



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

**MONDAY, JANUARY 22, 2024
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 Mark Aliff
- B. INVOCATION** Pastor Josh Richardson, Pueblo Christian Center
- C. PLEDGE OF ALLEGIANCE**
- D. ROLL CALL**
- E. SPECIAL RECOGNITIONS**
- F. PUBLIC FORUM**
- G. COUNCIL MEMBER AND MAYOR COMMENTARY**
- H. REVIEW OF AGENDA**

I. APPROVAL OF AGENDA

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

J. READING AND APPROVAL OF MINUTES

Motion to dispense with the reading and approve the Minutes of the Regular Meeting dated January 08, 2024, as distributed.

J1 City Council Minutes January 8, 2024

K. CONSENT AGENDA

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

L. COMMUNICATIONS

M. RESOLUTIONS

M1 A Resolution awarding a construction contract in the amount of \$115,232.01 to Weathercraft Co., for Project No. 23-137, Roof Replacement - Engineering Annex Building,

setting forth \$23,046.99 for contingencies, and authorizing the Purchasing Agent to execute same

- M2 A Resolution authorizing payment of one hundred thousand dollars (\$100,000) from Project No. CI2113 – American Rescue Plan Act, for the purposes of upgrading City Council chambers and pre-event room audio visual infrastructure, as authorized by Section 603 (a) of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35
- M3 A Resolution awarding a Construction Contract in the amount of \$74,000.00 to Rockies Environmental and Demolition Services, for Project No. 23-143, Abate and Demolish - 2907 2nd Ave., setting forth \$26,000.00 for contingencies, and authorizing the Purchasing Agent to execute same
- M4 A Resolution ratifying the award of a professional services agreement (Project No. 21-078 - Rate Consultant for Stormwater Utility Division) dated October 20, 2021 to Financial Consulting Solutions Group, Inc. DBA FCS Group; awarding Amendment No. 1 in the amount of \$19,567.00 to said agreement; and authorizing the purchasing agent to execute the same
- M5 A Resolution ratifying an emergency Construction Contract in the amount of \$10,201.52 with Russ Grading & Excavating LLC, for emergency storm sewer point repair at the intersection of East 9th Street and Erie Avenue, Project No. 23-040 (SWAN03) and approving the purchasing agent's execution of the same
- M6 A Resolution to approve Amendment No. 2 to Revocable Permit No. REV-23-41, issued to E.T. Technologies, Inc. for the purpose of installing groundwater monitoring wells
- M7 A Resolution authorizing the issuance of a Revocable Permit No. REV-23-49 to Fuel & Iron Master Tenant, LLC, for the use of parking spaces along B Street at the corner of B Street and S. Union Avenue for the purpose of hosting a Winter Beer Festival mobile axe throwing trailer
- M8 A Resolution confirming the appointment by the Mayor of Steve Nawrocki, Anthony Colarelli, and Michael Messervy to the Pueblo Urban Renewal Authority Board
- M9 A Resolution confirming the appointment of Council Members to various boards and commissions for the year 2024

N. ORDINANCES – FIRST PRESENTATION

- N1 An Ordinance approving and accepting an ARPA/SLRF and State Multi Modal Option Program Funds Grant (Pueblo Vanpool), Award No. 24-HTD-ZL-00125 / 491003385, and applicable conditions pertaining thereto, between the City of Pueblo and the Colorado Department of Transportation, establishing Project No. PT2402, budgeting and appropriating funds of \$400,000.00, and ratifying the Mayor's signature on same
- N2 An Ordinance approving and accepting a United States Department of Transportation, Federal Transit Administration Grant (areas of persistence poverty), Award No. FTA G-30, and applicable conditions pertaining thereto, between the City of Pueblo and the United States Department of Transportation, establishing Project No. PT2401, budgeting and appropriating funds \$180,000.00, with a local match of \$20,000.00 and ratifying the Mayor's signature on same
- N3 An Ordinance approving and accepting a Colorado Department of Transportation 2024-CTE: Pueblo Transit Fleet Transition Planning Grant Award-021647, and applicable conditions pertaining thereto, between the City of Pueblo and the Colorado Department of Transportation, establishing Project No. PT2403, budgeting and appropriating \$99,000.00 with a local match of \$11,000.00, and ratifying the Mayor's signature on same

- N4 An Ordinance approving a lease agreement between the City of Pueblo, a Colorado Municipal Corporation, and the State of Colorado, Department of Human Services for the premises known as the Langoni Sports Complex
- N5 An Ordinance authorizing Amendment No. 19 to the agreement for Community Services Planning, Administration, and Accountability Services between The City of Pueblo, a Colorado Municipal Corporation, and The Board of County Commissioners of the County of Pueblo
- N6 An Ordinance approve the grant agreement between the City of Pueblo and Health Colorado, Inc. for community outreach to connect community members to community resources and acceptance of \$80,000 for program project PS2402 and authorizing the Mayor to execute the same
- N7 An Ordinance approving an intergovernmental agreement (IGA) between Colorado State Patrol and the City of Pueblo relating to use of the Pueblo Fire Department training facilities and authorizing the mayor to execute the same
- N8 An Ordinance approving a subrecipient agreement authorizing payment in an amount of up to \$200,000 from Project CI2113 - American Rescue Plan Act to Rocky Mountain S.E.R./Jobs For Progress, INC., for equipment and related infrastructure improvements for its Empowerment Center 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
- N9 An Ordinance for safe use of public property to limit public camping and prohibit temporary structures on public property within the City of Pueblo, Colorado
- N10 An Ordinance amending Chapter 10 to Title XI and Chapter 1 of Title XV of the Pueblo Municipal Code regulating commercial vehicle operations within the City

O. APPROVAL OF CONSENT AGENDA

I move to approve all Resolutions Set Forth in the Consent Agenda; Pass the Ordinances of the Consent Agenda, Setting the Public Hearings for February 12, 2024, and Order the Ordinances to be published BY TITLE.

P. REGULAR AGENDA - QUASI-JUDICIAL PROCEEDINGS

- P1 An Ordinance amending zoning restrictions to rezone approximately 71.75 -acres if A-4, Agricultural Four to R-1, Single Family Residential (53.07-acres) and R-2 Single Family Residential (18.05-acres) located in the western portion of the Ventana Master Plan, 2002, and within the Proposed Ventana Estates Overall Development Plan area - *Introduced January 08, 2024 by Councilor Heather Graham*

Q. RESOLUTIONS

- Q1 A Resolution authorizing a transfer from the Council Contingencies account in the 2024 General Fund Budget to the Pueblo Food Project in the amount of \$2,000 to sponsor the Sun, Soil, Water Ag Summit on February 23 - 24, 2024
- Q2 A Resolution authorizing payment from Council Contingencies in the 2024 general fund budget to the Latino Chamber of Commerce in the amount of \$1,100 to sponsor a table of 10 at the 45th Anniversary Dinner Dance held on Saturday, February 24, 2024 at the Pueblo Convention Center
- Q3 A Resolution authorizing payment from Council Contingencies in the 2024 general fund budget to the Boys & Girls Club in the amount of \$1,800 to sponsor a V.I.P. table of 10 at the Champions of Youth Dinner on Thursday, March 14, 2024 at the Pueblo Convention

R. ORDINANCES – FINAL PRESENTATION

- R1 An Ordinance establishing Fund No. 304 - COP-Fire Stations and budgeting and appropriating the proceeds received from the issuance of the Series 2023 Certificates of Participation and all future funds received into Fund No. 304. - *Introduced January 08, 2024 by Councilor Heather Graham*
- R2 An Ordinance establishing Project PL2401 for Safe Routes to School Rock and Roll Safely, approving an Intergovernmental Agreement between the City of Pueblo, a Colorado Municipal Corporation, and the State of Colorado, acting by and through the Colorado Department of Transportation, Project: SAR M086-100 (25950), budgeting and appropriating funds in the amount of \$482,977 and authorizing the Mayor to execute same - *Introduced January 08, 2024 by Councilor Heather Graham*
- R3 An Ordinance amending section seven of chapter four of Title XVII of the Pueblo Municipal Code relating to Landscape Performance Standards - *Introduced January 08, 2024 by Councilor Heather Graham*
- R4 An Ordinance amending section 5 of Chapter 4, of Title XVII of the Pueblo Municipal Code relating to the appeal process for development and redevelopment review in the HB, HARP-1, HARP -2 and HARP-3 performance standard review - *Introduced January 08, 2024 by Councilor Heather Graham*
- R5 An Ordinance approving and authorizing the City to sell and assign certain liens encumbering real property pursuant to Title VII, Chapter 9 of the Pueblo Municipal Code, and authorizing the Mayor to execute assignments of lien - *Introduced January 08, 2024 by Councilor Heather Graham*

S. ADJOURN



**REGULAR CITY COUNCIL MEETING
CITY COUNCIL CHAMBERS – CITY HALL
#1 CITY HALL PLACE
MONDAY, JANUARY 8, 2024 - 7:00 PM
MINUTES**

A. CALL TO ORDER

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

B. INVOCATION

C. PLEDGE OF ALLEGIANCE

D. ROLL CALL

Council Members Present: Dennis Flores, Heather Graham, Regina Maestri, Sarah Martinez, Roger Gomez, Mark Aliff, Joe Latino.

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. OATH OF OFFICE

The newly-elected Councilors - Mark Aliff, Joe Latino, and Roger Gomez - were sworn in.

F. ELECTION OF 2024 OFFICERS

Councilor Martinez, seconded by Councilor Flores, nominated Councilor Flores for City Council President.

Councilor Lation, seconded by Councilor Maestri, nominated Councilor Aliff for City Council President.

A vote was made by secret ballot with 5 votes for Councilor Aliff and 2 votes for Councilor Flores. Councilor Aliff was named City Council President and took charge of the meeting.

Councilor Maestri, seconded by Joe Latino, nominated Councilor Gomez for City Council Vice President.

A vote was made by secret ballot with 7 votes for Councilor Gomez. Councilor Gomez was named City Council Vice President.

President Aliff named Councilor Maestri as Work Session Chair; Councilor Maestri accepted.

G. SPECIAL RECOGNITIONS

G1 RECOGNITION PRESENTATION: "DR. MARTIN LUTHER KING, JR. UNITY MARCH DAY - JANUARY 15, 2024" - ROXANA MACK, NAACP PUEBLO PRESIDENT

H. PUBLIC FORUM

- Elvis Martinez - Code Enforcement
- Frank Cirullo - Restitution
- Xan Kellogg - Camping ban
- Brett Boston - Crime, Drugs, Homeless
- Rylee Turano - Camping ban
- Grace Smith - gang violence, too many people dying

I. COUNCIL MEMBER AND MAYOR COMMENTARY

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

J. REVIEW AND APPROVAL OF AGENDA

Councilor Graham, seconded by Councilor Latino, moved to move items M4, M5, N9 and N10 to the regular agenda, remove item N3 from the agenda, postpone items N7 and N8 to the January 22, 2024 agenda and to approve the agenda as amended.

Roll Call - **Ayes:** Councilor Flores, Councilor Graham, Councilor Maestri, Councilor Martinez, President Aliff, Councilor Latino. **Nays:** Councilor Gomez. Motion Passed 6-1.

K. READING AND APPROVAL OF MINUTES

K1 CITY COUNCIL MINUTES DECEMBER 26, 2023

Councilor Martinez, seconded by Councilor Flores, moved to dispense with the reading and approve the Minutes of the Regular Meeting dated **December 26, 2023** as distributed.

Roll Call - **Ayes:** Councilor Flores, Councilor Graham, Councilor Maestri, Councilor Martinez, Councilor Gomez, President Aliff, Councilor Latino. **Nays:** None. Motion Passed 7-0.

L. CONSENT AGENDA

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

M. RESOLUTIONS

M1 A RESOLUTION DESIGNATING PUBLIC PLACES FOR THE POSTING OF NOTICE OF MEETINGS FOR THE PUEBLO CITY COUNCIL FOR THE YEAR 2024

This Resolution was assigned as 15457.

M2 A RESOLUTION DESIGNATING A PUBLIC PLACE FOR THE POSTING OF NOTICE OF MEETINGS FOR ALL BOARDS, COMMISSIONS, AND COMMITTEES OF THE CITY OF PUEBLO FOR THE YEAR 2024

This Resolution was assigned as 15458.

M3 A RESOLUTION FIXING AN ALTERNATE DAY FOR THE REGULAR CITY COUNCIL MEETING CURRENTLY SCHEDULED FOR THE FOURTH MONDAY IN MAY 2024 AND THE SECOND MONDAY IN OCTOBER 2024

This Resolution was assigned as 15459.

N. ORDINANCES – FIRST PRESENTATION

N1 AN ORDINANCE ESTABLISHING FUND NO. 304 - COP-FIRE STATIONS AND BUDGETING AND APPROPRIATING THE PROCEEDS RECEIVED FROM THE ISSUANCE OF THE SERIES 2023 CERTIFICATES OF PARTICIPATION AND ALL FUTURE FUNDS RECEIVED INTO FUND NO. 304.

N2 AN ORDINANCE ESTABLISHING PROJECT PL2401 FOR SAFE ROUTES TO SCHOOL ROCK AND ROLL SAFELY, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION, PROJECT: SAR M086-100 (25950), BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$482,977 AND AUTHORIZING THE MAYOR TO EXECUTE SAME

N3 AN ORDINANCE APPROVING AND RATIFYING A SUPPLEMENTAL ENVIRONMENTAL PROJECT AGREEMENT AND APPROVING A MODIFICATION TO SAID AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT FOR THE PURPOSE OF DEVELOPING A HOUSEHOLD HAZARDOUS WASTE PROGRAM; AUTHORIZING THE MAYOR TO EXECUTE THE MODIFICATION; ACCEPTING FUNDS IN THE AMOUNT OF \$378,880.00 FROM THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT; AND BUDGETING AND APPROPRIATING SAID FUNDS INTO PROJECT ACCOUNT NO. PL2302 - HOUSEHOLD HAZARDOUS WASTE PROGRAM

This item was removed from the agenda.

N4 AN ORDINANCE AMENDING ZONING RESTRICTIONS TO REZONE APPROXIMATELY 71.75 -ACRES IF A-4, AGRICULTURAL FOUR TO R-1, SINGLE FAMILY RESIDENTIAL (53.07-ACRES) AND R-2 SINGLE FAMILY RESIDENTIAL (18.05-ACRES) LOCATED IN THE WESTERN PORTION OF THE VENTANA MASTER PLAN, 2002, AND WITHIN THE PROPOSED VENTANA ESTATES OVERALL DEVELOPMENT PLAN AREA

N5 AN ORDINANCE AMENDING SECTION SEVEN OF CHAPTER FOUR OF TITLE

XVII OF THE PUEBLO MUNICIPAL CODE RELATING TO LANDSCAPE PERFORMANCE STANDARDS

N6 AN ORDINANCE AMENDING SECTION 5 OF CHAPTER 4, OF TITLE XVII OF THE PUEBLO MUNICIPAL CODE RELATING TO THE APPEAL PROCESS FOR DEVELOPMENT AND REDEVELOPMENT REVIEW IN THE HB, HARP-1, HARP-2 AND HARP-3 PERFORMANCE STANDARD REVIEW

N7 AN ORDINANCE AMENDING CHAPTER 10 TO TITLE XI AND CHAPTER 1 OF TITLE XV OF THE PUEBLO MUNICIPAL CODE REGULATING COMMERCIAL VEHICLE OPERATIONS WITHIN THE CITY

This item was moved to the January 22, 2024 agenda.

N8 AN ORDINANCE FOR SAFE USE OF PUBLIC PROPERTY TO LIMIT PUBLIC CAMPING AND PROHIBIT TEMPORARY STRUCTURES ON PUBLIC PROPERTY WITHIN THE CITY OF PUEBLO, COLORADO

This item was moved to the January 22, 2024 agenda.

N11 AN ORDINANCE APPROVING AND AUTHORIZING THE CITY TO SELL AND ASSIGN CERTAIN LIENS ENCUMBERING REAL PROPERTY PURSUANT TO TITLE VII, CHAPTER 9 OF THE PUEBLO MUNICIPAL CODE, AND AUTHORIZING THE MAYOR TO EXECUTE ASSIGNMENTS OF LIEN

O. APPROVAL OF CONSENT AGENDA

Councilor Graham, 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 January 22, 2024, and Order the Ordinances to be published BY TITLE.

Roll Call – **Ayes:** Councilor Flores, Councilor Graham, Councilor Maestri, Councilor Martinez, Councilor Gomez, President Aliff, Councilor Latino. **Nays:** None. Motion Passed 7-0.

P. REGULAR AGENDA

M4 A RESOLUTION AUTHORIZING THE PUEBLO URBAN RENEWAL AUTHORITY TO CONDUCT A STUDY TO DETERMINE WHETHER THE PROPOSED NORTH ELIZABETH AREA IS A SLUM, BLIGHTED AREA, OR A COMBINATION THEREOF, AND TO NOTIFY OWNERS OF PROPERTY IN THE AREAS SUBJECT OF STUDY.

This item was moved to the Regular Agenda.

Councilor Flores, seconded by President Graham, moved to remove the Resolution from the agenda.

Roll Call - **Ayes:** Councilor Flores, President Graham, Councilor Maestri, Councilor Martinez, Councilor Gomez, Councilor Aliff, Councilor Latino. **Nays:** None. Motion Passed 7-0.

M5 A RESOLUTION AUTHORIZING THE PUEBLO URBAN RENEWAL AUTHORITY

TO CONDUCT A STUDY TO DETERMINE WHETHER THE PROPOSED BLUFFS AREA IS A SLUM, BLIGHTED AREA, OR COMBINATION THEREOF, AND TO NOTIFY OWNERS OF PROPERTY IN THE AREA SUBJECT OF STUDY.

This item was moved to the regular agenda.

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

Roll Call - **Ayes:** Councilor Flores, Councilor Maestri, Councilor Martinez, Councilor Aliff, Councilor Latino. **Nays:** President Graham, Councilor Gomez. Motion Passed 5-2.

This Resolution was assigned as 15460.

N9 AN ORDINANCE MAKING CERTAIN LEGISLATIVE FINDINGS AND APPROVING THE BLUFFS PHASE 1 URBAN RENEWAL PLAN

This item was moved to the regular agenda.

Councilor Flores, seconded by President Graham, moved to remove this item from the agenda.

Roll Call - **Ayes:** Councilor Flores, President Graham, Councilor Martinez, Councilor Gomez, Councilor Aliff, Councilor Latino. **Nays:** Councilor Maestri. Motion Passed 6-1.

N10 AN ORDINANCE MAKING CERTAIN LEGISLATIVE FINDINGS AND APPROVING THE NORTH ELIZABETH HOTEL URBAN RENEWAL PLAN

This item was moved to the regular agenda.

Councilor Graham, seconded by Councilor Flores, moved to remove the item from the agenda.

Roll Call - **Ayes:** Councilor Flores, Councilor Graham, Councilor Martinez, Councilor Gomez, President Aliff, Councilor Latino. **Nays:** Councilor Maestri. Motion Passed 6-1.

Q. RESOLUTIONS

Q1 A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2024 GENERAL FUND BUDGET TO MT. CARMEL VETERANS SERVICE CENTER IN THE AMOUNT OF \$1,000 TO SPONSOR THE SALUTE TO HEROES EVENT ON THURSDAY, JANUARY 18, 2024, AT 4:00 PM AT PUEBLO COMMUNITY COLLEGE

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

President Graham, seconded by Councilor Flores, moved to approve the Resolution.

Roll Call - **Ayes:** Councilor Flores, Councilor Graham, Councilor Maestri, Councilor Martinez, Councilor Gomez, President Aliff, Councilor Latino. **Nays:** None. Motion Passed 7-0.

This Resolution was assigned as 15461.

R. ORDINANCES – FINAL PRESENTATION

**R1 AN ORDINANCE CHANGING THE STREET NAME OF US HIGHWAY 50
BYPASS TO DR. MARTIN LUTHER KING JR. BYPASS**

A staff report and detailed review of the Ordinance was given by Scott Hobson, Acting Director of Planning & Community Development. Mr. Hobson requested that the Planning & Zoning documents for this item, Case #SNC-23-02 dated December 13, 2024, be made part of the record for this hearing. So ordered by President Aliff.

PUBLIC HEARING:

- Ron Wiley appeared in person to speak in favor of this ordinance

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

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

Roll Call - **Ayes:** President Aliff, Councilor Flores, Councilor Gomez, Councilor Graham, Councilor Latino, Councilor Maestri, Councilor Martinez. **Nays:** None. Motion Passed 7-0.

This Ordinance was assigned as **10630.**

**R2 AN ORDINANCE ESTABLISHING PROJECT ED2305, THE POPE BLOCK
BUILDING GENERATOR ROOF MEMBRANE REPLACEMENT PROJECT,
TRANSFERRING \$30,000 FROM 41300000-56901, PROJECTS TO BE
DETERMINED TO ED2305, BUDGETING AND APPROPRIATING FUNDS IN
THE AMOUNT OF \$30,000, AND AUTHORIZING THE MAYOR TO EXECUTE
SAME**

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 Aliff declared the Hearing closed.

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

Roll Call - **Ayes:** President Aliff, Councilor Flores, Councilor Gomez, Councilor Graham, Councilor Latino, Councilor Maestri, Councilor Martinez. **Nays:** None. Motion Passed 7-0.

This Ordinance was assigned as **10631.**

**R3 AN ORDINANCE ESTABLISHING PROJECT ED2307, THE POPE BLOCK
BUILDING GENERATOR FENCING PROJECT, TRANSFERRING \$25,000
FROM 41300000-56901, PROJECTS TO BE DETERMINED TO ED2307,
BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$25,000,
AND AUTHORIZING THE MAYOR TO EXECUTE SAME**

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 Aliff declared the Hearing closed.

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

Roll Call - **Ayes:** President Aliff, Councilor Flores, Councilor Gomez, Councilor Graham, Councilor Latino, Councilor Maestri, Councilor Martinez. **Nays:** None. Motion Passed 7-0.

This Ordinance was assigned as 10632.

R4 AN ORDINANCE ESTABLISHING PROJECT ED2306, THE POPE BLOCK BUILDING ELEVATOR SHAFT REPAIR PROJECT, TRANSFERRING \$10,000 FROM 41300000-56901, PROJECTS TO BE DETERMINED TO ED2306, BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$10,000, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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 Aliff declared the Hearing closed.

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

Roll Call - **Ayes:** President Aliff, Councilor Flores, Councilor Gomez, Councilor Graham, Councilor Latino, Councilor Maestri, Councilor Martinez. **Nays:** None. Motion Passed 7-0.

This Ordinance was assigned as 10633.

R5 AN ORDINANCE APPROVING AND ACCEPTING A SUBGRANT IN THE AMOUNT OF \$20,000.00 FROM THE PUEBLO COUNTY DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT ON BEHALF OF THE PUEBLO FOOD PROJECT, BUDGETING AND APPROPRIATING \$20,000.00 TO PROJECT NO. 2333, AND AUTHORIZING THE MAYOR'S SIGNATURE OF THE GRANT AGREEMENT

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

PUBLIC HEARING:

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

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

Roll Call - **Ayes:** President Aliff, Councilor Flores, Councilor Gomez, Councilor Graham, Councilor Latino, Councilor Maestri, Councilor Martinez. **Nays:** None. Motion Passed 7-0.

This Ordinance was assigned as 10634.

R6 AN ORDINANCE APPROVING AND ACCEPTING A SUBGRANT IN THE AMOUNT OF \$12,000 FROM THE COLORADO BLUEPRINT TO END HUNGER FOR THE PUEBLO FOOD PROJECT, AUTHORIZING THE MAYOR TO SIGN THE GRANT AGREEMENT, AND BUDGETING AND APPROPRIATING \$12,000

TO PROJECT NO. CI2332

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

PUBLIC HEARING:

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

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

Roll Call - **Ayes:** President Aliff, Councilor Flores, Councilor Gomez, Councilor Graham, Councilor Latino, Councilor Maestri, Councilor Martinez. **Nays:** None. Motion Passed 7-0.

This Ordinance was assigned as **10635.**

R7 AN ORDINANCE APPROVING THE GRANT AGREEMENT BETWEEN THE CITY OF PUEBLO AND CARING FOR COLORADO FOUNDATION FOR THE DOTS PROGRAM AND ACCEPTANCE OF \$15,000 FOR PROJECT PS2401 AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME

A staff report and detailed review of the Ordinance was given by Barb Huber, Fire Chief.

PUBLIC HEARING:

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

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

Roll Call - **Ayes:** President Aliff, Councilor Flores, Councilor Gomez, Councilor Graham, Councilor Latino, Councilor Maestri, Councilor Martinez. **Nays:** None. Motion Passed 7-0.

This Ordinance was assigned as **10636.**

R8 AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, AND OTERO COUNTY RELATING TO MUTUAL AID IN THE PROVISION OF FIRE PROTECTION AND OTHER EMERGENCY SERVICES

A staff report and detailed review of the Ordinance was given by Barb Huber, Fire Chief.

PUBLIC HEARING:

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

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

Roll Call - **Ayes:** President Aliff, Councilor Flores, Councilor Gomez, Councilor Graham, Councilor Latino, Councilor Maestri, Councilor Martinez. **Nays:** None. Motion Passed 7-0.

This Ordinance was assigned as **10637.**

R9 AN ORDINANCE APPROVING AN AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND THE HOUSING

AUTHORITY OF THE CITY OF PUEBLO, A COLORADO NON-PROFIT CORPORATION ALLOWING FOR THE DELAY OF THE INSTALLATION OF LANDSCAPE IMPROVEMENTS FOR THE CRAWFORD TOWNHOMES PHASE 3 OF PHASE 2B AS REQUIRED BY SECTION 17-4-7 LANDSCAPE PERFORMANCE STANDARDS OF THE PUEBLO MUNICIPAL CODE AND AUTHORIZING THE MAYOR TO EXECUTE SAME

A staff report and detailed review of the Ordinance was given by Scott Hobson, Acting Director of Planning & Community Development.

PUBLIC HEARING:

- Steven Trujillo appeared via zoom to speak in favor of this ordinance

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

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

Roll Call - **Ayes:** President Aliff, Councilor Flores, Councilor Gomez, Councilor Graham, Councilor Latino, Councilor Maestri, Councilor Martinez. **Nays:** None. Motion Passed 7-0.

This Ordinance was assigned as **10638**.

S. ADJOURN

President Aliff adjourned the meeting at 9:17 p.m.

Respectfully submitted,



Marisa Stoller
City Clerk



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff 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 \$115,232.01 TO WEATHERCRAFT CO., FOR PROJECT NO. 23-137, ROOF REPLACEMENT - ENGINEERING ANNEX BUILDING, SETTING FORTH \$23,046.99 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

Attached is a resolution awarding a Construction Contract to Weathercraft Co., for Project No. 23-137, Roof Replacement - Engineering Annex Building.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

This project will consist of the replacement of the existing roof with a new modified bitumen 2-ply hot asphalt roof with silver surfacing at the Engineering Annex building.

This Resolution awards the Construction Contract to Weathercraft Co.

FINANCIAL IMPLICATION

Funding, including contingencies, in the amount of \$137,279.00, will be paid from account Project CIAN22, Roof Maintenance and Repair.

BOARD/COMMISSION RECOMMENDATION

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Denial of this resolution will cancel the project.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. 23-137 Combined Bid Summary

RESOLUTION NO. 15462

A RESOLUTION AWARDDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$115,232.01 TO WEATHERCRAFT CO., FOR PROJECT NO. 23-137, ROOF REPLACEMENT - ENGINEERING ANNEX BUILDING, SETTING FORTH \$23,046.99 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, competitive bids for Project No. 23-137, Roof Replacement - Engineering Annex Building have been received and examined; AND,

WHEREAS, the proposal of Weathercraft Co., was the lowest bid determined to be responsive, and the Committee of Awards recommends to the City Council that it authorize Project No. 23-137, Roof Replacement - Engineering Annex Building to be performed; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The City Council authorizes Project No. 23-137, Roof Replacement - Engineering Annex Building to be performed, and the contract for said project is hereby awarded to Weathercraft Co., in the amount of \$115,232.01.

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.....\$23,046.99

SECTION 4.

Funding, in the amount of \$138,279.00, will be paid from project account CIAN22, Roof Maintenance and Repair.

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: January 22, 2024

BY: Sarah Martinez
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



City of Pueblo
Purchasing

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

EVALUATION TABULATION

IFB No. 23-137 (CIAN22), 23-137A (Clarification No. 1)

Roof Replacement - Engineering Annex Building

RESPONSE DEADLINE: November 8, 2023 at 10:30 am

Report Generated: Wednesday, January 10, 2024

SELECTED VENDOR TOTALS

Vendor	Total	Base Bid	Bid Alternate No. 1	Bid Alternate No. 2 (Clarification No. 1)
Weathercraft Co.	\$115,237.66	\$114,232.06	\$5.65	\$999.95
Colorado Front Range Roofing	\$137,382.89	\$112,857.89	\$25.00	\$24,500.00

EVALUATION TABULATION
 IFB No. 23-137 (CIAN22)
 Roof Replacement - Engineering Annex Building

BASE BID

Base Bid					Colorado Front Range Roofing		Weathercraft Co.	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total
X	1	Remove and replace existing roof with a new modified bitumen 2-ply hot asphalt roof with silver surfacing	1	LS	\$101,572.10	\$101,572.10	\$108,520.46	\$108,520.46
X	2	Mobilization	1	LS	\$11,285.79	\$11,285.79	\$5,711.60	\$5,711.60
Total						\$112,857.89		\$114,232.06

BID ALTERNATE 1

Bid Alternate 1					Colorado Front Range Roofing		Weathercraft Co.	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total
X	3	Replacement of damaged wood decking	1	SF	\$25.00	\$25.00	\$5.65	\$5.65
Total						\$25.00		\$5.65

BID ALTERNATE 2 (Clarification No. 1)

Bid Alternate 2					Colorado Front Range Roofing		Weathercraft Co.	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total
X	4	Abate asbestos containing materials (As required)	3500	SF	\$7.00	\$24,500.00	\$0.2857	\$999.95
Total						\$24,500.00		\$999.95

EVALUATION TABULATION
IFB No. 23-137 (CIAN22)
Roof Replacement - Engineering Annex Building

VENDOR QUESTIONNAIRE PASS/FAIL

Question Title	Colorado Front Range Roofing	Weathercraft Co.	Central States Roofing Company (Disqualified)	Colorado Moisture Control, Inc. (Disqualified)	L.E. Roofing, LLC (Disqualified)
BID GUARANTEE	Pass	Pass	Pass	Pass	Pass
CONFIRMATION OF UNDERSTANDING AND OFFER	Pass	Pass	Pass	Pass	Pass
NAME, TITLE, AND CONTACT INFORMATION	Pass	Pass	Pass	Pass	Pass
ACKNOWLEDGEMENTS					
AFFIRMATIVE ACTION PLAN REQUIREMENT:	Pass	Pass	Pass	Pass	Pass
COLORADO LABOR REQUIREMENT:	Pass	Pass	Pass	Pass	Pass
SALES AND/OR USE TAX INFORMATION	Pass	Pass	Pass	Pass	Pass
Has/is this firm or any officer or partner of this firm:					
Convicted of a criminal offense	Pass	Pass	Pass	Pass	Pass
Convicted under state or federal statutes	Pass	Pass	Pass	Pass	Pass
Convicted under state or federal antitrust statutes	Pass	Pass	Pass	Pass	Pass
Failed to perform	Pass	Pass	Pass	Pass	Pass
Suspension or Debarment	Pass	Pass	Pass	Pass	Pass
Unqualified	Pass	Pass	Pass	Pass	Pass
Unlicensed	Pass	Pass	Pass	Pass	Pass
Delinquent	Pass	Pass	Pass	Pass	Pass
Confirmation	Pass	Pass	Pass	Pass	Pass
Responded to Clarification No. 1	Yes	Yes	No	No	No



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Lori Pinz, Director Information Technology

SUBJECT: A RESOLUTION AUTHORIZING PAYMENT OF ONE HUNDRED THOUSAND DOLLARS (\$100,000) FROM PROJECT NO. CI2113 – AMERICAN RESCUE PLAN ACT, FOR THE PURPOSES OF UPGRADING CITY COUNCIL CHAMBERS AND PRE-EVENT ROOM AUDIO VISUAL INFRASTRUCTURE, AS AUTHORIZED BY SECTION 603 (A) OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR 35

SUMMARY:

This Resolution authorizes the payment of \$100,000 in in American Rescue Plan Act (“ARPA”) funds for the purpose of upgrading the audio-visual infrastructure for City Council chambers and the pre-event room both located in City Hall.

PREVIOUS COUNCIL ACTION:

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

BACKGROUND:

The audio-visual equipment (AV) installed in City Council chambers and the pre-event room is outdated, failing, and must be upgraded. We completed an upgrade to the voting portion of the equipment in 2020, but the rest of the AV infrastructure was left in place due to limited budgetary resources caused by the Covid-19 Pandemic. The AV system is a highly engineered and complex system integrated to drive all of the legislative business processes of the city. Much of the equipment is over ten years old and is consistently failing. This is causing continual technical difficulties during council and board meetings. It has become increasingly difficult to locate replacement parts for

the failing components as they are obsolete. Further, the pre-event room is not functioning as the components to repair are not available. The pre-event room not only serves the city departments but also provides services vital to Memorial Hall events. This upgrade will stabilize the issues in Council Chambers as well as reestablish services in the pre-event room that would have been made by the City but for the Covid-19 Pandemic.

This system upgrade is an eligible use of ARPA funds 31C.F.R. 35.6(b)(3)(ii)(E)(4).

FINANCIAL IMPLICATIONS:

Funding in the amount of \$100,000 will be transferred from Project No. CI2113.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Resolution.

STAKEHOLDER PROCESS:

Not applicable to this Resolution.

ALTERNATIVES:

The City Council could decide not to support or fund the upgrade allowing the technical issues to continue or risk catastrophic system failure causing the inability to utilize the rooms for legislative business and events.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

None

RESOLUTION NO. 15463

A RESOLUTION AUTHORIZING PAYMENT OF ONE HUNDRED THOUSAND DOLLARS (\$100,000) FROM PROJECT NO. CI2113 – AMERICAN RESCUE PLAN ACT, FOR THE PURPOSES OF UPGRADING CITY COUNCIL CHAMBERS AND PRE-EVENT ROOM AUDIO VISUAL INFRASTRUCTURE, AS AUTHORIZED BY SECTION 603 (A) OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR 35

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

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

WHEREAS, by Ordinance No. 9931, approved on May 17, 2021, the City Council established Project No. CI-2113 and budgeted and appropriated up to \$36.7 million in funds which were expected to be distributed to the City from ARPA for covered costs and eligible expenses to be incurred during the period which began on March 3, 2021, until December 31, 2024 (to be expended by December 31, 2026); and

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

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

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Funds in the amount of one hundred thousand dollars (\$100,000) are hereby authorized for payment from Project No. CI2113 – American Rescue Plan Act, for purposes of upgrading the audio-visual infrastructure in City Council Chambers and Pre-event room.

SECTION 2.

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

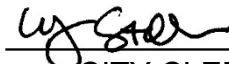
SECTION 3.

This Resolution shall become effective immediately upon final passage.

INTRODUCED: January 22, 2024

BY: Sarah Martinez
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff 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 \$74,000.00 TO ROCKIES ENVIRONMENTAL AND DEMOLITION SERVICES, FOR PROJECT NO. 23-143, ABATE AND DEMOLISH - 2907 2ND AVE., SETTING FORTH \$26,000.00 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

Attached is a resolution awarding a Construction Contract to Rockies Environmental and Demolition Services, for Project No. 23-143, Abate and Demolish - 2907 2nd Ave.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

In general, this project will consist of the abatement and demolition of 2907 2nd Ave. The Resolution awards the Construction Contract to Rockies Environmental and Demolition Services.

FINANCIAL IMPLICATIONS:

Funding (including contingencies) in the amount of \$100,000.00 will be paid from project account CIAN23 - Unsafe Building Demolition.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Denial of this resolution will cancel the project.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. 23-143 Bid Summary

RESOLUTION NO. 15468

A RESOLUTION AWARDDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$74,000.00 TO ROCKIES ENVIRONMENTAL AND DEMOLITION SERVICES, FOR PROJECT NO. 23-143, ABATE AND DEMOLISH - 2907 2ND AVE., SETTING FORTH \$26,000.00 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, bids for Project No. 23-143 - Abate and Demolish - 2907 2nd Ave have been received and examined; AND,

WHEREAS, the proposal of Rockies Environmental and Demolition Services, was the lowest of those bids determined to be responsive; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The City Council authorizes Project No. 23-143, Abate and Demolish - 2907 2nd Ave. to be performed, and the contract for said project is hereby awarded to Rockies Environmental and Demolition Services, in the amount of \$74,000.00.

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 the same.

SECTION 3.

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

Contingencies and Additional Work.....\$26,000.00

SECTION 4.

Funds for Project No. 23-143 (including contingencies), in the amount of \$100,000.00 shall be from project account CIAN23 - Unsafe Building Demolition.

SECTION 5.

The City Staff and 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: January 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



EVALUATION TABULATION
IFB No. 23-143 (CIAN23)
Abate & Demo - 2907 2nd Ave.
RESPONSE DEADLINE: January 10, 2024 at 10:00 am
Report Generated: Wednesday, January 10, 2024

SELECTED VENDOR TOTALS

Vendor	Total
Rockies Environmental and Demolition Services	\$74,000.00
Adept Building Solutions	\$133,680.00
Impact industrial Services	\$155,623.43
Hillen Abatement LLC	\$178,500.00
JKS Industries LLC	\$249,995.00

EVALUATION TABULATION
 IFB No. 23-143 (CIAN23)
 Abate & Demo - 2907 2nd Ave.

BASE BID

Selected	Line Item	Description	Quantity	Unit of Measure	Adept Building Solutions		Hillen Abatement LLC		Impact industrial Services		JKS Industries LLC		Rockies Environmental and Demolition Services	
					Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total
X	1	Abate & Demolition Building	1	LS	\$122,885.00	\$122,885.00	\$151,000.00	\$151,000.00	\$144,340.74	\$144,340.74	\$235,275.00	\$235,275.00	\$50,000.00	\$50,000.00
X	2	Traffic Control	1	LS	\$1,250.00	\$1,250.00	\$5,000.00	\$5,000.00	\$1,945.29	\$1,945.29	\$1,850.00	\$1,850.00	\$8,000.00	\$8,000.00
X	3	Erosion & Sediment Control	1	LS	\$1,045.00	\$1,045.00	\$10,000.00	\$10,000.00	\$2,334.35	\$2,334.35	\$5,680.00	\$5,680.00	\$8,000.00	\$8,000.00
X	4	Mobilization	1	LS	\$8,500.00	\$8,500.00	\$12,500.00	\$12,500.00	\$7,003.05	\$7,003.05	\$7,190.00	\$7,190.00	\$8,000.00	\$8,000.00
Total						\$133,680.00		\$178,500.00		\$155,623.43		\$249,995.00		\$74,000.00

VENDOR QUESTIONNAIRE PASS/FAIL

Question Title	Adept Building Solutions	Hillen Abatement LLC	Impact industrial Services	JKS Industries LLC	Rockies Environmental and Demolition Services
BID GUARANTEE	Pass	Pass	Pass	Pass	Pass
CONFIRMATION OF UNDERSTANDING AND OFFER	Pass	Pass	Pass	Pass	Pass
NAME, TITLE, AND CONTACT INFORMATION	Pass	Pass	Pass	Pass	Pass
ACKNOWLEDGEMENTS					
AFFIRMATIVE ACTION PLAN REQUIREMENT:	Pass	Pass	Pass	Pass	Pass
COLORADO LABOR REQUIREMENT:	Pass	Pass	Pass	Pass	Pass
INSURANCE REQUIREMENTS	Pass	Pass	Pass	Pass	Pass
SALES AND/OR USE TAX INFORMATION	Pass	Pass	Pass	Pass	Pass
Has/is this firm or any officer or partner of this firm:					
Convicted of a criminal offense	Pass	Pass	Pass	Pass	Pass
Convicted under state or federal statutes	Pass	Pass	Pass	Pass	Pass
Convicted under state or federal antitrust statutes	Pass	Pass	Pass	Pass	Pass
Failed to perform	Pass	Pass	Pass	Pass	Pass
Suspension or Debarment	Pass	Pass	Pass	Pass	Pass
Unqualified	Pass	Pass	Pass	Pass	Pass
Unlicensed	Pass	Pass	Pass	Pass	Pass
Delinquent	Pass	Pass	Pass	Pass	Pass
Confirmation	Pass	Pass	Pass	Pass	Pass



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: A RESOLUTION RATIFYING THE AWARD OF A PROFESSIONAL SERVICES AGREEMENT (PROJECT NO. 21-078 - RATE CONSULTANT FOR STORMWATER UTILITY DIVISION) DATED OCTOBER 20, 2021 TO FINANCIAL CONSULTING SOLUTIONS GROUP, INC. DBA FCS GROUP; AWARDING AMENDMENT NO. 1 IN THE AMOUNT OF \$19,567.00 TO SAID AGREEMENT; AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE THE SAME

SUMMARY:

This Resolution ratifies the award of a professional services agreement (Project No. 21-078, Rate Consultant for Stormwater Utility Division) to Financial Consulting Solutions Group, Inc. DBA FCS Group dated October 20, 2021 in an amount not to exceed \$73,340.00; awards Amendment No. 1 in the amount of \$19,567.00; and authorizing the purchasing agent to execute same.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

Section 16-6-26(c) of the Pueblo Municipal Code allows the Stormwater Utility Enterprise to perform biennial reviews of Stormwater Utility Enterprise's service charges to ascertain if the stormwater utility service charges generate sufficient revenue to pay the total project costs. Financial Consulting Solutions Group, Inc. DBA FCS Group was selected to perform a rate study for the Stormwater Utility Enterprise. The City of Pueblo (City) asked FCS Group to investigate an additional scenario that was not part of the initial scope of services for the rate study. FCS was asked to investigate what additional funding would be necessary for the City to assume additional maintenance responsibilities of stormwater detention facilities that are not being maintained in residential neighborhoods and are not the City's responsibility to maintain. The attached Amendment No. 1 to the agreement for professional services

between the City and FCS Group includes the expenses necessary for FCS Group to complete the additional work.

FINANCIAL IMPLICATIONS:

Funds for this project, including the proposed amendment, will be paid from the Stormwater Utility Enterprise budget (Project SW1902).

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Denial of this Resolution would prevent the City from executing the additional work on the rate study for the Stormwater Utility Division.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. 21-078 Stormwater Rate Study Agreement
2. 21-078 Amendment No. 1

RESOLUTION NO. 15464

A RESOLUTION RATIFYING THE AWARD OF A PROFESSIONAL SERVICES AGREEMENT (PROJECT NO. 21-078 - RATE CONSULTANT FOR STORMWATER UTILITY DIVISION) DATED OCTOBER 20, 2021 TO FINANCIAL CONSULTING SOLUTIONS GROUP, INC. DBA FCS GROUP; AWARDING AMENDMENT NO. 1 IN THE AMOUNT OF \$19,567.00 TO SAID AGREEMENT; AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE THE SAME

WHEREAS, a Professional Service Agreement was awarded to Financial Consulting Solutions Group, Inc, DBA FCS Group, under Contract Number 21-078 and;

WHEREAS, additional work is required to complete the Rate Study for the Stormwater Utility Department requiring the agreement to be amended; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

City Council hereby ratifies and approves the professional services agreement for the Rate Study for the Stormwater Utility Division with Financial Consulting Solutions Group, Inc. DBA FCS Group, Project No. 21-078, in an amount not to exceed \$73,340.00.

SECTION 2.

Amendment No. 1 to the Professional Service Agreement for Rate Study for the Stormwater Utility Division with Financial Consulting Solutions Group, Inc. DBA FCS Group, Project No. 21-078, is hereby awarded in the amount of \$19,567.00.

SECTION 3.

Funds for Project No. 21-078, Rate Consultant for Stormwater Utility Division shall be paid from SW1902.

SECTION 4.

The Purchasing Agent is hereby authorized to execute Amendment No. 1 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 the same.

SECTION 5.

The officers and staff of the City of Pueblo are authorized and directed to perform any and all acts consistent with this Resolution to implement the policies and procedures described herein. Furthermore, all actions previously taken by officers and staff of the City consistent with the Agreement, including any payments authorized under the Agreement, are hereby ratified.

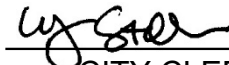
SECTION 6.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: January 22, 2024

BY: Sarah Martinez
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
CITY OF PUEBLO
AND
FINANCIAL CONSULTING SOLUTIONS GROUP, INC.
DBA FCS GROUP**

THIS AGREEMENT is made and entered this 20th day of October, 2021, by and between Pueblo, a Municipal Corporation (hereinafter referred to as "Client") and Financial Consulting Solutions Group, Inc. dba FCS Group, a Washington Corporation authorized to do business in the State of Colorado, (hereinafter referred to as "Consultant") for Consultant to render professional services as identified in the Scope of Services for Bid 21-078 RFP - Rate Consultant for Stormwater Department (hereinafter referred to as the "Project"). In consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

SECTION 1. GENERAL AND SCOPE OF SERVICES

(a) Consultant shall satisfactorily perform the professional consulting services for the Project described in more detail in Schedule 1 attached hereto and incorporated herein by reference (the "Scope of Services"). Such services shall include all usual and customary administration and management necessary for work on the Project. 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.

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

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.

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

(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 acknowledges that time is of the essence with respect to the completion of its services under this Agreement. Consultant represents that Schedule 3 attached hereto 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 at the rates set forth in Schedule 2 attached hereto.

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. \$73,340.00, 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 hourly rates and expense reimbursement provisions set forth in Schedule 2 attached hereto and shall contain appropriate documentation that such services have been performed and such expenses incurred. Thereafter, Client shall pay Consultant for the amount of the application within 45 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, secretarial or clerical 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 mistakes or negligence.

(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.

(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 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 according to the highest professional standards, or to perform work in a manner deemed satisfactory by Client's Project Representative, then in that event, Consultant's entire right to compensation shall be limited to the lesser of (a) the reasonable value of completed work to Client or (b) payment at the 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. SITE ACCESS

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

SECTION 7. 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, 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 8. 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/ contract, to be written on a comprehensive policy form. This insurance shall be written in amounts not less than \$1,000,000 for each occurrence and aggregate for personal injury including death and bodily injury and \$1,000,000 for each occurrence and aggregate for property damage. This policy of insurance shall name the City of Pueblo, its agents, officers, and employees as additional insureds. This policy shall have all necessary endorsements to provide coverage without exclusion for explosion and collapse hazards, underground property damage hazard, blanket contractual coverage, as well as Owner's and Contractor's Protective Liability (OCP) coverage. The policy shall also provide coverage for contractual liability assumed by Consultant under the provisions of the 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 owner.

(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, arising out of negligent acts or omissions of Consultant, its employees, subcontractors, and consultants.

SECTION 9. SUBCONTRACTS

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

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

(c) Consultant acknowledges that, due to the nature of the services to be provided under this Agreement, the Client has a substantial interest in the personnel and consultants to whom Consultant assigns principal

responsibility for services performed under this Agreement. Consequently, Consultant represents that it has selected and intends to employ or assign the key personnel and consultants identified in its proposal submitted to Client prior to execution of this Agreement to induce Client to enter this Agreement. 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 10. 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 Stormwater Department, Attention: Jeff Hawkins, Director, 211 E. D Street, Pueblo, CO 81003, or to Consultant at Financial Consulting Solutions Group, Inc. dba FCS Group, Attention: John Ghilarducci, President, 7525 166th Ave NE, Ste D-215, Redmond, WA 98052. 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 this entire Agreement shall be void.

SECTION 11. STATE-IMPOSED MANDATES PROHIBITING WORKERS WITHOUT AUTHORIZATION FROM PERFORMING WORK

(a) At or prior to the time for execution of this Contract, Consultant shall submit to the Purchasing Agent of the City its certification that it does not knowingly employ or contract with a "worker without authorization", as that term is defined within §8-17.5-101 (9), C.R.S. (herein "Worker without Authorization"), who will perform work under this Contract and that the Consultant will participate in either the "E-Verify Program" created in Public

Law 208, 104th Congress, as amended and expanded in Public law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security or the "Department Program" established pursuant to section 8-17.5-102(5)(c), C.R.S. that is administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract.

(b) Consultant shall not:

(i) Knowingly employ or contract with a Worker without Authorization to perform work under this Contract;

(ii) Enter into a contract with a subcontractor that fails to certify to Consultant that the subcontractor shall not knowingly employ or contract with a Worker without Authorization to perform work under this Contract.

(c) The following state-imposed requirements apply to this Contract:

(i) The Consultant shall have confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either the E-Verify Program or Department Program.

(ii) The Consultant is prohibited from using either the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.

(iii) If the Consultant obtains actual knowledge that a subcontractor performing work under this contract knowingly employs or contracts with a Worker without Authorization to perform work under this Contract, the Consultant shall be required to:

A. Notify the subcontractor and the Purchasing Agent of the City within three (3) days that the Consultant has actual knowledge that the subcontractor is employing or contracting with a Worker without Authorization; and

B. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (c)(iii)A. above, the subcontractor does not stop employing or contracting with the Worker without Authorization ; except that the Consultant shall not terminate the contract with the subcontractor if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a Worker without Authorization.

(iv) The Consultant is required to comply with any reasonable request by the Colorado Department of Labor and Employment (hereinafter referred to as "CDLE") made in the course of an investigation that CDLE is undertaking pursuant to its authority under §8-17.5-102(5), C.R.S.

(d) Violation of this Section by the Consultant shall constitute a breach of contract and grounds for termination. In the event of such termination, the Consultant shall be liable for City's actual and consequential damages.

(e) Nothing in this Section shall be construed as requiring the Consultant to violate any terms of participation in the E-Verify Program.

SECTION 12. 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 shall fill out the Colorado PERA Questionnaire attached hereto and submit the completed form to City as part of the signed Agreement.

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

FINANCIAL CONSULTING SOLUTIONS GROUP,
INC. DBA FCS GROUP

By: Naomi Hedden
Naomi Hedden, Director of Purchasing

By: John Ghilarducci
John Ghilarducci, President

Attest: [Signature]



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

[Signature]
Director of Finance

APPROVED AS TO FORM:

Daniel L. Koppsek
City Attorney

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

SCHEDULE 1

Scope of Services

Excerpt from Request for Proposal dated September 7, 2021, Section 2

2.1 Objective

The City of Pueblo is soliciting competitive proposals from qualified rate consultants to independently assess and evaluate the City's stormwater rates by conducting a comprehensive rate study. This study's ultimate goal is to provide adequate and sustainable funding for the Stormwater Utility's operations, maintenance, and capital needs, while developing rates and charges which are equitable, and cost based.

2.2 Background

The City of Pueblo Stormwater Utility was implemented in 2003 to coordinate, design, conduct, manage, operate, and maintain the stormwater and flood management systems and stormwater facilities in the City. The Stormwater Utility management activities are funded by charging user fees to the owner or tenant of each property containing impervious surface area within the corporate limits of the City of Pueblo. The City has a separate storm sewer collection system comprised of approximately 183 miles of storm sewer mains ranging in size from six inches to 120 inches in diameter, over 35 miles of open drainage channels, and over 175 acres of public detention facilities. Some of the City's active storm sewer mains are more than 100 years old and are considerably undersized. There are several flooding problem areas throughout the City that require very costly attention. The City is a Phase II National Pollution Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit holder that is responsible for ensuring compliance with ever-changing and challenging state and federal MS4 Permit requirements. Presently the City of Pueblo Stormwater Utility continues to recognize the increasing need for solutions to help reduce flooding impacts for problematic drainage areas within the city and incorporate sustainable water quality solutions.

2.3 Scope of Service

The general scope of services will, at a minimum, include the following:

2.3.1 Meet with Stormwater Engineering staff, Stormwater Maintenance staff, and Finance staff to review proposed scope of services and available data.

2.3.2 Perform a detailed review of existing stormwater rates and assessment of the current stormwater structure's performance as a baseline for comparing recommended changes as required by Section 16-12-6 of the Municipal Code.

2.3.3 Determine current Level of Service for the City's Stormwater System.

2.3.4 Perform analysis of historical capital and operational expenditures with the purpose of properly classifying and segregating the costs associated with various operations

2.3.5 Review the Stormwater Department's current impervious area calculation program used to determine the monthly stormwater utility service charge, compare this program to the service charge programs of other statewide municipalities, and make recommendations for improvements to the current program.

2.3.6 Review, perform analysis, and provide recommendations concerning current City policies as they relate to stormwater utilities.

2.3.7 Perform a comprehensive review and analysis of the Stormwater Utility's new Phase II Municipal Separate Storm Sewer System (MS4) General Permit and associated costs required to maintain compliance with the MS4 Permit and its new requirements.

2.3.8 Perform an analysis and classification of rate recommendations as they relate to the Stormwater Department's current debt service obligations.

2.3.9 Review and perform analysis the maintenance and operation expense requirements projected by the Stormwater Department and allocation to proper cost components.

2.3.10 Review and perform analysis of the 5-year Stormwater capital needs identified by the City for appropriateness and completeness.

2.3.11 Based on community engagement, recommend rate increases required to support desired Level of Service of the stormwater system. The recommended rate increase shall include provisions for the age and condition of the infrastructure, funding requirements for all current long-term liabilities and possible future debt obligations, and projected demands.

2.3.12 All future projections and recommendations should reflect at least a 10-year forecast period.

2.3.13 Perform review of project costs and stormwater utility service charges to ascertain if the stormwater utility service charges generate sufficient revenue to pay the total project costs.

2.3.14 Present recommendations on Stormwater Utility rates to City Council and perform community and public engagement activities as needed.

SCHEDULE 2

Fee Schedule

Excerpt from Consultant's Proposal Submittal dated September 27, 2021, Page 17

PROPOSED COST

FCS GROUP's value is measured by our effective execution of our schedule and task plan, analytical rigor, quality, defensibility, and an ability to communicate technical details to all involved parties.

The detailed budget estimate below offers an amount not to exceed \$73,340 inclusive of an estimated \$3000 in travel expenses associated with in person council meeting attendance.

