



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

**MONDAY, APRIL 8, 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 Richie Perko, Pueblo Christian Center
- C. PLEDGE OF ALLEGIANCE**
- D. ROLL CALL**
- E. SPECIAL RECOGNITIONS**
 - E1 Proclamation Presentation: "Arbor Day - April 18, 2024" - Charlie Kuntz, Forestry Program Coordinator & Mike Sexton, Assistant Director of Pueblo Parks & Recreation
 - E2 Proclamation Presentation: "Week of the Young Child - April 6-12, 2024" - Angie Shehorn, Director of Children First/Pueblo Early Childhood Council
 - E3 Special Presentation: "Quilt recognizing SRDA Supporters" - Carma Loontjer & SRDA Sewing Group
 - E4 Proclamation Presentation: "Child Abuse Prevention Month - April 2024" - Keeley Samson, Resource Development Coordinator & Felysha Valdez, Family Care Specialist for Pueblo Child Advocacy Center
 - E5 Recognition Presentation: "Certificate of Achievement for Excellence in 2022 Financial Reporting" - City of Pueblo Finance Department
 - E6 Proclamation Presentation: "Pueblo VITA Free Income Tax Filing Days - January 25 – April 15, 2024" - Adrian Gomez, Financial Wellness Coordinator for Bank On Pueblo
- 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 March 25, 2024, as distributed.

K. CONSENT AGENDA

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

L. COMMUNICATIONS

L1 Minutes of the Planning and Zoning Commission Regular Meeting 02/14/2024

M. RESOLUTIONS

- M1 A Resolution awarding a construction contract in the amount of \$442,320 to Evoqua Water Technology, LLC. for the Dissolved Air Floatation Thickener (DAFT) repair, from account WWAN04 at the James R. Dilorio Water Reclamation Facility and approving the Purchasing Agent's execution of the same.
- M2 A Resolution awarding a construction contract in the amount of \$640,660.07 to KR Construction Group Inc., for Project No. 24-035, Construction of HVAC and Kitchen Remodel at El Centro del Quinto Sol Recreation Center, setting forth \$260,464.93 for contingencies, and authorizing the Purchasing Agent to execute same
- M3 A Resolution awarding a construction contract in the amount of \$335,251.00 to Pyramid Construction, Inc., for Project No. 24-038, Asphalt Improvements - Cheyenne Avenue Ave (19th Street to 29th Street), setting forth \$50,300.00 for contingencies, and authorizing the Purchasing Agent to execute same
- M4 A Resolution approving an agreement in an amount not to exceed \$87,770 between the City of Pueblo and Brown and Caldwell, Inc., for professional services evaluating and developing pretreatment local limits and authorizing the Mayor to execute the same
- M5 A Resolution ratifying an emergency construction contract in the amount of \$54,364.25 with Russ Grading & Excavating LLC, for emergency storm sewer point repair at the intersection of 20th Street and Greenwood Avenue, Project No. 23-040 (SWAN03) and approving the purchasing agent's execution of the same
- M6 A Resolution ratifying an emergency construction contract in the amount of \$28,001.54 with Russ Grading & Excavating LLC, for emergency storm sewer point repair at the intersection of Northern Avenue and Beulah Avenue, Project No. 23-040 (SWAN03) and approving the purchasing agent's execution of the same
- M7 A Resolution awarding a construction contract in the amount of \$25,738.50 to P and A Inc., for Project No. 24-028, replacement of flooring at Walking Stick Restaurant and Golf Shop-Rebid, setting forth \$2,573.50 for contingencies, and authorizing the Purchasing Agent to execute same
- M8 A Resolution authorizing the issuance of a revocable permit (REV-24-5) to Fuel & Iron Food Hall for the use of the parking lot on the East side of Union Avenue between La Bella Union Plaza and Stitcher's Garden
- M9 A Resolution authorizing the issuance of a revocable permit (REV-24-9) to AMP 2, LLC, for the use of a portion of the alley right-of-way between Park Place, Oakland Avenue, Indiana Avenue, and E. Orman Avenue to install and maintain landscaping

- M10 A Resolution confirming the appointment by the Mayor of Patti Olenick and Anthony Vigil to complete a four-year term expiring June 30, 2025, on the Pueblo Energy Advisory Commission
- M11 A Resolution confirming the appointment by the Mayor of Jacqueline Rutherford to complete a three-year term expiring November 1, 2024, on the Pueblo Streetscape Advisory Committee
- M12 A Resolution establishing an approved list of contractors to perform emergency water line repairs for City Departments and authorizing the Purchasing Agent to execute same
- M13 A Resolution confirming the appointment by the Mayor of Regina Maestri to complete a one-year term expiring January 31, 2025 on the Planning & Zoning Commission and the Latino Chamber of Commerce Board of Directors

N. ORDINANCES – FIRST PRESENTATION

- N1 An Ordinance approving an Intergovernmental Agreement between the City of Pueblo, a Colorado Municipal Corporation and the County of Pueblo, a political subdivision of the State of Colorado, and the Historic Arkansas Riverwalk of Pueblo Authority, a political subdivision of the State of Colorado by which Pueblo County will pay to the City of Pueblo \$9,000,000 in 1A funds for the construction of the HARP Channel Extension and Boathouse Project, authorizing the Mayor to execute the same, accepting the 1A funds from the County, establishing Project No. CI2432, and budgeting and appropriating the funds to Project No. CI2432
- N2 An Ordinance approving and accepting a Colorado Department of Local Affairs grant in the amount of \$1,000,000 for the HARP Channel Extension and Boathouse Construction Project, authorizing the Mayor to execute the related grant agreement, transferring \$1,000,000 from the General Fund unappropriated fund balance, and budgeting and appropriating \$2,000,000 in total funds to Project No. CI2432
- N3 An Ordinance approving and authorizing the Mayor to execute a cooperation agreement between the City of Pueblo, a Colorado Municipal Corporation and the Historic Arkansas Riverwalk of Pueblo Authority, a political subdivision of the State of Colorado relating to the construction of the HARP channel extension and boathouse project
- N4 An Ordinance 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: SHO M086-102 (25957), accepting a grant in the amount of \$1,350,000.00, establishing Project Account CI2431, Lake Ave & Jones Ave Roundabout, transferring \$150,000.00 from Project Account CI2415, Street Rehabilitation to Project Account CI2431, Lake Ave & Jones Ave Roundabout, budgeting and appropriating funds in the amount of \$1,500,000 and authorizing the Mayor to execute same
- N5 An Ordinance 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: SHO M086-101 (25954) Grand and 13th Roundabout, accepting a grant in the amount of \$1,485,000.00, establishing Project Account CI2430, Grand Ave. & 13th Roundabout, transferring \$165,000.00 from Project Account HUAN01, Street Resurfacing Project to Project Account CI2430, Grand Ave. & 13th Roundabout Project, budgeting and appropriating funds in the amount of \$1,650,000, and authorizing the Mayor to execute same
- N6 An Ordinance amending Section 4-1-14 of Title IV (Building Regulations), Chapter 1 (Building Department Administration and Contractor's Licenses) of the Pueblo Municipal Code to exempt the City from the requirements of Section 4-1-11 relating to license

requirements for construction permitting

- N7 An Ordinance approving and accepting a participation agreement from the Colorado Housing and Finance Authority, a body corporate and political subdivision of the State of Colorado; Reinen Consultants LLC, a Colorado limited liability company; The Espinosa Group LLC, a Colorado limited liability company; and The City of Pueblo, a Colorado Municipal Corporation for the donation of preliminary design and feasibility services for the development of affordable housing at the former Pueblo Community Health Center site located at 1302 E. 4th Street and 1305 E. 5th Street and authorizing the Mayor to execute same
- N8 An Ordinance amending Section 17-2-2(84) of Chapter 4 of Title XVII of the Pueblo Municipal Code relating to the use definition of a manufactured home, one-family
- N9 An Ordinance amending the fiscal year 2024 Staffing Ordinance by adding one (1) full-time position to the authorized staffing of the Police Department entitled PD Community Engagement Manager
- N10 An Ordinance amending section 6-5-16 of Chapter 5, of Title VI of the Pueblo Municipal Code relating to the FY 2024 classification and pay plan by establishing the pay scale for PD Community Engagement Manager
- N11 An Ordinance amending the Fiscal Year 2024 Staffing Ordinance by converting one (1) Full-time Assistant City Attorney I position to a Deputy City Attorney within the authorized staffing of the Law Department

O. APPROVAL OF CONSENT AGENDA

I move to receive and file the minutes of the Planning and Zoning Commission, approve all the Resolutions Set Forth in the Consent Agenda; Pass the Ordinances of the Consent Agenda; Setting the Public Hearings for April 22, 2024, and Order the Ordinances to be published BY TITLE.

P. REGULAR AGENDA

Q. RESOLUTIONS

- Q1 A Resolution authorizing and approving transfer of \$3,311,597.29 from the 1992-2026 Sales and Use Tax Capital Improvement Projects Fund to Project No. ED2402 to fund, in part, construction of the HARP Channel Extension and Boathouse Project, a Regional Tourism Act Project
- Q2 A Resolution approving payment in the amount of nine hundred forty-five thousand dollars (\$945,000) from Project CI2113 - American Rescue Plan Act for the construction of the Boathouse 1A Project to be completed in conjunction with the HARP channel extension, as authorized by Section 603(c)(1)(c) of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6
- Q3 A Resolution approving payment in the amount of \$517,884.44 from Project CI2113 - American Rescue Plan Act for the construction of necessary infrastructure related to the Boathouse 1A and HARP Channel Extension Project, as authorized by Section 603(c)(1)(A) of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR § 35.6(b)(3)(ii)(A)(5)
- Q4 A Resolution approving and accepting the funds in the amount of \$200,000 from the Pueblo American Rescue Plan Act (ARPA) COVID-19 recovery to the Pueblo Urban Renewal Authority for the Historic Arkansas Riverwalk of Pueblo ("HARP") expansion of the canal and boathouse ("project") and budgeting and appropriating the \$200,000 to Project No. CI2432 and authorizing the Mayor to execute the same

- Q5 A Resolution authorizing payment from the Council Contingencies account in the 2024 general fund budget to the Southern Colorado Equality Alliance in the amount of \$280 to sponsor the Spring Fling banquet on Saturday, April 6, 2024 at Colorado State University Pueblo
- Q6 A Resolution authorizing payment from the Council Contingencies account in the 2024 general fund budget to C Cubed Training in the amount of \$700 to sponsor the International Day of Girls in IT Celebration on Thursday, April 25 from 10 am - 2 pm at the Cyber Cube in Water Tower Place

R. ORDINANCES – FINAL PRESENTATION

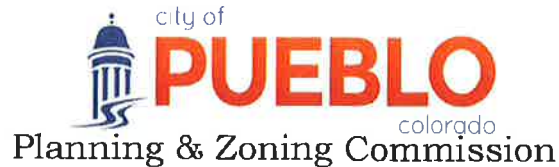
- R1 An Ordinance budgeting and appropriating \$721,825 from unappropriated fund balance from the Sewer User Fund, establishing Project WW2403 WRF Master Plan, and approving an agreement in the amount of \$721,825 between the City of Pueblo and Brown and Caldwell Inc. for professional services associated with updating the James R. Dilorio Water Reclamation Facility Master Plan for the City of Pueblo and authorizing the Mayor to execute same - *Introduced March 25, 2024 by Councilor Dennis Flores*
- R2 An Ordinance approving and accepting a grant from the Colorado Department of Labor and Employment in the amount of \$271,889.00 to develop and expand training and work-based programs for reskilling, upskilling, and next-skilling individuals and households adversely affected by COVID; authorizing the Mayor to sign the grant agreement, establishing Project No. CI2329, and budgeting and appropriating \$271,889.00 to Project No. CI2329 - *Introduced March 25, 2024 by Councilor Dennis Flores*
- R3 An Ordinance establishing Project Account CI2428 - Fabricate and Install New Signage for MLK Bypass, transferring \$40,000 from the unappropriated fund balance of the General Fund, and budgeting and appropriating said funds in the amount of \$40,000 to Project Account CI2428 - *Introduced March 25, 2024 by Councilor Dennis Flores*
- R4 An Ordinance amending Chapter 4 of Title IV of the Pueblo Municipal Code relating to plumbing regulations and adopting by reference portions of the 2023 Colorado Plumbing Code established by the Colorado State Plumbing Board, and the 2021 International Plumbing Code, the 2021 International Residential Code, and the 2021 International Swimming Pool and Spa Code, all published by the International Code Council, Inc., and the 2013 NFPA 24 Standard for the Installation of Private Fire Service Mains and their Appurtenances published by the National Fire Protection Association and providing penalties and remedies for the violation thereof - *Introduced March 25, 2024 by Councilor Dennis Flores*
- R5 An Ordinance amending Chapter 3 of Title IV of the Pueblo Municipal Code relating to electrical regulations and adopting by reference portions of the 2023 National Electrical Code published by the National Fire Protection Association, One Batterymarch Park, Quincy, Massachusetts 02169-7471, and the 2003 International Code Council Electrical Code Administrative Provisions published by The International Code Council, Inc., 4051 Flossmoor Road, Country Club Hills, IL 60478-5795, and providing penalties and remedies for the violation thereof - *Introduced March 25, 2024 by Councilor Dennis Flores*
- R6 An Ordinance accepting funds in the amount of \$60,000 from El Camino Homeowners Organization, Inc., a Colorado Nonprofit Corporation, for costs associated with traffic calming, landscaping, and other roadway improvements on Bandera Parkway, establishing account Project CI2427 - Bandera Parkway Traffic Calming Improvements and budgeting and appropriating funds in the amount of \$60,000 into said account. - *Introduced March 25, 2024 by Councilor Dennis Flores*

S. ADJOURN

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, February 14, 2024, 2024 – 3:30 p.m.
City Council Chambers, 1 City Hall Place

The meeting was called to order at 3:35 p.m. with Commissioner Castellucci presiding.

Commissioners Present: Mike Castellucci, Patrick Avalos, Lisa Bailey, Alexandra Aznar, Christopher Pasternak.

Commissioners Absent: Cheryl Spinuzzi, Sarah Martinez

Staff Members Present: David Wyatt, Assistant City Attorney; Scott Hobson, Acting Director of Planning and Community Development, Wade Broadhead, Senior Planner, Joe Martellaro, Engineer Public Works Department, Cindy Capritta, Land Use Tech.

Staff Members Absent: Beritt Odom, Principal Planner

Approval of the Agenda: Bailey motioned to move item Z-23-10, S-23-07, S-22-07 to the March 13, 2024, meeting and approve the agenda as amended. seconded by Aznar.

Motion Passed: 5-0

Public Hearing:

1. V-23-10 - Alley Vacation: Vacation of a portion of the alley within Block 38, Irving Place Subdivision. Generally located south of W. 16th St. and east of Cheyenne Ave. Staff report by Wade Broadhead.

Hearing: Applicant, Rudy Gutierrez was sworn in and spoke in favor of the application. No one appeared in opposition.

Commission Action: Bailey moved to recommend the application be referred to the City Council once Conditions 1 and 2 are met, seconded by Avalos.

Motion Passed: 5-0

2. Z-23-12 Belmont Place Rezoning: Rezoning 113 acres from PUD to B-3 Highway and Arterial Business, R-2 Single Family Residential and R-5 Multiple Residential and Office District. Staff report by Wade Broadhead.

Hearing: Applicant Zach Thatcher was sworn in and spoke in favor of the application. No one spoke in opposition.

Commission Action: Bailey moved to recommend the application be referred to the City Council, seconded by Avalos.

Motion Passed: 5-0

3. S-22-07 Belmont Place Subdivision: A Subdivision of 113 acres into commercial lots and non-buildable parcels for future development. Staff report by Wade Broadhead.

Hearing: Applicant Zach Thatcher remained sworn in and spoke in favor of the application. No one appeared in opposition.

Commission Action: Bailey moved to recommend the application be referred to City Council once Conditions 1-9 are met, seconded by Aznar.

Motion Passed: 5-0

4. Z-23-10 Andiamo Rezone: *Continue to March 13, 2024*

5. S-23-07 Andiamo Subdivision: *Continue to March 13, 2024*

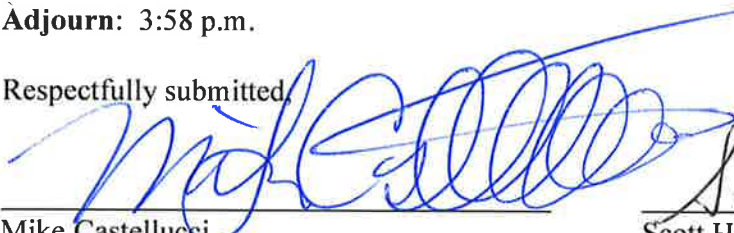
Approval of Minutes:

1. Bailey moved to approve the minutes from the **January 10, 2024**, seconded by Avalos.

Old/New Business:

Adjourn: 3:58 p.m.

Respectfully submitted,


Mike Castellucci
Chairperson


Scott Hobson
Executive Secretary

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



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Andra Ahrens, Director Wastewater

SUBJECT: A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$442,320 TO EVOQUA WATER TECHNOLOGY, LLC. FOR THE DISSOLVED AIR FLOATATION THICKENER (DAFT) REPAIR, FROM ACCOUNT WWAN04 AT THE JAMES R. DIORIO WATER RECLAMATION FACILITY AND APPROVING THE PURCHASING AGENT'S EXECUTION OF THE SAME.

SUMMARY:

This Resolution awards a construction contract to Evoqua Water Technology LLC. from account WWAN04 for the Dissolved Air Floatation Thickener (DAFT) repair at the James R. Dilorio Water Reclamation Facility.

PREVIOUS COUNCIL ACTION:

None

BACKGROUND:

The James R. Dilorio Water Reclamation Facility (WRF) treats all the wastewater for the City of Pueblo. The dissolved air floatation thickener (DAFT) receives solids from the three secondary clarifiers. The DAFT is split into two separate tanks. Tank #1 needs to be repaired due to a broken bottom collector chain. The DAFT system is currently running on one side (Tank #2) and if this side happens to go down due to a failure, this would put the WRF in jeopardy of a permit violation. Tank #2 was repaired as an emergency project earlier this year by Evoqua Water Technology LLC., and tank #1 will also be repaired by the same company to ensure the two tanks' components are the same.

FINANCIAL IMPLICATIONS:

The construction project repair proposal was \$442,320. Funds are available from the Sewer User Fund and appropriated from account WWAN04. This project is sole

sourced based on the compatibility with tank #2 as the overriding factor.

BOARD/COMMISSION RECOMMENDATION:

Not applicable

STAKEHOLDER PROCESS:

None

ALTERNATIVES:

If not approved, the DAFT tank would stay in a state of disrepair and could potentially cause a violation of our discharge permit requirements.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. 04-08-24 Proposal DAFT repair

RESOLUTION NO.

A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$442,320 TO EVOQUA WATER TECHNOLOGY, LLC. FOR THE DISSOLVED AIR FLOATATION THICKENER (DAFT) REPAIR, FROM ACCOUNT WWAN04 AT THE JAMES R. DIORIO WATER RECLAMATION FACILITY AND APPROVING THE PURCHASING AGENT'S EXECUTION OF THE SAME.

WHEREAS, a DAFT repair was approved by the Director of Purchasing as a sole source based on compatibility with tank #2 being the overriding factor; and

WHEREAS, the point repair work was awarded to Evoqua Water Technology LLC; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

City Council approves the contract for repair of the DAFT with Evoqua Water Technology LLC, in the amount of \$442,320.

SECTION 2.

Funds for this contract (WWAN04) shall be from the Sewer User Fund.

SECTION 3.

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

SECTION 4.

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

SECTION 5.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: April 8, 2024

BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____

CITY CLERK

FIRM PROPOSAL



CITY OF PUEBLO, CO

DAF UNIT 02 PROPOSAL POLY

Proposal No: 632719

FOR FURTHER INFORMATION

Your questions should be directed to Evoqua's area sales representative

Sean Lynch

MISCOwater

651 Corporate Circle Suite 100

Golden, CO 80401

720-694-3521 Cell

303-309-6150 – Office

slynch@miscowater.com



To: Ryan Maddaford

City of Pueblo, CO 1 - DAF Unit Proposal, note this is for unit 02.

Summary

Evoqua Water Technologies LLC (Evoqua) proposes to furnish the scope of supply described in this proposal subject to the Clarifications/Exceptions and Standard Terms of Sale stated herein.

The information in this proposal is confidential and/or proprietary and has been prepared solely for the recipient's use in considering the purchase of the equipment and/or services described herein. Transmission of all or any part of this information to others, or use by the recipient, for other purposes is expressly prohibited without Evoqua's prior written consent.

Evoqua supplied parts to rebuild existing DAF Unit -02	\$200,083 USD
Evoqua supplied labor to rebuild existing DAF Unit -02	\$242,237 USD

Total Cost
\$442,320 USD

Evoqua's price includes only the specific items detailed in this proposal. Items not specifically identified herein are to be furnished by others. Please refer to the excluded items in Section 0 of this proposal for a list of items to be furnished by others.

A. OPTIONS: The above items noted as Extra Cost Option will only be accepted only when included with the basic equipment order. *NONE*

B. FREIGHT: Pricing is FOB shipping point with standard freight allowed to the job site. Our price does not include any costs for unloading, transporting on the site, phased shipments, or storage.

C. PROPOSAL VALIDITY: This proposal is valid for a period of thirty (30) days unless extended in writing by Evoqua. Due to current raw material price fluctuation, Evoqua reserves the right to re-quote the equipment proposed herein after that time.

Due to volatility in steel costs, prices quoted in this proposal will be adjusted to reflect changes in the Metal and Metal Products Index (MMPI) published by the U.S. Department of Labor, Bureau of Labor Statistics. The most recent published MMPI is 304.15 for November 2023. If the MMPI exceeds 310.23 at the time the Equipment is released for manufacture, then the price will be increased by the same percentage as the MMPI exceeds 310.23.

Further Evoqua's price does not account for increased costs, delays and inefficiencies associated with current regulations and guidelines concerning COVID-19. Should these, or any additional, restrictions be implemented by any governing body, the CDC, or the customer or user of the Equipment to address COVID-19, Evoqua reserves the right to request a change order to the extent its costs or time for performance are increased by additional restrictions

D. FIELD SERVICES: Installation to be performed by Evoqua Water Technologies,

- Evoqua proposes to furnish labor, equipment and expendable materials to install the equipment as shown below in 1 trip and 31 working days on site.
 - Customer is responsible for having the filter drained before Evoqua arrives onsite to begin work.
 - All materials/equipment removed during demolition to be disposed of on site.
 - Evoqua is responsible for installing purchased equipment into the existing filter by normal installation procedures.
 - Evoqua is responsible for providing the necessary construction equipment for installation.
 - Work hours by Evoqua Water Technologies LLC at the site shall be as determined by Evoqua Water Technologies LLC.
 - The purchaser shall not define working hours, number of work days per week or prohibit Evoqua Water Technologies LLC from working evenings, weekends, holidays, etc., when deemed to be advisable.
- Exclusions:
 - Concrete modifications of any kind
 - Field Electrical work of any kind
 - Disposal of existing materials
 - Prevailing wages are not included
 - Taxes, Permits and bonds

E. PAYMENT AND PRICE TERMS: The terms of payment are net 30.

F. CANCELLATION POLICY: If Evoqua is issued an order and the Buyer cancels or suspends its order for any reason other than Evoqua's breach, the Buyer shall promptly pay Evoqua for work performed prior to cancellation or suspension and any other costs incurred by Evoqua as a result of such cancellation or suspension. At a minimum, cancellation after executed contract will result in a cancellation fee of 10% of the total order value.

Evoqua's prices are exclusive of any taxes. If this project is not subject to sales or use tax, please issue a Tax-Exempt Certificate with any ensuing purchase order (P.O.). If applicable, please provide a copy of payment bond information with the P.O. With no exemption or if this project is subject to sales or use tax, the Purchaser will be invoiced for taxes at the then-current rate of sales, use or other tax for the jobsite location.

2. DRAWING AND SHIPPING INFORMATION

Evoqua will furnish record drawings only and equipment per the following project schedule:

- No Submittal Drawings or Calculations will be submitted.
- General Arrangement Drawings will be provided as record drawings only and to assist the Contractor with installation.
- Shipping information, all times are after fully executed contract.
 - Engineering time: 1-2 weeks
 - Shipment of Manufacturing and Purchased parts: 12-14 weeks after completion of engineering.
 - Approximate delivery time: 1 week
 - Installation: 2-3 weeks
 - Field installation services will be scheduled after executed contract based on the delivery schedule above.

3. EQUIPMENT SCOPE

DAF unit parts to replace existing equipment

EQUIPMENT

Evoqua proposes to furnish the following Envirex® equipment:

1.01 Descriptive Work

1. Direct (upgraded replacement) parts for 1-DAF unit 02

1.02 Components Included

1. Evoqua shall furnish the items listed below:
 - a. Assembly components, installation of components, and initial startup of existing 1-DAF unit 02

1.03 Components Included – Details & Quantities

Item	Part No Description	Qty
1	W2T318589 CHAIN-LOOP-HS730,120.00"LG W/(2) ATTACH	18
2	W3T16127 skimmer ret. Track	2
3	W3T16127	2

	skimmer ret. Track	
4	W3T16127 skimmer ret. Track	2
5	W3T16127 skimmer ret. Track	2
7	W2T319411 TOOL-CHAIN ASSY,NCS720S/-NX/NCS360S,STL	1
8	W3T16127 N78 30T poly sprocket driven head shaft	1
9	W3T16127 head shaft with keys	1
10	W3T16127 skimmer head shaft sprocket	2
11	W3T23628 BEARING-WALL,2.437"DIA,SA,BABB,W/GRS FTG	2
12	W2T119213 WASHER-RND, .813"ID,2.75"OD,.135"TH, ZP	4
13	W2T121733 WASHER-RND,1.062"ID,2.75"OD,0.125"THK,PU	4
14	W2T117149 COLLAR-SET,SOLID,2.44"DIA.,1.00"THK,ZP	2
15	W3T16127 skimmer take up shaft	1
16	W3T310938 SPROCKET,HS730 13T PLAIN 1.94"B BLK	2

17	W3T16127 custom skimmer flight FRP	18
18	W2T118657 ATTACHMENT,2.5"SQ X 4.00",1.389"B,UHMW	36
19	W2T119353 COLLAR-SET,SOLID,1.94"DIA.,.88"THK,ZP	3
20	W3T16127 field hardware kit	1
21	W3T561111 Engineering SERVICES	1
24	W2T119925 skimmer CHAIN-DRIVE,NH78,2.609"P, POLY,304SS PIN	14
25	W3T365963 Sprocket-skimmer drive Shear Pin,N78-11T,1.50"B,316S H	1
26	W3T16127 take up bearing assy	2
27	W3T19171 Collector flight	9
28	W2T319598 Wear shoe collector return	18
29	W2T319594 Wear shoe collector carrying	18
30	W3T16127 Spacer Block	18

1.04 Components NOT Included are not listed above.

CONTRACTOR NOTE:

Dates for field installation must be scheduled with Evoqua after receipt of PO to determine availability. Unless Evoqua is selected as the installation contractor, Evoqua will furnish equipment as proposed for the Contractor to install. Labor, equipment necessary for alterations and/or installation of our equipment, repair and alterations or cleaning of the existing structures, is the responsibility of the Contractor. Evoqua is not responsible for the locations, condition or dimensions of existing concrete, anchors, or any equipment not furnished by Evoqua.

CORROSION PROTECTION

All ferrous metals will be shop primed as noted below at the end of this section.

Motors and reducers will have original factory finish.

SHIPPING INFORMATION FOR DAF Components

The equipment will be shipped as follows:

Via Flat Bed truck.

Evoqua's price is based on the following surface protection:

- A.** Shafting and exposed machined surfaces: solvent wiping, followed by one (1) coat of Evoqua's standard shop preservative.
- B.** Wood, nonferrous materials, stainless steel, and galvanized surfaces: unpainted.
- C.** Drive units and controls: manufacturer's standard.

Prices are based on paints and surface preparations as outlined in this Proposal. In the event an alternate paint system is selected, purchaser's order must advise of its selection. Evoqua will, at its sole discretion, either adjust its price as necessary to comply or ship the material unpainted if compliance is not possible due to price considerations, application problems or environmental controls.

Evoqua does not guarantee primer's compatibility with purchaser's coating system unless approved by the coating system manufacturer. Primers will only protect for a minimal amount of time, usually thirty (30) days. Specific information should be obtained from coating system manufacturer.

4. OTHER EXCLUDED ITEMS

The price from Evoqua includes only those items listed in this Proposal. The items listed below are excluded:

- Fastener anti-seize lubricant.
- Verification of the condition of the tanks to receive equipment.
- Electrical, hydraulic, or pneumatic controls.

- Wiring of motors or controls, control panels, or panel supports.
- Junction boxes, motor disconnect switches, MCC, control panels, or panel supports.
- Piping, valves, wall sleeves, gates, drains, weirs, baffles.
- Floor grating, stairways, ladders, platforms, handrailing.
- Concrete, grout, mastic, sealing compounds, shims.
- Lubricants, grease piping, grease gun.
- Machinery or bearing supports, shims.
- Detail shop fabrication drawings.
- Tools or spare parts.
- Modifications to existing equipment or structures.
- Supervisory services; laboratory, shop, or field testing.
- Underwriters Laboratory inspection of electrical controls.
- Special written process performance or extended mechanical warranties.

5. CLARIFICATIONS/EXCEPTIONS

The equipment specified herein shall conform to the specification sections referenced in Section 0 of Evoqua's Proposal to the extent they are technically applicable to Evoqua's scope of supply as described in this Proposal and subject to the following clarifications:

Article, Section	Clarifications/Proposed Modifications
Submittals	No Submittals or calculations will be provided. The existing general arrangement drawings will be provided as record drawings only. Proposed equipment components as noted above will be replacement parts for prior Evoqua Project #42579-01 as supplied on DAF unit 1
Equipment	The proposed components are intended to replace existing with same equipment components and materials as supplied on DAF unit 1

Evoqua's standard terms and conditions, including without limitation Evoqua's warranty obligations in Article 7 govern the purchase and sale of equipment, products, and related services, referred to in Evoqua's proposal. Evoqua's offer or acceptance is expressly conditioned on Buyer's assent to these terms. Evoqua rejects all additional or different terms in any of Buyer's forms or documents. In addition, Evoqua takes exception to all performance commitments, guarantees or obligations, unless provided for in Evoqua's proposal.

The Influent and Effluent criteria listed in the Bid Documents was used as the basis of design for equipment selection. Evoqua makes no express or implied performance warranty by offering equipment under this specification, unless specifically included in Evoqua's proposal. System performance may be impacted by factors outside of Evoqua's control. These factors may include but are not limited to site conditions including variation in flows and loadings, operator inputs, temperature, pH, toxic or inhibitory substances, and failure or limitations of other unit processes.

6. ADDITIONAL FIELD SERVICES

Should the Purchaser feel that additional services will be required, they can be purchased from Evoqua. Additional services may be purchased at the *per diem* rate stated below.

Evoqua's price does not include service of a factory field service technician during the time of installation of the equipment items.

In the event Purchaser wishes to videotape the Evoqua field service personnel during start-up and/or field service, Purchaser must execute Evoqua's standard "Videotape Agreement" in which the Purchaser shall expressly waive any claim against Evoqua, for injury or damage caused by inaccuracies or errors in such videotape(s), and acknowledge that such videotaping is done by Purchaser at its sole risk.

TERMS GOVERNING FIELD SERVICES: Services of a factory field service technician to inspect installation and/or first operation of the products specified in the Proposal can be furnished by Evoqua at the following rates:

- A.** Supervision or consultation of a process service technician within the continental limits of the United States: \$1,400 per eight (8) hour day, Monday through Friday inclusive.
- B.** Supervision or inspection of a field service technician within the continental limits of the United States: \$1,200 per eight (8) hour day, Monday through Friday inclusive. Overtime Monday through Friday and Saturday work is charged at time and one-half. Time worked on Sunday will be charged double time; time worked on U.S. Holidays will be charged triple time.
- C.** Traveling, living and incidental expenses at cost, including shipping charges on tools and other equipment which the factory field service technician has shipped to the construction site.
- D.** Travel time will be charged to and from Purchaser's construction site, and weekend or holiday travel request or required by Purchaser will be charged at the overtime rates.
- E.** Rescheduling or cancellation of a field service trip once booked will incur the greater of either a \$1,500 cancellation or re-scheduling charge, or actual costs.

Rates shown above apply only to additional services performed within twelve (12) months from the date of Proposal. Additional services performed after twelve (12) months from the date of Proposal shall be subject to Evoqua's current rates at the time such service is provided. Except for the direct acts or omissions of the factory field service technician, the responsibility for the installation and/or first operation shall be Purchaser's. Evoqua will assume responsibility for workmen's compensation coverage of Evoqua employees only and will provide umbrella liability coverage during installation. All other insurance coverage and necessary materials to accomplish installation shall be provided by Purchaser.

PROPOSAL SUBMITTED BY EVOQUA WATER TECHNOLOGIES LLC

Signature below indicates acceptance of this proposal including the Standard Terms of Sale attached hereto and will act as the purchase order document between Evoqua Water Technologies LLC, the Seller, and the Buyer. The Standard terms of Sale shall form the complete and only set of terms for this order.



Proposal No.: 632719

Accepted by Buyer:

City of Pueblo, Wastewater Department

Company

Naomi Hedden

Printed Name

Director of Purchasing

Title


Signature

2/1/2024

Date

Billing Address

Shipping Address

Acknowledged by Seller:

Evoqua Water Technologies LLC

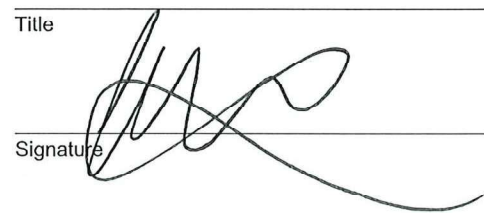
Company

Lee Bralee

Printed Name

Finance Director Central Functions

Title


Signature

02/12/2024

Date

Evoqua Water Technologies LLC
N19 W23993 Ridgeview Pkwy, Suite 200
Waukesha, WI 53188

Address

Please submit the signed proposal to TWEL@evoqua.com along with the Billing Address, Shipping Address, Tax-Exempt Certificate, and a Copy of Payment Bond. It is clarified that the purchase order price does not include sales tax and that sales tax is to be added to the sale price unless the Seller receives a Tax-Exempt Certificate or Resale Certificate.

EVOQUA WATER TECHNOLOGIES LLC

STANDARD TERMS OF SALE

1. **Applicable Terms.** These terms govern the purchase and sale of equipment, products, related services, leased products, and media goods if any (collectively herein "Work"), referred to in Seller's proposal ("Seller's Documentation"). Whether these terms are included in an offer or an acceptance by Seller, such offer or acceptance is expressly conditioned on Buyer's assent to these terms. Seller rejects all additional or different terms in any of Buyer's forms or documents.
2. **Payment.** Buyer shall pay Seller the full purchase price as set forth in Seller's Documentation. Unless Seller's Documentation specifically provides otherwise, freight, storage, insurance and all taxes, levies, duties, tariffs, permits or license fees or other governmental charges relating to the Work or any incremental increases thereto shall be paid by Buyer. If Seller is required to pay any such charges, Buyer shall immediately reimburse Seller. If Buyer claims a tax or other exemption or direct payment permit, it shall provide Seller with a valid exemption certificate or permit and indemnify, defend and hold Seller harmless from any taxes, costs and penalties arising out of same. All payments are due within 30 days after receipt of invoice. Buyer shall be charged the lower of 1 ½% interest per month or the maximum legal rate on all amounts not received by the due date and shall pay all of Seller's reasonable costs (including attorneys' fees) of collecting amounts due but unpaid. All orders are subject to credit approval by Seller. Back charges without Seller's prior written approval shall not be accepted.
3. **Delivery.** Delivery of the Work shall be in material compliance with the schedule in Seller's Documentation. Unless Seller's Documentation provides otherwise, delivery terms are Ex Works Seller's factory (Incoterms 2010). Title to all Work shall pass upon receipt of payment for the Work under the respective invoice. Unless otherwise agreed to in writing by Seller, shipping dates are approximate only and Seller shall not be liable for any loss or expense (consequential or otherwise) incurred by Buyer or Buyer's customer if Seller fails to meet the specified delivery schedule.
4. **Ownership of Materials and Licenses.** All devices, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data, software and other documents or information prepared or disclosed by Seller, and all related intellectual property rights, shall remain Seller's property. Seller grants Buyer a non-exclusive, non-transferable license to use any such material solely for Buyer's use of the Work. Buyer shall not disclose any such material to third parties without Seller's prior written consent. Buyer grants Seller a non-exclusive, non-transferable license to use Buyer's name and logo for marketing purposes, including but not limited to, press releases, marketing and promotional materials, and web site content.
5. **Changes.** Neither party shall implement any changes in the scope of Work described in Seller's Documentation without a mutually agreed upon change order. Any change to the scope of the Work, delivery schedule for the Work, any Force Majeure Event, any law, rule, regulation, order, code, standard or requirement which requires any change hereunder shall entitle Seller to an equitable adjustment in the price and time of performance.
6. **Force Majeure Event.** Neither Buyer nor Seller shall have any liability for any breach or delay (except for breach of payment obligations) caused by a Force Majeure Event. If a Force Majeure Event exceeds six (6) months in duration, the Seller shall have the right to terminate the Agreement without liability, upon fifteen (15) days written notice to Buyer, and shall be entitled to payment for work performed prior to the date of termination. "**Force Majeure Event**" shall mean events or circumstances that are beyond the affected party's control and could not reasonably have been easily avoided or overcome by the affected party and are not substantially attributable to the other party. Force Majeure Event may include, but is not limited to, the following circumstances or events: war, act of foreign enemies, terrorism, riot, strike, or lockout by persons other than by Seller or its sub-suppliers, natural catastrophes or (with respect to on-site work), unusual weather conditions.
7. **Warranty.** Subject to the following sentence, Seller warrants to Buyer that the (i) Work shall materially conform to the description in Seller's Documentation and shall be free from defects in material and workmanship and (ii) the Services shall be performed in a timely and workmanlike manner. Determination of suitability of treated water for any use by Buyer shall be the sole and exclusive responsibility

of Buyer. The foregoing warranty shall not apply to any Work that is specified or otherwise demanded by Buyer and is not manufactured or selected by Seller, as to which (i) Seller hereby assigns to Buyer, to the extent assignable, any warranties made to Seller and (ii) Seller shall have no other liability to Buyer under warranty, tort or any other legal theory. The Seller warrants the Work, or any components thereof, through the earlier of (i) eighteen (18) months from delivery of the Work or (ii) twelve (12) months from initial operation of the Work or ninety (90) days from the performance of services (the "Warranty Period"). If Buyer gives Seller prompt written notice of breach of this warranty within the Warranty Period, Seller shall, at its sole option and as Buyer's sole and exclusive remedy, repair or replace the subject parts, re-perform the Service or refund the purchase price. Unless otherwise agreed to in writing by Seller, (i) Buyer shall be responsible for any labor required to gain access to the Work so that Seller can assess the available remedies and (ii) Buyer shall be responsible for all costs of installation of repaired or replaced Work. If Seller determines that any claimed breach is not, in fact, covered by this warranty, Buyer shall pay Seller its then customary charges for any repair or replacement made by Seller. Seller's warranty is conditioned on Buyer's (a) operating and maintaining the Work in accordance with Seller's instructions, (b) not making any unauthorized repairs or alterations, and (c) not being in default of any payment obligation to Seller. Seller's warranty does not cover (i) damage caused by chemical action or abrasive material, misuse or improper installation (unless installed by Seller) and (ii) media goods (such as, but not limited to, resin, membranes, or activated carbon media) once media goods are installed. THE WARRANTIES SET FORTH IN THIS SECTION 7 ARE THE SELLER'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITATION OF LIABILITY PROVISION BELOW. SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

8. **Indemnity.** Seller shall indemnify, defend and hold Buyer harmless from any claim, cause of action or liability incurred by Buyer as a result of third party claims for personal injury, death or damage to tangible property, to the extent caused by Seller's negligence. Seller shall have the sole authority to direct the defense of and settle any indemnified claim. Seller's indemnification is conditioned on Buyer (a) promptly, within the Warranty Period, notifying Seller of any claim, and (b) providing reasonable cooperation in the defense of any claim.

9. **Assignment.** Neither party may assign this Agreement, in whole or in part, nor any rights or obligations hereunder without the prior written consent of the other party; provided, however, the Seller may assign its rights and obligations under these terms to its affiliates or in connection with the sale or transfer of the Seller's business and Seller may grant a security interest in the Agreement and/or assign proceeds of the agreement without Buyer's consent.

10. **Termination.** Either party may terminate this agreement, upon issuance of a written notice of breach and a thirty (30) day cure period, for a material breach (including but not limited to, filing of bankruptcy, or failure to fulfill the material obligations of this agreement). If Buyer suspends an order without a change order for ninety (90) or more days, Seller may thereafter terminate this Agreement without liability, upon fifteen (15) days written notice to Buyer, and shall be entitled to payment for work performed, whether delivered or undelivered, prior to the date of termination.

11. **Dispute Resolution.** Seller and Buyer shall negotiate in good faith to resolve any dispute relating hereto. If, despite good faith efforts, the parties are unable to resolve a dispute or claim arising out of or relating to this Agreement or its breach, termination, enforcement, interpretation or validity, the parties will first seek to agree on a forum for mediation to be held in a mutually agreeable site. If the parties are unable to resolve the dispute through mediation, then **any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Pittsburgh, Pennsylvania before three arbitrators** who are lawyers experienced in the discipline that is the subject of the dispute and shall be jointly selected by Seller and Buyer. **The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The Arbitrators shall issue a reasoned decision** of a majority of the arbitrators, which shall be the decision of the panel. Judgment may be entered upon the arbitrators' decision in any court of competent jurisdiction. The substantially prevailing party as determined by the arbitrators shall be reimbursed by the other party for all costs, expenses and charges, including without limitation reasonable attorneys' fees, incurred by the prevailing party in connection with the arbitration. For any order shipped outside of the United States, any dispute shall be referred to and finally determined by the International Center for Dispute Resolution in accordance with the provisions of its International Arbitration Rules, enforceable under the New York Convention (Convention on the Recognition and Enforcement of Foreign Arbitral Awards) and the governing language shall be English.

12. **Export Compliance.** Buyer acknowledges that Seller is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer, assignment, disposal and usage of the Work provided under this Agreement, including any export license requirements. Buyer agrees that such Work shall not at any time directly or indirectly be used, exported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with such applicable export laws and regulations. It shall be a condition of the continuing performance by Seller of its obligations hereunder that compliance with such export laws and regulations be maintained at all times. BUYER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.

13. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, AND SELLER'S TOTAL LIABILITY ARISING AT ANY TIME FROM THE SALE OR USE OF THE WORK, INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR ALL WARRANTY CLAIMS OR FOR ANY BREACH OR FAILURE TO PERFORM ANY OBLIGATION UNDER THE CONTRACT, SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE WORK. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY.

14. **Rental Equipment / Services.** Any leased or rented equipment ("Leased Equipment") provided by Seller shall at all times be the property of Seller with the exception of certain miscellaneous installation materials purchased by the Buyer, and no right or property interest is transferred to the Buyer, except the right to use any such Leased Equipment as provided herein. Buyer agrees that it shall not pledge, lend, or create a security interest in, part with possession of, or relocate the Leased Equipment. Buyer shall be responsible to maintain the Leased Equipment in good and efficient working order. At the end of the initial term specified in the order, the terms shall automatically renew for the identical period unless canceled in writing by Buyer or Seller not sooner than three (3) months nor later than one (1) month from termination of the initial order or any renewal terms. Upon any renewal, Seller shall have the right to issue notice of increased pricing which shall be effective for any renewed terms unless Buyer objects in writing within fifteen (15) days of issuance of said notice. If Buyer timely cancels service in writing prior to the end of the initial or any renewal term this shall not relieve Buyer of its obligations under the order for the monthly rental service charge which shall continue to be due and owing. Upon the expiration or termination of this Agreement, Buyer shall promptly make any Leased Equipment available to Seller for removal. Buyer hereby agrees that it shall grant Seller access to the Leased Equipment location and shall permit Seller to take possession of and remove the Leased Equipment without resort to legal process and hereby releases Seller from any claim or right of action for trespass or damages caused by reason of such entry and removal.

15. **Miscellaneous.** These terms, together with any Contract Documents issued or signed by the Seller, comprise the complete and exclusive statement of the agreement between the parties (the "Agreement") and supersede any terms contained in Buyer's documents, unless separately signed by Seller. No part of the Agreement may be changed or cancelled except by a written document signed by Seller and Buyer. No course of dealing or performance, usage of trade or failure to enforce any term shall be used to modify the Agreement. To the extent the Agreement is considered a subcontract under Buyer's prime contract with an agency of the United States government, in case of Federal Acquisition Regulations (FARs) flow down terms, Seller will be in compliance with Section 44.403 of the FAR relating to commercial items and those additional clauses as specifically listed in 52.244-6, Subcontracts for Commercial Items (OCT 2014). If any of these terms is unenforceable, such term shall be limited only to the extent necessary to make it enforceable, and all other terms shall remain in full force and effect. The Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws provisions. Both Buyer and Seller reject the applicability of the United Nations Convention on Contracts for the international sales of goods to the relationship between the parties and to all transactions arising from said relationship.

May 2015

General Terms and Conditions for Erection Work

These terms are in addition to and subject to the Sellers terms of sale.

1. **Equipment location.** Equipment location and staking, including plant orientation, influent and effluent location, is the responsibility of the Purchaser and/or his engineer.
2. **Equipment Elevation.** The elevation of equipment above or below grade must be determined by the purchaser and/or his engineer and entered upon the approved drawings. Purchaser is responsible for establishing benchmark at site for Seller's erection crew.
3. **Site Access/Erection.** Purchaser agrees to provide a clear level work area at least 35 feet wide around the periphery of the erection site. Prior to starting erection, any obstructions in the work area, such as excavations, overhead lines, fences, trees, shrubbery, etc., shall be removed by and at the expense of the purchaser. The purchaser shall keep the site properly drained and free from surface water during erection, and until the work has been completed and accepted. The site and site access shall be capable of supporting a crane up to and including 50-ton capacity and other erection equipment. Any fill or dewatering necessary to accomplish the above, or additional costs of oversized or special equipment required due to poor site conditions, will be the responsibility of the Purchaser. Site leveling, grading, etc., after erections, shall be the responsibility of the Purchaser. Seller shall be responsible for the cleanup and removal of trash, scrap materials, etc., left from Seller's erection work.
4. **Site Access.** Purchaser agrees to provide site access and site working area capable of supporting the delivery trucks (70,000-75,000 pounds gross weight). Purchaser agrees to maintain site access and working area, daily if required, to allow Seller's erection crew to perform work during all weather conditions. Should Seller have to stop work and return to the site when access and/or work area permits or experience delays due to the site and site access being unsuitable for work due to Purchaser's failure to prepare and/or maintain the above, the Purchaser agrees to compensate Seller for cost incurred and agrees Seller shall be indemnified and held harmless from all loss or damages resulting from delays of job progress, that are directly or indirectly a result of the Purchaser's responsibility.
5. **Labor Relations.** Seller's erection personnel are non-union and all work will be by non-union personnel. In case of interference in erection work due to labor problems by persons not employed by Seller, or the imposition of requirements concerning labor, working conditions, wage rates, etc., which were not clearly defined prior to Seller's acceptance of the erection job, Seller shall have the right to stop work without prejudice until such interference or condition is satisfactorily removed or resolved. If additional costs are incurred by Seller due to such conflict, the Purchaser hereby agrees to reimburse Seller for the additional costs incurred.

Evoqua is an Equal Opportunity Employer and shall comply with government regulations pertaining to fair and equal employment.

Work hours by Seller at the site shall be as determined by Seller. The Purchaser shall not define working hours or number of work days per week, nor prohibit Seller from working evenings, weekends, holidays, etc., when deemed to be advisable by Seller.

6. **Insurance.** During the period of erection of the equipment contemplated herein, Seller will maintain the following insurance:
 - (a) Workmen's Compensation and Employer's Liability.
 - (b) Occupational Disease.
 - (c) Contractual Liability.
 - (d) Public Liability Insurance, Personal Injury and Property Damage.
 - (e) Automobile Liability, Personal Injury and Property Damage.

Any insurance required by Purchaser in addition to the above mentioned coverage shall not be considered to be included in the purchase price as set forth herein and shall be charged to the Purchaser.

7. **Unloading of Equipment.** Seller is responsible for unloading of equipment which is to be erected by Seller. Purchaser is responsible for unloading any equipment or accessories shipped to Purchaser for his installation. (Such as base channels to be embedded in concrete foundation by Purchaser, blowers or other accessories to be installed by Purchaser).
8. **Purchaser Acceptance of Erected Equipment.** When erection of the equipment nears completion Seller shall give Purchaser seventy-two hours verbal notice that the equipment shall be ready for inspection and acceptance. Purchaser agrees to provide, on seventy-two hours' notice, an authorized agent to meet at the site with Seller's erection personnel, to inspect the erected equipment, and accept same for/or on behalf of the Purchaser. Any backordered items not installed at that time shall be listed on the acceptance agreement with written understanding that Seller is responsible for installing the subject equipment. Backordered items shall be received by the Purchaser at the "Backordered Address" previously provided and stored until Seller's installation is scheduled.

9. **Preparation for Start-up of Erected Equipment.** Upon completion of erection Seller shall inform the Purchaser that the erected equipment is ready to be placed in service. The Purchaser shall make all preparations for which he is responsible, such as influent and effluent connections, installation of the required electrical power supply and circuitry, filling tanks with clean water for testing and start-up, etc. If any deficiencies in Seller's materials or workmanship are discovered by the Purchaser while performing this work, the Purchaser shall immediately notify Seller so that corrective action can be taken. Seller is responsible for providing start-up supervision as defined in this Quotation. For scheduling purposes, ten days notice of desired start-up date is required.
10. **Security and Protection of Equipment.** Purchaser is responsible for security of equipment stored on his site after delivery and prior to arrival of Seller's crews to begin erection; and for any backordered material delivered to Purchaser after departure of Seller's erection crews. Seller shall not be responsible for deterioration, theft, vandalism or damage to equipment which is stored on site or left inoperative after installation due to delays in start-up. Purchaser agrees to be responsible for security and protection of such equipment.
11. **Back-charges.** Seller will accept no back-charges, for any reason, which have not been approved in writing by an authorized manager of the company prior to any work being performed. Purchaser agrees to contact Seller and receive written authorization prior to incurring any costs related to back-charges.
12. **Licenses and Permits.** Unless specifically stated in Seller's Quotation, Seller is not responsible for licenses, permits or fees required to perform the work defined in this Quotation.
13. **Delays.** Seller shall not be liable for delays due to: (1) causes beyond its reasonable control; (2) acts of God, acts of customer, prerequisite work by others, acts of civil or military authority, government priorities, fires, strikes or other labor disturbances, floods, epidemics, war, riot, delays in transportation; or (3) inability to obtain or delay in obtaining, due to causes beyond its reasonable control, suitable labor, materials, or facilities.
- In the event of any such delay; the time of performance shall be extended for a period equal to the time lost by reason of the delay.
- In the event Seller is delayed by acts of the customer or by prerequisite work by other contractors or suppliers of the customer, Seller shall be entitled to an equitable price adjustment in addition to extension of the time of performance.
14. **Subcontract.** Seller reserves the right to subcontract any of the work to one or more subcontractors.



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$640,660.07 TO KR CONSTRUCTION GROUP INC., FOR PROJECT NO. 24-035, CONSTRUCTION OF HVAC AND KITCHEN REMODEL AT EL CENTRO DEL QUINTO SOL RECREATION CENTER, SETTING FORTH \$260,464.93 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

Attached is a resolution awarding a construction contract to KR Construction Group Inc., for Project No. 24-035, Construction of HVAC and Kitchen Remodel at El Centro del Quinto Sol Recreation Center.

PREVIOUS COUNCIL ACTION:

Resolution 15068, dated November 28, 2022, awarded an agreement for architectural consulting services in the amount of \$90,800 to EV Studio, LLC for the 22-057 Design of El Centro del Quinto Sol Recreation Center Renovation.

BACKGROUND:

In general, this project consists of renovating the Pueblo El Centro Del Quinto Sol Recreation Center. There are 3 major scopes of work for this project. The first is renovating the basement space to convert it into a cooking class/event space for the public. Second is upgrading the HVAC system by installing new RTU's on the roof along with split systems and electric baseboard heaters around the building. Lastly, before any construction takes place the building must be abated. The abatement will be coordinated so that all areas affected by the renovations are free of asbestos. This Resolution awards the construction contract to KR Construction Group Inc.

FINANCIAL IMPLICATIONS:

Funding (including contingencies) in the amount of \$901,125.00 will be paid from

Project Account CI2113 ARPA Funds.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Denial of this resolution will cancel this project.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. 24-035 Bid Summary

RESOLUTION NO.

A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$640,660.07 TO KR CONSTRUCTION GROUP INC., FOR PROJECT NO. 24-035, CONSTRUCTION OF HVAC AND KITCHEN REMODEL AT EL CENTRO DEL QUINTO SOL RECREATION CENTER, SETTING FORTH \$260,464.93 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, competitive bids for Project No. 24-035, Construction of HVAC and Kitchen Remodel at El Centro del Quinto Sol Recreation Center have been received and examined; AND,

WHEREAS, the proposal of KR Construction Group Inc., was the only those bid received, was determined to be responsive, and the Committee of Awards recommends to the City Council that it authorize Project No. 24-035, Construction of HVAC and Kitchen Remodel at El Centro del Quinto Sol Recreation Center to be performed; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The City Council authorizes Project No. 24-035, Construction of HVAC and Kitchen Remodel at El Centro del Quinto Sol Recreation Center, to be performed, and the contract for said project is hereby awarded to KR Construction Group Inc., in the amount of \$640,660.07.

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.....\$260,464.93

SECTION 4.

Funds in the amount of \$901,125.00 for Project No. 24-035 (including contingencies and additional work) shall be from Project Account CI2113, ARPA Funds.

SECTION 5.

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

SECTION 6.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: April 8, 2024

BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK



EVALUATION TABULATION
IFB No. 24-035 (CI2113)
Construction of HVAC and Kitchen Remodel at El Centro del Quinto Sol Recreation Center
RESPONSE DEADLINE: March 27, 2024 at 2:00 pm
Report Generated: Wednesday, March 27, 2024

VENDOR TOTALS

Vendor	Base Bid	Bid Alternate #1	Bid Alternate #2	Bid Alternate #3	Bid Alternate #4	Bid Alternate #5	Bid Alternate #6	Total
KR Construction Group Inc.	\$457,923.73	\$6,304.76	\$3,248.29	\$7,087.84	-\$110,957.58	\$159,532.02	\$6,563.43	\$529,702.49

EVALUATION TABULATION

IFB No. 24-035 (CI2113)

Construction of HVAC and Kitchen Remodel at El Centro del Quinto Sol Recreation Center

BASE BID PRICING BREAKDOWN

All necessary work for project completion

Base Bid Pricing Breakdown					KR Construction Group Inc.	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
Asbestos Removal						
X	1	Asbestos Removal Basement (Excluding Bid Alt 1)	1	LS	\$24,983.06	\$24,983.06
X	2	Partial Asbestos Removal Level 1 (Minimum abatement for project completion, might be zero)	1	LS	\$0.00	\$0.00
X	3	Partial Asbestos Removal Level 2 (Minimize abatement for project completion, might be zero)	1	LS	\$0.00	\$0.00
Kitchen/Dining Room & Bathroom Demolition/Renovation						
X	4	Kitchen/Dining Room Demolition (D101, D110, MD100)	1	LS	\$18,024.59	\$18,024.59
X	5	Kitchen/Dining Room Renovation (A100, A105, A120, A140, A601, M100, P101, P601, E100)	1	LS	\$319,158.47	\$319,158.47
X	6	Bathroom Demolition (D101, D110, MD100)	1	LS	\$19,396.96	\$19,396.96
X	7	Bathroom Renovation (A100, A105, A120, A140, A601, M100, P101, P601, E100)	1	LS	\$56,520.18	\$56,520.18
X	8	Egress Stair Demolition and Rebuild (D101, A100, A101)	1	LS	\$19,840.47	\$19,840.47
Total						\$457,923.73

EVALUATION TABULATION

Public Improvement Invitation for Bid - Construction of HVAC and Kitchen Remodel at El Centro del Quinto Sol Recreation Center

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EVALUATION TABULATION

IFB No. 24-035 (CI2113)

Construction of HVAC and Kitchen Remodel at El Centro del Quinto Sol Recreation Center

BID ALTERNATE #1 - ADDITIONAL ASBESTOS ABATEMENT AND DEMOLITION

Bid Alternate #1 - Additional Asbestos Abatement and Demolition					KR Construction Group Inc.	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
Asbestos Removal						
X	1	Asbestos Removal & Demolition of Basement Closet (Bid Alt 1 on D101)	1	LS	\$4,304.76	\$4,304.76
X	1.1	Remaining Asbestos Removal Level 1 (Full abatement - Partial abatement Level 1)	1	LS	\$1,000.00	\$1,000.00
X	1.2	Remaining Asbestos Removal Level 2 (Full abatement - Partial abatement Level 2)	1	LS	\$1,000.00	\$1,000.00
Total						\$6,304.76

BID ALTERNATE #2 - STORAGE ROOM WINDOWS AND DOORS

Bid Alternate #2 - Storage Room Windows and Doors					KR Construction Group Inc.	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
X	2	Remove and replace windows and doors around storage room (Bid Alt 2 on D101)	1	LS	\$3,248.29	\$3,248.29
Total						\$3,248.29

EVALUATION TABULATION

Public Improvement Invitation for Bid - Construction of HVAC and Kitchen Remodel at El Centro del Quinto Sol Recreation Center

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EVALUATION TABULATION

IFB No. 24-035 (CI2113)

Construction of HVAC and Kitchen Remodel at El Centro del Quinto Sol Recreation Center

BID ALTERNATE #3 - FLOOR TRENCHING

Bid Alternate #3 - Floor Trenching					KR Construction Group Inc.	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
X	3	Price difference to trench electrical to stovetops and add floor boxes (Bid Alt 3 on D101, E100)	1	LS	\$7,087.84	\$7,087.84
Total						\$7,087.84

BID ALTERNATE #4 - SPECIALTY EQUIPMENT SCHEDULE

Bid Alternate #4 - Specialty Equipment Schedule					KR Construction Group Inc.	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
X	4	Price difference for owner to Purchase "Specialty Equipment Schedule" instead of contractor (Bid Alt 4 on A140)	1	LS	-\$110,957.58	-\$110,957.58
Total						-\$110,957.58

EVALUATION TABULATION

Public Improvement Invitation for Bid - Construction of HVAC and Kitchen Remodel at El Centro del Quinto Sol Recreation Center

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EVALUATION TABULATION

IFB No. 24-035 (CI2113)

Construction of HVAC and Kitchen Remodel at El Centro del Quinto Sol Recreation Center

BID ALTERNATE #5 - HVAC & ELECTRICAL SYSTEM UPGRADES

Bid Alternate #5 - HVAC & Electrical System Upgrades					KR Construction Group Inc.	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
X	5.1	HVAC & Electrical System Demolition/Upgrades Level 1 (M101, MD101, E101)	1	LS	\$53,177.34	\$53,177.34
X	5.2	HVAC & Electrical System Demolition/Upgrades Level 2 (M102, MD102, E102)	1	LS	\$53,177.34	\$53,177.34
X	5.3	HVAC & Electrical System Demolition/Upgrades Roof (M103, MD103, E103)	1	LS	\$53,177.34	\$53,177.34
Total						\$159,532.02

BID ALTERNATE # 6 - ROOF HATCH

Bid Alternate # 6 - Roof Hatch					KR Construction Group Inc.	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
X	6	Removal and replacement of existing hatch, associated hardware and ladder (D101, D110, A102, A105, A601)	1	LS	\$6,563.43	\$6,563.43
Total						\$6,563.43

EVALUATION TABULATION

Public Improvement Invitation for Bid - Construction of HVAC and Kitchen Remodel at El Centro del Quinto Sol Recreation Center

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EVALUATION TABULATION

IFB No. 24-035 (CI2113)

Construction of HVAC and Kitchen Remodel at El Centro del Quinto Sol Recreation Center

VENDOR QUESTIONNAIRE PASS/FAIL

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

EVALUATION TABULATION

Public Improvement Invitation for Bid - Construction of HVAC and Kitchen Remodel at El Centro del Quinto Sol Recreation Center

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Background Paper for Proposed Resolution

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$335,251.00 TO PYRAMID CONSTRUCTION, INC., FOR PROJECT NO. 24-038, ASPHALT IMPROVEMENTS - CHEYENNE AVENUE AVE (19TH STREET TO 29TH STREET), SETTING FORTH \$50,300.00 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

Attached is a resolution awarding a construction contract to Pyramid Construction, Inc., for Project No. 24-038, Asphalt Improvements - Cheyenne Avenue (19th Street to 29th Street).

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

In general, this project consists of asphalt improvements to Cheyenne Ave, from 19th St to 29th St, to include the mill and overlay of Cheyenne, and the installation of crosswalk striping at Irving Elementary School. This Resolution awards the construction contract to Pyramid Construction, Inc.

FINANCIAL IMPLICATIONS:

Funding (including contingencies) in the amount of \$385,551.00 will be paid from Project Account CI2415 Street Rehabilitation.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Denial of this resolution will cancel this project.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. 24-038 Bid Summary

RESOLUTION NO.

A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$335,251.00 TO PYRAMID CONSTRUCTION, INC., FOR PROJECT NO. 24-038, ASPHALT IMPROVEMENTS - CHEYENNE AVENUE AVE (19TH STREET TO 29TH STREET), SETTING FORTH \$50,300.00 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, competitive bids for Project No. 24-038, Asphalt Improvements - Cheyenne Avenue (19th Street to 29th Street) have been received and examined; and,

WHEREAS, the proposal of Pyramid Construction, Inc., was the lowest of those bids determined to be responsive, and the Committee of Awards recommends to the City Council that it authorize Project No. 24-038, Asphalt Improvements - Cheyenne Avenue (19th Street to 29th Street) to be performed; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The City Council authorizes Project No. 24-038, Asphalt Improvements - Cheyenne Avenue (19th Street to 29th Street), to be performed, and the contract for said project is hereby awarded to Pyramid Construction, Inc., in the amount of \$335,251.00.

SECTION 2.

The Purchasing Agent is hereby authorized to execute said contract on behalf of the City of Pueblo, a Municipal Corporation, and the City Clerk shall affix the seal of the City thereto and attest 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.....\$50,300.00

SECTION 4.

Funds for Project No. 24-038 (including contingencies and additional work) shall be from Project Account CI2415, Street Rehabilitation.