Task Detail	Mtgs	Principal	Hobart PM	Richard Analyst	Mumm TA	Admin Support	Total Hours	Expense Budget	Budget Estimate
Task 1: Project Kickoff and Data Collection									
1 Kickoff meeting	1	2	4	4			10		\$ 1,820
Task 1 Subtotal	1	2	4	4	-	-	10	\$0	\$ 1,820
Task 2: Data Collection									
1 Data request & review		1	1	6			8		\$ 1,315
2 Data follow-up		-	2	2			4		\$ 640
Task 2 Subtotal	-	1	3	8	-	-	12	\$0	\$ 1,955
Task 3a Policy Framework									
1 Issue Papers (4)		4	6	24	4		38		\$ 6,690
2 Meet with City Staff	1	2	4	4			10		\$ 1,820
Task 3a Subtotal	1	6	10	28	4	-	48	\$0	\$ 8,510
Task 3b Revenue Requirement									
1 Capital funding plan		1	4	16	1		22		\$ 3,560
2 Operating forecast		1	4	24			29		\$ 4,450
3 Revenue needs assessment		1	4	16			21		\$ 3,290
4 Meet with City Staff	1	2	4	4			10		\$ 1,820
Task 3b Subtotal	1	5	16	60	1	-	82	\$0	\$ 13,120
Task 3c Level of Service Matrix									
1 Define service levels		2	2	2	1		7		\$ 1,450
2 Develop matrix of rates		4	4	16			24		\$ 4,100
3 Meet with City Staff	1	2	4	4			10		\$ 1,820
Task 3c Subtotal	1	8	10	22	1	-	41	\$0	\$ 7,370
Task 3d Cost of Service									
1 Allocate costs by function		1	2	4	1		8		\$ 1,470
2 Calculate rate unit costs		1	2	4			7		\$ 1,200
Task 3d Subtotal	-	2	4	8	1	-	15	\$0	\$ 2,670
Task 3e Rate Design									
1 Compile customer information		2	4	16			22		\$ 3,560
2 Calculate agreed upon rate(s)		2	8	12			22		\$ 3,680
3 Meet with City Staff		3	3	3			9		\$ 1,770
4 Customer Bill Impacts		-	2	4			6		\$ 930
5 Jurisdictional Bill Comparisons		-	2	4			6		\$ 930
6 Meet with City Staff	1	2	4	4			10		\$ 1,820
Task 3e Subtotal	1	9	23	43	-	-	75	\$0	\$ 12,690
Task 4 Documentation									
1 Spreadsheet model			1	4			5		\$ 755
2 Draft report		2	8	24		2	36		\$ 5,600
3 Final report		2	2	4	1	2	11		\$ 1,920
Task 4 Subtotal	-	4	11	32	1	4	52	\$0	\$ 8,275
Task 5 Public Meetings									
1 Prepare materials for meetings		2	4	16		1	23		\$ 3,650
2 Council meetings	3	24	12	8	2		46		\$ 10,280
Task 5 Subtotal	3	26	16	24	2	1	69	\$0	\$ 13,930
Labor Total		\$17,010	\$16,975	\$33,205	\$ 2,700	\$ 450			\$ 70,340
Expenses									\$ 3,000
Budget Estimate									\$ 73,340
Total Meetings	8								
Total Hours		63	97	229	10	5	404		
Billing Rate		\$270	\$175	\$145	\$270	\$90			

SCHEDULE 3

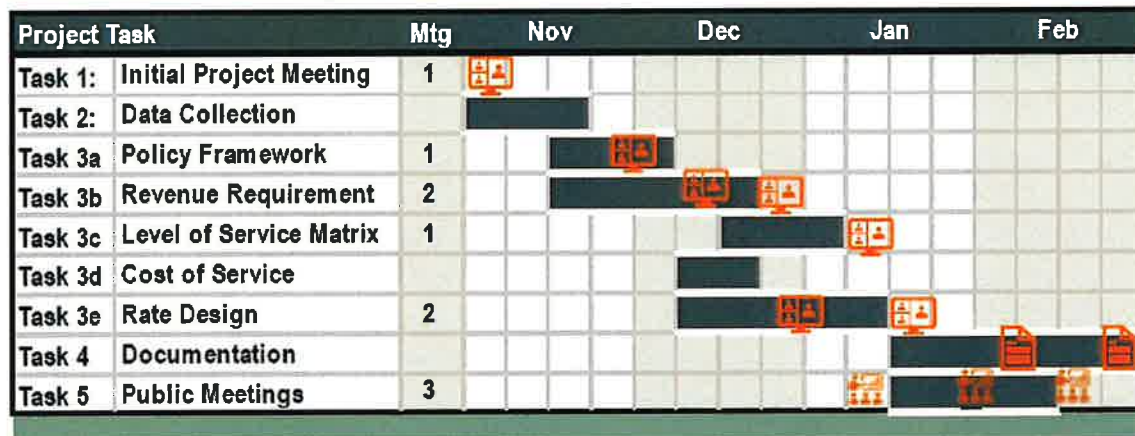
Work Schedule

Excerpt from Consultant's Proposal Submittal dated September 27, 2021, Page 16

PROPOSED TIMELINE

FCS GROUP maintains the necessary depth and capacity of resources to tackle both multi-phase engagements, and narrowly focused exercises with aggressive timelines.

Our schedule for completing your project by February 28, 2022, is shown below. In order to efficiently complete this study in a four-month time period, this schedule assumes a project initiation date on November 1, 2021, the availability of data, and the commitment of City staff to meet during the identified online meetings and workshops.



ADDITIONAL INFORMATION FOR AGREEMENT

State of Colorado Certificate of Good Standing

State of Washington Business License

Registration with City of Pueblo Sales Tax —

Complete per Sales Tax (DR) 10/25/21
Colorado PERA Questionnaire

Affirmative Action Plan

E-Verify Participation Letter

Insurance Certificate(s)

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,

Financial Consulting Solutions Group, Inc.

is an entity formed or registered under the law of Washington, 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 20071451891.

This certificate reflects facts established or disclosed by documents delivered to this office on
paper through 09/21/2021 that have been posted, and by documents delivered to this office
electronically through 09/22/2021 @ 11:51:44.

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 09/22/2021 @ 11:51:44 in accordance with applicable law.
This certificate is assigned Confirmation Number 13456555.



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 Web site 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 Web site, <http://www.sos.state.co.us/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 Web site, <http://www.sos.state.co.us/> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."

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Summary

Details			
Name	Financial Consulting Solutions Group, Inc.		
Status	Good Standing	Formation date	10/01/2007
ID number	20071451891	Form	Foreign Other
Periodic report month	August	Jurisdiction	Washington
Principal office street address	7525 166th Ave. NE, Suite D215, Redmond, WA 98052, United States		
Principal office mailing address	n/a		

Registered Agent	
Name	The Corporation Company
Street address	7700 E Arapahoe Rd Ste 220, Centennial, CO 80112-1268, United States
Mailing address	7525 166th Ave. NE, Suite D215, Redmond, CO 98052, United States

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STATE OF
WASHINGTON

BUSINESS LICENSE

Profit Corporation

FINANCIAL CONSULTING SOLUTIONS GROUP, INC.
FCS GROUP
7525 166TH AVE NE STE D215
REDMOND, WA 98052-7871

UNEMPLOYMENT INSURANCE - ACTIVE
TAX REGISTRATION - ACTIVE

Issue Date: Jul 09, 2021
Unified Business ID #: 601098550
Business ID #: 001
Location: 0002
Expires: Jul 31, 2022

INDUSTRIAL INSURANCE - ACTIVE

CITY ENDORSEMENTS:

KELSO GENERAL BUSINESS - NON-RESIDENT #Y601098550 - ACTIVE
PASCO GENERAL BUSINESS - NON-RESIDENT #29935 - ACTIVE
BAINBRIDGE ISLAND GENERAL BUSINESS - NON-RESIDENT #45707 - ACTIVE
KIRKLAND GENERAL BUSINESS - NON-RESIDENT #OBL-0000717 - ACTIVE
BELLINGHAM GENERAL BUSINESS #026486 - ACTIVE
BLAINE GENERAL BUSINESS - NON-RESIDENT - ACTIVE
ISSAQUAH GENERAL BUSINESS - NON-RESIDENT #BUS03-00726 - ACTIVE
NEWCASTLE GENERAL BUSINESS - NON-RESIDENT - ACTIVE
OLYMPIA GENERAL BUSINESS - NON-RESIDENT #8159 - ACTIVE
PORT TOWNSEND GENERAL BUSINESS - NON-RESIDENT #7769 - ACTIVE
RICHLAND GENERAL BUSINESS - NON-RESIDENT - ACTIVE
SPOKANE VALLEY GENERAL BUSINESS - NON-RESIDENT - ACTIVE
SUMNER GENERAL BUSINESS - NON-RESIDENT - ACTIVE
WOODINVILLE GENERAL BUSINESS - NON-RESIDENT - ACTIVE
VANCOUVER GENERAL BUSINESS - NON-RESIDENT - ACTIVE

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

Vikki Smith

Director, Department of Revenue

STATE OF WASHINGTON

UBI: 601098550 001 0002

Expires: Jul 31, 2022

FINANCIAL CONSULTING
SOLUTIONS GROUP, INC.
FCS GROUP
7525 166TH AVE NE STE D215
REDMOND, WA 98052-7871

UNEMPLOYMENT INSURANCE -
ACTIVE
INDUSTRIAL INSURANCE - ACTIVE
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Vikki Smith

Director, Department of Revenue



STATE OF
WASHINGTON

BUSINESS LICENSE

Profit Corporation

FINANCIAL CONSULTING SOLUTIONS GROUP, INC.
FCS GROUP
7525 166TH AVE NE STE D215
REDMOND, WA 98052-7871

CITY ENDORSEMENTS:

SPOKANE GENERAL BUSINESS - NON-RESIDENT #T12051365BUS - ACTIVE
FRIDAY HARBOR GENERAL BUSINESS - NON-RESIDENT (EXPIRES 1/31/2022) - ACTIVE
SEATAC GENERAL BUSINESS - NON-RESIDENT - ACTIVE
MERCER ISLAND GENERAL BUSINESS - NON-RESIDENT #200500 - ACTIVE
BURIEN GENERAL BUSINESS - NON-RESIDENT #07358 - ACTIVE
REDMOND GENERAL BUSINESS #RED88-000135 (EXPIRES 12/31/2021) - ACTIVE

LICENSING RESTRICTIONS:

Not licensed to hire minors without a Minor Work Permit.

REGISTERED TRADE NAMES:

FCS GROUP

Issue Date: Jul 09, 2021

Unified Business ID #: 601098550

Business ID #: 001

Location: 0002

Expires: Jul 31, 2022

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

Director, Department of Revenue

STATE OF WASHINGTON

UBI: 601098550 001 0002

Expires: Jul 31, 2022

FINANCIAL CONSULTING
SOLUTIONS GROUP, INC.
FCS GROUP
7525 166TH AVE NE STE D215
REDMOND, WA 98052-7871

UNEMPLOYMENT INSURANCE -
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BUSINESS - NON-RESIDENT #45707 -
ACTIVE
KIRKLAND GENERAL BUSINESS -
NON-RESIDENT #OBL-0000717 -
ACTIVE

Director, Department of Revenue

**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 and social security number of each such PERA Retiree. If more than two, please attach a supplemental list.

Name	Address	Social Security Number
Name	Address	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: Financial Consulting Solutions Group, Inc.

Authorized Signature: *Diane Harmon* Title: Accounting Manager

Printed Name: Diane Harmon Date: October 20, 2021

October 18, 2021

City of Pueblo
230 S Mechanic Street
Pueblo, CO 81003

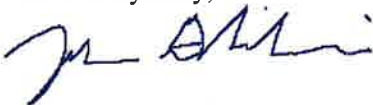
Re: Bid 21-078 RFP – Rate Consultant for Stormwater Department

AFFIRMATIVE ACTION PLAN

FCS GROUP does not discriminate against any employee or applicant or employment because of race, color, religion, sex, national origin, creed or age.

FCS GROUP will take affirmative action to ensure applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, creed or age. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment of 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.

Yours very truly,



John Ghilarducci
Principal & President
FCS GROUP

October 18, 2021

City of Pueblo
230 S Mechanic Street
Pueblo, CO 81003

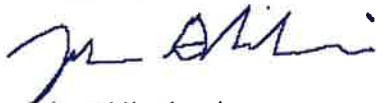
Re: Compliance with E-Verify Program
Bid 21-078 RFP – Rate Consultant for Stormwater Department

To Whom It May Concern:

Please accept this letter as certification that FCS GROUP does not knowingly employ or contract with any workers without authorization and has not or will not knowingly enter into a contract with any subcontractor that fails to certify to us that they do not knowingly employ or contract with any workers without authorization.

FCS GROUP participates in or has applied for participation in the E-Verify Program created by Public Law 208, 104th Congress, as administered by the United States Department of Homeland Security.

Yours very truly,



John Ghilarducci
Principal & President
FCS GROUP

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)

10/19/2021

PRODUCER SHINSTROM & NORMAN INC PO Box 638 Kirkland, WA 98083 (425)827-6200		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED FINANCIAL CONSULTING SOLUTIONS GROUP, INC. 7525 166TH AVENUE NE, STE #D-215 REDMOND, WA 98052		INSURERS AFFORDING COVERAGE	NAIC#
		INSURER A: LIBERTY MUTUAL INS. CO.	
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY	BKW58035312	09/20/21	09/20/22	EACH OCCURRENCE	\$ 1,000,000
	☒	COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
	☐	CLAIMSMADE ☒ OCCUR				MED EXP (Any one person)	\$ 15,000
	NO DEDUCTIBLE					PERSONAL & ADV INJURY	\$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:					GENERAL AGGREGATE	\$ 2,000,000
	☒ POLICY ☐ PRO-JECT ☐ LOC	PRODUCTS - COMP/OP AGG				\$ 2,000,000	
A		AUTOMOBILE LIABILITY	BAA58035312	09/20/21	09/20/22	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	☐	ANY AUTO				BODILY INJURY (Per person)	\$
	☐	ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	☐	SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	☒	HIRED AUTOS					
	☒	NON-OWNED AUTOS					
NO DEDUCTIBLE							
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	☐	ANY AUTO				OTHER THAN EA ACC	\$
						AUTO ONLY: AGG	\$
A		EXCESS/UMBRELLA LIABILITY	USO58035312	09/20/21	09/20/22	EACH OCCURRENCE	\$ 2,000,000
	☒	OCCUR ☐ CLAIMSMADE				AGGREGATE	\$ 2,000,000
	☐	DEDUCTIBLE					\$
	☒	RETENTION \$ 10,000					\$
							\$
							\$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	BKW58035312 WASH. STOP GAP	09/20/21	09/20/22	☒ WC STATUTORY LIMITS ☐ OTHER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?					E.L. EACH ACCIDENT	\$ 1,000,000
	If yes, describe under SPECIAL PROVISIONS below					E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
						E.L. DISEASE - POLICY LIMIT	\$ 2,000,000
A		OTHER BUSINESS PERSONAL PROPERTY	BKW58035312	09/20/21	09/20/22	SPEC FORM / RC \$30,752 LIMIT \$500 DEDUCTIBLE	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Bid 21-078 RFP- Rate Consultant for Stormwater Department and The City of Pueblo, its agents, officers, and employees are designated as additional insured. Coverage is Primary and Non-Contributory and includes Waiver of Subrogation as provided in the attached form CG8810.

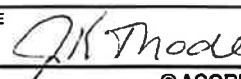
CERTIFICATE HOLDER

City of Pueblo
a Municipal Corporation
230 S. Mechanic Street
Pueblo, CO 81003

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 45 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY EXTENSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

A. NON-OWNED AIRCRAFT

Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, exclusion g. Aircraft, Auto Or Watercraft does not apply to an aircraft provided:

1. It is not owned by any insured;
2. It is hired, chartered or loaned with a trained paid crew;
3. The pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating her or him a commercial or airline pilot; and
4. It is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

B. NON-OWNED WATERCRAFT

Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraph (2) of exclusion g. Aircraft, Auto Or Watercraft is replaced by the following:

This exclusion does not apply to:

- (2) A watercraft you do not own that is:
 - (a) Less than 52 feet long; and
 - (b) Not being used to carry persons or property for a charge.

C. PROPERTY DAMAGE LIABILITY - ELEVATORS

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraphs (3), (4) and (6) of exclusion j. Damage To Property do not apply if such "property damage" results from the use of elevators. For the purpose of this provision, elevators do not include vehicle lifts. Vehicle lifts are lifts or hoists used in automobile service or repair operations.
2. The following is added to Section IV - Commercial General Liability Conditions, Condition 4. Other Insurance, Paragraph b. Excess Insurance:

The insurance afforded by this provision of this endorsement is excess over any property insurance, whether primary, excess, contingent or on any other basis.

D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)

If Damage To Premises Rented To You is not otherwise excluded from this Coverage Part:

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury and Property Damage Liability:

- a. The fourth from the last paragraph of exclusion j. Damage To Property is replaced by the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke, or leakage from an automatic fire protection system) to:

- (i) Premises rented to you for a period of 7 or fewer consecutive days; or
- (ii) Contents that you rent or lease as part of a premises rental or lease agreement for a period of more than 7 days.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" to contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in Section III - Limits of Insurance.

- b. The last paragraph of subsection **2. Exclusions** is replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III - Limits Of Insurance**.

2. Paragraph 6. under **Section III - Limits Of Insurance** is replaced by the following:

6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to:

- a. Any one premise:

(1) While rented to you; or

(2) While rented to you or temporarily occupied by you with permission of the owner for damage by fire, lightning, explosion, smoke or leakage from automatic protection systems; or

- b. Contents that you rent or lease as part of a premises rental or lease agreement.

3. As regards coverage provided by this provision **D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)** - Paragraph 9.a. of **Definitions** is replaced with the following:

9.a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with the permission of the owner, or for damage to contents of such premises that are included in your premises rental or lease agreement, is not an "insured contract".

E. MEDICAL PAYMENTS EXTENSION

If **Coverage C Medical Payments** is not otherwise excluded, the Medical Payments provided by this policy are amended as follows:

Under Paragraph 1. **Insuring Agreement** of **Section I - Coverage C - Medical Payments**, Subparagraph (b) of Paragraph a. is replaced by the following:

- (b) The expenses are incurred and reported within three years of the date of the accident; and

F. EXTENSION OF SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. Under **Supplementary Payments - Coverages A and B**, Paragraph 1.b. is replaced by the following:

- b. Up to **\$3,000** for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. Paragraph 1.d. is replaced by the following:

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to **\$500** a day because of time off from work.

G. ADDITIONAL INSURED - BY CONTRACT, AGREEMENT OR PERMIT

1. Paragraph 2. under **Section II - Who Is An Insured** is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract, written agreement or permit. Such person or organization is an additional insured but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by:

- a. Your acts or omissions, or the acts or omissions of those acting on your behalf, in the performance of your on going operations for the additional insured that are the subject of the written contract or written agreement provided that the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" is committed, subsequent to the signing of such written contract or written agreement; or

- b. Premises or facilities rented by you or used by you; or
- c. The maintenance, operation or use by you of equipment rented or leased to you by such person or organization; or
- d. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit subject to the following additional provisions:
- (1) This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of the operations performed for the state or political subdivision;
 - (2) This insurance does not apply to "bodily injury" or "property damage" included within the "completed operations hazard".
 - (3) Insurance applies to premises you own, rent, or control but only with respect to the following hazards:
 - (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - (b) The construction, erection, or removal of elevators; or
 - (c) The ownership, maintenance, or use of any elevators covered by this insurance.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

With respect to Paragraph 1.a. above, a person's or organization's status as an additional insured under this endorsement ends when:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

With respect to Paragraph 1.b. above, a person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such premises or facilities ends.

With respects to Paragraph 1.c. above, this insurance does not apply to any "occurrence" which takes place after the equipment rental or lease agreement has expired or you have returned such equipment to the lessor.

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured as required in Paragraph b. of Condition 2. **Duties In the Event Of Occurrence, Offense, Claim Or Suit under Section IV - Commercial General Liability Conditions.**

2. With respect to the insurance provided by this endorsement, the following are added to Paragraph 2. **Exclusions under Section I - Coverage A - Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

- a. "Bodily injury" or "property damage" arising from the sole negligence of the additional insured.
- b. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.
- c. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

- d. "Bodily injury" or "property damage" occurring after:
 - (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- e. Any person or organization specifically designated as an additional insured for ongoing operations by a separate **ADDITIONAL INSURED -OWNERS, LESSEES OR CONTRACTORS** endorsement issued by us and made a part of this policy.

3. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement; or
- b. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

H. PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED EXTENSION

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

Condition 4. **Other Insurance of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

- a. The following is added to Paragraph a. **Primary Insurance:**

If an additional insured's policy has an Other Insurance provision making its policy excess, and you have agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured's policy for damages we cover.

b. The following is added to Paragraph b. **Excess Insurance**:

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

I. **ADDITIONAL INSUREDS - EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"**

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

1. The following is added to Condition 2. **Duties In The Event Of Occurrence, Offense, Claim or Suit**:

An additional insured under this endorsement will as soon as practicable:

- a. Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this insurance to us;
- b. Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and
- c. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.
- d. We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured.

2. The limits of insurance applicable to the additional insured are those specified in a written contract or written agreement or the limits of insurance as stated in the Declarations of this policy and defined in **Section III - Limits of Insurance** of this policy, whichever are less. These limits are inclusive of and not in addition to the limits of insurance available under this policy.

J. **WHO IS AN INSURED - INCIDENTAL MEDICAL ERRORS / MALPRACTICE**
WHO IS AN INSURED - FELLOW EMPLOYEE EXTENSION - MANAGEMENT EMPLOYEES

Paragraph 2.a.(1) of **Section II - Who Is An Insured** is replaced with the following:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1) (a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1) (a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services. However, if you are not in the business of providing professional health care services or providing professional health care personnel to others, or if coverage for providing professional health care services is not otherwise excluded by separate endorsement, this provision (Paragraph (d)) does not apply.

Paragraphs (a) and (b) above do not apply to "bodily injury" or "personal and advertising injury" caused by an "employee" who is acting in a supervisory capacity for you. Supervisory capacity as used herein means the "employee's" job responsibilities assigned by you, includes the direct supervision of other "employees" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and

advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury", or caused in whole or in part by their intoxication by liquor or controlled substances.

The coverage provided by provision J. is excess over any other valid and collectable insurance available to your "employee".

K. NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES

Paragraph 3. of Section II - Who Is An Insured is replaced by the following:

3. Any organization you newly acquire or form and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
 - a. Coverage under this provision is afforded only until the expiration of the policy period in which the entity was acquired or formed by you;
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
 - d. Records and descriptions of operations must be maintained by the first Named Insured.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations or qualifies as an insured under this provision.

L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES

Under Section IV - Commercial General Liability Conditions, the following is added to Condition 6. Representations:

Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" is not intentional.

M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

Under Section IV - Commercial General Liability Conditions, the following is added to Condition 2. Duties In The Event of Occurrence, Offense, Claim Or Suit:

Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless an insured listed under Paragraph 1. of Section II - Who Is An Insured or a person who has been designated by them to receive reports of "occurrences", offenses, claims or "suits" shall have received such notice from the agent, servant or "employee".

N. LIBERALIZATION CLAUSE

If we revise this Commercial General Liability Extension Endorsement to provide more coverage without additional premium charge, your policy will automatically provide the coverage as of the day the revision is effective in your state.

O. BODILY INJURY REDEFINED

Under Section V - Definitions, Definition 3. is replaced by the following:

3. "Bodily Injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

P. EXTENDED PROPERTY DAMAGE

Exclusion a. of **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is replaced by the following:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

Q. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU

Under **Section IV - Commercial General Liability Conditions**, the following is added to **Condition 8. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have against a person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard" provided:

1. You and that person or organization have agreed in writing in a contract or agreement that you waive such rights against that person or organization; and
2. The injury or damage occurs subsequent to the execution of the written contract or written agreement.

57980004

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235

of 234

115

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)

10/19/2021

PRODUCER

SHINSTROM & NORMAN INC
PO Box 638
Kirkland, WA 98083
(425) 827-6200

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED

FINANCIAL CONSULTING SOLUTIONS GROUP, INC.
7525 166TH AVENUE NE, SUITE D-215
REDMOND, WA 98052

INSURER A: STARSTONE NATIONAL INSURANCE CO.
INSURER B: NAIC: 25496
INSURER C:
INSURER D:
INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY				
	☐ COMMERCIAL GENERAL LIABILITY				EACH OCCURRENCE \$
	☐ CLAIMS MADE ☐ OCCUR				FIRE DAMAGE (Any one fire) \$
					MED EXP (Any one person) \$
					PERSONAL & ADV INJURY \$
					GENERAL AGGREGATE \$
					PRODUCTS - COMP/OP AGG \$
	GEN'L AGGREGATE LIMIT APPLIES PER:				
	☐ POLICY ☐ PRO-JECT ☐ LOC				
	AUTOMOBILE LIABILITY				
	☐ ANY AUTO				COMBINED SINGLE LIMIT (Ea accident) \$
	☐ ALL OWNED AUTOS				BODILY INJURY (Per person) \$
	☐ SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
	☐ HIRED AUTOS				PROPERTY DAMAGE (Per accident) \$
	☐ NON-OWNED AUTOS				
	GARAGE LIABILITY				
	☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$
					OTHER THAN EA ACC \$
					AUTO ONLY: AGG \$
	EXCESS LIABILITY				
	☐ OCCUR ☐ CLAIMS MADE				EACH OCCURRENCE \$
					AGGREGATE \$
	☐ DEDUCTIBLE				\$
	☐ RETENTION \$				\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				
					WC STATU-TORY LIMITS ☐ OTH-ER ☐
					E.L. EACH ACCIDENT \$
					E.L. DISEASE - EA EMPLOYEE \$
					E.L. DISEASE - POLICY LIMIT \$
A	OTHER				
	PROFESSIONAL LIABILITY	09550B21AAPLQ	09/20/21	09/20/22	\$2,000,000 EACH CLAIM
	CLAIMS MADE FORM				\$4,000,000 AGGREGATE
					\$ 5,000 DEDUCTIBLE

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

RETROACTIVE DATE: 7/26/1988

CERTIFICATE HOLDER

ADDITIONAL INSURED; INSURER LETTER:

CANCELLATION

City of Pueblo
a Municipal Corporation
230 S. Mechanic Street
Pueblo, CO 81003

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 45 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

JK Thode



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/19/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER DIVERSIFIED COMMERCIAL INSURERS 34342579 2228 SOUTH FRASER ST SUITE 2 AURORA CO 80014	CONTACT NAME:	
	PHONE (303) 693-9343 (A/C, No, Ext):	FAX (303) 693-4351 (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Hartford Fire and Its P&C Affiliates	
INSURED FCS GROUP INC. 7525 166TH AVE NE STE D215 REDMOND WA 98052-7871	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/Y YYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	UMBRELLA LIAB EXCESS LIAB ☐ OCCUR ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$						EACH OCCURRENCE AGGREGATE
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	34 WEC AB2VKO	02/26/2021	02/26/2022	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$100,000 E.L. DISEASE -EA EMPLOYEE \$100,000 E.L. DISEASE - POLICY LIMIT \$500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Those usual to the Insured's Operations. RE: Bid 21-078 RFP- Rate Consultant for Stormwater Department

CERTIFICATE HOLDER

City of Pueblo
 230 S MECHANIC ST
 PUEBLO CO 81003-3422

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Susan L. Castaneda

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THE HARTFORD
BUSINESS SERVICE CENTER
3600 WISEMAN BLVD
SAN ANTONIO TX 78251

October 19, 2021

City of Pueblo
230 S MECHANIC ST
PUEBLO CO 81003-3422

Account Information:

Policy Holder Details :	FCS Group Inc.
--------------------------------	----------------



Contact Us

Business Service Center

Business Hours: Monday - Friday
(7AM - 7PM Central Standard Time)

Phone: (866) 467-8730

Fax: (888) 443-6112

Email: agency.services@thehartford.com

Website: <https://business.thehartford.com>

Enclosed please find a Certificate Of Insurance for the above referenced Policyholder. Please contact us if you have any questions or concerns.

Sincerely,

Your Hartford Service Team

AMENDMENT NO. 1
TO THE AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN CITY OF PUEBLO AND
FINANCIAL CONSULTING SOLUTIONS GROUP, INC. DBA FCS GROUP

1. Introduction

This Amendment No. 1 to the Agreement for Professional Services ("Amendment") is executed to be effective as of the ____ day of _____, 20____, by and between the City of Pueblo, a Colorado Municipal Corporation ("Client") and Financial Consulting Solutions Group, Inc. dba FCS Group, a registered Washington Corporation authorized to do business in the State of Colorado ("Consultant"). Client and Consultant are sometimes referred to herein as a "Party" and collectively, as the "Parties."

2. Project Statement

WITNESSETH THAT:

WHEREAS, Client and Consultant entered into that certain Agreement for Professional Services dated October 20, 2021 for Bid 21-078 RFP - Rate Consultant for Stormwater Department (the "Agreement").

WHEREAS, Client and Consultant desire to modify the Agreement pursuant to the provisions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual promises set forth herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Client and Consultant hereby agree to the following conditions.

3. AGREEMENT

- A. The Agreement is amended by expanding the scope of services to include the following additional services:
 - 1. Consultant shall provide continued rate study services including documentation, public meetings, and new scenario development as identified in Attachment A.
 - 2. Attachment A to this Amendment No. 1 shall be additional work as agreed upon by Consultant and City, and Consultant shall complete the work items as generally described in said Attachment A in accordance with the terms of the Agreement.
- B. With respect to services provided under the Amendment No. 1, the fee schedule attached as Attachment B to this Amendment No. 1 shall apply to compensation payable to Consultant. The aggregate compensation payable to the Consultant for performance of the

additional services authorized by this Amendment No. 1 shall not exceed the maximum amount of \$19,567.00 as set forth in the Attachment B and notwithstanding whether the service is billed as Time and Material.

1. The compensation payable to the Consultant by this Amendment No. 1 shall be billed at the amounts set forth in the Attachment B.
 2. City must respond in writing with written approval prior to Consultant beginning work.
- C. This Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- D. Except as expressly modified by this Amendment No. 1, the Agreement shall remain in full force and effect. Except as modified by this Amendment No. 1, any obligations to be performed under the 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 Agreement as it existed prior to this Amendment No. 1.
- E. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document with the same effect as if all Parties had signed the same original. The Parties further agree that transmission of this Amendment by any electronic format, telecopy or via email in a PDF format, shall be deemed transmission of the original Amendment for all purposes. Electronic signatures shall be deemed valid and binding to the same extent as the original

(Continue to next page for Signature Section)

4. Signature Section

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

CITY OF PUEBLO, A MUNICIPAL CORPORATION

FINANCIAL CONSULTING SOLUTIONS GROUP, INC.
DBA FCS GROUP

By _____
Naomi Hedden, Director of Purchasing

By _____
John Ghilarducci, President

Attest _____
Marisa Stoller, City Clerk

[SEAL]

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

Alexandria Romero, Finance Director

APPROVED AS TO FORM
Department of Law

George Hypolite, City Attorney

Attachments: Attachment A – Scope of Service
Attachment B – Fee Schedule
Attachment C – Work Schedule
Additional Information for Amendment

Attachment A

Scope of Services

Excerpt from Consultant Proposal dated November 30, 2023, Page 1

Thank you for reaching out to initiate this update process. As discussed with the City, in continuation of the services provided, FCS GROUP is requesting an amendment to cover the following components:

1. **Documentation**, as originally scoped, for \$8,275.
2. **Public Meetings**, as originally scoped, for \$13,930.
3. **New Scenario Development** for \$14,900. This work includes:
 - a. Updated revenue requirements
 - i. Input of newest financial data (fund balances, budgets, capital plans, etc)
 - ii. Estimation and inclusion of the new potential pond maintenance contract costs
 - iii. Estimation of changes to rate revenue with reduction of credits offered
 - b. Updated Rate Design to incorporate new customer numbers and rate revenue targets
 - c. Meetings and Reviews throughout the process

Attachment B

Fee Schedule

Excerpt from Consultant Proposal dated November 30, 2023, Pages 1 – 2

The total of this remaining work is \$37,105, plus \$3,000 in expenses – combined total of \$40,105. With \$20,538 remaining on the original contract, **we request additional budget not to exceed \$19,567** (\$40,105 in amended scope less the \$20,538 in remaining budget).

		Ghilarducci	Hobart	Richard	Mumm	Admin	Total	Expense	Budget
Task Detail	Mtgs	Principal	PM	Analyst	TA	Support	Hours	Budget	Estimate
Task 4 Documentation									
1 Spreadsheet model			1	4			5		\$ 755
2 Draft report		2	8	24		2	36		\$ 5,600
3 Final report		2	2	4	1	2	11		\$ 1,920
<i>Task 4 Subtotal</i>	-	4	11	32	1	4	52	\$0	\$ 8,275
Task 5 Public Meetings									
1 Prepare materials for meetings		2	4	16		1	23		\$ 3,650
2 Council meetings	3	24	12	8	2		46		\$ 10,280
<i>Task 5 Subtotal</i>	3	26	16	24	2	1	69	\$0	\$ 13,930
Task 6 Update Needs									
1 Forecast Updates		2	8	16			26		\$ 4,790
2 Rate Design Updates		2	8	16			26		\$ 4,790
3 Meetings and Reviews		8	8	8			24		\$ 5,320
<i>Task 6 Subtotal</i>	-	12	24	40	-	-	76	\$0	\$ 14,900
<i>Expenses</i>									\$ 3,000

Total Remaining Tasks From Original Scope \$ 25,205

Total New Tasks \$ 14,900

Expected Remaining Project Costs \$ 40,105

Remaining Budget on Original Contract \$ 20,538

Proposed Amendment Amount \$ 19,567

ADDITIONAL INFORMATION FOR AMENDMENT

Certificate of Good Standing

Colorado PERA Questionnaire

Insurance Certificate(s)

**For this Record...**

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Business Home
Business Information
Business Search

FAQs, Glossary and Information

Summary

Details			
Name	Financial Consulting Solutions Group, Inc.		
Status	Good Standing	Formation date	10/01/2007
ID number	20071451891	Form	Foreign Other
Periodic report month	August	Jurisdiction	Washington
Principal office street address	7525 166th Ave NE Ste D215, Redmond, WA 98052, US		
Principal office mailing address	7525 166th Ave NE Ste D215, Redmond, WA 98052, US		

Registered Agent	
Name	C T Corporation System
Street address	7700 E Arapahoe Rd Ste 220, Centennial, CO 80112, US
Mailing address	7700 E Arapahoe Rd Ste 220, Centennial, CO 80112, US

[Filing history and documents](#)[Trade names](#)[Get a certificate of good standing](#)[Get certified copies of documents](#)[File a form](#)[Set up secure business filing](#)[Subscribe to email notification](#)[Unsubscribe from email notification](#)[Subscribe to text notification](#)[Unsubscribe from text notification](#)[Back](#)

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Business Home
Business Information
Business Search

FAQs, Glossary and Information

Summary

Details			
Trade name	FCS GROUP		
Registrant name	Financial Consulting Solutions Group, Inc.		
Status	Effective	Formation Date	10/18/2021
ID number	20211951594	Form	Foreign Other
Renewal month	n/a	Expiration Date	n/a
Primary residence or usual place of business street address	n/a		
Primary residence or usual place of business mailing address	n/a		

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OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF TRADE NAME

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office, a Statement of Trade Name for:

FCS GROUP

(Entity ID # 20211951594)

was filed in this office on 10/18/2021 with an effective date of 10/18/2021 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 12/29/2023 that have been posted, and by documents delivered to this office electronically through 01/02/2024 @ 11:02:39 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 01/02/2024 @ 11:02:39 in accordance with applicable law. This certificate is assigned Confirmation Number 15614880 .



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."

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,

Financial Consulting Solutions Group, Inc.

is an entity formed or registered under the law of Washington, 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 20071451891.

This certificate reflects facts established or disclosed by documents delivered to this office on
paper through 12/29/2023 that have been posted, and by documents delivered to this office
electronically through 01/02/2024 @ 11:03:25.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this
official certificate at Denver, Colorado on 01/02/2024 @ 11:03:25 in accordance with applicable law.
This certificate is assigned Confirmation Number 15614886.



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: Financial Consulting Solutions Group, Inc.

Authorized Signature:  Title: Accounting Manager

Printed Name: Diane Harmon Date: March 16, 2023

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/3/2024

PRODUCER

SHINSTROM & NORMAN INC
PO Box 638
Kirkland, WA 98083
(425)827-6200

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

NAIC#

INSURED

FINANCIAL CONSULTING SOLUTIONS GROUP, INC.
7525 166TH AVENUE NE, STE #D-215
REDMOND, WA 98052

INSURER A: **LIBERTY MUTUAL INS. CO.**

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY	BKW58035312	09/20/23	09/20/24	EACH OCCURRENCE \$ 1,000,000
	☒	COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
		CLAIMSMADE ☒ OCCUR				MED EXP (Any one person) \$ 15,000
		NO DEDUCTIBLE				PERSONAL & ADV INJURY \$ 1,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE \$ 2,000,000
		☐ POLICY ☒ PRO-JECT ☐ LOC				PRODUCTS - COMP/OP AGG \$ 2,000,000
A		AUTOMOBILE LIABILITY	BAA58035312	09/20/23	09/20/24	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
		ANY AUTO				BODILY INJURY (Per person) \$
		ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	☒	SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
	☒	HIRED AUTOS				
	☒	NON-OWNED AUTOS				
		NO DEDUCTIBLE				
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
		ANY AUTO				OTHER THAN EA ACC \$
						AUTO ONLY: AGG \$
A		EXCESS/UMBRELLA LIABILITY	USO58035312	09/20/23	09/20/24	EACH OCCURRENCE \$ 2,000,000
	☒	OCCUR ☐ CLAIMSMADE				AGGREGATE \$ 2,000,000
		DEDUCTIBLE				\$
	☒	RETENTION \$ 10,000				\$
						\$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	BKW58035312 WASH. STOP GAP	09/20/23	09/20/24	☒ WC STATUTORY LIMITS ☐ OTHER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT \$ 1,000,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 2,000,000
A		OTHER BUSINESS PERSONAL PROPERTY	BKW58035312	09/20/23	09/20/24	SPEC FORM / RC \$250,507 LIMIT \$500 DEDUCTIBLE

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

City of Pueblo, its agents, officers and employees are included as additional insured per attached form CG8810. Includes Waiver of Subrogation.

CERTIFICATE HOLDER

City of Pueblo
A Municipal Corporation
230 S. Mechanic
Pueblo, CO, 81003

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 45 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)

1/3/2024

PRODUCER SHINSTROM & NORMAN INC PO Box 638 Kirkland, WA 98083 (425)827-6200		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED FINANCIAL CONSULTING SOLUTIONS GROUP, INC. 7525 166TH AVENUE NE, SUITE D-215 REDMOND, WA 98052		INSURERS AFFORDING COVERAGE INSURER A: STARSTONE NATIONAL INSURANCE CO. INSURER B: NAIC: 25496 INSURER C: INSURER D: INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☐ OCCUR ☐ ☐ GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC				EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	EXCESS LIABILITY ☐ OCCUR ☐ CLAIMS MADE ☐ DEDUCTIBLE ☐ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				☐ WC STATU-TORY LIMITS ☐ OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	OTHER PROFESSIONAL LIABILITY	MEO00052441P12 CLAIMS MADE FORM	09/20/23	09/20/24	\$2,000,000 EACH CLAIM \$4,000,000 AGGREGATE \$ 5,000 DEDUCTIBLE

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

RETROACTIVE DATE: 7/26/1988

CERTIFICATE HOLDER City of Pueblo A Municipal Corporation 230 S. Mechanic Pueblo, CO, 81003	ADDITIONAL INSURED; INSURER LETTER:	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 45 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE: 
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY EXTENSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

INDEX

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With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

A. NON-OWNED AIRCRAFT

Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, exclusion g. Aircraft, Auto Or Watercraft does not apply to an aircraft provided:

1. It is not owned by any insured;
2. It is hired, chartered or loaned with a trained paid crew;
3. The pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating her or him a commercial or airline pilot; and
4. It is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

B. NON-OWNED WATERCRAFT

Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraph (2) of exclusion g. Aircraft, Auto Or Watercraft is replaced by the following:

This exclusion does not apply to:

- (2) A watercraft you do not own that is:
 - (a) Less than 52 feet long; and
 - (b) Not being used to carry persons or property for a charge.

C. PROPERTY DAMAGE LIABILITY - ELEVATORS

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraphs (3), (4) and (6) of exclusion j. Damage To Property do not apply if such "property damage" results from the use of elevators. For the purpose of this provision, elevators do not include vehicle lifts. Vehicle lifts are lifts or hoists used in automobile service or repair operations.
2. The following is added to Section IV - Commercial General Liability Conditions, Condition 4. Other Insurance, Paragraph b. Excess Insurance:

The insurance afforded by this provision of this endorsement is excess over any property insurance, whether primary, excess, contingent or on any other basis.

D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)

If Damage To Premises Rented To You is not otherwise excluded from this Coverage Part:

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury and Property Damage Liability:
 - a. The fourth from the last paragraph of exclusion j. Damage To Property is replaced by the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke, or leakage from an automatic fire protection system) to:

 - (i) Premises rented to you for a period of 7 or fewer consecutive days; or
 - (ii) Contents that you rent or lease as part of a premises rental or lease agreement for a period of more than 7 days.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" to contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in Section III - Limits of Insurance.

- b. The last paragraph of Subsection **2. Exclusions** is replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III - Limits Of Insurance**.

2. Paragraph 6. under **Section III - Limits Of Insurance** is replaced by the following:

6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to:

- a. Any one premise:

(1) While rented to you; or

(2) While rented to you or temporarily occupied by you with permission of the owner for damage by fire, lightning, explosion, smoke or leakage from automatic protection systems; or

- b. Contents that you rent or lease as part of a premises rental or lease agreement.

3. As regards coverage provided by this provision **D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)** - Paragraph 9.a. of **Definitions** is replaced with the following:

9.a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with the permission of the owner, or for damage to contents of such premises that are included in your premises rental or lease agreement, is not an "insured contract".

E. MEDICAL PAYMENTS EXTENSION

If **Coverage C Medical Payments** is not otherwise excluded, the Medical Payments provided by this policy are amended as follows:

Under Paragraph 1. **Insuring Agreement** of **Section I - Coverage C - Medical Payments**, Subparagraph (b) of Paragraph a. is replaced by the following:

- (b) The expenses are incurred and reported within three years of the date of the accident; and

F. EXTENSION OF SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. Under **Supplementary Payments - Coverages A and B**, Paragraph 1.b. is replaced by the following:

- b. Up to **\$3,000** for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. Paragraph 1.d. is replaced by the following:

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to **\$500** a day because of time off from work.

G. ADDITIONAL INSURED - BY CONTRACT, AGREEMENT OR PERMIT

1. Paragraph 2. under **Section II - Who Is An Insured** is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract, written agreement or permit. Such person or organization is an additional insured but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by:

- a. Your acts or omissions, or the acts or omissions of those acting on your behalf, in the performance of your on going operations for the additional insured that are the subject of the written contract or written agreement provided that the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" is committed, subsequent to the signing of such written contract or written agreement; or

- b. Premises or facilities rented by you or used by you; or
- c. The maintenance, operation or use by you of equipment rented or leased to you by such person or organization; or
- d. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit subject to the following additional provisions:
 - (1) This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of the operations performed for the state or political subdivision;
 - (2) This insurance does not apply to "bodily injury" or "property damage" included within the "completed operations hazard".
 - (3) Insurance applies to premises you own, rent, or control but only with respect to the following hazards:
 - (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - (b) The construction, erection, or removal of elevators; or
 - (c) The ownership, maintenance, or use of any elevators covered by this insurance.

However:

- 1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
- 2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

With respect to Paragraph 1.a. above, a person's or organization's status as an additional insured under this endorsement ends when:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

With respect to Paragraph 1.b. above, a person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such premises or facilities ends.

With respects to Paragraph 1.c. above, this insurance does not apply to any "occurrence" which takes place after the equipment rental or lease agreement has expired or you have returned such equipment to the lessor.

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured as required in Paragraph b. of Condition 2. **Duties In the Event Of Occurrence, Offense, Claim Or Suit** under **Section IV - Commercial General Liability Conditions**.

2. With respect to the insurance provided by this endorsement, the following are added to Paragraph 2. **Exclusions under Section I - Coverage A - Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

- a. "Bodily injury" or "property damage" arising from the sole negligence of the additional insured.
- b. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.
- c. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

- d. "Bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- e. Any person or organization specifically designated as an additional insured for ongoing operations by a separate **ADDITIONAL INSURED -OWNERS, LESSEES OR CONTRACTORS** endorsement issued by us and made a part of this policy.

3. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement; or
 - b. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

H. PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED EXTENSION

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

Condition 4. Other Insurance of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

- a. The following is added to Paragraph a. **Primary Insurance:**

If an additional insured's policy has an Other Insurance provision making its policy excess, and you have agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured's policy for damages we cover.

b. The following is added to paragraph **b. Excess Insurance**:

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

I. ADDITIONAL INSURED - EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

1. The following is added to Condition **2. Duties In The Event Of Occurrence, Offense, Claim or Suit**:

An additional insured under this endorsement will as soon as practicable:

- a. Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this insurance to us;
- b. Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and
- c. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.
- d. We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured.

2. The limits of insurance applicable to the additional insured are those specified in a written contract or written agreement or the limits of insurance as stated in the Declarations of this policy and defined in **Section III - Limits of Insurance** of this policy, whichever are less. These limits are inclusive of and not in addition to the limits of insurance available under this policy.

**J. WHO IS AN INSURED - INCIDENTAL MEDICAL ERRORS / MALPRACTICE
WHO IS AN INSURED - FELLOW EMPLOYEE EXTENSION - MANAGEMENT EMPLOYEES**

Paragraph 2.a.(1) of **Section II - Who Is An Insured** is replaced with the following:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1) (a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1) (a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services. However, if you are not in the business of providing professional health care services or providing professional health care personnel to others, or if coverage for providing professional health care services is not otherwise excluded by separate endorsement, this provision (Paragraph (d)) does not apply.

Paragraphs (a) and (b) above do not apply to "bodily injury" or "personal and advertising injury" caused by an "employee" who is acting in a supervisory capacity for you. Supervisory capacity as used herein means the "employee's" job responsibilities assigned by you, includes the direct supervision of other "employees" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and

advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury", or caused in whole or in part by their intoxication by liquor or controlled substances.

The coverage provided by provision J. is excess over any other valid and collectable insurance available to your "employee".

K. NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES

Paragraph 3. of **Section II - Who Is An Insured** is replaced by the following:

3. Any organization you newly acquire or form and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
 - a. Coverage under this provision is afforded only until the expiration of the policy period in which the entity was acquired or formed by you;
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
 - d. Records and descriptions of operations must be maintained by the first Named Insured.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations or qualifies as an insured under this provision.

L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES

Under **Section IV - Commercial General Liability Conditions**, the following is added to Condition 6. **Representations**:

Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" is not intentional.

M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

Under **Section IV - Commercial General Liability Conditions**, the following is added to Condition 2. **Duties In The Event of Occurrence, Offense, Claim Or Suit**:

Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless an insured listed under Paragraph 1. of **Section II - Who Is An Insured** or a person who has been designated by them to receive reports of "occurrences", offenses, claims or "suits" shall have received such notice from the agent, servant or "employee".

N. LIBERALIZATION CLAUSE

If we revise this Commercial General Liability Extension Endorsement to provide more coverage without additional premium charge, your policy will automatically provide the coverage as of the day the revision is effective in your state.

O. BODILY INJURY REDEFINED

Under **Section V - Definitions**, Definition 3. is replaced by the following:

3. "Bodily Injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

P. EXTENDED PROPERTY DAMAGE

Exclusion a. of **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is replaced by the following:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

Q. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU

Under **Section IV - Commercial General Liability Conditions**, the following is added to **Condition 8. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have against a person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard" provided:

1. You and that person or organization have agreed in writing in a contract or agreement that you waive such rights against that person or organization; and
2. The injury or damage occurs subsequent to the execution of the written contract or written agreement.



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: A RESOLUTION RATIFYING AN EMERGENCY CONSTRUCTION CONTRACT IN THE AMOUNT OF \$10,201.52 WITH RUSS GRADING & EXCAVATING LLC, FOR EMERGENCY STORM SEWER POINT REPAIR AT THE INTERSECTION OF EAST 9TH STREET AND ERIE AVENUE, PROJECT NO. 23-040 (SWAN03) AND APPROVING THE PURCHASING AGENT'S EXECUTION OF THE SAME

SUMMARY:

This Resolution ratifies and approves award of a Construction Contract to Russ Grading & Excavating LLC, for emergency storm sewer point repair at the intersection of East 9th Street & Erie Avenue.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

An emergency point repair was required to repair the stormwater inlet and manhole access on an inlet at the southeast corner of the intersection of 9th Street and Erie Avenue due to a structural defect.

The bid summary sheet with the unit prices for the estimated work performed by Russ Grading & Excavating LLC is attached. This work was performed under the 2023-2026 Storm Sewer Point Repair Contract, which was approved under Resolution #15335.

The cost breakdown for the project is as follows:

Line Item	Description	Bid Quantities	Quantity	Unit of Measure	Unit Cost	Totals
1	Remove and Replace Standard Curb and Gutter	1-20	7	LF	\$50.00	\$350.00
2	Cast in Place Manhole or Partial Manhole Repair	1	1	EA	\$5,500.00	\$5,500.00
3	Mobilization	1	1	LS	\$4,000.00	\$4,000.00
4	Traffic Control	1	1	LS	\$351.52	\$351.52
					Total	\$10,201.52

FINANCIAL IMPLICATIONS:

Funding for this project was paid from the Stormwater Utility budget. Funding was available and had been previously budgeted, appropriated, and allocated to Project No. 23-040 (SWAN03).

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Not applicable.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. Bid Summary
2. Site Location Map

RESOLUTION NO. 15465

A RESOLUTION RATIFYING AN EMERGENCY CONSTRUCTION CONTRACT IN THE AMOUNT OF \$10,201.52 WITH RUSS GRADING & EXCAVATING LLC, FOR EMERGENCY STORM SEWER POINT REPAIR AT THE INTERSECTION OF EAST 9TH STREET AND ERIE AVENUE, PROJECT NO. 23-040 (SWAN03) AND APPROVING THE PURCHASING AGENT'S EXECUTION OF THE SAME

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

WHEREAS, the point repair work was awarded to Russ Grading & Excavating LLC, under the 2023-2026 Storm Sewer Point Repair contract; NOW THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

City Council ratifies and approves the Contract for repair of the stormwater pipes at the intersection of 9th Street and Erie Avenue with Russ Grading & Excavating LLC, Project No. 23-040 (SWAN03) awarded to said bidder in the amount of \$10,201.52.

SECTION 2.

Funds for Project No. 23-040 (SWAN03) shall be paid from the Stormwater Utility Fund.

SECTION 3.

The officers and staff of the City are authorized to perform any and all acts consistent with this Resolution to implement the policies and procedures herein. Furthermore, all previous acts taken by City officers and staff consistent with the Contract, including prior payments, are hereby ratified.

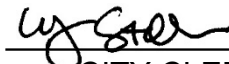
SECTION 4.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: January 22, 2024

BY: Sarah Martinez
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

Bid: 23-040 2023-2026 Emergency Storm Sewer Point Repair					Russ Grading & Excavating LLC	
Line Item	Description	Bid Quantities	Quantity	Unit of Measure	Unit Cost	
1	Remove and Replace Standard Curb and Gutter	1-20	7	LF	\$50.00	\$350.00
2	Cast in Place Manhole or Partial Manhole Repair	1	1	EA	\$5,500.00	\$5,500.00
3	Mobilization	1	1	LS	\$4,000.00	\$4,000.00
4	Traffic Control	1	1	LS	\$351.52	\$351.52
					Total	\$10,201.52





0
25
50
US Feet

9th Street and Erie Avenue

The City of Pueblo, Colorado does not guarantee nor provide any warranty, expressed or implied, as to the representative completeness or accuracy of maps and data provided herein



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**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: A RESOLUTION TO APPROVE AMENDMENT NO. 2 TO REVOCABLE PERMIT NO. REV-23-41, ISSUED TO E.T. TECHNOLOGIES, INC. FOR THE PURPOSE OF INSTALLING GROUNDWATER MONITORING WELLS

SUMMARY:

This Resolution will amend the description of the permitted area described in Revocable Permit REV-23-41 Amendment 1 to include W. D. Street, Lamkin Street, and the alley located between Lamkin Street; S. Victoria Avenue extending from W. D Street to W. C Street; and W. C Street between Lamkin Street and the alley between Lamkin Street and Victoria Avenue authorizing the Permittee to install groundwater monitoring wells within the permitted area.

PREVIOUS COUNCIL ACTION:

Resolution No. 15365 was passed by City Council on September 11, 2023, approving the issuance of Revocable Permit No. REV-23-41.

City Council passed Resolution No. 15422 on November 13, 2023, approving Amendment No. 1 to Revocable Permit No. REV-23-41.

BACKGROUND:

The Permittee has requested a second amendment to Revocable Permit No. REV-23-41 to expand the permitted area previously authorized under the initial permit and as previously expanded by Amendment No. 1 to REV-23-41. Permittee has indicated that they intend to install additional groundwater monitoring wells consistent with the purpose of the initial Revocable Permit. All other terms and conditions of the permit will remain unchanged.

FINANCIAL IMPLICATIONS:

None.

BOARD/COMMISSION RECOMMENDATION:

The Revocable Permit Review Committee recommends approval.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Failure to approve the Resolution to Amend will prevent E.T. Technologies, Inc., from amending Revocable Permit REV-23-41 to authorize the installation of additional groundwater monitoring wells within West C Street between Lamkin Street and the alley between Lamkin Street and Victoria Avenue.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. Amendment No. 2 -Amended Revocable Permit (REV-23-41)

RESOLUTION NO. 15466

A RESOLUTION TO APPROVE AMENDMENT NO. 2 TO
REVOCABLE PERMIT NO. REV-23-41, ISSUED TO E.T.
TECHNOLOGIES, INC. FOR THE PURPOSE OF INSTALLING
GROUNDWATER MONITORING WELLS

WHEREAS, City Council passed Resolution No. 15365 on September 11, 2023, authorizing the issuance of Revocable Permit REV-23-41 to E.T. Technologies, Inc., for the use of the public right-of-way on West D Street and Lamkin Street to install groundwater monitoring wells; AND

WHEREAS, City Council passed Resolution No. 15422 on November 13, 2023, amending Revocable Permit REV-23-41 to expand the permitted area to include a portion of the alley between Victoria Avenue and Lamkin Street extending from West D Street to West C Street for the same purpose; AND

WHEREAS, E.T. Technologies, Inc., has requested a second amendment to expand the permitted area to include the public right-of-way in West C Street between Lamkin Street and the alley between Lamkin Street and Victoria Avenue for the same purpose; AND

WHEREAS, the Revocable Permit Committee recommends approval of the requested amendment; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The attached Amendment No. 2 to Revocable Permit REV-23-41 is authorized to be issued to E.T. Technologies, Inc. to amend the designated permitted area for the purpose of installing groundwater monitoring wells.

SECTION 2.

The use of the public right-of-way granted hereby is subject to all limitations, terms, and conditions set forth in Revocable Permit REV-23-41, as amended by the attached Amendment No. 2.

SECTION 3.

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

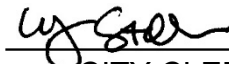
SECTION 4.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: January 22, 2024

BY: Sarah Martinez
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

AMENDMENT NO. 2 TO REVOCABLE PERMIT REV-23-41

This Amendment to Revocable Permit REV-23-41 dated September 18, 2023, is issued by the City of Pueblo ("City") to E.T. Technologies, Inc., ("Permittee") as

WHEREAS, Resolution No. 15365 approved by City Council on September 11, 2023, approved the issuance of Revocable Permit REV-23-41 (hereinafter referred to as the "Permit") the Permittee and the City issued said Permit on September 18, 2023;

WHEREAS, Resolution No. 15422 was approved by City Council on November 13, 2023, approving Amendment No. 1 to Revocable Permit REV-23-41;

WHEREAS, the Permittee has requested an amendment to the Permit to update the description of the permitted area; and

WHEREAS, the Revocable Permit Committee recommends approval of the requested amendment; NOW THEREFORE,

PERMITTEE IN CONSIDERATION OF THE ISSUANCE AND GRANTING OF THE ABOVE DESCRIBED AMENDMENT REPRESENTS, WARRANTS, AND AGREES:

1. Paragraph 2. of Revocable Permit REV-23-41 is hereby deleted in its entirety and amended to read as follows:

2. Permitted Area:

- (a) W. D Street, Lamkin Street, and the alley located between Lamkin Street and S. Victoria Avenue extending from W. D Street to W. C Street;*
- (b) W. C Street between Lamkin Street and the alley between Lamkin Street and Victoria Avenue.*

2. This Amendment shall become effective on the date of final signature by the Mayor.

3. This Amendment shall be recorded by the City in the records of the Pueblo County Clerk and Recorder. Permittee shall be responsible for payment of all fees associated with recording at its sole expense.