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: April 8, 2024

BY: None
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. 24-038 (HUAN01)

Asphalt Improvements - Cheyenne Avenue (19th Street to 29th Street)

RESPONSE DEADLINE: March 20, 2024 at 10:00 am

Report Generated: Wednesday, March 20, 2024

VENDOR TOTALS

Vendor	Total
Pyramid Construction, Inc.	\$335,251.00
Martin Marietta Materials, Inc.	\$349,516.20
A&S Construction Co.	\$422,256.00
Tony J Beltramo & Sons, Inc.	\$425,526.05

EVALUATION TABULATION
 IFB No. 24-038 (HUAN01)
 Asphalt Improvements - Cheyenne Avenue (19th Street to 29th Street)

BASE BID

Base Bid					A&S Construction Co.		Martin Marietta Materials, Inc.		Pyramid Construction, Inc.		Tony J Beltramo & Sons, Inc.	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total
X	1	Asphalt Cold Mill Planing +/- 2 inches	17827	SY	\$3.00	\$53,481.00	\$2.60	\$46,350.20	\$2.00	\$35,654.00	\$3.95	\$70,416.65
X	2	Install HMA SX PG 64-28 Asphalt Overlay	1961	TON	\$135.00	\$264,735.00	\$109.00	\$213,749.00	\$122.00	\$239,242.00	\$105.40	\$206,689.40
X	3	Adjust Sanitary Manhole to Finished Grade	6	EA	\$2,000.00	\$12,000.00	\$770.00	\$4,620.00	\$380.00	\$2,280.00	\$1,300.00	\$7,800.00
X	4	Adjust Water Valves to Finished Grade	10	EA	\$600.00	\$6,000.00	\$494.00	\$4,940.00	\$250.00	\$2,500.00	\$300.00	\$3,000.00
X	5	Adjust Survey Boxes To Finished Grade	1	EA	\$800.00	\$800.00	\$671.00	\$671.00	\$425.00	\$425.00	\$300.00	\$300.00
X	6	Install Thermoplastic Markings per City Plans (X-Walk)	200	SF	\$21.00	\$4,200.00	\$17.25	\$3,450.00	\$18.00	\$3,600.00	\$15.00	\$3,000.00

EVALUATION TABULATION

IFB No. 24-038 (HUAN01)

Asphalt Improvements - Cheyenne Avenue (19th Street to 29th Street)

Base Bid					A&S Construction Co.		Martin Marietta Materials, Inc.		Pyramid Construction, Inc.		Tony J Beltramo & Sons, Inc.	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total
X	7	Install Class 6 Base Material (Place and Compact)	100	TON	\$50.00	\$5,000.00	\$140.00	\$14,000.00	\$55.00	\$5,500.00	\$33.00	\$3,300.00
X	8	Asphalt Patching (3-inches HMA)	500	SF	\$10.00	\$5,000.00	\$4.95	\$2,475.00	\$4.60	\$2,300.00	\$6.40	\$3,200.00
X	9	Asphalt Patching (3-inches HMA on 8-inches ABC)	500	SF	\$14.00	\$7,000.00	\$14.45	\$7,225.00	\$10.50	\$5,250.00	\$9.40	\$4,700.00
X	10	Vehicle Towing Allowance	1	EA	\$340.00	\$340.00	\$115.00	\$115.00	\$450.00	\$450.00	\$300.00	\$300.00
X	11	Erosion and Sediment Control	1	LS	\$3,700.00	\$3,700.00	\$2,587.00	\$2,587.00	\$9,800.00	\$9,800.00	\$2,000.00	\$2,000.00
X	12	Traffic Control	1	LS	\$24,000.00	\$24,000.00	\$38,555.00	\$38,555.00	\$12,750.00	\$12,750.00	\$43,120.00	\$43,120.00
X	13	Mobilization	1	LS	\$36,000.00	\$36,000.00	\$10,779.00	\$10,779.00	\$15,500.00	\$15,500.00	\$77,700.00	\$77,700.00
Total						\$422,256.00		\$349,516.20		\$335,251.00		\$425,526.05

EVALUATION TABULATION

Public Improvement Invitation for Bid - Asphalt Improvements - Cheyenne Avenue (19th Street to 29th Street)

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EVALUATION TABULATION
 IFB No. 24-038 (HUAN01)
 Asphalt Improvements - Cheyenne Avenue (19th Street to 29th Street)

VENDOR QUESTIONNAIRE PASS/FAIL

Question Title	A&S Construction Co.	Martin Marietta Materials, Inc.	Pyramid Construction, Inc.	Tony J Beltramo & Sons, Inc.
BID GUARANTEE	Pass	Pass	Pass	Pass
CONFIRMATION OF UNDERSTANDING AND OFFER	Pass	Pass	Pass	Pass
NAME, TITLE, AND CONTACT INFORMATION	Pass	Pass	Pass	Pass
ACKNOWLEDGEMENTS				
AFFIRMATIVE ACTION PLAN REQUIREMENT:	Pass	Pass	Pass	Pass
INSURANCE REQUIREMENTS	Pass	Pass	Pass	Pass
COLORADO LABOR REQUIREMENT:	Pass	Pass	Pass	Pass
SALES AND/OR USE TAX INFORMATION	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
Convicted under state or federal statutes	Pass	Pass	Pass	Pass
Convicted under state or federal antitrust statutes	Pass	Pass	Pass	Pass
Failed to perform	Pass	Pass	Pass	Pass
Suspension or Debarment	Pass	Pass	Pass	Pass
Unqualified	Pass	Pass	Pass	Pass
Unlicensed	Pass	Pass	Pass	Pass
Delinquent	Pass	Pass	Pass	Pass
Confirmation	Pass	Pass	Pass	Pass



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Andra Ahrens, Director Wastewater

SUBJECT: A RESOLUTION APPROVING AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$87,770 BETWEEN THE CITY OF PUEBLO AND BROWN AND CALDWELL, INC., FOR PROFESSIONAL SERVICES EVALUATING AND DEVELOPING PRETREATMENT LOCAL LIMITS AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME

SUMMARY:

This Resolution accepts an agreement between the City of Pueblo and Brown and Caldwell, Inc. for professional services associated with evaluation and development of pretreatment local limits. The agreement will ensure that the pretreatment local limits are protective of the sanitary sewer system and water reclamation facility from industrial and other nondomestic discharges.

PREVIOUS COUNCIL ACTION:

Resolution No. 15497 awarded an agreement between the City of Pueblo and Brown and Caldwell, Inc., to provide engineering services for the Pueblo Wastewater Department, on February 12, 2024

BACKGROUND:

The Wastewater Department has administered an EPA approved Pretreatment Program since 1984. The Pretreatment Program is responsible for regulation of industrial and nondomestic discharges to the sanitary sewer system to protect infrastructure, wastewater personnel, and reduce conventional and toxic pollutant levels discharged by industries and other nondomestic wastewater sources into the City's sanitary sewer system.. Local limits are intended to protect the needs specific to our City's sewer system and water reclamation facility, and the receiving waters. These limits require periodic evaluation to ensure that they are protective.

The purpose of this project is to review the local limits to ensure that they are protective of our system.

This agreement between the City of Pueblo and Brown and Caldwell, Inc. authorizes Brown and Caldwell, Inc. to evaluate and develop pretreatment local limits for the Wastewater Department to ensure protection of the wastewater system.

FINANCIAL IMPLICATIONS:

Funds for this project are available from the Sewer User Fund and have been appropriated in the Sewer User Fund, Professional Services.

BOARD/COMMISSION RECOMMENDATION:

None

STAKEHOLDER PROCESS:

None

ALTERNATIVES:

The no-approval alternative is to forego evaluation of current local limits. If current local limits are not applicable to controllable discharges or are not protective of the wastewater system, there is potential for violations of the water reclamation facility's discharge permit.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. 23-130 Brown and Caldwell - Local Limits (Approved BC and City)
2. 04-08-24 Pretreatment SID-150630 Pueblo Local Limits Scope and Fee
Final_02.16.24

RESOLUTION NO.

A RESOLUTION APPROVING AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$87,770 BETWEEN THE CITY OF PUEBLO AND BROWN AND CALDWELL, INC., FOR PROFESSIONAL SERVICES EVALUATING AND DEVELOPING PRETREATMENT LOCAL LIMITS AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME

WHEREAS, the City of Pueblo owns, operates, and maintains a wastewater system subject to the requirements of the Federal Clean Water Act and the Colorado Water Quality Control Act; and

WHEREAS, to protect the wastewater system, the City of Pueblo implements local limits through an approved pretreatment program; and

WHEREAS, the pretreatment local limits may require period evaluation and development to remain protective of the wastewater system; and

WHEREAS, Brown and Caldwell, Inc. is the Engineer of Record for the James R. Dilorio Water Reclamation Facility, they will provide professional services; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The Agreement for Professional Services by and between Pueblo, a Colorado Municipal Corporation, and Brown and Caldwell, Inc., a true copy of which is attached hereto and incorporated herein by reference (the "Agreement") having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

Funds for payment for professional services under said Agreement in an amount not to exceed \$87,770 shall be paid from appropriated funds budgeted in the City's 2024 Budget from the Sewer User Fund, Professional Services.

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 and to implement the transaction herein authorized.

SECTION 4.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: April 8, 2024

BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK



**AGREEMENT FOR PROFESSIONAL CONSULTING
SERVICES BY AND BETWEEN CITY OF PUEBLO AND
BROWN AND CALDWELL, INC.**

23-130

WASTEWATER DEPARTMENT ENGINEER OF RECORD - LOCAL
LIMITS EVALUATION AND DEVELOPMENT

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES BY AND BETWEEN CITY OF PUEBLO AND BROWN AND CALDWELL, INC.

1. INTRODUCTION

THIS AGREEMENT ("Agreement") made and entered this _____ day of _____, 20____, by and between the City of Pueblo, a Municipal Corporation (hereinafter referred to as "City") and Brown and Caldwell, Inc., a registered California Corporation (hereinafter referred to as "Consultant"), for Consultant to render certain professional data sampling and analysis, evaluation, plan development, report preparation, and related services for City in connection with Bid 23-130 Wastewater Department Engineer of Record - Local Limits Evaluation and Development, hereinafter referred to as the "Project." In consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

- A. Consultant shall satisfactorily perform professional data review, sampling, analysis, planning, evaluation, plan development, local limits development, report preparation, and related services for the Project described in more detail in Schedule 1 attached hereto and incorporated herein by reference (the "Services"). Such Services shall include all usual and customary professional services incidental to the work on the Project. In the event this Agreement follows the selection of Consultant by City 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.

2. CONSULTANT 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 for the Project Approach and Scope of Services as outlined in Schedule 1, and other services, irrespective of City's approval of or acquiescence in same. Consultant shall be responsible, in accordance with applicable law, to City for all loss or damage to City to the extent caused by Consultant's negligent act or omission. 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.
- B. Prior to start Project, City and Consultant shall update the work schedule referenced in Schedule 2 by which Consultant proposes to accomplish its work, with time periods for which it will commence and complete each major work item of each phase. 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 City'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.

- C. Before undertaking any work or incurring any expense which Consultant considers beyond or in addition to the Services described in Schedule 1 or otherwise contemplated by the terms of this Agreement, Consultant shall advise City in writing that (1) Consultant considers the work beyond the scope of this Agreement, (2) the reasons that Consultant believes the out of scope or additional work should be performed, and (3) 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 City. 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 1 attached hereto.
- D. Consultant acknowledges that, due to the nature of the services for this Project, related professional services, and the impact of same on the Project, the City 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 Consultant has selected and intends to employ or assign the key personnel and subconsultants identified in Schedule 3 ("Identification of Personnel, Subcontractors, and Task Responsibility") attached hereto for the Project assignments and areas of responsibility stated therein. Within 10 days of execution of this Agreement, City shall have the right to object in writing to employment on the Project of any such key person, subconsultant, or assignment of principal responsibility, in which case Consultant will employ alternate personnel for such function or reassign such responsibility to another to whom City has no reasonable objection. Thereafter, Consultant shall not assign or reassign Project work to any person to whom City has reasonable objection.

3. CITY'S RESPONSIBILITIES

- A. City agrees to advise Consultant regarding City's Project requirements and to provide all relevant information, data and previous reports accessible to City which Consultant may reasonably require. Consultant shall rely on information provided without verification unless otherwise agreed in Schedule 1. City shall notify Consultant of any known or potential health or safety hazards existing at or near the project site.
- B. City shall designate a Project Representative to whom all communications from Consultant shall be directed and who shall have limited administrative authority on behalf of City to receive and transmit information and make decisions with respect to the Project. Said representative shall not, however, have authority to bind City 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 agreement price.

- C. City shall examine all documents presented by Consultant and render decisions pertaining thereto within a reasonable time. The City's approval of any data, memorandums, sampling, evaluations, reports, plans, or product furnished hereunder shall not in any way relieve Consultant of responsibility for the professional adequacy of its work.
- D. City shall perform its obligations and render decisions within a reasonable time under the circumstances presented. Based upon the nature of City 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 City to responsibly render a decision has been furnished. A period of 46 days shall be presumed reasonable for City 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 City but must be procured from others.

4. TIME FOR PERFORMANCE

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

5. PAYMENT

- A. City will pay to Consultant as full compensation for all services required to be performed by Consultant under this Agreement, except for services for additional work or work beyond the scope of this Agreement as shown in A1 below, an amount not to exceed \$87,770.00 in the aggregate as set forth in the grand total shown in Schedule 2 "Fee Schedule".
 - 1. The maximum amount of each phase shall not exceed the amount specified in Schedule 2 for such phase unless agreed upon by Consultant and City with a written Change Order or written Amendment.
 - 2. A written Change Order may be considered for an increase amount of the applicable phase for up to 10% of the grand total cost of the project.
 - 3. A written Amendment approved by City Council, Consultant, and Department Director shall be utilized for any agreed upon change to each phase exceeding 10% of the grand total.
- B. Consultant shall submit periodic, but not more frequently than monthly, applications for payment, aggregating to not more than the maximum amount set forth above, for actual professional services rendered and reimbursable expenses incurred.

1. Such applications shall be submitted based upon the hourly rates and expense reimbursement provisions for each phase as set forth in Schedule 2 and shall contain appropriate documentation that such services have been performed and expenses incurred.
 2. Such applications for payment of each phase shall not exceed 90% of said phase until final work of the phase has been completed. The final application for payment for each phase shall be the remaining 10% of the phase and shall be paid upon satisfactory completion of the phase as approved by City.
 3. The applications for payment shall be submitted monthly with consideration of City for review of satisfactory completion and payment within 45 days of the date of such application is received provided that sufficient documentation has been furnished.
 4. The final application for payment for the final 10% of the final phase, shall be held by City until all previous phases and current final phase have been completed to City's reasonable satisfaction and all required Consultant submittals have been provided.
- C. No separate or additional payment shall be made for profit, overhead, local telephone expenses, lodging, routine photocopying, computer time, or similar expenses unless otherwise provided and listed in Schedule 2 - "Fee Schedule."
- D. No compensation shall be paid to Consultant for services required and expenditures incurred in correcting Consultant's negligent errors or omissions.
- E. Compensation for authorized Services beyond the scope of this Agreement shall be governed by Section 2.

6. TERMINATION

- A. City reserves the right to terminate this Agreement and Consultant's performance hereunder, at any time upon 10 days' written notice, either for cause or for convenience. Upon such termination, Consultant and its subcontractors shall cease all work, stop incurring expenses, and shall promptly deliver to City all data, memorandums, sampling, evaluations, reports, plans, or work product and materials as Consultant may have accumulated in performing this Agreement, together with all finished work and work in progress. Consultant shall at all times act in good faith with respect to the orderly transfer of work to the City or any entity designated by City.
- B. Upon termination of this Agreement for events or reasons not the fault of Consultant, Consultant shall be paid at the rates specified in Schedule 2 for all services rendered and reasonable costs incurred to the date of termination; together with any reasonable costs incurred within 10 days of termination provided such latter costs could not be avoided or were incurred in mitigating loss or expenses to Consultant or City. Consultant shall provide a detailed final invoice to the City within fourteen (14) calendar days from the effective date of

termination, itemizing the work completed, costs incurred, and any outstanding payments due. In no event shall payment to Consultant upon termination exceed the maximum compensation provided for complete performance in Section 5, and the Consultant expressly waives any right to claim damages, including but not limited to lost profits, anticipated revenue, or indirect or consequential damages arising out of or relating to the termination for convenience.

- 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 services, or to pay its employees and Consultants, or to perform services with that level of care and skill ordinarily exercised by consultants performing similar services at the time services are performed in a manner deemed satisfactory by City's Project Representative, then in that event, Consultant's entire right to compensation shall be limited payment at the rates specified in Schedule 2 for services satisfactorily performed and reimbursable expenses reasonably incurred, prior to date of termination.
- D. Consultant's responsibility for its completed work and services shall survive any termination.

7. GENERAL PROVISIONS

7.1. Ownership of Documents

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

7.2. Advertising

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

7.3. Equal Employment Opportunity

In connection with the performance of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national

origin, disability, or age. Consultant shall endeavor to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, national origin, disability, or age.

7.4. Notices

Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either the City or the Consultant by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service when deposited in the United States mail, first-class postage prepaid, addressed to the City of Pueblo, City of Pueblo, Department of Wastewater, Attn: Andra Ahrens, Director, 1300 S. Queens Avenue, Pueblo, Colorado, 81001; or to the Consultant, Brown and Caldwell, Inc., Attn: Michael Thorstenson, Principal-In-Charge, 1527 Cole Blvd., Suite 300, Lakewood, Colorado, 80401. Either party may change their address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

7.5. Entire Agreement

This instrument contains the entire agreement for the work in Schedule 1 between the City and the Consultant respecting the Project, and any other written or oral agreement or representation respecting the Project or the duties of either the City or the Consultant in relation thereto not expressly set forth in this instrument are null and void. Notwithstanding the foregoing, the terms of Bid 23-130 Wastewater Department Engineer of Record and 23-130 Master Contract, are hereby incorporated herein, and Consultant agrees to abide by and comply with the same. In the event of any conflict between any provision of this Agreement and a provision of any Schedule or attachment to this Agreement, the provision in any schedule or attachment shall control and supersede the conflicting provision in Agreement.

7.6. Subcontracts

- A. City acknowledges that Consultant is the prime contractor and the only party with whom City 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 City, and City shall be a third-party beneficiary of those subcontract provisions.
- B. Consultant shall indemnify and defend City from all claims and demands for payment for services provided by subcontractors of Consultant to the extent City has paid Consultant for services performed by Consultant's subconsultants and subcontractors.
- C. Consultant acknowledges that, due to the nature of the services to be provided under this Agreement, the City 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 City prior to execution of

this Agreement to induce City to enter this Agreement. Consultant shall not change such consultants or key personnel except after giving notice of a proposed change to City and receiving City's consent thereto. Consultant shall not assign or reassign Project work to any person to whom City has reasonable objection.

7.7. Successors and Assigns

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

7.8. Amendments

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

7.9. Choice of Law, Jurisdiction, and Venue

Colorado law, the Pueblo City Charter, the Pueblo Municipal Code, 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 that 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 County of Pueblo. In the event of litigation the court shall award the prevailing party its court costs and reasonable attorney fees.

7.10. Severability

If any provision of this Agreement, 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.

7.11. Appropriations

The City is prohibited by law from making commitments beyond the term of the current City Fiscal Year. Payment to Consultant beyond the current City Fiscal Year is contingent on the appropriation and continuing availability of agreement funds in any subsequent year. The City's obligation to pay Consultant shall be contingent upon 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 City's liability for such payments shall be limited to the amount remaining of such Agreement Funds. If City funds are not appropriated, or otherwise become unavailable to fund this Agreement, the City may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The City shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the

effective date of notice of termination. Consultant shall confirm availability of Agreement Funds before proceeding and/or making obligations for work exceeding the initial and subsequent annual appropriations.

7.12. Force Majeure

Neither party shall be responsible for delays caused by circumstances beyond its reasonable control including but not limited to governmental action, statute, ordinance, rule or regulation, strike or other labor troubles, fire, acts of God, or other incidents outside of either party's control that makes performance or acceptance impossible or impractical. The Consultant shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control created from any force majeure event.

8. DISPUTES

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which the designated Agreement representatives cannot resolve shall be referred in writing to the Mayor's Office for the City for a final determination of the issue. The Parties agree that participation in this administrative procedure shall be a condition precedent to the initiation of litigation or mediation, as mutually agreed, except in the case of an emergency or other conditions that entitle either Party to seek injunctive or emergency relief from a court of competent jurisdiction, in which no participation in the preceding alternative dispute resolution process shall be required.

9. INSURANCE

9.1. Conditions

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

9.2. Minimum Requirements

- A. Commercial General Liability Insurance. The Consultant shall secure and maintain during the period of this Contract and for such additional time as work on the project is being performed, Commercial General Liability Insurance issued to and covering the liability of the Consultant with respect to all work performed by it and all its subcontractors under the Contract, to be written on a commercial general liability policy form. This insurance shall be written in amounts not less than a combined single limit of \$1,000,000 for each occurrence and aggregate for bodily injury

including death and 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, and blanket contractual coverage. The policy shall also provide "Completed Operations and Projects Liability" coverage.

- B. Commercial Automobile Liability Insurance. The Consultant shall procure and maintain during the period of the Contract and for such additional time as work on the project is being performed, Commercial Automobile Liability Insurance. This insurance shall be written with limits of liability of \$1,000,000 each accident for bodily injury and property damage. This insurance shall include uninsured/underinsured motorist coverage and shall protect the Consultant from any and all claims arising from the use both on and off the site of the project of automobiles, trucks, tractors, backhoes, and similar equipment whether owned, leased, hired or used by Consultant.
- C. Workers' Compensation Insurance complying with statutory requirements in Colorado and in any other state or states where the work is performed. The Workers' Compensation Insurance policy shall contain an endorsement waiving subrogation against the City.
- D. Professional Liability Insurance with coverage of not less than \$1,000,000 each claim and aggregate in a form and with a self-insured retention acceptable to City.
- E. Consultant shall furnish to City a certificate or certificates of insurance showing compliance with this Section. Consultant shall obtain a special endorsement from its insurance carrier that provides that the insurance shall not be changed or cancelled until ten (10) days after written notice has been given to City and provide a copy of such endorsement to City. Consultant shall immediately notify City of any substantial change in, or cancellation, or non-renewal of any such insurance.

10. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the City, 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). 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.

11. ACCESSIBILITY

The Americans with Disabilities Act (ADA) provides that it is a violation of the ADA to design and construct a facility for first occupancy later than January 26, 1993, that does not meet the accessibility and usability requirements of the ADA except where an entity can demonstrate that it is structurally impractical to meet such requirements. The Consultant therefore, will use its best reasonable

professional efforts to implement applicable ADA requirements and other federal, state, and local laws, rules codes, ordinances and regulations as they apply to the Project. Notwithstanding, unless otherwise specified in the Scope of Services, City shall have sole responsibility as between City and Consultant with compliance with the ADA and related regulations.

12. IMMIGRATION REFORM AND CONTROL ACT OF 1986

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

13. PERA LIABILITY

The Consultant shall reimburse the City for the full amount of any employer contribution required to be paid by the City of Pueblo to the Public Employees' Retirement Association ("PERA") for salary or other compensation paid to a PERA retiree performing contracted services for the City under this Agreement. The Consultant shall fill out the Colorado PERA Questionnaire and submit the completed form to City as part of the signed Agreement.

14. SCHEDULES

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

- Schedule 1 - "Scope of Services" consisting of 2 pages.
- Schedule 2 - "Fee Schedule" consisting of 2 pages.
- Schedule 3 - "Identification of Personnel, Subcontractors, and Task Responsibility" consisting of 1 page.

15. ELECTRONIC SIGNATURE

This Agreement and all other documents contemplated hereunder may be executed using electronic signatures with delivery via facsimile transmission, by scanning and transmission of electronic files in Portable Document Format (PDF) or other readily available file format, or by copy transmitted via email, or by other electronic means and in one or more counterparts, each of which shall be: (1) an original, and all of which taken together shall constitute one and the same agreement, (2) a valid and binding agreement and fully admissible under state and federal law, and (3) enforceable in accordance with its terms.

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

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

CITY OF PUEBLO, A MUNICIPAL CORPORATION

BROWN AND CALDWELL, INC.

By _____
Naomi Hedden, Director of Purchasing

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

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

David Wyatt, Assistant City Attorney

Attachments: Schedule 1 - Scope of Services
Schedule 2 - Fee Schedule
Schedule 3 - Identification of Personnel, Subcontractors, and Task Responsibility

Schedule 1

Scope of Service

Excerpt from Consultant's Proposal dated February 16, 2024, Pages 2 and 3

Project Approach and Scope of Services

Phase 1: Data Review and Sampling and Analysis Plan

BC will review all relevant documents and monitoring data for each potential pollutant of concern (POC) and to identify any data gaps. BC staff will identify the City's potential POCs from the following:

- EPA's 15 National POCs
- Water Quality Standards
- NPDES Permit Effluent Limits
- Reuse Standards (if applicable)
- Sludge/Biosolids Disposal Criteria
- Pollutants with an existing local limit
- Other pollutants measured in quantities that may cause pass through or interference, including sulfate and selenium
- Haule Wate Data

BC will compare information and monitoring data provided by the City to the Data Needs Checklist (provided by BC). Findings of the analysis will be discussed with the City to determine if any additional information or data may be available to fill the gaps and what additional data and information is necessary to perform the evaluation.

Based on the findings of the data evaluation and gap analysis, BC will develop a sampling analysis plan (SAP), if needed. The SAP will provide the City with recommended sampling to collect data necessary for the local limits evaluation.

Deliverables

- Data Needs Checklist
- Draft SAP Technical Memorandum
- Final SAP Technical Memorandum

Assumptions

- Requested data and information will be provided in a format specified by BC
- If additional sampling is required, the City will conduct all sampling and analysis

Phase 2: Local Limits Evaluation

BC will complete the following as part of this task:

- Evaluate existing local limits in accordance with the 2004 U.S. EPA *Local Limits Development Guidance*
 - Evaluate existing Maximum Allowable Headworks Loadings (MAHLs)
 - Population trends
 - Industrial User (IU) inventory
 - IU flow trends
 - Treatment Plant Compliance History
- Evaluate list of POCs, together with results of data, to assess if any new POCs need a local limit



This task will also include an evaluation for selenium and sulfate for both controlled and uncontrolled sources. BC will determine the pollutant loading to the WRF and conduct a mass balance to quantify the estimated loadings from each source type (e.g., domestic/residential, hauled waste, and industrial). If new local limits need to be developed based on the tasks completed in this phase of work, BC will move onto Phase 3. If local limits do not need updating, BC will develop a local limits evaluation report to be submitted for review and approval by the U.S. EPA Region 8.

Deliverables

- Draft Local Limits Evaluation Report
- Final Local Limits Evaluation Report
- Assistance with any responses to the U.S. EPA Region 8 comments

Phase 3: Local Limits Development

BC will develop MAHLs, where applicable, for the following environmental criterion:

- Acute and chronic water quality standards
- NPDES permit limits
- Reuse standards (if applicable)
- Sludge/Biosolids treatment and end uses and/or sludge disposal and landfilling (if applicable)
- Treatment plant design criteria and process inhibition
- Protection of treatment works, collection system, and workers

BC will calculate the Maximum Allowable Industrial Loading (MAIL) for each POC and industrial allocations, which can be mass-based or concentration-based. BC will work with the City to determine the appropriate allocation method for local limits. Local limits may be uniformly or non-uniformly allocated to industrial users.

Deliverables

- Draft Local Limits Development Report
- Final Local Limits Development Report
- Assistance with any responses to the U.S. EPA Region 8 comments

Schedule 2

Work Schedule and Fee Schedule

Excerpt from Consultant's Proposal dated February 16, 2024, Pages 4 and 5

Proposed Schedule and Fee

Compensation for services shall be on a time-and-expense basis and shall not exceed \$87,770 without prior written authorization.

Table 2. BC Project Schedule and Fee

Task	Estimated Completion Date	Estimated Fee
Phase 1: Data Review and Sampling and Analysis Plan	June 3, 2024	\$10,120
Phase 2: Local Limits Evaluation	August 27, 2024	\$43,900
Phase 3: Local Limits Development (if required)	December 13, 2024	\$26,990
Project Management	Ongoing	\$6,760
		\$87,770

Assumptions

- The project is assumed to start February 26, 2024, and all work will be completed by December 13, 2024
- The City will conduct sampling and pay analytical laboratory costs directly to their contract laboratory

SID-150630 Pueblo Local Limits Evaluation & Development												
		Forrest Lindsey	Joshua Balentine	Laurel Rognstad	Anna Holdosh	Jacob Danielson	Keli Lambert	Mike Thorstenson				
Phase	Phase Description								Total Labor Hours	Total Labor Effort	Total Expense Effort	Total Effort
		\$175.00	\$255.00	\$195.00	\$130.00	\$130.00	\$130.00	\$290.00				
100	Data Needs Request and Sampling	12	8	12	28	0	0	0	60	10,120	0	10,120
****	Default	0	0	0	0	0	0	0	0	0	0	0
001	Kickoff Meeting	2	2	2	0	0	0	0	6	1,250	0	1,250
002	Data Needs Request	2	2	2	4	0	0	0	10	1,770	0	1,770
003	Data Gathering by City	0	0	0	0	0	0	0	0	0	0	0
004	Data Gap Analysis	4	2	4	20	0	0	0	30	4,590	0	4,590
005	Field Sampling and Analysis (if requ	4	2	4	4	0	0	0	14	2,510	0	2,510
200	Local Limits Evaluation	104	8	60	92	0	0	0	264	43,900	0	43,900
****	Default	0	0	0	0	0	0	0	0	0	0	0
001	Data Analysis and MAHL Eval	40	2	16	40	0	0	0	98	15,830	0	15,830
002	Hauled Waste Eval	40	2	20	40	0	0	0	102	16,610	0	16,610
003	Tech Memo Draft	20	2	20	8	0	0	0	50	8,950	0	8,950
004	City Review	0	0	0	0	0	0	0	0	0	0	0
005	Tech Memo Final	4	2	4	4	0	0	0	14	2,510	0	2,510
300	Local Limits Development	52	10	52	40	0	0	0	154	26,990	0	26,990
****	Default	0	0	0	0	0	0	0	0	0	0	0
001	Domestic Background Sampling (if r	4	2	4	4	0	0	0	14	2,510	0	2,510
002	MAHL/MAIL Development	20	2	20	20	0	0	0	62	10,510	0	10,510
003	IU Allocations	4	2	4	4	0	0	0	14	2,510	0	2,510
004	Tech Memo Draft	20	2	20	8	0	0	0	50	8,950	0	8,950
005	City Review	0	0	0	0	0	0	0	0	0	0	0
006	Tech Memo Final	4	2	4	4	0	0	0	14	2,510	0	2,510
400	Project Management	0	12	0	0	12	12	2	38	6,760	0	6,760
****	Default	0	12	0	0	12	12	2	38	6,760	0	6,760
GRAND TOTAL		168	38	124	160	12	12	2	516	87,770	0	87,770

Hours and Dollars are rounded to nearest whole number. To display decimals, change the format of the cells.

Schedule 3

Identification of Personnel, Subcontractors, and Task Responsibility

Excerpt from Consultant's Proposal dated February 16, 2024, Pages 3 and 4

Key Staff

As previously mentioned, our team's resources and qualifications are second to none. BC's team has real-world first-hand experience at every level: local, state, and federal (U.S. EPA). Listed below are the key staff that will support the City in evaluating and developing local limits.

Table 2. BC Project Schedule and Fee

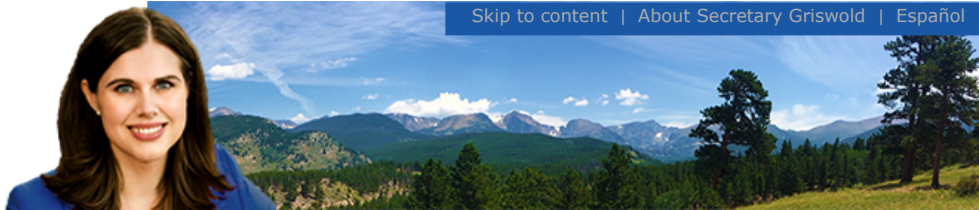
Name/Role	Qualifications	Related Experience
 Joshua Balentine PROJECT MANAGER	Joshua is BC's National Pretreatment Technical Lead and has more than 13 years' experience supporting Pretreatment Programs across the nation. He previously managed the City of Memphis's Pretreatment Program and was a contractor for the U.S. EPA.	– Project Manager, Local Limits Evaluation & Development, City of Goodyear, AZ – Project Manager, Local Limits Evaluation & Development, City of Tolleson, AZ – Technical Lead, Enhanced Local Limits Development, City of San Diego, CA – Technical Lead, Local Limits Evaluation, City of Memphis, TN
 Laurel Rognstad TECHNICAL LEAD	Laurel is one of BC's Pretreatment and local limits Technical Leads. She has evaluated and developed local limits for numerous Pretreatment Programs across the country. Prior to joining BC, she was the Pretreatment Coordinator for the State of Tennessee, reviewing more than 40 local limits evaluations.	– Technical Lead, Local Limits Evaluation & Development, Wilsonville, OR – Technical Lead, Local Limits Evaluation & Development, City of Tolleson, AZ – Project Engineer, Local Limits Evaluation & Development, DELCORA, Chester, PA
 Forrest Lindsey PROJECT SCIENTIST	Forrest has both experience developing and implementing local limits. Prior to joining BC, he managed the Pretreatment and FOG Programs in Jacksonville, Arkansas. He has first-hand knowledge of how local limits impact industrial users and the community.	– Project Scientist, Local Limits Evaluation & Development, City of Tolleson, AZ – Project Scientist, Local Limits Evaluation & Development, Little Rock Water Reclamation Authority, Little Rock, AR – Project Scientist, High Strength User Classification, City of Walla Walla, WA
 Anna Holdosh PROJECT ENGINEER	Anna has extensive experience with wastewater sampling at domestic background, influent, & effluent locations for the development of technically based local limits. She is also an experienced data validator.	– Project Engineer, Local Limits Evaluation & Development, City of Goodyear, AZ – Project Engineer, Local Limits Evaluation & Development, City of Memphis, TN – Project Engineer, Local Limits Evaluation & Development, City of Tolleson, AZ

Additional Information for Agreement

Certificate of Good Standing

PERA Questionnaire

Insurance Certificate(s) – **to be added prior to final signature of agreement**



- For this Record...**
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Summary

Details			
Name		BROWN AND CALDWELL, INC.	
Status	Good Standing	Formation date	03/20/1978
ID number	19871067502	Form	Foreign Corporation
Periodic report month	March	Jurisdiction	California
Principal office street address	201 North Civic Drive, Suite 300, Walnut Creek, CA 94596, US		
Principal office mailing address	201 North Civic Drive, Suite 300, Walnut Creek, CA 94596, US		

Registered Agent	
Name	Corporation Service Company
Street address	1900 W Littleton Blvd, Littleton, CO 80120, US
Mailing address	1900 W Littleton Blvd, Littleton, CO 80120, US

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OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

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

BROWN AND CALDWELL, INC.

is an entity formed or registered under the law of California , has complied with all
applicable requirements of this office, and is in good standing with this office. This entity has
been assigned entity identification number 19871067502 .

This certificate reflects facts established or disclosed by documents delivered to this office on
paper through 11/27/2023 that have been posted, and by documents delivered to this office
electronically through 11/28/2023 @ 14:52:40 .

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 11/28/2023 @ 14:52:40 in accordance with applicable law.
This certificate is assigned Confirmation Number 15522494 .