4. The Permit, as amended by this Amendment, shall remain in full force and effect, and Permittee shall be and remain subject to all terms and conditions of the Permit including expressly and not in any way by limitation subsection (n) which provides that, "Permittee acknowledges and agrees that this Permit is temporary and subject to revocation or termination by resolution of the City Council of City, in its sole discretion, for any reason or no reason, at anytime, without liability to City, and without notice to or hearing by Permittee. Permittee waives any and all right or claim to such notice, hearing, and liability of the City."

SIGNATURE PAGE FOLLOWS

PERMITTEE:

Signed in Pueblo, Colorado this _____ day of _____, 20____.

E.T. Technologies, Inc., a Utah corporation

By: _____
Cynthia L. Cason, Asst. Corporate Secretary

STATE OF COLORADO)
) SS.
COUNTY OF PUEBLO)

The foregoing instrument was acknowledged before me the _____ day of _____, 2023
by _____ as _____.

My commission expires: _____.

Notary Public

CITY:

APPROVED this _____ day of _____, 20____.

CITY OF PUEBLO, a Municipal Corporation

By _____
Nicholas A. Gradisar, Mayor



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: A RESOLUTION AUTHORIZING THE ISSUANCE OF A REVOCABLE PERMIT NO. REV-23-49 TO FUEL & IRON MASTER TENANT, LLC, FOR THE USE OF PARKING SPACES ALONG B STREET AT THE CORNER OF B STREET AND S. UNION AVENUE FOR THE PURPOSE OF HOSTING A WINTER BEER FESTIVAL MOBILE AXE THROWING TRAILER

SUMMARY:

This Resolution approves the issuance of a Revocable Permit (No. REV-23-49) to Fuel & Iron Master Tenant, LLC authorizing the use of public parking spaces on E. B Street to park a mobile axe-throwing trailer as part of a Winter Beer Festival event on January 27, 2023.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

Fuel & Iron Master Tenant, LLC, has submitted a revocable permit application (REV-23-49) requesting to reserve the parking spaces along B Street at the corner of B Street and S. Union Avenue to park a mobile axe-throwing trailer on January 27, 2024, from 9:00 a.m. through 9:00 p.m. as part of their Winter Beer Festival event.

FINANCIAL IMPLICATIONS:

None.

BOARD/COMMISSION RECOMMENDATION:

The Revocable Permit Review Committee recommends approval.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Failure to approve the Resolution will preclude the applicant from using the public right-of-way for parking a mobile axe-throwing trailer as part of the Winter Beer Festival Event.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. Revocable Permit - 23-49

RESOLUTION NO. 15467

A RESOLUTION AUTHORIZING THE ISSUANCE OF A REVOCABLE PERMIT NO. REV-23-49 TO FUEL & IRON MASTER TENANT, LLC, FOR THE USE OF PARKING SPACES ALONG B STREET AT THE CORNER OF B STREET AND S. UNION AVENUE FOR THE PURPOSE OF HOSTING A WINTER BEER FESTIVAL MOBILE AXE THROWING TRAILER

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The attached Revocable Permit REV-23-49 is authorized to be issued to Fuel & Iron Master Tenants, LLC, for use of parking spaces along B Street at the corner of B Street and S. Union Avenue for the purpose of parking a mobile axe-throwing trailer as part of a Winter Beer Festival Event.

SECTION 2.

The use of the public right-of-way granted hereby is subject to all limitations, terms, and conditions set forth in the attached Revocable Permit (REV-23-49).

SECTION 3.

The staff and the officers 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 4.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: January 22, 2024

BY: Sarah Martinez
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

REVOCABLE PERMIT

Pursuant to the authority granted by Section 16-9 of the Charter of Pueblo, a Municipal Corporation, (the "City"), the City Council of City hereby grants the following revocable permit to Permittee subject to and conditioned upon the provisions herein contained and the Permittee's compliance therewith:

1. Name, Address and Telephone Number of Permittee: **Fuel & Iron Master Tenant, LLC 144 W. Bayaud Ave. Denver CO 80223 7204804592 3273 S. Tulare Cir.**
2. Permitted Area: **Use of parking spaces along B Street at the corner of B Street and S. Union Avenue**
3. Purpose of Revocable Permit: **Hosting a Winter Beer Festival mobile axe throwing trailer on Saturday, January 27th, 2024, from 9:00 a.m. to 9:00 p.m.**
4. Commencement Date: **January 27, 2024** Time: **9AM**
5. Ending Date: **January 27, 2024** Time: **9PM**

PERMITTEE IN CONSIDERATION OF THE ISSUANCE AND GRANTING OF THE ABOVE DESCRIBED REVOCABLE PERMIT (THE "PERMIT") REPRESENTS, WARRANTS AND AGREES:

(a) The Permitted Area shall be used for the above-specified Purpose of Revocable Permit. No use of the Permitted Area shall be made before the time of the Commencement Date.

(b) All structures, fences, tables, chairs, equipment or other improvements authorized to be placed in the Permitted Area by Permittee (the "Improvements") shall be constructed, installed, and maintained by Permittee in compliance with all applicable codes, ordinances, rules and regulations of City and this Permit.

(c) If the Revocable Permit is issued for a sidewalk café, the Permittee and sidewalk café shall be subject to all the provisions, conditions and requirements contained in section 9-10-84 of the Pueblo Municipal Code, or as same may be amended, which are incorporated herein by reference. In addition, no Improvement shall be tied-down or chained to any tree within or adjacent to the Permitted Area nor shall any Improvement be installed or located in such a manner as to hinder or interfere with the opening of motor vehicle doors or passenger movement to and from motor vehicles parked adjacent to or near the Permitted Area.

(d) If this Permit is issued for the use of the public right-of-way for a special event, Permittee shall deposit with the City the sum of \$500.00 ("Deposit"). The Deposit will be forfeited to the City if Permittee does not remove all Permittee's equipment and property from, and clean and restore the Permitted Area to its original condition before the Time of the Ending Date. If so timely removed and cleaned, the Deposit will be returned to Permittee.

(e) Before the Time of the Ending Date, or immediately upon any other termination of this Permit, Permittee shall, at Permittee's expense, remove all of Permittee's Improvements from the Permitted Area and clean and restore the Permitted Area to its original condition. Failure to timely remove all of Permittee's Improvements from the Permitted Area and clean and restore the Permitted Area to its original condition shall constitute Permittee's abandonment of the Permittee's Improvements, and City may, at Permittee's expense, remove and dispose of Permittee's Improvements and clean and restore the Permitted Area to its original condition. Permittee agrees to pay all City's costs and expenses, including reasonable attorney fees, incurred in the enforcement of this Permit.

(f) Permittee shall keep all Improvements and Permitted Area in good, clean and safe condition and repair, free from litter, waste and debris.

(g) Permittee shall indemnify, defend and hold City, its officers, agents and employees harmless from and against any and all suits, claims, liabilities, loss, damages and expenses, including reasonable attorney fees and cost of defense, arising, directly or indirectly, from or caused by the issuance of this Permit or the conditions hereof, or the existence, construction, installation, repair or maintenance of the Improvements in the Permitted Area, or the use of the Permitted Area or Improvements by Permittee, its officers, agents, employees, invitees or general public.

(h) Neither this Permit nor any of the privileges granted to Permittee hereby, may be conveyed, assigned, transferred or sublet by Permittee without the prior written consent of the City Council of City. Any attempted conveyance, assignment, transfer or subletting of the Permit or Permitted Area without the written consent of the City Council of Pueblo shall be void and of no effect and shall cause this Permit to be automatically revoked.

(i) Permittee shall keep and maintain commercial general liability insurance covering the Permitted Area and Improvements in amounts not less than \$1,000,000.00 combined single limits per occurrence and aggregate, naming the City as an additional insured and contain a waiver of rights of subrogation against City. A certificate for such insurance and each renewal thereof shall be delivered to the City. Failure to maintain such insurance shall cause this Permit to be automatically revoked.

(j) Trees, landscaping and shrubbery within or adjacent to the Permitted Area shall be protected from damage or injury by Permittee and shall not be removed except after receipt by the Permittee of the written consent of the City's Director of Parks and Recreation. Covid-19

(k) Any notice or other document required or permitted herein shall be in writing and delivered personally or by first class mail, postage prepaid, as follows:

(i) If to Permittee, at the address shown in paragraph 1 above.

(ii) If to City, 1 City Hall Place, Pueblo, Colorado, 81003, Attention: Revocable Permit Review Committee. Each party reserves the right to change its address provided notice of such change is given in accordance with this paragraph (k).

(l) City reserves and is hereby granted by Permittee access to, under and through the Permitted Area for any and all purposes. City may injure, damage or remove any and all Permittee's Improvements in the Permitted Area in exercising the right of access hereby reserved and granted. Permittee assumes the risk of injury, loss and damage to Permittee's Improvements within the Permitted area, and City shall have no responsibility or liability for any damage or injuries thereto, whatsoever the cause, including, but not limited to, the acts or omissions of City, its officers, employees, or agents.

(m) This Permit shall terminate upon the occurrence of any one of the following events: (i) the Time of the Ending Date, (ii) abandonment or nonuse by Permittee for a period of three (3) consecutive months, (iii) surrender or cancellation of the Permit in writing by Permittee, (iv) automatic revocation as provided in paragraphs (h) and (i) above; (v) revocation or termination of this Permit by resolution of the City Council of City; or (vi) revocation by the Mayor as provided in paragraph (p). The termination of this Permit shall not relieve Permittee from Permittee's obligations under paragraph (f) until the Authorized Improvements have been removed by Permittee in compliance with paragraph (e).

(n) Permittee acknowledges and agrees that this Permit is temporary and subject to revocation or termination by resolution of the City Council of City, in its sole discretion, for any reason or no reason, at anytime, without liability to City, and without notice to or hearing by Permittee. Permittee waives any and all right or claim to such notice, hearing, and liability of the City.

(o) Permittee acknowledges and agree that use of the Permitted Area shall be conducted in compliance with applicable laws and regulations including but not limited orders, regulations and directives issued by the Governor, Colorado Department of Public Health and Environment and the Pueblo County Department of Public Health and Environment with respect to COVID-19 ("COVID-19 Regulations"). Seven days prior to Commencement Date, Permittee shall submit in writing to the Revocable Permit Review Committee those actions Permittee shall take to assure protection of the public health and compliance with COVID-19 Regulations.

(p) Permittee further acknowledges and agrees that this Permit is temporary and subject to revocation or termination if the purpose of the permit or any potential activities to be conducted under the Permit is determined by the Mayor of City, in his sole and absolute discretion, to not be in furtherance of and/or contrary to the public health or welfare due to COVID-19 or related issues. Such determination and termination may be issued at any time, without liability to City, and without notice to or hearing by Permittee. Permittee waives any and all right or claim to such notice, hearing, and liability of the City.

(q) Nothing in this Permit shall be interpreted to limit or prevent the protections afforded to City under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq.

Signed in Pueblo, Colorado this _____ day of _____, 20_____.

PERMITTEE:

Organization or

Individual: _____

By: _____

Title: _____

STATE OF COLORADO)

COUNTY OF PUEBLO) SS..

The foregoing instrument was acknowledged before me the _____ day of _____, 20_____ by _____ as _____.

My commission expires: _____.

Notary Public

APPROVED this _____ day of _____, 20_____.
PUEBLO, a Municipal Corporation

By _____

Nicholas A. Gradisar, Mayor



**Background Paper for Proposed
Action Item**

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Alyssa Parga, Secretary to the Mayor

SUBJECT: A RESOLUTION CONFIRMING THE APPOINTMENT BY THE MAYOR
OF STEVE NAWROCKI, ANTHONY COLARELLI, AND MICHAEL
MESSERVY TO THE PUEBLO URBAN RENEWAL AUTHORITY
BOARD

SUMMARY:

This Resolution confirms the appointment by the Mayor of Steve Nawrocki, Anthony Colarelli, and Michael Messervy to the Pueblo Urban Renewal Authority Board.

PREVIOUS COUNCIL ACTION:

The Mayor has made appointments to boards and commissions selecting individuals to serve terms which expire during a particular calendar year and presented them to Council for approval.

BACKGROUND:

Due to the term expirations of Donald Banner, Betty Martinez, and Dr. James Valenzuela, there are three appointments available to serve a five-year term expiring February 1, 2029.

FINANCIAL IMPLICATIONS:

This is a volunteer committee and members serve without compensation.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAKEHOLDER PROCESS:

N/A

ALTERNATIVES:

Remove from agenda and re-advertise for additional applications.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

None

RESOLUTION NO.

A RESOLUTION CONFIRMING THE APPOINTMENT BY THE
MAYOR OF STEVE NAWROCKI, ANTHONY COLARELLI, AND
MICHAEL MESSERVY TO THE PUEBLO URBAN RENEWAL
AUTHORITY BOARD

WHEREAS, Mayor Nicholas A. Gradisar has requested confirmation by the City Council of his appointment of Steve Nawrocki, Anthony Colarelli, and Michael Messervy to the Pueblo Urban Renewal Authority Board; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The appointment by the Mayor of Steve Nawrocki, Anthony Colarelli, and Michael Messervy to the Pueblo Urban Renewal Authority Board to serve a five-year term expiring February 1, 2029, shall be and is hereby confirmed by the City Council.

SECTION 2.

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

SECTION 3.

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

INTRODUCED: January 22, 2024

BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK



**Background Paper for Proposed
Action Item**

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Nicholas Gradisar, Mayor

SUBJECT: A RESOLUTION CONFIRMING THE APPOINTMENT OF COUNCIL MEMBERS TO VARIOUS BOARDS AND COMMISSIONS FOR THE YEAR 2024

SUMMARY:

This Resolution will appoint a City Council representative to the Boards and Commissions where it is either required that a Council Member be a member or it has been the policy to have a Council Member serve on the Board or Commission.

These Boards and Commissions include the following:

- City/County Library District Board of Trustees Appointment Committee - 2 Council Members
- Committee on Disposition of Forfeited Property
- Community Commission on Housing & Homelessness
- Fountain Creek Watershed Flood Control Governing Board + 1 Alternate
- HARP Authority Board of Directors
- PACOG Budget Committee
- Planning and Zoning Commission
- Pueblo Economic Development Corporation Board of Directors - 2 Council Members
- Pueblo Regional Building Commission
- Pueblo Urban Renewal Authority + 1 Ex-Officio Member
- Pueblo Memorial Airport Advisory Committee
- Pueblo Depot Activity Development Authority Board of Directors
- Latino Chamber Foundation Board of Directors
- Pueblo Energy Advisory Commission

PREVIOUS COUNCIL ACTION:

These appointments are confirmed on an annual basis.

BACKGROUND:

Annual appointments are made assigning a City Council representative to serve on Boards and Commissions where it is either required by legislation that a Council Member be a member, or it has been the policy to have a Council Member serve on a particular Board or Commission. The new terms will expire January 31, 2025.

FINANCIAL IMPLICATIONS:

N/A

BOARD/COMMISSION RECOMMENDATION:

N/A

STAKEHOLDER PROCESS:

N/A

ALTERNATIVES:

None.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

None

RESOLUTION NO.

A RESOLUTION CONFIRMING THE APPOINTMENT OF
COUNCIL MEMBERS TO VARIOUS BOARDS AND
COMMISSIONS FOR THE YEAR 2024

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Heather Graham and Sarah Martinez to serve as the Council representatives on the **City/County Library District Board of Trustees Appointment Committee** for one-year terms expiring January 31, 2025.

SECTION 2.

Regina Maestri to serve as the Council Representative on the **Committee on Disposition of Forfeited Property** for a one-year term expiring January 31, 2025.

SECTION 3.

Roger Gomez to serve as the Council Representative on the **Community Commission on Housing & Homelessness** for a one-year term expiring January 31, 2025.

SECTION 4.

Joe Latino to serve as the City Council Representative and Dennis Flores to serve as the Alternate City Council Representative to serve on the **Fountain Creek Watershed Flood Control & Greenway District Governing Board** for one-year terms expiring January 31, 2025.

SECTION 5.

Heather Graham to serve as the Council Representative on the **HARP Authority Board of Directors** for a one-year term expiring January 31, 2025.

SECTION 6.

Roger Gomez to serve as the Council Representative on the **Pueblo Area Council of Governments (PACOG) Budget Committee** for a one-year term expiring January 31, 2025.

SECTION 7.

Roger Gomez to serve as the Council Representative on the **Planning and Zoning Commission** for a one-year term expiring January 31, 2025.

SECTION 8.

Mark Aliff and Dennis Flores to serve as the Council Representatives on the **Pueblo Economic Development Corporation Board of Directors** for one-year terms expiring January 31, 2025.

SECTION 9.

Heather Graham to serve as the Council Representative on the **Pueblo Regional Building Commission** for a one-year term expiring January 31, 2025.

SECTION 10.

Mark Aliff to serve as the Council Representative and Joe Latino to serve as the Ex-Officio Member on the **Pueblo Urban Renewal Authority** for one-year terms expiring January 31, 2025.

SECTION 11.

Heather Graham to serve as the Council Representative on the ***Pueblo Memorial Airport Advisory Committee*** for one-year terms expiring January 31, 2025.

SECTION 12.

Heather Graham to serve as the Council Representative on the ***Pueblo Energy Advisory Commission*** for a one-year term expiring January 31, 2025.

SECTION 13.

Joe Latino to serve as the Council Representative on the ***Pueblo Depot Activity Development Authority Board of Directors*** for a one-year term expiring January 31, 2025.

SECTION 14.

Roger Gomez to serve as the ex-officio on the ***Latino Chamber Foundation Board of Directors*** for a one-year term expiring January 31, 2025.

SECTION 15.

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 16.

This Resolution shall become effective upon passage and approval.

INTRODUCED: January 22, 2024

BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Benjamin Valdez

SUBJECT: AN ORDINANCE APPROVING AND ACCEPTING AN ARPA/SLRF AND STATE MULTI MODAL OPTION PROGRAM FUNDS GRANT (PUEBLO VANPOOL), AWARD NO. 24-HTD-ZL-00125 / 491003385, AND APPLICABLE CONDITIONS PERTAINING THERETO, BETWEEN THE CITY OF PUEBLO AND THE COLORADO DEPARTMENT OF TRANSPORTATION, ESTABLISHING PROJECT NO. PT2402, BUDGETING AND APPROPRIATING FUNDS OF \$400,000.00, AND RATIFYING THE MAYOR'S SIGNATURE ON SAME

SUMMARY:

Attached is a Grant Award between the City of Pueblo and the Colorado Department of Transportation for \$400,000.00.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

This is a FY2023 ARPA/SLRF and State Multi Modal Grant for \$400,000.00. Per the Grant Agreement, the Grant provided is 100%, with a 0% match. This Grant utilizes ARP Act funding to prevent, prepare for, and respond to COVID-19, and State Multi Modal Option Funds. The grant scope of work includes the following projects:

\$400,000.00 – Vanpool Estimated Cost

\$400,000.00 Total Grant

FINANCIAL IMPLICATIONS:

The anticipated total Project cost is \$400,000.00. The Federal/State share is 100% with no City match requirement.

BOARD/COMMISSION RECOMMENDATION:

Pueblo Transit Board recommends approval.

STAKEHOLDER PROCESS:

Not applicable.

ALTERNATIVES:

The alternative, should this Ordinance not pass, is for the City of Pueblo to not receive the Grant Funds for a Pilot Vanpool Program.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. 491003385-Pueblo, City of_ARPA-SLFRF_MMOf-Fed_MMOf-State Combo-FINAL
2. GRANT CERTIFICATION Vanpool 2024

ORDINANCE NO.

AN ORDINANCE APPROVING AND ACCEPTING AN ARPA/SLRF AND STATE MULTI MODAL OPTION PROGRAM FUNDS GRANT (PUEBLO VANPOOL), AWARD NO. 24-HTD-ZL-00125 / 491003385, AND APPLICABLE CONDITIONS PERTAINING THERETO, BETWEEN THE CITY OF PUEBLO AND THE COLORADO DEPARTMENT OF TRANSPORTATION, ESTABLISHING PROJECT NO. PT2402, BUDGETING AND APPROPRIATING FUNDS OF \$400,000.00, AND RATIFYING THE MAYOR'S SIGNATURE ON SAME

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

SECTION 1.

The Awarding of Grant No. 24-HTD-ZL-00125 / 491003385 to the City of Pueblo, Pueblo Transit, 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 PT2402 is hereby established, and the amount of \$400,000.00 is budgeted and appropriated therefore.

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 Ordinance and the attached Award to implement the policies and procedures described herein.

SECTION 5.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk

STATE OF COLORADO GRANT AGREEMENT

COVER PAGE

State Agency Department of Transportation		Agreement Number/PO Number 24-HTD-ZL-00125 / 491003385																
Grantee CITY OF PUEBLO		Agreement Performance Beginning Date The Effective Date																
Grantee UEI NJK3BNUDRHJ7		Initial Agreement Expiration Date December 31, 2026																
Subaward Agreement Amount Federal Funds-ARPA/SLFRF Maximum Amount \$249,800.00		Fund Expenditure End Date December 31, 2026																
MMOF-State Maximum Amount \$150,200.00		Agreement Authority Authority to enter into this Agreement exists in CRS §§43-1-106, 43-1-110, 43-1-117.5, 43-1-701, 43-1-702 and 43-2-101(4)(c), SB2018-001, SB 2021-260, as appropriated and otherwise made available pursuant to the FAST ACT, MAP-21, SAFETEA_LU, 23 USC §104 and 23 USC §149.																
Funds Encumbered via This Agreement \$400,000.00																		
Agreement Purpose The purpose for this agreement is for CDOT to disburse ARPA/SLFRF and State Multi-Modal Option Program Funds (MMOF-State) to assist in the completion of the awarded project within the provisions of this Agreement.																		
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, Required Federal Contract/Agreement Clauses. 5. Exhibit E, Verification of Payment 6. Exhibit F, Federal Provisions Personal Services Contracts (Civil Rights). 7. Exhibit G, PII Certification. 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. 2. Exhibit D, Required Federal Contract/Agreement Clauses. 3. Exhibit F, Federal Provisions Personal Services Contracts (Civil Rights) 4. Colorado Special Provisions in §17 of the main body of this Agreement. 5. The provisions of the other sections of the main body of this Agreement. 6. Exhibit A, Statement of Work and Budget. 7. Exhibit B, Sample Option Letter. 8. Exhibit E, Verification of Payment.																		
<table border="0"> <tr> <td>Principal Representatives</td> <td></td> </tr> <tr> <td>For the State:</td> <td>For Grantee:</td> </tr> <tr> <td>Michael Snow</td> <td>Benjamin Valdez</td> </tr> <tr> <td>Division of Transportation Development</td> <td>Municipal Transportation Planner</td> </tr> <tr> <td>Colorado Dept. of Transportation</td> <td>City of Pueblo</td> </tr> <tr> <td>2829 W. Howard Place</td> <td>15151 East Alameda Parkway</td> </tr> <tr> <td>Denver, CO 80204</td> <td>Aurora, CO 80012</td> </tr> <tr> <td>michael.snow@state.co.us</td> <td>hliu@auroragov.org</td> </tr> </table>			Principal Representatives		For the State:	For Grantee:	Michael Snow	Benjamin Valdez	Division of Transportation Development	Municipal Transportation Planner	Colorado Dept. of Transportation	City of Pueblo	2829 W. Howard Place	15151 East Alameda Parkway	Denver, CO 80204	Aurora, CO 80012	michael.snow@state.co.us	hliu@auroragov.org
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SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

GRANTEE CITY OF PUEBLO By: _____ Name: _____ Title: _____ Date: _____	STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director By: _____ Name: _____ Title: _____ Date: _____
2nd Grantee Signature if Needed By: _____ Name: _____ Title: _____ Date: _____	LEGAL REVIEW Philip J. Weiser, Attorney General _____ By: Assistant Attorney General Date: _____
In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD _____ By: Department of Transportation Effective Date: _____	

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1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Effective Date

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

B. Initial Term

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

C. Extension Terms - State’s Option

The State, at its discretion, shall have the option to extend the performance under this Agreement beyond the Initial Term for a period, or for successive periods, of one year or less at the same rates and under the same terms specified in this Agreement (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Grantee in a form 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 Grantee provided in §14, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically

terminate upon execution of a replacement Agreement or modification extending the total term of this Agreement.

E. Early Termination in the Public Interest

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

i. Method and Content

The State shall notify Grantee of such termination in accordance with §14. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Grantee shall be subject to the rights and obligations set forth in 12.A.i.a.

iii. Payments

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

F. Grantee's Termination Under Federal Requirements

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

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Agreement"** means this 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 Grantee 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 Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Grantee is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- D. **"Budget"** means the budget for the Work described in Exhibit A.
- E. **"Business Day"** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday, or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- F. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.

- G. **“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.
- H. **“End of Term Extension”** means the time period defined in §2.D2.D.
- I. **“Exhibits”** means the exhibits and attachments included with this Agreement as shown on the Cover Page for this Agreement.
- J. **“Extension Term”** means the time period defined in §2.C.
- K. **“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 contractor or payments to an individual that is a beneficiary of a Federal program.
- L. **“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.
- M. **“Goods”** means any movable material acquired, produced, or delivered by Grantee as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
- N. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- O. **“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.
- P. **“Initial Term”** means the time period defined in §2.B2.B.
- Q. **“Matching Funds”** (Local Funds, or Local Match) means the funds provided by Grantee as a match required to receive the Subaward Funds and includes in-kind contribution.
- R. **“Party”** means the State or Grantee, and **“Parties”** means both the State and Grantee.
- S. **“Recipient”** means the State agency shown on the Signature and Cover Page of this Agreement, for the purposes of this Federal Award.
- T. **“Services”** means the services to be performed by Grantee as set forth in this Agreement and shall include any services to be rendered by Grantee in connection with the Goods.
- U. **“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 records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Grantee which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Grantee without restrictions at the time of its disclosure to Grantee; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Grantee to the State; (iv) is disclosed to Grantee, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- V. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- W. **“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.

- X. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited, information subject to disclosure under CORA.
- Y. **“Subaward Agreement Amount”** means an amount equal to the total of Grant Funds for this Agreement.
- Z. **“Subcontractor”** means third-parties, if any, engaged by Grantee to aid in performance of the Work. “Subcontractor” also includes sub-recipients of Grant Funds.
- AA. **“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 or Subgrantee may also be a recipient of other Federal Awards directly from a Federal Awarding Agency. For the purposes of this Agreement, Grantee is a Subrecipient or Subgrantee.
- BB. **“Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- CC. **“Work”** means the Goods delivered and Services performed pursuant to this Agreement.
- DD. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

4. STATEMENT OF WORK

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

5. PAYMENTS TO GRANTEE

A. Maximum Amount

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

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Grantee in the amounts and in accordance with the schedule and other conditions set forth in Exhibit A.
- b. Grantee shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State’s receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Grantee and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Grantee shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Agreement.

ii. Interest

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

delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. **Payment Disputes**

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

iv. **Available Funds-Contingency-Termination**

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

v. **Federal Recovery**

The 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**

Grantee shall provide Matching Funds as provided in **§5.A** and Exhibit A. Grantee shall have raised the full amount of Matching Funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Grantee's obligation to pay all or any part of any Matching Funds, whether direct or contingent, only extends to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Grantee and paid into Grantee's treasury or bank account. Grantee represents to the State that the amount designated "Grantee's Matching Funds" in Exhibit A has been legally appropriated for the purposes of this Agreement by its authorized representatives and paid into its treasury or bank account. Grantee does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of Grantee. Grantee shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Grantee's laws or policies.

D. **Reimbursement of Grantee Costs**

Only with prior written approval, the State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount described in Exhibit A and **§5.A** for all allowable costs described in this Grant and shown in the Budget, except that Grantee may adjust the amounts between each line item of the Budget without formal modification to this Agreement as long as the Grantee provides notice to the State of the change, the change does not modify the total maximum amount of this Agreement or the maximum amount for any state fiscal year, and the change does not modify any requirements of the Work. The State shall reimburse Grantee for the federal and State share of properly documented allowable costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and Exhibit A. However, any costs incurred by Grantee prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. Grantee's costs for Work performed after the Fund Expenditure End Date shown on the Cover Page for this Agreement, or after any phase performance period end

date for a respective phase of the Work, shall not be reimbursable. The State shall only reimburse allowable costs described in this Agreement and shown in the Budget if those costs are:

- i. Reasonable and necessary to accomplish the Work and for the Goods and Services provided; and
- ii. Equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred).

E. Close-Out

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

6. REPORTING - NOTIFICATION

A. Quarterly Reports

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

B. Litigation Reporting

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

C. Performance and Final Status

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

D. Violations Reporting

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

7. GRANTEE RECORDS

A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder (collectively, the "Grantee Records"). Grantee shall maintain such records for a period (the "Record Retention 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. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all

litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Grantee in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

B. Inspection

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

C. Monitoring

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

D. Final Audit Report

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

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Grantee shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Grantee shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law or approved in writing by the State. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. Grantee shall immediately forward any request or demand for State Records to the State's Principal Representative.

B. Other Entity Access and Nondisclosure Agreements

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

C. Use, Security, and Retention

Grantee shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information. Grantee wherever located. Grantee shall provide the State with access, subject to Grantee's reasonable security requirements, for purposes of inspecting and

monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Grantee shall return State Records provided to Grantee or destroy such State Records and certify to the State that it has done so, as directed by the State. If Grantee is prevented by law or regulation from returning or destroying State Confidential Information, Grantee warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Grantee can establish that Grantee, and none of Grantee's or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Grantee shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan, in its sole discretion and Grantee shall make all modifications as directed by the State. If Grantee cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Grantee shall reimburse the State for the reasonable costs thereof.

E. Safeguarding PII

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

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

- D. Grantee acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Grantee further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Agreement to the State.

10. INSURANCE

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

A. Workers' Compensation

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

B. General Liability

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

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

C. Automobile Liability

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

D. Cyber/Network Security and Privacy Liability

Liability insurance covering civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation, or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$2,000,000 general aggregate.

E. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

F. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

G. Additional Insured

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

H. Primacy of Coverage

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

I. Cancellation

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

J. Subrogation Waiver

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

K. Public Entities

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

L. Certificates

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

11. BREACH OF AGREEMENT

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of Breach of Agreement to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State; or if Grantee is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Grantee is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

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

a. Obligations and Rights

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

b. Payments

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

c. Damages and Withholding

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

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

Withhold payment to Grantee until Grantee corrects its Work.

c. Deny Payment

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

d. Removal

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

e. Intellectual Property

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

B. Grantee's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Grantee, following the notice and cure period in §11 and the dispute resolution process in §13 shall have all remedies available at law and equity.

13. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

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

14. NOTICES AND REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's principal representative at the address set forth 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

Grantee 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 Grantee upon completion or termination hereof.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Grantee shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Grantee's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Grantee shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Grantee

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

16. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

Grantee shall not enter into any subaward or subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Grantee shall submit to the State a copy of each such subaward or subcontract upon request by the State. All subawards and subcontracts entered into by Grantee in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement. If the entity with whom Grantee enters into a subcontract or subaward would also be considered a Grantee, then the subcontract or subaward entered into by Grantee shall also contain provisions permitting both Grantee 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 Grantee's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

L. Severability

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

M. Survival of Certain Agreement Terms

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

N. Taxes

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

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§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

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

S. Licenses, Permits, and Other Authorizations

Grantee shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or Subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

T. Compliance with State and Federal Law, Regulations, and Executive Orders

Grantee shall comply with all State and Federal law, regulations, executive orders, State and Federal Awarding Agency policies, procedures, directives, and reporting requirements at all times during the term of this Agreement.

U. Accessibility

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

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

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

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR.

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

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

H. SOFTWARE PIRACY PROHIBITION.

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

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

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

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

[*Not applicable to intergovernmental agreements*] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i)

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

EXHIBIT A, STATEMENT OF WORK AND BUDGET

City of Pueblo
Pueblo County Commuter Vanpool
Multimodal Options Fund (MMOF) Grant
Scope of Work

Objective

The City of Pueblo (dba, Pueblo Transit) will establish, market, and operate a commuter vanpool service that is county-wide. The service goal is to provide a cost-effective means of transportation to local commuters to reduce air pollution, traffic congestion, reliable work transportation barriers and energy consumption. The Steel City Vanpool Program will be available to any commuters traveling to work in Pueblo County and will be subsidized by the City of Pueblo to defray a portion of the cost of the service.

The City of Pueblo will secure a subcontracted Service Provider to operate and administer a capital lease program for the required vehicles, and to insure and maintain these vehicles.

The Service Provider will assist in vanpool formation and oversight and be responsible for overall operation of the service, driver authorization, billing, and fare collection. The cost of the vanpool service will be paid by corporate sponsors, rider fees, and a proposed subsidy of \$500 per month, per vehicle, paid by the City of Pueblo. The City of Pueblo will offer the selected Service Provider a two-year agreement with two (2) possible one-year extensions for a maximum of four (4) years.

Pueblo Transit, along with the Service Provider will assist with marketing and outreach support through program advertising, outreach activities, and participation in community events. Pueblo Transit will use multiple media outlets to market vanpooling as alternate mode of transportation.

Work and Deliverables

1. Develop Vanpool Service Plan
 - a. Develop a program plan to include program guidelines, financial plan, marketing plan, participant rules, Fee structure, etc.
2. Program Administration
 - a. Program management, accounting, communications, service provider procurement and management, etc.
3. Marketing and Outreach
 - a. Develop Vanpool page within the current City of Pueblo website.
 - b. Print and distribute program materials.
 - c. Advertising (radio, print, Television, Facebook ads, etc.)
 - d. Corporate sponsor outreach and communications
 - e. Attend PEDCO's HR Manager Meetings to inform employers.
 - f. Work With participating HR Managers to train employees on service use.

4. Sponsor Vehicle Subsidy

Vanpool service costs for each vehicle in active service will be subsidized \$500 per month, per vehicle. The program is projected to have 14 sponsored vanpools at program kickoff in 2024, growing to an average of 24 vanpools in 2025 & 2026.

Funding: \$400,000.00 Total Project Funding
\$150,200.00 MMOF – state (37.55%)
\$249,800.00 MMOF – ARPA/SLFRF (62.45%)
\$0.00 Local Funds (0% match required)

Itemized Budget

1. Vanpool Service Plan - \$20,000
 2. Program Administration - \$60,000
 3. Marketing & Outreach - \$50,000
 4. Vehicle Subsidy – \$270,000
Annual projections: \$70,000 (2024), \$100,000 (2025), \$100,000 (2026)
- TOTAL Item Budget - \$400,000

Timeline & Milestones

Service Plan – September-October 2023
Website deployment – October 2023
Marketing kickoff – November 2023
RFP release – September 2023
Service Provider Procurement & Notice to Proceed – December 2024
Vanpool Service Program – January 2024 through December 2027

EXHIBIT B, SAMPLE OPTION LETTER

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

1. **OPTIONS:**

A. Option to extend for an Extension Term

2. **REQUIRED PROVISIONS:**

A. **For use with Option 1(A):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current Agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.

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 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 Effective Date: _____
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EXHIBIT C, FEDERAL PROVISIONS

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,
- 5.) Submitting annual results to CDOT.

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, VERIFICATION OF PAYMENT

This checklist is to assist the Grantee in preparation of its billing packets to State. This checklist is provided as guidance and is subject to change by State. State shall provide notice of any such changes to Grantee. All items may not apply to your particular entity. State's goal is to reimburse Grantees as quickly as possible and a well organized and complete billing packet helps to expedite payment.

☐ **Verification of Payment –**

- ✓ General Ledger Report must have the following:
 - Identify check number or EFT number;
 - If no check number is available, submit Accounts Payable Distribution report with the General Ledger;
 - In-Kind (must be pre-approved by State) and/or cash match;
 - Date of the report;
 - Accounting period;
 - Current period transactions; and
 - Account coding for all incurred expenditures.
- ✓ If no General Ledger Report, all of the following are acceptable:
 - copies of checks;
 - check registers; and
 - paycheck stub showing payment number, the amount paid, the check number or electronic funds transfer (EFT), and the date paid.
- ✓ State needs to ensure that expenditures incurred by the local agencies have been paid by Party before State is invoiced by Party.
- ✓ Payment amounts should match the amount requested on the reimbursement. Additional explanation and documentation is required for any variances.

☐ **In-Kind or Cash Match – If an entity wishes to use these types of match, they must be approved by State prior to any Work taking place.**

- ✓ If in-kind or cash match is being used for the Local Match, the in-kind or cash match portion of the project must be included in the project application and the statement of work attached to the Agreement or purchase order. FHWA does not require pre-approval of in-kind or cash match, but State does.
- ✓ General ledger must also show the in-kind and/or cash match.

☐ **Indirect costs – If an entity wishes to use indirect costs, the rate must be approved by State prior to applying it to the reimbursements.**

- ✓ If indirect costs are being requested, an approved indirect letter from State or your cognizant agency for indirect costs, as defined in 2 CCR §200. 19, must be provided. The letter must state what indirect costs are allowed, the approved rate and the time period for the approval. The indirect cost plan must be reconciled annually and an updated letter submitted each year thereafter.

☐ **Fringe Benefits- Considered part of the Indirect Cost Rate and must be reviewed and approved prior to including these costs in the reimbursements.**

- ✓ Submit an approval letter from the cognizant agency for indirect costs, as defined in 2 CCR §200. 19, that verifies fringe benefit, or
- ✓ Submit the following fringe benefit rate proposal package to State Audit Division:
 - Copy of Financial Statement;
 - Personnel Cost Worksheet;
 - State of Employee Benefits; and
 - Cost Policy Statement.

EXHIBIT F, FEDERAL PROVISIONS PERSONAL SERVICES CONTRACTS (Civil Rights)

Terms defined in this Exhibit shall only apply to the section of this Exhibit in which the definition occurs. Defined terms used in this Exhibit without a definition shall have the definition given in the Contract.

1) USDOT Order 1050.2A, Appendix A - Standard Title VI Assurances and Nondiscrimination Provisions
[Applies to all personal services contracts]

“Acts” and “Regulations” means Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); 49 C.F.R. Part 21 (entitled Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964); and 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964).

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- a) **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (“FHWA”), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.
- b) **Non-discrimination:** The contractor, with regard to the work performed by it during the Contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- c) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this Contract and the Acts and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d) **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- e) **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the nondiscrimination provisions of this Contract, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - i) withholding payments to the contractor under the Contract until the contractor complies; and/or
 - ii) cancelling, terminating, or suspending the Contract, in whole or in part.
- f) **Incorporation of Provisions:** The contractor will include the provisions of paragraphs 1.a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the State to enter into any litigation to protect the interests of the State. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

2) USDOT Order 1050.2A, Appendix E - Pertinent Nondiscrimination Authorities***[Applies to all personal services contracts]***

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities, including but not limited to:

Pertinent Nondiscrimination Authorities:

- a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- b) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- c) Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- d) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- f) Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- g) The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- h) Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- i) The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- j) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- k) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency ("LEP"). To ensure compliance with Title VI, contractor must take reasonable steps to ensure that LEP persons have meaningful access to programs (70 Fed. Reg. at 74087 to 74100); and
- l) Title IX of the Education Amendments of 1972, as amended, which prohibits contractor from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

3) Discrimination, Harassment, and Workplace Violence Reporting***[Applies to all personal services contracts]***

The State prohibits any form of workplace discrimination, harassment and retaliation. The State also has a zero tolerance policy with respect to workplace violence. If any of Contractor's agents, employees, assigns or Subcontractors believes they have been harassed, discriminated against, retaliated against or subjected to workplace violence by the State while working on or as part of this Contract, Contractor shall immediately notify the State's principle representative listed on the Cover Page of this Contract.

4) Assurances under the Disadvantaged Business Enterprise Program. 49 C.F.R. § 26.13(a)***[Applies only if the Contract is funded with FHWA or FTA funds]***

The Contractor, sub recipient or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the State deems appropriate, which may include, but is not limited to:

- a) Withholding monthly progress payments;
- b) Assessing sanctions;

- c) Liquidated damages; and/or
- d) Disqualifying the Contractor from future bidding as non-responsible.

5) Prompt Payment by Contractors to Subcontractors. 49 C.F.R. § 26.29(a)
[Applies only if the Contract is funded with FHWA or FTA funds]

The Contractor shall pay Subcontractors and suppliers for all Work which has been satisfactorily completed within thirty calendar days after receiving payment for that Work from the State. For the purpose of this section only, Work shall be considered satisfactorily complete when the State has made payment for the Work. The Contractor shall include in all subcontracts a provision that this requirement for prompt payment to Subcontractors and suppliers must be included in all subcontracts at every tier. The Contractor shall ensure that all Subcontractors and suppliers at every tier are promptly paid. If the Contractor or its Subcontractors fail to comply with this provision, the State will not authorize further progress payment for Work performed directly by the Contractor or the noncompliant Subcontractor until the required payments have been made. The State will continue to authorize progress payments for Work performed by compliant Subcontractors.

EXHIBIT G, PII CERTIFICATION

**STATE OF COLORADO
THIRD PARTY INDIVIDUAL CERTIFICATION FOR ACCESS TO PII THROUGH A
DATABASE OR AUTOMATED NETWORK**

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

Signature: _____
Printed Name: _____
Date: _____

EXHIBIT G, PII CERTIFICATION
STATE OF COLORADO
THIRD PARTY ENTITY / ORGANIZATION CERTIFICATION FOR ACCESS TO B
THROUGH A DATABASE OR AUTOMATED NETWORK

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

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

Signature: _____
Printed Name: _____
Title: _____
Date: _____

GRANT CERTIFICATION

To: Mark Aliff, President of the City Council
Nicholas Gradisar, Mayor

Re: 24-HTD-ZL-00125 / 491003385 ARPA/SLRF and State Muti Modal Option Program
Funds Grant (Vanpool)

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) Benjamin Valdez

1/8/2024
Date

Title: Transit Director



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Benjamin Valdez

SUBJECT: AN ORDINANCE APPROVING AND ACCEPTING A UNITED STATES DEPARTMENT OF TRANSPORTATION, FEDERAL TRANSIT ADMINISTRATION GRANT (AREAS OF PERSISTENCE POVERTY), AWARD NO. FTA G-30, AND APPLICABLE CONDITIONS PERTAINING THERETO, BETWEEN THE CITY OF PUEBLO AND THE UNITED STATES DEPARTMENT OF TRANSPORTATION, ESTABLISHING PROJECT NO. PT2401, BUDGETING AND APPROPRIATING FUNDS \$180,000.00, WITH A LOCAL MATCH OF \$20,000.00 AND RATIFYING THE MAYOR'S SIGNATURE ON SAME

SUMMARY:

Attached is a Grant Award between the City of Pueblo and the United States Department of Transportation for \$180,000.00.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

Pursuant to Department of Transportation Federal Transit Administration Award G-30, the City has been awarded \$180,000.00 Transition Planning Grant funding that will be matched by \$20,000.00 in local funds. The local funds are from the City of Pueblo's general fund as indicated by the City's FY2024 Budget. These funds are intended to subsidize Pueblo Transit's additional operating expenditures incurred in FY 2024. The grant scope of work includes the following Projects:

\$200,000.00 – Pueblo Airport Industrial complex route study

\$200,000.00 Total Grant

FINANCIAL IMPLICATIONS:

The anticipated total Project cost is \$200,000.00. The Federal share is \$180,000.00 (90%) with a \$20,000.00 (10%) City match requirement.

BOARD/COMMISSION RECOMMENDATION:

Pueblo Transit Board recommends approval.

STAKEHOLDER PROCESS:

Not applicable.

ALTERNATIVES:

Should this Ordinance not pass the City of Pueblo would forgo Grant Funds for an Airport Industrial Complex Route Study.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. GRANT CERTIFICATION Areas of Persistent Poverty
2. 1578_001

ORDINANCE NO.

AN ORDINANCE APPROVING AND ACCEPTING A UNITED STATES DEPARTMENT OF TRANSPORTATION, FEDERAL TRANSIT ADMINISTRATION GRANT (AREAS OF PERSISTENCE POVERTY), AWARD NO. FTA G-30, AND APPLICABLE CONDITIONS PERTAINING THERETO, BETWEEN THE CITY OF PUEBLO AND THE UNITED STATES DEPARTMENT OF TRANSPORTATION, ESTABLISHING PROJECT NO. PT2401, BUDGETING AND APPROPRIATING FUNDS \$180,000.00, WITH A LOCAL MATCH OF \$20,000.00 AND RATIFYING THE MAYOR'S SIGNATURE ON SAME

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

SECTION 1.

The Awarding of Grant FTA G-30 to the City of Pueblo, Pueblo Transit, 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 hereby 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. To the extent the Mayor has executed Grant Award or other documents associated therewith, City Council hereby ratifies such acceptance or actions.

SECTION 3.

Project Number PT2401 is hereby established, and the amount of \$180,000.00 Federal Portion an \$20,000.00 City Match is budgeted and appropriated therefore.

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 Ordinance and the attached Award to implement the policies and procedures described herein.

SECTION 5.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk

GRANT CERTIFICATION

To: Mark Aliff, President of the City Council
Nicholas Gradisar, Mayor

Re: Department of Transportation Areas of Persistent Poverty Grant Award # FTA G-30

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) Benjamin Valdez

1/8/2024

Date

Title: Transit Director

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION**

**GRANT AGREEMENT
(FTA G-30)**

On the date the authorized U.S. Department of Transportation, Federal Transit Administration (FTA) official signs this Grant Agreement, FTA has obligated and awarded federal assistance as provided below. Upon execution of this Grant Agreement by the Recipient named below, the Recipient affirms this FTA Award, enters into this Grant Agreement with FTA, and binds its compliance with the terms of this Grant Agreement.

The following documents are incorporated by reference and made part of this Grant Agreement:

- (1) "Federal Transit Administration Master Agreement," FTA MA(30), <http://www.transit.dot.gov>,
- (2) The Certifications and Assurances applicable to the FTA Award that the Recipient has selected and provided to FTA, and
- (3) Any Award notification containing special conditions or requirements, if issued.

WHEN THE TERM "FTA AWARD" OR "AWARD" IS USED, EITHER IN THIS GRANT AGREEMENT OR THE APPLICABLE MASTER AGREEMENT, "AWARD" ALSO INCLUDES ALL TERMS AND CONDITIONS SET FORTH IN THIS GRANT AGREEMENT.

FTA OR THE FEDERAL GOVERNMENT MAY WITHDRAW ITS OBLIGATION TO PROVIDE FEDERAL ASSISTANCE IF THE RECIPIENT DOES NOT EXECUTE THIS GRANT AGREEMENT WITHIN 90 DAYS FOLLOWING FTA's AWARD DATE SET FORTH HEREIN.

FTA AWARD

Federal Transit Administration (FTA) hereby awards a Federal Grant as follows:

Recipient Information

Recipient Name: CITY OF PUEBLO

Recipient ID: 1140

UEI: NJK3BNUDRHJ7

DUNS: 010620284

Award Information

Federal Award Identification Number: CO-2023-022-00

Award Name: FY2021 Areas of Persistent Poverty - Planning

Award Start Date: 7/5/2023

Original Award End Date: 2/28/2024

Current Award End Date: 2/28/2024

Award Executive Summary: City of Pueblo applies apportionment of FY2021 Areas of Persistent Poverty discretionary funds in the amount of \$180,000. Discretionary ID# D2022-AOPP-010. This project will produce a study including ridership estimates for a modernized route system and the viability of an hourly commuter shuttle to the Pueblo Airport Industrial Complex, aimed at providing efficient workforce transportation benefiting economically disadvantaged individuals.

Pueblo has obligated a contract under pre-award authority for the planning study. Per the NOFO; FTA will issue pre-award authority to incur costs for selected projects beginning on the date that project selections are announced. The projects for FFY2021 Areas of Persistent Poverty were announced on June 23, 2022. In total, Pueblo has incurred \$200,000 in contractual obligations starting on 12/15/2022 that will be reported as accrued expense in the initial FFR. These amounts will be reported in lines I, J, and K as unliquidated obligations, and a remark will be added to explain the pre-award authority commitments.

The following documents are attached to this award: TIP & STIP approval letter, UPWP, and SF424 with supplement documents.

Local funding source is general funds from City of Pueblo.

Research and Development: This award does not include research and development activities.

Indirect Costs: This award does not include an indirect cost rate.

Suballocation Funds: Recipient organization is directly allocated these funds and is eligible to apply for and receive these funds directly.

Pre-Award Authority: This award is using Pre-Award Authority.

Award Budget

Total Award Budget: \$200,000.00

Amount of Federal Assistance Obligated for This FTA Action (in U.S. Dollars): \$0.00

Amount of Non-Federal Funds Committed to This FTA Action (in U.S. Dollars): \$0.00

Total FTA Amount Awarded and Obligated (in U.S. Dollars): \$180,000.00

Total Non-Federal Funds Committed to the Overall Award (in U.S. Dollars): \$20,000.00

Award Budget Control Totals

(The Budget includes the individual Project Budgets (Scopes and Activity Line Items) or as attached)

Funding Source	Section of Statute	CFDA Number	Amount
AOPP - Areas of Persistent Poverty	5305-2	20505	\$180,000
Local			\$20,000
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$200,000

(The Transportation Development Credits are not added to the amount of the Total Award Budget.)

U.S. Department of Labor Certification of Public Transportation Employee Protective Arrangements:

Original Certification Date:

Special Conditions

There are no special conditions.

FINDINGS AND DETERMINATIONS

By signing this Award on behalf of FTA, I am making all the determinations and findings required by federal law and regulations before this Award may be made.

FTA AWARD OF THE GRANT AGREEMENT

Awarded By:
Cindy Terwilliger
Regional Administrator
FEDERAL TRANSIT ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
Contact Info: cindy.terwilliger@dot.gov
Award Date: 7/5/2023

EXECUTION OF THE GRANT AGREEMENT

Upon full execution of this Grant Agreement by the Recipient, the Effective Date will be the date FTA or the Federal Government awarded Federal assistance for this Grant Agreement.

By executing this Grant Agreement, the Recipient intends to enter into a legally binding agreement in which the Recipient:

- (1) Affirms this FTA Award,
- (2) Adopts and ratifies all of the following information it has submitted to FTA:
 - (a) Statements,
 - (b) Representations,
 - (c) Warranties,
 - (d) Covenants, and
 - (e) Materials,
- (3) Consents to comply with the requirements of this FTA Award, and
- (4) Agrees to all terms and conditions set forth in this Grant Agreement.

Executed By:
Benjamin Valdez
Maintenance/Facilities Supervisor
CITY OF PUEBLO
11/13/2023



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Benjamin Valdez

SUBJECT: AN ORDINANCE APPROVING AND ACCEPTING A COLORADO DEPARTMENT OF TRANSPORTATION 2024-CTE: PUEBLO TRANSIT FLEET TRANSITION PLANNING GRANT AWARD-021647, AND APPLICABLE CONDITIONS PERTAINING THERETO, BETWEEN THE CITY OF PUEBLO AND THE COLORADO DEPARTMENT OF TRANSPORTATION, ESTABLISHING PROJECT NO. PT2403, BUDGETING AND APPROPRIATING \$99,000.00 WITH A LOCAL MATCH OF \$11,000.00, AND RATIFYING THE MAYOR'S SIGNATURE ON SAME

SUMMARY:

Attached is a Grant Award between the City of Pueblo and the Colorado Department of Transportation for \$99,000.00.

PREVIOUS COUNCIL ACTION:

None

BACKGROUND:

Pursuant to Colorado Department of Transportation Award # 021647, the City has been awarded \$99,000.00 Transition Planning Grant funding that will be matched by \$11,000.00 in local funds. The local funds are from the City of Pueblo's general fund as indicated by the City's FY2024 Budget. These funds are intended to subsidize Pueblo Transit's additional operating expenditures incurred in FY 2024. The grant scope of work includes the following projects:

\$110,000.00 – Electrification/Hydrogen Electric Transition Plan

\$110,000.00 Total Grant

FINANCIAL IMPLICATIONS:

The anticipated total Project cost is \$110,000.00. The State share is 90% with 10% City match requirement.

BOARD/COMMISSION RECOMMENDATION:

Pueblo Transit Board recommends approval.

STAKEHOLDER PROCESS:

Not applicable.

ALTERNATIVES:

The alternative, should this Ordinance not pass, is for the City of Pueblo to not receive the Grant Funds for an EV Transition Plan.

RECOMMENDATION:

Approval of the Ordinance

ATTACHMENTS:

1. CTE Transition Planning Grant
2. GRANT CERTIFICATION Transition Planning Grant



Background Paper for Proposed Ordinance

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2. GRANT CERTIFICATION Transition Planning Grant



COLORADO

Department of Transportation

Division of Transit & Rail

Proposed Award Summary

Agency:

Pueblo, City of

Proposed Award Summary Info

Proposed Award Name: Proposed Award
-0977

Award Type: Planning

Application: A2.0-0006474

Congratulations! The Colorado Department of Transportation (CDOT) Division of Transit and Rail (DTR) has received and evaluated your application. We are pleased to inform you that DTR has either approved or partially approved your request. This proposed award offer provides a summary of your award. Note that you will receive one award offer per funding source and application; please follow the instructions for each award offer received.

2024-CTE:
Description: Pueblo Transit Fleet
Transition Planning

Funding Source: CTE

Award Year: 2024

Awarded Amount: \$99,000.00

Your agency shall use the awarded funds to carry out the following:

:

Pueblo will solicit proposals from qualified firms to undertake a ZEV transition planning project to ensure the best possible economic, social and environmental outcome for Puebloans. The project will help prepare for and accelerate the deployment of zero-emission transit vehicles and support the infrastructure, facilities, and organizational investments necessary to make such deployments successful. Such a plan is likely to include, but not be limited to: assessment of current and future vehicle capabilities, including target vehicle specs that may trigger the start of the fleet transition; fleet transition targets and timeliness; consideration of potential facility renovations and electrical supply infrastructure upgrades necessary to support the charging of vehicles; route analyses of anticipated initial ZEV deployments; analysis of potential air quality, health, and economic benefits of ZEVs; specific impacts to environmental justice (EJ) and/or disproportionately impacted communities; financial assessment of budgetary impacts and required resources; consideration of workforce training and development needs; coordination with utility partners, property managers, local governments, partner agencies, and other key stakeholders; and public engagement elements to support the other transition elements.

Budget Details & Acceptance

Awarded Amount: \$99,000.00
Total Project Amount: \$110,000.00

Local Match Amount: \$11,000.00

Please confirm the Local Match Amount here and enter the source and status of matching funds (if you plan to deny the award, please enter N/A):.