Jena Griswold

Secretary of State of the State of Colorado

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

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

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

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

(a) Are you, or do you employ or engage in any capacity, including an independent contractor, a PERA Retiree who will perform any services for the City of Pueblo? Yes____, No X. (If you answered "no" please proceed to signature section at bottom of this page.)

(b) If you answered "yes" to (a) above, please answer the following question: Are you an individual, sole proprietor or partnership, or a business or company owned or operated by a PERA Retiree or an affiliated party? For purposes of responding to this question, an "affiliated party" includes (1) any person who is the named beneficiary or cobeneficiary on the PERA account of the PERA Retiree; (2) any person who is a relative of the PERA Retiree by blood or adoption to and including parents, siblings, half-siblings, children, and grandchildren; (3) any person who is a relative of the PERA Retiree by marriage to and including spouse, spouse's parents, stepparents, stepchildren, stepsiblings, and spouse's siblings; and (4) any person or entity with whom the PERA Retiree has an agreement to share or otherwise profit from the performance of services for the City of Pueblo by the PERA Retiree other than the PERA Retiree's regular salary or compensation. Yes _____, No____.

If you answered "yes" please state which of the above entities best describes your business:

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

Please provide the name, address, date of birth, and social security number of each such PERA Retiree. If more than two, please attach a supplemental list.

Name	Address	DOB	Social Security Number
Name	Address	DOB	Social Security Number

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

Company Name: Brown and Caldwell

Authorized Signature:  Title: Managing Director, CS

Printed Name: Michael J. Thorstenson Date: September 22, 2023

City of Pueblo, CO

Proposal for Local Limits Evaluation and Development

Background

The City of Pueblo (City or Pueblo) James R. Dilorio Water Reclamation Facility (WRF) provides wastewater collections and treatment services for the residents and commercial/industrial users within the service area. The City's National Pollutant Discharge Elimination System (NPDES) permit allows Pueblo to discharge treated wastewater from the WRF into the Arkansas River. The NPDES permit requires the City to administer an approved Industrial Pretreatment Program (IPP). The City would like to evaluate the need for selenium and sulfate local limits from controllable (e.g., hauled waste and permitted industrial users) and uncontrollable (e.g., domestic and residential) sources. In addition to selenium and sulfate, this project will include evaluating the existing local limits to determine if they are protective of the publicly owned treatment works (POTW) or require updates. Brown and Caldwell (BC) will provide assistance by evaluating the City's existing local limits and determining if any existing limits should be revised or if new limits need to be developed to protect the collection system, WPCF, biosolids, and receiving water from pass through and interference and evaluate the need to develop local limits for selenium and sulfate.

Firm Background and Qualifications

Since 1947, BC has been at the forefront of water and wastewater innovation with one primary goal: providing safe and effective solutions. With a principal focus on water and wastewater engineering, more than 50 offices, and over 2,000 professionals, we have the resources to deliver your utility projects to meet your high standards of safety and strategic plans. Our national reputation is based on exceptional client service and an unwavering commitment to quality. We are a mid-sized, employee-owned, 100% environmental firm, making us truly unique in our industry.

Our team's resources and qualifications are second to none. BC's team collectively has more than 60 years of experience at every level of pretreatment. This includes three former municipal Pretreatment Program Managers that regulated more than 300 industrial users, a former state of Tennessee Pretreatment Program Manager that regulated more than 100 approved pretreatment programs with approximately 700 industrial users, and a contractor for the U.S. EPA's National Pretreatment Program and the U.S. EPA Region 9.

BC's National Pretreatment Services team is led by Joshua Balentine, who works from our Memphis, TN office and has extensive pretreatment experience within the U.S. EPA Region 9. Under previous employment, Joshua was a contractor for the U.S. EPA Region 9, conducting more than 100 Pretreatment Compliance Audits/Inspections, legal authority evaluations, and local limits evaluations. He also supported the U.S. EPA National Pretreatment Program, authoring the 2017 *Industrial User Inspection and Sampling Guidance Manual for POTWs*. He is supported by Laurel Rognstad will serve as Technical Lead on this project. Laurel is the former state of Tennessee Pretreatment Program Coordinator, where she oversaw the implementation of the State's delegated Pretreatment Program. She has reviewed and approved over 40 local limit evaluations, conducted more than 80 Pretreatment Compliance Audits, and performed more than 100 industrial user inspections. Forrest Lindsey, who managed the Pretreatment and Fats, Oil, and Grease Programs for Jacksonville, Arkansas. Forrest will serve on the technical team for this project and has evaluated and developed numerous local limits projects and has first-hand knowledge in implementing local limits and pretreatment programs. Anna Holdosh will serve as a Project Engineer and has experience supporting pretreatment programs, evaluating and developing local limits, and conducting wastewater sampling.

Project Approach and Scope of Services

Phase 1: Data Review and Sampling and Analysis Plan

BC will review all relevant documents and monitoring data for each potential pollutant of concern (POC) and to identify any data gaps. BC staff will identify the City's potential POCs from the following:

- EPA's 15 National POCs
- Water Quality Standards
- NPDES Permit Effluent Limits
- Reuse Standards (if applicable)
- Sludge/Biosolids Disposal Criteria
- Pollutants with an existing local limit
- Other pollutants measured in quantities that may cause pass through or interference, including sulfate and selenium
- Haule Wate Data

BC will compare information and monitoring data provided by the City to the Data Needs Checklist (provided by BC). Findings of the analysis will be discussed with the City to determine if any additional information or data may be available to fill the gaps and what additional data and information is necessary to perform the evaluation.

Based on the findings of the data evaluation and gap analysis, BC will develop a sampling analysis plan (SAP), if needed. The SAP will provide the City with recommended sampling to collect data necessary for the local limits evaluation.

Deliverables

- Data Needs Checklist
- Draft SAP Technical Memorandum
- Final SAP Technical Memorandum

Assumptions

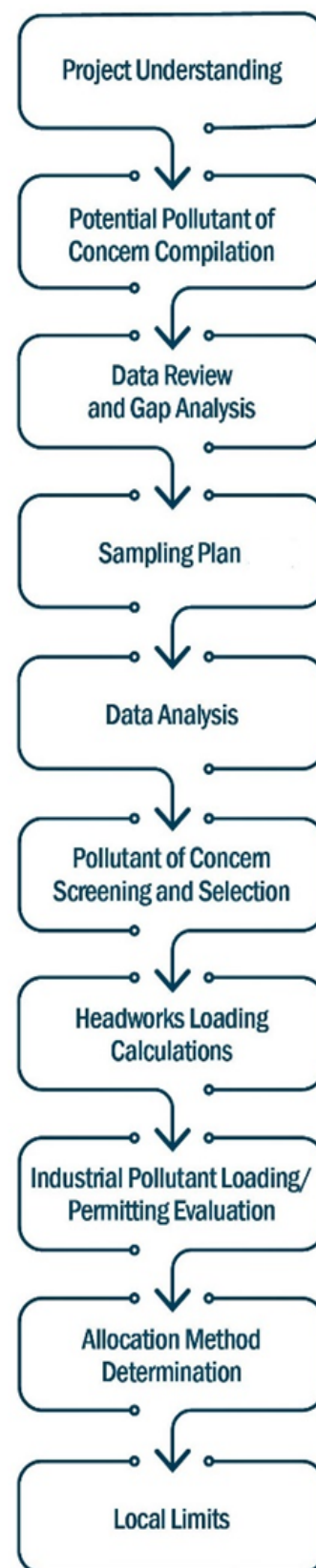
- Requested data and information will be provided in a format specified by BC
- If additional sampling is required, the City will conduct all sampling and analysis

Phase 2: Local Limits Evaluation

BC will complete the following as part of this task:

- Evaluate existing local limits in accordance with the 2004 U.S. EPA *Local Limits Development Guidance*
 - Evaluate existing Maximum Allowable Headworks Loadings (MAHLs)
 - Population trends
 - Industrial User (IU) inventory
 - IU flow trends
 - Treatment Plant Compliance History
- Evaluate list of POCs, together with results of data, to assess if any new POCs need a local limit

This task will also include an evaluation for selenium and sulfate for both controlled and uncontrolled sources. BC will determine the pollutant loading to the WRF and conduct a mass balance to quantify the estimated loadings from each source type (e.g., domestic/residential, hauled waste, and industrial). If new local limits need to be developed based on the tasks completed in this phase of work, BC will move



onto Phase 3. If local limits do not need updating, BC will develop a local limits evaluation report to be submitted for review and approval by the U.S. EPA Region 8.

Deliverables

- Draft Local Limits Evaluation Report
- Final Local Limits Evaluation Report
- Assistance with any responses to the U.S. EPA Region 8 comments

Phase 3: Local Limits Development

BC will develop MAHLs, where applicable, for the following environmental criterion:

- Acute and chronic water quality standards
- NPDES permit limits
- Reuse standards (if applicable)
- Sludge/Biosolids treatment and end uses and/or sludge disposal and landfilling (if applicable)
- Treatment plant design criteria and process inhibition
- Protection of treatment works, collection system, and workers

BC will calculate the Maximum Allowable Industrial Loading (MAIL) for each POC and industrial allocations, which can be mass-based or concentration-based. BC will work with the City to determine the appropriate allocation method for local limits. Local limits may be uniformly or non-uniformly allocated to industrial users.

Deliverables

- Draft Local Limits Development Report
- Final Local Limits Development Report
- Assistance with any responses to the U.S. EPA Region 8 comments

Key Staff

As previously mentioned, our team's resources and qualifications are second to none. BC's team has real-world first-hand experience at every level: local, state, and federal (U.S. EPA). Listed below are the key staff that will support the City in evaluating and developing local limits.

Table 2. BC Project Schedule and Fee

Name/Role	Qualifications	Related Experience
 Joshua Balentine PROJECT MANAGER	Joshua is BC's National Pretreatment Technical Lead and has more than 13 years' experience supporting Pretreatment Programs across the nation. He previously managed the City of Memphis's Pretreatment Program and was a contractor for the U.S. EPA.	– Project Manager, Local Limits Evaluation & Development, City of Goodyear, AZ – Project Manager, Local Limits Evaluation & Development, City of Tolleson, AZ – Technical Lead, Enhanced Local Limits Development, City of San Diego, CA – Technical Lead, Local Limits Evaluation, City of Memphis, TN
 Laurel Rognstad TECHNICAL LEAD	Laurel is one of BC's Pretreatment and local limits Technical Leads. She has evaluated and developed local limits for numerous Pretreatment Programs across the country. Prior to joining BC, she was the Pretreatment Coordinator for the State of Tennessee, reviewing more than 40 local limits evaluations.	– Technical Lead, Local Limits Evaluation & Development, Wilsonville, OR – Technical Lead, Local Limits Evaluation & Development, City of Tolleson, AZ – Project Engineer, Local Limits Evaluation & Development, DELCORA, Chester, PA



Forrest Lindsey

PROJECT SCIENTIST

Forrest has both experience developing and implementing local limits. Prior to joining BC, he managed the Pretreatment and FOG Programs in Jacksonville, Arkansas. He has first-hand knowledge of how local limits impact industrial users and the community.

- Project Scientist, Local Limits Evaluation & Development, City of Tolleson, AZ
- Project Scientist, Local Limits Evaluation & Development, Little Rock Water Reclamation Authority, Little Rock, AR
- Project Scientist, High Strength User Classification, City of Walla Walla, WA



Anna Holdosh

PROJECT ENGINEER

Anna has extensive experience with wastewater sampling at domestic background, influent, & effluent locations for the development of technically based local limits. She is also an experienced data validator.

- Project Engineer, Local Limits Evaluation & Development, City of Goodyear, AZ
- Project Engineer, Local Limits Evaluation & Development, City of Memphis, TN
- Project Engineer, Local Limits Evaluation & Development, City of Tolleson, AZ

Proposed Schedule and Fee

Compensation for services shall be on a time-and-expense basis and shall not exceed **\$87,770** without prior written authorization.

Table 2. BC Project Schedule and Fee

Task	Estimated Completion Date	Estimated Fee
Phase 1: Data Review and Sampling and Analysis Plan	June 3, 2024	\$10,120
Phase 2: Local Limits Evaluation	August 27, 2024	\$43,900
Phase 3: Local Limits Development (if required)	December 13, 2024	\$26,990
Project Management	Ongoing	\$6,760
		\$87,770

Assumptions

- The project is assumed to start February 26, 2024, and all work will be completed by December 13, 2024
- The City will conduct sampling and pay analytical laboratory costs directly to their contract laboratory

Limitations:

The information contained in this proposal is proprietary and contains confidential information that is of significant economic value to Brown and Caldwell. It is intended to be used only for evaluation of our qualifications to provide services. It should not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate this proposal. Further, Client is cautioned that electronic files may be compromised by media degradation, file corruption, incompatibilities, operator inexperience, and file modification. We cannot be responsible for any alteration of these files, or for any use not contemplated by this proposal.

SID-150630 Pueblo Local Limits Evaluation & Development												
		Forrest Lindsey	Joshua Balentine	Laurel Rognstad	Anna Holdosh	Jacob Danielson	Keli Lambert	Mike Thorstenson				
Phase	Phase Description								Total Labor Hours	Total Labor Effort	Total Expense Effort	Total Effort
		\$175.00	\$255.00	\$195.00	\$130.00	\$130.00	\$130.00	\$290.00				
100	Data Needs Request and Sampling	12	8	12	28	0	0	0	60	10,120	0	10,120
****	Default	0	0	0	0	0	0	0	0	0	0	0
001	Kickoff Meeting	2	2	2	0	0	0	0	6	1,250	0	1,250
002	Data Needs Request	2	2	2	4	0	0	0	10	1,770	0	1,770
003	Data Gathering by City	0	0	0	0	0	0	0	0	0	0	0
004	Data Gap Analysis	4	2	4	20	0	0	0	30	4,590	0	4,590
005	Field Sampling and Analysis (if requ	4	2	4	4	0	0	0	14	2,510	0	2,510
200	Local Limits Evaluation	104	8	60	92	0	0	0	264	43,900	0	43,900
****	Default	0	0	0	0	0	0	0	0	0	0	0
001	Data Analysis and MAHL Eval	40	2	16	40	0	0	0	98	15,830	0	15,830
002	Hauled Waste Eval	40	2	20	40	0	0	0	102	16,610	0	16,610
003	Tech Memo Draft	20	2	20	8	0	0	0	50	8,950	0	8,950
004	City Review	0	0	0	0	0	0	0	0	0	0	0
005	Tech Memo Final	4	2	4	4	0	0	0	14	2,510	0	2,510
300	Local Limits Development	52	10	52	40	0	0	0	154	26,990	0	26,990
****	Default	0	0	0	0	0	0	0	0	0	0	0
001	Domestic Background Sampling (if r	4	2	4	4	0	0	0	14	2,510	0	2,510
002	MAHL/MAIL Development	20	2	20	20	0	0	0	62	10,510	0	10,510
003	IU Allocations	4	2	4	4	0	0	0	14	2,510	0	2,510
004	Tech Memo Draft	20	2	20	8	0	0	0	50	8,950	0	8,950
005	City Review	0	0	0	0	0	0	0	0	0	0	0
006	Tech Memo Final	4	2	4	4	0	0	0	14	2,510	0	2,510
400	Project Management	0	12	0	0	12	12	2	38	6,760	0	6,760
****	Default	0	12	0	0	12	12	2	38	6,760	0	6,760
GRAND TOTAL		168	38	124	160	12	12	2	516	87,770	0	87,770

Hours and Dollars are rounded to nearest whole number. To display decimals, change the format of the cells.



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: A RESOLUTION RATIFYING AN EMERGENCY CONSTRUCTION CONTRACT IN THE AMOUNT OF \$54,364.25 WITH RUSS GRADING & EXCAVATING LLC, FOR EMERGENCY STORM SEWER POINT REPAIR AT THE INTERSECTION OF 20TH STREET AND GREENWOOD AVENUE, PROJECT NO. 23-040 (SWAN03) AND APPROVING THE PURCHASING AGENT'S EXECUTION OF THE SAME

SUMMARY:

This Resolution ratifies and approves the award of a construction contract to Russ Grading & Excavating LLC, for emergency storm sewer point repair at the intersection of 20th Street and Greenwood Avenue.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The Stormwater Utility was notified that flooding was occurring at the intersection of 20th Street and Greenwood Avenue. A visual inspection of the inlets and a CCTV inspection were conducted inside the stormwater pipes at the intersection. The visual inspection of the inlets on the northwest and southwest side revealed structural damage due to aging and normal wear and tear. The CCTV inspection of the pipes showed pipe fractures, root intrusion, pipes disconnected at the joints, and holes in the pipes. An emergency point repair was required to repair the inlet and pipes at the intersection.

The bid summary sheet with the unit prices for the estimated work performed by Russ Grading & Excavating LLC. This work was performed under the 2023-2026 Storm Sewer Point Repair Resolution #15335 through which contractors were qualified via competitive bid.

The cost breakdown for the project is as follows:

BID ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE	AMOUNT
1.	Remove Existing Pipe and Replace w/15" High Performance Polypropylene Pipe Less than 8' Deep	103	\$182.00	\$18,746.00
2.	Remove Existing Pipe and Replace w/18" High Performance Polypropylene Pipe Less than 8' Deep	5	\$250.00	\$1,250.00
3.	Remove and Replace Asphalt 5" Asphalt on 6" Class 6 ABC 15" Pipe	93	\$80.00	\$7,400.00
4.	Remove and Replace Standard Curb and Gutter	4	\$50.00	\$200.00
5.	Install Extra Lean Concrete (Flowable Fill)	14	\$185.00	\$2,590.00
6.	Dissimilar Pipe Connection for Pipe 12" to 18"	3	\$750.00	\$2,250.00
7.	Remove and Replace 4 ft Dia. Standard Manhole	1	\$6,000.00	\$6,000.00
8.	Remove and Replace Single Denver 16 Combination Inlet	2	\$8,500.00	\$17,000.00
9.	Mobilization	1	\$4,000.00	\$4,000.00
10.	Traffic Control +10%	1	\$3,073.55	\$3,073.55
CHANGE ORDER (ADD-ONS)				
1.	Remove Existing Pipe and Replace w/12" High Performance Polypropylene Pipe Less than 8' Deep	10	\$245.00	\$2450.00
2.	Remove Existing Pipe and Replace w/15" High Performance Polypropylene Pipe Less than 8' Deep	45	\$232.00	10,440.00
3.	Remove and Replace Standard Curb and Gutter`	20	\$50.00	\$1,000.00

4.	Potholing	4	\$250.00	\$1,000.00
CHANGE ORDER (DEDUCTIONS)				
1.	Remove Existing Pipe and Replace w/15" High Performance Polypropylene Pipe Less than 8' Deep	103	\$182.00	-\$18,746.00
2.	Remove Existing Pipe and Replace w/18" High Performance Polypropylene Pipe Less than 8' Deep	5	\$250.00	-\$1,250.00
3.	Remove and Replace Asphalt 5" Asphalt on 6" Class ABC 15" Pipe	38	\$80.00	-\$3,040.00
4.	Install Extra Lean Concrete (Flowable Fill)	5	\$185.00	-\$925.00
5.	Dissimilar Pipe Connection for Pipe 12" to 18"	1	\$750.00	-\$750.00
GRAND TOTAL				\$54,364.25

FINANCIAL IMPLICATIONS:

Funding for this project came from the Stormwater Utility budget. Funding was available and had been 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 20th Street and Greenwood Avenue
2. Site location Map 20th Street and Greenwood Avenue

RESOLUTION NO.

A RESOLUTION RATIFYING AN EMERGENCY CONSTRUCTION CONTRACT IN THE AMOUNT OF \$54,364.25 WITH RUSS GRADING & EXCAVATING LLC, FOR EMERGENCY STORM SEWER POINT REPAIR AT THE INTERSECTION OF 20TH STREET AND GREENWOOD 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 20th Street and Greenwood Avenue with Russ Grading & Excavating LLC, Project No. 23-040 (SWAN03) awarded to said bidder in the amount of \$54,364.25.

SECTION 2.

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

SECTION 3.

The Purchasing Agent was authorized to execute said contract on behalf of Pueblo, a Colorado Municipal Corporation, and the City Clerk properly affixed the seal of the City thereto and attested the same. Furthermore, all actions previously taken by officers and staff of the City consistent with the contract including any payments authorized under the contract are hereby ratified.

SECTION 4.

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

SECTION 5.

This Resolution shall become effective immediately upon passage and approval.

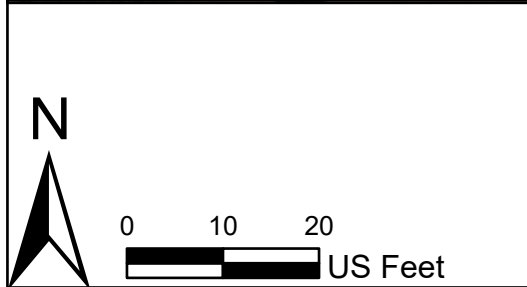
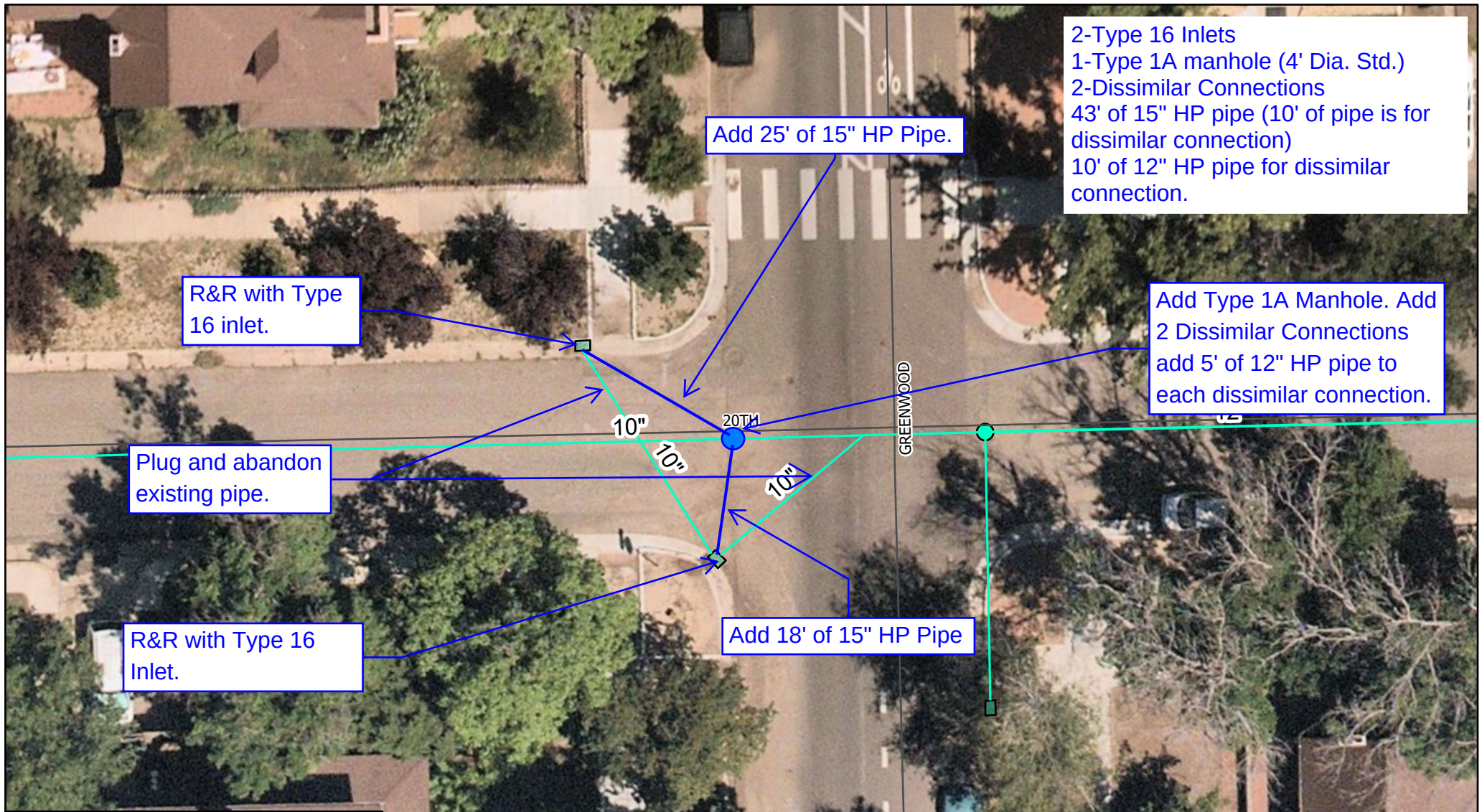
INTRODUCED: April 8, 2024

BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK

20th Street & Greenwood Avenue					Russ Grading & Excavating LLC	
23-040						
Line Item	Description	Bid Quantities	Quantity	Unit of Measure	Unit Cost	Total Price
1	Remove Existing Pipe and Replace w/12" High Performance Polypropylene Pipe Less than 8' Deep	1-20	10	LF	\$245.00	\$2,450.00
2	Remove Existing Pipe and Replace w/15" High Performance Polypropylene Pipe Less than 8' Deep	21-100	43	LF	\$232.00	\$9,976.00
3	Remove and Replace Asphalt 5" Asphalt on 6" Class 6 ABC 15" Pipe	21-100	43	LF	\$80.00	\$3,440.00
4	Install Extra Lean Concrete (Flowable	1-20	7	CY	\$185.00	\$1,295.00
5	Dissimilar Pipe Connection for Pipe 12" to 18"	1	2	EA	\$750.00	\$1,500.00
6	Remove and Replace 4 ft Dia. Standard Manhole	1	1	EA	\$6,000.00	\$6,000.00
7	Remove and Replace Single Denver 16 Combination Inlet	1	2	EA	\$8,500.00	\$17,000.00
8	Mobilization	1	1	LS	\$4,000.00	\$4,000.00
					Total	\$33,235.00



20th and Greenwood	
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	nearmap.com Maxar, Microsoft, Copyright nearmap 2015





**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: A RESOLUTION RATIFYING AN EMERGENCY CONSTRUCTION CONTRACT IN THE AMOUNT OF \$28,001.54 WITH RUSS GRADING & EXCAVATING LLC, FOR EMERGENCY STORM SEWER POINT REPAIR AT THE INTERSECTION OF NORTHERN AVENUE AND BEULAH AVENUE, PROJECT NO. 23-040 (SWAN03) AND APPROVING THE PURCHASING AGENT'S EXECUTION OF THE SAME

SUMMARY:

This Resolution ratifies and approves the award of a construction contract to Russ Grading & Excavating LLC, for emergency storm sewer point repair at the intersection of Northern Avenue and Beulah Avenue.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The Stormwater Utility was notified that a stormwater pipe was damaged at the southeast corner of the intersection of Northern Avenue and Beulah Avenue. The pipes were noticed due to the Watermain Rehabilitation Project being conducted on Northern Avenue. CCTV of the pipe revealed that the pipe had collapsed due to aging and normal wear and tear. A visual inspection of the system revealed that the inlet connected to the pipe was aged and needed to be replaced as well. An emergency point repair was required to repair the inlet and pipe.

The bid summary sheet with the unit prices for the estimated work performed by Russ Grading & Excavating LLC. This work was performed under the 2023-2026 Storm Sewer Point Repair Resolution #15335 through which contractors were qualified via competitive bid.

The cost breakdown for the project is as follows:

BID ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE	AMOUNT
1.	Remove Existing Pipe and Replace w/15" High Performance Polypropylene Pipe Less than 8' Deep	21	\$232.00	\$4,872.00
2.	Remove and Replace Asphalt 5" Asphalt on 6" Class 6 ABC 15" Pipe	35	\$80.00	\$2,800.00
3.	Install Extra Lean Concrete (Flowable Fill)	6	\$175.00	\$1,050.00
4.	Dissimilar Pipe Connection for Pipe 12" to 18"	3	\$750.00	\$2,250.00
5.	Remove and Replace 5 ft Dia. Standard Manhole	1	\$6,500.00	\$6,500.00
7.	Mobilization	1	\$4,000.00	\$4,000.00
8.	Traffic Control +10%	1	\$2,284.54	\$2,284.54
CHANGE ORDER (ADD-ONS)				
1.	Remove Existing Pipe and Replace w/18" High Performance Polypropylene Pipe > 8' Deep	10	\$250.00	\$2,500.00
2.	Remove Existing Pipe and Replace w/15" High Performance Polypropylene Pipe > 8' Deep	5	\$232.00	\$1,160.00
3.	Remove and Replace Asphalt 5" Asphalt on 6" Class 6 ABC 15" Pipe`	2	\$80.00	\$160.00
4.	Install Extra Lean Concrete (Flowable Fill)	21	\$175.00	\$3,675.00
CHANGE ORDER (DEDUCTIONS)				
1.	Remove Existing Pipe and Replace w/18" High Performance Polypropylene Pipe > 8' Deep	10	\$250.00	-\$2,500.00
2.	Dissimilar Pipe Connection for	1	\$750.00	-\$750.00

	Pipe 12" to 18"			
GRAND TOTAL				\$28,001.54

FINANCIAL IMPLICATIONS:

Funding for this project came from the Stormwater Utility budget. Funding was available and had been 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 Northern & Beulah
2. Site Location Map Northern & Beulah

RESOLUTION NO.

A RESOLUTION RATIFYING AN EMERGENCY CONSTRUCTION CONTRACT IN THE AMOUNT OF \$28,001.54 WITH RUSS GRADING & EXCAVATING LLC, FOR EMERGENCY STORM SEWER POINT REPAIR AT THE INTERSECTION OF NORTHERN AVENUE AND BEULAH 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 Northern Avenue and Beulah Avenue with Russ Grading & Excavating LLC, Project No. 23-040 (SWAN03) awarded to said bidder in the amount of \$28,001.54.

SECTION 2.

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

SECTION 3.

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

SECTION 4.

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

SECTION 5.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: April 8, 2024

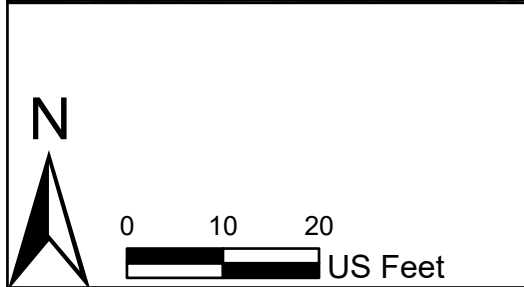
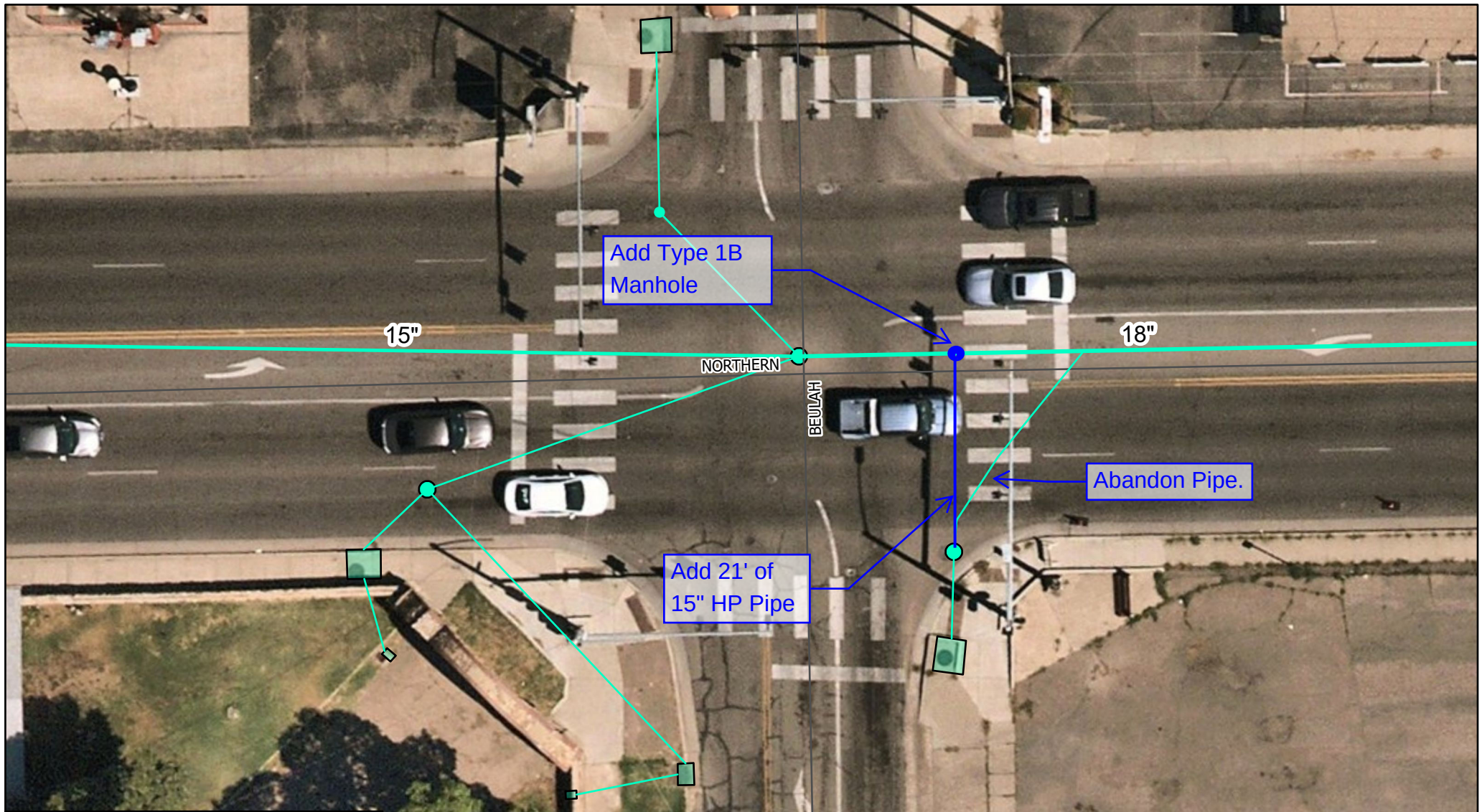
BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____

CITY CLERK

Bid: 23-040 2023-2026 Emergency Storm Sewer Point Repair					K.R. Swerdfeger Construction, Inc.		Parker Excavating, Inc.		Russ Grading & Excavating LLC	
Line Item	Description	Bid Quantities	Quantity	Unit of Measure	Unit Cost		Unit Cost		Unit Cost	
1	Remove Existing Pipe and Replace w/15" High Performance Polypropylene Pipe Less than 8' Deep	21-100	21	LF	\$254.00	\$5,334.00	\$182.00	\$3,822.00	\$232.00	\$4,872.00
2	Remove and Replace Asphalt 5" Asphalt on 6" Class 6 ABC 15" Pipe	21-100	21	LF	\$91.00	\$1,911.00	\$78.00	\$1,638.00	\$80.00	\$1,680.00
3	Install Extra Lean Concrete (Flowable Fill)	1-20	5	CY	\$332.00	\$1,660.00	\$207.00	\$1,035.00	\$185.00	\$925.00
4	Dissimilar Pipe Connection for Pipe 12" to 18"	1	1	EA	\$1,428.00	\$1,428.00	\$1,731.00	\$1,731.00	\$750.00	\$750.00
5	Remove and Replace 5 ft Dia. Standard Manhole	1	1	EA	\$5,821.00	\$5,821.00	\$5,700.00	\$5,700.00	\$6,500.00	\$6,500.00
6	Mobilization	1	1	LS	\$5,544.00	\$5,544.00	\$4,100.00	\$4,100.00	\$4,000.00	\$4,000.00
Total						\$21,698.00	Total	\$18,026.00	Total	\$18,727.00



Northern & Beulah	
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	Maxar, Microsoft, Copyright nearmap 2015





**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$25,738.50 TO P AND A INC., FOR PROJECT NO. 24-028, REPLACEMENT OF FLOORING AT WALKING STICK RESTAURANT AND GOLF SHOP-REBID, SETTING FORTH \$2,573.50 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

Attached is a Resolution awarding a construction contract to p and a Inc., for Project No. 24-028, Replacement of Flooring at Walking Stick Restaurant and Golf Shop-Rebid.

PREVIOUS COUNCIL ACTION

None.

BACKGROUND:

This project consists of removal of the existing carpet, and the installation of new glue-down vinyl plank flooring at the Walking Stick Golf Course Restaurant and Golf Shop. This Resolution awards the construction contract to p and a inc.

FINANCIAL IMPLICATIONS:

Funding in the amount of \$28,312.00 will be paid from Project Account WS2201 Walking Stick Enterprise - Restroom Renovation.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Denial of this resolution will cancel this project.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. 24-028 Combined Bid Summary

RESOLUTION NO.

A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$25,738.50 TO P AND A INC., FOR PROJECT NO. 24-028, REPLACEMENT OF FLOORING AT WALKING STICK RESTAURANT AND GOLF SHOP-REBID, SETTING FORTH \$2,573.50 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, competitive bids for Project No. 24-028, Replacement of Flooring at Walking Stick Restaurant and Golf Shop-Rebid have been received and examined; and,

WHEREAS, the proposal of p and a Inc., was the lowest of those bids determined to be responsive, and the Committee of Awards recommends to the City Council that it authorize Project No. 24-028, Replacement of Flooring at Walking Stick Restaurant and Golf Shop-Rebid to be performed; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The City Council authorizes Project No. 24-028, Replacement of Flooring at Walking Stick Restaurant and Golf Shop-Rebid, to be performed, and the contract for said project is hereby awarded to p and a Inc., in the amount of \$25,738.50.

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.....\$2,573.50

SECTION 4.

Funds for Project No. 24-028, in the amount of \$28,312.00 (including contingencies and additional work) shall be from Project Account WS2201, Walking Stick Enterprise - Restroom Renovation.

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.

The Resolution shall become effective immediately upon passage and approval.

INTRODUCED: April 8, 2024

BY: None
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-S No. 24-028, 23-138A (Clarification No. 1)

Replacement of Flooring at Walking Stick Restaurant and Golf Shop-Rebid

RESPONSE DEADLINE: February 21, 2024 at 11:30 am

Report Generated: Wednesday, March 27, 2024

VENDOR TOTALS

Vendor	Bid Alternate – Clarification No. 1	Base Bid	Total
p and a inc.	\$5,000.00	\$20,738.50	\$25,738.50
Corsentino Construction	\$0.00	\$48,804.58	\$48,804.58
Sasquatch Flooring LLC	\$0.00	\$53,780.00	\$53,780.00

EVALUATION TABULATION

IFB-S No. 24-028

Replacement of Flooring at Walking Stick Restaurant and Golf Shop-Rebid

BASE BID (TABLE 1)

Selected	Line Item	Description	Quantity	Unit of Measure	Corsentino Construction		p and a inc.		Sasquatch Flooring LLC	
					Unit Cost	Total	Unit Cost	Total	Unit Cost	Total
X	1	Remove and Dispose of Existing Flooring and Cove Base	1	LS	\$12,467.44	\$12,467.44	\$3,500.00	\$3,500.00	\$4,750.00	\$4,750.00
X	2	Install New Flooring and Cove Base	1	LS	\$34,305.14	\$34,305.14	\$15,641.50	\$15,641.50	\$47,280.00	\$47,280.00
X	3	Mobilization	1	LS	\$2,032.00	\$2,032.00	\$1,597.00	\$1,597.00	\$1,750.00	\$1,750.00
Total						\$48,804.58		\$20,738.50		\$53,780.00

BID ALTERNATE - WORK TO BE COMPLETED AFTER-HOURS

Please provide a lump sum price to perform the work after-hours. This price will only include the additional cost to work after-hours and should not include any work or labor included in your original bid. If working after hours is selected, the base bid and bid alternate will be added together for the final contract amount.

Bid Alternate - Work to be Completed After-Hours					Corsentino Construction		p and a inc.		Sasquatch Flooring LLC	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total
X	1	Additional cost to complete project after-hours	1	LS	\$0.00	\$0.00	\$5,000.00	\$5,000.00	\$0.00	\$0.00
Total						\$0.00		\$5,000.00		\$0.00

EVALUATION TABULATION

Invitation For Bid - Replacement of Flooring at Walking Stick Restaurant and Golf Shop-Rebid

Page 2

EVALUATION TABULATION

IFB-S No. 24-028

Replacement of Flooring at Walking Stick Restaurant and Golf Shop-Rebid

VENDOR QUESTIONNAIRE PASS/FAIL

Question Title	Corsetino Construction	Sasquatch Flooring LLC	p and a inc.	Colorado Custom Carpet Inc (Disqualified)	Colorado Hardwood Floors (Disqualified)	Pachi's Projects (Disqualified)
Confirmation of Offer and Understanding	Pass	Pass	Pass	Pass	Pass	Pass
Name, Title, and Contact Information	Pass	Pass	Pass	Pass	Pass	Pass
Bidder References	Pass	Pass	Pass	Pass	Pass	Pass
Specifications, Descriptive Literature, and Warranty Information	Pass	Pass	Pass	Pass	Pass	Pass
Specification Exceptions	Pass	Pass	Pass	Pass	Pass	Pass
Specification Exceptions	Pass	Pass	Pass	Pass	Pass	Pass
List Exceptions to Specifications (if any)	Pass	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	Pass
Convicted under state or federal statutes	Pass	Pass	Pass	Pass	Pass	Pass

EVALUATION TABULATION

Invitation For Bid - Replacement of Flooring at Walking Stick Restaurant and Golf Shop-Rebid

Page 3

EVALUATION TABULATION

IFB-S No. 24-028

Replacement of Flooring at Walking Stick Restaurant and Golf Shop-Rebid

Question Title	Corsetino Construction	Sasquatch Flooring LLC	p and a inc.	Colorado Custom Carpet Inc (Disqualified)	Colorado Hardwood Floors (Disqualified)	Pachi's Projects (Disqualified)
Convicted under state or federal antitrust statutes	Pass	Pass	Pass	Pass	Pass	Pass
Failed to perform	Pass	Pass	Pass	Pass	Pass	Pass
Suspension or Debarment	Pass	Pass	Pass	Pass	Pass	Pass
Unqualified	Pass	Pass	Pass	Pass	Pass	Pass
Unlicensed	Pass	Pass	Pass	Pass	Pass	Pass
Delinquent	Pass	Pass	Pass	Pass	Pass	Pass
Confirmation	Pass	Pass	Pass	Pass	Pass	Pass
Responded to Clarification No. 1	Yes	Yes	Yes	No	No	No

EVALUATION TABULATION

Invitation For Bid - Replacement of Flooring at Walking Stick Restaurant and Golf Shop-Rebid

Page 4



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: A RESOLUTION AUTHORIZING THE ISSUANCE OF A REVOCABLE PERMIT (REV-24-5) TO FUEL & IRON FOOD HALL FOR THE USE OF THE PARKING LOT ON THE EAST SIDE OF UNION AVENUE BETWEEN LA BELLA UNION PLAZA AND STITCHER'S GARDEN

SUMMARY:

Attached is Revocable Permit (REV-24-5) to be approved for issuance to Fuel & Iron Food Hall.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The applicant has submitted a Revocable Permit application (REV-24-5) requesting the use of the parking lot on the East side of Union Avenue between La Bella Union Plaza and Stitcher's Garden to support their upcoming Steel City Music Showcase event.

FINANCIAL IMPLICATIONS:

None.

BOARD/COMMISSION RECOMMENDATION:

The Revocable Permit Review Committee recommends approval.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Failure to approve the Resolution will prevent the applicant from using the parking lot.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. NOTARIZED REVOCABLE PERMIT - 24-5

RESOLUTION NO.

A RESOLUTION AUTHORIZING THE ISSUANCE OF A REVOCABLE PERMIT (REV-24-5) TO FUEL & IRON FOOD HALL FOR THE USE OF THE PARKING LOT ON THE EAST SIDE OF UNION AVENUE BETWEEN LA BELLA UNION PLAZA AND STITCHER'S GARDEN

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The attached Revocable Permit (REV-24-5) is authorized to be issued to Fuel & Iron Food Hall for the use of the parking lot on the east side of Union Avenue between La Bella Union Plaza and Stitcher's Garden.

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.

SECTION 3.

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

SECTION 4.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: April 8, 2024

BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK

REVOCABLE PERMIT

(Existing Structure)

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 Food Hall 400 S. Union Ave. Pueblo, CO 81003 720-480-4592 1 City Hall Place. Pueblo, CO 81003**
2. Permitted Area: **Parking lot on the east side of Union Ave., between La Bella Union Plaza and Stitcher's Garden**
3. Purpose of Revocable Permit: **Allow the Authorized Structure to be within the Permitted Area until termination or revocation of this Revocable Permit.**
4. Authorized Structure:
5. Commencement Date: **April 12, 2024**
6. Ending Date: **Indefinite**

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. In no event shall the Authorized Structure be enlarged or otherwise expanded beyond its current size or location.

(b) The Authorized Structure shall be 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, the Authorized Structure shall not be tied-down or chained to any tree within or adjacent to the Permitted Area nor shall the Authorized Structure 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) Before the Time of the Ending Date, or immediately upon any other termination of this Permit, Permittee shall, at Permittee's expense, remove the Authorized Structure from the Permitted Area, repair any damage caused by such removal and restore the Permitted Area to a condition compliant with all existing laws. Failure to timely remove the Authorized Structure from the Permitted Area, repair any damage caused by such removal and restore the Permitted Area to a condition compliant with all existing laws shall constitute Permittee's abandonment of the Authorized Structure, and the City may, at Permittee's expense, remove the Authorized Structure from the Permitted Area, repair any damage caused by such removal and restore the Permitted Area to a condition compliant with all existing laws. Permittee agrees to pay all City's costs and expenses, including reasonable attorney fees, incurred in the enforcement of this Permit.

(e) Permittee shall keep the Authorized Structure and Permitted Area in good, clean and safe condition and repair, free from litter, waste and debris.

(f) 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, repair or maintenance of the Authorized Structure in the Permitted Area, or the use of the Permitted Area or Authorized Structure by Permittee, its officers, agents, employees, invitees or general public.

(g) 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.

(h) Permittee shall keep and maintain commercial general liability insurance covering the Permitted Area and the Authorized Structure 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 CA – 4/6/10 and each renewal thereof shall be delivered to the City. Failure to maintain such insurance shall cause this Permit to be automatically revoked.

(i) 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.

(j) 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 (j).

(k) 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 Permittee's Authorized Structure 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 Authorized Structure 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.

(l) This Permit shall terminate upon the occurrence of any one of the following events: (i) the Time of the Ending Date, (ii) abandonment or non-use 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 (g) and (h) above; or (v) revocation or termination of this Permit by resolution of the City Council of City.

(m) 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.

Signed in Pueblo, Colorado this 27th day of March, 2024.

PERMITTEE:

Organization or
Individual:

By:

Title:

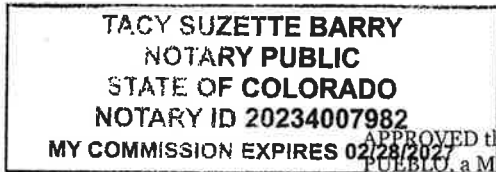
Fuel & Iron Food Hall
Nathan Stern
Authorized Representative

STATE OF COLORADO)

COUNTY OF PUEBLO) SS..

The foregoing instrument was acknowledged before me the 27th day of March, 2024 by Nathan Stern as Authorized Representative.

My commission expires: _____



Tacy Suzette Barry
Notary Public

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

By _____

Heather Graham, Mayor



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: A RESOLUTION AUTHORIZING THE ISSUANCE OF A REVOCABLE PERMIT (REV-24-9) TO AMP 2, LLC, FOR THE USE OF A PORTION OF THE ALLEY RIGHT-OF-WAY BETWEEN PARK PLACE, OAKLAND AVENUE, INDIANA AVENUE, AND E. ORMAN AVENUE TO INSTALL AND MAINTAIN LANDSCAPING

SUMMARY:

Attached is Revocable Permit (REV-24-9) to AMP 2, LLC, for the use of a portion of the alley right-of-way between Park Place, Oakland Avenue, Indiana Avenue, and E. Orman Avenue to install and maintain landscaping

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The applicant has submitted a Revocable Permit application (REV-24-9) requesting use of a portion of the public alley right-of-way adjacent to Permittee's Property to maintain landscaping and concrete improvements. The attached Exhibit A, showing the permitted area, highlights where sidewalks and landscaping have been installed. The permit prohibits the installation of any new improvements in the right-of-way without further approval of the City..

FINANCIAL IMPLICATIONS:

None.

BOARD/COMMISSION RECOMMENDATION:

The Revocable Permit Review Committee recommends approval.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Failure to approve the Resolution will prevent the applicant from being able to maintain the existing improvements within the public right-of-way.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. Revocable Permit-24-9

RESOLUTION NO.

A RESOLUTION AUTHORIZING THE ISSUANCE OF A REVOCABLE PERMIT (REV-24-9) TO AMP 2, LLC, FOR THE USE OF A PORTION OF THE ALLEY RIGHT-OF-WAY BETWEEN PARK PLACE, OAKLAND AVENUE, INDIANA AVENUE, AND E. ORMAN AVENUE TO INSTALL AND MAINTAIN LANDSCAPING

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The attached Revocable Permit (REV-24-9), including Exhibit A and Exhibit B, is authorized to be issued to AMP 2, LLC.

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.

SECTION 3.

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

SECTION 4.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: April 8, 2024

BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK

LANDSCAPING REVOCABLE PERMIT

Pursuant to Section 16-9 of the Charter of the City of Pueblo ("City") the City Council of City hereby grants a revocable permit to the Permittee named herein for the sole purpose of installing and maintaining landscaping in the Permitted Area herein described, subject to and conditioned upon the provisions, covenants and conditions contained herein and Permittee's compliance therewith:

1. Permittee's name and address: **AMP 2, LLC; 5555 DTC Parkway, Suite 272, Greenwood Village, CO 80111 303.906.2873**
2. Legal description and street address of real property owned by Permittee subject to Section 17-4-7 of the Pueblo Municipal Code ("Permittee's Property"): **LOTS 1 TO 4 INC, ALL BLK 3 EASTLAKE and 924 INDIANA AVE PUEBLO, CO 81004**
3. "Permitted Area" means and includes that portion of the public right-of-way adjacent to Permittee's Property shown on the attached Exhibit A where **sidewalks and landscaping have been installed within a portion of the alley at 2116 Oakland, Pueblo, CO 81004**

In consideration of the issuance and granting of this Revocable Permit, Permittee represents, warrants and agrees as follows:

1. Permittee, having installed landscaping and other concrete improvements as shown in the attached Exhibit B ("Authorized Improvements") within the alley located at 2116 Oakland Avenue, Pueblo, CO, 81004, shall maintain said Authorized Improvements. Permittee agrees that any safety hazards or nuisance or menace conditions shall be immediately rectified by the Permittee, at its sole expense, upon notice by the City to the satisfaction of the Director of Public Works. City reserves the right, but not the obligation, to cause any required maintenance or repair of installed improvements if any safety hazards or nuisance or menace conditions arise whereby the Permittee fails to comply with the terms and conditions of this revocable permit. Permittee agrees that the cost of any such work performed by the City or its contractors shall be assessed against the property in accordance with the provisions of Section 15-3-5 of the Pueblo Municipal Code or any substituted provision thereof.
2. Permittee shall keep, maintain and replace the landscaping as required by Section 17-4- 7(b)(8)(b) of the Pueblo Municipal Code or any substituted provision thereof. Other than plants and bedding materials, Permittee shall not install any new improvements in the Permitted Area without an amendment of this revocable permit by City Council.
3. This Revocable Permit shall automatically terminate and be revoked upon the revocation or termination of this Revocable Permit by Resolution of the City Council of City or if Permittee fails to timely correct any violations of the terms or conditions of this revocable permit. Permittee acknowledges and agrees that this Revocable Permit is temporary and subject to revocation or termination by the City Council of City for any reason, at any time, without notice to or hearing by Permittee, and Permittee waives any and all claim to any such notice and hearing.
4. City and reserves the right to access the Permitted Area at any time and without prior notice to install, operate, maintain, or repair any underground public utilities or other public infrastructure that may be installed within the Permitted Area.
5. **Immediately upon termination of this Revocable Permit, Permittee shall:**
 - (a) remove the Authorized Improvements from the Permitted Area and restore the alley, including the concrete alley pan and asphalt pavement surface constructed in accordance with the City's adopted Standard Construction Specifications and Standard Details in effect as of the termination date of the revocable permit and no longer use the Permitted Area for any purpose;**
 - (b) replace and relocate landscaping on Permittee's Property which meets and complies with Section 17-4-7 of the Pueblo Municipal Code or any substituted provision thereof; and**
 - (c) meet and comply with all applicable off-street parking requirements set forth in Sections 17-4-42, 17-4-43, 17-4-44 and 17-4-45 of the Pueblo Municipal Code on Permittee's Property or other property allowed under said Sections of the Pueblo Municipal Code or any substituted provision thereof.**
6. If Permittee fails for any reason to timely perform and comply with the requirements and provisions of this Revocable Permit, City, in addition to all other remedies provided by law, may revoke the certificate of occupancy for the building on Permittee's Property.
7. The covenants of this Revocable Permit shall run with Permittee's Property and shall extend to, be binding upon, and inure to the benefit of City and Permittee and their respective heirs, personal representatives, successors and assigns. This Revocable Permit will be recorded in the office of the Pueblo County Clerk and Recorder. The Permittee shall pay all fees associated with recording.
8. 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 Revocable Permit or the conditions hereof, or the existence, construction, installation, repair or maintenance of the landscaping in the Permitted Area, or the use of the Permitted Area by Permittee, its officers, agents, employees, invitees or general public.

Executed at Pueblo, Colorado the _____ 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 _____

Heather Graham, Mayor

EXHIBIT A

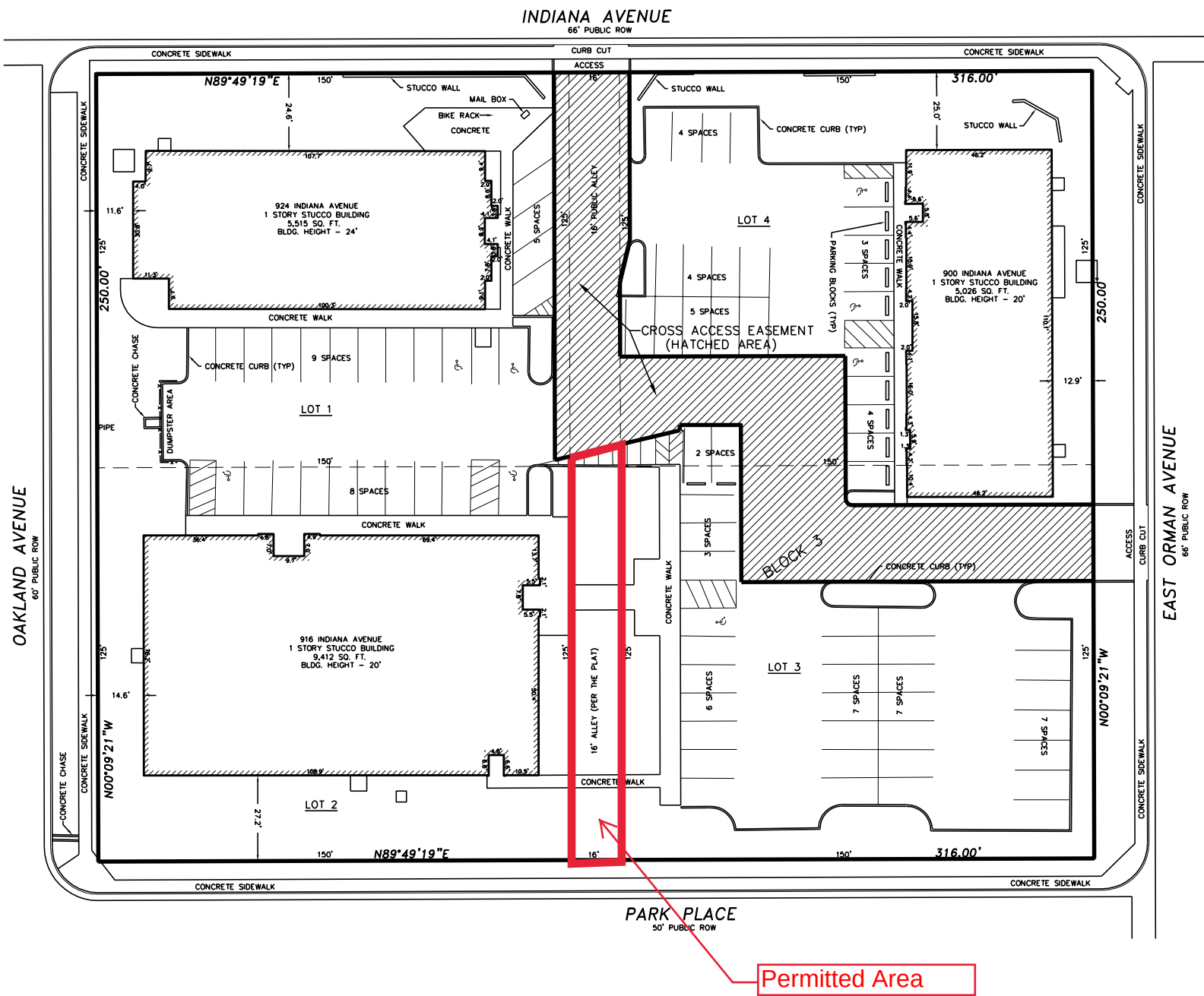




Exhibit B – Installed Improvements as of March 20, 2024

No new improvements or encroachments into required right-of-way setbacks beyond those installed as of this date may be installed without amending the Revocable Permit.

All improvements installed within the permitted area and the associated setback from the right-of-way shall be maintained by the property owner at his/her sole expense.



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: April 8, 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 PATTI OLENICK AND ANTHONY VIGIL TO COMPLETE A FOUR-YEAR TERM EXPIRING JUNE 30, 2025, ON THE PUEBLO ENERGY ADVISORY COMMISSION

SUMMARY:

This Resolution confirms the appointment by the Mayor of Patti Olenick and Anthony Vigil to complete a four-year term expiring June 30, 2025, on the Pueblo Energy Advisory Commission.

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 resignations and removals, there are two vacancies on this commission.

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 PATTI OLENICK AND ANTHONY VIGIL TO
COMPLETE A FOUR-YEAR TERM EXPIRING JUNE 30, 2025,
ON THE PUEBLO ENERGY ADVISORY COMMISSION

WHEREAS, Mayor Heather Graham has requested confirmation by the City Council of her appointment of Patti Olenick and Anthony Vigil to the Pueblo Energy Advisory Commission; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The appointment by the Mayor of Patti Olenick and Anthony Vigil to the Pueblo Energy Advisory Commission to complete a four-year term expiring June 30, 2025, 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: April 8, 2024

BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK



**Background Paper for Proposed
Presentation**

COUNCIL MEETING DATE: April 8, 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 JACQUELINE RUTHERFORD TO COMPLETE A THREE-YEAR TERM EXPIRING NOVEMBER 1, 2024, ON THE PUEBLO STREETSCAPE ADVISORY COMMITTEE

SUMMARY:

This Resolution confirms the appointment by the Mayor of Jacqueline Rutherford to complete a three-year term expiring November 1, 2024, on the Pueblo Streetscape Advisory Committee.

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 resignation of Jean Eskra, there is one appointment available to serve a three-year term expiring November 1, 2024, on the Pueblo Streetscape Advisory Committee.

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 JACQUELINE RUTHERFORD TO COMPLETE A
THREE-YEAR TERM EXPIRING NOVEMBER 1, 2024, ON THE
PUEBLO STREETSCAPE ADVISORY COMMITTEE

WHEREAS, Mayor Heather Graham has requested confirmation by the City Council of her appointment of Jacqueline Rutherford to the Pueblo Streetscape Advisory Committee; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The appointment by the Mayor of Jacqueline Rutherford to the Pueblo Streetscape Advisory Committee to complete a three-year term expiring November 1, 2024, 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: April 8, 2024

BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: A RESOLUTION ESTABLISHING AN APPROVED LIST OF CONTRACTORS TO PERFORM EMERGENCY WATER LINE REPAIRS FOR CITY DEPARTMENTS AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

Attached is a Resolution establishing an approved list of contractors to perform emergency water line repairs to water lines owned and maintained by the City of Pueblo for use by various City departments.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

Water line repairs include repairing cracked, broken, defective, damaged, etc. water line(s), supplying all materials, completing work to specifications, and providing traffic control (as needed) for each project as contracted. Each contract (site) will be awarded as the need arises, based upon availability and project calculations from submitted unit prices. The term of the approved contractor list is three years, consisting of the remainder of calendar year 2024, and all of 2025 and 2026 with the option to renew for two (2) additional one-year terms.

The irrigation systems and water lines regularly break, but it is not possible to anticipate when and where repairs will be needed. Repairs must be completed as soon as possible to limit disruption in services and loss of required turf and landscape irrigation.

The City of Pueblo requires formal competitive bids for these emergency projects to assure that costs are controlled. This Resolution will provide both competitive bid cost controls and rapid response capability by creating a list of qualified contractors who

have provided a list of unit prices. The City's Purchasing Department solicited unit cost competitive bids from contractors for various elements of water line repair, which included mobilization, labor, and equipment costs. Three bids were received and attached is the bid summary sheet. All bidders form a list of qualified firms to whom the water line repair projects can be offered.

FINANCIAL IMPLICATIONS:

Funding for future projects will be determined at the time of the project.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Denial of this resolution will cancel establishing an approved list of contractors.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. 24-043 Bid Summary

RESOLUTION NO.

A RESOLUTION ESTABLISHING AN APPROVED LIST OF CONTRACTORS TO PERFORM EMERGENCY WATER LINE REPAIRS FOR CITY DEPARTMENTS AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, proposals for performing emergency water line repairs under Project No. 24-043 - Emergency Water Line Repairs for City Parks have been received and examined; AND,

WHEREAS, the proposals of FRPHI Environmental Construction Services, Inc., KK Construction, and Miller Pipeline, LLC, (collectively the "Approved List") have been determined to be responsive; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The City Council authorizes, subject to an unexpended balance of appropriations therefore, and in accordance with the City's purchasing policies and procedures, that contracts for emergency water line repairs may be awarded from time to time in accordance with the bid documents and associated Contract 24-043 - Emergency Water Line Repairs for City Parks, to the lowest responsive and responsible bidder on the Approved List capable of causing the required repairs to be performed within the City's required time frame, as best fits the needs of the City. Emergency contract awards shall be determined by unit prices for work elements submitted by responsive bidders under Project No. 24-043 - Emergency Water Line Repairs for City Parks, the City's timeline requirements, and unit quantities for each emergency repair project, and that the same be awarded to said bidder in the required amount at the time of each emergency repair project. So long as the repairs are performed according to an approved statement of work pursuant to the bid documents and Contract, additional City Council approval will not be needed for each emergency repair contract that is paid out of operating expenses or other capital projects designated for facility repair and maintenance.

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.