City of Pueblo General Fund

Acceptance

Do you accept this award?:

Yes

Next Steps

Upon your acceptance, CDOT will create a final award in COTRAMS.

1. Milestones and Risk Assessment: After you receive notice that the award has been created, login to COTRAMS to complete the Milestones and Risk Assessment within one week.

2. TIP Your Project: If you are in an urbanized area (over 50,000 population) and have not already done so, please begin the process of ensuring that your project is in, or can be amended into, the appropriate Transportation Improvement Program (TIP) for your MPO area; once placed in the TIP, CDOT will place your project in the STIP. CDOT cannot begin the budgeting or contracting process until your project is in the STIP. If you are in a rural area, CDOT will place your project in the STIP.

3. Execute a Grant Agreement with CDOT: Please be aware that your agency should not enter a purchase arrangement or incur costs without an executed grant agreement (i.e. signed by both parties) and CDOT written authorization (i.e. Purchase Authorization) to make that purchase. If you make any purchasing arrangement prior to execution of the grant agreement, your agency will be completely responsible for payment. All purchases that involve state or federal funds must be conducted in a fair, open, and competitive manner and follow all applicable CDOT guidelines. You cannot pre-select a favored vehicle or equipment manufacturer and make a purchase without written CDOT approval, unless the project was funded through a FTA Discretionary grant and FTA has approved the vendor.

It is important to note that the funding periods for FTA grants and state grants are different. If your project is funded with FTA funds, CDOT can immediately begin negotiating a scope of work and grant agreement, and we anticipate doing so over the next three months. If your project is funded with state funds, CDOT cannot begin negotiating a scope of work or grant agreement until those funds are available, which may not be until July 1st.

Please be aware that the grant agreement you enter into with CDOT for funding is a reimbursement agreement. This means your agency must incur the capital or operating expense before you can seek reimbursement for the federal or state share. CDOT will reimburse the federal or state funds to your organization, not to the vendor. Therefore, your agency is ultimately responsible for reimbursing the vendor.

4. Keep Your Project Moving: CDOT looks forward to working with its subrecipients to quickly move these projects to completion. CDOT recognizes that most projects encounter unexpected hurdles and challenges; nonetheless, we expect our subrecipients to address these challenges in a timely manner. CDOT reserves the right to remove grant funds if we determine the project is not proceeding at a reasonable pace (e.g., unreasonable delays in executing the

grant agreement, delays in procuring the equipment, etc.). This action would be preceded by at least one formal written warning.

Attachments

Upload Attachments

Document Name	Update Date/Time
---------------	------------------

Signature and Submission

Accepted By: Benjamin Valdez

Ben TV ✓



GRANT CERTIFICATION

To: Mark Aliff, President of the City Council
Nicholas Gradisar, Mayor

Re: Colorado Department of Transportation Fleet Transition Planning Grant Award # 021647

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) Benjamin Valdez

1/8/2024

Date

Title: Transit Director



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Steven Meier, Director of Parks and Recreation

SUBJECT: AN ORDINANCE APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND THE STATE OF COLORADO, DEPARTMENT OF HUMAN SERVICES FOR THE PREMISES KNOWN AS THE LANGONI SPORTS COMPLEX

SUMMARY:

This Ordinance would approve a Lease Agreement with the State of Colorado, Department of Human Services to allow the City to continue to maintain and program the Langoni Sports Complex, which is located at 2101 W. 24th Street.

PREVIOUS COUNCIL ACTION:

On May 23, 1988, City Council approved Resolution No. 6203, which approved a Lease Agreement by and between the City of Pueblo and the State of Colorado, Department of Human Services, for the premises known as Langoni Fields. The term of this Agreement expired on June 30, 2014.

On October 14, 2014, City Council approved Ordinance No. 8786, which approved a Lease Agreement by and between the City of Pueblo and the State of Colorado, Department of Human Services for the premises known as Langoni Fields. The terms of this agreement expired June 30, 2023.

BACKGROUND:

The Langoni Sports Complex is located on 80 acres of state-owned land that is leased by the City for competitive and recreational Pueblo youth soccer programs. Over the past forty years, the City has developed the 22-acres site which includes irrigated turf athletic fields, gravel-based parking lot, 100 capacity picnic shelter, and ADA accessible restroom/concession building.

FINANCIAL IMPLICATIONS:

The State of Colorado has agreed to lease the Langoni Fields, aka Langoni Sports Complex, to the City for \$0.00 rent. The City must continue to maintain the fields and structures on the property.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

City Council may choose not to approve the Lease Agreement in which case, the City will no longer be able to utilize the Langoni Sports Complex for recreational purposes.

RECOMMENDATION:

Approval of this Ordinance.

ATTACHMENTS:

1. LANGONI LEASE AGREEMENT_01.22.2024
2. Exhibit A - Property Image

ORDINANCE NO.

AN ORDINANCE APPROVING A LEASE AGREEMENT
BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL
CORPORATION, AND THE STATE OF COLORADO,
DEPARTMENT OF HUMAN SERVICES FOR THE PREMISES
KNOWN AS THE LANGONI SPORTS COMPLEX

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

SECTION 1.

The Lease Agreement by and between the City of Pueblo, a Colorado Municipal Corporation, and the State of Colorado, Department of Human Services for the premises known as the Langoni Sports Complex attached hereto and having been approved as to form by the Assistant City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute and deliver Agreement in the name of the City and the City Clerk shall affix the Seal of the City thereto and attest the same.

SECTION 3.

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

SECTION 4.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk

**STATE OF COLORADO
OFFICE OF THE STATE ARCHITECT
REAL ESTATE PROGRAMS**



**STANDARD
LEASE AGREEMENT [STATE-OWNED REAL ESTATE]**

LESSOR THE STATE OF COLORADO, DEPARTMENT OF HUMAN SERVICES

LESSEE THE CITY OF PUEBLO

LOCATION PREMISES KNOWN AS "LANGONI FIELDS"

**STATE OF COLORADO
OFFICE OF THE STATE ARCHITECT
REAL ESTATE PROGRAMS**

• **STANDARD LEASE AGREEMENT [STATE-OWNED REAL ESTATE]**

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LEASE AGREEMENT
[State-Owned Real Estate]

THIS LEASE AGREEMENT (the "Lease"), made and entered into this **1** day of **October, 2023**, by and between THE STATE OF COLORADO, **acting by and through the DEPARTMENT OF HUMAN SERVICES**, hereinafter referred to as "Lessor", and **THE CITY OF PUEBLO**, whose address or principal place of business is **1 City Hall Place, Pueblo CO 81003**, hereinafter referred to as "Lessee".

WITNESSETH:

WHEREAS, the Lessor owns certain property herein identified, which Lessee desires to lease according to the terms of the Lease;

WHEREAS, authority exists in the law for the Lessor to lease the property.

WHEREAS, the Parties entered into a Lease Agreement dated April 19, 1988 (the "1988 Lease") for the lease of the premises known and described as

N ½ of the SE ¼ of section 23, T20S, R65W in Pueblo County (the "Premises")

for a term beginning July 1, 1988 and ending June 30, 2013;

WHEREAS, the term of the 1988 Lease was extended from June 30 2013 to June 30, 2014 in an Amendment No. 1 to Lease Agreement, dated June 18th, 2013;

WHEREAS, the Lessor and the Lessee entered into a new Lease Agreement for the Premises, dated July 12th, 2014, for a term beginning July 1, 2014 and ending June 30, 2023; and

WHEREAS, the Lessor and the Lessee are entering into this Lease Agreement for the Premises for a ten (10) year term beginning July 1, 2023 and ending June 30, 2033.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. PREMISES

Lessor hereby leases and demises unto Lessee the Premises, hereinafter referred to as "Premises" ~~within the building located at~~ **known and described as the N ½ of the SE ¼ of section 23, T20S, R65W in Pueblo County**, hereinafter referred to as "~~Building~~" "**LANGONI FIELDS**" (including land, improvements and other rights appurtenant thereto). The Premises, commonly known and described as **LANGONI FIELDS**, includes approximately **78.58 acres** ~~square feet~~ of rentable ~~floor area~~ **land**; the leased Premises being as shown on the plat attached hereto, made a part hereof and marked "Exhibit A".

2. USE OF PREMISES

A. Lessee agrees that the Premises shall be used and occupied only as **Athletic and Recreation Fields** in a careful, safe, and proper manner, and that it will pay on demand for any damage to the Premises caused by the misuse of same by it, its guests, invitees, agents, or employees.

B. Lessee shall not use or permit the Premises to be used for any purposes prohibited by the laws, ordinances or regulations of the United States, the State of Colorado or other governmental entity with jurisdiction.

C. Lessee shall not use or keep any substance or material in or about the Premises, which may reduce or void the insurance coverage on said building **"Premises"** or increase risks associated with the use or occupancy of the Premises, or which may prove offensive or annoying to persons occupying adjacent premises.

D. Lessee shall not permit any nuisance in the Premises.

3. PARKING ☒ Check applicable provision(s)

☐ As part of the monthly Rent, the Lessee shall be provided _____ [number] of designated parking spaces and _____ [number] of general parking spaces for use by Lessee's guests, invitees, agents and employees. Lessor shall provide Lessee a written description and location of the spaces prior to execution of the Lease.

☐ Lessee and Lessee's guests, invitees, agents and employees shall have the privilege to use parking as designated by the Lessor upon payment of normal parking fees to be paid by Lessor or Lessor's employees and acceptance of Lessor's published parking rules and regulations. Lessee agrees that such use shall be at the sole risk of Lessee, Lessee's guests, invitees, agents and employees and Lessor shall not be liable for any injury or damage occasioned by such use.

☒ Not Applicable.

☐ OTHER:

~~Lessee shall use all reasonable efforts to confine parking to the areas designed by the Lessor and to refrain from interfering with the use of the parking area in the Building by other tenants and their customers, invitees and employees.~~

4. LESSOR'S OWNERSHIP

Lessor warrants and represents itself to be the owner of, or the authorized representative or agent of the owner of, the leased Premises in the form and manner as stated herein, and during the term of this lease covenants and agrees to warrant and defend Lessee in the quiet, peaceable enjoyment and possession of the leased Premises. In the event of any dispute regarding Lessor's ownership, Lessor shall immediately, upon request from and at no cost to Lessee, furnish proof thereof by delivering to Lessee an "Ownership and Encumbrance Letter" issued by a properly qualified title insurance company.

5. WORK REQUIREMENTS ☒ Check applicable provision

☒ None

☐ Prior to the Premises being occupied by Lessee, Lessor agrees to:

All ~~tenant finish~~ alterations in the Premises, now and hereafter undertaken, shall be designed and constructed in accordance with the technical design specifications of the Uniform Federal Accessibility Standards, latest edition.

6. TERM OF LEASE

The term of this Lease shall commence on the **1st** day of **July 2023** and end on **June 30, 2033**, unless terminated sooner, as provided herein.

7. RENT

Lessee hereby agrees to pay to Lessor a term ~~monthly~~ rent as provided below ("Rent") ~~each and every month~~, payable in U.S. Dollars, without further notice and without any setoff or deduction whatsoever, for the full term shown below:

TERM DATE (S)	TERM RENT	MONTHLY RENT	ANNUALIZED SQ. FOOT COST
07/01/2023 - 06/30/2033	\$10.00	N/A	N/A

8. SERVICES AND GOVERNMENTAL CHARGES ☒ Check applicable provision(s)

The Rent paid by Lessee includes the following services and governmental charges:

- | | |
|--|--|
| ☒ NONE | ☐ Snow removal |
| ☐ Real estate taxes | ☐ Telecomm and IT services |
| ☐ Water | ☐ Trash collection and removal |
| ☐ Sewer | ☐ Landscaping services |
| ☐ Heat | ☐ Janitorial services __ days/week |
| ☐ Air conditioning | ☐ Parking per section 3 |
| ☐ Natural gas or other fuel | ☐ Security |
| ☐ Electricity | ☐ Window washing in/outside __ times/yr |
| ☐ Elevator service | ☐ Govt charges or assessments |
| ☐ Storm drainage | ☐ Other: |
| ☐ Telephone | |

SERVICES PAID BY LESSEE: If "NONE" is checked [or if a listed service or governmental charge is not checked], the service or governmental charge is not included in the Rent and is to be paid separately by the Lessee. If Lessee is responsible for payment of water, heat, gas, electricity, sewer, and any other governmental charges or assessments (collectively, the "Utilities") which are assessed, imposed, or become a lien upon the Premises or the contents, or become payable during the term of this Lease, Lessee agrees to contract in its own name for the service and promptly pay all charges and assessments.

If Lessee is responsible for payment of assessment for storm drainage, Lessee shall pay a fractional portion of assessments in an amount proportional to the percentage of the Premises to the property assessed.

Lessee agrees that Lessor shall not be liable for any loss or damage caused by interruption or failure of utility services serving the Premises.

9. PAYMENT OF RENT

Payment is to be made upon execution of this Lease to the Lessor at the offices of:

~~All payments are to be made in advance on the first day of each calendar month during the term of this Lease to Lessor at the offices of:~~

THE STATE OF COLORADO, the DEPARTMENT OF HUMAN SERVICES
1575 Sherman St, c/o Accounting, Department of Human Services
Denver , CO 802303

~~(or at such other place as Lessor may designate in writing from time to time).~~

~~If the term herein commences on a day other than the first day of a calendar month, then Lessee shall pay to Lessor the rental for the number of days that exist prior to the first day of the succeeding month, with a similar adjustment being made at the termination of this Lease.~~

~~If the Rent remains unpaid for a period of ten (10) days, a penalty in the amount of \$_____ [or _____% of the monthly Rent] shall be assessed against Lessee.~~

10. SECURITY DEPOSIT

☒ Check applicable provision(s)

☒ THIS LEASE DOES NOT REQUIRE A SECURITY DEPOSIT.

☐ THIS LEASE REQUIRES PAYMENT OF A SECURITY DEPOSIT AS FOLLOWS:

~~Lessee shall, as of the date of this Lease, deposit the sum of \$_____, the receipt of which is hereby acknowledged, as security for the faithful performance of all terms, conditions, and covenants of this Lease ("Security Deposit"). If Lessee defaults in the performance of any of the provisions of this Lease, Lessor shall have the right, but not the obligation, to use all or a portion of the Security Deposit to remedy any such default. Lessee shall immediately upon request pay to Lessor any and all such expenditures so that Lessor will at all times have the full amount of the Security Deposit as security. Upon the termination of this Lease, Lessee, if not then in default, shall be entitled to the return of the Security Deposit (without interest thereon) or so much thereof as has not been lawfully expended by Lessor.~~

11. TERMINATION – HOLDING AFTER TERMINATION

Upon termination of this Lease, either by lapse of time or otherwise, Lessee shall peaceably surrender the Premises in good condition and repair, except for ordinary wear and tear. Lessee shall remove all personal property upon such termination and shall repair all damage to the Premises caused by such removal.

If Lessee shall fail to vacate the Premises upon expiration or sooner termination of this lease and remain in possession of said Premises, without a written agreement as to such possession, then such holding over shall be deemed to be a tenancy from month-to-month at a new rental of **\$100 per month payable**

~~on the first of each month one hundred fifty (150) percent of the rent being paid by Lessee as of the date of expiration or sooner termination pursuant to the Lease.~~ Such possession shall be subject to all the laws of the State of Colorado applicable to such tenancy and subject to all of the other terms and conditions (except any option to renew) contained in this Lease.

12. MAINTENANCE AND REPAIRS

A. Lessor's Obligations. Lessee has inspected and accepts the Premises in its present condition and acknowledges that the Premises are tenantable and in good condition. Except as provided in this Lease, Lessor shall have no obligation of any kind to make any expenditures of any nature upon the Premises, including damage arising from an act or the negligence of Lessee, its agents or employees. Lessor shall have the right to enter the Premises at reasonable times for the purpose of making necessary inspections and repairs or maintenance.

Unless otherwise agreed in writing to the contrary, Lessor shall maintain the exterior of the building, the roof, the structural components of the building, and building systems **(if and where applicable)** in good order and repair, except for damage or injury caused by Lessee or its guests, invitees, agents, or employees, including, without limitation, damage to the heating, plumbing, and electrical systems caused by Lessee's failure to properly operate or provide routine maintenance to the systems, in which case Lessee shall be responsible for all costs of repair or replacement resulting from such action or inaction.

B. Lessee's Obligations. Lessee shall, at its sole expense, maintain, repair, and keep the Premises in good order. In addition, Lessee shall be responsible for the routine maintenance of the heating and plumbing systems and replacement of lights and bulbs **(if and where applicable)**. If Lessor is not required by this Lease to provide snow removal services, Lessee agrees to remove snow, ice or any other obstructions from the sidewalks around the Premises and from parking areas and agrees to keep the Premises clean and in a sanitary condition as required by any applicable laws, ordinances or regulations.

In the event Lessee shall fail to commence any necessary repairs or diligently pursue the completion of any repairs, Lessor, in addition to all other remedies available under this Lease (and without waiving any other remedies) may make the repairs, the cost of which shall become due and payable as additional Rent 30 days after notice to Lessee. Lessee shall not permit, commit, or suffer waste, impairment, or deterioration of the Premises or the improvements thereon or any part thereof, reasonable wear and tear excepted.

13. ALTERATIONS TO PREMISES

Lessee shall not make any structural or non-structural changes or alterations to the Premises without the prior written approval of Lessor, which approval may be withheld at the sole and absolute discretion of Lessor. This includes, but is not limited to, any change or alteration which, in the sole discretion of Lessor, impairs the structural soundness or diminishes the value of the building(s) on the Premises; impacts the exterior appearance of the Premises; changes the interior configuration of the Premises; or adversely impacts the functioning of the wiring, plumbing, heating, air conditioning, sewer, or other similar systems. Such approval by Lessor shall commonly require that when performing approved changes or alterations, Lessee shall: (1) procure all required municipal and other governmental permits; (2) perform all work in a good and workmanlike manner and in compliance with all building and zoning laws, including Colorado State Buildings design and code requirements; (3) provide adequate insurance; and (4) provide indemnification against mechanics' liens.

Lessee shall not erect nor install any exterior or interior window or door signs or advertising media or window or door lettering or placards on any portion of the Premises without the prior written consent of Lessor. Lessee agrees not to use any advertising media that shall be deemed objectionable in

the reasonable opinion of Lessor, including, without limitation, loudspeakers that can be heard outside the Premises.

Lessee shall not install any exterior lighting or plumbing fixtures, shades, or awnings, or any exterior decorations or painting, or build any fences or make any changes to the outside of the Premises without the prior written consent of Lessor. All alterations, additions, improvements, and fixtures that may be made or installed by either of the parties hereto upon the Premises or improvements thereon and which in any manner are attached to the floors, walls or ceilings shall be the property of Lessor and at the termination of this Lease shall remain upon and be surrendered with the Premises as a part thereof.

14. INSURANCE

Lessee shall at its sole cost and expense, during the entire term hereof, carry and maintain the following insurance written as primary policies, exclusive of any coverage Lessor may carry and in the amounts specified below, or at such other amounts as Lessor shall, from time to time, reasonably request, with insurance companies and in a form satisfactory to Lessor:

A. Public liability and property damage liability insurance with a combined single occurrence limit of not less than \$1,000,000 and shall include contractual liability insurance applicable to Lessee's obligations hereunder.

B. Fire and extended coverage insurance covering all of Lessee's equipment, trade fixtures, appliances, furniture, furnishings, and personal property from time to time in, on, or upon the Premises in an amount not less than the full replacement cost without deduction for depreciation.

C. The liability insurance referred to hereinbefore shall name Lessor as an additional insured.

D. A copy of every policy or certificate of insurance pertaining to this provision shall be delivered to Lessor within thirty (30) days of the execution of this Lease. Such insurance shall not be cancelable without thirty (30) days' prior written notice thereof to Lessor and shall permit Lessee to waive its rights of subrogation, which, by execution of this Lease, Lessee hereby waives.

15. ASSIGNMENT AND SUBLETTING

Neither this Lease nor any interest herein may be assigned by Lessee, voluntarily or involuntarily, by operation of law or otherwise. In addition, Lessee agrees that it will not sublet the Premises, or any part thereof, or any interest therein, without the prior written consent of Lessor, which consent shall not be unreasonably withheld. No assignment or subletting shall release Lessee from any responsibility or liability hereunder. Any subletting or assignment in violation of this Section shall be null and void.

16. EMINENT DOMAIN

A. Complete Taking. If the whole or substantially all of the Premises shall be taken as a result of the exercise of the power of eminent domain, this Lease shall terminate as of the date of vesting of title of the Premises or delivery of possession, whichever event shall first occur, pursuant to such proceeding. For the purpose of this Section, "substantially all of the Premises" shall be deemed to have been taken if a taking under any such proceeding shall involve such an area that Lessee cannot reasonably operate in the remainder of the Premises the business being conducted on the Premises at the time of such proceeding.

B. Partial Taking. If less than substantially all of the Premises shall be taken by eminent domain, Lessor has the option to either (1) terminate this Lease by written notice, or (2) reduce the Rent thereafter due and payable by Lessee in such proportion as the nature, value, and extent of the part so taken bears

to the whole of the Premises. If Lessor chooses the rent reduction option, then Lessor shall, from the proceeds of the condemnation, restore the Premises for the use of Lessee. If the proceeds of the condemnation are not sufficient to properly restore the Premises, then Lessee shall pay any deficiency between the condemnation proceeds and the restoration costs.

C. Award. Any award granted for either partial or complete taking regarding the Premises shall be the exclusive property of Lessor. Notwithstanding the foregoing, should the Lease survive a partial taking, nothing herein shall preclude Lessee from pursuing its separate award.

17. CASUALTY

If the Premises are materially damaged, as determined by Lessor, in its sole judgment, by an act of God, fire, or other catastrophe, then Lessor may terminate this Lease from the date of the occurrence of such damage. If Lessor terminates the Lease, then Lessee shall surrender the Premises and all interest therein, and Lessor may re-enter and take possession of the Premises and remove Lessee therefrom. Lessee shall pay Rent, duly apportioned, up to the time of such termination of this Lease.

Lessor may, however, in the alternative, elect not to terminate this Lease, in which case it shall repair the damage so done with all reasonable speed, and the Rent shall be abated on a pro rata basis only for the period during which Lessee shall be deprived of the use some or all of the Premises by reason of such damage and the repair thereof. The Rent, until the completion of such repairs or restoration, shall abate in proportion to the area of the Premises which is unusable by Lessee.

If the Premises, without the fault of Lessee, shall be slightly damaged by fire or other catastrophe but not so as to render the same untenable, Lessor, after receiving notice in writing of the occurrence of the injury, shall cause the same to be repaired with reasonable promptness; but in such event, there shall be no abatement of the Rent.

18. LESSEE'S PERSONAL PROPERTY

A. Loss or Damage. Lessee agrees that all property of the Lessee, its agents, employees, customers and guests kept or stored on the Premises or in the building shall be the sole risk of the Lessee and Lessor shall not be held liable for any damage or loss to any of Lessee's personal property of any kind or description whatsoever, or for damage or loss suffered by the business or occupation of Lessee caused by (1) bursting, overflowing or leaking of water, sewer, or steam pipes; (2) heating or plumbing fixtures, or from electric wires; (3) from gases or odors; or (4) caused in any other manner whatever, except the gross negligence of Lessor.

B. Removal. If Lessee fails to remove all its effects from the Premises upon abandonment or upon the termination of this Lease for any cause whatsoever, Lessor, at its option, may remove the same in any manner that it shall choose, and store the effects without any liability to Lessee for loss or damage. Lessee agrees to pay Lessor on demand any and all expenses incurred in such removal, including court costs, attorneys' fees, and storage charges. Lessor, at its option and without notice, may sell said effects, or any of the same, at public or private sale, for such prices as Lessor may obtain. The proceeds of such sale may be applied to any amounts due Lessor under this Lease, including removal expense. If said property, or any portion thereof, shall be offered at public auction, Lessor may become the purchaser thereof.

19. DEFAULT PROVISIONS

The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Lessee:

A. Failure to Pay Rent. Lessee failing to pay the Rent or Additional Rent herein required within **30** days from the date when due.

B. Failure to Pay Other Costs. Lessee failing to make any other payments required to be made by Lessee when due, where such failure shall continue for a period of 30 days following written notice from Lessor to Lessee.

C. Failure to Keep Covenants. Lessee failing to perform or keep any of the terms, covenants, or conditions of this Lease, where such failure shall continue for a period of 30 days following written notice from Lessor to Lessee.

D. Abandonment. Lessee abandoning the Premises.

E. Insolvency.

1) Lessee making an assignment for the benefit of creditors, filing a petition commencing a voluntary case under any chapter of the Bankruptcy Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), being adjudicated an insolvent, filing a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar arrangement under the Bankruptcy Code or any other present or future statute, law, rule, or regulation, or file an Answer admitting the material allegations of a petition filed against it in any such proceeding, consent to the filing of such a petition, or acquiesce in the appointment of a trustee, receiver, custodian, or other similar official for it or of all or any substantial part of its assets or properties, or take any action looking to its dissolution or liquidation.

2) A case, proceeding or other action is instituted against Lessee seeking the entry of an order for relief against Lessee, to adjudicate Lessee as bankrupt or insolvent, or seeking reorganization, arrangement, readjustment, liquidation, dissolution, or similar relief against Lessee under the Bankruptcy Code or other present or future statute, law, rule, or regulation, which case, proceeding, or other action either results in such entry, adjudication, or issuance, or entry of any other order or judgment having a similar effect or remains undismissed for 60 days, or within 60 days after the appointment without Lessee's consent or acquiescence of any trustee, receiver, custodian, or other similar official for it or of all or any substantial part of its assets and properties, such appointment shall not be vacated.

20. REMEDIES

In the event of an occurrence of default as set forth above, Lessor shall have the right to:

A. Terminate Lease. Terminate this Lease by giving Lessee written notice of such termination. After termination, Lessor shall be entitled to recover from Lessee the amount of unpaid Rent earned at the time of termination and the amount of future unpaid Rent for the balance of the term of this Lease (had the Lease not been terminated by Lessor), the latter of which shall be discounted at the discount rate established at the Federal Reserve Bank of Kansas City, Kansas, at the time of termination; or

B. Sue Monthly. Sue monthly for and recover all Rent, other required payments due under this Lease, and other sums including damages, litigation-related costs and attorney fees at any time and from time to time accruing hereunder (without resuming possession of the Premises or terminating this Lease); or

C. Repossess Premises. After notice, re-enter and take possession of the Premises, expel Lessee and those claiming by, through or under Lessee and remove the effects of both or either (forcibly, if necessary) without being liable for prosecution thereof, without being deemed guilty in any manner of trespass and without prejudice to any remedies for Rent delinquencies or preceding Lease defaults. Lessor may then from time to time, without terminating this Lease, relet the Premises. Such re-entry or taking of possession of the Premises by Lessor shall not be construed as an election on Lessor's part to terminate this Lease unless a written notice of termination is given to Lessee. In the event of Lessor's

election to proceed under this Section, then such repossession shall not relieve Lessee of its obligation and liability under this Lease, all of which shall survive such repossession. Lessee shall pay to Lessor as current liquidated damages the Rent specified in this Lease which would be payable hereunder if such repossession had not occurred, less the net proceeds (if any) of any reletting of the Premises after deducting all of Lessor's expenses in connection with such reletting, including but without limitation all repossession costs, brokerage commissions, legal expenses, and attorneys' fees. Lessee shall pay such current damages to Lessor on the days on which the Rent would have been payable hereunder if possession had not been retaken.

21. ENVIRONMENTAL MATTERS

The parties agree not to use, produce, treat, generate, release, discharge, store, transport, or cause to be transported, or dispose of any hazardous substances at, on, under, in, or about the premises or the building. The term "hazardous substances" shall mean any toxic or hazardous or noxious substance, material, or waste which is regulated by any local government authority having jurisdiction over the Premises, the State of Colorado, or the United States government, including but not limited to:

A. Any oil or petroleum compounds, flammable substances, explosives, radioactive materials, or any other materials or pollutants which pose a hazard to the Premises or to persons on or about the Premises or cause the Premises to be in violation of any environmental laws, including all federal, state and local laws, statutes, regulations, or ordinances relating to the environment, and/or public health and safety ("Environmental Laws");

B. Asbestos or any asbestos-containing material of any kind or character which is now or may potentially become friable;

C. Polychlorinated biphenyls ("PCBs"), as regulated by the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; or

D. Any materials or substances now or hereafter defined or designated as: "hazardous substances" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1251 et seq.; "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; or "chemical substance," "new chemical substance," or "hazardous chemical substance or mixture" pursuant to Sections 3, 6 and 7 of the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., or by any successor statute to these statutes, or by any regulation now or hereafter promulgated pursuant to said statutes or their successors.

Lessee also agrees that it will notify Lessor in writing within ten days of its receipt of any notice of a violation of any Environmental Laws during the term of this Lease. Said notice shall include a copy of such notice of violation.

Lessee shall take no action to disturb or disrupt existing asbestos within the building or the Premises, if any. Should remediation of asbestos be required by an appropriate governmental entity, unless it is the result of Lessee's breach of this provision, either party may terminate this Lease upon 30 days' notice to the other, whereupon all responsibilities of both parties relating to this Lease shall terminate.

22. APPLICABLE LAW

The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this lease. Any provision of this lease, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations shall be void and unenforceable in any action at law.

23. TIME FOR PERFORMANCE

Time is of the essence in the execution and performance of this Lease and of all of its provisions.

24. COMPLETE AGREEMENT

This lease, including all exhibits, supersedes any and all prior written or oral agreements and there are no covenants, conditions or agreements between the parties except as set forth herein. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever unless incorporated herein in writing. No novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless in writing and signed by all parties hereto.

25. CAPTIONS, CONSTRUCTION, AND BINDING EFFECT

The captions and headings used in this lease are for identification only, and shall be disregarded in any construction of the lease provisions. All of the terms of this lease shall inure to the benefit of and be binding upon both the Lessor and the Lessee.

26. SEVERABILITY

If any provision of this lease shall be determined to be invalid, illegal, or without force by a court of law or rendered so by legislative act then the remaining provisions of this lease shall remain in full force and effect.

27. NO BENEFICIAL INTEREST

The signatories aver that to their knowledge, no state employee has any personal or beneficial interest whatsoever in the service or property described herein.

28. NOTICE

Any notice required or permitted by this lease may be delivered in person or sent by registered or certified mail, return receipt requested, to the party at the address as hereinafter provided, and if sent by mail it shall be effective when posted in the U.S. Mail Depository with sufficient postage attached thereto:

Lessor:
**Colorado Department of Human Services
Division of Facilities Management
4112 S. Knox Court
Denver, CO 80236**

Lessee:
**City of Pueblo
1 City Hall Place
Pueblo, Co 81003**

With a copy delivered to:

Real Estate Programs
1525 Sherman Street, Suite **500**
Denver, CO 80203

Notice of change of address shall be treated as any other notice.

29. LESSOR LIABILITY EXPOSURE

Notwithstanding any other provision of this lease to the contrary, no term or condition of this lease shall be construed or interpreted as a waiver of any provision of the Colorado Governmental Immunity Act, §24-10-101 et seq., C.R.S., as now or hereafter amended. The parties hereto understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of §24-10-101, et seq., C.R.S., as now or hereafter amended and §24-30-1501, et seq., C.R.S., as now or hereafter amended. Any provision of this lease, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the Lessor to the above cited laws.

30. LESSEE'S INDEMNIFICATION

~~Lessee agrees to hold harmless and indemnify Lessor from and against any and all losses, damages, liens, claims, demands, debts, obligations, liabilities, fines, penalties, suits or actions, judgments, and costs of any kind whatsoever (including reasonable attorney's fees) related to the use of the Premises, caused by any act, omission or neglect of the Lessee or Lessee's employees, guests, invitees or assignees.~~ **Not Applicable**

31. ADDITIONAL PROVISIONS

None

IN WITNESS WHEREOF, the parties hereto have executed this lease agreement on the day and year first above written.

LESSOR

STATE OF COLORADO
Jared S. Polis, Governor
Acting by and through
The Department of Human Services

By: _____

LESSEE:
THE CITY OF PUEBLO

By: _____

Title: _____
Name

(If Corporation)
Attest (Seal)

By: _____
—
Secretary

APPROVED:

STATE OF COLORADO
DEPARTMENT OF PERSONNEL & ADMINISTRATION
REAL ESTATE PROGRAMS

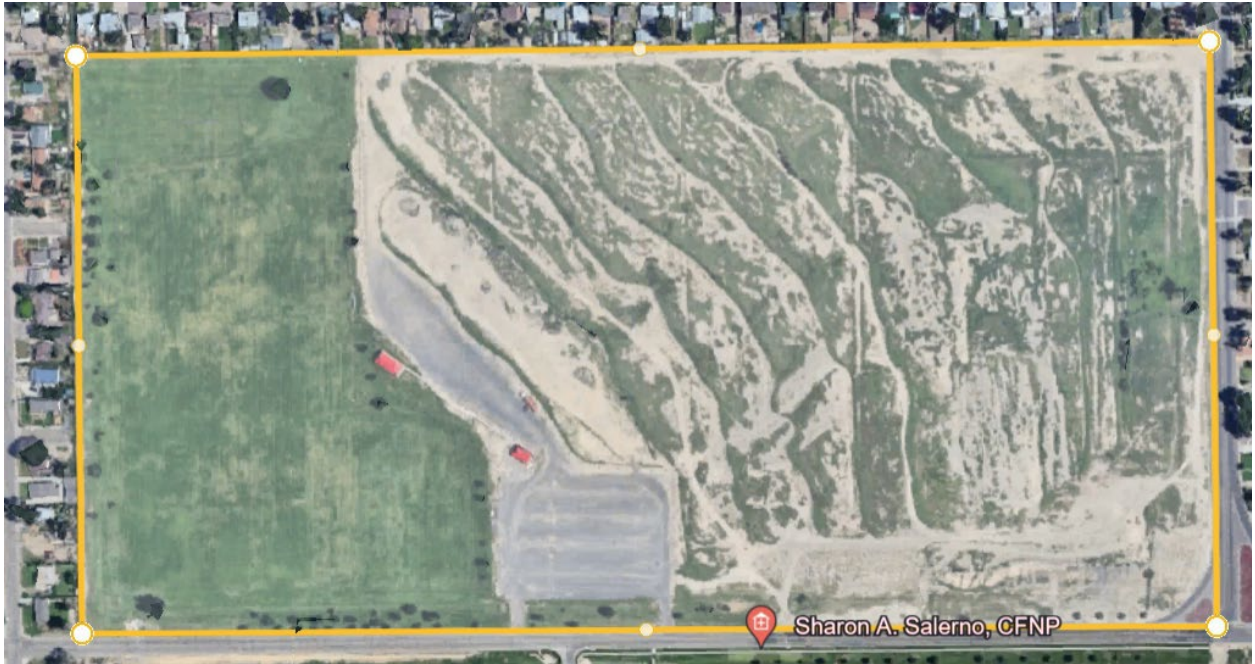
By: _____
—

APPROVED:

STATE OF COLORADO
Philip J. Weiser, Attorney General

By: _____

Exhibit A: Property Image



See Property Description Page 1



**Background Paper for Proposed
Action Item**

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Scott Hobson, Acting Director Planning and Community Development

SUBJECT: AN ORDINANCE AUTHORIZING AMENDMENT NO. 19 TO THE AGREEMENT FOR COMMUNITY SERVICES PLANNING, ADMINISTRATION, AND ACCOUNTABILITY SERVICES BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PUEBLO

SUMMARY:

Attached is Amendment No. 19 to the Intergovernmental Agreement between the City and the County of Pueblo, which provides for the administration of the Community Services Advisory Commission (CSAC). This Amendment extends the Agreement until December 31, 2024.

PREVIOUS COUNCIL ACTION:

The City Council has approved the extension of the Agreement every year since 2003.

BACKGROUND:

Prior to 2003, the City and County of Pueblo had separate processes by which they allowed local non-profits to apply for general revenue funds. In 2003, the City and County entered into an agreement that streamlined that process and created the Community Services Advisory Commission. Under the Agreement, Pueblo County administers the funding process. The Agreement is for one year, and it has been renewed each year since 2003.

FINANCIAL IMPLICATIONS:

During the City's budget process, the City Council determines the amount of funding that it will appropriate for the Community Services Advisory Committee. There is no set amount stated in the Agreement. In 2013, the City and County amended the Agreement to allow for a 5% administrative fee to be charged, as opposed to a yearly negotiated

amount. In 2024, the City will contribute \$490,000 and the County contribution will be \$490,000. The CSAC Agreement allows the County a 5% (\$24,500) administrative fee to administer CSAC.

BOARD/COMMISSION RECOMMENDATION:

The Community Services Advisory Commission has made funding recommendations to both the City and the County for delivery of services.

STAKEHOLDER PROCESS:

There are no required or recommended stakeholder processes attached to this action.

ALTERNATIVES:

The City or the County could choose to return to the processes in place prior to 2003, and each entity would undertake its own funding process.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. CSAC Amendment 19
2. 2024 CSAC Funding Recommendations

ORDINANCE NO.

AN ORDINANCE AUTHORIZING AMENDMENT NO. 19 TO THE AGREEMENT FOR COMMUNITY SERVICES PLANNING, ADMINISTRATION, AND ACCOUNTABILITY SERVICES BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PUEBLO

WHEREAS, City and County have heretofore entered into the Agreement for Community Services Planning, Administration and Accountability Services dated July 14, 2003, (hereinafter "the Agreement") wherein the parties set forth their agreement concerning cooperation in the funding, contracting, and compliance monitoring of non-profit community service organizations; and

WHEREAS, the parties desire to continue the cooperative arrangement for another calendar year and it is therefore necessary and desirable that the Agreement be amended to extend its term for an additional calendar year; NOW, THEREFORE,

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

SECTION 1.

Amendment No. 19 to Agreement for Community Services Planning, Administration, and Accountability dated February 12, 2024 between the City of Pueblo, a Municipal Corporation, and the Board of County Commissioners of the County of Pueblo ("Amendment "), for community services planning, administration, and accountability 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 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 3.

The Mayor is hereby authorized to execute CSAC Subrecipient Agreements to effectuate the 2024 Recommendations of the Community Services Advisory Commission 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 4.

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

SECTION 5.

If any section, paragraph, clause, or provision of this Ordinance 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 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

AMENDMENT NO. 19 TO
AGREEMENT FOR COMMUNITY SERVICES PLANNING,
ADMINISTRATION, AND ACCOUNTABILITY SERVICES

THIS AMENDMENT NO. 19 to Agreement for Community Services Planning, Administration, and Accountability Services is made and entered into this _____ day of February 2024, by and between the City of Pueblo, a Municipal Corporation (hereinafter referred to as "City"), and the Board of County Commissioners of the County of Pueblo (hereinafter referred to as "County").

WHEREAS, City and County have heretofore entered into the Agreement for Community Services Planning, Administration, and Accountability Services dated July 14, 2003 (hereinafter the "Agreement"), and prior Amendment No's. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 thereto, wherein the parties set forth their agreement concerning cooperation in the funding, contracting, and compliance monitoring of non-profit community service organizations; and

WHEREAS, the parties desire to continue the cooperative arrangement for another calendar year and it is therefore necessary and desirable that the Agreement be amended to extend its term for an additional calendar year.

NOW, THEREFORE, in consideration of the foregoing and the mutual terms and conditions set forth herein, the parties agree as follows:

1. The Agreement is amended by revising section 8 (Term of Agreement) thereof to extend the expiration of the term of the Agreement to December 31, 2024, unless sooner terminated as provided in the Agreement.
2. Except as expressly modified by this Amendment No. 19, the Agreement, including all prior Amendments, shall remain in full force and effect. Any obligations remaining to be performed under the original Agreement and prior Amendments by either party, including but not limited to those relating to the services to be performed by County, or the compensation payable therefore, are not waived or excused in any manner, but shall be fully performed in accordance with the terms and conditions of the Agreement as it existed prior to this Amendment No. 18.

IN WITNESS WHEREOF, City and County have executed this Amendment No. 19 to Agreement for Community Services Planning, Administration, and Accountability Services as of the date first above written.

CITY OF PUEBLO,
A MUNICIPAL CORPORATION

ATTEST:

City Clerk

By _____
Mayor

APPROVED AS TO FORM

BALANCE OF APPROPRIATION EXISTS
FOR THIS CONTRACT AND FUNDS ARE
AVAILABLE

City Attorney

By _____
Director of Finance

ATTEST:

COUNTY OF PUEBLO

County Clerk

By _____
Chair, Board of County Commissioners

[S E A L]



**Department of Planning & Community Development
Housing and Citizen Services Division**

2024 Community Services Funding Recommendations	50% City / 50% County
A Caring Pregnancy Center	\$ 36,422.00
Bessemer Historical Society - Steelworks Center of the West	\$ 9,667.00
Bits of Freedom	\$ 3,404.00
Boys & Girls Clubs of Pueblo County	\$ 98,732.00
Care & Share Food Bank	\$ 48,277.00
CASA	\$ 25,381.00
Catholic Charities	\$ 44,347.00
Center for Disabilities - Center Toward Self Reliance	\$ 12,503.00
Colorado Legal Services	\$ 10,433.00
Crossroads Turning Points	\$ 15,518.00
East Side Child Care	\$ 50,901.00
El Pueblo History Museum	\$ 7,904.00
Friendly Harbor Community Center	\$ 11,126.00
Mariposa Center for Safety (fka YWCA)	\$ 53,981.00
MIKID	\$ 22,925.00
Mt. Carmel Veterans Service Center	\$ 21,036.00
Nature & Wildlife Discovery Center	\$ 29,077.00
Posada	\$ 72,703.00
Pueblo Child Advocacy Center	\$ 31,411.00
Pueblo Cooperative Care Center	\$ 35,749.00
Pueblo Diversified Industries	\$ 12,696.00
Pueblo Heritage Museum - Southern Colorado Heritage Center -	\$ 13,029.00
Pueblo Hispanic Education Foundation	\$ 18,685.00
Pueblo Municipal Band	\$ 5,293.00
Pueblo Railway Museum	\$ 8,589.00
Pueblo Rape Crisis Services	\$ 12,211.00
Pueblo Rescue Mission	\$ 59,510.00
SEL Tutoring	\$ 7,367.00
Servicios de la Raza - Behavioral Healthcare Services & Workforce Development	\$ 50,735.00
Southside Children's Center	\$ 53,036.00
The Arc of Pueblo	\$ 8,863.00
SRDA	\$ 63,989.00
AGREEMENT TOTAL, City and County combined	\$ 955,500.00



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Barb Huber, Fire Chief

SUBJECT: AN ORDINANCE APPROVE THE GRANT AGREEMENT BETWEEN THE CITY OF PUEBLO AND HEALTH COLORADO, INC. FOR COMMUNITY OUTREACH TO CONNECT COMMUNITY MEMBERS TO COMMUNITY RESOURCES AND ACCEPTANCE OF \$80,000 FOR PROGRAM PROJECT PS2402 AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME

SUMMARY:

The Grant Agreement, accepted by the Pueblo Fire Department, is for funding two positions who will provide assistance for people to connect to community resources. One position is to assist members of the community by providing telehealth education and connection to resources. The other position is to connect DOTS patients to resources based on their individual needs. The \$80,000 is for program project funds to be placed in project PS2402.

PREVIOUS COUNCIL ACTION:

2022 cooperation agreement with Health Colorado and acceptance of \$42,300 in funds for use in the DOTS program.

BACKGROUND:

The Pueblo Fire Department, working with Health Colorado, Inc. seeks to promote whole person care through healthy neighborhoods bringing together members of physical and behavioral health care along with support services.

FINANCIAL IMPLICATIONS:

Administration of positions.

BOARD/COMMISSION RECOMMENDATION:

Not Applicable.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

None.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE APPROVE THE GRANT AGREEMENT BETWEEN THE CITY OF PUEBLO AND HEALTH COLORADO, INC. FOR COMMUNITY OUTREACH TO CONNECT COMMUNITY MEMBERS TO COMMUNITY RESOURCES AND ACCEPTANCE OF \$80,000 FOR PROGRAM PROJECT PS2402 AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME

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

SECTION 1.

The Grant Agreement, attached hereto, after being approved by the City Attorney, is hereby approved, and the grant funds of \$80,000 is to be placed in project PS2402 for use procuring two positions for community outreach, is hereby approved.

SECTION 2.

The Mayor, is hereby authorized to execute said Grant 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.

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

SECTION 4.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Barb Huber, Fire Chief

SUBJECT: AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN COLORADO STATE PATROL AND THE CITY OF PUEBLO RELATING TO USE OF THE PUEBLO FIRE DEPARTMENT TRAINING FACILITIES AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME

SUMMARY:

This ordinance approves an IGA with Colorado State Patrol and their use of Pueblo Fire training facilities and location. The IGA is attached hereto.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

As part of emergency planning and collaboration, the City of Pueblo enters into this agreement with the Colorado State Patrol to allow the sharing of training facilities and equipment thus improving community partnerships and responses.

FINANCIAL IMPLICATIONS:

None.

BOARD/COMMISSION RECOMMENDATION:

Not applicable.

STAKEHOLDER PROCESS:

Not applicable.

ALTERNATIVES:

None.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. City of Pueblo-CSP IGA FINAL
2. City of Pueblo-CSP IGA Exhibit A FINAL

ORDINANCE NO.

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN COLORADO STATE PATROL AND THE CITY OF PUEBLO RELATING TO USE OF THE PUEBLO FIRE DEPARTMENT TRAINING FACILITIES AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME

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

SECTION 1.

The Intergovernmental Agreement ("Agreement") between Pueblo, a municipal corporation and Colorado State Patrol, 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.

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

SECTION 4.

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

Action by City Council:

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

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

INTERGOVERNMENTAL AGREEMENT

State Agency State of Colorado acting by and through the Department of Public Safety for the use and benefit of the Colorado State Patrol	IGA Number Insert CMS number or Other IGA Number
Local Government Pueblo, a Municipal Corporation	IGA Performance Beginning Date The Effective Date
IGA Maximum Amount Initial Term State Fiscal Year 2024 \$0.00 Extension Terms State Fiscal Year 2025 \$0.00 State Fiscal Year 2026 \$0.00 State Fiscal Year 2027 \$0.00 State Fiscal Year 2028 \$0.00 Total for All State Fiscal Years \$0.00	Initial IGA Expiration Date One Year After the Effective Date IGA Authority Statutory authority to enter into this Agreement exists as set forth at § 24-33.5-201, <i>et seq.</i> , C.R.S. for Colorado State Patrol to enter into this Intergovernmental Agreement
IGA Purpose Sets forth the terms and conditions upon which the Colorado State Patrol will be able to utilize the City Facilities and City Equipment for its Trainees.	
Exhibits and Order of Precedence In the event of a conflict or inconsistency between this IGA and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority: 1. The provisions of the other sections of the main body of this IGA; and 2. Exhibit A, Instructor and Trainee Release of Liability Agreement.	
Principal Representatives	
For the State: Colonel Matthew C. Packard, Chief Department of Public Safety Colorado State Patrol 700 Kipling Street Lakewood, CO 80215 Email: Matthew.Packard@state.co.us	For Pueblo: Pueblo Fire Department Attn: Fire Chief 1551 Bonforte Boulevard Pueblo, CO 81001 Email

**INTERGOVERNMENTAL AGREEMENT
FOR
USE OF PUEBLO FIRE TRAINING FACILITIES**

THIS AGREEMENT (“Agreement” or “IGA”) is made and entered into as of the _____ day of _____, 2024 (the “Effective Date”), by and between the State of Colorado acting by and through the Department of Public Safety (the “State”) for the use and benefit of the Colorado State Patrol (hereinafter referred to as “Permittee”), and Pueblo, a Municipal Corporation, 1 City Hall Place, Pueblo, Colorado (hereinafter referred to as “City”).

WHEREAS, pursuant to its authority under law, Permittee provides fire protection services within its jurisdictional area, and in connection therewith, provides training and education in fire science and fire suppression to its employees and trainees (collectively “Trainees”); and

WHEREAS, City owns and operates a Training Tower and Training Tower Classroom (collectively, “City Facilities”) for the use and training of members of the City’s Fire Department, which City Facilities are not always in use and may be available for training by other governmental units engaged in fire suppression functions; and

WHEREAS, Permittee desires to use the City Facilities in connection with its fire science and fire prevention and protection training provided by Permittee to its Trainees; and

WHEREAS, City is willing, subject to the conditions set forth in this Agreement, to allow use by Permittee of the City Facilities, when not necessary for use by City, in order to cooperate with Permittee in Permittee’s efforts to provide meaningful fire science and fire prevention and protection training to its Trainees; and

WHEREAS, the parties are empowered by § 29-1-203, C.R.S. to enter into this IGA for the purpose of setting forth the manner in which the parties intend to cooperate; and

WHEREAS, the legislative body of Permittee has specifically authorized Permittee to enter into this IGA and has authorized the undersigned representative of Permittee to execute this Agreement on its behalf and thereby contractually obligate and bind Permittee to the terms of this Agreement;

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

1. Subject to the terms, conditions and requirements of this Agreement, City agrees to permit Permittee and its Trainees to use and occupy the following City Facilities when such facilities are not otherwise scheduled for or in use for City’s needs and functions:
 - (a) the Training Tower located at Murray Road, Pueblo, Colorado;

- (b) the classroom located on the Training Tower grounds; and which may be collectively referred to herein as the “City Facilities.”
2. Subject to the terms, conditions and requirements of this Agreement, City also agrees to permit Permittee and its Trainees to use and train with the following City equipment: rescue saws, fire axes, fire hoses and various hand and power tools located at the City Facilities, which is referred to herein as “City Equipment.”
 3. Permittee shall, at all times, have an experienced and qualified training instructor physically present and directly supervising Trainees when Trainees are upon City Facilities and when City Equipment is being used or demonstrated. It shall be the responsibility of Permittee, and not of City, to assure that Trainees are provided with all appropriate safety instruction and training on the operation and use of City Equipment prior to any handling or use of same.
 4. Under no circumstances will Permittee’s Instructors or Trainees be permitted to drive City fire or rescue vehicles nor respond to actual emergency response events to which City personnel may be dispatched.
 5. At all times during the term of this Agreement, Permittee shall be deemed as the State and its Instructors and Trainees shall be its employees and shall not be employees of the City. Permittee is a “public entity” within the meaning of the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S. (the “GIA”) and so long as an exemption does not apply shall be responsible in accordance with law for all withholding taxes, social security, pension, unemployment, workers’ compensation, and other employment taxes with respect to its Instructors and Trainees.

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. (City Sales Tax Exemption Identification Number 98-03479)(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 the State.
 6. The term of this Agreement shall commence on the Effective Date and shall expire at exactly 11:59 p.m. on the one-year anniversary of the Effective Date; provided, however, that City may terminate this Agreement at any time upon thirty (30) days advance written notice to Permittee. The provisions of sections 5, 9 and 12 shall survive the expiration or termination of this Agreement.
 7. Mutual Agreement by Parties for Burn Room Use. The Burn Room may only be used if the Parties execute a memorandum to this Agreement specifying the terms of use.
 8. If payments for the use of the City Facilities, City Equipment and associated costs are expected to be made by the Permittee, the Parties shall address such costs by an amendment to this IGA.
 9. This Agreement is not intended to, nor shall it create, any duty to any Trainee, Instructor, other Permittee employee, or any other person, firm or entity with regard to the provision of

facilities or equipment by City, nor security, level of safety, or activities undertaken by City's employees or conditions resulting therefrom. No Trainee, Instructor, Permittee employee, or other person, firm or entity shall be granted or have any private right of action, claim or civil liability remedy against the City or Permittee, or their respective officers, employees or agents, by virtue of this Agreement. Nothing in this Agreement shall be construed to create any liability, or to waive any of the immunities, limitations on liability or other provisions of the Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., or to waive any immunities or limitations on liability otherwise available to the City, Permittee, or their officers, employees or agents.

10. For avoidance of doubt, a party's failure or delay in exercising any right, power or privilege under this Agreement/IGA, 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.
11. This Agreement constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No modification of this Agreement, and no waiver of any of the Agreement's provisions or conditions, shall be binding unless made by written document signed by the parties. Any delegation or assignment of this Agreement by either party, without the prior written consent of the other party, shall be void.
12. Permittee acknowledges that the use of the City Facilities and City Equipment present inherent dangers and that use of saws, axes, fire hoses and other tools presents inherent risks. The use by Permittee and its Trainees and Instructors of the City Facilities and City Equipment is "AS IS" and in its existing condition, whatever that may be. **NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, IS MADE BY THE CITY CONCERNING THE SAFETY, USABILITY, OR FITNESS FOR ANY PURPOSE, OF THE CITY FACILITIES AND CITY EQUIPMENT FURNISHED HEREUNDER, AND CITY EXPRESSLY DISCLAIMS ANY AND ALL SUCH WARRANTIES.**
13. In the event this Agreement or any material provision hereof shall be declared to be invalid, unenforceable, or in violation of any applicable federal, state or local laws or regulations, the parties will immediately begin negotiations to modify or amend this Agreement in order that this Agreement shall, as amended, express and contain the understanding and intentions of the parties.
14. Except as set forth elsewhere in this section, all notices to be given under this Agreement shall be made in writing, and shall be sufficient if delivered personally, or mailed by First Class United States Mail, postage prepaid, to the other party at the following addresses:

If to Permittee: Colorado State Patrol
Attn: Colonel Matthew C. Packard, Chief
700 Kipling Street
Lakewood, CO 80215

If to the City: Pueblo Fire Department
Attn: Fire Chief
1551 Bonforte Boulevard
Pueblo, CO 81001

15. Each party represents and warrants to the other that the execution and delivery of this Agreement, and the performance of such parties' obligations have been duly authorized.
16. 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. THIS AGREEMENT REPRESENTS THE COMPLETE INTEGRATION OF ALL UNDERSTANDINGS BETWEEN THE PARTIES AND ALL PRIOR REPRESENTATIONS AND UNDERSTANDINGS, 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.
17. 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 Colorado Open Records Act set forth at § 24-72-200.1, *et seq.*, C.R.S.
18. Insurance.
 - (a) The City is self-insured. The City shall have the right to provide such insurance under a self-insurance program, or, at any time during the term of this Agreement/IGA, to provide such insurance through an insurance company. To the extent the City requires additional insurance through an insurance company, the City agrees to carry and maintain the following insurance coverage with respect to the City Facilities during the terms of this Agreement/IGA:
 - i. Commercial General Liability Insurance covering operations by, or on behalf of, the City on an occurrence basis against claims for bodily injury, property damage and personal injury liability with minimum limits of (a) \$1,000,000 each occurrence; (b) \$2,000,000 general aggregate; (c) \$2,000,000 products and completed operations aggregate.
 - ii. Property Insurance covering City Facilities, including the premises, its equipment (City Equipment)(if applicable), and the City's interest in improvements and betterments on an "All Risk" basis, including where appropriate, the perils of Flood and Earthquake. Coverage shall be written with a Replacement Cost valuation and include an agreed value provision.
 - iii. All policies shall be written with carriers approved to do business in the State of Colorado with an A.M. Best Rating of at least A-VII.
 - (b) The State is self-insured. The State shall have the right to provide such insurance under a self-insurance program, or, at any time during the term of this Agreement/IGA, to provide such insurance through an insurance company. With respect to general liability, the State is self-insured in accordance with the provisions of the Colorado Governmental Immunity Act set forth at § 24-10-101, *et seq.*, C.R.S. and the Colorado Risk Management Act, set forth at § 24-30-1501, *et seq.*, C.R.S.

19. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

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

PERMITTEE:
STATE OF COLORADO
Jared S. Polis, Governor
Department of Public Safety
Stan Hilkey, Executive Director

PUEBLO, A MUNICIPAL CORPORATION

By _____

Name: Matthew C. Packard

Title: Chief/Colonel, Colorado State Patrol

By _____

Mayor

Attest:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF COLORADO

Jared S. Polis, Governor
Department of Personnel & Administration
Tony Gherardini, Executive Director For the Executive
Director

By: _____
Julie Mileham, Director, Office of Risk Management

Date: _____

LEGAL REVIEW

Philip J. Weiser, Attorney General

By: _____
Lori Ann Knutson, First 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: _____
Tanya Olsen, Controller, Department of Public Safety

Date: _____

Exhibit "A"

Instructor and Trainee
Release of Liability Agreement

I. RELEASE OF LIABILITY AGREEMENT: PARTICIPANT MUST READ CAREFULLY BEFORE SIGNING

In consideration for being permitted to use and occupy certain City Facilities and to use and train with certain City Equipment in connection with instruction provided by [insert name of IGA party], I hereby acknowledge, represent, and agree as follows:

A. I understand that use of said City Facilities and City Equipment and related activities are inherently dangerous and do or may involve risks of death, injury, loss, or damage. I further acknowledge that such risks may include, but not be limited to, bodily injury, personal injury, sickness, disease, death, and property loss or damage. I acknowledge that such risks may arise from a variety of foreseeable and unforeseeable circumstances connected with the use of the City Facilities and City Equipment and related activities, including but not limited to the following risks: burns, smoke inhalation, heart attack, back injury, skeletal injuries, hernia, muscular injuries, eye injuries, loss of fingers or limbs, and injuries related to heavy lifting, pulling, pushing and climbing.

_____(Participant initials here)

_____(Participant initials here)

B. I understand and acknowledge that the City of Pueblo, its officers, and its employees are relying on, and do not waive or intend to waive by any provision of this **RELEASE OF LIABILITY AGREEMENT**, the monetary limitations (presently \$424,000 per person and \$1,195,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et. seq., as amended, or otherwise available to the City of Pueblo, its officers, or its employees. I hereby agree that this Release of Liability Agreement extends to all acts of negligence by City, its officers and employees, including negligent rescue operations, and is intended to be as broad and inclusive as permitted by the laws of Colorado.

_____(Participant initials here)

C. I understand and agree that this **RELEASE OF LIABILITY AGREEMENT** shall be governed by the laws of the State of Colorado, and that jurisdiction and exclusive venue for any suit or cause of action under this Release of Liability Agreement shall lie in the district court of Pueblo County, Colorado and I consent to and submit to the jurisdiction of that Court.

_____ (Participant initials here)

D. This **RELEASE OF LIABILITY AGREEMENT** shall be effective as of the date set forth below (or the date signed if the date has not been completed) and shall be binding upon me, my successors, representatives, heirs, executors, assigns, and transferees.

_____ (Participant initials here)

II. PARTICIPANT SIGNATURE AND DATE:

Trainee/Instructor-Print Name: _____ Date: _____

Trainee/Instructor Signature: _____

Witness: _____



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: George Hypolite, City Attorney

SUBJECT: AN ORDINANCE APPROVING A SUBRECIPIENT AGREEMENT AUTHORIZING PAYMENT IN AN AMOUNT OF UP TO \$200,000 FROM PROJECT CI2113 - AMERICAN RESCUE PLAN ACT TO ROCKY MOUNTAIN S.E.R./JOBS FOR PROGRESS, INC., FOR EQUIPMENT AND RELATED INFRASTRUCTURE IMPROVEMENTS FOR ITS EMPOWERMENT CENTER 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

SUMMARY:

This ordinance approves a subrecipient agreement and grant award of \$200,000 in American Rescue Plan Act ("ARPA") funds for the purpose of making equipment and other infrastructure upgrades to R.M.S.E.R.'s empowerment center to facilitate its Mobile Healthy Food Hunger Relief Project.

PREVIOUS COUNCIL ACTION:

By Ordinance No. 9931, approved on May 17, 2021, the City Council established Project No. CI-2113 and budgeted and appropriated up to \$36.7 million in funds which were expected to be distributed to the City from the American Recovery Plan Act ("ARPA") for covered costs and eligible expenses to be incurred during the period which began on March 3, 2021, until December 31, 2024, (to be expended by December 31, 2026).

BACKGROUND:

The attached subrecipient agreement and grant award will be used by Rocky Mountain S.E.R., to make specific improvements and upgrades to its empowerment center to facilitate the Mobile Healthy Food Hunger Relief Project, which will promote improved health outcomes and increase access to healthy foods for persons disproportionately impacted by the Coronavirus within the City.

FINANCIAL IMPLICATIONS:

\$200,000 in ARPA funds are being authorized for payment.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

City Council could decide not to approve the subrecipient agreement and fund the award for the improvements.

RECOMMENDATION:

Approval of the Ordinance

ATTACHMENTS:

1. Subrecipient Agreement - RMSER -Empower Center Upgrades (Draft)

ORDINANCE NO.

AN ORDINANCE APPROVING A SUBRECIPIENT AGREEMENT AUTHORIZING PAYMENT IN AN AMOUNT OF UP TO \$200,000 FROM PROJECT CI2113 - AMERICAN RESCUE PLAN ACT TO ROCKY MOUNTAIN S.E.R./JOBS FOR PROGRESS, INC., FOR EQUIPMENT AND RELATED INFRASTRUCTURE IMPROVEMENTS FOR ITS EMPOWERMENT CENTER 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

NOW, THEREFORE

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

SECTION 1.

The Subrecipient Agreement ("Agreement") between Pueblo, a Colorado Municipal Corporation and Rocky Mountain S.E.R./Jobs for Progress, Inc., a Colorado nonprofit corporation., attached hereto, and the Award of ARPA funds from Project No. CI2113 – American Rescue Plan Act 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 Project No. CI2113 – American Rescue Plan Act.

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 January 08, 2024.

Final adoption of Ordinance by City Council on January 22, 2024.

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

CITY OF PUEBLO, COLORADO
SUBRECIPIENT AGREEMENT
AMERICAN RESCUE PLAN ACT (SLFRF FUNDS)

This Subrecipient Agreement ("Agreement") is entered into 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 Rocky Mountain S.E.R./Jobs for Progress, Inc., a Colorado nonprofit corporation ("Subrecipient") (individually "Party", collectively "Parties"). The purpose of this Agreement is to provide funding to the Subrecipient from funds provided to the City by the Department of Treasury ("Treasury") pursuant to Sections 602 and 603 of the Social Security Act, as added by section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (Mar. 11, 2021) ("ARPA"), which authorized the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") to enable the Subrecipient to carry out specific eligible activities on behalf of City.

WITNESSETH

WHEREAS, City has received SLFRF funds from Treasury under ARPA;

WHEREAS, City is authorized by ARPA to disburse all or a portion of its SLFRF funds to Subrecipients, which carry out eligible uses, as defined under SLFRF on behalf of City;

WHEREAS, the Subrecipient has applied to City for an eligible use of SLFRF funds;

WHEREAS, based on the Subrecipient's project application for SLFRF funds in the form attached hereto as **Exhibit A**, City has determined that the Subrecipient's Project in **Exhibit A** is an eligible use of SLFRF funds under ARPA; and

WHEREAS, City has awarded the Subrecipient SLFRF funds of \$200,000 ("Award"), subject to City and the Subrecipient entering into this Agreement concerning the use of said funds;

WHEREAS, Subrecipient, as an express condition herein, has agreed and proposed to use the funds to make specific improvements and upgrades to facilitate the Mobile Healthy Food Hunger Relief Project, which will promote improved health outcomes and increase access to healthy foods for persons disproportionately impacted by the Coronavirus within the City (hereinafter "Project").

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

1. SCOPE OF PROJECT; ELIGIBLE USE OF AWARD FUNDS

- A. City shall pay Subrecipient the Award to cover necessary expenses related to the activities specifically described in the Subrecipient's application ("Project"). If there is a conflict between the terms and provisions in the Subrecipient's application and this Agreement, the

terms of this Agreement shall govern.

- B. Subrecipient shall only use the Award to cover expenses that are necessary for the completion of the Project and are eligible uses under ARPA and this Agreement.
- C. Subrecipient may revise the scope of the Project with prior written approval from City's Mayor, where such revisions to the Project do not materially alter the Project or cause the use of the Award for the revised Project to constitute an ineligible use of SLFRF funds or constitute a change in the category of eligible use of SLFRF funds. In no event shall a revision to the scope of the Project entitle the Subrecipient to an additional allocation of SLFRF funds by City unless Subrecipient makes a request for and City's City Council approves additional funds. City, in its sole and absolute discretion, may approve and authorize additional SLFRF funds for the Project. However, no such additional allocation is guaranteed.
- D. Once the Project is completed, all costs for the management, operation, maintenance, and repair and replacement of the Project (as applicable) shall be the sole responsibility of the Subrecipient. The City shall have no liability, financial or otherwise, with respect to the management, operation, maintenance, repair or replacement of the Project.

2. TERM OF AGREEMENT

The term of this Agreement begins on the date this Agreement is fully executed by the Parties and ends on December 31, 2026. Notwithstanding other provisions of this Agreement, this Agreement will remain in effect until City determines Subrecipient has completed all applicable administrative actions, reporting requirements, and all Project work required by and set forth in this Agreement. Should Subrecipient require additional time for auditing of or reporting for the Project in accordance with ARPA and this Agreement shall be deemed automatically extended until said audit and reporting is completed.

3. PAYMENTS

- A. *Reimbursement Payment.* City shall pay the Award to Subrecipient on a reimbursement of eligible cost basis. Subrecipient shall submit reimbursement requests to the City no later than fifteen (15) days after the end of each calendar month for the duration of the Project. Such requests shall be in a form acceptable to City and include, where applicable for construction projects, certification by Subrecipient's engineer that the amounts are eligible Project costs. Subrecipient may not request reimbursements under this Agreement for work that has not been completed.
- B. *Advance Payment.* City, in its sole and absolute discretion, may elect to pay Subrecipient in advance for its allowable costs for the Project identified by this Agreement upon the presentation of all forms and documents as may be required by City. Advance payments

must be limited to the minimum amounts needed and timed to be in accordance with the Subrecipients actual, immediate cash requirements in carrying out and completing the work of the Project.

- C. *Withholding or Cancellation of Funds.* City reserves the right to withhold payments until Subrecipient timely delivers reimbursement requests or documents as may be required under this Agreement. Upon completion of the Project, City may cancel payment of any portion of the Award City, in its sole and absolute discretion, determines to be surplus. City shall be relieved of any obligation for payments if funds allocated to City cease to be available.
- D. *Where Payments Are Made.* Payments shall be made by check or electronic deposit into Subrecipient's bank account, according to a process established by the City.
- E. *Recoupment.* The Award is subject to recoupment by Treasury and/or City for the Subrecipient's failure to use the funds for the Project in strict accordance with ARPA and this Agreement.

4. OBLIGATION AND EXPENDITURE TIMING REQUIREMENTS; REPORTING REQUIREMENTS

- A. *Timing Requirements.* Subrecipient may use Award funds to cover eligible costs incurred from March 3, 2021, to December 31, 2026, if the obligations are incurred by December 31, 2024, and liquidated by December 31, 2026.
- B. *Reporting Requirements.* Subrecipient shall submit such reports and adhere to all conditions and obligations as are required by City including, but not limited to, the SLFRF Reporting Requirements attached to this Agreement as **Exhibit B**. Such reporting requirements shall extend beyond the term of this Agreement. City reserves the right to inspect, at any time, Subrecipient's records that are related to the Project and/or Subrecipient's performance of this Agreement. Notwithstanding any record retention policies, Subrecipient shall maintain all documentation associated with the Project for the period required by State law or Federal law or seven (7) years after Closeout, whichever is greater.

5. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

In addition to the requirements set forth in ARPA, use of the Award may be subject to various other Federal, State, and Local laws. Subrecipient shall comply with all applicable Federal, State, and Local laws and regulations with respect to its receipt and use of the Award pursuant to this Agreement.

6. USE AND DISPOSITION OF PROPERTY

SUBRECIPIENT AGREEMENT AMERICAN RESCUE PLAN ACT (SLFRF FUNDS)
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A. Disposition of Expendable/Non-Expendable Real and Personal Property:

- a. 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:
 - i. 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:
 1. 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;
 2. A physical inventory of the property must be taken, and the results reconciled with the property records at least once every two years;
 3. 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;
 4. Adequate maintenance procedures must be developed to keep the property in good condition; and
 5. 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 ARPA funds by the Treasury, 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.
 - i. 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 the appropriate Federal agency or using them for a purpose under Federal regulations.

7. RETURN OF FUNDS; RECOUPMENT

Subrecipient shall return any Award funds not obligated by December 31, 2024 to City. The Subrecipient must also return Award funds obligated by December 31, 2024 but not expended by December 31, 2026.

If City determines Subrecipient's use of the Award does not comply with ARPA or this Agreement, City shall provide Subrecipient with an initial written notice of the amount subject to recoupment, along with an explanation of such amounts. Within thirty (30) calendar days of receipt of such notice from Treasury or City, Subrecipient may submit to City either (1) a request for reconsideration requesting the City seek a reconsideration of any amounts subject to recoupment or (2) written consent to the notice of recoupment.

If Subrecipient has not submitted a reconsideration request, or if City denies the reconsideration request, the Subrecipient shall repay the amount subject to recoupment within thirty (30) calendar days of the request for consideration deadline or the City's denial of the request.

8. PROCUREMENT

A. Subrecipient must have and use documented procurement procedures consistent with Federal, State, local, and tribal laws and regulations and the standards of this section for the acquisition of property or services required under a Federal award or subaward. Additionally, the Subrecipient's documented procurement procedures must conform to the procurement standards identified in 2 CFR § 200.318 through 200.327, including but not limited to the following. If the Subrecipient does not have documented procurement procedures, they must follow the City's procurement policy.

1. Maintaining a code or standard of conduct governing the performance of the Subrecipient's officers, employees or agents who award and administer contracts supported with Federal funds.
2. All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards in 2 CFR § 200.319 through 200.320. No sole source procurement (obtaining only one bid) is permitted without prior approval for all purchases except small purchases as defined in 2 CFR § 200.320 and 48 CFR Part 2, Subpart 2.1.
3. Invitations for bids shall be based on specifications developed by the Subrecipient. Said specifications shall be detailed to the extent necessary to solicit comparable bids without

unduly limiting competitive bidding.

4. Bids will be awarded on the basis of the lowest and best bid, price and other factors considered.
5. The Subrecipient agrees to purchase services, goods and materials on an “as needed basis” and at the “lowest price obtainable”.
6. The Subrecipient will maintain procurement files outlining procurement efforts for each bid, including names and addresses of bidders solicited, and information pertaining to advertising. Information will also be maintained of bid tabulations, justification of bid award, letters of notification to bidders regarding bid award, and any other pertinent information.

9. FAILURE TO PERFORM

If Subrecipient fails to comply with any terms or conditions of this Agreement, or to provide in any manner the activities or other performance as agreed to herein, City reserves the right to:

- A. withhold all or any part of payment pending correction of the deficiency; and
- B. suspend all or part of this Agreement.

Further, any failure to perform as required pursuant to this Agreement may subject the Subrecipient to recoupment as set forth under ARPA, SLFRF, and this Agreement. The option to withhold funds is in addition to, and not in lieu of, City's right to terminate as provided in Section 8 below. City may also consider performance under this Agreement when considering future awards.

10. TERMINATION

- A. *Termination for Cause.* City may terminate this Agreement for cause if Subrecipient fails to comply with the terms and conditions of this Agreement and any of the following conditions exist:
 1. The lack of compliance with the provisions of this Agreement is of such scope and nature City deems continuation of this Agreement to be substantially non-beneficial to the public interest;
 2. The Subrecipient has failed to take satisfactory corrective action as directed by the City or its authorized representative within the time specified by the same; or
 3. The Subrecipient has failed within the time specified by City or its authorized representative to satisfactorily substantiate its compliance with the terms and conditions of this Agreement.

City shall initiate termination for cause by providing notice to the Subrecipient of its intent to terminate for cause, accompanied by a written justification for the termination. After receiving the notice of termination for cause, the Subrecipient shall have fifteen (15) calendar days to cure the cause for termination. If the Subrecipient has not cured the cause for termination within fifteen (15) calendar days of receipt of the notice, City may pursue such remedies as are available by law or equity, including, but not limited to, the termination of this Agreement in whole or in part, and thereupon shall notify in writing Subrecipient of the termination, the reasons for the termination, and the effective date of the termination. Upon termination, any outstanding Award funds held by Subrecipient are subject to recoupment by City in accordance with ARPA, the SLFRF program, and this Agreement. Any costs resulting from obligations incurred by Subrecipient after termination of this Agreement are not allowable and will not be reimbursed by the City unless specifically authorized in writing by the City.

- B. *Termination for Convenience.* This Agreement may be terminated for convenience, in whole or in part, by either Party upon thirty (30) days written notice or by mutual agreement of the Parties.
- C. *Termination for Withdrawal, Reduction, or Limitation of Funding.* In the event funding is not received from the Federal Government, or is withdrawn, reduced, modified, or limited in any way after the effective date of this Agreement and prior to its normal completion, City may summarily terminate this Agreement as to the funds not received, reduced, modified, or limited, notwithstanding any other termination provision in this Agreement. If the level of funding is reduced to such an extent City deems the continuation of the Project covered by this Agreement is no longer in the best interest of the public, City may summarily terminate this Agreement in whole notwithstanding any other termination provisions in this Agreement. Termination under this Section shall be effective upon receipt of written notice by the Subrecipient or its representative.

11. CLOSEOUT

Upon termination of this Agreement, in whole or in part for any reason, including completion of the Project, the following provisions apply:

- A. Upon written request by Subrecipient, City will make or arrange for payment to the Subrecipient of allowable reimbursable costs not covered by previous payments.
- B. Subrecipient shall submit within thirty (30) calendar days after the date of expiration of this Agreement, all financial, performance, and other reports required by this Agreement, and in addition, will cooperate in a Project audit by City or its designee.
- C. Closeout of funds will not occur unless all requirements of this Agreement and Federal, State, and Local law are met and all outstanding issues with Subrecipient are completed.

Any unused Award funds in Subrecipient's possession or control shall be immediately returned to City.

12. INDEMNIFICATION

Any Award funds which are determined by City to be ineligible under ARPA shall be subject to recoupment. To the greatest extent permitted by law, Subrecipient shall indemnify, save, and hold harmless City, its appointed and elected officials, and employees from any liability, loss, costs (including reasonable attorney fees), damage, or expense, incurred because of actions, claims, or lawsuits for damages resulting from misuse of Award funds by the Subrecipient, personal or bodily injury, including death, sustained or alleged to have been sustained by any person or persons and on account of damage to property, arising or alleged to have arisen out of the performance of this Agreement, whether or not such injuries to persons or damage to property is due to the negligence of Subrecipient, its subcontractors, agents, successors or assigns.

13. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the City, its departments, boards, committees, 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.; and the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b). 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 in these statutes.

14. CORA DISCLOSURE

To the extent not prohibited by federal or State law, this Agreement and the terms, conditions, and standards required under §24-106-107, C.R.S., if any, are subject to public release through the Colorado Open Records Act.

15. NOTICES

Any notices required to be given by the City or the Subrecipient shall be in writing and delivered to the following representatives for each party:

For City:

Mayor's Office
City of Pueblo
1 City Hall Place
Pueblo, Co 81003

CC: City Attorney

1 City Hall Place
Pueblo, Co 81003
cityattorney@pueblo.us

For Subrecipient:

Rocky Mountain S.E.R./Jobs for Progress, Inc.
ATTN: Christopher W. Hall, Chief Executive Officer
3555 Pecos Street, Denver, CO 80211
chall@rmsr.org

Either Party hereto may designate in writing from time to time the address of substitute or supplementary persons to receive such notices. The effective date of service of any such notice shall be the date such notice is deposited in the mail or hand-delivered to the Party.

16. 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.

17. NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT

Subrecipient certifies that:

- A. 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.
- B. 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.
- C. 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.
- D. 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.

- E. 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.
- F. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. FURTHER ASSURANCE

The Parties shall cooperate in good faith with the other to execute and deliver such further documents, to adopt any ordinance or resolutions, to take any other official action, and to perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions contemplated under this Agreement.

Subrecipient shall, in good faith and to the greatest extent possible, complete the Project in accordance with the Subrecipient's proposed project timeline in the Subrecipient's application. Subrecipient acknowledges that time is of the essence, and Subrecipient shall exercise due diligence to complete the project in a timely manner.

23. ASSIGNMENT

Subrecipient shall not assign any portion of the Award, nor responsibility for completion of the Project provided for by this Agreement, to any other party.

24. AMENDMENTS

This Agreement cannot be amended or modified except in writing, signed by both Parties.

25. VENUE AND CHOICE OF LAW

This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, without regard to the choice of law thereof, and the Charter and Code of Ordinances of the City of Pueblo and the ordinances, regulations, and Executive Orders enacted or promulgated pursuant thereto. The Charter and the Code of Ordinances of the City of Pueblo, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in the State District Court in and for the City Pueblo, Colorado. To the fullest extent permitted by law, the Parties hereby waive their right to a trial by jury.

26. SEVERABILITY

If any part of this Agreement is held by the courts to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the part held to be invalid.

27. NO THIRD-PARTY BENEFICIARY

Nothing in this Agreement shall create or be interpreted to create any rights in or obligations in favor of any person or entity not a party to this agreement. Except for the Parties to this Agreement, no person or entity is an intended third-party beneficiary.

28. PRIOR AGREEMENTS

SUBRECIPIENT AGREEMENT AMERICAN RESCUE PLAN ACT (SLFRF FUNDS)
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This Agreement supersedes all prior written or oral agreements, and there are no covenants, conditions or agreements between the Parties except as set forth herein. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendment executed and approved under the City's Charter and Code of Ordinances. In the event of any conflict, variance or disagreement, the terms and conditions of this Agreement shall supersede, govern and control those of any addenda, exhibits, or attachments.

29. HEADINGS

The section headings of this agreement are for the purposes of reference only and shall not limit or define the meaning thereof.

30. CITY EXECUTION OF AGREEMENT

This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been approved by the Pueblo City Council and fully executed by all signatories of the City.

31. FORCE MAJEURE

Neither Party shall be liable to the other, nor shall either Party have any right to terminate this Agreement or assert a claim against the other due to the other Party's failure to perform any of its obligations under this Agreement if the failure is due to reasons beyond the non-performing Party's reasonable control, including but not limited to strikes or other labor difficulties, unavailability of materials, war, riot, civil insurrection, accidents, Acts of God, or governmental preemption in connection with a national emergency.

32. ELECTRONIC SIGNATURES

Subrecipient consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically, in one or more counterparts, in the manner specified by the City. The Parties agree not to deny this Agreement's legal effect or enforceability solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

33. AUTHORITY TO SIGN

Subrecipient assures and covenants that it possesses the legal authority to enter into this Agreement under any proper, appropriate, and official motion, resolution or action passed or taken. The person or persons signing and executing this Agreement on behalf of Subrecipient do hereby warrant and

covenant that he/she or they have been fully authorized by Subrecipient to execute this Agreement on behalf of the Subrecipient and to validly and legally bind Subrecipient to all the terms, performances, and provisions herein set forth.

[SIGNATURE PAGE & EXHIBITS FOLLOW]

[PAGE INTENTIONALLY LEFT BLANK]

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

SUBRECIPIENT:

Rocky Mountain S.E.R./Jobs for Progress, Inc., a Colorado nonprofit corporation

By: _____
Subrecipient, Christopher W. Hall,
Chief Executive Officer

Date: _____

EXHIBIT A: PROJECT DESCRIPTION

Principal Tasks

The Subrecipient will be responsible for administering the Project for homeless, low-income individuals, who are experiencing hunger or food insecurity. The Subrecipient will administer all tasks encompassed in the aforesaid Project in compliance with all applicable federal, state and local rules and regulations governing the Project, in a manner satisfactory to the City.

The components of the Subrecipient's work plan under this Agreement shall be as follows:

1. Use the refrigerated/freezer mobile food trailer to directly provide healthy and nutritious food to Pueblo residents experiencing COVID-19 hardships in food insecure areas.
2. Provide direct access to food in low-income neighborhoods where food insecurities are prevalent.
3. Cooperate with other Pueblo community non-profits to ensure that there is no unnecessary duplication of services. Share the mobile freezer trailer with other local non-profit organizations which are also combatting hunger and food insecurity.
4. Regularly distribute perishable foods such as chicken, hamburger, milk, cheese, chile, fresh fruit and vegetables, to disproportionately impacted neighborhoods to help feed families nutritious, protein-rich meals during the pandemic and its aftermath where food access is limited and financial resources are strained.
5. Use no fewer than three (3) locations in the City of Pueblo, one on the Eastside, Northside and in the Central area which are known as food insecure areas.
6. In addition to the three (3) fixed locations, use the mobile refrigerated/freezer trailer for on-demand food distribution in other areas thereby increasing geographical outreach.
7. Continuously employ and monitor food safety measures when using the refrigerated/freezer and mobile plug-in unit and maintain refrigerated temperatures at 41 degrees and below, at all time
8. Obtain a minimum of three (3) written bids from mobile food trailer vendors and purchase the refrigerated/freezer trailer from a qualified vendor with the lowest price.

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

Performance Monitoring:

Subrecipient shall submit all requested information and documents to allow City to monitor the performance of the Subrecipient according to the Principal Tasks and Budget set forth herein. Substandard

Commented [GH1]: Can you please review the project description and provide the most updated information, including costs from your approved application in the form provided below.

performance shall mean non-compliance with the Agreement. If actions to correct such substandard performance are not taken by the Subrecipient within a reasonable period, not to exceed five (5) calendar days, after being notified, City, in its sole discretion, may initiate contract suspension or termination procedures.

Subrecipient’s performance under this Agreement will be measured by the following data-driven criteria:

1. Pounds of healthy nutritious food distributed;
2. Number of meals served;
3. Number of Seniors served;
4. Number of adults served;
5. Number of children served;
6. Number of families served;
7. Total number of Pueblo residents served;
8. Number and locations of food distribution sites;
9. Number of on-demand food deliveries;
10. Number of cooperating non-profit organizations which shared the refrigerated/freezer trailer;
11. Zip Codes of food distribution; and
12. Number of Volunteers recruited by the Subrecipient.

Detailed Budget:

Subrecipient is allocated \$200,000 in City of Pueblo SLFRF ARPA funds for the following:

1.

- 3.

Should the cost of equipment and improvements be greater than \$200,000, Subrecipient shall provide the necessary funds to complete the purchase. If the purchase price is less than \$200,00 Subrecipient shall use the savings for Project purposes only.

Commented [GH2]: Please include the scope of what will be purchased or improved.

EXHIBIT B: SLFRF REQUIREMENTS

1. Applicable Statutes, Rules, and Guidance.

The statutes, rules, and regulations outlined in the Agreement apply to the reporting obligations set forth herein. All terms used herein have the definitions outlined in the Agreement or, if not specified in the Agreement, as outlined in ARPA. Additionally, Treasury's publication entitled the "Compliance and Reporting Guidance" ("Compliance Guidance") and Treasury's "Project and Expenditure Report User Guide for State and Local Fiscal Recovery Funds" ("User Guide") apply as noted herein. In addition, the Uniform Administrative Requirements for Federal Awards in 2 CFR Part 200 apply to the Award under this Agreement.

2. Recipients, Subrecipients, Subawards, and Projects.

The definition of "recipient" includes counties that receive a payment under section 602(b) or 603(b) of the Social Security Act. 31 CFR § 3. In this case and as set forth in the Agreement, the City is the recipient of SLFRF funds.

A "subrecipient" includes any non-Federal entity that receives a subaward from a recipient to carry out part of a Federal program, in this case the SLFRF program. See 2 CFR §200.93. Entities that receive a subaward from the City to carry out the SLFRF program are subrecipients, as defined in the Agreement.

A "subaward" is an award of SLFRF funds provided to a subrecipient by a recipient to carry out the SLFRF program.

"Projects" are defined as a group of closely related activities that are intended to meet a certain goal or directed toward a common purpose or "new or existing eligible government services or investments funded in whole or in part by SLFRF funding."

3. Eligible Costs Timeframe.

Under this Agreement, Subrecipient may use Award funds to cover eligible costs incurred from March 3, 2021, to December 31, 2026, as long as the obligations are incurred by December 31, 2024, and liquidated by December 31, 2026.

4. Obligations.

SLFRF funds defines an obligation as "an order placed for property and services and entering into contracts, sub-awards, and similar transactions that require payment." 31 CFR § 35.3. The Project and Expenditure Report User Guide also includes contracts as obligations. Obligation is defined as "orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future

period."

For purposes of the Agreement, an obligation is incurred by Subrecipient when the Subrecipient enters into a contract with a contractor, service provider, or supplier for and in furtherance of the Project; the Agreement between the Subrecipient and the City does not constitute an obligation for purposes of Subrecipient's compliance with the Rule.

5. Expenditures.

Reporting must be consistent with the definition of "expenditure" in 2 CFR Part 200. The Uniform Administrative Requirements for federal awards define "expenditures" as "charges made by a non-Federal entity to a project or program for which a federal award was received." 2 CFR § 200.1; 2 CFR § 200.34.

However, the definition does not clarify whether the "non-Federal entity" is the recipient or the sub-recipient. According to the User Guide, an expenditure is "when the service has been rendered or the good has been delivered to the entity, and payment is due." This definition does not clarify whether "the entity" is the recipient or the sub-recipient. For a sub-recipient, the service or goods would be delivered to the sub-recipient, and then the sub-recipient would ask the recipient for funds. Expenditures may be reported on a cash or accrual basis, but the methodology must be disclosed and consistently applied.

For purposes of this Agreement and the Subrecipient's reporting obligations under this Agreement and Exhibit, City will consider funds "obligated" when the Subrecipient incurs the obligation (enters into a contract with a contractor or supplier) and "expended" payment is due to a contractor or supplier under that contract and payment is made by the Subrecipient.

6. Required Information for Project and Expenditure Reports

Since City is required to submit quarterly or annual Project and Expenditure reports (using the **Assistance Listing Number 21.027**), Subrecipient is required to provide City with the necessary information on the Subrecipient's Project promptly so City can comply with its reporting obligations under ARPA. Subrecipient shall provide necessary information to the City within fifteen (15) days of the end of each quarter to facilitate the City's filing of such reports. City will furnish Subrecipient with forms or links to submit information for the Project and Expenditure reports.

Subrecipients **must be** registered in SAM.gov and must provide identifying and demographic information (DUNS number, Unique Entity Identifier (UIE) number, or its Taxpayer Identification Number (TIN), and location) to the City to receive ARPA funds.

7. Conflicts of Interest

City understands and agrees that it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy applies to each activity funded under this award. Subrecipient and Contractors must disclose in writing to the City or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds per 2 C.F.R. § 200.112. The Office of the

State Controller shall disclose such conflict to Treasury.

8. Maintenance of and Access to Records

- A. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing;
- B. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient to conduct audits or other investigations;
- C. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.

9. Pre-award Costs.

Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.

10. Administrative Costs.

Subrecipient may use funds provided under this award to cover direct and indirect costs. Subrecipient shall follow guidance on administrative costs issued by the City.

11. Cost Sharing.

Cost sharing or matching funds are not required to be provided by Subrecipient.

12. Compliance with Applicable Law and Regulations.

- A. Subrecipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury under section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- B. Federal regulations applicable to this award include, without limitation, the following:
 - a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

- b. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, under which the award term outlined in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- c. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- d. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and Subcontractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
- e. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
- f. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- g. New Restrictions on Lobbying, 31 C.F.R. Part 21.
- h. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
- i. Generally applicable federal environmental laws and regulations.

C. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination based on race, color, or national origin under programs or activities receiving federal financial assistance;
- b. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
- d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

- e. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

13. Remedial Actions.

In the event of Subrecipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as outlined in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.

14. Hatch Act.

Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

15. False Statements.

Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.

16. Publications.

Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number SLFRF0126 awarded to the City of Pueblo by the U.S. Department of the Treasury."

17. Debts Owed the Federal Government.

- A. Any funds paid to the Subrecipient (1) over the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation under sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.

- B. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt. Treasury will take any actions available to it to collect such a debt.

18. Disclaimer.

- A. The United States expressly disclaims any responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or Subcontractor under this award.
- B. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.

19. Protections for Whistleblowers.

- A. Per 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.
- B. The list of persons and entities referenced in the paragraph above includes the following:
- a. A member of Congress or a representative of a committee of Congress;
 - b. An Inspector General;
 - c. The Government Accountability Office;
 - d. A Treasury employee responsible for Agreement or grant oversight or management;
 - e. An authorized official of the Department of Justice or other law enforcement agency;
 - f. A court or grand jury; or
 - g. A management official or other employee of Subrecipient, Contractor, or Subcontractor who is responsible for investigating, discovering, or addressing misconduct.
- C. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce. Increasing Seat Belt Use in the United States. Under Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company owned, rented or personally owned vehicles.

20. Reducing Text Messaging While Driving.

Under Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees, Subrecipients, and Contractors to adopt and enforce policies that ban text messaging while driving and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

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.



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: George Hypolite, City Attorney

SUBJECT: AN ORDINANCE FOR SAFE USE OF PUBLIC PROPERTY TO LIMIT PUBLIC CAMPING AND PROHIBIT TEMPORARY STRUCTURES ON PUBLIC PROPERTY WITHIN THE CITY OF PUEBLO, COLORADO

SUMMARY:

The following ordinance limits public camping and prohibits the use of temporary structures for housing on public property within the City of Pueblo.

PREVIOUS COUNCIL ACTION:

On or about April 26, 1982, the Pueblo City Council approved Ordinance Number 4964, which made it unlawful for any person to erect any booth tent or other structure in any park by any private person for any purpose, except by written permission.

BACKGROUND:

This ordinance applies to all encampments located on public property where camping is not expressly authorized by the City. This ordinance establishes laws and penalties set forth to prevent health and safety hazards brought on by hazardous wastes such as trash and human feces from its occupants. The city must be entrusted to protect the environment of city land and real estate owned by the people. Occupants of the illegal camps will have the option to move into sheltered bed space or face a fine up to \$1,000.

FINANCIAL IMPLICATIONS:

Fine revenue from this ordinance will be included within the City's general fund.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If the City Council chooses not to approve this ordinance, camping in public parks will still be unlawful under the municipal code.

RECOMMENDATION:

Councilor Regina Maestri recommends passage of this Ordinance.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE FOR SAFE USE OF PUBLIC PROPERTY TO
LIMIT PUBLIC CAMPING AND PROHIBIT TEMPORARY
STRUCTURES ON PUBLIC PROPERTY WITHIN THE CITY OF
PUEBLO, COLORADO

WHEREAS, the City Council of the City of Pueblo, Colorado ("Council") is authorized to enact this ordinance pursuant to Section 3-5 of the Pueblo Municipal Charter and C.R.S. § 31-15-401; and

WHEREAS, City Council finds that the purpose of and the intent of this ordinance is to ensure the safe use of public property, to protect those lawfully using public property, preserve public property, promote the safe and lawful use of public property, and promote the public health, safety, and welfare of the citizens, including the residents of the City of Pueblo; NOW, THEREFORE;

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

SECTION 1.

Section 11-1-211 is hereby added to Article II of Chapter 1 of Title XI of the Pueblo Municipal Code as follows:(brackets indicate matter being deleted, underscoring indicates new matter being added)

Section 11-1-211 is hereby added to Article II of Chapter 1 of Title XI of the Pueblo Municipal Code as follows:

Sec. 11-1-211. Prohibited Use of Public Property.

(a) No person shall camp on City Property without first having obtained the written permission of the authorized officer of such public property.

(1) A person cannot violate this section where there is no access to other shelter available. Refusal to accept or move to other available shelter, where other shelter is accessible is a per se violation of this Section.

(2) For purposes of section, "City Property" means all land, including, any park, parkway, recreation area, roadway, open space, or any other public property owned by the City of Pueblo.

(3) For purposes of section, "Camp" means to reside or dwell temporarily in a place, with shelter, and conduct activities of daily living, such as eating or sleeping, in such place. Camp does not include temporary residence associated with the performance of governmental services.

(4) For purposes of section, "Shelter" includes, without limitation, any cover or protection from the elements other than clothing.

(5) For purposes of section, "Written Permission" includes a documented reservation, permit, park pass, or contract.

(6) Failure to provide written permission upon request by an authorized party, including all law enforcement personnel shall be treated as an admission appropriate permission was not obtained.

(b) No person shall erect or use any tent, net, or other temporary structure for the purpose of shelter or storage of property on City Property without first having obtained the Written Permission of the authorized officer of such public property.

(7) For purposes of this section, "Temporary Structure" includes any structure used to shelter a person or property after sundown and all enclosed structures. For purposes of this section, temporary structure does not apply to non-enclosed portable structures designed to provide overhead covering, including umbrellas and awnings.

(8) Failure to provide written permission upon request by an authorized party, including all law enforcement is an admission appropriate permission was not obtained.

SECTION 2.

Section 11-1-212 is hereby added to Article II of Chapter 1 of Title XI of the Pueblo Municipal Code as follows:(brackets indicate matter being deleted, underscoring indicates new matter being added)

Sec. 11-1-212. Violation and Enforcement.

(a) the Pueblo Police Department shall be responsible for enforcement of Section 11-1-211.

(b) Any person who violates Section 11-1-211 shall be subject to the penalties outlined in Section 11-1-103 of this Title.

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



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: George Hypolite, City Attorney

SUBJECT: AN ORDINANCE AMENDING CHAPTER 10 TO TITLE XI AND CHAPTER 1 OF TITLE XV OF THE PUEBLO MUNICIPAL CODE REGULATING COMMERCIAL VEHICLE OPERATIONS WITHIN THE CITY

SUMMARY:

The following ordinance would regulate the operation of commercial vehicles on any street within the City and require such operations to be compliant with C.R.S. § 42-4-235.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

This ordinance allows enforcement by Pueblo Police department in case a motor carrier drops off or picks up persons at a location that is not licensed or permitted by the PUC.

This also allows for a penalty if the motor carrier is in violation. The fines will be allocated towards road maintenance and repairs.

FINANCIAL IMPLICATIONS:

Not applicable to this Ordinance.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If the City Council chooses not to approve this ordinance, motor carrier operations will not be subject to enforcement under the Pueblo Municipal Code.

RECOMMENDATION:

Councilor Regina Maestri recommends passage of this Ordinance.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 10 TO TITLE XI AND CHAPTER 1 OF TITLE XV OF THE PUEBLO MUNICIPAL CODE REGULATING COMMERCIAL VEHICLE OPERATIONS WITHIN THE CITY

WHEREAS, the City, as a Colorado home rule municipality, is authorized to exercise all powers of self-government, as set forth in article 20, section 6 of the Colorado Constitution. Included within these general powers of self-government are the powers necessary, requisite or proper for the government and administration of its local and municipal matters; and

WHEREAS, the City's Home Rule Charter, at section 1-3, specifically provides that the city shall have all powers granted to municipalities under the state statutes, as defined therein. These powers specifically include: (1) the general police powers enumerated in C.R.S. § 31-15-401; and (2) the powers to regulate businesses enumerated in C.R.S. § 31-15-501; and

WHEREAS, the City in order to preserve the health, welfare, and safety of its citizens, City Council has determined it is necessary to regulate the intra-City operations of commercial vehicles; NOW; THEREFORE;

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

Section 15-1-16 is hereby added to Chapter 1 of Title XV of the Pueblo Municipal Code to read as follows: (brackets indicate matter being deleted, underscoring indicates new matter being added)

Sec. 15-1-16 Regulation of commercial vehicles.

(a) No person [or] motor carrier shall operate a commercial vehicle on any street within the City unless such vehicle is in compliance with C.R.S. § 42-4-235, as amended, and the rules and regulations promulgated thereunder.

(b) This Section may be enforced by any law enforcement officer who meets the inspector qualifications set forth in C.R.S. § 42-4-235, as amended, and the rules and regulations promulgated thereunder.

(c) It shall be unlawful for any person to operate a motor vehicle in violation of subsection (a) of this Section.

(d) Any person who fails to comply with any provision of this Section shall be guilty of a violation of this Code and, on conviction thereof, shall be punished by a fine as specified in Section 1-4-20 of this Code.

(e) fines collected based on conviction under this section shall be dedicated and used solely for road, right of way, and other transportation improvements.

SECTION 2.

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

SECTION 3.

This Ordinance shall become effective thirty (30) days after the date of final action by the Mayor and City Council.

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

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

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

President of City Council

ATTEST

City Clerk



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Scott Hobson, Acting Director Planning and Community Development

SUBJECT: AN ORDINANCE AMENDING ZONING RESTRICTIONS TO REZONE APPROXIMATELY 71.75 -ACRES IF A-4, AGRICULTURAL FOUR TO R-1, SINGLE FAMILY RESIDENTIAL (53.07-ACRES) AND R-2 SINGLE FAMILY RESIDENTIAL (18.05-ACRES) LOCATED IN THE WESTERN PORTION OF THE VENTANA MASTER PLAN, 2002, AND WITHIN THE PROPOSED VENTANA ESTATES OVERALL DEVELOPMENT PLAN AREA

SUMMARY:

The applicant is requesting to rezone the western portion of the 2002 Ventana Annexation area from A-4, Agricultural Four to R-1, Single Family Residential and R-2, Single Family Residential. If approved, the southern 53.7-acres of land, will be rezoned R-1, and the northern 18.05 acres will be rezoned to R-2.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The area proposed to be rezoned was annexed into the City in 2002. Following annexation, the area west of the arroyo was zoned A-4, Agricultural Four, and the eastern portion was zoned A-1, Agricultural One. In 2003, the eastern portion of the annexation site was rezoned to R-1, Single Family Residential, R-2, Single Family Residential, and B-2, Subregional Business District and subdivided into single-family residential lots, one large lot for single-family attached, and one commercial lot. In 2008, the southern portion of the eastern Ventana development area was rezoned from R-2 and B-2 to R-2U and re-subdivided to facilitate development of single-family attached homes, all zoning provisions for commercial uses were removed. The applicant is requesting to rezone the Ventana Annexation area, west of the arroyo, to R-2 and R-1, Single Family Residential to facilitate townhome and single-family development. The applicant is proposing to construct a maximum of 170 single-family

homes on the 53.7-acres proposed to be zoned R-1. The proposed R-2 area is 18.05-acres and the developer proposes to construct a maximum of 96 townhomes. The arroyo and a small portion of the area east of the arroyo will maintain the existing A-4 Zone District. At the time of subdivision, dedicated parks, within the development, will most likely be rezoned to S-1, Government Use District, the arroyo and open space east of the arroyo may be rezoned also. The proposed gross residential density based on the area being rezoned to R-1 and R-2 is 3.7 units per acre, which is within the density range of two to five dwelling units per acre as prescribed by the Suburban Land Use Designation of the Pueblo Regional Comprehensive Plan, 2022. The gross density is calculated by dividing the total number of proposed dwelling units by the total acreage included in the rezone request (266 dwelling units/71.75-acres).

In both the 2002 and the proposed Ventana Master Plans, all residential traffic from the western portion of the Ventana development will be routed through the existing Ventana Development. Traffic traveling to the northeast will navigate through Ventana Filing No. 1 to reach the full movement Bandera Parkway and Highway 78 Intersection. Since the townhomes are proposed to be constructed north of the future Sienna Drive, it is assumed that most of the townhome traffic will head east on Sienna Drive to reach Bandera Parkway. Sienna Drive is classified as a Mixed-Use Collector roadway and is designed to accommodate a maximum 10,000 vehicle trips per day. All existing residences constructed adjacent to the south side of Sienna Drive front Terracina Place and no driveway access for these homes is allowed from Sienna Drive. Sienna Drive is a Mixed-Use Collector roadway and is intended to collect traffic from nearby local roadways and provide a delineation between the townhomes, R-2 Zone District, and single-family residences, R-1 Zone District.

FINANCIAL IMPLICATIONS:

There are no financial implications for the City.

BOARD/COMMISSION RECOMMENDATION:

The Planning and Zoning Commission, at their December 13, 2023 Regular Meeting, voted 7-0 to recommend approval.

STAKEHOLDER PROCESS:

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

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

ALTERNATIVES:

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

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

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. Z-23-03 Attachments

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ORDINANCE NO. 10639

AN ORDINANCE AMENDING ZONING RESTRICTIONS TO REZONE APPROXIMATELY 71.75 -ACRES IF A-4, AGRICULTURAL FOUR TO R-1, SINGLE FAMILY RESIDENTIAL (53.07-ACRES) AND R-2 SINGLE FAMILY RESIDENTIAL (18.05-ACRES) LOCATED IN THE WESTERN PORTION OF THE VENTANA MASTER PLAN, 2002, AND WITHIN THE PROPOSED VENTANA ESTATES OVERALL DEVELOPMENT PLAN AREA

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

SECTION 1.

The zoning restrictions covering the following described property, and in addition half of all adjacent dedicated roadway and alley rights-of-way, together generally identified in the attached Rezone Exhibit, is hereby changed from A-4, Agricultural Four Zone District to R-1, Single Family Residential and R-2, Single Family Residential Zone Districts:

R-1, Single Family Residential Zone District:

A parcel of land located in the Northeast one-quarter of Section 17, Township 21 South, Range 65 West of the 6th Principal Meridian, in the County of Pueblo and State of Colorado, and being more particularly described as follows:

Considering the East line of the Northeast one-quarter of Section 17 to bear N. 00°04'53" W., and all bearings contained herein being relative thereto.

Commencing at the north quarter corner of said Section 17; thence S 00°10'47" E a distance of 764.22 feet along the west line of the Northeast one-quarter of said Section 17 to the TRUE Point of Beginning;

thence S 89°52'10" E a distance of 157.72 feet;

thence along the arc of a tangent curve to the left whose radius is 500.00 feet, a distance of 315.54 feet, delta of 36°09'29";

thence N58°14'06" E a distance of 104.83 feet;

thence along the arc of a tangent curve to the right whose radius is 500.00 feet, a distance of 318.03 feet, delta of 36°26'36";

thence S 89°35'03" E a distance of 115.28 feet;

thence along the arc of a tangent curve to the left whose radius is 500.00 feet, a distance of 356.80 feet, delta of 40°53'11"; To a point on a line being the 25-foot offset west of the western Zone A boundary for the Goodnight Arroyo as delineated on the FEMA NFIP Flood Insurance Rate Map (version 2.3.3.2; map 08101C0706D; August 15, 2019), said line subject to revision based on updated Zone A delineation; Thence along said western offset boundary the following Twenty-four (24) courses;

1. thence S 15°40'54" W a distance of 56.70 feet;
2. thence S 07°14'05" W a distance of 93.04 feet;
3. thence S 54°26'59" W a distance of 54.65 feet;
4. thence S 37°38'21" E a distance of 33.55 feet;
5. thence S 48°31'45" W a distance of 35.86 feet;
6. thence S 03°36'35" W a distance of 121.21 feet;
7. thence S 50°12'38" E a distance of 31.48 feet;
8. thence S 16°50'48" W a distance of 151.40 feet;

9. thence S 19°51'17" W a distance of 71.78 feet;
10. thence S 09°41'56" W a distance of 205.32 feet;
11. thence S 42°46'48" W a distance of 30.28 feet;
12. thence S 08°31'59" W a distance of 87.26 feet;
13. thence S 16°32'17" E a distance of 122.42 feet;
14. thence S 38°32'16" E a distance of 17.80 feet;
15. thence S 24°45'50" W a distance of 98.67 feet;
16. thence S 13°22'39" E a distance of 269.57 feet;
17. thence S 16°07'23" W a distance of 134.09 feet;
18. thence S 07°35'14" E a distance of 145.47 feet;
19. thence S 42°00'50" E a distance of 85.20 feet;
20. thence S 07°34'15" W a distance of 127.48 feet;
21. thence S 41°12'36" W a distance of 117.45 feet;
22. thence S 14°03'51" W a distance of 198.51 feet;
23. thence S 06°13'49" E a distance of 73.25 feet;
24. thence S 04°42'42" W a distance of 95.97 feet to a point on the south line of the Northeast one-quarter of said Section 17;

thence N 89°34'45" W a distance of 1043.17 feet along said south line to the Center Corner of said Section 17; thence N 00°10'47" W a distance of 1,916.09 feet along the west line of the Northeast one-quarter of said Section 17 to the point of beginning.

Said parcel contains 53.709 acres more or less.

R-2, Single Family Residential Zone District:

A parcel of land located in the Northeast one-quarter of Section 17, Township 21 South, Range 65 West of the 6th Principal Meridian, in the County of Pueblo and State of Colorado, and being more particularly described as follows:

Considering the East line of the Northeast one-quarter of Section 17 to bear N. 00°04'53" W., and all bearings contained herein being relative thereto.

Beginning at the north quarter corner of said Section 17; thence S 89°39'25" E a distance of 1,377.24 feet; along the north line of said Section 17; To a point on a line being the 25-foot offset west of the western Zone A boundary for the Goodnight Arroyo as delineated on the FEMA NFIP Flood Insurance Rate Map (version 2.3.3.2; map 08101C0706D; August 15, 2019) said line subject to revision based on updated Zone A delineation; Thence along said western offset boundary the following Five (5) courses;

1. thence S 00°35'39" E a distance of 42.66 feet
2. thence S 23°45'51" W a distance of 48.47 feet;
3. thence S 61°44'34" W a distance of 59.79 feet;
4. thence S 09°20'32" E a distance of 100.03 feet;
5. thence S 11°31'03" W a distance of 180.73 feet;

thence along the arc of a non-tangent curve to the right whose radius is 500.00 feet, a distance of 356.80 feet, delta of 40°53'11", chord bearing S 69°58'21" W a distance of 349.28 feet;

thence S 89°35'03" E a distance of 115.28 feet;

thence along the arc of a tangent curve to the left whose radius is 500.00 feet, a distance of 318.03 feet, delta of 36°26'36";

thence N58°14'06" E a distance of 104.83 feet;

thence along the arc of a tangent curve to the right whose radius is 500.00 feet, a distance of 315.54 feet, delta of 36°09'29";

thence S 89°52'10" E a distance of 157.72 feet to a point along the west line of the Northeast one-quarter of said Section 17;

thence N 00°10'47" W a distance of 764.22 feet along the west line of the Northeast one-quarter of said Section 17 to the point of beginning.
Said parcel contains 18.054-acres more or less.

SECTION 2.

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

SECTION 3.

This Ordinance shall become effective immediately upon final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on January 08, 2024.

Final adoption of Ordinance by City Council on January 22, 2024.

APPROVED: 
PRESIDENT OF CITY COUNCIL

Action by the Mayor:

☒ Approved on January 30, 2024.

☐ Disapproved on _____ based on the following objections:

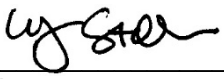

Mayor

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

RE-ZONING EXHIBIT

A PARCEL OF LAND LOCATED
IN THE NORTHEAST ONE-QUARTER OF SECTION 17,
TOWNSHIP 21 SOUTH, RANGE 65 WEST OF THE
6"th PRINCIPAL MERIDIAN, IN THE COUNTY OF PUEBLO, CO 81005.

CO. STATE GRID NORTH



LEGEND:

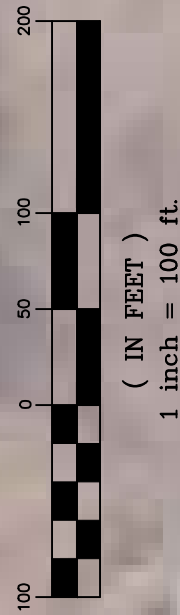
Description	Area (Acres)	Remarks
AREA TO BE RE-ZONE	70.897	FROM A-4 TO R-2
FLOODPLAIN, SW MGMT, OPEN SPACE, PARKS/TRAILS	20.558	Will be deeded to the city at the time of Subdivision
TOTAL AREA	91.455	

FEMA MAPPING
FLOODWAY LINES
25' EROSION BUFFER
ZONE

FEMA MAPPING
FLOODWAY LINES
25' EROSION BUFFER
ZONE

AREA TO BE REZONED
FROM A-4 TO R-2(70.897 Ac)

GRAPHIC SCALE



RE-ZONING EXHIBIT

THE VENTANA ESTARES SUBDIVISION (Ventana Filling#2)

CITY OF PUEBLO, PUEBLO CO 81005

OWNER:- VESTOGE PUEBLO CO LLC

SCALE: 1"=100'

DATE: Jun. 023

C.L.: 2

SHEET

OF

FILE No.

BELL CONSULTING, LLC

P.O. Box 8
Rifle, Colorado 81650
Phone: 970/948-3153
nb@bellconsult.net

Westage Engineers

44081 Pipeline Plaza,
Ashburn VA 20147
Tel. (571) 278-6992

PLAN DATE

07/03/023
08/07/023
08/25/023
09/01/023

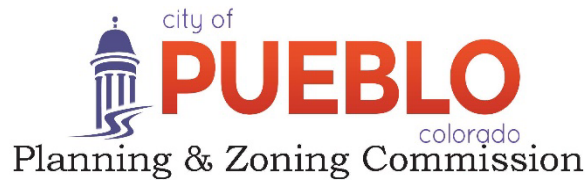
DATE

REVISIONS

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

Regular Agenda:

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 Odom, 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.

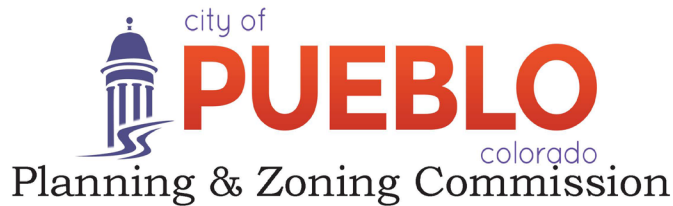
Commission Action: Bailey moved to recommend the application with one (1) staff condition, seconded by Spinuzzi.

Motion Passed 5-1

Mike Castellucci
Chair

Patrick Avalos
Vice Chair

Sarah Martinez
City Council Representative



Christopher Pasternak

Alexandra Aznar

Elizabeth Bailey

Cheryl Spinuzzi

Z-23-03

TO: City of Pueblo, Planning and Zoning Commission

FROM: Beritt Odom, Principal Planner

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

DATE: September 13, 2023

SUBJECT: Rezone from A-4, Agricultural Four to R-2, Single-Family Residential.

APPLICANT: Ramesh Kalwala, Vestoge, Pueblo CO LLC

PROPERTY OWNER: Ramesh Kalwala, Vestoge, Pueblo CO LLC

LOCATION: 74.21 acres, generally located west of Ventana, Subdivision, Filing No. 1 and north of State Highway 78

CONCURRENT REQUESTS: ODP-23-01 Ventana Estates Overall Development Plan

REQUEST:

The applicant is requesting to rezone 70.89-acres of land, 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 to R-2, Single Family Residential.