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

SECTION 4.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: April 8, 2024

BY: None

MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK

24-043 Emergency Water Line Repairs				FRPHI Environmental Construction Services, Inc.	KK CONSTRUCTION	Miller Pipeline, LLC
Line Item	Description	Amount	Unit of Measure	Unit Cost	Unit Cost	Unit Cost
1	Remove and Replace 3/4" Copper Pipe Less Than 6' Deep	0-5	LF	\$355.35	\$400.00	\$498.00
2	Remove and Replace 3/4" Copper Pipe Less Than 6' Deep	Greater than 5	LF	\$298.50	\$300.00	\$253.00
3	Remove and Replace 1" Copper Pipe Less Than 6' Deep	0-5	LF	\$409.35	\$425.00	\$607.00
4	Remove and Replace 1" Copper Pipe Less Than 6' Deep	Greater than 5	LF	\$331.50	\$325.00	\$297.00
5	Remove and Replace 2" PVC Less Than 6' Deep	0-5	LF	\$426.25	\$435.00	\$169.00
6	Remove and Replace 2" PVC Less Than 6' Deep	Greater than 5	LF	\$347.00	\$327.00	\$122.00
7	Remove and Replace 4" AC Less Than 6' Deep	0-5	LF	\$647.95	\$650.00	\$674.00
8	Remove and Replace 4" AC Less Than 6' Deep	Greater than 5	LF	\$528.35	\$525.00	\$354.00
9	Remove and Replace 4" Cast Iron Less Than 6' Deep	0-5	LF	\$589.35	\$600.00	\$597.00
10	Remove and Replace 4" Cast Iron Less Than 6' Deep	Greater than 5	LF	\$467.95	\$475.00	\$293.00
11	Remove and Replace 6" AC Less Than 6' Deep	0-5	LF	\$998.85	\$1,020.00	\$913.00
12	Remove and Replace 6" AC Less Than 6' Deep	Greater than 5	LF	\$794.35	\$810.00	\$460.00
13	Remove and Replace 6" Cast Iron Less Than 6' Deep	0-5	LF	\$937.35	\$950.00	\$822.00
14	Remove and Replace 6" Cast Iron Less Than 6' Deep	Greater than 5	LF	\$754.95	\$760.00	\$384.00
15	Remove and Replace 8" AC Less Than 6' Deep	0-5	LF	\$1,198.95	\$1,225.00	\$1,198.00
16	Remove and Replace 8" AC Less Than 6' Deep	Greater than 5	LF	\$947.50	\$980.00	\$583.00
17	Remove and Replace 8" Cast Iron Less Than 6' Deep	0-5	LF	\$1,094.95	\$1,150.00	\$1,091.00
18	Remove and Replace 8" Cast Iron Less Than 6' Deep	Greater than 5	LF	\$887.50	\$925.00	\$492.00
19	Remove Curb and Gutter	0-5	LF	\$165.00	\$65.00	\$12.75
20	Remove Curb and Gutter	Greater than 5	LF	\$130.95	\$60.00	\$9.50
21	Remove Concrete	0-49	SF	\$13.35	\$8.50	\$15.75
22	Remove Concrete	50-100	SF	\$10.95	\$7.50	\$10.75
23	Remove Concrete	Greater than 100	SF	\$7.75	\$5.00	\$9.75
24	Remove Reinforced Concrete	0-49	SF	\$19.20	\$10.50	\$17.00
25	Remove Reinforced Concrete	50-100	SF	\$14.35	\$9.50	\$14.00
26	Remove Reinforced Concrete	Greater than 100	SF	\$10.95	\$8.50	\$13.00
27	Remove Asphalt	0-49	SF	\$4.85	\$6.00	\$16.75
28	Remove Asphalt	50-100	SF	\$4.15	\$5.00	\$14.50
29	Remove Asphalt	Greater than 100	SF	\$3.65	\$4.00	\$13.75
30	Construct Curb and Gutter	0-5	LF	\$113.95	\$75.00	\$93.00
31	Construct Curb and Gutter	Greater than 5	LF	\$77.50	\$65.00	\$70.25
32	Construct 4" Concrete	0-49	SF	\$17.85	\$15.00	\$68.00
33	Construct 4" Concrete	50-100	SF	\$16.10	\$13.00	\$52.75
34	Construct 4" Concrete	Greater than 100	SF	\$14.85	\$12.00	\$45.00
35	Construct 6" Concrete	0-49	SF	\$23.95	\$18.00	\$91.50
36	Construct 6" Concrete	50-100	SF	\$21.70	\$17.00	\$76.25
37	Construct 6" Concrete	Greater than 100	SF	\$18.35	\$16.00	\$61.00
38	Construct 7" Reinforced Concrete	0-49	SF	\$28.95	\$30.00	\$117.50
39	Construct 7" Reinforced Concrete	50-100	SF	\$27.35	\$28.00	\$102.25
40	Construct 7" Reinforced Concrete	Greater than 100	SF	\$24.95	\$27.00	\$87.00
41	Construct Asphalt Roadway Patch	0-49	SF	\$12.95	\$12.00	\$69.50
42	Construct Asphalt Roadway Patch	50-100	SF	\$11.10	\$10.00	\$54.25
43	Construct Asphalt Roadway Patch	Greater than 100	SF	\$8.95	\$10.00	\$39.00
44	Flowfill	0-5	CY	\$284.35	\$300.00	\$511.00
45	Flowfill	Greater than 5	CY	\$243.70	\$270.00	\$388.00
46	Area restoration including appropriate soil backfill to grade, level, flat surface, ready for re-seeding by City	0-49	SF	\$8.85	\$28.00	\$32.50
47	Area restoration including appropriate soil backfill to grade, level, flat surface, ready for re-seeding by City	50-100	SF	\$7.90	\$27.00	\$31.25
48	Area restoration including appropriate soil backfill to grade, level, flat surface, ready for re-seeding by City	Greater than 100	SF	\$6.80	\$26.00	\$30.50
49	Mobilization	1	LS	\$425.00	\$500.00	\$6,960.00



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Heather Graham, Mayor

SUBJECT: A RESOLUTION CONFIRMING THE APPOINTMENT BY THE MAYOR OF REGINA MAESTRI TO COMPLETE A ONE-YEAR TERM EXPIRING JANUARY 31, 2025 ON THE PLANNING & ZONING COMMISSION AND THE LATINO CHAMBER OF COMMERCE BOARD OF DIRECTORS

SUMMARY:

This Resolution confirms the appointment by the Mayor of a member to complete a one-year term expiring January 31, 2025 on the Planning & Zoning Commission and the Latino Chamber of Commerce Board of Directors.

PREVIOUS COUNCIL ACTION:

Council representative appointments are confirmed on an annual basis.

BACKGROUND:

Due to the vacancies left from the resignation of Roger Gomez, there is one City Council representative appointment available to complete a one-year term expiring January 31, 2025 on the Planning & Zoning Commission and one City Council representative appointment available to complete a one-year term expiring January 31, 2025 on the Latino Chamber of Commerce Board of Directors.

FINANCIAL IMPLICATIONS:

None.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAKEHOLDER PROCESS:

N/A

ALTERNATIVES:

Move to regular agenda and modify resolution to appoint different council members to these vacancies.

RECOMMENDATION:

Approval of the Resolution

ATTACHMENTS:

None

RESOLUTION NO.

A RESOLUTION CONFIRMING THE APPOINTMENT BY THE
MAYOR OF REGINA MAESTRI TO COMPLETE A ONE-YEAR
TERM EXPIRING JANUARY 31, 2025 ON THE PLANNING &
ZONING COMMISSION AND THE LATINO CHAMBER OF
COMMERCE BOARD OF DIRECTORS

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Regina Maestri will serve as the Council representative on the Planning & Zoning Commission for a one-year term expiring January 31, 2025.

SECTION 2.

Regina Maestri will serve as the Council representative on the Latino Chamber of Commerce Board of Directors for a one-year term expiring January 31, 2025.

SECTION 3.

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

SECTION 4.

This Resolution shall become effective immediately upon final passage.

INTRODUCED: April 8, 2024

BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Carla Sikes, City Attorney

SUBJECT: AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE COUNTY OF PUEBLO, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO, AND THE HISTORIC ARKANSAS RIVERWALK OF PUEBLO AUTHORITY, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO BY WHICH PUEBLO COUNTY WILL PAY TO THE CITY OF PUEBLO \$9,000,000 IN 1A FUNDS FOR THE CONSTRUCTION OF THE HARP CHANNEL EXTENSION AND BOATHOUSE PROJECT, AUTHORIZING THE MAYOR TO EXECUTE THE SAME, ACCEPTING THE 1A FUNDS FROM THE COUNTY, ESTABLISHING PROJECT NO. CI2432, AND BUDGETING AND APPROPRIATING THE FUNDS TO PROJECT NO. CI2432

SUMMARY:

This Ordinance approves and authorizes the Mayor to sign an Intergovernmental Agreement accepting 1A funds from Pueblo County to be used to fund, in part, the construction of the HARP Channel Extension and Boathouse Project.

PREVIOUS COUNCIL ACTION:

City Council previously approved on March 18, 2019, an Intergovernmental Agreement between the parties for the purpose of providing design and construction ready plans for the HARP Channel Extension and Boathouse Project.

BACKGROUND:

In November 2016, County voters passed Ballot Question 1A, which allows the County to collect, retain and spend all revenue from all sources notwithstanding the limitations of Article X, Section 20 of the Colorado Constitution ("TABOR") or other law and utilize revenues from expiring Tax Incentive Agreements ("TIA") in the amount of approximately \$66 million to fund an initial list of 20 specific community improvement

Projects, and a list of Projects as modified or supplemented from time to time, now formally known as the Capital Improvement Program ("CIP"). The HARP Channel Extension and Boathouse Project was identified as a Project.

The design and construction plans contemplated by the previous IGA have been completed, bids reviewed, and a qualified contractor identified. The project consists of the demolition of the existing eastern channel terminus, construction of a new channel eastward to Santa Fe Drive, new and retrofitted utilities, paving and hardscapes, drainage, site electrical and lighting, landscape improvements as well as the construction of a new two-story building. The two-story building will be used by HARP for boat and equipment storage, office space, and public gatherings.

FINANCIAL IMPLICATIONS:

The total cost of the project is \$15,974,481.73 as set out below:

PROJECT COSTS	
Base Bid – Channel	\$4,212,227.00
Base Bid – Boathouse	9,088,834.00
Add Alts #1 – 7	<u>943,812.00</u>
Sub-total	\$14,244,873.00
Black Hill Estimate (separate cost)	<u>277,383.73</u>
Sub-total	\$14,522,256.73
10% Contingency	<u>\$1,452,225.00</u>
TOTAL PROJECT COST	<u>\$15,974,481.73</u>
 PROJECT REVENUE	
County 1A	\$9,000,000.00
DOLA Grant	1,000,000.00
DOLA Match – City GF/Unappropriated fund	1,000,000.00
ARPA Lost Revenue	945,000.00
ARPA – Basic Funds	517,884.44
PURA	<u>200,000.00</u>
Sub-total	\$12,662,884.44
RTA/Sale & Use Tax	<u>3,311,597.29</u>
	<u>\$15,974,481.73</u>

Pursuant to the IGA, Pueblo County will contribute \$9,000,000 to the project as set forth above.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

The City Council could decide not to enter into the IGA with the County or accept the \$9,000,000 offered by the County for the HARP project. The HARP Channel Extension and Boathouse Project will not be able to be completed without the 1A money from the County.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. FINAL IGA with County HARP City for 1A money for riverwalk expansion

ORDINANCE NO.

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE COUNTY OF PUEBLO, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO, AND THE HISTORIC ARKANSAS RIVERWALK OF PUEBLO AUTHORITY, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO BY WHICH PUEBLO COUNTY WILL PAY TO THE CITY OF PUEBLO \$9,000,000 IN 1A FUNDS FOR THE CONSTRUCTION OF THE HARP CHANNEL EXTENSION AND BOATHOUSE PROJECT, AUTHORIZING THE MAYOR TO EXECUTE THE SAME, ACCEPTING THE 1A FUNDS FROM THE COUNTY, ESTABLISHING PROJECT NO. CI2432, AND BUDGETING AND APPROPRIATING THE FUNDS TO PROJECT NO. CI2432

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

SECTION 1.

The Intergovernmental Agreement, dated April 22, 2024, by which the County will pay to the City \$9,000,000 in 1A funds to be used for the HARP Channel Extension and Boathouse Project, between the City of Pueblo, a Colorado Municipal Corporation and the County of Pueblo, a political subdivision of the State of Colorado, and the Historic Arkansas Riverwalk of Pueblo Authority, a political subdivision of the State of Colorado, attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to accept the 1A funds from the County and to execute said Intergovernmental Agreement on behalf of the City and the City Clerk is authorized to affix the seal of the City thereto and attest the same.

SECTION 3.

Project No. CI2432 -- HARP Channel Extension and Boathouse Project is hereby established.

SECTION 4.

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

SECTION 5.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

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

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

President of City Council

ATTEST

City Clerk

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT is entered into and is effective upon the last date executed by the Parties ("Effective Date") between Pueblo County, a political subdivision of the State of Colorado, ("County"), the City of Pueblo, a Colorado Municipal Corporation ("City") and the Historic Arkansas Riverwalk of Pueblo Authority, a political subdivision of the State of Colorado ("Authority") (collectively, the "Parties").

WITNESSETH:

WHEREAS, in November 2016, County voters passed Ballot Question 1A, which allows the County to collect, retain and spend all revenue from all sources notwithstanding the limitations of Article X, Section 20 of the Colorado Constitution ("TABOR") or other law and utilize revenues from expiring Tax Incentive Agreements ("TIA") in the amount of approximately \$66 million to fund an initial list of 20 specific community improvement Projects, and a list of Projects as modified or supplemented from time to time, now formally known as the Capital Improvement Program ("CIP"); and

WHEREAS, the Authority is a legal entity established by local governments, including the County, under C.R.S. §29-1-203 for the purpose of promoting, managing, supervising, operating, developing, and maintaining the Historic Arkansas Riverwalk of Pueblo ("HARP") and has extensive experience in HARP-related construction Projects; and

WHEREAS the Authority and the County previously entered an IGA executed February 28, 2019, by the County and executed March 18, 2019, by the Authority for the purpose of providing design and construction ready plans for the HARP Channel Extension and two-story facility which included a boathouse; and

WHEREAS the design and construction plans contemplated by the prior IGA have been completed and submitted; and

WHEREAS, the City has requested, received, and examined bids from general contractors and identified a qualified contractor; and

WHEREAS Pueblo County has issued a second tranche of financing utilizing Certificates of Participation and the TIA revenues to support funding of certain designated community improvement projects in the CIP beginning in 2023, including the construction of an eastward expansion of the HARP Channel and addition of a two-story facility for the HARP 1A Expansion Project (the "Project"); and

WHEREAS, the lowest bid for the demolition of the existing eastern channel terminus, construction of new channel eastward to Santa Fe Drive, new and retrofitted utilities, paving and hardscapes, drainage, site electrical and lighting, landscape improvements, the construction of a new two-story building which includes a new visitor

center, Authority offices, a roof top space for public gatherings and a boathouse for the Authority is \$13,301,061.00 with Additional Alternates totaling \$943,812.00; and

WHEREAS, the County desires to provide \$9,000,000 from the 1A funds to pay for the construction of the Project; and

WHEREAS, the City and the Authority are committed to providing the balance of the funds for the Project.

NOW THEREFORE, in consideration of the promises, conditions and covenants set forth herein the Parties mutually agree as follows:

1. SPECIFIC PROVISIONS:

- 1.1 The County agrees to provide the City \$9,000,000 for the purpose of the construction of the Project as is detailed in Construction Plans for the HARP Channel Extension Exhibit A, and the Construction Drawings for the HARP new two-story building, Exhibit B. The Parties understand that the County's obligation under this Agreement is only to provide funding for the Project and it is the City's obligation in cooperation with HARP, to complete the Project. The City shall bear all risk and responsibility related to management of and completing the Project. Authority shall, at their own and separate expense, operate and maintain the improvements following completion of the Project.
- 1.2 The City will use all funding sources it deems appropriate to complete the Project. Those funding sources may include but not be limited to, American Rescue Plan Act (ARPA) funds, Capital Improvement Project Fund (commonly referred to as the half-cent City sales tax fund for economic development), a DOLA Energy and Mineral Impact Assistance Fund Program grant funds, and general funds.
- 1.3. The Authority and the City have entered into a Cooperation Agreement pursuant to which the City with the cooperation of HARP, will direct construction of the Project. Once all funds required to complete the Project, with or without the Additional Alternatives, are received from the various Parties and from other sources, as applicable, the City will award a construction contract to complete the work. No portion of the County's \$9,000,0000 contribution shall be spent until the City and Authority have secured the full amount of funding required to complete the Project, with or without the Additional Alternatives.
- 1.4. The City anticipates that the project will be completed within approximately twenty-four (24) months after it receives the funds from the County. The City hereby represents and warrants to the Parties that it will commit the human and other resources necessary to undertake and perform its obligations under this

Agreement and within the time periods specified. The City further acknowledges and intends that County rely upon this representation and warranty.

- 1.5. The City shall inspect the Project for progress and review all construction receipts and pay requests for accuracy prior to approval. The City will pay Project expenses from the Project funds.
- 1.6 The Authority shall provide written monthly updates to the County regarding the progress of the Project. The Authority and City agree to make its representative(s) available to answer any questions the County may have about the Project and Project submittals. The Parties will publicly promote the Project and periodically inform the public about the Project.
- 1.7 Title to all work product related to the Project shall vest in the City.
- 1.8 The County will pay the sum of \$9,000,000 to the City within ten (10) days of the execution of this Intergovernmental Agreement by the parties.
- 1.9 Once constructed, the Authority will operate, maintain, and manage the new two-story facility in a manner that will not compromise the tax-exempt status of the County's Certificate of Participation issuance. Should the City or Authority allow any use of the Boathouse that compromises the tax-exempt status of the County's Certificates of Participation, City and Authority shall be liable to County for any penalties, costs, fees, increased interest rate or other damages of any type incurred by County resulting from City or Authority's failure to properly use the facility. The Authority will provide the City and the County with the proposed annual schedule of fees charged for rental and facility usage and copies of the proposed facility usage agreements utilized by the Authority for the use of the facility which may be adopted by the Authority subject to County approval.
- 1.10 If the City and/or Authority cannot proceed with the Project for any reason, including if the channel extension or boathouse construction is no longer financially viable, then the City shall return all unexpended County funding to the County. If the City and/or Authority cannot complete the Boathouse within 30 months of the date of this Agreement but can complete the channel extension, the City shall utilize County's funds to pay for the channel extension and return the remaining funds to the County.

ESTIMATE OF PROJECT COSTS

The Parties estimate the cost of the Project to be \$15,974,481.73 which includes Additional Alternatives totaling \$943,812.00 as set forth below:

<u>Base Bid Channel</u>	<u>\$4,212,227.00</u>
<u>Base Bid Boathouse</u>	<u>\$9,088,834.00</u>
<u>Total Base Bid</u>	<u>\$13,301,061.00</u>

<u>Add Alt 1 Mechanic Street Improvements</u>	<u>\$1,080.00</u>
<u>Add Alt 2 Boathouse Stone Pavers</u>	<u>\$49,160.00</u>
<u>Add Alt 3 Santa Fe Overlook</u>	<u>\$75,330.00</u>
<u>Add Alt 4 Storm Drain Improvements</u>	<u>\$50,127.00</u>
<u>Add Alt 5 Santa Fe Improvements</u>	<u>\$143,473.00</u>
<u>Add Alt 6 Landscaping</u>	<u>\$207,071.00</u>
<u>Add Alt 7 Electrical and Fiber Optic Improvements</u>	<u>\$417,571.00</u>
<u>Total Add Alts</u>	<u>\$943,812.00</u>
<u>Total Base Bid + Add Alts</u>	<u>\$14,244,873.00</u>
<u>Black Hills Electric Estimate</u>	<u>\$277,383.73</u>
<u>Total Base Bid, Add Alts & BHE</u>	<u>\$14,522,256.73</u>
<u>Contingency 10%</u>	<u>\$1,452,225.00</u>
<u>Total Project</u>	<u>\$15,974,481.73</u>

2. TERM AND TERMINATION:

The term of this Agreement shall begin on the Effective Date which shall be the latest date of execution of this agreement by any of the Parties and, unless sooner terminated as provided herein, end thirty (30) months from the date of this Agreement.

3. CITY AND AUTHORITY CONTRIBUTIONS:

The City agrees that the funds committed by the County pursuant to the Agreement are intended by the County to be in addition to, and not in substitution or replacement of, any monies previously committed or agreed to be committed by the Authority or any other entity to the HARP 1A Expansion Project.

4. OTHER:

4.1 TABOR: The City and Authority shall bear all risk and responsibility related to compliance with Article X, Section 20 of the Colorado Constitution ("TABOR") or other law which is applicable to the transactions described in this Agreement.

4.2 ENTIRE AGREEMENT: This Agreement constitutes the entire Agreement between the Parties and supersedes all prior and contemporaneous agreements, representations, and understandings between them. This Agreement shall be construed and enforced according to the laws of the State of Colorado. No alterations, amendments, changes, or modifications to this Agreement shall be valid unless they are contained in writing and executed by all Parties. This Agreement shall be binding and inure to the benefit of the Parties to it and their respective legal representatives, successors and assigns. Any delegation or assignment of this Agreement by either Party without the prior written consent of the other Party shall be void. The subject headings of the paragraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of its provisions.

4.3 NOTICES: Except as set forth elsewhere in this paragraph, all notices to be given in this Agreement shall be made in writing and shall be sufficient if delivered personally due to the need for timely transmission of information or by Certified Mail to the other party at the following addresses:

City of Pueblo
One City Hall Place
Pueblo, Colorado 81003
Attention: Office of the Mayor

With a copy to:

Pueblo City Attorney
One City Hall Place
Pueblo, Colorado 81003

Pueblo County Department of Budget and Finance
Pueblo County Courthouse
215 West 10th Street
Pueblo, CO 81003

With a copy to:

Pueblo County Attorney's Office
Pueblo County Courthouse
215 West 10th Street, Room 312
Pueblo, CO 81003

And

Historic Arkansas Riverwalk of Pueblo
Attention Lynn Clark

125 Riverwalk Place
Pueblo, CO 81003

With a copy to
Wm. David Lytle
503 N. Main St., Suite 125
Pueblo, CO 81003

- 4.4 GOOD FAITH: The Parties shall implement this Agreement in good faith including acting in good faith in all matters that require joint or coordinated action.
- 4.5 STATUS OF PARTIES: The Parties will perform their duties under this Agreement independent from each other. Neither Party, nor any employee, officer, or agent thereof, will be considered an agent or employee of the other Party for any purpose whatsoever.
- 4.6 NO THIRD-PARTY BENEFICIARY: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the Authority or County receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.
- 4.7 LEGAL AUTHORITY: The Parties assure that they possess the legal authority, pursuant to any proper, appropriate, and official motion, resolution or action passed or taken, to enter into this Agreement. The person or persons signing and executing this Agreement do hereby warrant that he/she or they have been fully authorized to execute this Agreement and to validly and legally bind their principals to all the terms, performances and provisions herein set forth.
- 4.8 SURVIVAL OF CERTAIN CONTRACT TERMS: Notwithstanding anything to the contrary, the Parties understand and agree that all terms and conditions of this Agreement and the exhibits and attachments hereto which may require continued performance or compliance beyond the termination date of the Agreement shall survive such termination date and shall be enforceable by the County.
- 4.9 LIABILITY AND INSURANCE: The Authority maintains general liability insurance for HARP. As between the Authority and County, the Authority (as the manager and operator of the Historic Arkansas Riverwalk and the Project improvements) agrees to assume the risk of personal injury, including death and bodily injury, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in conjunction with or arising out of the use of the HARP improvements funded by County 1A dollars or by the conditions created thereby; provided, however, that nothing in this paragraph is intended, nor should it be

construed, to create or extend any rights, claims or benefits or assume any liability for or on behalf of any third party, or to waive any immunities or limitations otherwise conferred under or by virtue of federal or state law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. Authority and City shall provide and maintain Workers' Compensation insurance coverage on its employees complying with the requirements of State law.

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

ATTEST:

Clerk to the Board

COUNTY OF PUEBLO

By: _____
Chair, Board of County Commissioners
Date: _____

ATTEST:

Marisa Stoller, City Clerk

MAYOR CITY OF PUEBLO

By: _____
Heather Graham
Date: _____

ATTEST:

By: _____

AUTHORITY

By: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Cynthia Mitchell County Attorney

By: _____
Carla L. Sikes, City Attorney

APPROVED AS TO FORM:

By: _____
Wm. David Lytle, Authority Attorney



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 8, 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 AND ACCEPTING A COLORADO DEPARTMENT OF LOCAL AFFAIRS GRANT IN THE AMOUNT OF \$1,000,000 FOR THE HARP CHANNEL EXTENSION AND BOATHOUSE CONSTRUCTION PROJECT, AUTHORIZING THE MAYOR TO EXECUTE THE RELATED GRANT AGREEMENT, TRANSFERRING \$1,000,000 FROM THE GENERAL FUND UNAPPROPRIATED FUND BALANCE, AND BUDGETING AND APPROPRIATING \$2,000,000 IN TOTAL FUNDS TO PROJECT NO. CI2432

SUMMARY:

Attached is an Ordinance approving and accepting a grant in the amount of \$1,000,000.00 from the Colorado Department of Local Affairs ("DOLA") The DOLA grant requires matching funds from the City and therefore, the Ordinance transfers \$1,000,000 from the General Fund for a total of \$2,000,000 budgeted and appropriated to Project No. CI2432 to be used to fund, in part, the HARP Channel Extension and Boathouse construction project.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

The City of Pueblo and the Historic Arkansas Riverwalk of Pueblo ("HARP") have collaborated over many years to complete the HARP channel and improve the Riverwalk. The DOLA grant and matching funds will be used to further this collaboration and complete the next phase of the overall plan. The HARP Channel Extension and Boathouse construction project will result in demolition of the existing eastern channel terminus, construction of new channel eastward to Santa Fe Drive, new and retrofitted utilities, paving and hardscapes, drainage, site electrical and lighting, landscape improvements, and the construction of a new two-story building which will house

equipment and boats, HARP offices, and a roof top space for public gatherings.

FINANCIAL IMPLICATIONS:

The DOLA grant will provide \$1,000,000, and \$1,000,000 will be transferred from the City's General Fund to Project CI2432 to match the grant for a total of \$2,000,000 for the HARP Channel Extension and Boathouse Project. Acceptance of the grant will bind the City to the conditions of the DOLA grant agreement.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If the proposed Ordinance is not approved, the Historic Arkansas Riverwalk of Pueblo (HARP) will not receive the grant funds and would be unable to complete the Project.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. DOLA GRANT AWARD - City of Pueblo

ORDINANCE NO.

AN ORDINANCE APPROVING AND ACCEPTING A COLORADO DEPARTMENT OF LOCAL AFFAIRS GRANT IN THE AMOUNT OF \$1,000,000 FOR THE HARP CHANNEL EXTENSION AND BOATHOUSE CONSTRUCTION PROJECT, AUTHORIZING THE MAYOR TO EXECUTE THE RELATED GRANT AGREEMENT, TRANSFERRING \$1,000,000 FROM THE GENERAL FUND UNAPPROPRIATED FUND BALANCE, AND BUDGETING AND APPROPRIATING \$2,000,000 IN TOTAL FUNDS TO PROJECT NO. CI2432

WHEREAS, the Colorado Department of Local Affairs ("DOLA") has tendered a grant award to the City of Pueblo in the amount of \$1,000,000; and

WHEREAS, acceptance of the DOLA grant award is in the best interest of the City; NOW, THEREFORE,

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

SECTION 1.

The Grant from DOLA in the amount of \$1,000,000 for the HARP Channel Extension and Boathouse Project is hereby accepted and budgeted and appropriated to Project No. CI2432.

SECTION 2.

Funds in the amount of \$1,000,000 shall be transferred from the City's General Fund unappropriated fund balance to Project CI2432 and be expended for the HARP Channel Extension and Boathouse Project.

SECTION 3.

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

SECTION 4.

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

SECTION 5.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

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

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

President of City Council

ATTEST

City Clerk



COLORADO
Department of Local Affairs
Division of Local Government

March 19, 2024

The Honorable Heather Graham, Mayor
City of Pueblo
1 City Hall Place
Pueblo, CO 81003

RE: EIAF 9830 - Pueblo HARP Boathouse Construction

Dear Mayor Graham:

Congratulations! After thorough review, I am excited to offer a grant award in the amount of \$1,000,000 to assist with the above mentioned project.

Your project was reviewed based on a variety of factors such as its connection to energy impact, degree of need, measurable outcomes, amount of request, relationship to community goals, level of local match and community support, management capacity, resiliency and readiness to go. Competition for these limited funds is intense and we are seeing great demand.

These grant funds will be from state severance tax proceeds, which may cause you to go to election to receive and spend them. You should confer with your legal and budget advisors to determine if such an election is necessary.

Please contact your DOLA Regional Manager, Tara Marshall, at 719-250-6944 for information on how to proceed. Expenditure of State funds prior to the contract being fully executed cannot be included in the contract budget or reimbursed by the State. Per our program guidelines, this offer is valid for one year from the date of this letter.

I wish you success with your project. Thank you for helping Colorado build an economy where all Coloradans can thrive.

Sincerely,

Maria De Cambra
Executive Director

cc: Nick Hinrichsen, State Senator
Tisha Mauro, State Representative
Luann Martinez, City of Pueblo
Tara Marshall, DOLA





Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 8, 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 AND AUTHORIZING THE MAYOR TO EXECUTE A COOPERATION AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE HISTORIC ARKANSAS RIVERWALK OF PUEBLO AUTHORITY, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO RELATING TO THE CONSTRUCTION OF THE HARP CHANNEL EXTENSION AND BOATHOUSE PROJECT

SUMMARY:

This Ordinance approves and authorizes the Mayor to sign a Cooperation Agreement between the City of Pueblo and the Historic Arkansas Riverwalk of Pueblo Authority ("HARP") for the construction of the HARP Channel Extension and Boathouse Project.

PREVIOUS COUNCIL ACTION:

City Council previously approved on March 18, 2019, an Intergovernmental Agreement between the parties for the purpose of providing design and construction ready plans for the HARP Channel Extension and Boathouse Project.

BACKGROUND:

The design and construction plans contemplated by the previous IGA have been completed, bids reviewed, and a qualified contractor identified. The project consists of the demolition of the existing eastern channel terminus, construction of a new channel eastward to Santa Fe Drive, new and retrofitted utilities, paving and hardscapes, drainage, site electrical and lighting, landscape improvements as well as the construction of a new two-story building. The two-story building will be used by HARP for boat and equipment storage, office space, and public gatherings. The Cooperation Agreement sets forth the respective duties and responsibilities of each party for the construction of the HARP Channel Extension and Boathouse Project.

FINANCIAL IMPLICATIONS:

Not applicable to this Ordinance.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

The City Council could decide not to enter into the Cooperation Agreement with HARP.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. FINAL City-HARP Cooperation Agreement

ORDINANCE NO.

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A COOPERATION AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE HISTORIC ARKANSAS RIVERWALK OF PUEBLO AUTHORITY, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO RELATING TO THE CONSTRUCTION OF THE HARP CHANNEL EXTENSION AND BOATHOUSE PROJECT

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

SECTION 1.

The Intergovernmental Agreement, dated March ____, 2024, by which the County will pay to the City \$9,000,000 in 1A funds to be used for the HARP Channel Extension and Boathouse Project, between the City of Pueblo, a Colorado Municipal Corporation and the County of Pueblo, a political subdivision of the State of Colorado, and the Historic Arkansas Riverwalk of Pueblo Authority, a political subdivision of the State of Colorado, attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to accept the 1A funds from the County and to execute said Intergovernmental Agreement on behalf of the City and the City Clerk is authorized to affix the seal of the City thereto and attest same.

SECTION 3.

Project No. CI2432 -- HARP Channel Extension and Boathouse Project is hereby established.

SECTION 4.

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

SECTION 5.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

President of City Council

ATTEST

City Clerk

COOPERATION AGREEMENT

Relating to Construction of the HARP Channel Extension and Boat House Facility

This Cooperation Agreement (“Agreement”) is entered into as of April 23, 2024 (the “Effective Date”) by and between the City of Pueblo, a municipal corporation (the “City”), and the Historic Arkansas Riverwalk of Pueblo Authority, a governmental entity formed pursuant to Article XIV, Section 18(2)(a) and (b) of the Colorado Constitution and Section 29-1-201, C.R.S. (the “Authority”).

WHEREAS, the Authority is a legal entity established by local governments, including the City and the County, under C.R.S. §29-1-203 for the purpose of promoting, managing, supervising, operating, developing, and maintaining the Historic Arkansas Riverwalk of Pueblo ("HARP") and has extensive experience in HARP-related construction projects; and

WHEREAS the City owns the public lands managed by the Authority and the parties agree there is a need to undertake the project described herein; and

WHEREAS, this project consists of demolition of the existing eastern channel terminus, construction of new channel eastward to Santa Fe Drive, new and retrofitted utilities, paving and hardscapes, drainage, site electrical and lighting, landscape improvements, and the construction of a new two-story building with a roof top space as set forth in the Construction Drawings for the HARP Channel Extension attached as Exhibit A, and the Construction Drawings for the HARP New Two Story Building attached as Exhibit B (collectively the “Project”); and

WHEREAS the Authority and the County previously entered an IGA executed February 28, 2019, by the County and executed March 18, 2019, by the Authority for the purpose of providing design and construction ready plans for the Project; and

WHEREAS the design and construction plans contemplated by the prior IGA have been completed and submitted; and

WHEREAS, the City has requested, received, and examined bids from general contractors and identified a qualified contractor; and

WHEREAS, the Authority and the City have entered into an Intergovernmental Agreement dated April 23, 2024 with Pueblo County, a political subdivision of the State of Colorado, (“County”) concerning the Ballot Question 1A that County voters passed in November 2016, which allows the County to collect, retain and spend all revenue from all sources notwithstanding the limitations of Article X, Section 20 of the Colorado Constitution (“TABOR”) or other law and utilize revenues from expiring Tax Incentive Agreements (“TIA”) and providing for the payment of \$9,000,000 by the County to the City and Authority for construction of the Project; and

WHEREAS, the City and the Authority desire to work collaboratively to complete the construction of the Project; and

WHEREAS, both parties wish to define their respective roles and responsibilities in relation to the construction of the Project.

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

1. **PURPOSE:** The purpose of this Agreement is to identify the construction administration and management tasks and the roles the Parties will assume and shall be responsible for through the completion of the Project. The Parties hereby agree to cooperate in the construction and financial management of the Project as set forth herein.

2. **PROJECT DESCRIPTION:** The Project consists of demolition of the existing eastern channel terminus, construction of new channel eastward to Santa Fe Drive, new and retrofitted utilities, paving and hardscapes, drainage, site electrical and lighting, landscape improvements, and the construction of a new two-story building with a roof top space as set forth in the Construction Drawings for the HARP Channel Extension attached as Exhibit A and incorporated herein by this reference, and the Construction Drawings for the HARP New Two Story Building attached as Exhibit B and incorporated herein by this reference.