BACKGROUND AND ANALYSIS:

The area proposed to be rezoned was annexed into the City in 2002. Following annexation, the area west of the arroyo that bisects the property was zoned A-4, Agricultural Four, and the eastern portion was zoned A-1, Agricultural One. The eastern portion of the annexation site was rezoned to R-1, Single Family Residential, R-2, Single Family Residential, and B-2, Subregional Business District in 2003 and subdivided into single-family residential lots. In 2008, the southern portion of the eastern Ventana development was rezoned to R-2U and re-subdivided to facilitate development of single-family attached homes.

The applicant is requesting to amend the western portion of the 2002 Ventana Master Plan and rezone the area west of the arroyo to R-2, Single Family Residential to facilitate single-family and townhome development within a more traditional grid subdivision that includes five cul-de-sacs as opposed to the previous curvilinear streets and roundabouts. The applicant is proposing to construct 165 single-family homes, 95 townhomes and 15.168 acres of parks/open space. Total residential units will be 260, which is a proposed gross residential density is 3.5 units per acre.

The 2002 Ventana Master Plan contemplated approximately 285 dwelling units within the western portion of the development. In both the 2002 and the proposed Ventana Master Plan, all residential traffic from the western portion of the Ventana development is intended to be routed through the existing Ventana Development (Ventana

Subdivision, Filing No. 1). Traffic traveling to the northeast would use Siena Drive and link to Bandera Boulevard. Traffic heading southwest will utilize the Ventana Circle and State Hwy 78 Intersection. The proposed Ventana Development has approximately 25 fewer dwelling units than the original planned development, therefore traffic impacts should not be greater than what was originally planned and approved in 2002.

LAND USE AND PLANNING COMMENTS

CHARACTER AND COMPATIBILITY

Site Character:	The area proposed to be rezoned is vacant undeveloped land consisting of native prairie grasses, located west of Ventana Subdivision, Filing No. 1 and north of State Highway 78.		
R-2 District Regulations:	Lot Area Single-Family: 5,000 sq. ft.		
	Minimum Lot Width: 50-feet		
	Max Building Height: 35-ft.		
Neighborhood Compatibility:	North	Pueblo County A-4, Unimproved land.	
	East	R-1 and R-2U, Single family residences and single family attached residences.	
	South	Pueblo County A-4, Residence and salvage items	
	West	Pueblo County A-4, Unimproved land	
Comprehensive Plan:	The rezoning area is designated as Suburban Residential by the “Pueblo Regional Comprehensive Plan, 2022.” According to the Comprehensive Plan, Suburban Neighborhoods are predominantly single-family detached and attached homes on similarly sized lots, and future development accommodates a similar mix of lot sizes and housing types. The plan states that new neighborhoods should be designed with a mix of housing types, and pedestrian and bicycle connectivity should be provided within and between neighborhoods (Policy – 1.1.2.). Supporting land uses can include accessory dwelling units, single-family attached homes, duplexes, and townhouses. The recommended density for Suburban Neighborhoods is two to five units per acre. The proposed townhome and single-family residential development provides a mixture of housing types as promoted by the Comprehensive Plan. The proposed		

net density is approximately 3.5 units per acre, which is within the prescribed density range of the Suburban Residential land use category, which is two to five units per acre and is therefore compliant with the 2022 Pueblo Regional Comprehensive Plan.

ZONING AMENDMENT TEST

The standard for accepting an amendment to the zoning map is that the proposed zoning action must either:

1) Further the goals and objectives of the comprehensive land use plan, or

- ☐ Comments The rezoning and future development of single-family homes and townhomes furthers the Regional Comprehensive Plan Goal of providing attainable housing. According to the plan, rising housing costs and a constrained housing supply have made it increasingly difficult for many people to find housing that meets their needs at a price they can afford.

2) Show that the area has changed significantly since the adoption of the comprehensive land use plan

- ☐ Comments Not Applicable

3) Show that there was a mistake or error made in the original zoning of the property.

- ☐ Comments Not Applicable

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

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

- ☐ Comments The application contains the required information.

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

- ☐ Comments The application contains the required information

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

- ☐ Comments The application contains the required information

A statement of the facts which the applicant believes justify the amendment; provided; however, that when any amendment changing the zoning map is requested:

- Comments The rezoning area appears to have been zoned A-4 following annexation as an interim zone district prior to development. It is appropriate to rezone to a low-density residential zone district as prescribed by the Pueblo Regional Comprehensive Plan, 2022 and the proposed Ventana Estates Overall Development Plan.

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

- Comments The rezoning site is currently undeveloped natural lands. The proposed rezoning will facilitate development of single-family residences and townhomes. Because the site is currently undeveloped, traffic volumes will increase; however, the proposed residential development will have approximately 25 fewer residential dwelling units than the previously approved 2002 Ventana Master Plan. Therefore, traffic will not be any greater than originally proposed and approved.

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

- Comments The proposed Ventana Estates Overall Development Plan includes tentative lot layouts, a Parks and Open Space Plan, and Street Network Plan.

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

- Comments The application does not include an estimated time schedule for beginning and completion of the development.

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

- Comments The application does not include a statement reasonably indicating the applicant's economic responsibility and capability of accomplishing the development for which the zoning amendment is requested.

RECOMMENDED ACTION:

If the Planning and Zoning Commission finds the rezoning request furthers the goals and objectives of the Comprehensive Plan, a recommendation of approval to City Council is appropriate with the following condition:

1. **Provide a legal description, for the area to be rezoned, in a Word Document format prior to City Council review.**

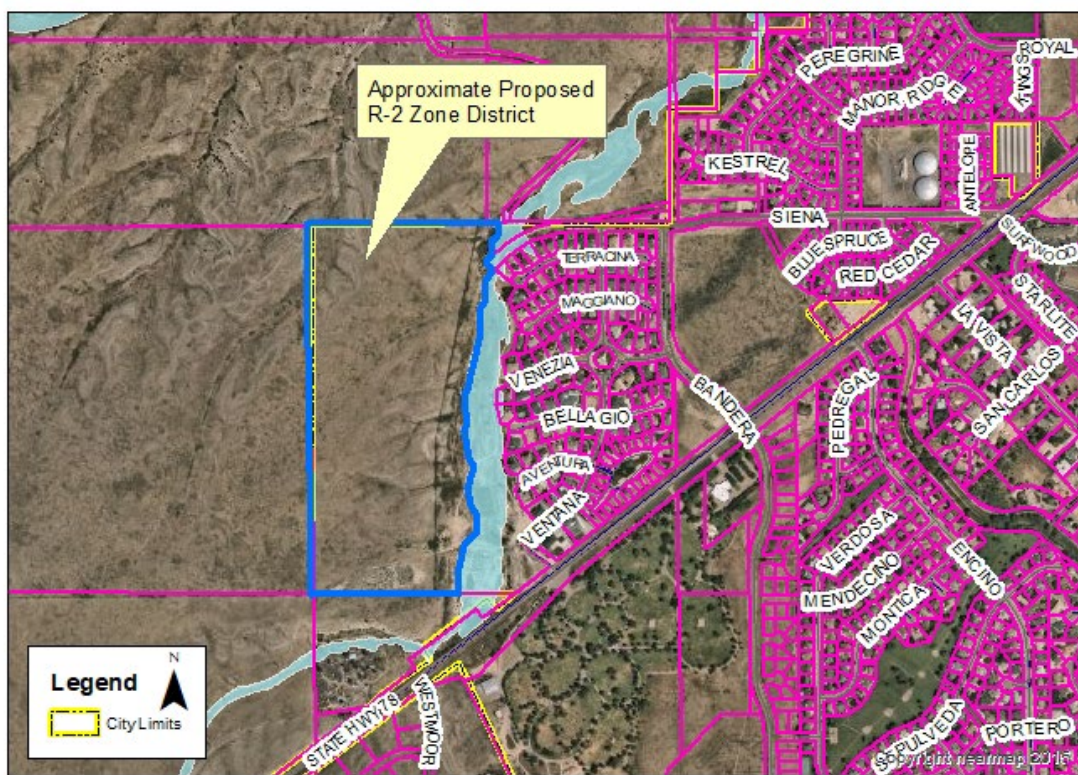
REFERRAL AGENCIES AND COMMENTS:

- City Public Works-No comment
- City Transportation-No comment
- City Law Department-No comment
- Pueblo Regional Building Department-No comment
- City Fire Department-No comment

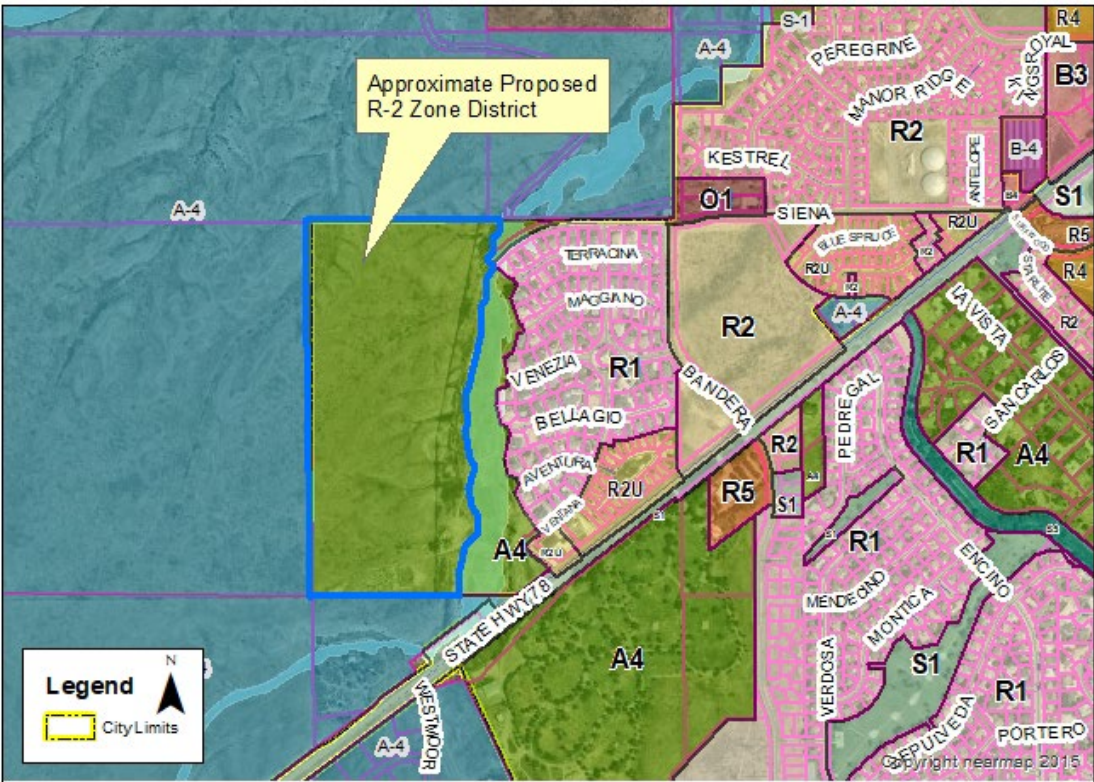
- City Wastewater-No comment
- City Stormwater-No comment
- City Parks and Recreation Department-No comment
- Xcel Energy-No comment
- Black Hills Energy-No comment
- CDOT-No comment

ATTACHMENTS:

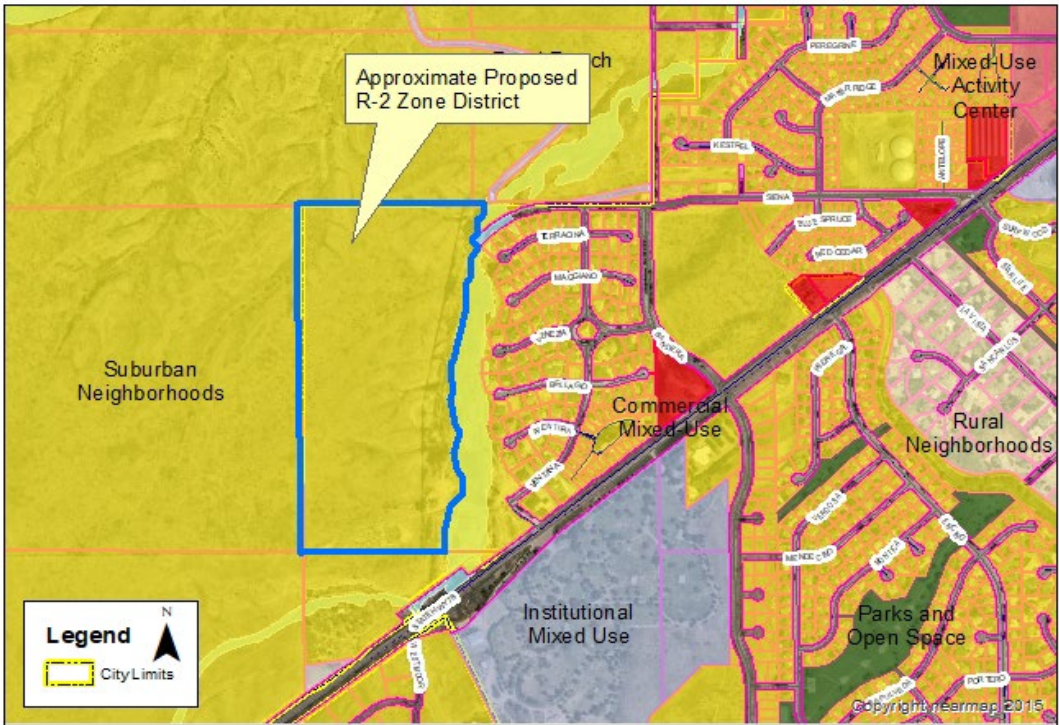
- A. **Aerial Photograph**
- B. **Zoning Map**
- C. **Comprehensive Plan Map**
- D. **Site Photographs**
- E. **Zoning Exhibit**



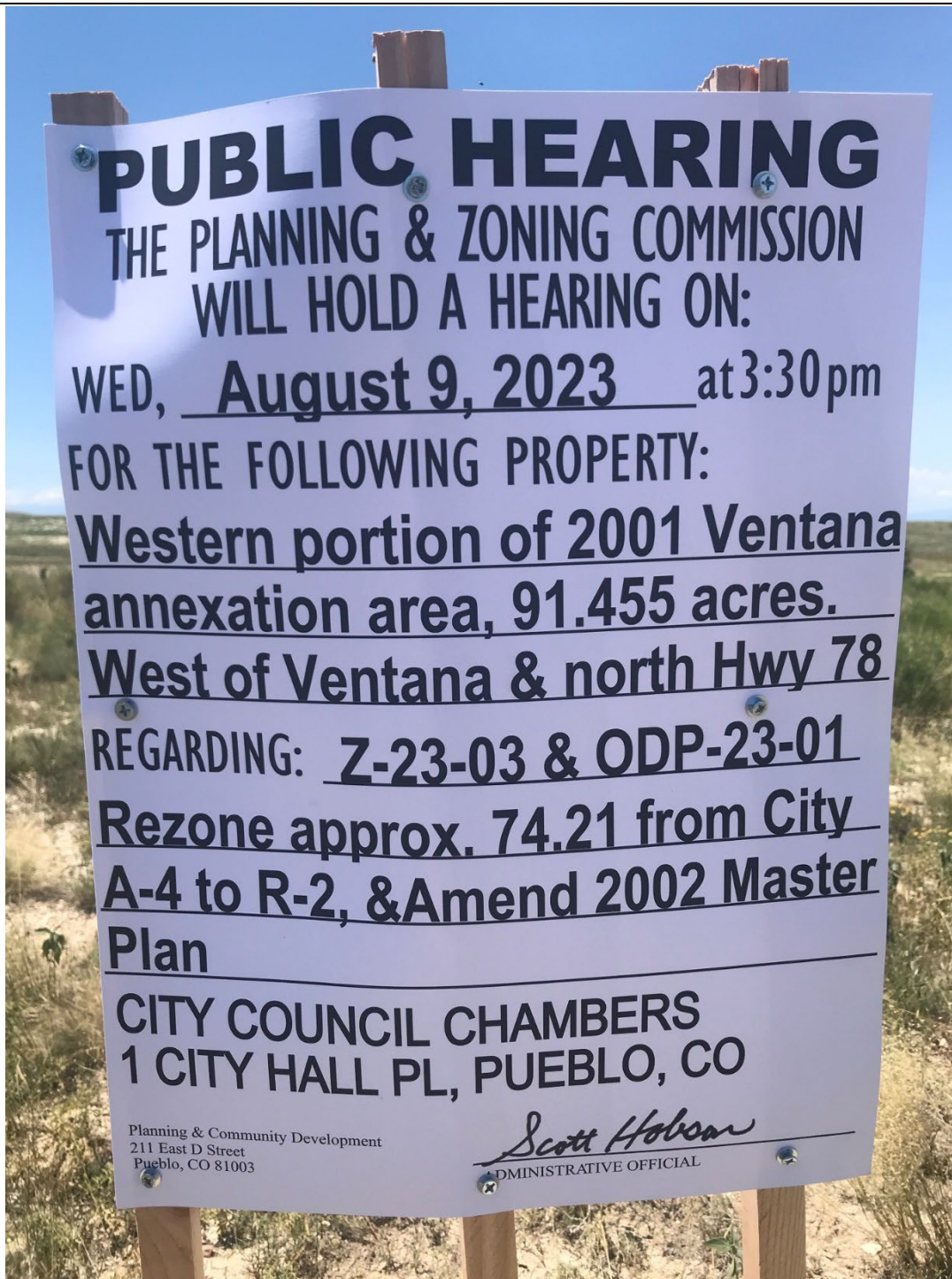
A. Aerial Photograph



B. Zoning



C. Comprehensive Plan



D. Public Notice



D. Rezoning site looking northwest from the corner of Northern Ave. and Ventana Cir.



D. Rezoning Site looking west from Aventura Way

July 25, 2023

This is to inform you that the City of Pueblo Planning and Zoning Commission will hold a public hearing on a request by **Ramesh Kalwala, Vestoge Pueblo, CO LLC** for approval of the following application(s):

ODP-23-01 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.

Z-23-03 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.

The Planning and Zoning Commission meeting will be held on August 9, 2023, at 3:30 p.m., in City Council Chambers, 1 City Hall Place, Pueblo, CO or by Zoom: <https://pueblo.zoom.us/j/92717867722?pwd=WUdnaHVGbnlCdHRrUHNfZnpPWG1Ydz09>, Meeting ID: 927 1786 7722, Passcode: 195462, Telephone: 1 346 248 7799 US (Houston). You are welcome to attend this public hearing and express your viewpoint concerning this proposal. To review the plans and staff report for the proposed application, please visit www.pueblo.us/PandZ and click on “Most Recent Agenda” no sooner than the Friday prior to the hearing. **Please contact the planner listed below if you have questions.**

Scott Hobson, Director
Planning & Community Development
Beritt Odom, Principal Planner
(719) 553-2339

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Scott Hobson, Director
Planning & Community Development
Beritt Odom, Principal Planner
(719) 553-2339

CASE NUMBER: Z-23-03

CERTIFICATION

I hereby certify that I did this day cause written notice of the public hearing on the proposed Zoning Map Amendment of the property located at Parcel # 1517000022 to be sent to the attached list of owners of the real property lying within three hundred (300) feet of the said property on which the Zoning Map Amendment is proposed by depositing the same properly addressed and postage paid in the post office, as set forth in the Code of Ordinances, Section 17-6-2.

July 25, 2023

(Date)

PUEBLO PLANNING & ZONING COMMISSION

By Cindy Caputo

I hereby certify that I did this day verify and photograph the posted notice of the public hearing on the Zoning Map Amendment of the property located at Parcel #1517000022, upon which action is pending as set forth in the Code of Ordinances, Section 17-6-2.

July 25, 2023

(Date)

PUEBLO PLANNING & ZONING COMMISSION

By Cindy Caputo

Owner	OwnerStree	OwnerCity	Owne
VESTOGE PUEBLO CO LLC	13800 COPPERMINE RD	HERNDON	VA
WILSON FAMILY PARTNERSHIP LTD	207 BRIDLE TRL UNIT O	PUEBLO	CO
O QUIN NICHOLAS R/O QUIN AUBREY J	2422 VENTANA CIR	PUEBLO	CO
PUEBLO RECREATION INVESTORS LLC	31 N TEJON ST STE 500	COLORADO SPR CO	
SOTO KEITH/SOTO OLIVIA	323 QUINCY ST	PUEBLO	CO
VIALPANDO STEPHEN G + VIALPANDO DEBRA K ,	37 POSADA DR	PUEBLO	CO
HALDE KERRY W/HALDE CYNTHIA J	46495 US HIGHWAY 24	BURLINGTON	CO
KNEZEVICH MARY A	5521 STATE HWY 78	PUEBLO	CO
TURNER CHRISTOPHER MICHAEL + TURNER LEA ANN ,	5605 TERRACINA PL	PUEBLO	CO
AUGEROT MATTHEW / AUGEROT JANELLE	5605 TERRACINA PL	PUEBLO	CO
TORRES PEDRO J/TORRES VALERIE A	5610 TERRACINA PL	PUEBLO	CO
RASO GARY J/RASO WENDY H	5611 TERRACINA PL	PUEBLO	CO
MORROW DAVID R II	5618 TERRACINA PL	PUEBLO	CO
ROBERTS TONY/ROBERTS DEBRA	5623 TERRACINA PL	PUEBLO	CO
TORLINE DAVID K/TORLINE CAROLYN C	5627 TERRACINA PL	PUEBLO	CO
BELL BRIAN A/BELL KERRI L	5631 MAGGIANO PL	PUEBLO	CO
BUXTON DALE O/BUXTON SUSAN S REVO	5633 TERRACINA PL	PUEBLO	CO
WHITE JODI L	5634 TERRACINA PL	PUEBLO	CO
JIN DONGKWAN + LEE SANGMI ,	5637 MAGGIANO PL	PUEBLO	CO
ZERFAS BRAD C/ZERFAS MARY M	5637 TERRACINA PL	PUEBLO	CO
SOTO GUILLERMO E TR/SOTO DEBRA J	5637 VENEZIA WAY	PUEBLO	CO
ORESKOVICH ANTHONY G + ORESKOVICH CELESTE M ,	5641 AVENTURA WAY	PUEBLO	CO
DANIELS SALLY J	5641 TERRACINA PL	PUEBLO	CO
LEWIS ERIC ANDREW / ROUKEMA THOMA	5645 MAGGIANO PL	PUEBLO	CO
GUTIERREZ AARON C	5645 TERRACINA PL	PUEBLO	CO
LARSEN ARNOLD R/LARSEN CHRISTINE	5645 VENEZIA WAY	PUEBLO	CO
MCCAFFERTY DAVID R + MCCAFFERTY JESSICA L ,	5647 AVENTURA WAY	PUEBLO	CO
NORICK DENNIS WAYNE / WILLEY LEAH	5648 AVENTURA WAY	PUEBLO	CO
BOZZI AARON / BOZZI VIVIANA SALV	5648 BELLAGIO WAY	PUEBLO	CO
KONCILJA FAMILY TRUST LLC	5648 TERRACINA PL	PUEBLO	CO
GARCIA MICHAEL L	5648 VENEZIA WAY	PUEBLO	CO
MURAD ALI KHETRAN/MURAD BARBARA G	5649 BELLAGIO WAY	PUEBLO	CO
PRUTCH FREDERICK R	5650 MAGGIANO PL	PUEBLO	CO
C F + I STEEL LP + C/O TAX DEPT ,	PO BOX 316	PUEBLO	CO

OwnerZip
20171-6163
81005-2974
81005-5575
80903-1514
81004-2024
81005-2946
80807-9405
81005-9606
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81005-5566
81002-0316



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Laura Solano, Chief of Staff

SUBJECT: A RESOLUTION AUTHORIZING A TRANSFER FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2024 GENERAL FUND BUDGET TO THE PUEBLO FOOD PROJECT IN THE AMOUNT OF \$2,000 TO SPONSOR THE SUN, SOIL, WATER AG SUMMIT ON FEBRUARY 23 - 24, 2024

SUMMARY:

Attached for consideration is a request for support of the Pueblo Food Project in the amount of \$2,000 to sponsor the Sun, Soil, Water Ag Summit on February 23 - 24, 2024.

PREVIOUS COUNCIL ACTION:

City Council sponsored this event in 2023.

BACKGROUND:

This two-day summit holds several events including the 2nd Annual Pueblo Food Summit Leadership Awards, a Food Business Pitch Competition, and, of course, a Community-Led Summit, where we will gather to learn, share, inspire, and catalyze food systems change. Last year PFP hosted over 200 people at this event.

On Friday, February 23rd at 6 pm, the Food Systems Leadership Awards will honor leaders in the Pueblo Food System and announce the pitch competition winners. On Saturday, February 24, a day-long conference will be held.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$2,000 would be transferred from the Council Contingencies Account in the 2023 General Fund Budget to the Pueblo Food Project.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Resolution.

STAKEHOLDER PROCESS:

Not applicable to this Resolution.

ALTERNATIVES:

Not applicable to this Resolution.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. 01-22-24 Sun Soil Water Ag Summit Contingencies
2. 01-22-24 Sun Soil Water Ag Summit Background

RESOLUTION NO. 15469

A RESOLUTION AUTHORIZING A TRANSFER FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2024 GENERAL FUND BUDGET TO THE PUEBLO FOOD PROJECT IN THE AMOUNT OF \$2,000 TO SPONSOR THE SUN, SOIL, WATER AG SUMMIT ON FEBRUARY 23 - 24, 2024

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Payment in the amount of \$2,000 from the Council Contingencies Account in the 2024 General Fund Budget is authorized to be transferred to Pueblo Food Project to sponsor the Sun, Soil, Water Ag Summit on February 23 - 24 2024.

SECTION 2.

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

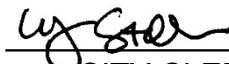
SECTION 3.

This Resolution shall become effective upon passage and approval.

INTRODUCED: January 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

[illegible]

DATE	BALANCE IN 2024 CONTINGENCIES ACCOUNT		DEBIT	CREDIT	BALANCE



≡ ABOUT ▾ CALENDAR ENTREPRENEUR DEVELOPMENT PROGRAM SUN SOIL WATER AG SUMMIT ▾

SUN SOIL WATER AG SUMMIT '24

[aquí para español](#)

SUN SOIL 2024 WATER AG SUMMIT



PUEBLO COUNTY
COLORADO STATE UNIVERSITY
EXTENSION



PUEBLO
FOOD
PROJECT

Friday, February 23rd

&

Saturday, February 24th

scroll for registration

Elements of the Sun Soil Water Ag Summit

Pitch Competition | Friday, February 23rd - Afternoon

Southern Colorado Innovation Link and the Pueblo Food Project are hosting a pitch competition for food and agriculture related businesses in Colorado. Registration is closed but you can see more information below on how to watch!

3rd Annual Pueblo Food Systems Leadership Awards | Friday, February 23rd - Evening

Join us for an evening of celebration as we honor leaders in the Pueblo Food System and announce our pitch competition winners. We will enjoy local food, drinks, and music. Sponsorship packages are available. Seating is limited.

Sun Soil Water Ag Community Led Summit | Saturday, February 24th - All-Day

We will gather to learn, share, inspire, and catalyze community food systems change. This day-long conference will include key note presentations, panel discussions, hands-on breakouts, and delicious food to enjoy. All are welcome! Our focus of this year's conference will be People Power! We are so excited to help our community members, organizations, and producers gain knowledge and better engage with our food system.

Makers' Market and Idea Fair | Saturday, February 24th - Afternoon/Evening

Conference participants will get to explore ideas, try products, and support local food business at the Maker's Market and Idea Fair. See what's happening with local foods and take home some goodies to share with family and friends. Makers and Community organizations interested in a table are welcome to participate for free. Each spot includes a table, chair, tablecloth, and electricity. Share your products, and your ideas. **[APPLY HERE!](#)**

**Scholarships available for Awards and Summit. Dual translation offered for all events.*

Register NOW!

Interested in **volunteering**? Fill out the form below to get connected!

VOLUNTEER FORM!

Interested in **supporting Sun Soil Water**? Sponsor levels below!

SPONSORSHIP OPTIONS!

Thank you to last year's sponsors!



We'll see you there!

email address

Subscribe

info@pueblofoodproject.org

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**Background Paper for Proposed
Action Item**

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Dennis Flores, Councilor

SUBJECT: A RESOLUTION AUTHORIZING PAYMENT FROM COUNCIL CONTINGENCIES IN THE 2024 GENERAL FUND BUDGET TO THE LATINO CHAMBER OF COMMERCE IN THE AMOUNT OF \$1,100 TO SPONSOR A TABLE OF 10 AT THE 45TH ANNIVERSARY DINNER DANCE HELD ON SATURDAY, FEBRUARY 24, 2024 AT THE PUEBLO CONVENTION CENTER

SUMMARY:

Attached for consideration is a request for support of the Latino Chamber of Commerce in the amount of \$1,100 to sponsor a table of 10 at the 45th Anniversary Dinner Dance held on Saturday, February 24, 2024, at the Pueblo Convention Center.

PREVIOUS COUNCIL ACTION:

City Council contributed to this event in 2005, 2008, 2015, 2018, 2019, 2020, 2022, and 2023.

BACKGROUND:

This resolution supports the Latino Chamber of Commerce's Annual Dinner Dance Celebration on Saturday, February 24th in beautiful Pueblo, Colorado. The evening celebration recognizes outstanding community leaders, business organizations, and individuals, while providing a unique and elegant experience highlighting the Latino culture. This is the Latino Chamber's biggest event of the year. The 45th Annual Dinner Celebration will include a night of networking, celebration, games, giveaways, dancing, and a silent auction.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$1,100 would be paid from the Council Contingencies Account in the 2024 General Fund Budget to Pueblo Latino of Commerce.

BOARD/COMMISSION RECOMMENDATION:

This Resolution is at the request of Council Member Dennis Flores.

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 Dennis Flores.

ATTACHMENTS:

1. 2024 45th Annual Dinner Dance Celebration Sponsor Sheet
2. 2024 Contingencies (Council) Latino Chamber 45th Anniversary Dinner Table

RESOLUTION NO. 15470

A RESOLUTION AUTHORIZING PAYMENT FROM COUNCIL CONTINGENCIES IN THE 2024 GENERAL FUND BUDGET TO THE LATINO CHAMBER OF COMMERCE IN THE AMOUNT OF \$1,100 TO SPONSOR A TABLE OF 10 AT THE 45TH ANNIVERSARY DINNER DANCE HELD ON SATURDAY, FEBRUARY 24, 2024 AT THE PUEBLO CONVENTION CENTER

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Payment in the amount of \$1,100 from the Council Contingencies Account in the 2024 General Fund Budget is authorized to be paid to Latino Chamber of Commerce to sponsor the 45th Anniversary Dinner Dance held on Saturday, February 24, 2024.

SECTION 2.

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

SECTION 3.

This Resolution shall become effective upon passage and approval.

INTRODUCED: January 22, 2024

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

ANNUAL DINNER DANCE CELEBRATION



The Latino Chamber of Commerce is excited to host the **Annual Dinner Dance Celebration** on Saturday, February 24th in beautiful Pueblo, Colorado. The evening celebration recognizes outstanding community leaders, business organizations, and individuals, while providing a unique and elegant experience highlighting the Latino culture. This is the Latino Chamber's biggest event of the year and we invite you to be a part of it! The 45th Annual Dinner Celebration will include a night of networking, celebration, games, giveaways, dancing, and a silent auction.

PLATINUM | \$5,000 (EXCLUSIVE)

- (1) Reserved corporate table – 10 seats
- Up to a one-minute video played during the event (provided by sponsor)
- Company representative will have the option to provide welcome remarks before dinner
- Full-page advertisement in the event program (provided by sponsor)
- Sponsor signage/banner/pop up displayed during the event
- Media recognition on all Annual Dinner Celebration advertising as a Platinum Sponsor
- Sponsor's promotional items placed on tables during the event
- Sponsor name/logo featured in the presentation & on table signs
- Dedicated display table of resources and materials during the event
- One month banner advertisement on Latino Chamber website (redeemable in 2024)

GOLD | \$4,000

- (1) Reserved corporate table – 10 seats
- Up to a one-minute video played during the event (provided by sponsor)
- Full-page advertisement in the event program (provided by sponsor)
- Sponsor signage/banner/pop up displayed during the event
- Media recognition on all Annual Dinner Celebration advertising as a Gold Sponsor
- Sponsor name/logo featured in the presentation & on table signs
- One month banner advertisement on Latino Chamber website (redeemable in 2024)

SILVER | \$3,000

- (1) Reserved corporate table - 10 seats
- Up to a 30-second video played during the event (provided by sponsor)
- Half-page advertisement in the event program (provided by sponsor)
- Sponsor signage/banner/pop up displayed during the event
- Media recognition on all Annual Dinner Celebration advertising as a Silver Sponsor
- Sponsor name/logo featured in the presentation & on table signs

BRONZE | \$2,000

- 8 Reserved seats for the event
- Half-page advertisement in the event program (provided by sponsor)
- Media recognition on all Annual Dinner Celebration advertising as a Bronze Sponsor
- Sponsor name/logo featured in the presentation & on table signs

COPPER | \$1,000

- 6 Reserved seats for the event
- Quarter-page advertisement in the event program (provided by sponsor)
- Media recognition on all Annual Dinner Celebration advertising as a Copper Sponsor
- Sponsor name/logo featured in the presentation & on table signs

SILENT AUCTION DONATION

- Sponsor name on bid sheets and event literature

CONTRIBUTING | \$500

- Media recognition on all Annual Dinner Celebration advertising as a Contributing Sponsor
- Sponsor name featured in the presentation & event program

TABLES | \$1,100

- Table of 10 seats with customized table sign for your company/family and listed in the event program and presentation

INDIVIDUAL TICKETS | \$110

EVENT PROGRAM ADS | \$200 - \$300

- Quarter Page | \$200
- Half Page | \$250
- Full Page | \$300

SPONSOR NAME/LOGO MEDIA RECOGNITION INCLUDES

- Customized printed/mailed invitations
- Customized email invitations
- Latino Chamber of Commerce electronic newsletter – El Gritón
- Social media postings on Facebook, Twitter, LinkedIn, and Instagram
- Listing in the Latino Chamber of Commerce calendar of events & the City of Pueblo's community events calendar
- General press release – local/state media distribution

*If your company does not have a video or commercial the Latino Chamber or a member may be able to help. Contact our office at (719) 542-5513



[illegible]



**Background Paper for Proposed
Action Item**

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff 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 COUNCIL CONTINGENCIES IN THE 2024 GENERAL FUND BUDGET TO THE BOYS & GIRLS CLUB IN THE AMOUNT OF \$1,800 TO SPONSOR A V.I.P. TABLE OF 10 AT THE CHAMPIONS OF YOUTH DINNER ON THURSDAY, MARCH 14, 2024 AT THE PUEBLO CONVENTION CENTER

SUMMARY:

Attached for consideration is a request for sponsorship of a V.I.P. table for the Champions of Youth Dinner.

PREVIOUS COUNCIL ACTION:

City Council sponsored a table for this event in 2021 for \$1,200, in 2022 for \$1,350, and in 2023 for \$1,600.

BACKGROUND:

Since 1972, Boys & Girls Clubs of Pueblo County's proven youth development strategy has been the solution for children and teens in need. The Club's afterschool and summer programs fulfill an unquestionable need: keeping local youth productively occupied, out of trouble, and in a positive learning environment.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$1,800 would be paid from the Council Contingencies Account in the 2024 General Fund Budget to the Boys and Girls Club of Pueblo County.

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. BGC CYD 2024
2. 2024 Contingencies (Council) Boys Girls Club Champions of Youth

RESOLUTION NO. 15471

A RESOLUTION AUTHORIZING PAYMENT FROM COUNCIL CONTINGENCIES IN THE 2024 GENERAL FUND BUDGET TO THE BOYS & GIRLS CLUB IN THE AMOUNT OF \$1,800 TO SPONSOR A V.I.P. TABLE OF 10 AT THE CHAMPIONS OF YOUTH DINNER ON THURSDAY, MARCH 14, 2024 AT THE PUEBLO CONVENTION CENTER

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Payment in the amount of \$1,800 from the Council Contingencies Account in the 2024 General Fund Budget is authorized to be paid to the Boys and Girls Club of Pueblo County for sponsorship of a V.I.P. table for the Champions of Youth Dinner on Thursday, March 14, 2024, at the Pueblo Convention Center.

SECTION 2.

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

SECTION 3.

This Resolution shall become effective upon passage and approval.

INTRODUCED: January 22, 2024

BY: Sarah Martinez
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



Presenting Sponsor \$25,000

20 Tickets to event and reception (two tables of 10)
 Prominent seating and exclusive table gift *
 Corporate digital media at event
 Corporate name and logo on invitation¹⁰ and in press release
 Opportunity to speak to attendees during event program
 Logo on all social media and website
 Verbal recognition at event and logo in event video presentation
 Thank you video, made by BGCP, played at event

Platinum Sponsor \$5,000

10 Tickets to event and reception (one table of 10)
 Prominent seating
 Corporate digital media at event
 Corporate name and logo on invitation⁶
 Logo on all social media and website
 Verbal recognition at event and logo in event video presentation

Club Kid Underwriter \$2,500

Sponsors tickets for Club Kids who will be honored at the event, plus one guardian per child
 Corporate branding on Club Kids' snack packs at the event
 2 tickets to event and reception
 Corporate digital media at event
 Mention in social media and press release
 Verbal recognition at event and logo in event video presentation

Silver Sponsor \$1,500

6 Tickets to event and reception
 Mention in social media and press release
 Verbal recognition at event and logo in event video presentation

Reserved Table of 10 \$1,600

10 Tickets to event and reception (one table of 10)
 Name recognition in event video presentation

A portion of your ticket or sponsorship purchase qualifies for the 50 percent Colorado Childcare Contribution Tax Credit. Contact your financial consultant for details.

Signature Sponsor \$10,000

10 Tickets to event and reception (one table of 10)
 Prominent seating and exclusive table gift *
 Corporate digital media at event
 Corporate name and logo on invitation¹⁰ and in press release
 Logo on all social media and website
 Verbal recognition at event and logo in event video presentation
 Thank you video, made by BGCP, played at event

Gold Sponsor \$2,500

10 Tickets to event and reception (one table of 10)
 Prominent seating
 Corporate digital media at event
 Corporate name and logo on invitation⁶
 Mention in social media and press release
 Verbal recognition at event and logo in event video presentation

VIP Table \$1,800 (Only 6 tables available)

10 Tickets to event and reception (one table of 10)
 Prominent seating and exclusive table gift⁶
 Corporate table signage

Bronze Sponsor \$1,000

2 Tickets to event and reception
 Name recognition in event video presentation

Individual Ticket \$150



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 22, 2024

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

SUBJECT: AN ORDINANCE ESTABLISHING FUND NO. 304 - COP-FIRE STATIONS AND BUDGETING AND APPROPRIATING THE PROCEEDS RECEIVED FROM THE ISSUANCE OF THE SERIES 2023 CERTIFICATES OF PARTICIPATION AND ALL FUTURE FUNDS RECEIVED INTO FUND NO. 304.

SUMMARY:

This Ordinance establishes Fund No. 304 - COP-Fire Stations and budgets and appropriates funds in the amount of \$34,450,000 from the issuance of the Series 2023 Certificates of Participation and all future funds received into Fund No. 304.

PREVIOUS COUNCIL ACTION:

On October 23, 2023, by Ordinance No. 10570, City Council authorized 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 by issuing Series 2023 Certificates of Participation to not exceed \$37,000,000.

BACKGROUND:

On December 21, 2023, the City closed and received the proceeds from the Series 2023 Certificates of Participation (COP). A separate account with ColoTrust, Fire Stations COP, was created for the transaction proceeds. This Ordinance will establish a debt service fund for the Series 2023 COPs.

FINANCIAL IMPLICATIONS:

The attached ordinance budgets and appropriates \$34,450,000 from the Series 2023 Certificates of Participation issuance into Fund No. 304.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

Failure to adopt this Ordinance will result in the City Council not authorizing the establishment of Fund No. 304 and the budgeting and appropriation of funds received from the Series 2023 Certificates of Participation issuance.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

None

ORDINANCE NO. 10640

AN ORDINANCE ESTABLISHING FUND NO. 304 - COP-FIRE STATIONS AND BUDGETING AND APPROPRIATING THE PROCEEDS RECEIVED FROM THE ISSUANCE OF THE SERIES 2023 CERTIFICATES OF PARTICIPATION AND ALL FUTURE FUNDS RECEIVED INTO FUND NO. 304.

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

SECTION 1.

Fund No. 304 is hereby established, and the \$34,450,000 received from the Series 2023 Certificates of Participation issuance by the City of Pueblo and all future funds received, are hereby budgeted and appropriated into said Fund No. 304.

SECTION 2.

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

SECTION 3.

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

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on January 08, 2024.

Final adoption of Ordinance by City Council on January 22, 2024.

APPROVED: 
PRESIDENT OF CITY COUNCIL

Action by the Mayor:

☒ Approved on January 30, 2024.

☐ Disapproved on _____ based on the following objections:



Mayor

Action by City Council After Disapproval by the Mayor:

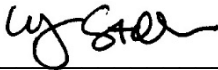
☐ Council did not act to override the Mayor's veto.

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

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

President of City Council

ATTEST



City Clerk



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 22, 2024

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: AN ORDINANCE ESTABLISHING PROJECT PL2401 FOR SAFE ROUTES TO SCHOOL ROCK AND ROLL SAFELY, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION, PROJECT: SAR M086-100 (25950), BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$482,977 AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance creates Project No. PL2401 for Safe Routes to School for Rock and Roll Safely, approves an Intergovernmental Agreement ("IGA") between Pueblo, a Colorado Municipal Corporation ("City") and the State of Colorado, Colorado Department of Transportation ("CDOT") relating to Rock and Roll Safely Safe Routes to School and budgets and appropriates funds totaling \$482,977 for the Project.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

This Ordinance establishes the Safe Routes to School, PL2401 for Rock and Roll Safely and approves the grant agreement between the City and CDOT.

The City submitted a Safe Routes to Schools grant for improvements at Park View Elementary and Risley Middle Schools in 2022. This project provides safe and accessible routes to school by:

- 1) Pedestrian and bicycle crossing improvements, including installation of ADA curb ramps.

- 2) Street striping to define bike lanes and crosswalks.
- 3) Construction of a mid-block bump out in front of the elementary school.
- 4) Sidewalk improvements that include new sidewalks, widened sidewalks, and sidewalk gap closures.
- 5) Signage placement to slow traffic and provide awareness for bicyclists and pedestrians.
- 6) Installation of bicycle facilities, separated from the main roadway and with sharrow markings in selected segments.
- 7) Implementation of an in-school education component, which may include bike to school and workday, bike rodeos training, bike and pedestrian safety classes, active school travel safety classes, and parent engagement.

FINANCIAL IMPLICATIONS:

Match funds are not required.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Currently, there are no alternatives for completing the improvements without the funding from the CDOT Safe Routes to Schools Grant funds.

RECOMMENDATION:

Approve the Ordinance.

ATTACHMENTS:

1. Draft Agreement (25950)
2. GRANT CERTIFICATION SRTS

ORDINANCE NO. 10641

AN ORDINANCE ESTABLISHING PROJECT PL2401 FOR SAFE ROUTES TO SCHOOL ROCK AND ROLL SAFELY, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION, PROJECT: SAR M086-100 (25950), BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$482,977 AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

SECTION 1.

The PL2401, Safe Routes to School Rock and Roll Safely, is hereby established.

SECTION 2.

The Intergovernmental Agreement ("IGA") between the City of Pueblo ("City"), a Colorado Municipal Corporation, and the State of Colorado, acting with and through the Colorado Department of Transportation ("CDOT"), Project: SAR M086-100 (25950), Safe Routes to School Rock and Roll Safely, a copy of which is attached, having been approved as to form by the City Attorney, is hereby approved.

SECTION 3.

Subject to encumbrances by the Colorado State Department of Transportation, funds from the Safe Routes to School Rock and Roll Safely (25950) in the amount of \$482,977.00 are hereby budgeted and appropriated for the Safe Routes to School, No. PL2401 for Rock and Roll Safely.

SECTION 4.

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

SECTION 5.

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

SECTION 6.

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

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on January 08, 2024.

Final adoption of Ordinance by City Council on January 22, 2024.

APPROVED: 
PRESIDENT OF CITY COUNCIL

Action by the Mayor:

☒ Approved on January 30, 2024.

☐ Disapproved on _____ based on the following objections:


Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST



City Clerk

STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT

Signature and Cover Page

State Agency Department of Transportation		Agreement Routing Number 24-HA2-XC-00221	
Local Agency CITY OF PUEBLO		Agreement Effective Date The later of the effective date or September 25, 2023	
Agreement Description Pueblo SRTS Rock and Roll Safety		Agreement Expiration Date September 24, 2033	
Project # SAR M086- 100 (25950)	Region # 2	Contract Writer CM	Agreement Maximum Amount \$482,977.00

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

LOCAL AGENCY CITY OF PUEBLO _____ Signature _____ By: (Nick Gradisar, Mayor) Date: _____	STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director _____ Keith Stefanik, P.E., Chief Engineer Date: _____
Local Agency _____ ATTESTED BY _____ By: (Marisa Stoller, City Clerk) Date: _____	LEGAL REVIEW Philip J. Weiser, Attorney General _____ Assistant Attorney General _____ By: (Print Name and Title) Date: _____
In accordance with §24-30-202 C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Department of Transportation Effective Date: _____	

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1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Effective Date

A. Effective Date

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

B. Initial Term and Extension

The Parties’ respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on September 24, 2033, as shown on the Signature and Cover Page for this Agreement, unless sooner terminated or further extended in accordance with the terms of this Agreement. Upon request of Local Agency, the State may, in its sole discretion, extend the term of this Agreement by Option Letter pursuant **§7.E.iv**. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in **Exhibit C**.

C. Early Termination in the Public Interest

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

i. Method and Content

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

ii. Obligations and Rights

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

iii. Payments

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

D. Local Agency Termination Under Federal Requirements

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

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

3. **AUTHORITY**

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

A. Federal Authority

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

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

B. State Authority

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

4. **PURPOSE**

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

5. **DEFINITIONS**

The following terms shall be construed and interpreted as follows:

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

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

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

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

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

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

6. SCOPE OF WORK

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

Expiration Date and/or the phase performance periods will not amend or alter in any way the funding provisions or any other terms specified in this Agreement, notwithstanding the options listed under §7.E

A. Local Agency Commitments

i. Design

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

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

ii. Local Agency Work

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

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

iii. Construction

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

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

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

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

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

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

v. Utilities

If necessary, Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company that may become involved in the Work. Prior to the Work being advertised for bids, Local Agency shall certify in writing to the State that all such clearances have been obtained.

vi. Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, Local Agency shall make timely application to the Public Utilities Commission ("PUC") requesting its order providing for the installation of the proposed improvements. Local Agency shall not proceed with that part of the Work before obtaining the PUC's order. Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities, and:

- a. Execute an agreement with the railroad company setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.

- b. Obtain the railroad's detailed estimate of the cost of the Work.
- c. Establish future maintenance responsibilities for the proposed installation.
- d. Proscribe in the agreement the future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- e. Establish future repair and/or replacement responsibilities, as between the railroad company and the Local Agency, in the event of accidental destruction or damage to the installation.

vii. Environmental Obligations

Local Agency shall perform all Work in accordance with the requirements of current federal and State environmental regulations, including the National Environmental Policy Act of 1969 (NEPA) as applicable.

viii. Maintenance Obligations

Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. Local Agency shall conduct such maintenance and operations in accordance with all applicable statutes, ordinances, and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

ix. Monitoring Obligations

Local Agency shall respond in a timely manner to and participate fully with the monitoring activities described in §7.F.vi.

B. State's Commitments

- i. The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
- ii. Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any Work constituting major structures designed by, or that are the responsibility of, Local Agency, as identified in **Exhibit E**.

7. **PAYMENTS**

A. Maximum Amount

Payments to Local Agency are limited to the unpaid, obligated balance of the Agreement Funds set forth in **Exhibit C**. The State shall not pay Local Agency any amount under this Agreement that exceeds the Agreement Maximum set forth in **Exhibit C**.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Local Agency in the amounts and in accordance with conditions set forth in **Exhibit C**.
- b. Local Agency shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Local Agency and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Local Agency shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.

- e. If a project is funded in part with Federal or State special funding there may be an expiration date for the funds. The expiration date applies to grants and local funds used to match grants. To receive payment or credit for the match, Work must be completed or substantially completed, as outlined in the terms of the grant, prior to the expiration date of the special funding and invoiced in compliance with the rules outlined in the award of the funding. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.

- ii. Interest

Amounts not paid by the State within 45 days after the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 46th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Local Agency shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

- iii. Payment Disputes

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

- iv. Available Funds-Contingency-Termination

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

- v. Erroneous Payments

The State may recover, at the State's discretion, payments made to Local Agency in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Local Agency. The State may recover such payments by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Local Agency, or by any other appropriate method for collecting debts owed to the State. The close out of a Federal Award does not affect the right of FHWA or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period (as defined below in **§9.A**).

- vi. Federal Recovery

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

C. Local Agency Funds

Local Agency shall provide their obligated contribution funds as outlined in **§7.A.** and **Exhibit C.** Local Agency shall have raised the full amount of their funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Local Agency and paid into Local Agency's treasury. Local Agency represents to the State that the amount designated "Local Agency Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. Local Agency may evidence such obligation by an appropriate ordinance/resolution or other authority letter expressly authorizing Local Agency to enter into this Agreement and to expend its match share of the Work. A copy of any such ordinance/resolution or authority letter is attached hereto as **Exhibit D** if applicable. Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of Local Agency. Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes, or penalties of any nature, except as required by Local Agency's laws or policies.

D. Reimbursement of Local Agency Costs

The State shall reimburse Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and **§7.** However, any costs incurred by Local Agency prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Local Agency for costs or expenses incurred or performance by the Local Agency prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the Local Agency. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement. The applicable principles described in 2 C.F.R. Part 200 shall govern the State's obligation to reimburse all costs incurred by Local Agency and submitted to the State for reimbursement hereunder, and Local Agency shall comply with all such principles. The State shall reimburse Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C.** Local Agency costs for Work performed prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. Local Agency costs for Work performed after any Performance Period End Date for a respective phase of the Work, is not reimbursable. Allowable costs shall be:

- i. Reasonable and necessary to accomplish the Work and for the Goods and Services provided.
- ii. Actual net cost to Local Agency (i.e. the price paid minus any items of value received by Local Agency that reduce the cost actually incurred).

E. Unilateral Modification of Agreement Funds Budget by State Option Letter

The State may, at its discretion, issue an "Option Letter" to Local Agency to add or modify Work phases in the Work schedule in **Exhibit C** if such modifications do not increase total budgeted Agreement Funds. Such Option Letters shall amend and update **Exhibit C**, Sections 2 or 4 of the Table, and sub-sections B and C of the **Exhibit C.** Option Letters shall not be deemed valid until signed by the State Controller or an authorized delegate. **This is NOT a Notice to Proceed.** Modification of **Exhibit C** by unilateral Option Letter is permitted only in the specific scenarios listed below. The State will exercise such options by providing Local Agency a fully executed Option Letter, in a form substantially equivalent to **Exhibit B.** Such Option Letters will be incorporated into this Agreement. This applies to the entire Scope of Work.

- i. Option to Begin a Phase and/or Increase or Decrease the Encumbrance Amount

The State may require by Option Letter that Local Agency begin a new Work phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous Work (but may not include Right of Way Acquisition/Relocation or Railroads) as detailed in **Exhibit A.** Such Option

Letters may not modify the other terms and conditions stated in this Agreement and must decrease the amount budgeted and encumbered for one or more other Work phases so that the total amount of budgeted Agreement Funds remains the same. The State may also change the funding sources so long as the amount budgeted remains the same and the Local Agency contribution does not increase. The State may also issue a unilateral Option Letter to increase and/or decrease the total encumbrance amount of two or more existing Work phases, as long as the total amount of budgeted Agreement Funds remains the same, replacing the original Agreement Funding exhibit (**Exhibit C**) with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

ii. Option to Transfer Funds from One Phase to Another Phase.

The State may require or permit Local Agency to transfer Agreement Funds from one Work phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another phase as a result of changes to State, federal, and local match funding. In such case, the original funding exhibit (**Exhibit C**) will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The Agreement Funds transferred from one Work phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within thirty (30) days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iii. Option to Exercise Options i and ii.

The State may require Local Agency to add a Work phase as detailed in **Exhibit A**, and encumber and transfer Agreement Funds from one Work phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The addition of a Work phase and encumbrance and transfer of Agreement Funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within 30 days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iv. Option to Extend Agreement/Phase Term and/or modify the OMB Uniform Guidance. The State, at its discretion, shall have the option to extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.). In order to exercise this option, the State shall provide written notice to the Local Agency in a form substantially equivalent to **Exhibit B**.

F. Accounting

Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

i. Local Agency Performing the Work

If Local Agency is performing the Work, it shall document all allowable costs, including any approved Services contributed by Local Agency or subcontractors, using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

ii. Local Agency-Checks or Draws

Checks issued or draws made by Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. Local Agency shall keep on file all checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents in the office of Local Agency, clearly identified, readily accessible, and to the extent feasible, separate and apart from all other Work documents.

iii. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. Local Agency shall reimburse the State for the costs of any such services from the budgeted Agreement Funds as

provided for in **Exhibit C**. If FHWA Agreement Funds are or become unavailable, or if Local Agency terminates this Agreement prior to the Work being approved by the State or otherwise completed, then all actual incurred costs of such services and assistance provided by the State shall be reimbursed to the State by Local Agency at its sole expense.

iv. Local Agency-Invoices

Local Agency's invoices shall describe in detail the reimbursable costs incurred by Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and Local Agency shall not submit more than one invoice per month.

v. Invoicing Within 60 Days

The State shall not be liable to reimburse Local Agency for any costs invoiced more than 60 days after the date on which the costs were incurred, including costs included in Local Agency's final invoice. The State may withhold final payment to Local Agency at the State's sole discretion until completion of final audit. Any costs incurred by Local Agency that are not allowable under 2 C.F.R. Part 200 shall be Local Agency's responsibility, and the State will deduct such disallowed costs from any payments due to Local Agency. The State will not reimburse costs for Work performed after the Performance Period End Date for a respective Work phase. The State will not reimburse costs for Work performed prior to Performance Period End Date, but for which an invoice is received more than 60 days after the Performance Period End Date.

vi. Risk Assessment & Monitoring

Pursuant to 2 C.F.R. 200.331(b), – CDOT will evaluate Local Agency's risk of noncompliance with federal statutes, regulations, and terms and conditions of this Agreement. Local Agency shall complete a Risk Assessment Form (**Exhibit L**) when that may be requested by CDOT. The risk assessment is a quantitative and/or qualitative determination of the potential for Local Agency's non-compliance with the requirements of the Federal Award. The risk assessment will evaluate some or all of the following factors:

- Experience: Factors associated with the experience and history of the Subrecipient with the same or similar Federal Awards or grants.
- Monitoring/Audit: Factors associated with the results of the Subrecipient's previous audits or monitoring visits, including those performed by the Federal Awarding Agency, when the Subrecipient also receives direct federal funding. Include audit results if Subrecipient receives single audit, where the specific award being assessed was selected as a major program.
- Operation: Factors associated with the significant aspects of the Subrecipient's operations, in which failure could impact the Subrecipient's ability to perform and account for the contracted goods or services.
- Financial: Factors associated with the Subrecipient's financial stability and ability to comply with financial requirements of the Federal Award.
- Internal Controls: Factors associated with safeguarding assets and resources, deterring and detecting errors, fraud and theft, ensuring accuracy and completeness of accounting data, producing reliable and timely financial and management information, and ensuring adherence to its policies and plans.
- Impact: Factors associated with the potential impact of a Subrecipient's non-compliance to the overall success of the program objectives.
- Program Management: Factors associated with processes to manage critical personnel, approved written procedures, and knowledge of rules and regulations regarding federal-aid projects.