3. **PROJECT REPRESENTATIVES AND CONTACT INFORMATION:** The City and the Authority designate the following individuals as representatives to the project:

City:

Name	Title	E-mail	Phone
Steven Meier*	Director of Parks and Recreation	smeier@pueblo.us	719-553-2790
Andrew Hayes	Director of Public Works	ahayes@pueblo.us	719-553-2295
Chuck Roy*	Deputy Director of Public Works	croy@pueblo.us	719-553-2295
Kurt Patrick	Public Works Engineering Mgr.	kpatrick@pueblo.us	719-553-2283
Todd Berisford	Construction Manager	tberisford@pueblo.us	719-553-2289
Naomi Hedden	Director of Purchasing	nchedden@pueblo.us	719-553-2343
Carla Sikes	City Attorney	csikes@pueblo.us	719-562-3896

Authority:

Name	Title	E-mail	Phone
Lynn Clark*	Executive Director	lynn@puebloriverwalk.org	719-595-0242
Daisy Jensen*	Director of Operations	daisy@puebloriverwalk.org	719-595-0242
David Lytle	HARP Authority Attorney	lytle@altman-keilbach.com	719-545-7325

The names above designated with an asterisk are designated as the Construction Committee for each party and Steven Meier shall act as Project Manager.

4. CONSTRUCTION COMMITTEE ROLE. The Construction Committee shall manage and oversee the Project. The Parties agree that prompt and open communication between the Parties is necessary for the efficient and timely completion of the Project within contract parameters. The City and Authority shall maintain open and regular communication throughout the Project. All communication relating to design, construction, and payments as well as all routine Project updates shall include, at a minimum, the Construction Committee. The City and Authority will establish and maintain a method of prompt and efficient communication concerning the construction administration. The Construction Committee shall meet weekly to monitor project completion progress, progress payments, and discuss any project related issues. The time and date of the meeting shall be mutually agreed upon by the Construction Committee, the architect and engineer of record (“A/E”), and the Contractor. All records relating to the Project in the possession of one Party shall be promptly made available for review by the other upon request.

4.1 The Construction Committee will be responsible for the supervision and oversight of the \$15,974,482 million construction budget and financing package and will review all contracts and expenses associated with the Project. It will determine whether the activities undertaken through the contract are an appropriate expenditure of the funds. The Construction Committee shall meet weekly to review progress payments, ensure all payment applications are complete and consistent with percentage of Project completion, and approve payment as appropriate. The Construction Committee is responsible for ensuring the Project is completed on time and within budget.

5. COST CERTIFICATION AND PAYMENT PROCEDURES
Contractor’s Application for Payment for Eligible Project costs shall be completed in accordance with the schedule of values and shall be submitted to the designated person in the City’s Department of Public Works for review and acceptance. The payment application will then be forwarded to the A/E for their review. Upon A/E approval, the payment application shall be forwarded to the Committee for their final review and approval. The payment application will be forwarded to the City Finance Department to process after both the A/E and the Construction Committee have approved the payment application.

4.3 CHANGE ORDERS
Changes in work may be accomplished after execution of the contract only by a written Change Order. Changes in work may include a: 1) change in the Scope of Work, 2) a change in Contract Sum, or 3) change in Project Timeline. All Change Orders, except minor changes in work pursuant to paragraph 4.4, must be in writing and approved by the A/E and Construction Committee.

4.4 MINOR CHANGES IN WORK
The Project Manager, will have the authority to order minor changes to the Work which do not involve an adjustment to the Contract Sum, Scope of Work, or Project Timeline, and are not inconsistent with the intent of the contract documents. The Project Manager and A/E will document all Minor Changes in Work. The Project Manager should report all Minor Changes in Work to the Construction Committee at the weekly meeting.

5. ESTIMATE OF PROJECT COSTS: The Parties estimate the cost of the Project to be \$15,974,481.73 which includes Additional Alternatives totaling \$943,812.00 as set forth below:

<u>Base Bid Channel</u>	<u>\$4,212,227.00</u>
<u>Base Bid Boathouse</u>	<u>\$9,088,834.00</u>
<u>Total Base Bid</u>	<u>\$13,301,061.00</u>
<u>Add Alt 1 Mechanic Street Improvements</u>	<u>\$1,080.00</u>
<u>Add Alt 2 Boathouse Stone Pavers</u>	<u>\$49,160.00</u>
<u>Add Alt 3 Santa Fe Overlook</u>	<u>\$75,330.00</u>
<u>Add Alt 4 Storm Drain Improvements</u>	<u>\$50,127.00</u>
<u>Add Alt 5 Santa Fe Improvements</u>	<u>\$143,473.00</u>
<u>Add Alt 6 Landscaping</u>	<u>\$207,071.00</u>
<u>Add Alt 7 Electrical and Fiber Optic Improvements</u>	<u>\$417,571.00</u>
<u>Total Add Alts</u>	<u>\$943,812.00</u>
<u>Total Base Bid + Add Alts</u>	<u>\$14,244,873.00</u>
<u>Black Hills Electric Estimate</u>	<u>\$277,383.73</u>
<u>Total Base Bid, Add Alts & BHE</u>	<u>\$14,522,256.73</u>
<u>Contingency 10%</u>	<u>\$1,452,225.00</u>
<u>Total Project</u>	<u>\$15,974,481.73</u>

6. RESPONSIBILITIES OF THE CITY:

6.1 Establish a project account and, upon approval of an Ordinance by City Council, deposit, budget, and appropriate all Project funds into said account.

6.2 Award and enter into a construction contract with the most qualified general contractor selected in accordance with the City's Charter, Pueblo Municipal Code, and the City's Purchasing Policies and Procedures.

6.3 Perform all necessary inspections of the Project and report results of all inspections to the Construction Committee during weekly Project meetings.

6.4 Receive and review all payment applications and invoices received from the contractor and forward to the Construction Committee for payment approval.

6.5 Subsequent to payment approval by the Construction Committee, promptly process and issue payment to the general contractor and subcontractors, engineers, and consultants working on the Project.

6.6 Process all approved Change Orders or contract amendments in accordance with City Purchasing Policies and Procedures.

7. RESPONSIBILITIES OF THE AUTHORITY:

7.1 Attend and participate in the Project progress and coordination meeting facilitated by the Construction Committee.

7.2 Respond to inquiries and provide updates to the public and serve as the primary media point of contact with respect to the Project.

7.2 Oversee the procurement and installation of all furniture, fixtures, and equipment that may be required to outfit the proposed Boat House facility for use including coordination of any such work that may be required prior to final acceptance of the Boat House with the City's project representatives.

7.3 Secure additional funding for any Authority-initiated requests for changes to the Project scope.

7.4 Procure all required materials, supplies, labor, and equipment necessary to relocate the Authority's offices from the current location into the new Boat House facility.

8. JOINT RESPONSIBILITIES OF THE PARTIES:

8.1 Ensure compliance with all applicable laws, regulations, and standards throughout the construction process.

8.2 Notify the Construction Committee of any conditions that may result in changes to Project scope, schedule, or cost.

8.3 Meet, review, and discuss the proposed use of any contingency funds designated for use on the Project.

9. TERM: This Agreement shall begin on the Effective Date and, unless earlier terminated by mutual agreement of the Parties, end upon completion of the Project and receipt of a Certificate of Occupancy.

10. MISCELLANEOUS:

10.1 ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the Parties and supersedes all prior and contemporaneous agreements, representations,

and understandings between them. This Agreement shall be construed and enforced according to the laws of the State of Colorado. No alterations, amendments, changes, or modifications to this Agreement shall be valid unless they are contained in writing and executed by all Parties.

10.2 SUCCESSORS. This Agreement shall be binding and inure to the benefit of the Parties to it and their respective legal representatives, successors, and assigns. Any delegation or assignment of this Agreement by either Party without the prior written consent of the other Party shall be void. The subject headings of the paragraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of its provisions.

10.3 NOTICES. Except as set forth elsewhere in this paragraph, all legal notices to be given in this Agreement shall be made in writing and shall be sufficient if delivered personally due to the need for timely transmission of information or by Certified Mail to the other party at the following addresses:

City of Pueblo #1 City Hall Place
Pueblo, Colorado 81003
Attention: Office of the Mayor

With a copy to:

Pueblo City Attorney
#1 City Hall Place
Pueblo, Colorado 81003

And additional copy to:
Director of Parks and Recreation
800 Goodnight Ave.
Pueblo, CO 81005

Historic Arkansas Riverwalk of Pueblo
Attention Lynn Clark
125 Riverwalk Place
Pueblo, CO 81003

With a copy to
Wm. David Lytle
503 N. Main St., Suite 125
Pueblo, CO 81003

10.4 GOOD FAITH: The Parties shall implement this Agreement in good faith including acting in good faith in all matters that require joint or coordinated action.

10.5 STATUS OF PARTIES: The Parties will perform their duties under this Agreement independent from each other. Neither Party, nor any employee, officer, or agent thereof, will be considered an agent or employee of the other Party for any purpose whatsoever.

10.6 NO THIRD-PARTY BENEFICIARY: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the Authority or the City receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

10.7 LEGAL AUTHORITY: The Parties assure that they possess the legal authority, pursuant to any proper, appropriate, and official motion, resolution or action passed or taken, to enter into this Agreement. The person or persons signing and executing this Agreement do hereby warrant that he/she or they have been fully authorized to execute this Agreement and to bind their principals validly and legally to all the terms, performances and provisions herein set forth.

10.8 SURVIVAL OF CERTAIN CONTRACT TERMS: Notwithstanding anything to the contrary, the Parties understand and agree that all terms and conditions of this Agreement and the exhibits and attachments hereto which may require continued performance or compliance beyond the termination date of the Agreement shall survive such termination date and shall be enforceable by the County.

10.9 LIABILITY AND INSURANCE: The Authority maintains general liability insurance for HARP. As between the Authority and the City, the Authority (as the manager and operator of the Historic Arkansas Riverwalk and the Project improvements) agrees to assume the risk of personal injury, including death and bodily injury, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in conjunction with or arising out of the use of the HARP improvements funded by County 1A dollars or by the conditions created thereby; provided, however, that nothing in this paragraph is intended, nor should it be construed, to create or extend any rights, claims or benefits or assume any liability for or on behalf of any third party, or to waive any immunities or limitations otherwise conferred under or by virtue of federal or state law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. Authority and City shall provide and maintain Workers' Compensation insurance coverage on its employees complying with the requirements of State law.

10.10 AMENDMENTS: Any and all amendments or modifications to this Agreement must be in writing and signed by authorized representatives of the Parties.

*****SIGNATURE PAGE FOLLOWS*****

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be executed by their duly authorized representatives as of the date first above written.

ATTEST:

MAYOR CITY OF PUEBLO

Marisa Stoller, City Clerk

By: _____
Heather Graham

Date: _____

ATTEST:

AUTHORITY

By: _____

By: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Carla L. Sikes, City Attorney

By: _____
Wm. David Lytle Authority Attorney



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: AN ORDINANCE 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: SHO M086-102 (25957), ACCEPTING A GRANT IN THE AMOUNT OF \$1,350,000.00, ESTABLISHING PROJECT ACCOUNT CI2431, LAKE AVE & JONES AVE ROUNDABOUT, TRANSFERRING \$150,000.00 FROM PROJECT ACCOUNT CI2415, STREET REHABILITATION TO PROJECT ACCOUNT CI2431, LAKE AVE & JONES AVE ROUNDABOUT, BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$1,500,000 AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance approves an Intergovernmental Agreement ("IGA") between Pueblo, a Colorado Municipal Corporation ("City") and the State of Colorado, Colorado Department of Transportation ("CDOT"), accepting a grant in the amount of \$1,350,000, creates Project Account CI2431 for Lake Ave & Jones Ave Roundabout, transfers \$150,000 for the required 10% match from Project Account CI2415, and budgets and appropriates funds totaling \$1,500,000 for the Project.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

This Ordinance accepts the Federal Highway Safety Improvements Program (HSIP) grant award for Lake and Jones Roundabout.

The City submitted a Federal Highway Safety Improvement Program grant for improvements at the intersection of Lake Avenue and Jones Avenue in 2023. Despite

the fact this is a signalized intersection, 50% of the crashes were broadsides (front to side) with one being a fatality. Because of the high percentage of broadsides at this intersection, it is a good candidate for a roundabout. The Federal Highway Administration has identified the roundabout construction as one of the most significant accident countermeasure concepts and current speed studies of existing Pueblo roundabouts have shown average speeds in the low 20 miles per hour (MPH) range.

The intersection of Lake Avenue and Jones Avenue is in close proximity to St. Mary Corwin Medical Center, Corwin Middle School and Lake Minnequa. This improvement will enhance the safety of drivers, bicyclists, and pedestrians of all ages and abilities.

The Department of Public Works has reviewed and is familiar with the grant application, award, and associated draft agreement, and to the best of our knowledge and belief, the City has the present ability to comply with all monetary expenditures, special conditions, certifications and assurances therein contained.

FINANCIAL IMPLICATIONS:

The matching funds in the amount of \$150,000.00 will be transferred from Project Account CI2415, Street Rehabilitation to Project Account CI2431, Lake Ave & Jones Ave Roundabout. Funds in the amount of \$1,500,000.00 shall be budgeted and appropriated for Project Account CI2431.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Currently, there are no alternatives for completing the improvements without the funding from the Highway Safety Improvements Program funds.

RECOMMENDATION:

Approve the Ordinance.

ATTACHMENTS:

1. Draft Agreement (25957)

ORDINANCE NO.

AN ORDINANCE 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: SHO M086-102 (25957), ACCEPTING A GRANT IN THE AMOUNT OF \$1,350,000.00, ESTABLISHING PROJECT ACCOUNT CI2431, LAKE AVE & JONES AVE ROUNDABOUT, TRANSFERRING \$150,000.00 FROM PROJECT ACCOUNT CI2415, STREET REHABILITATION TO PROJECT ACCOUNT CI2431, LAKE AVE & JONES AVE ROUNDABOUT, BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$1,500,000 AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

SECTION 1.

Project Account CI2431, the Lake Ave & Jones Ave Roundabout, 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: SHO M086-102 (25957), Lake and Jones Roundabout, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 3.

Funds in the amount of \$150,000.00 are hereby transferred from Project Account CI2415, Street Rehabilitation to Project Account CI2431, Lake Ave & Jones Ave Roundabout, and budgeted and appropriated for the Lake Ave & Jones Ave Roundabout Project Account, CI2431.

SECTION 4.

Subject to encumbrances by the Colorado State Department of Transportation, funds in the amount of \$1,350,000.00 are hereby budgeted and appropriated for the Lake Ave & Jones Ave Roundabout into Project Account, CI2431.

SECTION 5.

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 6.

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 7.

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

Action by City Council:

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

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 INTERGOVERNMENTAL AGREEMENT

Signature and Cover Page

State Agency Department of Transportation			Agreement Routing Number 24-HA2-XC-00044
Local Agency CITY OF PUEBLO			Agreement Effective Date The later of the effective date or March 13, 2024
Agreement Description Lake Ave and Jones Ave Roundabout			Agreement Expiration Date March 12, 2034
Project # SHO M086- 102 (25957)	Region # 2	Contract Writer CM	Agreement Maximum Amount \$1,500,000.00

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 By: _____ *Signature Name: _____ (Heather Graham) Title: _____ (Mayor) Date: _____	STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director By: _____ Keith Stefanik, P.E., Chief Engineer Date: _____
2ND LOCAL AGENCY CITY OF PUEBLO By: _____ *ATTESTED BY Name: _____ (Marisa Stoller) Title: _____ (City Clerk) Date: _____	STATE OF COLORADO 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 Local Agency named on the Signature and Cover Page for this Agreement (“Local Agency”), and the STATE OF COLORADO acting by and through the State agency named on the Signature and Cover Page for this Agreement (the “State” or “CDOT”). Local Agency and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

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

B. Initial Term and Extension

The Parties’ respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on March 12, 2024, 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 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)
Matt Pettit, Local Agency Coordinator
CDOT, Region 2
5615 Wills Blvd.
Pueblo, CO 81008
719-248-0378
matthew.pettit@state.co.us

For the Local Agency

CITY OF PUEBLO
Kelly Grisham, Project Coordinator
211 East D Street
PUEBLO, CO 81003
719-553-2254
kgrisham@pueblo.us

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Local Agency hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Local Agency or any Subcontractors. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Local Agency is under contract with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Local Agency hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Local Agency cannot make any of the assignments required by this section, Local Agency hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from,

or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

In addition, Local Agency grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Local Agency that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

iii. Assignments and Assistance

Whether or not the Local Agency is under Agreement with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

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

C. Exclusive Property of Local Agency

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

18. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. The following applies through June 30, 2022: no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this §19 shall apply. Local Agency agrees to be governed by and comply with the provisions of §24-106-103, §24-102-206, §24-106-106, §24-106-107 C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Local Agency's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

20. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

Local Agency shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Local Agency shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Local Agency in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement.

C. Binding Effect

Except as otherwise provided in **§20.A.** all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Digital Signatures

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

H. Entire Understanding

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

I. Jurisdiction and Venue

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

J. Modification

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

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

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

L. Order of Precedence

In the event of a conflict or inconsistency between this Agreement and any exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i. The provisions of the other sections of the main body of this Agreement.
- ii. **Exhibit N**, Federal Treasury Provisions.
- iii. **Exhibit F**, Certification for Federal-Aid Contracts.
- iv. **Exhibit G**, Disadvantaged Business Enterprise.
- v. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts.
- vi. **Exhibit J**, Additional Federal Requirements.
- vii. **Exhibit K**, Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions.
- viii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form.
- ix. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the "Uniform Guidance").
- x. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds.
- xi. **Exhibit R**, Applicable Federal Awards.
- xii. Colorado Special Provisions in the main body of this Agreement.
- xiii. **Exhibit A**, Scope of Work.
- xiv. **Exhibit H**, Local Agency Procedures for Consultant Services.
- xv. **Exhibit B**, Sample Option Letter.
- xvi. **Exhibit C**, Funding Provisions.
- xvii. **Exhibit P**, SLFRF Subrecipient Quarterly Report.
- xviii. **Exhibit Q**, SLFRF Reporting Modification Form.
- xix. **Exhibit D**, Local Agency Resolution.
- xx. **Exhibit E**, Local Agency Contract Administration Checklist.
- xxi. **Exhibit S**, PII Certification.
- xxii. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source.
- xxiii. Other exhibits in descending order of their attachment.

M. Severability

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

N. Survival of Certain Agreement Terms

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

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§20.C**, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations.

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

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

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

U. Accessibility

- i. Local Agency shall comply with and the Work Product provided under this Agreement shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by the Governor's Office of Information Technology (OIT), pursuant to Section §24-85-103 (2.5), C.R.S. Local Agency shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.
- ii. Each Party agrees to be responsible for its own liability incurred as a result of its participation in and performance under this Agreement. In the event any claim is litigated, each Party will be responsible for its own attorneys' fees, expenses of litigation, or other costs. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to either the Local Agency or the State by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. and Article XI of the Colorado Constitution. Nothing in the Agreement shall be construed as a waiver of any provision of the State Fiscal Rules.
- iii. The State may require Local Agency's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Local Agency's Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

V. Taxes

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

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

These Special Provisions apply to all contracts. Contractor refers to Local Agency and Contract refers to Agreement.

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(19), 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. applicable Local Agency law, rule or regulation.

Financial obligations of the Parties 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: Lake Ave & Jones Ave Roundabout
Project Number: SHO M086-102
SubAccount #: 25957

The Local Agency shall be responsible for design and construction of a traffic roundabout in the intersection of Lake Avenue and Jones Avenue in the City of Pueblo. The roundabout shall provide a free flow condition for all turning movements and will eliminate the existing traffic signal.

The general scope of work includes, but is not limited to:

- Design of roundabout
- Removal of existing traffic signal
- Installation of curb and gutter, sidewalk, medians, curb ramps, pavement markings, signage, etc.
- Asphalt pavement patching
- Any utility work that might be necessary
- Erosion and sediment control
- Traffic control
- Any other items pertinent to roundabout construction

Easements and/or right of way acquisition may be 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, Project # SHO M086-102 (25957)****A. Cost of Work Estimate**

The Local Agency has estimated the total cost the Work to be \$1,500,000.00, which is to be funded as follows:

1. FUNDING		
a.	Federal Funds (90% of HSIP Award)	\$1,350,000.00
b.	Local Agency Funds (10% of HSIP Award)	\$150,000.00
TOTAL FUNDS ALL SOURCES		\$1,500,000.00
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	\$1,350,000.00
b.	Less Estimated Federal Share of CDOT-Incurred Costs	\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		90% \$1,350,000.00
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY		10% \$150,000.00
TOTAL PROJECT ESTIMATED FUNDING		100.00% \$1,500,000.00
4. FOR CDOT ENCUMBRANCE PURPOSES		
a.	Total Encumbrance Amount (Federal funds + Local Agency funds)	\$1,500,000.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$0.00
NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS		\$1,500,000.00

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 25957.10.30	Performance Period Start*/End Date TBD - TBD	Design 3020	\$0.00
WBS Element 25957.20.10	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 90% federal funds to 10% Local Agency funds, and this ratio applies only to the \$1,500,000.00 that is eligible for federal funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$1,500,000.00, and additional federal funds are not available, the Local Agency shall pay all such excess costs. If the total

cost of performance of the Work is less than \$1,500,000.00, 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 \$1,350,000.00. For CDOT accounting purposes, the federal funds of \$1,350,000.00 and the Local Agency funds of \$150,000.00 will be encumbered for a total encumbrance of \$1,500,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total budget is \$1,500,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work.**

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 Contract Administration Checklist

COLORADO DEPARTMENT OF TRANSPORTATION			
LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. M086-102	STIP No. SR26644	Project Code 25957	Region 02
Project Location Lake Avenue and Jones Avenue			Date 11/21/23
Project Description Roundabout at the intersection of Lake Avenue and Jones Avenue			
Local Agency City of Pueblo	Local Agency Project Manager Kelly Grisham		
CDOT Resident Engineer Lachelle Davis	CDOT Project Manager Matthew Pettit		
INSTRUCTIONS: This checklist shall be used to establish the contractual administrative responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency Agreement. Section numbers (NO.) correspond to the applicable chapters of the <i>CDOT Local Agency Desk Reference (Local Agency Manual)</i>. LAWR numbers correspond to the applicable flowchart in the Local Agency Web Resource. 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, # will denote that CDOT must concur or approve. Tasks that will be performed by Headquarters staff are indicated with an X in the CDOT column under Responsible Party. 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.			

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
		TIP / STIP AND LONG-RANGE PLANS		
	2.1	Review Project to ensure it is consistent with STIP and amendments thereto		X
		FEDERAL FUNDING OBLIGATION AND AUTHORIZATION		
	4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement). <i>Please write in "NA", if Not Applicable.</i>		x
		PROJECT DEVELOPMENT		
	5.1	Determine Delivery Method on Infrastructure Projects	X	
1	5.2	Prepare Design Data - CDOT Form 463		X
	5.3	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
2	5.4	Conduct Consultant Selection/Execute Consultant Agreement - Project Development - Construction Contract Administration (including Fabrication Inspection Services)	X X	
3,3A	5.5	Conduct Design Scoping Review Meeting	X	
3,6	5.6	Conduct Public Involvement	X	
3	5.7	Conduct Field Inspection Review (FIR)	X	X

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
4	5.8	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	X
5	5.9	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	X
3	5.10	Obtain Utility and Railroad Agreements	X	
3	5.11	Conduct Final Office Review (FOR)	X	
3A	5.12	Justify Force Account Work by the Local Agency	X	
3B	5.13	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	
3	5.14	Document Design Exceptions - CDOT Form 464	X	
3	5.15	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	X	
	5.16	Ensure Authorization of Funds for Construction		X
	5.17	Electronic Signatures	X	X
	5.18	Records Management	X	X
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE				
3	6.1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist).		X
	6.2	Determine Applicability of Davis-Bacon Act This project ☐ is ☒ is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Lachelle Davis 03/29/2023 _____ CDOT Resident Engineer Date		X
	6.3	Set On-the-Job Training Goals (CDOT Region EEO/Civil Rights Specialist) "NA", if Not Applicable		X
3	6.4	Title VI Assurances	X	
6,7		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	X
ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS				
6,7	7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	
7	7.2	Advertise for Bids	X	
7	7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7	7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7	7.5	Open Bids	X	
7	7.6	Process Bids for Compliance		
		Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals. <i>Please write in "NA", if Not Applicable.</i>		X
		Evaluate CDOT Form 1416 - Good Faith Effort Report and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals. <i>"NA", if Not Applicable.</i>		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
7,8	7.9	Award Contract	X	
8	7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT				
8	8.1	Issue Notice to Proceed to the Contractor	X	
8	8.2	Project Safety	X	X
8	8.3	Conduct Conferences:		
		Pre-construction Conference (Appendix B)	X	
		• Fabrication Inspection Notifications	X	
		Pre-survey		
		• Construction staking	X	
		• Monumentation	X	
		Partnering (Optional)	X	
		Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	X	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
		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	8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
9	8.5	Supervise Construction		
		A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Charles Roy 719-553-2271	X	
		Local Agency Professional Engineer or CDOT Resident Engineer Phone number		
		Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
		Construction inspection and documentation	X	
		Fabrication Inspection and documentation	X	
9	8.6	Approve Shop Drawings	X	
9	8.7	Perform Traffic Control Inspections	X	
9	8.8	Perform Construction Surveying	X	
9	8.9	Monument Right-of-Way	X	
9,9A	8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent)		
		Provide the name and phone number of the person authorized for this task. Charles Roy 719-553-2271	X	
		Local Agency Representative Phone number		
9	8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	N/A	
9B	8.12	Prepare and Authorize Change Orders	X	
9B	8.13	Submit Change Order Package to CDOT	X	
9A	8.14	Prepare Local Agency Reimbursement Requests	X	
9	8.15	Monitor Project Financial Status	X	
9	8.16	Prepare and Submit Monthly Progress Reports	X	
9	8.17	Resolve Contractor Claims and Disputes	X	
	8.18	Conduct Routine and Random Project Reviews		
		Provide the name and phone number of the person responsible for this task. Lachelle Davis 719-595-9741		X
		CDOT Resident Engineer Phone number		
9	8.19	Ongoing Oversight of DBE Participation	X	
MATERIALS				
9,9C	9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	X	
9,9C	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
9C	9.3	Perform Project Acceptance Samples and Tests	X	
9C	9.4	Perform Laboratory Verification Tests	X	
9C	9.5	Accept Manufactured Products	X	
		Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
9C	9.6	Approve Sources of Materials	X	
9C	9.7	Independent Assurance Testing (IAT). Local Agency Procedures ☐ CDOT Procedures ☐ • Generate IAT schedule • Schedule and provide notification • Conduct IAT	X X	X
9C	9.8	Approve mix designs • Concrete • Hot mix asphalt	X X	
9C	9.9	Check Final Materials Documentation	X	
9C	9.10	Complete and Distribute Final Materials Documentation	X	
CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE				
9	10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
8,9	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	
9	10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
9	10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
9	10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. • Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements. • Complete CDOT Form 838 – OJT Trainee / Apprentice Record. • Complete CDOT Form 200 - OJT Training Questionnaire	X X X	
9	10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	
9	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
10	11.2	Write Final Project Acceptance Letter	X	
10	11.3	Advertise for Final Settlement	X	
11	11.4	Prepare and Distribute Final As-Constructed Plans	X	
11	11.5	Prepare EEO Certification and Collect EEO Forms	X	
11	11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11	11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11	11.8	Obtain CDOT Form 1419 from the Contractor and Submit to the CDOT Project Manager	X	
	11.9	(FHWA Form 47 discontinued)		
	11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		X
11	11.11	Process Final Payment	X	
	11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11	11.13	Retain Project Records	X	
11	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 ENTERPRISES

SECTION 1. Policy

It is the policy of the Colorado Department of Transportation (CDOT) that Disadvantaged Business Enterprises (DBEs) 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. Accordingly, CDOT's federally approved DBE Program Plan shall apply to this agreement.

SECTION 2. Subrecipient and Participant Obligation.

The Local Agency and its subrecipients agrees to ensure that DBEs certified through the Colorado Unified Certification Program 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.

All participants on contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement shall take all necessary and reasonable steps in accordance with the CDOT's federally approved DBE Program Plan to ensure that DBEs have the maximum opportunity to compete for and perform contracts.

Local Agency subrecipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT and federally assisted contracts.

SECTION 3. DBE Program.

The Local Agency subrecipient shall be responsible for complying with CDOT's FHWA-approved DBE Program Plan.

Local Agency requirements can be found at:

<https://www.codot.gov/business/civilrights>

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.

* * * * *

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	✓	✓	✓



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: AN ORDINANCE 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: SHO M086-101 (25954) GRAND AND 13TH ROUNDABOUT, ACCEPTING A GRANT IN THE AMOUNT OF \$1,485,000.00, ESTABLISHING PROJECT ACCOUNT CI2430, GRAND AVE. & 13TH ROUNDABOUT, TRANSFERRING \$165,000.00 FROM PROJECT ACCOUNT HUAN01, STREET RESURFACING PROJECT TO PROJECT ACCOUNT CI2430, GRAND AVE. & 13TH ROUNDABOUT PROJECT, BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$1,650,000, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance approves an Intergovernmental Agreement ("IGA") between Pueblo, a Colorado Municipal Corporation ("City") and the State of Colorado, Colorado Department of Transportation ("CDOT") accepting a grant in the amount of \$1,485,000, creates Project Account CI2430 for Grand and 13th Roundabout, transfers \$165,000 for the required 10% match from Project Account HUAN01, and budgets and appropriates funds totaling \$1,650,000 for the Project.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

This Ordinance accepts the Federal Highway Safety Improvements Program (HSIP) grant award for Grand and 13th Roundabout.

The City submitted a Federal Highway Safety Improvement Program grant for

improvements at the intersection of Grand Avenue and 13th Street in 2023. Despite the fact this is a signalized intersection, 62% of the crashes were broadsides (front to side) with one being a fatality. Because of the high percentage of broadsides at this intersection, it is a good candidate for a roundabout. The Federal Highway Administration has identified the roundabout construction as one of the most significant accident countermeasure concepts and current speed studies of existing Pueblo roundabouts have shown average speeds in the low 20 miles per hour (MPH) range.

The intersection of Grand Avenue and 13th Street is in close proximity to Parkview Medical Center and Mineral Palace Park. This improvement will enhance the safety of drivers, bicyclists, and pedestrians of all ages and abilities.

The Department of Public Works has reviewed and is familiar with the grant application, award, and associated draft agreement, and to the best of our knowledge and belief, the City has the present ability to comply with all monetary expenditures, special conditions, certifications and assurances therein contained.

FINANCIAL IMPLICATIONS:

The matching funds in the amount of \$165,000.00 will be transferred from Project Account HUAN01, Street Resurfacing to Project Account CI2430, Grand Ave. & 13th Roundabout. Funds in the amount of \$1,650,000.00 shall be budgeted and appropriated for Project Account CI2430.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Currently, there are no alternatives for completing the improvements without the funding from the Highway Safety Improvements Program funds.

RECOMMENDATION:

Approve the Ordinance.

ATTACHMENTS:

1. Draft Agreement (25954)

ORDINANCE NO.

AN ORDINANCE 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: SHO M086-101 (25954) GRAND AND 13TH ROUNDABOUT, ACCEPTING A GRANT IN THE AMOUNT OF \$1,485,000.00, ESTABLISHING PROJECT ACCOUNT CI2430, GRAND AVE. & 13TH ROUNDABOUT, TRANSFERRING \$165,000.00 FROM PROJECT ACCOUNT HUAN01, STREET RESURFACING PROJECT TO PROJECT ACCOUNT CI2430, GRAND AVE. & 13TH ROUNDABOUT PROJECT, BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$1,650,000, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

SECTION 1.

Project Account CI2430, Grand Ave. & 13th Roundabout, 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: SHO M086-101 (25954), Grand and 13th Roundabout, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 3.

Funds in the amount of \$165,000.00 are hereby transferred from Project Account HUAN01, Street Resurfacing to Project Account CI2430, Grand Ave. & 13th Roundabout, and budgeted and appropriated for the Grand Ave. & 13th Roundabout Project Account, CI2430.

SECTION 4.

Subject to encumbrances by the Colorado State Department of Transportation, funds in the amount of \$1,485,000.00 are hereby budgeted and appropriated for the Grand Ave. & 13th Roundabout into Project Account CI2430.

SECTION 5.

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 6.

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 7.