Following Local Agency's completion of the Risk Assessment Tool (**Exhibit L**), CDOT will determine the level of monitoring it will apply to Local Agency's performance of the Work. This risk assessment may be re-evaluated after CDOT begins performing monitoring activities.

G. Close Out

Local Agency shall close out this Award within 90 days after the Final Phase Performance End Date. If SLFRF Funds are used the Local Agency shall close out that portion of the Award within 45 days after the ARPA Award Expiration Date. Close out requires Local Agency's submission to the State of all deliverables defined in this Agreement, and Local Agency's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If FHWA or US Treasury has not closed this Federal Award within one (1) year and 90 days after the Final Phase Performance End Date due to Local Agency's failure to submit required documentation, then Local Agency may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

8. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to §19 or pursuant to any exhibit, for any contract having a term longer than 3 months, Local Agency shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than ten (10) Business Days following the end of each calendar quarter or at such time as otherwise specified by the State. If SLFRF Funds are used the report must be in the format of **Exhibit P**.

B. Litigation Reporting

If Local Agency is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Local Agency's ability to perform its obligations under this Agreement, Local Agency shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in §16.

C. Performance and Final Status

Local Agency shall submit all financial, performance and other reports to the State no later than 60 calendar days after the Final Phase Performance End Date or sooner termination of this Agreement, containing an Evaluation of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

D. Violations Reporting

Local Agency must disclose, in a timely manner, in writing to the State and FHWA, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. Penalties for noncompliance may include suspension or debarment (2 CFR Part 180 and 31 U.S.C. 3321).

9. LOCAL AGENCY RECORDS

A. Maintenance

Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Local Agency shall maintain such records for a period (the "Record Retention Period") pursuant to the requirements of the funding source and for a minimum of three (3) years following the date of submission to the State of the final expenditure report, whichever is longer, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Local Agency in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three (3) years following final disposition of such property.

B. Inspection

Records during the Record Retention Period. Local Agency shall make Local Agency Records available during normal business hours at Local Agency's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two (2) Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Local Agency's performance of its obligations under this Agreement using procedures as determined by the State. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. Local Agency shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Local Agency. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. If Local Agency enters into a subcontract with an entity that would also be considered a Subrecipient, then the subcontract entered into by Local Agency shall contain provisions permitting both Local Agency and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

D. Final Audit Report

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

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

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

B. Other Entity Access and Nondisclosure Agreements

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

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

If Local Agency becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Local Agency can establish that none of Local Agency or any of its agents, employees, assigns, or Subcontractors are the cause or source of the Incident, Local Agency shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Local Agency shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing, and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding Personally Identifying Information "PII"

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

11. **CONFLICTS OF INTEREST**

A. Actual Conflicts of Interest

Local Agency shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Local Agency under this Agreement. Such a conflict of interest would arise when a Local Agency or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement. Officers, employees, and agents of Local Agency may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

12. **INSURANCE**

Local Agency shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Local Agency Insurance

Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA") and shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Subcontractor Requirements

Local Agency shall ensure that each Subcontractor that is a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA. Local Agency shall ensure that each Subcontractor that is not a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement all of the following insurance policies:

i. Workers' Compensation

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

ii. General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate; and
- d. \$50,000 any 1 fire.

iii. Automobile Liability

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

iv. Protected Information (this insurance requirement only applies if the Subcontractor has or will have access to State Confidential Information)

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$2,000,000 general aggregate.

- v. Professional Liability Insurance (this insurance requirement only applies if the Subcontractor is providing professional services including but not limited to engineering, architectural, landscape architectural, professional surveying, industrial hygiene services, or any other commonly understood professional service)

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

- vi. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

- vii. Cyber/Network Security and Privacy Liability

Liability insurance covering all civil, regulatory and statutory damages, contractual damages, data breach management exposure, and any loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of breach, violation or infringement of right to privacy rights through improper use or disclosure of protected consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$2,000,000 general aggregate.

C. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Local Agency and Subcontractors. In the event of cancellation of any commercial general liability policy, the carrier shall provide at least 10 days prior written notice to CDOT.

D. Primacy of Coverage

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

E. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Local Agency and Local Agency shall forward such notice to the State in accordance with §16 within 7 days of Local Agency's receipt of such notice.

F. Subrogation Waiver

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

G. Certificates

For each commercial insurance plan provided by Local Agency under this Agreement, Local Agency shall provide to the State certificates evidencing Local Agency's insurance coverage required in this Agreement within seven (7) Business Days following the Effective Date. Local Agency shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following the Effective Date, except that, if Local Agency's subcontract is not in effect as of

the Effective Date, Local Agency shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following Local Agency's execution of the subcontract. No later than 15 days before the expiration date of Local Agency's or any Subcontractor's coverage, Local Agency shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Local Agency shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §12.

13. BREACH

A. Defined

The failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner, shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization, or similar law, by or against Local Agency, or the appointment of a receiver or similar officer for Local Agency or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §14 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in the Agreement in order to protect the public interest of the State.

14. REMEDIES

A. State's Remedies

If Local Agency is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §13.B, shall have all of the remedies listed in this §14.A, in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Local Agency's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

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

b. Payments

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

c. Damages and Withholding

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

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

Withhold payment to Local Agency until Local Agency corrects its Work.

c. Deny Payment

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

d. Removal

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

e. Intellectual Property

If any Work infringes a patent, copyright, trademark, trade secret, or other intellectual property right, Local Agency shall, as approved by the State (a) secure that right to use such Work for the State or Local Agency; (b) replace the Work with non infringing Work or modify the Work so that it becomes non infringing; or, (c) remove any infringing Work and refund the amount paid for such Work to the State.

B. Local Agency's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Local Agency, following the notice and cure period in §13.B and the dispute resolution process in §15 shall have all remedies available at law and equity.

15. **DISPUTE RESOLUTION**

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Local Agency for resolution.

B. Resolution of Controversies

If the initial resolution described in §15.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of CDOT as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505, C.R.S., (the “Resolution Statutes”), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor’s challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

C. Questions of Fact

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer’s decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

16. NOTICES AND REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) by hand with receipt required, (ii) by certified or registered mail to such Party’s principal representative at the address set forth below or (iii) as an email with read receipt requested to the principal representative at the email address, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party’s principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §16 without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

For the State

Colorado Department of Transportation (CDOT)
Don Scanga, Local Agency Coordinator
CDOT, Region 2
5615 Wills Blvd.
Pueblo, CO 81008
719-621-8340
donald.scanga@state.co.us

For the Local Agency

City of Pueblo
Kelly Grisham, Senior Planner
211 East D Street
Pueblo, CO 81003
719-553-2643
kgrisham@pueblo.us

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Local Agency hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Local Agency or any Subcontractors. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Local Agency is under contract with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Local Agency hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Local Agency cannot make any of the assignments required by this section, Local Agency hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

In addition, Local Agency grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Local Agency that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

iii. Assignments and Assistance

Whether or not the Local Agency is under Agreement with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives, or other documents, drawings, models, materials, data, and information shall be the exclusive property of the State (collectively, "State Materials"). Local Agency shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Local Agency's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Local Agency shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Local Agency

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

18. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. The following applies through June 30, 2022: no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this §19 shall apply. Local Agency agrees to be governed by and comply with the provisions of §24-106-103, §24-102-206, §24-106-106, §24-106-107 C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Local Agency's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

20. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

Local Agency shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Local Agency shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Local Agency in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement.

C. Binding Effect

Except as otherwise provided in §20.A, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Digital Signatures

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

H. Entire Understanding

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

I. Jurisdiction and Venue

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

J. Modification

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

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

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

L. Order of Precedence

In the event of a conflict or inconsistency between this Agreement and any exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i. The provisions of the other sections of the main body of this Agreement.
- ii. **Exhibit N**, Federal Treasury Provisions.
- iii. **Exhibit F**, Certification for Federal-Aid Contracts.
- iv. **Exhibit G**, Disadvantaged Business Enterprise.
- v. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts.
- vi. **Exhibit J**, Additional Federal Requirements.
- vii. **Exhibit K**, Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions.
- viii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form.
- ix. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the "Uniform Guidance").
- x. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds.
- xi. **Exhibit R**, Applicable Federal Awards.
- xii. Colorado Special Provisions in the main body of this Agreement.
- xiii. **Exhibit A**, Scope of Work.
- xiv. **Exhibit H**, Local Agency Procedures for Consultant Services.
- xv. **Exhibit B**, Sample Option Letter.
- xvi. **Exhibit C**, Funding Provisions.
- xvii. **Exhibit P**, SLFRF Subrecipient Quarterly Report.
- xviii. **Exhibit Q**, SLFRF Reporting Modification Form.
- xix. **Exhibit D**, Local Agency Resolution.

- xx. **Exhibit E**, Local Agency Contract Administration Checklist.
- xxi. **Exhibit S**, PII Certification.
- xxii. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source.
- xxiii. Other exhibits in descending order of their attachment.

M. Severability

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

N. Survival of Certain Agreement Terms

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

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§20.C**, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations.

Local Agency shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

T. Compliance with State and Federal Law, Regulations, and Executive Orders

Local Agency shall comply with all State and Federal law, regulations, executive orders, State and Federal Awarding Agency policies, procedures, directives, and reporting requirements at all times during the term of this Agreement.

U. Accessibility

- i. Local Agency shall comply with and the Work Product provided under this Agreement shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by the Governor's Office of Information Technology (OIT), pursuant to Section §24-85-103 (2.5), C.R.S. Local Agency shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the

most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.

- ii. Each Party agrees to be responsible for its own liability incurred as a result of its participation in and performance under this Agreement. In the event any claim is litigated, each Party will be responsible for its own attorneys' fees, expenses of litigation, or other costs. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to either the Local Agency or the State by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. and Article XI of the Colorado Constitution. Nothing in the Agreement shall be construed as a waiver of any provision of the State Fiscal Rules.
- iii. The State may require Local Agency's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Local Agency's Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

V. Taxes

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

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

These Special Provisions apply to all contracts. Contractor refers to Local Agency.

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR

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

proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

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

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

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

22. FEDERAL REQUIREMENTS

Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and State laws, and their implementing regulations, as they currently exist and may hereafter be amended. A summary of applicable federal provisions are attached hereto as **Exhibit F, Exhibit I, Exhibit J, Exhibit K, Exhibit M, Exhibit N and Exhibit O** are hereby incorporated by this reference.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Local Agency will comply with all requirements of **Exhibit G** and **Exhibit E**, Local Agency Contract Administration Checklist, regarding DBE requirements for the Work, except that if Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If Local Agency uses any State- approved DBE program for this Agreement, Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of Local Agency's DBE program does not waive or modify the sole responsibility of Local Agency for use of its program.

EXHIBIT A

SCOPE OF WORK

Name of Project: Pueblo SRTS Rock and Roll Safety
Project Number: SAR M086-100
SubAccount #: 25950

The local agency shall be responsible for design and construction of safe and accessible routes to Park View Elementary and Risley Middle Schools by providing the following improvements:

- 1) Pedestrian and bicycle crossing improvements including installation of ADA curb ramps.
- 2) Street striping to define bike lanes and crosswalks.
- 3) Construction of a mid-block bump out in front of the elementary school.
- 4) Sidewalk improvements that include new sidewalks, widened sidewalks, and sidewalk gap closures.
- 5) Signage placement to slow traffic and provide awareness for bicyclists and pedestrians.
- 6) Installation of bicycle facilities, separated from the main roadway and with sharrow markings in selected segments.
- 7) Implementation of an in-school education component, which may include bike to school and workday, bike rodeos training, bike and pedestrian safety classes, active school travel safety classes, and parent engagement.
- 8) Utility relocation, as necessary.
- 9) Right-of-Way acquisition, as necessary.

If ARPA funds are used, all ARPA funds must be encumbered by December 31, 2024. All work funded by ARPA must be completed by December 31, 2026 and all bills must be submitted to CDOT for payment by January 31, 2027. These bills must be paid by CDOT by March 31, 2027.

By accepting funds for this Scope of Work, Local Agency acknowledges, understands, and accepts the continuing responsibility for the safety of the traveling public after initial acceptance of the project. **Local Agency is responsible for maintaining and operating the scope of work described in this Exhibit A constructed under this Agreement at its own cost and expense during its useful life.**

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EXHIBIT B

SAMPLE IGA OPTION LETTER

Date	State Fiscal Year	Option Letter No.
Project Code	Original Agreement #	

Vendor Name:

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous and to update encumbrance amount(s).

Option to unilaterally transfer funds from one phase to another phase.

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous, to update encumbrance amount(s), and to unilaterally transfer funds from one phase to another phase.

Option to unilaterally extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify OMB Guidance.

Option A

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to authorize the Local Agency to add a phase and to encumber funds for the phase based on changes in funding availability and authorization. The total encumbrance is (or increased) by \$0.00. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option B

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to transfer funds based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option C

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to 1) release the Local Agency to begin a phase; 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from phases based on variance in actual phase costs and

original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option D

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. This is made part of the original Agreement and replaces the Expiration Date shown on the Signature and Cover Page. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

The effective date of this option letter is upon approval of the State Controller or delegate.

STATE OF COLORADO
Jared S. Polis
Department of Transportation

By: _____
Keith Stefanik, P.E., Chief Engineer
(For) Shoshana M. Lew, Executive Director

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

STATE OF COLORADO
STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Colorado Department of Transportation

Date: _____

EXHIBIT C FUNDING PROVISIONS**City of Pueblo: SAR M086-100 (25950)****A. Cost of Work Estimate**

The Local Agency has estimated the total cost the Work to be \$482,977.00, which is to be funded as follows:

1. FUNDING		
a.	Federal Funds (100% of SAR Award)	\$482,977.00
b.	Local Agency Funds (0% of SAR Award)	\$0.00
TOTAL FUNDS ALL SOURCES		\$482,977.00
2. OMB UNIFORM GUIDANCE		
a.	Federal Award Identification Number (FAIN):	TBD
b.	Name of Federal Awarding Agency:	FHWA
c.	Local Agency Unique Entity Identifier	NJK3BNUDRHJ7
d.	Assistance Listing # Highway Planning and Construction	ALN 20.205
e.	Is the Award for R&D?	No
f.	Indirect Cost Rate (if applicable)	N/A
g.	Amount of Federal Funds Obligated by this Action:	\$0.00
h.	Amount of Federal Funds Obligated to Date (including this Action):	\$0.00
3. ESTIMATED PAYMENT TO LOCAL AGENCY		
a.	Federal Funds Budgeted	\$482,977.00
b.	Less Estimated Federal Share of CDOT-Incurred Costs	\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		100% \$482,977.00
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY		0% \$0.00
TOTAL PROJECT ESTIMATED FUNDING		100.00% \$482,977.00
4. FOR CDOT ENCUMBRANCE PURPOSES		
a.	Total Encumbrance Amount (Federal funds + Local Agency funds)	\$482,977.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$0.00
NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS		\$482,977.00

Note: No funds are currently available. Design and Construction funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.

WBS Element 25950.10.30	Performance Period Start*/End Date TBD-TBD	Design 3020	\$0.00
WBS Element 25950.20.10	Performance Period Start*/End Date TBD-TBD	Const. 3301	\$0.00

*The Local Agency should not begin work until all three (3) of the following are in place: 1) Phase Performance Period Start Date; 2) the execution of the document encumbering funds for the respective phase; and 3) Local Agency receipt of the official Notice to Proceed. Any work performed before these three (3) milestones are achieved will not be reimbursable.

B. Funding Ratios

The funding ratio for the federal funds for this Work is 100% federal funds to 0% Local Agency funds, and this ratio applies only to the \$482,977.00 that is eligible for federal funding. All other costs are borne by

the Local Agency at 100%. If the total cost of performance of the Work exceeds \$482,977.00, and additional federal funds are available for the Work, the Local Agency shall pay 0% of all such costs eligible for federal funding and 100% of all other costs. If additional federal funds are not available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than \$482,977.00, then the amounts of Local Agency and federal funds will be decreased in accordance with the funding ratio described in **A1. This applies to the entire scope of Work.**

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$482,977.00. For CDOT accounting purposes, the federal funds of \$482,977.00 and the Local Agency funds of \$0.00 will be encumbered for a total encumbrance of \$482,977.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total budget is \$482,977.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work.**

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving \$750,000 or more from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of 2 CFR part 200, subpart F (Audit Requirements) see also, 49 CFR 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$750,000

If the Local Agency expends less than \$750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure of \$750,000 or more-Highway Funds Only

If the Local Agency expends \$750,000 or more, in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure of \$750,000 or more-Multiple Funding Sources

If the Local Agency expends \$750,000 or more in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

EXHIBIT D

LOCAL AGENCY RESOLUTION (IF APPLICABLE)

EXHIBIT E: LOCAL AGENCY ADMINISTRATION CHECKLIST

COLORADO DEPARTMENT OF TRANSPORTATION LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. SAR M086-100	STIP No. SR26868	Project Code 25950	Region 2
Project Location East Pueblo Colorado near Park Elementary School			Date 8/7/2023
Project Description Pueblo SRTS Walk and Roll Safety			
Local Agency City of Pueblo		Local Agency Project Manager Charles Roy	
CDOT Resident Engineer Lachelle Davis		CDOT Project Manager Don Scanga	
INSTRUCTIONS: This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i> . The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve. Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT. The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist. Note: Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2.1	Review Project to ensure it is consist with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463	X	X
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement	X	
5.4	Conduct Design Scoping Review Meeting	X	
5.5	Conduct Public Involvement	X	
5.6	Conduct Field Inspection Review (FIR)	X	
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	
5.9	Obtain Utility and Railroad Agreements	X	
5.10	Conduct Final Office Review (FOR)	X	
5.11	Justify Force Account Work by the Local Agency	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	
5.13	Document Design Exceptions - CDOT Form 464	X	
5.14	Prepare Plans, Specifications and Construction Cost Estimates	X	
5.15	Ensure Authorization of Funds for Construction		X
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6.2	Determine Applicability of Davis-Bacon Act This project ☐ is X is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Lachelle Davis CDOT Resident Engineer (Signature on File) 6/3/2021 Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances	X	
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	
7.2	Advertise for Bids	X	
7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor	X	
8.2	Project Safety	X	X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)	X	
	Pre-survey		
	• Construction staking	X	
	• Monumentation	X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	X	
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8.5	Supervise Construction		

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." <u>Charles Roy, P.E.</u> <u>719-553-2271</u> Local Agency Professional Engineer or Phone number CDOT Resident Engineer	X	
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8.6	Approve Shop Drawings	X	
8.7	Perform Traffic Control Inspections	X	
8.8	Perform Construction Surveying	X	
8.9	Monument Right-of-Way	X	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates Provide the name and phone number of the person authorized for this task. <u>Kelly Grisham</u> <u>(719) 553-2254</u> Local Agency Representative Phone number	X	
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	
8.12	Prepare and Authorize Change Orders	X	
8.13	Submit Change Order Package to CDOT	X	
8.14	Prepare Local Agency Reimbursement Requests	X	
8.15	Monitor Project Financial Status	X	
8.16	Prepare and Submit Monthly Progress Reports	X	
8.17	Resolve Contractor Claims and Disputes	X	
8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. <u>Don Scanga</u> <u>719-546-5434</u> CDOT Resident Engineer Phone number		X
MATERIALS			
9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	X	
9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	X X	X
9.3	Perform Project Acceptance Samples and Tests	X	
9.4	Perform Laboratory Verification Tests	X	
9.5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X	
9.6	Approve Sources of Materials	X	
9.7	Independent Assurance Testing (IAT), Local Agency Procedures ☐ CDOT Procedures X • Generate IAT schedule • Schedule and provide notification • Conduct IAT	X X X	
9.8	Approve mix designs • Concrete • Hot mix asphalt	X X	
9.9	Check Final Materials Documentation	X	
9.10	Complete and Distribute Final Materials Documentation	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	X	
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter	X	
11.3	Advertise for Final Settlement	X	
11.4	Prepare and Distribute Final As-Constructed Plans	X	
11.5	Prepare EEO Certification	X	
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11.8	Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer	X	
11.9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor	X	
11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment		X
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure		X
11.14	Retain Final Version of Local Agency Contract Administration Checklist	X	

cc: CDOT Resident Engineer/Project Manager
CDOT Region Program Engineer
CDOT Region EEO/Civil Rights Specialist
CDOT Region Materials Engineer
CDOT Contracts and Market Analysis Branch
Local Agency Project Manager

EXHIBIT F
CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

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

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

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

EXHIBIT G

DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

The recipient or the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency

upon request: Business Programs Office

Colorado Department of Transportation

2829 West Howard Place Denver,

Colorado 80204

Phone: (303) 757-9007

REQUIRED BY 49 CFR
PART 26

EXHIBIT H

LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded Local Agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states “The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost” and according to 23 CFR 172.5 “Price shall not be used as a factor in the analysis and selection phase.” Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a Local Agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting Local Agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting Local Agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The Local Agency shall not advertise any federal aid contract without prior review by the CDOT Regional Civil Rights Office (RCRO) to determine whether the contract shall be subject to a DBE contract goal. If the RCRO determines a goal is necessary, then the Local Agency shall include the goal and the applicable provisions within the advertisement. The Local Agency shall not award a contract to any Contractor or Consultant without the confirmation by the CDOT Civil Rights and Business Resource Center that the Contractor or Consultant has demonstrated good faith efforts. The Local Agency shall work with the CDOT RCRO to ensure compliance with the established terms during the performance of the contract.
5. The Local Agency shall require that all contractors pay subcontractors for satisfactory performance of work no later than 30 days after the receipt of payment for that work from the contractor. For construction projects, this time period shall be reduced to seven days in accordance with Colorado Revised Statute 24-91-103(2). If the Local Agency withholds retainage from contractors and/or allows contractors to withhold retainage from subcontractors, such retainage provisions must comply with 49 CFR 26.29.
6. Payments to all Subconsultants shall be made within thirty days of receipt of payment from [the Local Agency] or no later than ninety days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify [the Local Agency] no later than the required date for payment. Such notification shall include the amount disputed and justification for the withholding. The Consultant shall maintain records of payment that show amounts paid to all Subconsultants. Good cause does not include the Consultant's failure to submit an invoice to the Local Agency or to deposit payments made.
7. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,

- b. Approach to the Work,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services. Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
 - b. Past performance,
 - c. Willingness to meet the time and budget requirement,
 - d. Location,
 - e. Current and projected work load,
 - f. Volume of previously awarded contracts, and
 - g. Involvement of minority consultants.
8. Once a consultant is selected, the Local Agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.
9. A qualified Local Agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the Local Agency prepares a performance evaluation (a CDOT form is available) on the consultant.

CRS §§24-30-1401 THROUGH 24-30-1408, 23 CFR PART 172, AND P.D. 400.1, PROVIDE ADDITIONAL DETAILS FOR COMPLYING WITH THE PRECEEDING EIGHT (8) STEPS.

EXHIBIT I

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants /

Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials

and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

3. Records and certified payrolls (29 CFR 5.5)

a. Basic record requirements (1) Length of record retention. All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) Information required. Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) Additional records relating to fringe benefits. Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) Additional records relating to apprenticeship. Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. Certified payroll requirements (1) Frequency and method of submission. The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) Information required. The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHDL/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) Statement of Compliance. Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) Use of Optional Form WH-347. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeymen under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

4. **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees 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 Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

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XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT J

ADDITIONAL FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

Clean Air Act

Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts more than \$100,000).

Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally assisted programs.

Nondiscrimination

The Local Agency shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color national origin, sex, age or disability. Prior to the receipt of any Federal financial assistance from CDOT, the Local Agency shall execute the attached Standard DOT Title VI assurance. As appropriate, the Local Agency shall include Appendix A, B, or C to the Standard DOT Title VI assurance in any contract utilizing federal funds, land, or other aid. The Local Agency shall also include the following in all contract advertisements:

The [Local Agency], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (79 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, DBEs will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for any award.

ADA

In any contract utilizing federal funds, land, or other federal aid, the Local Agency shall require the federal-aid recipient or contractor to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees, and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions §22

The Contractor will include the provisions of this Exhibit J in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

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SAMPLE

The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination

Assurances for Local Agencies

DOT Order No. 1050.2A

The [Local Agency] (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Colorado Department of Transportation and the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including the FHWA, FTA, or FAA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non- discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FHWA, FTA, and FAA assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated or will be (with regard to a "facility") operated or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all FHWA, FTA and FAA programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
3. "The [Local Agency] in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity

4. to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."
5. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
6. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
7. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
8. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
9. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
10. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
11. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
12. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the [Local Agency] also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA, FTA, and FAA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by CDOT, FHWA, FTA, or FAA. You must keep records, reports, and submit the material for review

upon request to CDOT, FHWA, FTA, or FAA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

[Local Agency] gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FHWA, FTA, and FAA. This ASSURANCE is binding on [Local Agency], other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FHWA, FTA, and FAA funded programs. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

(Name of Recipient)

by _____
(Signature of Authorized Official)

DATED _____

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, FHWA, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the [Local Agency], CDOT or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the [Local Agency], CDOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the non-discrimination provisions of this contract, the [Local Agency] will impose such contract sanctions as it, CDOT or FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the [Local Agency], CDOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the [Local Agency] will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), the Regulations for the Administration of (*Name of Appropriate Program*), and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the [Local Agency] all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto [Local Agency] and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the [Local Agency] its successors and assigns.

The [Local Agency], in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the [Local Agency] will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the [Local Agency] pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. *
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the [Local Agency] will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the [Local Agency] and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by [Local Agency] pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non- discrimination covenants, [Local Agency] will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued. *
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will there upon revert to and vest in and become the absolute property of [Local Agency] of Transportation and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

EXHIBIT K

FFATA SUPPLEMENTAL FEDERAL PROVISIONS

**State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13**

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

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. “Award” means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

- 1.1.1.** Grants;
- 1.1.2.** Contracts;
- 1.1.3.** Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 1.1.4.** Loans;
- 1.1.5.** Loan Guarantees;
- 1.1.6.** Subsidies;
- 1.1.7.** Insurance;
- 1.1.8.** Food commodities;
- 1.1.9.** Direct appropriations;
- 1.1.10.** Assessed and voluntary contributions; and
- 1.1.11.** Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

- 1.1.12.** Technical assistance, which provides services in lieu of money;
- 1.1.13.** A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 1.1.14.** Any award classified for security purposes; or
- 1.1.15.** Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. “Contract” means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

1.3. “Contractor” means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.

1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpartC;

- 1.5.1.** A governmental organization, which is a State, local government, or Indian Tribe;
- 1.5.2.** A foreign public entity;
- 1.5.3.** A domestic or foreign non-profit organization;

- 1.5.4. A domestic or foreign for-profit organization; and
- 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109- 282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
- 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17 **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
 - 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
 - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 4.2. In the preceding fiscal year, Contractor received:
 - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 To SAM. A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

7.1.1 Subrecipient DUNS Number;

7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

7.1.3 Subrecipient Parent DUNS Number;

7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

7.2.1 Subrecipient's DUNS Number as registered in SAM.

7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

8.2 A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

8.3 Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

8.4 There are no Transparency Act reporting requirements for Vendors.

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

EXHIBIT L

SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT

	CDOT SUBRECIPIENT RISK ASSESSMENT	Date:		
Name of Entity (Subrecipient):				
Name of Project / Program:				
Estimated Award Period:				
Entity Executive Director or VP:				
Entity Chief Financial Officer:				
Entity Representative for this Self Assessment:				
Instructions: (See "Instructions" tab for more information) 1. Check only one box for each question. All questions are required to be answered. 2. Utilize the "Comment" section below the last question for additional responses. 3. When complete, check the box at the bottom of the form to authorize.		Yes	No	N/A
EXPERIENCE ASSESSMENT		Yes	No	N/A
1 Is your entity new to operating or managing federal funds (has not done so within the past three years)?		☐	☐	
2 Is this funding program new for your entity (managed for less than three years)? <i>Examples of funding programs include CMAQ, TAP, STP-M, etc.</i>		☐	☐	
3 Does your staff assigned to the program have at least three full years of experience with this federal program?		☐	☐	
MONITORING/AUDIT ASSESSMENT		Yes	No	N/A
4 Has your entity had an on-site project or grant review from an external entity (e.g., CDOT, FHWA) within the last three years?		☐	☐	☐
5 a) Were there non-compliance issues in this prior review?		☐	☐	☐
b) What were the number and extent of issues in prior review?		☐ 1 to 2	☐ >3	☐
OPERATION ASSESSMENT		Yes	No	N/A
6 Does your entity have a time and effort reporting system in place to account for 100% of all employees' time, that can provide a breakdown of the actual time spent on each funded project? <i>If No, in the comment section please explain how you intend to document 100% of hours worked by employees and breakdown of time spent on each funding project.</i>		☐	☐	
FINANCIAL ASSESSMENT		Yes	No	N/A
7 a) Does your entity have an indirect cost rate that is approved and current?		☐	☐	
b) If Yes, who approved the rate, and what date was it approved?				
8 Is this grant/award 10% or more of your entity's overall funding?		☐ >10%	☐ <10%	
9 Has your entity returned lapsed* funds? *Funds "lapse" when they are no longer available for obligation.		☐	☐	☐
10 Has your entity had difficulty meeting local match requirements in the last three years?		☐	☐	☐
11 What is the total federal funding your entity has been awarded for the last federal fiscal year, and what is your entity's fiscal year end?				

INTERNAL CONTROLS ASSESSMENT		Yes	No	N/A
12	Has your entity had any significant changes in key personnel or accounting system(s) in the last year? (e.g., Controller, Exec Director, Program Mgr, Accounting Mgr, etc.) If Yes, in the comment section, please identify the accounting system(s), and / or list personnel positions and identify any that are vacant.	☐	☐	☐
13	Does your entity have financial procedures and controls in place to accommodate a federal-aid project?	☐	☐	
14	Does your accounting system identify the receipts and expenditures of program funds separately for each award?	☐	☐	
15	Will your accounting system provide for the recording of expenditures for each award by the budget cost categories shown in the approved budget?	☐	☐	
16	Does your agency have a review process for all expenditures that will ensure that all costs are reasonable, allowable and allocated correctly to each funding source? If Yes, in the comment section, please explain your current process for reviewing costs.	☐	☐	☐
17	How many total FTE perform accounting functions within your organization?	☐ ≥ 6	☐ 2 to 5	☐ < 2
IMPACT ASSESSMENT		Yes	No	N/A
18	For this upcoming federal award or in the immediate future, does your entity have any potential conflicts of interest* in accordance with applicable Federal awarding agency policy? If Yes, please disclose these conflicts in writing, along with supporting information, and submit with this form. (*Any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Subrecipient's obligations to the State.)	☐	☐	
19	For this award, has your entity disclosed to CDOT, in writing, violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award? Response options: YES = Check if have one or more violation(s) and have either disclosed previously to CDOT or as part of this form. In the comment section, list all violations with names of supporting documentation and submit with this form. NO = Check if have one or more violation(s) and have not disclosed previously or will not disclose as part of this form. Explain in the comment section. N/A = Check if have no violations.	☐	☐	☐
PROGRAM MANAGEMENT ASSESSMENT		Yes	No	N/A
20	Does your entity have a written process/procedure or certification statement approved by your governing board ensuring critical project personnel are capable of effectively managing Federal-aid projects? If Yes, please submit with this form.	☐	☐	☐
21	Does your entity have written procurement policies or certification statement for consultant selection approved by your governing board in compliance with 23 CFR 172*? If Yes, please submit with this form. (*The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications, at a fair and reasonable price.)	☐	☐	☐
22	a) Is your staff familiar with the relevant CDOT manuals and federal program requirements?	☐	☐	☐
	b) Does your entity have a written policy or a certification statement approved by your governing board assuring federal-aid projects will receive adequate inspections? If Yes, please submit with this form.	☐	☐	☐
	c) Does your entity have a written process or a certification statement approved by your governing board assuring a contractor's work will be completed in conformance with approved plans and specifications? If Yes, please submit with this form.	☐	☐	☐

d) Does your entity have a written policy or certification statement approved by your governing board assuring that materials installed on the projects are sampled and tested per approved processes. <i>If Yes, please submit with this form.</i>	☐	☐	☐
e) Does your entity have a written policy or certification statement approved by your governing board assuring that only US manufactured steel will be incorporated into the project (<i>Buy America requirements</i>)? <i>If Yes, please submit with this form.</i>	☐	☐	☐
Comments - As needed, include the question number and provide comments related to the above questions. Insert additional rows as needed.			
☐ By checking this box, the Executive Director, VP or Chief Financial Officer of this entity certifies that all information provided on this form is true and correct.  Tool Version: v2.0 (081816)			

EXHIBIT M

OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS

**Subject to
The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and
Audit Requirements for Federal Awards (“Uniform Guidance”),
Federal Register, Vol. 78, No. 248, 78590**

The agreement to which these Uniform Guidance Supplemental Provisions are attached has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Uniform Guidance Supplemental Provisions shall control. In the event of a conflict between the provisions of these Supplemental Provisions and the FFATA Supplemental Provisions, the FFATA Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

- 1.1. “Award”** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise. 2 CFR §200.38
- 1.2. “Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 1.3. “Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. 2 CFR §200.37
- 1.4. “FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 1.5. “Grant” or “Grant Agreement”** means an agreement setting forth the terms and conditions of an Award. The term does not include an agreement that provides only direct Federal cash assistance to an individual, a subsidy, a loan, a loan guarantee, insurance, or acquires property or services for the direct benefit of use of the Federal Awarding Agency or Recipient. 2 CFR §200.51.
- 1.6. “OMB”** means the Executive Office of the President, Office of Management and Budget.
- 1.7. “Recipient”** means a Colorado State department, agency or institution of higher education that receives a Federal Award from a Federal Awarding Agency to carry out an activity under a Federal program. The term does not include Subrecipients. 2 CFR §200.86
- 1.8. “State”** means the State of Colorado, acting by and through its departments, agencies and institutions of higher education.
- 1.9. “Subrecipient”** means a non-Federal entity receiving an Award from a Recipient to carry out part of a Federal program. The term does not include an individual who is a beneficiary of such program.
- 1.10. “Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

- 1.11. “Uniform Guidance Supplemental Provisions”** means these Supplemental Provisions for Federal Awards subject to the OMB Uniform Guidance, as may be revised pursuant to ongoing guidance from relevant Federal agencies or the Colorado State Controller.
- 2. Compliance.** Subrecipient shall comply with all applicable provisions of the Uniform Guidance, including but not limited to these Uniform Guidance Supplemental Provisions. Any revisions to such provisions automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3. Procurement Standards.**
- 3.1 Procurement Procedures.** Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation,
§§200.318 through 200.326 thereof.
- 3.2 Procurement of Recovered Materials.** If Subrecipient is a State Agency or an agency of a political subdivision of a state, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 4. Access to Records.** Subrecipient shall permit Recipient and auditors to have access to Subrecipient’s records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).
- 5. Single Audit Requirements.** If Subrecipient expends \$750,000 or more in Federal Awards during Subrecipient’s fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
- 5.1 Election.** Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 5.2 Exemption.** If Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government

Accountability Office.

- 5.3 Subrecipient Compliance Responsibility.** Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

- 6. Contract Provisions for Subrecipient Contracts.** Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Grant Agreement.

- 6.1 Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments

under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled,

terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

6.2 Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40

U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

6.3 Rights to Inventions Made Under a Contract or Agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6.4 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251- 1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection

Agency (EPA).

6.5 Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAMExclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

6.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

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

7.1 Event of Default. Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute an event of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

8. Effective Date. The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.

9. Performance Measurement. The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes.

The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

Exhibit N

Federal Treasury Provisions

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.
- 1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
 - 2.1.1. "Award" means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
 - 2.1.2. "Entity" means:
 - 2.1.2.1. a Non-Federal Entity;
 - 2.1.2.2. a foreign public entity;
 - 2.1.2.3. a foreign organization;
 - 2.1.2.4. a non-profit organization;
 - 2.1.2.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
 - 2.1.2.6. a foreign non-profit organization (only for 2 CFR part 170) only);
 - 2.1.2.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
 - 2.1.2.8. a foreign for-profit organization (for 2 CFR part 170 only).
 - 2.1.3. "Executive" means an officer, managing partner or any other employee in a management position.
 - 2.1.4. "Expenditure Category (EC)" means the category of eligible uses as defined by the US Department of Treasury in "Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

- 2.1.5. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
- 2.1.6. “Grant” means the Grant to which these Federal Provisions are attached.
- 2.1.7. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.8. “Non-Federal Entity” means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 2.1.9. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
- 2.1.9.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.9.2. Is not organized primarily for profit; and
 - 2.1.9.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.10. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.11. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.12. “Prime Recipient” means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.13. “Subaward” means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. “Subrecipient” or “Subgrantee” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.15. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
- 2.1.15.1. Salary and bonus;
 - 2.1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the

fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

- 2.1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 2.1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.16. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 2.1.17. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
- 2.1.18. “Unique Entity ID” means the Unique Entity ID established by the federal government for a Grantee at <https://sam.gov/content/home>.

3. COMPLIANCE.

- 3.1. Grantee shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado, at its discretion, may provide written notification to Grantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3.2. Per US Treasury Final Award requirements, grantee programs or services must not include a term or conditions that undermines efforts to stop COVID-19 or discourages compliance with recommendations and CDC guidelines.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND UNIQUE ENTITY ID (UEI) REQUIREMENTS.

- 4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually.
- 4.2. UEI. Grantee shall provide its Unique Entity ID to its Prime Recipient, and shall update Grantee’s information in Sam.gov at least annually.

5. TOTAL COMPENSATION.

- 5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and
 - 5.1.2. In the preceding fiscal year, Grantee received:

- 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.3. 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

- 6.1. If Grantee is a Subrecipient of the Award pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below \$30,000 no reporting required; if more than \$30,000 and less than \$50,000 then FFATA reporting is required; and, \$50,000 and above SLFRF reporting is required.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. Grantee shall report as set forth below.
 - 8.1.1. Grantee shall use the SLFRF Subrecipient Quarterly Report Workbook as referenced in Exhibit P to report to the State Agency within ten (10) days following each quarter ended September, December, March and June. Additional information on specific requirements are detailed in the SLFRF Subrecipient Quarterly Report Workbooks and "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

EC 1 – Public Health

All Public Health Projects

- a) Description of structure and objectives
- b) Description of relation to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

COVID-19 Interventions and Mental Health (1.4, 1.11, 1.12, 1.13)

- a) Amount of total project used for evidence-based programs
- b) Evaluation plan description

COVID-19 Small Business Economic Assistance (1.8)

- a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

- a) Number of non-profits served

COVID-19 Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (1.10)

- a) Sector of employer
- b) Purpose of funds

EC 2 – Negative Economic Impacts

All Negative Economic Impacts Projects

- a) Description of project structure and objectives
- b) Description of project's response to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Amount of total project used for evidence-based programs and description of evaluation plan (*not required for 2.5, 2.8, 2.21-2.24, 2.27-2.29, 2.31, 2.34-2.36*)
- e) Number of workers enrolled in sectoral job training programs
- f) Number of workers completing sectoral job training programs
- g) Number of people participating in summer youth employment programs
- h) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

Household Assistance (2.1-2.8)

- a) Number of households served

- b) Number of people or households receiving eviction prevention services (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*
- c) Number of affordable housing units preserved or developed (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*

Healthy Childhood Environments (2.11-2.13)

- a) Number of children served by childcare and early learning *(Federal guidance may change this requirement in July 2022)*
- b) Number of families served by home visiting *(Federal guidance may change this requirement in July 2022)*

Education Assistance (2.14, 2.24-2.27)

- a) National Center for Education Statistics (“NCES”) School ID or NCES District ID
- b) Number of students participating in evidence-based programs *(Federal guidance may change this requirement in July 2022)*

Housing Support (2.15, 2.16, 2.18)

- a) Number of people or households receiving eviction prevention services *(Federal guidance may change this requirement in July 2022)*
- b) Number of affordable housing units preserved or developed *(Federal guidance may change this requirement in July 2022)*

Small Business Economic Assistance (2.29-2.33)

- a) Number of small businesses served

Assistance to Non-Profits (2.34)

- a) Number of non-profits served

Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (2.35-2.36)

- a) Sector of employer
- b) Purpose of funds
- c) If other than travel, tourism and hospitality (2.36) – description of hardship

EC 3 – Public Health – Negative Economic Impact: Public Sector Capacity

Payroll for Public Health and Safety Employees (EC 3.1)

- a) Number of government FTEs responding to COVID-19

Rehiring Public Sector Staff (EC 3.2)

- a) Number of FTEs rehired by governments

EC 4 – Premium Pay

All Premium Pay Projects

- a) List of sectors designated as critical by the chief executive of the jurisdiction, if beyond those listed in the final rule
- b) Numbers of workers served
- c) Employer sector for all subawards to third-party employers
- d) Written narrative justification of how premium pay is responsive to essential work during the public health emergency for non-exempt workers or those making over 150 percent of the state/county’s average annual wage

- e) Number of workers to be served with premium pay in K-12 schools

EC 5 – Infrastructure Projects

All Infrastructure Projects

- a) Projected/actual construction start date (month/year)
- b) Projected/actual initiation of operations date (month/year)
- c) Location (for broadband, geospatial data of locations to be served)
- d) Projects over \$10 million
 - i. Prevailing wage certification or detailed project employment and local impact report
 - ii. Project labor agreement certification or project workforce continuity plan
 - iii. Prioritization of local hires
 - iv. Community benefit agreement description, if applicable

Water and sewer projects (EC 5.1-5.18)

- a) National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- b) Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
- c) Median Household Income of service area
- d) Lowest Quintile Income of the service area

Broadband projects (EC 5.19-5.21)

- a) Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
 - i. If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
 - ii. Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- b) Additional programmatic data will be required for broadband projects and will be defined in a subsequent version of the US Treasury Reporting Guidance, including, but not limited to (*Federal guidance may change this requirement in July 2022*):
 - i. Number of households (broken out by households on Tribal lands and those not on Tribal lands) that have gained increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, with the number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download and number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
 - ii. Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) that have projected increased access to broadband meeting the minimum speed standards in areas that previously

lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization, with the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

- iii. Narrative identifying speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering, technology to be deployed, miles of fiber, cost per mile, cost per passing, number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download, number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload, and number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization. Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

All Expenditure Categories

- a) Program income earned and expended to cover eligible project costs
- 8.1.2. A Subrecipient shall report the following data elements to Prime Recipient no later than five days after the end of the month following the month in which the Subaward was made.
- 8.1.2.1. Subrecipient Unique Entity ID;
 - 8.1.2.2. Subrecipient Unique Entity ID if more than one electronic funds transfer (EFT) account;
 - 8.1.2.3. Subrecipient parent's organization Unique Entity ID;
 - 8.1.2.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

- 8.1.2.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 8.1.2.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.
- 8.1.3. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, the following data elements:
- 8.1.3.1. Subrecipient's Unique Entity ID as registered in SAM.
 - 8.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
 - 8.1.3.3. Narrative identifying methodology for serving disadvantaged communities. See the "Project Demographic Distribution" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. This requirement is applicable to all projects in Expenditure Categories 1 and 2.
 - 8.1.3.4. Narrative identifying funds allocated towards evidenced-based interventions and the evidence base. See the "Use of Evidence" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. See section 8.1.1 for relevant Expenditure Categories.
 - 8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the public health and negative economic impacts of COVID-19. This requirement is applicable to Expenditure Categories 1 and 2. For aid to travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12), also provide the sector of employer, purpose of funds, and if not travel, tourism and hospitality a description of the pandemic impact on the industry.
 - 8.1.3.6. Narrative identifying the sector served and designated as critical to the health and well-being of residents by the chief executive of the jurisdiction and the number of workers expected to be served. For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county's average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is higher, OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions, include justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19 but should not include personally identifiable information. This requirement applies to EC 4.1, and 4.2.
 - 8.1.3.7. For infrastructure projects (EC 5), or capital expenditures in any expenditure category, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and location (for broadband, geospatial location data). For projects over \$10 million:
 - 8.1.3.8. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less

than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.

- 8.1.3.8.1. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.
 - 8.1.3.8.2. Whether the project prioritizes local hires.
 - 8.1.3.8.3. Whether the project has a Community Benefit Agreement, with a description of any such agreement.
- 8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor's Office and Office of the State Controller. The State of Colorado may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Exhibit Q – SLFRF Reporting Modification Form.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.
- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS.

- 10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

11. SINGLE AUDIT REQUIREMENTS.

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

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

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.
 - 12.1.1. [Applicable to federally assisted construction Agreements.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.
 - 12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).

- 12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements,” and any implementing regulations issued by the Federal Awarding Agency.
- 12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 12.1.7. Never Contract with the Enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never Contract with the Enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- 12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

- 12.1.9. Title VI of the Civil Rights Act. The Subgrantee, Contractor, Subcontractor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CRF Part 22, and herein incorporated by reference and made part of this Agreement or agreement.

13. CERTIFICATIONS.

- 13.1. Subrecipient Certification. Subrecipient shall sign a "State of Colorado Agreement with Recipient of Federal Recovery Funds" Certification Form in Exhibit E and submit to State Agency with signed grant agreement.
- 13.2. Unless prohibited by Federal statutes or regulations, Prime Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Grantee with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

15. EVENT OF DEFAULT AND TERMINATION.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.
- 15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
- 15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
- 15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

- 15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- 15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or
- 15.2.5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

EXHIBIT O

AGREEMENT WITH SUBSUBRECIPIENT OF FEDERAL RECOVERY FUNDS

Section 602(b) of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021), authorizes the Department of the Treasury (Treasury) to make payments to certain Subrecipients from the Coronavirus State Fiscal Recovery Fund. The State of Colorado has signed and certified a separate agreement with Treasury as a condition of receiving such payments from the Treasury. This agreement is between your organization and the State and your organization is signing and certifying the same terms and conditions included in the State's separate agreement with Treasury. Your organization is referred to as a Subrecipient.

As a condition of your organization receiving federal recovery funds from the State, the authorized representative below hereby (i) certifies that your organization will carry out the activities listed in section 602(c) of the Act and (ii) agrees to the terms attached hereto. Your organization also agrees to use the federal recovery funds as specified in bills passed by the General Assembly and signed by the Governor.

Under penalty of perjury, the undersigned official certifies that the authorized representative has read and understood the organization's obligations in the Assurances of Compliance and Civil Rights Requirements, that any information submitted in conjunction with this assurances document is accurate and complete, and that the organization is in compliance with the nondiscrimination requirements.

Subrecipient Name _____

Authorized Representative: _____

Title: _____

Signature: _____

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
TERMS AND CONDITIONS

1. Use of Funds.
 - a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 602(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.
 - b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Subrecipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award. Subrecipient also agrees to comply with any reporting requirements established by the Governor's Office and Office of the State Controller.
4. Maintenance of and Access to Records
 - a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs. Subrecipient shall follow guidance on administrative costs issued by the Governor's Office and Office of the State Controller.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.
8. Conflicts of Interest. The State of Colorado understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy

is applicable to each activity funded under this award. Subrecipient and Contractors must disclose in writing to the Office of the State Controller or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Office of the State Controller shall disclose such conflict to Treasury.

9. Compliance with Applicable Law and Regulations.

a. Subrecipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

- i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
- ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and Subcontractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - i. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - ii. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - iii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - iv. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

- v. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
 - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. Remedial Actions. In the event of Subrecipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.
11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number SLFRF0126 awarded to the State of Colorado by the U.S. Department of the Treasury.”

14. Debts Owed the Federal Government.

- a. Any funds paid to the Subrecipient (1) in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.
- b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury’s initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

- a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or Subcontractor under this award.
- b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;

- iii. The Government Accountability Office;
- iv. A Treasury employee responsible for Agreement or grant oversight or management;
- v. An authorized official of the Department of Justice or other law enforcement agency;
- vi. A court or grand jury; or
- vii. A management official or other employee of Subrecipient, Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.

c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

1. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees, Subrecipients, and Contractorsto adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance, regulated programs, licenses, procurement Agreements by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.
3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Contractors, Subcontractors, successors, transferees, and assignees:

The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.
7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.
9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of

discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub- Subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

EXHIBIT P

SLFRF SUBRECIPIENT QUARTERLY REPORT

1. SLFRF SUBRECIPIENT QUARTERLY REPORT WORKBOOK

- 1.1 The SLFRF Subrecipient Quarterly Report Workbook must be submitted to the State Agency within ten (10) days following each quarter ended September, December, March and June. The SLFRF Subrecipient Quarterly Report Workbook can be found at:

<https://osc.colorado.gov/american-rescue-plan-act> (see SLFRF Grant Agreement Templates tab)

EXHIBIT Q

SAMPLE SLFRF REPORTING MODIFICATION FORM

Local Agency:			Agreement No:	
Project Title:			Project No:	
Project Duration:	To:		From:	
State Agency:	CDOT			

This form serves as notification that there has been a change to the reporting requirements set forth in the original SLFRF Grant Agreement.

The following reporting requirements have been (add/ remove additional rows as necessary):

Updated Reporting Requirement (Add/Delete/Modify)	Project Number	Reporting Requirement

By signing this form, the Local Agency agrees to and acknowledges the changes to the reporting requirements set forth in the original SLFRF Grant Agreement. All other terms and conditions of the original SLFRF Grant Agreement, with any approved modifications, remain in full force and effect. Grantee shall submit this form to the State Agency within 10 business days of the date sent by that Agency.

Local Agency

Date

CDOT Program Manager

Date

EXHIBIT R
APPLICABLE FEDERAL AWARDS

FEDERAL AWARD(S) APPLICABLE TO THIS GRANT AWARD

Federal Awarding Office	US Department of the Treasury
Grant Program	Coronavirus State and Local Fiscal Recovery Funds
Assistance Listing Number	21.027
Federal Award Number	SLFRP0126
Federal Award Date *	May 18, 2021
Federal Award End Date	December 31, 2024
Federal Statutory Authority	Title VI of the Social Security Act, Section 602
Total Amount of Federal Award (this is <u>not</u> the amount of this grant agreement)	\$3,828,761,790

* Funds may not be available through the Federal Award End Date subject to the provisions in §2 and §5 below.

EXHIBIT S

PII Certification

STATE OF COLORADO

LOCAL AGENCY CERTIFICATION FOR ACCESS TO PII THROUGH A DATABASE OR AUTOMATED NETWORK

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

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

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT T

CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

Checklist for required exhibits due to funding sources. Required Exhibits are dependent on the source of funding. This is a guide to assist in the incorporation and completion of Exhibits in relation to funding sources.

Exhibit	Funding only from FHWA	Funding only from ARPA	FHWA and ARPA Funding
EXHIBIT A, SCOPE OF WORK	✓	✓	✓
EXHIBIT B, SAMPLE OPTION LETTER	✓	✓	✓
EXHIBIT C, FUNDING PROVISIONS	✓	✓	✓
EXHIBIT D, LOCAL AGENCY RESOLUTION (IF APPLICABLE)	✓	✓	✓
EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST	✓	✓	✓
EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS	✓		✓
EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE	✓		✓
EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES	✓		✓
EXHIBIT I, FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS	✓		✓
EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS	✓		✓
EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS	✓	✓	✓
EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM	✓	✓	✓
EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS	✓		✓

EXHIBIT N, FEDERAL TREASURY PROVISIONS		✓	✓
EXHIBIT O, AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS		✓	✓
EXHIBIT P, SLFRF SUBRECIPIENT QUARTERLY REPORT		✓	✓
EXHIBIT Q, SLFRF REPORTING MODIFICATION FORM		✓	✓
EXHIBIT R, APPLICABLE FEDERAL AWARDS		✓	✓
EXHIBIT S, PII CERTIFICATAION	✓	✓	✓
EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE	✓	✓	✓

GRANT CERTIFICATION

To: Heather Graham, President of the City Council
Nicholas Gradisar, Mayor

Re: Safe Routes to School FY 2022, Grant for Safe Routes to Schools, Rock and Roll Safely

I hereby certify that I have reviewed and am familiar with the attached documents, and to the best of my knowledge and belief, the City has the present ability to comply with all special conditions, certifications and assurances therein contained.

Name (print) Kelly Grisham

12/12/2023

Date

Title: Public Works Project Coordinator



**Background Paper for Proposed
Ordinance**

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Scott Hobson, Acting Director Planning and Community Development

SUBJECT: AN ORDINANCE AMENDING SECTION SEVEN OF CHAPTER FOUR OF TITLE XVII OF THE PUEBLO MUNICIPAL CODE RELATING TO LANDSCAPE PERFORMANCE STANDARDS

SUMMARY:

Attached for consideration is an Ordinance that amends Section 17-4-7(b),(2) of the Pueblo Municipal Code relating to Landscape Performance Standards.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

Currently, the Municipal Code requires developed commercial, industrial, and multifamily properties to come into full compliance with the landscaping code when any additional structure is constructed or placed on the property, regardless of size or proposed use of the building. In situations where a property was developed several years ago and the landscaping does not meet the current Landscape Performance Standards, Section 17-4-7 of the Pueblo Municipal Code, the addition of a small accessory structure, such as a storage shed, gazebo, pergola, etc., would require expensive landscape improvements to be made in conjunction with the construction or placement of that accessory structure. Requiring full landscaping for accessory structures is often a significant financial burden for property owners and a disincentive for redevelopment and investment into an existing site. The proposed amendment also includes other minor changes in the code language to improve comprehension and address provisions that currently conflict with other portions of the code.

FINANCIAL IMPLICATIONS:

There are no financial implications for the City.

BOARD/COMMISSION RECOMMENDATION:

The Planning and Zoning Commission, at their December 13, 2023, Regular Meeting, voted 7-0, to recommend approval.

STAKEHOLDER PROCESS:

The Planning Department sent out Notice of the Planning and Zoning Commission Public Hearing by publication of the proposed amendment fifteen (15) days prior to the Public Hearing.

ALTERNATIVES:

If City Council does not approve this Ordinance, Section 17-4-7(b),(2) relating to Landscape Performance Standards will remain.

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

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. TA-23-01 Attachments

ORDINANCE NO. 10642

AN ORDINANCE AMENDING SECTION SEVEN OF CHAPTER
FOUR OF TITLE XVII OF THE PUEBLO MUNICIPAL CODE
RELATING TO LANDSCAPE PERFORMANCE STANDARDS

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

SECTION 1.

Section 17-4-7(b)(2) of the Pueblo Municipal Code is hereby amended to read as follows:

Sec. 17-4-7. Landscape Performance Standard

...

(2) Applicable Zones: Unless provided through a Special Area Plan or Planned Unit Development, the provisions of this Section shall apply in the following zone districts: R-4, R-5, R-6, RCN, B-1, B-2, B-3, B-4, BP, PUD (when the PUD does not establish its own landscaping regulations), H-B, Industrial-Zoned properties in the designated high-visibility areas, O-1, CCN, S-1, S-4 and S-5 when at least one (1) of the following occurs within the above-mentioned zones:

a. The construction or placement of any building or structure upon any lot. Exceptions to this requirement include constructing or placing any one (1) family, residence or two (2) family residence, and constructing or placing accessory structure(s) with a singular or cumulative ground floor area of 1,000 square feet or fewer.

b. Any structural addition of thirty-five percent (35%) or more of the ground floor area [gross square footage] [of] to an existing building, except a residence, one (1) family and a residence, two (2) family. [or] An addition of ten thousand (10,000) square feet of ground floor area [gross square feet] or more [of] to an existing building in any [I-2 zone] Industrial district [(whichever quantity is less)]. Additional increases in floor area, based on the above zone districts, shall be a maximum allowable limit of expansion whether cumulative or not, based on structure size after 2017.

SECTION 2.

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

SECTION 3.

This Ordinance shall become effective thirty (30) days after the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on January 08, 2024.

Final adoption of Ordinance by City Council on January 22, 2024.

APPROVED: 
PRESIDENT OF CITY COUNCIL

Action by the Mayor:

☒ Approved on January 30, 2024.

☐ Disapproved on _____ based on the following objections:


Mayor

Action by City Council After Disapproval by the Mayor:

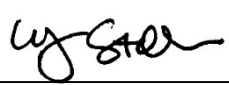
☐ Council did not act to override the Mayor's veto.

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

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

President of City Council

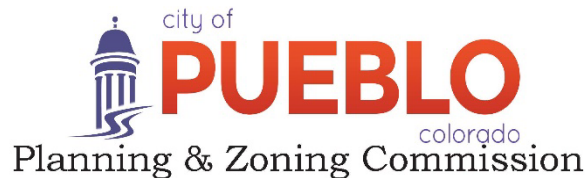
ATTEST


City Clerk

Mike Castellucci
Chair

Patrick Avalos
Vice Chair

Sarah Martinez
City Council Representative



Christopher Pasternak

Alexandra Aznar

Elizabeth Bailey

Cheryl Spinuzzi

MINUTES OF REGULAR MEETING

City of Pueblo, Colorado

Wednesday, December 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: Alexandra Aznar, Mike Castellucci, Patrick Avalos, Cheryl Spinuzzi, Lisa Bailey, Christopher Pasternak, Sarah Martinez

Commissioners Absent: None

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, Andrew Hayes, Public Works Director, Noah Stamm, Drainage Engineer, Melanie Turner, Traffic Engineer, and Joe Martellaro, Associate Engineer II.

Staff Members Absent: None

Approval of the Agenda: Bailey motioned to move items Z-23-10, S-23-07, S-22-07 and Z-23-12 to the January 10, 2024, meeting and approve the December 13, 2023, agenda as amended, seconded by Spinuzzi.

Motion Passed: 7-0

Public Hearing:

7. TA-23-01 Landscape Performance Standards, Accessory Structure Exemption: Modifies the existing Zoning Code to exempt certain accessory structures from the Landscape Performance Standards.

Beritt Odom, Principal Planner, provided the staff report.

Hearing: No one testified in favor or opposition of the request.

Commission Action: Bailey moved to recommend approval of TA-23-01, seconded by Aznar.

Motion Passed: 7-0

TEXT AMENDMENT TA-23-01

TO: City of Pueblo Planning and Zoning Commission
FROM: Beritt Odom, Principal Planner & Bart Mikitowicz, Senior Planner
THROUGH: Scott Hobson, Acting Director of Planning and Community Development
DATE: December 13, 2023
SUBJECT: AN ORDINANCE AMENDING SECTION 17-4-7 OF CHAPTER 4 OF TITLE XVII OF THE PUEBLO MUNICIPAL CODE RELATING TO LANDSCAPE PERFORMANCE STANDARDS

Background:

Currently, the Municipal Code requires developed commercial, industrial, and multifamily properties to come into full compliance with the landscaping code when any additional structure is constructed or placed on the property, regardless of size or proposed use of the building. In situations where a property was developed several years ago and the landscaping does not meet the current Landscape Performance Standards, Section 17-4-7 of the Pueblo Municipal Code, the addition of a small accessory structure, such as a storage shed, gazebo, pergola, etc., would require expensive landscape improvements to be made in conjunction with the construction or placement of that accessory structure. Requiring full landscaping for accessory structures is often a significant financial burden for property owners and a disincentive for redevelopment and investment into an existing site.

The proposed amendment also includes other minor changes in the code language to improve comprehension and address provisions that currently conflict with other portions of the code.

Analysis:

The Planning and Community Development Department proposes to exempt new accessory structures with a cumulative ground floor area of 1,000 square feet or fewer from the landscape requirements. This will allow a property owner to construct or place one or more accessory structures with a cumulative ground floor area of not more than 1,000 square feet without having to bring the property's landscaping into compliance with the current code. In situations where shipping containers are allowed by right (industrial zone districts) or by Special Use Permit (commercial zone districts) a property may be allowed to have up to three larger-sized shipping containers without having to landscape the entire parcel or lot. This will also allow other types of storage structures which will still have to be architecturally compatible with the principal structure gazebos, pergolas, or other similar structures.

The proposed amendment also exempts residential duplex structures from having to landscape according to the code in R-4, R-5, and R-6 Zone Districts. Other portions of the code, such as the Single-Family Placement Standards, treat single-family homes and duplex units equally. Not exempting duplex units from the landscape requirements was most likely an oversight at the time of landscape code adoption.

The amendment proposes to change the current reference of “gross floor area” to “ground floor area” to calculate whether a structural addition or a free-standing accessory structure will trigger landscape improvements. Gross floor area is defined as the sum of all areas on all floors of a building included within the outside faces of the exterior walls. Ground floor area is the total area of a building between the outside faces of the exterior walls of the story at ground level. Typically, the ground floor area is of most concern with regard to zoning regulations. Lot coverage and setbacks are determined based on the ground floor area of a structure, not the gross floor area. Staff feels that it is more appropriate to determine if landscape improvements are necessary based on an increase of ground floor area as opposed to gross floor area.

Prior to 2018, landscaping regulations applied to multifamily, commercial, and light industrial zone districts. Landscaping was not required for the I-3, Heavy Industrial District. In 2018, the “Building and Site Design Standards for Industrial Zone Districts” was adopted, which identifies high visibility and low visibility industrial areas and requires different landscaping standards for each area. The site design standards also require I-3 Zone Districts to landscape according to the designation of high or low visibility (Section 17-4-49 of the Pueblo Municipal Code). Section 17-4-7, (2), b., was not amended to reflect the change and only referenced I-2 Zone Districts in calculating whether landscaping was required. The proposed amendment removes the I-2 reference and replaces it with “Industrial District,” to accurately reflect the requirements of Section 17-4-49.

Recommendation:

Staff recommends that if the Planning and Zoning Commission finds the proposed accessory structure exemption and language clarification changes to the code are appropriate, a recommendation of approval for the Text Amendment is forwarded to City Council

Attachments:

Ordinance Amending Section, 17-4-7, (b), (2) of Title XVII of the Pueblo Municipal Code Relating to

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION SEVEN OF
CHAPTER FOUR OF TITLE XVII OF THE PUEBLO
MUNICIPAL CODE RELATING TO LANDSCAPE
PERFORMANCE STANDARDS

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

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

SECTION 1.

Section 17-4-7(b)(2) of the Pueblo Municipal Code is hereby amended to read as follows:

Sec. 17-4-7. Landscape Performance Standard

. . .

(2) Applicable Zones: Unless provided through a Special Area Plan or Planned Unit Development, the provisions of this Section shall apply in the following zone districts: R-4, R-5, R-6, RCN, B-1, B-2, B-3, B-4, BP, PUD (when the PUD does not establish its own landscaping regulations), H-B, Industrial-Zoned properties in the designated high-visibility areas, O-1, CCN, S-1, S-4 and S-5 when at least one (1) of the following occurs within the above-mentioned zones:

a. The construction or placement of any building or structure upon any lot. Exceptions to this requirement include constructing or placing any one (1) family, residence or two (2) family residence, and constructing or placing accessory structure(s) with a singular or cumulative ground floor area of 1,000 square feet or fewer.

b. Any structural addition of thirty-five percent (35%) or more of the ground floor area [gross square footage] [of] to an existing building, except a residence, one (1) family and a residence, two (2) family, [or] An addition of ten thousand (10,000) square feet of ground floor area [gross square feet] or more [of] to an existing building in any [I-2 zone] Industrial district [(whichever quantity is less)]. Additional increases in floor area, based on the above zone districts, shall be a maximum allowable limit of expansion whether cumulative or not, based on structure size after 2017.

**DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT
CITY OF PUEBLO**

**Submitted November 21, 2023
Published November 28, 2023**

NOTICE OF PUBLIC HEARING

TO WHOM IT MAY CONCERN:

Take notice that at 3:30 P.M., on the 13th day of December, 2023 in the **City Council Chambers**, 1 City Hall Place.

The Planning and Zoning Commission of Pueblo will hold a hearing for the following:

TA-23-01: An ordinance amending Section 17-4-7 of Chapter 4 Title XVII of the Pueblo Municipal Code relating to Landscape Performance Standards.

The proposed text amendment modifies the existing applicability section of the Landscape code exempting two-family residences and accessory structures with less than 1,000 sq.ft. of floor area from the requirements of the section.

A draft of the proposed text amendments will be posted on www.pueblo.us/PandZ under "Most Recent Agenda" and on file in the office of the Department of Planning and Community Development office and will be available for viewing and printing, typically the Friday prior to the meeting.

Any person may appear before the Planning and Zoning Commission at the time and place stated above to be heard on the proposed amendments. Individuals who require special arrangements to participate are encouraged to contact the Planning Department at least 72 hours in advance.

After the public hearing and recommendation by the Planning and Zoning Commission, the ordinance adopting the proposed Text Amendment will be considered by the City Council at a public hearing. Notice of the public hearing before the City Council will be published in the Pueblo Chieftain at least ten (10) days prior to the hearing. Any interested person may appear and be heard at such public hearing and may call the Department of Planning and Community Development for the time and date of such public hearing.


Scott Hobson
Administrative Official
(719) 553-2259



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Scott Hobson, Acting Director Planning and Community Development

SUBJECT: AN ORDINANCE AMENDING SECTION 5 OF CHAPTER 4, OF TITLE XVII OF THE PUEBLO MUNICIPAL CODE RELATING TO THE APPEAL PROCESS FOR DEVELOPMENT AND REDEVELOPMENT REVIEW IN THE HB, HARP-1, HARP -2 AND HARP-3 PERFORMANCE STANDARD REVIEW

SUMMARY:

Attached for consideration is a Text Amendment that will amend section 5 of chapter 4 of Title XVII of the Pueblo Municipal Code relating to the appeal process for development and redevelopment review in the HB, HARP-1, HARP-2 AND HARP-3 Zone Districts.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

In 2009, City Council approved Ordinance 8079, with recommendation from the Planning and Zoning Commission to dissolve the Pueblo Architectural Review Board (PARB). Prior to dissolution, PARB was responsible for reviewing and issuing Certificates of Compliance for new construction, remodeling, reconstructing, and rehabilitation of structures within the Historic Business (HB) and Historic Arkansas Riverwalk Zone Districts 1, 2 & 3. At the time, Planning and Community Development Staff asserted that PARB review duplicated reviews conducted by the Historic Preservation Commission, which was unnecessary. No substantial justification for the Planning and Zoning Commission conducting development reviews within the HARP Zone Districts was provided in the staff report presented to the Planning and Zoning Commission. Ordinance 8079 dissolved PARB and inadvertently removed appeal procedures for applicants that received a denial from either HB or P&Z on their development or redevelopment proposal. Because of this, Planning and Community Development Department staff recommend modifying the existing Zoning Code to re-

establish appeal procedures for development and redevelopment review with the HB, HARP-1, HARP-2 AND HARP-3 Zone Districts.

FINANCIAL IMPLICATIONS:

There are no financial implications for the City.

BOARD/COMMISSION RECOMMENDATION:

The Planning and Zoning Commission, at their December 13, 2023, Regular Meeting, voted 7-0, to recommend approval.

STAKEHOLDER PROCESS:

The Planning Department sent out Notice of the Planning and Zoning Commission Public Hearing by publication of the proposed amendment fifteen (15) days prior to the Public Hearing.

ALTERNATIVES:

If City Council does not approve this Ordinance, there will be no appeal procedures for the development review in the HB, HARP-1, HARP-2 and HARP-3 Zone Districts. Upon request of City Council, the Ordinance could be returned to the Planning and Zoning Commission for consideration of proposed modifications.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. TA-23-04 Attachments
2. ORDINANCE

ORDINANCE NO. 10643

AN ORDINANCE AMENDING SECTION 5 OF CHAPTER 4,
OF TITLE XVII OF THE PUEBLO MUNICIPAL CODE
RELATING TO ESTABLISHING APPEAL PROCEEDURES
RELATED TO THE HB, HARP-1, HARP-2, AND HARP-3
PERFORMANCE STANDARD REVIEW

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

(brackets indicate matter being deleted, underscoring indicating matter being added)

SECTION 1.

Section 17-4-5, (5), a., of Title XVII of the Pueblo Municipal Code, as amended, is hereby modified by the addition of subsections 17-4-5, (5), a., 2., (a) and (b) to read as follows:

Sec. 17-4-5, (5), a., 2., Appeals.

- (a) Any person adversely affected by a decision of the Historic Preservation Commission may appeal such decision to the City Council by filing with the City Clerk, within twenty (20) days after Commission's decision, a written request for review. Such appeal must specify in detail the provisions of the Commission's decision the person contends are arbitrary or capricious or is beyond the jurisdiction of the Commission, and the supporting grounds and reasons together with a copy of the Commission's decision. The City Council shall conduct a hearing to review the provisions asserted to be arbitrary or capricious or beyond the jurisdiction of the Commission, and the supporting grounds and reasons specified in the request for review. The person seeking review and the Commission shall be given written notice of the date, time and place of the review hearing at least ten (10) days before the hearing date. Notice to the person seeking review shall be given by first-class mail, postage prepaid, at the person's address stated in the appeal. No other notice need be given for such a hearing. The City Council may sustain the decision of the Commission if it finds that the Commission exceeded its jurisdiction or acted in an arbitrary or capricious manner. If City Council finds the Commission exceeded its jurisdiction or acted in an arbitrary or capricious manner, the City Council will remand the appeal to the Commission for a redetermination within thirty (30) days. Such determination shall be limited to and consistent with the City Council's written findings. The appeal hearing shall be conducted as near as practicable according to the procedures set forth in Chapter 7 of Title I of this Code. The Commission's decision will be stayed until the City Council rules on the appeal.

- (b) Any person adversely affected after the Commission makes a final determination, after a review and decision by City Council, may seek judicial review by the District Court, Pueblo County, Colorado, in the manner provided in Rule 106(a)(4), of the Colorado Rules of Civil Procedure. A complaint seeking such review shall be filed in Pueblo District Court no later than thirty (30) days after the Commission's final decision.

SECTION 2.

Section 17-4-5, (5), b., of Title XVII of the Pueblo Municipal Code, as amended, is hereby modified by the addition of subsections 17-4-5, (5), b., 4., (a) and (b) to read as follows:

Sec. 17-4-5, (5), b., 4., Appeals.

- (a) Any person adversely affected by a decision of the Planning and Zoning Commission may appeal such decision to the City Council by filing with the City Clerk, within twenty (20) days after Commission's decision, a written request for review. Such appeal must specify in detail the provisions of the Commission's decision the person contends are arbitrary or capricious or is beyond the jurisdiction of the Commission, and the supporting grounds and reasons together with a copy of the Commission's decision. The City Council shall conduct a hearing to review the provisions asserted to be arbitrary or capricious or beyond the jurisdiction of the Commission, and the supporting grounds and reasons specified in the request for review. The person seeking review and the Commission shall be given written notice of the date, time and place of the review hearing at least ten (10) days before the hearing date. Notice to the person seeking review shall be given by first-class mail, postage prepaid, at the person's address stated in the appeal. No other notice need be given for such a hearing. The City Council may sustain the decision of the Commission if it finds that the Commission exceeded its jurisdiction or acted in an arbitrary or capricious manner. If City Council finds the Commission exceeded its jurisdiction or acted in an arbitrary or capricious manner, the City Council will remand the appeal to the Commission for a redetermination within thirty (30) days. Such determination shall be limited to and consistent with the City Council's written findings. The appeal hearing shall be conducted as near as practicable according to the procedures set forth in Chapter 7 of Title I of this Code. The Commission's decision will be stayed until the City Council rules on the appeal.
- (b) Any person adversely affected after the Commission makes a final determination, after a review and decision by City Council, may seek judicial review by the District Court, Pueblo County, Colorado, in the manner provided in Rule 106(a)(4), of the Colorado Rules of Civil Procedure. A complaint seeking such review shall be filed in Pueblo District Court no later than thirty (30) days after the Commission's final decision.

SECTION 3.

Section 17-4-5, (5), c., of Title XVII of the Pueblo Municipal Code, as amended, is hereby modified by the addition of subsections 17-4-5, (5), c., 3., (a) and (b) to read as follows:

Sec. 17-4-5, (5), c., 3., Appeals.

- (a) Any person adversely affected by a decision of the Planning and Zoning Commission may appeal such decision to the City Council by filing with the City Clerk, within twenty (20) days after Commission's decision, a written request for review. Such appeal must specify in detail the provisions of the Commission's decision the person contends are arbitrary or capricious or is beyond the jurisdiction of the Commission, and the supporting grounds and reasons together with a copy of the Commission's decision. The City Council shall conduct a hearing to review the provisions asserted to be arbitrary or capricious or beyond the jurisdiction of the Commission, and the supporting grounds and reasons specified in the request for review. The person seeking review and the Commission shall be given written notice of the date, time and place of the review hearing at least ten (10) days before the hearing date. Notice to the person seeking review shall be given by first-class mail, postage prepaid, at the person's address stated in the appeal. No other notice need be given for such a hearing. The City Council may sustain the decision of the Commission if it finds that the Commission exceeded its jurisdiction or acted in an arbitrary or capricious manner. If City Council finds the Commission exceeded its jurisdiction or acted in an arbitrary or capricious manner, the City Council will remand the appeal to the Commission for a redetermination within thirty (30) days. Such determination shall be limited to and consistent with the City Council's written findings. The appeal hearing shall be conducted as near as practicable according to the procedures set forth in Chapter 7 of Title I of this Code. The Commission's decision will be stayed until the City Council rules on the appeal.

- (b) Any person adversely affected after the Commission makes a final determination, after a review and decision by City Council, may seek judicial review by the District Court, Pueblo County, Colorado, in the manner provided in Rule 106(a)(4), of the Colorado Rules of Civil Procedure. A complaint seeking such review shall be filed in Pueblo District Court no later than thirty (30) days after the Commission's final decision.

SECTION 4.

Section 17-4-5, (5), d., of Title XVII of the Pueblo Municipal Code, as amended, is hereby modified by the addition of subsections 17-4-5, (5), d., 3., (a) and (b) to read as follows:

Sec. 17-4-5, (5), d., 3., Appeals.

- (a) Any person adversely affected by a decision of the Planning and Zoning Commission may appeal such decision to the City Council by filing with the City Clerk, within twenty (20) days after Commission's decision, a written request for review. Such appeal must specify in detail the provisions of the Commission's decision the person contends are arbitrary or capricious or is beyond the jurisdiction of the Commission, and the supporting grounds and reasons together with a copy of the Commission's decision. The City Council shall conduct a hearing to review the provisions asserted to be arbitrary or capricious or beyond the jurisdiction of the Commission, and the supporting grounds and reasons specified in the request for review. The person seeking review and the Commission shall be given written notice of the date, time and place of the review hearing at least ten (10) days before the hearing date. Notice to the person seeking review shall be given by first-class mail, postage prepaid, at the person's address stated in the appeal. No other notice need be given for such a hearing. The City Council may sustain the decision of the Commission if it finds that the Commission exceeded its jurisdiction or acted in an arbitrary or capricious manner. If City Council finds the Commission exceeded its jurisdiction or acted in an arbitrary or capricious manner, the City Council will remand the appeal to the Commission for a redetermination within thirty (30) days. Such determination shall be limited to and consistent with the City Council's written findings. The appeal hearing shall be conducted as near as practicable according to the procedures set forth in Chapter 7 of Title I of this Code. The Commission's decision will be stayed until the City Council rules on the appeal.
- (b) Any person adversely affected after the Commission makes a final determination, after a review and decision by City Council, may seek judicial review by the District Court, Pueblo County, Colorado, in the manner provided in Rule 106(a)(4), of the Colorado Rules of Civil Procedure. A complaint seeking such review shall be filed in Pueblo District Court no later than thirty (30) days after the Commission's final decision.

SECTION 5.

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 6.

This Ordinance shall become effective thirty (30) days after the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on January 8, 2024.

Final adoption of Ordinance by City Council on January 22, 2024.

APPROVED: 
PRESIDENT OF CITY COUNCIL

Action by the Mayor:

☒ Approved on January 30, 2024.

☐ Disapproved on _____ based on the following objections:


Mayor

Action by City Council After Disapproval by the Mayor:

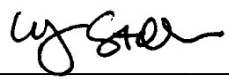
☐ Council did not act to override the Mayor's veto.

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

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

President of City Council

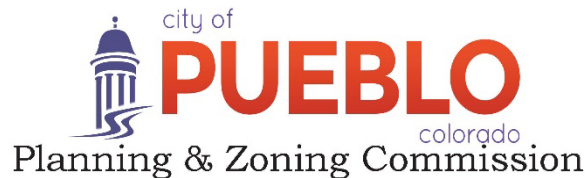
ATTEST


City Clerk

Mike Castellucci
Chair

Patrick Avalos
Vice Chair

Sarah Martinez
City Council Representative



Christopher Pasternak

Alexandra Aznar

Elizabeth Bailey

Cheryl Spinuzzi

MINUTES OF REGULAR MEETING

City of Pueblo, Colorado

Wednesday, December 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: Alexandra Aznar, Mike Castellucci, Patrick Avalos, Cheryl Spinuzzi, Lisa Bailey, Christopher Pasternak, Sarah Martinez

Commissioners Absent: None

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, Andrew Hayes, Public Works Director, Noah Stamm, Drainage Engineer, Melanie Turner, Traffic Engineer, and Joe Martellaro, Associate Engineer II.

Staff Members Absent: None

Approval of the Agenda: Bailey motioned to move items Z-23-10, S-23-07, S-22-07 and Z-23-12 to the January 10, 2024, meeting and approve the December 13, 2023, agenda as amended, seconded by Spinuzzi.

Motion Passed: 7-0

Public Hearing:

8. TA-23-04 HB, HARP-1, HARP-2, and HARP-3, Appeal Procedures: Modifies the existing Zoning Code to re-establish appeal procedures for development and redevelopment review within the HB, HARP-1, HARP-2, and HARP-3 Zone Districts.

Beritt Odom, Principal Planner, provided the staff report.

Hearing: No one testified in favor or opposition of the request.

Commission Action: Bailey moved to recommend approval of TA-23-04, seconded by Spinuzzi.

Motion Passed: 7-0

TEXT AMENDMENT TA-23-04

TO: City of Pueblo Planning and Zoning Commission
FROM: Beritt Odom, Principal Planner
THROUGH: Scott Hobson, Acting Director of Planning and Community Development
DATE: December 13, 2023
SUBJECT: An ordinance amending Sections, 17-4-5, (5), a. 2.; 17-4-5, (5), b., 4.; 17-4-5, (5), c., 3.; 17-4-5, (5), d., 3. of Title XVII of the Pueblo Municipal Code relating to the appeal process for development and redevelopment review in the HB, HARP-1, HARP-2, and HARP-3, Zone Districts.

Background:

In 2009, City Council approved Ordinance 8079, with recommendation from the Planning and Zoning Commission to dissolve the Pueblo Architectural Review Board (PARB). Prior to dissolution, PARB was responsible for reviewing and issuing Certificates of Compliance for new construction, remodeling, reconstructing, and rehabilitation of structures within the Historic Business (HB) and Historic Arkansas Riverwalk Zone Districts 1, 2 & 3. At the time, Planning and Community Development Staff asserted that PARB review duplicated reviews conducted by the Historic Preservation Commission, which was unnecessary. No substantial justification for the Planning and Zoning Commission conducting development reviews within the HARP Zone Districts was provided in the staff report presented to the Planning and Zoning Commission.

Ordinance 8079 dissolved PARB and inadvertently removed appeal procedures for applicants that received a denial from either HB or P&Z on their development or redevelopment proposal. Because of this, Planning and Community Development Department staff recommend reestablishing appeal procedures for the Certificate of Compliance review process.

Analysis:

Presently, Sections 17-4-5, (5) of the Pueblo Municipal Code (PMC) requires any work undertaken or commenced to construct, reconstruct, remodel, repair, paint, rehabilitate or in any way alter or modify the exterior of any building in the Historic Business (HB) or Historic Arkansas Riverwalk of Pueblo Zone Districts 1, 2 & 3 to be reviewed by either the Historic Preservation Commission (HPC) or Planning and Zoning Commission (P&Z). The Historic Preservation Commission reviews all rehabilitation and construction within the HB District, if the Commission makes the necessary findings of fact, it issues a Certificate of Compliance for the proposed development or redevelopment and staff is authorized to approve building permits, etc. The Planning and Zoning Commission reviews all development and redevelopment within the HARP Zone Districts 1, 2 & 3, if the Commission approves the proposed development or redevelopment according to the development standards in the Municipal Code, a Certificate of Compliance is issued and staff is authorized to approve building permits.

The proposed appeal procedures are very similar to the appeal procedures that were codified prior to 2009, with minor changes made to the wording to improve comprehension. The appeal procedure for HB and all HARP Districts will consist of an adversely affected applicant filing a written request for review to the City Council. The applicant must specify in detail the provisions of the Commission's decision asserting that the Commission's decision was arbitrary, capricious, or beyond the jurisdiction of the Commission. City Council will then review the appeal request and conduct a hearing. The City Council may sustain the decision of the Commission or rule that the Commission acted in an arbitrary or capricious manner and remand the decision back to the Commission for a redetermination that is consistent with City Council's findings. Any person adversely affected by the Commission's findings, following City Council review and findings, may seek judicial review by the Pueblo County District Court.

The proposed appeal procedure is the same procedure that HPC follows for Certificates of Appropriateness related to development within a Historic District or redevelopment of a landmarked property. It is also the same appeal procedure that was codified for HARP Zone Districts prior to the 2009 dissolution of PARB.

Recommendation:

Staff recommends that if the Planning and Zoning Commission finds the proposed Appeal Procedures are appropriate, a recommendation of approval for the Text Amendment is forwarded to City Council.

Attachments:

Draft Ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 5 OF CHAPTER 4,
OF TITLE XVII OF THE PUEBLO MUNICIPAL CODE
RELATING TO ESTABLISHING APPEAL PROCEEDURES
RELATED TO THE HB, HARP-1, HARP-2, AND HARP-3
PERFORMANCE STANDARD REVIEW

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:
(brackets indicate matter being deleted, underscoring indicating matter being added)

SECTION 1.

Section 17-4-5, (5), a., of Title XVII of the Pueblo Municipal Code, as amended, is hereby modified by the addition of subsections 17-4-5, (5), a., 2., (a) and (b) to read as follows:

Sec. 17-4-5, (5), a., 2., Appeals.

- (a) Any person adversely affected by a decision of the Historic Preservation Commission may appeal such decision to the City Council by filing with the City Clerk, within twenty (20) days after Commission's decision, a written request for review. Such appeal must specify in detail the provisions of the Commission's decision the person contends are arbitrary or capricious or is beyond the jurisdiction of the Commission, and the supporting grounds and reasons together with a copy of the Commission's decision. The City Council shall conduct a hearing to review the provisions asserted to be arbitrary or capricious or beyond the jurisdiction of the Commission, and the supporting grounds and reasons specified in the request for review. The person seeking review and the Commission shall be given written notice of the date, time and place of the review hearing at least ten (10) days before the hearing date. Notice to the person seeking review shall be given by first-class mail, postage prepaid, at the person's address stated in the appeal. No other notice need be given for such a hearing. The City Council may sustain the decision of the Commission if it finds that the Commission exceeded its jurisdiction or acted in an arbitrary or capricious manner. If City Council finds the Commission exceeded its jurisdiction or acted in an arbitrary or capricious manner, the City Council will remand the appeal to the Commission for a redetermination within thirty (30) days. Such determination shall be limited to and consistent with the City Council's written findings. The appeal hearing shall be conducted as near as practicable according to the procedures set forth in Chapter 7 of Title I of this Code. The Commission's decision will be stayed until the City Council rules on the appeal.
- (b) Any person adversely affected after the Commission makes a final determination, after a review and decision by City Council, may seek judicial

review by the District Court, Pueblo County, Colorado, in the manner provided in Rule 106(a)(4), of the Colorado Rules of Civil Procedure. A complaint seeking such review shall be filed in Pueblo District Court no later than thirty (30) days after the Commission's final decision.

SECTION 2.

Section 17-4-5, (5), b., of Title XVII of the Pueblo Municipal Code, as amended, is hereby modified by the addition of subsections 17-4-5, (5), b., 4., (a) and (b) to read as follows:

Sec. 17-4-5, (5), b., 4., Appeals.

- (a) Any person adversely affected by a decision of the Planning and Zoning Commission may appeal such decision to the City Council by filing with the City Clerk, within twenty (20) days after Commission's decision, a written request for review. Such appeal must specify in detail the provisions of the Commission's decision the person contends are arbitrary or capricious or is beyond the jurisdiction of the Commission, and the supporting grounds and reasons together with a copy of the Commission's decision. The City Council shall conduct a hearing to review the provisions asserted to be arbitrary or capricious or beyond the jurisdiction of the Commission, and the supporting grounds and reasons specified in the request for review. The person seeking review and the Commission shall be given written notice of the date, time and place of the review hearing at least ten (10) days before the hearing date. Notice to the person seeking review shall be given by first-class mail, postage prepaid, at the person's address stated in the appeal. No other notice need be given for such a hearing. The City Council may sustain the decision of the Commission if it finds that the Commission exceeded its jurisdiction or acted in an arbitrary or capricious manner. If City Council finds the Commission exceeded its jurisdiction or acted in an arbitrary or capricious manner, the City Council will remand the appeal to the Commission for a redetermination within thirty (30) days. Such determination shall be limited to and consistent with the City Council's written findings. The appeal hearing shall be conducted as near as practicable according to the procedures set forth in Chapter 7 of Title I of this Code. The Commission's decision will be stayed until the City Council rules on the appeal.
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SECTION 3.

Section 17-4-5, (5), c., of Title XVII of the Pueblo Municipal Code, as amended, is hereby modified by the addition of subsections 17-4-5, (5), c., 3., (a) and (b) to read as follows:

Sec. 17-4-5, (5), c., 3., Appeals.

- (a) Any person adversely affected by a decision of the Planning and Zoning Commission may appeal such decision to the City Council by filing with the City Clerk, within twenty (20) days after Commission's decision, a written request for review. Such appeal must specify in detail the provisions of the Commission's decision the person contends are arbitrary or capricious or is beyond the jurisdiction of the Commission, and the supporting grounds and reasons together with a copy of the Commission's decision. The City Council shall conduct a hearing to review the provisions asserted to be arbitrary or capricious or beyond the jurisdiction of the Commission, and the supporting grounds and reasons specified in the request for review. The person seeking review and the Commission shall be given written notice of the date, time and place of the review hearing at least ten (10) days before the hearing date. Notice to the person seeking review shall be given by first-class mail, postage prepaid, at the person's address stated in the appeal. No other notice need be given for such a hearing. The City Council may sustain the decision of the Commission if it finds that the Commission exceeded its jurisdiction or acted in an arbitrary or capricious manner. If City Council finds the Commission exceeded its jurisdiction or acted in an arbitrary or capricious manner, the City Council will remand the appeal to the Commission for a redetermination within thirty (30) days. Such determination shall be limited to and consistent with the City Council's written findings. The appeal hearing shall be conducted as near as practicable according to the procedures set forth in Chapter 7 of Title I of this Code. The Commission's decision will be stayed until the City Council rules on the appeal.
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SECTION 4.

Section 17-4-5, (5), d., of Title XVII of the Pueblo Municipal Code, as amended, is hereby modified by the addition of subsections 17-4-5, (5), d., 3., (a) and (b) to read as follows:

Sec. 17-4-5, (5), d., 3., Appeals.

- (a) Any person adversely affected by a decision of the Planning and Zoning Commission may appeal such decision to the City Council by filing with the City Clerk, within twenty (20) days after Commission's decision, a written request for review. Such appeal must specify in detail the provisions of the Commission's decision the person contends are arbitrary or capricious or is beyond the jurisdiction of the Commission, and the supporting grounds and reasons together with a copy of the Commission's decision. The City Council shall conduct a hearing to review the provisions asserted to be arbitrary or capricious or beyond the jurisdiction of the Commission, and the supporting grounds and reasons specified in the request for review. The person seeking review and the Commission shall be given written notice of the date, time and place of the review hearing at least ten (10) days before the hearing date. Notice to the person seeking review shall be given by first-class mail, postage prepaid, at the person's address stated in the appeal. No other notice need be given for such a hearing. The City Council may sustain the decision of the Commission if it finds that the Commission exceeded its jurisdiction or acted in an arbitrary or capricious manner. If City Council finds the Commission exceeded its jurisdiction or acted in an arbitrary or capricious manner, the City Council will remand the appeal to the Commission for a redetermination within thirty (30) days. Such determination shall be limited to and consistent with the City Council's written findings. The appeal hearing shall be conducted as near as practicable according to the procedures set forth in Chapter 7 of Title I of this Code. The Commission's decision will be stayed until the City Council rules on the appeal.
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SECTION 5.

This Ordinance shall become effective immediately after final passage and approval.

INTRODUCED: _____

BY: _____
COUNCIL PERSON

APPROVED: _____
PRESIDENT OF THE CITY COUNCIL

ATTESTED BY: _____
CITY CLERK

PASSED AND APPROVED: _____

**DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT
CITY OF PUEBLO**

**Submitted November 21, 2023
Published November 28, 2023**

NOTICE OF PUBLIC HEARING

TO WHOM IT MAY CONCERN:

Take notice that at 3:30 P.M., on the 13th day of December, 2023 in the **City Council Chambers**, 1 City Hall Place.

The Planning and Zoning Commission of Pueblo will hold a hearing for the following:

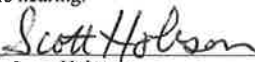
TA-23-04: An ordinance amending Sections, 17-4-5, (5), a. 2.; 17-4-5, (5), b., 4.; 17-4-5, (5), c., 3.; 17-4-5, (5), d., 3. of Title XVII of the Pueblo Municipal Code relating to the appeal process for development and redevelopment review in the HB, HARP-1, HARP-2, and HARP-3, Zone Districts.

The proposed text amendment modifies the existing Zoning Code to re-establish appeal procedures for development and redevelopment review within the HB, HARP-1, HARP-2, and HARP-3 Zone Districts.

A draft of the proposed text amendments will be posted on www.pueblo.us/PandZ under "Most Recent Agenda" and on file in the office of the Department of Planning and Community Development office and will be available for viewing and printing, typically the Friday prior to the meeting.

Any person may appear before the Planning and Zoning Commission at the time and place stated above to be heard on the proposed amendments. Individuals who require special arrangements to participate are encouraged to contact the Planning Department at least 72 hours in advance.

After the public hearing and recommendation by the Planning and Zoning Commission, the ordinance adopting the proposed Text Amendment will be considered by the City Council at a public hearing. Notice of the public hearing before the City Council will be published in the Pueblo Chieftain at least ten (10) days prior to the hearing. Any interested person may appear and be heard at such public hearing and may call the Department of Planning and Community Development for the time and date of such public hearing.


Scott Hobson
Administrative Official
(719) 553-2259

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 5 OF CHAPTER 4,
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SECTION 5.

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 6.

This Ordinance shall become effective thirty (30) days after the date of final action by the Mayor and City Council.

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

- ☐ Approved on _____.
- ☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Lisa Macchietto, Assistant City Attorney

SUBJECT: AN ORDINANCE APPROVING AND AUTHORIZING THE CITY TO SELL AND ASSIGN CERTAIN LIENS ENCUMBERING REAL PROPERTY PURSUANT TO TITLE VII, CHAPTER 9 OF THE PUEBLO MUNICIPAL CODE, AND AUTHORIZING THE MAYOR TO EXECUTE ASSIGNMENTS OF LIEN

SUMMARY:

This Ordinance authorizes the City to publish notice and sell the liens identified in the included list by public auction.

PREVIOUS COUNCIL ACTION:

On April 17, 2021, Council approved Ordinance No. 9930, which created a Vacant Property Registration program that required properties that were not occupied for at least 30 days in a calendar year to register and pay a \$500 fee. Failure to register the property and pay the fee resulted in the imposition of a \$500 penalty.

On December 12, 2022, Council approved Ordinance No. 10325, as amended, which amended the Pueblo Municipal Code to include new provisions allowing assignment and foreclosure as collection remedies. It also added a new Chapter 9 to Title VII of the Code to establish a procedure for sale and assignment by public auction.

On April 10, 2023, Council approved Ordinance No. 10342 authorizing the City to sell certain liens. Those liens, if not previously paid, were included in an auction that began on May 16, 2023.

BACKGROUND:

Nuisance abatement costs and vacant property registration fees often are unpaid by owners of the affected real property parcels for long periods of time. As a result, liens are recorded with the County Clerk's office to secure the City's interest in collecting the debt. The City may collect that debt by any legal means, including sale and assignment of the liens or by pursuing a foreclosure action. Additionally, many of the properties affected by the City's municipal real property liens are blighted and harm the quality of life and property values of the neighborhoods in which they are found.

Pursuing sale and assignment of municipal liens that encumber real property will allow the public to bid to become assignees of the liens. Any buyer or assignee of the liens may subsequently collect the debt secured by such lien, including interest and costs of collection, in any manner that was available to the City in their own name, subject to all claims and defenses and subject to the limitations and requirements of Title VII of the Pueblo Municipal Code. This remedy is desirable because it relieves the City from the burden of pursuing the collection activity. Moreover, it is likely to result in an assignee of the lien pursuing ownership of the property by foreclosure and rehabilitating nuisance and blighted properties to productive and positive ownership.

FINANCIAL IMPLICATIONS:

By pursuing sale and assignment as a collection remedy, the City will increase its collection rate resulting in fewer unpaid accounts and more timely collections.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If this Ordinance does not pass it will not be possible for the City to pursue sale and assignment of the identified liens by public auction as a collection remedy.

RECOMMENDATION:

Passage of the Ordinance.

ATTACHMENTS:

1. Assignment of Lien Ordinance
2. Assignment of Lien form

ORDINANCE NO. 10644

AN ORDINANCE APPROVING AND AUTHORIZING THE CITY TO SELL AND ASSIGN CERTAIN LIENS ENCUMBERING REAL PROPERTY PURSUANT TO TITLE VII, CHAPTER 9 OF THE PUEBLO MUNICIPAL CODE, AND AUTHORIZING THE MAYOR TO EXECUTE ASSIGNMENTS OF LIEN

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

SECTION 1.

The following list of municipal real property liens is hereby approved for collection by sale and assignment. The City is authorized to publish notice and pursue collection by public auction in accordance with Title VII, Chapter 9 of the Pueblo Municipal Code.

Encumbered Property Address	Lien Type	Lien Amount Due
503 Bellevue Place, Pueblo, CO 81004	Vacant Property # 2292203 (2022)	\$1,270.29
903 Catalpa Street, Pueblo, CO 81001	Vacant Property # 2292202 (2022)	\$1,270.57
2131 Driftwood Lane, Pueblo, CO 81005	Vacant Property # 2305319 (2022)	\$1,235.29
2403 E. Evans Avenue, Pueblo, CO 81004	Vacant Property # 2285121 (2022)	\$1,286.68
2403 E. Evans Avenue, Pueblo, CO 81004	Vacant Property # 2322235 (2023)	\$1,172.84
124 Idaho Avenue, Pueblo, CO 81004	Vacant Property # 2300749 (2022)	\$1,252.79
1110 E. 1st Street, Pueblo, CO 81001	Vacant Property # 2294173 (2022)	\$1,265.01
722 E. 3rd Street, Pueblo, CO 81001	Vacant Property # 2294176 (2022)	\$1,264.46
722 E. 3rd Street, Pueblo, CO 81001	Vacant Property # 2316402 (2023)	\$1,191.18
724 E. 3rd Street, Pueblo, CO 81001	Vacant Property # 2294175 (2022)	\$1,264.73
724 E. 3rd Street, Pueblo, CO 81001	Vacant Property # 2316422 (2023)	\$1,186.46
724 E. 3rd Street, Pueblo, CO 81001	Weeds # 2299524 (2022)	\$547.51
724 E. 3rd Street, Pueblo, CO 81001	Litter # 2299525 (2022)	\$549.01
1102 E. 5th Street, Pueblo, CO 81001	Vacant Property # 2293195 (2022)	\$1,267.51
1102 E. 5th Street, Pueblo, CO 81001	Vacant Property # 2312646 (2023)	\$1,199.79
1102 E. 5th Street, Pueblo, CO 81001	Board Up # 2277347 (2022)	\$487.41
1102 E. 5th Street, Pueblo, CO 81001	Board Up # 2249299 (2021)	\$489.80
812 E. 6th Street, Pueblo, CO 81001	Vacant Property # 2282184 (2022)	\$1,295.57
812 E. 6th Street, Pueblo, CO 81001	Vacant Property # 2316423 (2023)	\$1,186.46
812 E. 6th Street, Pueblo, CO 81001	Board Up # 2268733 (2022)	\$418.30
812 E. 6th Street, Pueblo, CO 81001	Litter # 2268732 (2022)	\$486.66
812 E. 6th Street, Pueblo, CO 81001	Weeds # 2268731 (2022)	\$485.50
812 E. 6th Street, Pueblo, CO 81001	Board Up # 2238199 (2021)	\$452.43
812 E. 6th Street, Pueblo, CO 81001	Weeds # 2238198 (2021)	\$584.74
812 E. 6th Street, Pueblo, CO 81001	Board Up # 2225346 (2021)	\$533.57
812 E. 6th Street, Pueblo, CO 81001	Litter # 2225345 (2021)	\$451.84
812 E. 6th Street, Pueblo, CO 81001	Weeds # 2225344 (2021)	\$521.83

Encumbered Property Address	Lien Type	Lien Amount Due
1445 E. 8th Street, Pueblo, CO 81001	Vacant Property # 2290765 (2022)	\$1,273.07
1445 E. 8th Street, Pueblo, CO 81001	Vacant Property # 2312639 (2023)	\$1,200.07
2126 E. 7th Street, Pueblo, CO 81001	Vacant Property # 2284461 (2022)	\$1,288.34
2126 E. 7th Street, Pueblo, CO 81001	Vacant Property # 2310606 (2023)	\$1,208.68
2126 E. 7th Street, Pueblo, CO 81001	Weeds # 2277350 (2022)	\$732.83
2126 E. 7th Street, Pueblo, CO 81001	Trash # 2277351 (2022)	\$631.84
2026 E. 9th Street, Pueblo, CO 81001	Vacant Property # 2293200 (2022)	\$1,267.23
2026 E. 9th Street, Pueblo, CO 81001	Weeds # 2308664 (2023)	\$469.51
2026 E. 9th Street, Pueblo, CO 81001	Litter # 2308665 (2023)	\$472.72
429 W. Abriendo Avenue, Pueblo, CO 81004	Vacant Property # 2293203 (2022)	\$1,267.23
429 W. Abriendo Avenue, Pueblo, CO 81004	Vacant Property # 2323843 (2023)	\$1,162.84
1330 E. Abriendo Avenue, Pueblo, CO 81004	Vacant Property # 2294179 (2022)	\$1,263.62
1330 E. Abriendo Avenue, Pueblo, CO 81004	Vacant Property # 2323833 (2023)	\$1,163.12
1727 E. Abriendo Avenue, Pueblo, CO 81004	Vacant Property # 2292193 (2022)	\$1,271.12
1102 W. Arroyo Avenue, Pueblo, CO 81004	Vacant Property # 2294194 (2022)	\$1,263.62
429 E. Beech Street, Pueblo, CO 81001	Vacant Property # 2285107 (2022)	\$1,287.79
1605 E. 10th Street, Pueblo, CO 81001	Vacant Property # 2299517 (2022)	\$1,253.90
1605 E. 10th Street, Pueblo, CO 81001	Vacant Property # 2312643 (2023)	\$1,200.07
1605 E. 10th Street, Pueblo, CO 81001	Board Up # 2295522 (2022)	\$533.26
1605 E. 10th Street, Pueblo, CO 81001	Litter # 2295521 (2022)	\$657.91
1605 E. 10th Street, Pueblo, CO 81001	Weeds # 2295520 (2022)	\$550.86
1605 E. 10th Street, Pueblo, CO 81001	Litter # 2283032 (2022)	\$1,116.21
1605 E. 10th Street, Pueblo, CO 81001	Weeds # 2283031 (2022)	\$561.84
1829 W. 17th Street, Pueblo, CO 81003	Vacant Property # 2302538 (2022)	\$1,243.62
2211 W. 15th Street, Pueblo, CO 81003	Vacant Property # 2294170 (2022)	\$1,265.29
2211 W. 15th Street, Pueblo, CO 81003	Vacant Property # 2323823 (2023)	\$1,165.90
2211 W. 15th Street, Pueblo, CO 81003	Weeds # 2316418 (2023)	\$493.48
2211 W. 15th Street, Pueblo, CO 81003	Litter # 2316419 (2023)	\$418.56
2204 E. 10th Street, Pueblo, CO 81001	Vacant Property # 2292201 (2022)	\$1,270.57
1023 E. 12th Street, Pueblo, CO 81001	Vacant Property # 2293197 (2022)	\$1,267.51
1023 E. 12th Street, Pueblo, CO 81001	Vacant Property # 2312645 (2023)	\$1,199.79
1023 E. 12th Street, Pueblo, CO 81001	Litter # 2310614 (2023)	\$633.31

SECTION 2.

The Mayor of the City is hereby authorized to execute an Assignment of Lien for any such liens sold by auction to effectuate the intended transaction. The Assignment of Lien shall be in substantially the same form and content as the Assignment of Lien form hereto attached and incorporated.

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 on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on January 8, 2024.

Final adoption of Ordinance by City Council on January 22, 2024.

APPROVED: 
PRESIDENT OF CITY COUNCIL

Action by the Mayor:

☒ Approved on January 30, 2024.

☐ Disapproved on _____ based on the following objections:


Mayor

Action by City Council After Disapproval by the Mayor:

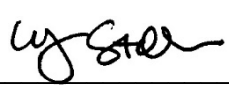
☐ Council did not act to override the Mayor's veto.

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

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

President of City Council

ATTEST


City Clerk

ORDINANCE NO. _____

AN ORDINANCE APPROVING AND AUTHORIZING THE CITY TO SELL AND ASSIGN CERTAIN LIENS ENCUMBERING REAL PROPERTY PURSUANT TO TITLE VII, CHAPTER 9 OF THE PUEBLO MUNICIPAL CODE, AND AUTHORIZING THE MAYOR TO EXECUTE ASSIGNMENTS OF LIEN

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

SECTION 1.

The following list of municipal real property liens is hereby approved for collection by sale and assignment. The City is authorized to publish notice and pursue collection by public auction in accordance with Title VII, Chapter 9 of the Pueblo Municipal Code.

Encumbered Property Address	Lien Type	Lien Amount Due
503 Bellevue Place, Pueblo, CO 81004	Vacant Property # 2292203 (2022)	\$1,270.29
903 Catalpa Street, Pueblo, CO 81001	Vacant Property # 2292202 (2022)	\$1,270.57
2131 Driftwood Lane, Pueblo, CO 81005	Vacant Property # 2305319 (2022)	\$1,235.29
2403 E. Evans Avenue, Pueblo, CO 81004	Vacant Property # 2285121 (2022)	\$1,286.68
2403 E. Evans Avenue, Pueblo, CO 81004	Vacant Property # 2322235 (2023)	\$1,172.84
124 Idaho Avenue, Pueblo, CO 81004	Vacant Property # 2300749 (2022)	\$1,252.79
1110 E. 1st Street, Pueblo, CO 81001	Vacant Property # 2294173 (2022)	\$1,265.01
722 E. 3rd Street, Pueblo, CO 81001	Vacant Property # 2294176 (2022)	\$1,264.46
722 E. 3rd Street, Pueblo, CO 81001	Vacant Property # 2316402 (2023)	\$1,191.18
724 E. 3rd Street, Pueblo, CO 81001	Vacant Property # 2294175 (2022)	\$1,264.73
724 E. 3rd Street, Pueblo, CO 81001	Vacant Property # 2316422 (2023)	\$1,186.46
724 E. 3rd Street, Pueblo, CO 81001	Weeds # 2299524 (2022)	\$547.51
724 E. 3rd Street, Pueblo, CO 81001	Litter # 2299525 (2022)	\$549.01
1102 E. 5th Street, Pueblo, CO 81001	Vacant Property # 2293195 (2022)	\$1,267.51
1102 E. 5th Street, Pueblo, CO 81001	Vacant Property # 2312646 (2023)	\$1,199.79
1102 E. 5th Street, Pueblo, CO 81001	Board Up # 2277347 (2022)	\$487.41
1102 E. 5th Street, Pueblo, CO 81001	Board Up # 2249299 (2021)	\$489.80
812 E. 6th Street, Pueblo, CO 81001	Vacant Property # 2282184 (2022)	\$1,295.57
812 E. 6th Street, Pueblo, CO 81001	Vacant Property # 2316423 (2023)	\$1,186.46
812 E. 6th Street, Pueblo, CO 81001	Board Up # 2268733 (2022)	\$418.30
812 E. 6th Street, Pueblo, CO 81001	Litter # 2268732 (2022)	\$486.66
812 E. 6th Street, Pueblo, CO 81001	Weeds # 2268731 (2022)	\$485.50
812 E. 6th Street, Pueblo, CO 81001	Board Up # 2238199 (2021)	\$452.43
812 E. 6th Street, Pueblo, CO 81001	Weeds # 2238198 (2021)	\$584.74
812 E. 6th Street, Pueblo, CO 81001	Board Up # 2225346 (2021)	\$533.57
812 E. 6th Street, Pueblo, CO 81001	Litter # 2225345 (2021)	\$451.84
812 E. 6th Street, Pueblo, CO 81001	Weeds # 2225344 (2021)	\$521.83

Encumbered Property Address	Lien Type	Lien Amount Due
1445 E. 8th Street, Pueblo, CO 81001	Vacant Property # 2290765 (2022)	\$1,273.07
1445 E. 8th Street, Pueblo, CO 81001	Vacant Property # 2312639 (2023)	\$1,200.07
2126 E. 7th Street, Pueblo, CO 81001	Vacant Property # 2284461 (2022)	\$1,288.34
2126 E. 7th Street, Pueblo, CO 81001	Vacant Property # 2310606 (2023)	\$1,208.68
2126 E. 7th Street, Pueblo, CO 81001	Weeds # 2277350 (2022)	\$732.83
2126 E. 7th Street, Pueblo, CO 81001	Trash # 2277351 (2022)	\$631.84
2026 E. 9th Street, Pueblo, CO 81001	Vacant Property # 2293200 (2022)	\$1,267.23
2026 E. 9th Street, Pueblo, CO 81001	Weeds # 2308664 (2023)	\$469.51
2026 E. 9th Street, Pueblo, CO 81001	Litter # 2308665 (2023)	\$472.72
429 W. Abriendo Avenue, Pueblo, CO 81004	Vacant Property # 2293203 (2022)	\$1,267.23
429 W. Abriendo Avenue, Pueblo, CO 81004	Vacant Property # 2323843 (2023)	\$1,162.84
1330 E. Abriendo Avenue, Pueblo, CO 81004	Vacant Property # 2294179 (2022)	\$1,263.62
1330 E. Abriendo Avenue, Pueblo, CO 81004	Vacant Property # 2323833 (2023)	\$1,163.12
1727 E. Abriendo Avenue, Pueblo, CO 81004	Vacant Property # 2292193 (2022)	\$1,271.12
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1605 E. 10th Street, Pueblo, CO 81001	Vacant Property # 2299517 (2022)	\$1,253.90
1605 E. 10th Street, Pueblo, CO 81001	Vacant Property # 2312643 (2023)	\$1,200.07
1605 E. 10th Street, Pueblo, CO 81001	Board Up # 2295522 (2022)	\$533.26
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2211 W. 15th Street, Pueblo, CO 81003	Vacant Property # 2323823 (2023)	\$1,165.90
2211 W. 15th Street, Pueblo, CO 81003	Weeds # 2316418 (2023)	\$493.48
2211 W. 15th Street, Pueblo, CO 81003	Litter # 2316419 (2023)	\$418.56
2204 E. 10th Street, Pueblo, CO 81001	Vacant Property # 2292201 (2022)	\$1,270.57
1023 E. 12th Street, Pueblo, CO 81001	Vacant Property # 2293197 (2022)	\$1,267.51
1023 E. 12th Street, Pueblo, CO 81001	Vacant Property # 2312645 (2023)	\$1,199.79
1023 E. 12th Street, Pueblo, CO 81001	Litter # 2310614 (2023)	\$633.31

SECTION 2.

The Mayor of the City is hereby authorized to execute an Assignment of Lien for any such liens sold by auction to effectuate the intended transaction. The Assignment of Lien shall be in substantially the same form and content as the Assignment of Lien form hereto attached and incorporated.

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 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

ASSIGNMENT OF LIEN ON REAL PROPERTY

This Assignment of Lien (the "Assignment") is made this _____ day of _____, 2024,

BETWEEN: The City of Pueblo, a Colorado Municipal corporation, of 1 City Hall Place, City of Pueblo, County of Pueblo, State of Colorado, herein referred to as "Assignor",

AND: (name of assignee)/a corporation organized and existing under the laws of (state), with its head office located at/of (address), City of (city), County of (county), State of (state), herein referred to as "Assignee".

RECITALS:

In consideration of (amount) Dollars (\$0.00), receipt of which is hereby acknowledged, Assignor does hereby assign to Assignee, without any warranty express or implied and without recourse, the Real Property Lien(s) on the property of (name of the property owner), located at (address) [or by legal description (Lot X)], Pueblo, Colorado, and by Assessor's Parcel No. (number), which has been duly recorded in the office of the Pueblo County Clerk and Recorder's Office, as follows:

Weed/Litter/Vacant Property Lien dated (X), recorded in Volume (number), Page (number), at Reception (number) on date (X), a copy of which is attached hereto; and

Weed/Litter/Vacant Property Lien dated (X), recorded in Volume (number), Page (number), at Reception (number) on date (X), a copy of which is attached hereto.

WHEREAS, the intent of this assignment is to transfer to Assignee full power to collect that certain sum secured by said lien(s), however, any costs incurred by the Assignee in enforcing the assigned lien(s), shall be borne solely by the Assignee.

IN WITNESS WHEREOF, the Assignor has executed this Assignment of Lien on the day and year first above written.

Nicholas Gradisar
Mayor of the City of Pueblo

COUNTY OF PUEBLO)
) ss.
STATE OF COLORADO)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by Nicholas Gradisar, as Mayor of the City of Pueblo.

Witness my hand and official seal.

My commission expires: _____
Notary Public