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

Action by City Council:

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

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 INTERGOVERNMENTAL AGREEMENT

Signature and Cover Page

State Agency Department of Transportation			Agreement Routing Number 24-HA2-XC-00042
Local Agency CITY OF PUEBLO			Agreement Effective Date The later of the effective date or March 13, 2024
Agreement Description Grand Ave and 13th Street Roundabout			Agreement Expiration Date March 12, 2034
Project # SHO M086- 101 (25954)	Region # 2	Contract Writer CM	Agreement Maximum Amount \$1,650,000.00

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 By: _____ *Signature Name: _____ (Heather Graham) Title: _____ (Mayor) Date: _____	STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director By: _____ Keith Stefanik, P.E., Chief Engineer Date: _____
2ND LOCAL AGENCY SIGNATURE CITY OF PUEBLO By: _____ *ATTESTED BY Name: _____ (Marisa Stoller) Title: _____ (City Clerk) Date: _____	STATE OF COLORADO 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 Local Agency named on the Signature and Cover Page for this Agreement (“Local Agency”), and the STATE OF COLORADO acting by and through the State agency named on the Signature and Cover Page for this Agreement (the “State” or “CDOT”). Local Agency and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

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

B. Initial Term and Extension

The Parties’ respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on March 12, 2034, 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 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)
Matt Pettit, Local Agency Coordinator
CDOT, Region 2
5615 Wills Blvd.
Pueblo, CO 81008
719-248-0378
matthew.pettit@state.co.us

For the Local Agency

CITY OF PUEBLO
Kelly Grisham, Project Coordinator
211 East D Street
PUEBLO, CO 81003
719-553-2254
kgrisham@pueblo.us

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Local Agency hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Local Agency or any Subcontractors. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Local Agency is under contract with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Local Agency hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Local Agency cannot make any of the assignments required by this section, Local Agency hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from,

or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

In addition, Local Agency grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Local Agency that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

iii. Assignments and Assistance

Whether or not the Local Agency is under Agreement with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

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

C. Exclusive Property of Local Agency

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

18. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. The following applies through June 30, 2022: no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this §19 shall apply. Local Agency agrees to be governed by and comply with the provisions of §24-106-103, §24-102-206, §24-106-106, §24-106-107 C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Local Agency's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

20. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

Local Agency shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Local Agency shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Local Agency in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement.

C. Binding Effect

Except as otherwise provided in **§20.A.** all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Digital Signatures

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

H. Entire Understanding

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

I. Jurisdiction and Venue

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

J. Modification

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

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

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

L. Order of Precedence

In the event of a conflict or inconsistency between this Agreement and any exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i. The provisions of the other sections of the main body of this Agreement.
- ii. **Exhibit N**, Federal Treasury Provisions.
- iii. **Exhibit F**, Certification for Federal-Aid Contracts.
- iv. **Exhibit G**, Disadvantaged Business Enterprise.
- v. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts.
- vi. **Exhibit J**, Additional Federal Requirements.
- vii. **Exhibit K**, Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions.
- viii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form.
- ix. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the "Uniform Guidance").
- x. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds.
- xi. **Exhibit R**, Applicable Federal Awards.
- xii. Colorado Special Provisions in the main body of this Agreement.
- xiii. **Exhibit A**, Scope of Work.
- xiv. **Exhibit H**, Local Agency Procedures for Consultant Services.
- xv. **Exhibit B**, Sample Option Letter.
- xvi. **Exhibit C**, Funding Provisions.
- xvii. **Exhibit P**, SLFRF Subrecipient Quarterly Report.
- xviii. **Exhibit Q**, SLFRF Reporting Modification Form.
- xix. **Exhibit D**, Local Agency Resolution.
- xx. **Exhibit E**, Local Agency Contract Administration Checklist.
- xxi. **Exhibit S**, PII Certification.
- xxii. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source.
- xxiii. Other exhibits in descending order of their attachment.

M. Severability

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

N. Survival of Certain Agreement Terms

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

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§20.C**, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations.

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

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

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

U. Accessibility

- i. Local Agency shall comply with and the Work Product provided under this Agreement shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by the Governor's Office of Information Technology (OIT), pursuant to Section §24-85-103 (2.5), C.R.S. Local Agency shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.
- ii. Each Party agrees to be responsible for its own liability incurred as a result of its participation in and performance under this Agreement. In the event any claim is litigated, each Party will be responsible for its own attorneys' fees, expenses of litigation, or other costs. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to either the Local Agency or the State by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. and Article XI of the Colorado Constitution. Nothing in the Agreement shall be construed as a waiver of any provision of the State Fiscal Rules.
- iii. The State may require Local Agency's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Local Agency's Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

V. Taxes

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

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

These Special Provisions apply to all contracts. Contractor refers to Local Agency and Contract refers to Agreement.

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(19), 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. applicable Local Agency law, rule or regulation.

Financial obligations of the Parties 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: Grand Ave & 13th Roundabout
Project Number: SHO M086-101
SubAccount #: 25954

The local agency shall be responsible for design and construction of a traffic roundabout in the intersection of Grand Avenue and 13th Street in the City of Pueblo. The roundabout shall provide a free flow condition for all turning movements and will eliminate the existing traffic signal.

The general scope of work includes, but is not limited to:

- Design of roundabout
- Removal of existing traffic signal
- Installation of curb and gutter, sidewalk, medians, curb ramps, pavement markings, signage, etc.
- Asphalt pavement patching
- Any utility work that might be necessary
- Erosion and sediment control
- Traffic control
- Any other items pertinent to roundabout construction

Easements and/or right of way acquisition may be 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, Project # SHO M086-101 (25954)****A. Cost of Work Estimate**

The Local Agency has estimated the total cost the Work to be \$1,650,000.00, which is to be funded as follows:

1. FUNDING		
a.	Federal Funds (90% of HSIP Award)	\$1,485,000.00
b.	Local Agency Funds (10% of HSIP Award)	\$165,000.00
TOTAL FUNDS ALL SOURCES		\$1,650,000.00
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	\$1,485,000.00
b.	Less Estimated Federal Share of CDOT-Incurred Costs	\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		90% \$1,485,000.00
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY		10% \$165,000.00
TOTAL PROJECT ESTIMATED FUNDING		100.00% \$1,650,000.00
4. FOR CDOT ENCUMBRANCE PURPOSES		
a.	Total Encumbrance Amount (Federal funds + Local Agency funds)	\$1,650,000.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$0.00
NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS		\$1,650,000.00

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 25954.10.30	Performance Period Start*/End Date TBD - TBD	Design 3020	\$0.00
WBS Element 25954.20.10	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 90% federal funds to 10% Local Agency funds, and this ratio applies only to the \$1,650,000.00 that is eligible for federal funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$1,650,000.00, and additional federal funds are not available, the Local Agency shall pay all such excess costs. If the total

cost of performance of the Work is less than \$1,650,000.00, 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 \$1,485,000.00. For CDOT accounting purposes, the federal funds of \$1,485,000.00 and the Local Agency funds of \$165,000.00 will be encumbered for a total encumbrance of \$1,650,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total budget is \$1,650,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work.**

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 Contract Administration Checklist

COLORADO DEPARTMENT OF TRANSPORTATION			
LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No.: SHO M086-101	STIP No. SR26644	Project Code 25954	Region 02
Project Location Grand Avenue and 13th Street			Date 11/21/23
Project Description Roundabout at the intersection of Grand Avenue and 13th Street			
Local Agency City of Pueblo	Local Agency Project Manager Kelly Grisham		
CDOT Resident Engineer Lachelle Davis	CDOT Project Manager Matthew Pettit		
INSTRUCTIONS: This checklist shall be used to establish the contractual administrative responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency Agreement. Section numbers (NO.) correspond to the applicable chapters of the <i>CDOT Local Agency Desk Reference (Local Agency Manual)</i>. LAWR numbers correspond to the applicable flowchart in the Local Agency Web Resource. 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, # will denote that CDOT must concur or approve. Tasks that will be performed by Headquarters staff are indicated with an X in the CDOT column under Responsible Party. 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.			

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
		TIP / STIP AND LONG-RANGE PLANS		
	2.1	Review Project to ensure it is consistent with STIP and amendments thereto		X
		FEDERAL FUNDING OBLIGATION AND AUTHORIZATION		
	4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement). <i>Please write in "NA", if Not Applicable.</i>		x
		PROJECT DEVELOPMENT		
	5.1	Determine Delivery Method on Infrastructure Projects	X	
1	5.2	Prepare Design Data - CDOT Form 463		X
	5.3	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
2	5.4	Conduct Consultant Selection/Execute Consultant Agreement - Project Development - Construction Contract Administration (including Fabrication Inspection Services)	X X	
3,3A	5.5	Conduct Design Scoping Review Meeting	X	
3,6	5.6	Conduct Public Involvement	X	
3	5.7	Conduct Field Inspection Review (FIR)	X	X

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
4	5.8	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	X
5	5.9	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	X
3	5.10	Obtain Utility and Railroad Agreements	X	
3	5.11	Conduct Final Office Review (FOR)	X	
3A	5.12	Justify Force Account Work by the Local Agency	X	
3B	5.13	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	
3	5.14	Document Design Exceptions - CDOT Form 464	X	
3	5.15	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	X	
	5.16	Ensure Authorization of Funds for Construction		X
	5.17	Electronic Signatures	X	X
	5.18	Records Management	X	X
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE				
3	6.1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist).		X
	6.2	Determine Applicability of Davis-Bacon Act This project ☐ is ☒ is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Lachelle Davis 03/29/2023 _____ CDOT Resident Engineer Date		X
	6.3	Set On-the-Job Training Goals (CDOT Region EEO/Civil Rights Specialist) "NA", if Not Applicable		X
3	6.4	Title VI Assurances	X	
6,7		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	X
ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS				
6,7	7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	
7	7.2	Advertise for Bids	X	
7	7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7	7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7	7.5	Open Bids	X	
7	7.6	Process Bids for Compliance		
		Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals. <i>Please write in "NA", if Not Applicable.</i>		X
		Evaluate CDOT Form 1416 - Good Faith Effort Report and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals. "NA", if Not Applicable.		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
7,8	7.9	Award Contract	X	
8	7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT				
8	8.1	Issue Notice to Proceed to the Contractor	X	
8	8.2	Project Safety	X	X
8	8.3	Conduct Conferences:		
		Pre-construction Conference (Appendix B)	X	
		• Fabrication Inspection Notifications	X	
		Pre-survey		
		• Construction staking	X	
		• Monumentation	X	
		Partnering (Optional)	X	
		Structural Concrete Pre-Pour (Agenda is in CDOT Construction Manual)	X	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
		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	8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
9	8.5	Supervise Construction		
		A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Charles Roy 719-553-2271	X	
		Local Agency Professional Engineer or CDOT Resident Engineer Phone number		
		Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
		Construction inspection and documentation	X	
		Fabrication Inspection and documentation	X	
9	8.6	Approve Shop Drawings	X	
9	8.7	Perform Traffic Control Inspections	X	
9	8.8	Perform Construction Surveying	X	
9	8.9	Monument Right-of-Way	X	
9,9A	8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent)		
		Provide the name and phone number of the person authorized for this task. Charles Roy 719-553-2271	X	
		Local Agency Representative Phone number		
9	8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	N/A	
9B	8.12	Prepare and Authorize Change Orders	X	
9B	8.13	Submit Change Order Package to CDOT	X	
9A	8.14	Prepare Local Agency Reimbursement Requests	X	
9	8.15	Monitor Project Financial Status	X	
9	8.16	Prepare and Submit Monthly Progress Reports	X	
9	8.17	Resolve Contractor Claims and Disputes	X	
	8.18	Conduct Routine and Random Project Reviews		
		Provide the name and phone number of the person responsible for this task. Lachelle Davis 719-595-9741		X
		CDOT Resident Engineer Phone number		
9	8.19	Ongoing Oversight of DBE Participation	X	
MATERIALS				
9,9C	9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	X	
9,9C	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
9C	9.3	Perform Project Acceptance Samples and Tests	X	
9C	9.4	Perform Laboratory Verification Tests	X	
9C	9.5	Accept Manufactured Products	X	
		Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
9C	9.6	Approve Sources of Materials	X	
9C	9.7	Independent Assurance Testing (IAT). Local Agency Procedures ☐ CDOT Procedures ☐ • Generate IAT schedule • Schedule and provide notification • Conduct IAT	X X	X
9C	9.8	Approve mix designs • Concrete • Hot mix asphalt	X X	
9C	9.9	Check Final Materials Documentation	X	
9C	9.10	Complete and Distribute Final Materials Documentation	X	
CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE				
9	10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
8,9	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	
9	10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
9	10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
9	10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. • Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements. • Complete CDOT Form 838 – OJT Trainee / Apprentice Record. • Complete CDOT Form 200 - OJT Training Questionnaire	X X X	
9	10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	
9	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
10	11.2	Write Final Project Acceptance Letter	X	
10	11.3	Advertise for Final Settlement	X	
11	11.4	Prepare and Distribute Final As-Constructed Plans	X	
11	11.5	Prepare EEO Certification and Collect EEO Forms	X	
11	11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11	11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11	11.8	Obtain CDOT Form 1419 from the Contractor and Submit to the CDOT Project Manager	X	
	11.9	(FHWA Form 47 discontinued)		
	11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		X
11	11.11	Process Final Payment	X	
	11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11	11.13	Retain Project Records	X	
11	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 ENTERPRISES

SECTION 1. Policy

It is the policy of the Colorado Department of Transportation (CDOT) that Disadvantaged Business Enterprises (DBEs) 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. Accordingly, CDOT's federally approved DBE Program Plan shall apply to this agreement.

SECTION 2. Subrecipient and Participant Obligation.

The Local Agency and its subrecipients agrees to ensure that DBEs certified through the Colorado Unified Certification Program 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.

All participants on contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement shall take all necessary and reasonable steps in accordance with the CDOT's federally approved DBE Program Plan to ensure that DBEs have the maximum opportunity to compete for and perform contracts.

Local Agency subrecipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT and federally assisted contracts.

SECTION 3. DBE Program.

The Local Agency subrecipient shall be responsible for complying with CDOT's FHWA-approved DBE Program Plan.

Local Agency requirements can be found at:

<https://www.codot.gov/business/civilrights>

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.

* * * * *

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	✓	✓	✓



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: AN ORDINANCE AMENDING SECTION 4-1-14 OF TITLE IV (BUILDING REGULATIONS), CHAPTER 1 (BUILDING DEPARTMENT ADMINISTRATION AND CONTRACTOR'S LICENSES) OF THE PUEBLO MUNICIPAL CODE TO EXEMPT THE CITY FROM THE REQUIREMENTS OF SECTION 4-1-11 RELATING TO LICENSE REQUIREMENTS FOR CONSTRUCTION PERMITTING

SUMMARY:

The Ordinance will amend Section 4-1-14 of the Pueblo Municipal Code to authorize the Director of Public Works or his/her designee to apply for and obtain construction permits on behalf of the City and exempt the City from license requirements outlined in Section 4-1-11.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The Public Works Director will establish a list of designated employees who, based upon their qualifications and experience, will be authorized to apply for and obtain construction permits on behalf of the City. That list will be forwarded to the Building Official and updated from time to time.

This amendment would not affect Licensure requirements for contractors working on City projects. Those contractors would remain subject to the existing licensing requirements. The amendment also does not exempt the City from complying with applicable building codes or from paying applicable plan review or permitting fees set by City Council.

FINANCIAL IMPLICATIONS:

None.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

Failure to pass this Ordinance will prevent the Public Works Director from establishing a list of designated employees that will be authorized to apply for and obtain construction permits on behalf of the City.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE AMENDING SECTION 4-1-14 OF TITLE IV (BUILDING REGULATIONS), CHAPTER 1 (BUILDING DEPARTMENT ADMINISTRATION AND CONTRACTOR'S LICENSES) OF THE PUEBLO MUNICIPAL CODE TO EXEMPT THE CITY FROM THE REQUIREMENTS OF SECTION 4-1-11 RELATING TO LICENSE REQUIREMENTS FOR CONSTRUCTION PERMITTING

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

SECTION 1.

Section 4-1-14 of the Pueblo Municipal Code is amended to read as follows [brackets indicate matter being deleted, underscoring indicates matter being added]:

Sec. 4-1-14. - [Reserved] Permits for City Construction Projects.

(1) The City of Pueblo shall be exempt from the provisions of Section 4-1-11 as specified in this section.

(2) The Building Official shall, upon application by the Director of Public Works or his or her designee, issue permits for construction at City-owned or leased construction sites without regard to licensure status of the applicant.

(3) The Director of Public Works shall prepare a list of City employees authorized to apply for construction permits on behalf of the City. The Director may restrict the type(s) of permits for which each individual may apply. Said list shall be provided to the Building Official and may be updated from time to time by the Director.

(4) Nothing herein shall prohibit an otherwise-qualified City of Pueblo employee from applying for licensure or registration under the provisions of Section 4-1-12. However, only employees designated by the Director of Public Works under Section 4-1-19 (2) shall be authorized to obtain construction permits on behalf of the City.

(5) Nothing herein shall exempt the City from complying with applicable building codes or payment of applicable plan review or permitting fees as established by City Council.

SECTION 2.

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

SECTION 3.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

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

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

President of City Council

ATTEST

City Clerk



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 8, 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 APPROVING AND ACCEPTING A PARTICIPATION AGREEMENT FROM THE COLORADO HOUSING AND FINANCE AUTHORITY, A BODY CORPORATE AND POLITICAL SUBDIVISION OF THE STATE OF COLORADO; REINEN CONSULTANTS LLC, A COLORADO LIMITED LIABILITY COMPANY; THE ESPINOSA GROUP LLC, A COLORADO LIMITED LIABILITY COMPANY; AND THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION FOR THE DONATION OF PRELIMINARY DESIGN AND FEASIBILITY SERVICES FOR THE DEVELOPMENT OF AFFORDABLE HOUSING AT THE FORMER PUEBLO COMMUNITY HEALTH CENTER SITE LOCATED AT 1302 E. 4TH STREET AND 1305 E. 5TH STREET AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance accepts the donation of preliminary design and feasibility services for the development of affordable housing located at 1302 E. 4th Street and 1305 E. 5th Street. CHFA has extended an invitation to utilize their consultants and design specialists to assist the City to produce a design concept that is marketable to developers and the financial sector as well as demonstrate the proposed plan to the surrounding neighborhood.

PREVIOUS COUNCIL ACTION:

No previous action has been taken by Council.

BACKGROUND:

The City acquired the property from the Pueblo Community Health Center late last year using ARPA funds. The site has been cleared of structures.

FINANCIAL IMPLICATIONS:

Not applicable.

BOARD/COMMISSION RECOMMENDATION:

Not applicable.

STAKEHOLDER PROCESS:

Not applicable.

ALTERNATIVES:

Council could elect not to accept the donation of services.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. CHFA Participation Agreement

ORDINANCE NO.

AN ORDINANCE APPROVING AND ACCEPTING A PARTICIPATION AGREEMENT FROM THE COLORADO HOUSING AND FINANCE AUTHORITY, A BODY CORPORATE AND POLITICAL SUBDIVISION OF THE STATE OF COLORADO; REINEN CONSULTANTS LLC, A COLORADO LIMITED LIABILITY COMPANY; THE ESPINOSA GROUP LLC, A COLORADO LIMITED LIABILITY COMPANY; AND THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION FOR THE DONATION OF PRELIMINARY DESIGN AND FEASIBILITY SERVICES FOR THE DEVELOPMENT OF AFFORDABLE HOUSING AT THE FORMER PUEBLO COMMUNITY HEALTH CENTER SITE LOCATED AT 1302 E. 4TH STREET AND 1305 E. 5TH STREET AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

SECTION 1.

The Participation Agreement from the Colorado Housing and Finance Authority dated March 18, 2024 ("Agreement") between the Colorado Housing Finance Authority, a body corporate and political subdivision of the State of Colorado; the Reinen Consultants LLC, a Colorado limited liability company; the Espinosa Group LLC, a Colorado limited liability company, and the City of Pueblo, a municipal corporation to provide a preliminary design and project feasibility services for the development of affordable housing at 1305 E. 4th Street and 1302 E. 5th Street, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

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

SECTION 3.

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

SECTION 4.

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

Action by City Council:

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

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

PROGRAM PARTICIPATION AGREEMENT
CHFA Small-Scale Housing Technical Assistance Program

THIS PROGRAM PARTICIPATION AGREEMENT (this “Agreement”) is dated effective as of March 18, 2024 (the “Effective Date”) by and among: Colorado Housing and Finance Authority, a body corporate and political subdivision of the State of Colorado (“CHFA”); Reinen Consultants, LLC, a Colorado limited liability company (“Reinen”); The Espinosa Group, LLC, a Colorado limited liability company (“Espinosa” together with Reinen are collectively the “Consultants”); and The City of Pueblo, a Municipal Corporation with offices at 1 City Hall Place, Pueblo, Colorado 81003 (the “Project Sponsor”). CHFA, Consultants and Project Sponsor are also referred to in this Agreement each as a “Party” and, collectively, the “Parties”.

RECITALS

- A. Project Sponsor has requested and been selected by CHFA to participate in CHFA’s small-scale housing technical assistance program (the “Program”).
- B. The Program is intended to help catalyze small-scale affordable housing developments by, in part, providing access to housing consultants selected by CHFA, for affordable housing planning and development technical assistance services.
- C. The Parties desire to enter into this Agreement to set forth the terms and understanding in connection with the services to be provided to Project Sponsor under the Program (the “Services”).

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

1. **Program Description.**

- (a) Under the Program, CHFA will match Project Sponsor with the Consultants, to help further the Project Sponsor’s efforts with a small-scale affordable housing development in a community in Colorado. For purposes of this Program, a community includes a neighborhood, city, county, or region of any size, provided such community is within Colorado. CHFA will, taking into consideration the Project Sponsor’s technical assistance needs, pair the Project Sponsor with the consultant(s) of CHFA’s choice in furtherance of the goal of making significant progress towards an actionable affordable housing plan, project, or initiative in Colorado (the “Project”).
- (b) The Services will be available from the Effective Date and ending on the earlier of: i) the date on which the Services as detailed on Exhibit A are completed, or ii) September 18, 2024 (the “Consultant Period”) and will be provided to Project Sponsor during such period free of charge.
- (c) Progress will be assessed through regular calls or meetings by and among the Parties and a final Project report will be submitted by the Project Sponsor to CHFA, in a form acceptable to CHFA, promptly at the end of the Consulting Period.
- (d) Ineligible Pre-development Activities. Notwithstanding if the Project Sponsor may

determine any or all of the following as necessary or otherwise authorized in connection with the Project, the Services may not be used for any of the following:

- i. Any direct or indirect work or expenses associated with a site/parcel rezoning application, including community engagement or outreach;
- ii. Application fees for land use or development approval including, but not limited to, site development plan, building permit, etc.;
- iii. Activities not intended to provide long-term housing affordability;
- iv. Direct or indirect compensation or reimbursement to the Project Sponsor for services rendered or work product; or
- v. Political activities including, but not limited to, state, local, or federal lobbying, candidate, or issue campaign activities or contributions.

2. **Project Manager.**

- (a) The Project Sponsor will designate a project manager to be the Project Sponsor's authorized, point of contact for the Project throughout the Consulting Period (the "Project Manager"). The Project Manager will be fully authorized to act and make any and all decisions on the Project Sponsor's behalf in connection with the Project. CHFA and Consultants may fully rely on any and all statements, representations and communications from the Project Manager in connection with the Project, and the Project Manager will be responsible for all communications to CHFA and Consultants in connection with the Project.
- (b) **The initial Project Manager is the individual named under Project Sponsor's contact information for notices (see Section 13.(c)) below.** Project Sponsor shall promptly notify the other Parties as to any change in the Project Manager as soon as possible, but not later than five (5) business days following such change.

3. **Project Sponsor Responsibilities.** Below are Project Sponsor's responsibilities under this Agreement.

- (a) Taking into consideration Project needs, work with CHFA and Consultants to define the Services, however, CHFA will make the final determination as to the scope of the Services. The Project Sponsor will coordinate, lead or participate in Project meetings, obtain community and other Project-related information, provide housing project input to meet the communities' needs and other activities to maximize the impact of the Services provided under this Program.
- (b) Cooperate with the Consultants and CHFA in connection with the Services including, but not limited to, Project meetings to coordinate work and maximize communication among the Parties.
- (c) Lead and conduct any and all neighborhood and community conversations and engagement. It is the Project Sponsor's responsibility to work closely with the community including, but not limited to, the monitoring of the Project's progress,

answering community questions, managing costs and payments for the Project and problem-solving challenges related to the Project.

- (d) Provide ongoing communication and updates to CHFA and Consultants, as appropriate, as to the Project including community engagement.
- (e) To the extent legally permissible, provide CHFA any reports or documentation relating to the Services or Project, as CHFA may request from time to time.

4. **CHFA Responsibilities.** Below are CHFA's responsibilities under this Agreement.

- (a) Share Project-related information to the Consultants or Project Sponsor which CHFA deems appropriate and helpful in a timely manner to help move the Project forward.
- (b) Inform the Project Manager if CHFA, in its sole discretion, has determined the Consultants relationship is not working, or there is a need to modify the Services. If CHFA determines, in its sole discretion, that any of the original Consultants' engagement is not a good fit, CHFA reserves the right to discontinue the Services and, upon notice to Project Sponsor, terminate this Agreement.

5. **Consultants Responsibilities.** Below are Consultants' responsibilities under this Agreement.

- (a) Provide Services as described on Exhibit A.
- (b) Provide ongoing communication and updates to CHFA and Project Sponsor and attend Project-related meetings and calls with CHFA and Project Sponsor in connection with the provisions of Services.
- (c) To the extent legally permissible, provide CHFA any reports or documentation relating to the Services or Project, as CHFA may request from time to time.

6. **No Representations or Warranties.** Project Sponsor understands and agrees that CHFA's and Consultants' respective roles and responsibilities in connection with the Project under the Program are limited to those specified under this Agreement. Nothing in this Agreement or any part of the Services is, nor should be interpreted as, legal advice, as neither CHFA nor Consultants will provide any legal advice to Project Sponsor including in connection with the Project or this Agreement. Project Sponsor is fully responsible for seeking its own legal, tax, accounting or other professional services advice, if and as needed. Neither CHFA nor Consultants make any representations or warranties as to the Services or the Project including, but not limited to: the completion or success of Project or the appropriateness, suitability, accuracy or benefits of the Services. Project Sponsor assumes any and all risks in connection with its use of the Services.

7. **Additional Funding and Program Costs.**

- (a) **Additional Funding.** CHFA may, in its sole discretion, but is no one way obligated to, expand the Program to offer grants or other funds under this Program (the “Program Funds”). If CHFA offers any such Program Funds, CHFA currently anticipates that those interested will need to separately apply for and be selected by CHFA to receive such Program Funds, subject to applicable terms and conditions, regardless of whether they are or were approved to receive the services of the Consultants under the Program. Notwithstanding the foregoing, CHFA is under no obligation to offer Program Funds and Project Sponsor should not rely on the availability any such funding. For avoidance of doubt, this Agreement including this Section 7(a) relates solely to the Program (defined above) and not to any other CHFA programs.
 - (b) **Additional Program Costs.** Program Sponsor understands and acknowledges the resources CHFA and Consultants are respectively providing to the Project Sponsor for the Project are limited to the Services specified under this Agreement. Project Sponsor is fully responsible for obtaining any additional support, whether financial, professional or otherwise, that it deems necessary and appropriate in connection with the Project.
8. **Agreement Term.** Unless earlier terminated in accordance with its terms, this Agreement will terminate at the end of the Consultant Period. This Agreement will not renew automatically. Sections 6, 8, 9, 10, 11, 12 and 13 of this Agreement shall survive its termination.
9. **Limitation of Liability.** Neither CHFA nor Consultants shall be liable for loss, damage, claims, demands, suits, proceedings, actions, costs, and expenses that results from the Services (collectively, the “Liabilities”) including, but not limited to, for the Project Sponsor’s or Project Manager’s failure to comply with the Agreement terms. Project Sponsor agrees to defend, indemnify and hold CHFA, Consultants and each of their respective directors, officers, employees, representatives and agents harmless from and against any claims, actions, demands, suits, proceedings, losses, damages, costs and expenses, including, without limitation, attorneys’ fees arising from or relating to the Services.
10. **Termination.** CHFA or Project Sponsor may terminate this Agreement, for any reason, upon at least 30 days’ written notice to the other. In addition, if CHFA determines, in its sole discretion, that any of the Services provided to Project Sponsor are not used in accordance with this Agreement or that Project Sponsor is otherwise not in full compliance with this Agreement, then CHFA may, in its sole discretion, upon and in accordance with written notice from CHFA: a) immediately terminate this Agreement, including the Services; or b) immediately suspend Services until any issues or concerns relating to the use of the Services or this Agreement are fully addressed to CHFA’s its satisfaction.
11. **Publications.** Project Sponsor and Consultants agree that CHFA may share including, but not limited to, in CHFA publications any information, descriptions, photos, reports,

and/or outcomes relating to the Project and/or Services by means of any medium of communication, without notice or compensation to Project Sponsor. These may include, but are not limited to: community reports, video presentations, news bulletins, placement on CHFA's websites, CHFA's social media pages, as well as other means of delivery or publications. CHFA is not responsible or liable for any further or subsequent distribution of such publications.

12. **Use of CHFA Name, Logos, and Trademarks.** Nothing in this Agreement gives Project Sponsor or Consultants the right to use CHFA's name, logo(s) or trademark(s) and CHFA is under no obligation to permit such use. Prior to any use in any medium of CHFA's name, logo(s) and/or trademark(s) by or on behalf of Program Sponsor or Consultants including, but not limited to, either of those Parties' respective websites, in marketing literature, press releases, newsletter articles, and/ blog posts, each Party must first obtain CHFA's prior written consent to such use including CHFA's review and approval of the final form of such use. Notwithstanding the foregoing, CHFA may at any time, upon notice to Program Sponsor and/or Consultants, as applicable, withdraw any prior approval of the use of CHFA's name, logo(s) and/or trademark(s) and Program Sponsor and/or Consultants, as applicable, shall thereafter take reasonable steps to promptly cease its use thereof.

13. **Miscellaneous.**

- (a) **Relationship of Parties.** Each Party and its respective employees, officers, directors, representatives and agents are at all times acting and performing separately and independently of the other Parties and are in no way or manner to represent themselves as employees, officers, directors, representatives and agents of the other Parties. This Agreement shall not create a joint venture, partnership, or relationship of principal and agent or employer and employee between or among the Parties.
- (b) **Legal Review.** Each Party has had the opportunity for their respective legal counsel to review and fully address any of such Party's questions or concerns relating to this Agreement.
- (c) **Notice.** All notices, demands, and other communications given or delivered under this Agreement shall be in writing and shall be deemed to have been given: (i) when received if given in person; (ii) three days after being deposited in the U.S. mail, certified or registered mail, postage prepaid; (iii) one day after being deposited with a reputable overnight courier; or (iv) by electronic transmission at the email address provided below, with written confirmation of receipt. Notices, demands, and communications to the Parties shall, unless another address is specified in writing, be sent to the address indicated below.

If to CHFA: Colorado Housing and Finance Authority
1981 Blake Street
Denver, CO 80202
Attention: Manager, Regional Community Relationships
Email: jplakorus@chfainfo.com

If to Consultant: Reinen Consultants, LLC
1501 Wazee St. #5B
Denver, CO 80202
Attn: Tim Reinen
Email: tim@reinenconsulting.com

The Espinosa Group, LLC
10917 Ouray Street
Commerce City, CO 80022
Attn: Joseph Espinosa
Email: joseph@theespinosa.group

If to Project Sponsor*: City of Pueblo
1 City Hall Place
Pueblo, CO 81003
Attn: Heather Graham, Mayor
Email: mayor@pueblo.us

*Unless Project Sponsor notifies the other Parties in writing otherwise, the Project Sponsor's contact information (above) shall also be deemed that of the Project Manager.

- (d) Amendment. This Agreement may be amended only by a writing signed by all of the Parties and shall be binding upon and inure to the benefit of the Parties and their successors and assigns.
- (e) Assignment. No Party may assign their rights under this Agreement to any third party without the prior written consent of the other Parties.
- (f) Severability. If any provision of this Agreement shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision in other circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
- (g) Confidentiality. To the extent legally permissible, the Project Sponsor and Consultants shall keep the terms of this Agreement confidential.
- (h) CORA. As a political subdivision of the State of Colorado, CHFA is subject to the Colorado Open Records Act (CORA) C.R.S. §§ 24-72-201, et seq., which requires CHFA to permit inspection and copying of public records. The Parties should be aware that documents submitted to CHFA pursuant to this Agreement may be subject to

inspection by the public.

- (i) Governing Law. This Agreement and the obligations of the Parties hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of Colorado, excluding its conflicts of law provisions. 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, and each Party irrevocably submits and consents to the exclusive personal jurisdiction of the courts located in the City and County of Denver. The Parties agree to waive the right to a trial before a jury.
- (j) Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person or entity other than the Parties and their respective successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement. In addition, Project Sponsor shall have no legal or equitable right, benefit or remedy of any nature under or by reason of any contract which CHFA and any of the Consultants may have or may in the future enter into regarding the Services.
- (k) Counterpart Signatures. This Agreement may be executed on separate counterparts, each of which, when so executed and delivered, shall be deemed an original and all of which, taken together, shall constitute one and the same agreement.
- (l) Electronic Signatures. The electronic signatures of the Parties included in this Agreement, in any form, is intended to authenticate this writing, bind it hereto, and to otherwise have the same force and effect as a manual signature. Delivery of a copy of this Agreement bearing an original or electronic signature by electronic mail in portable document format (.pdf) form, or by any other electronic means intended to preserve the original form of the document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives effective as of the Effective Date.

CHFA:

Colorado Housing and Finance Authority

By:_____

Title: Manager, Regional Community
Relationships

Name: John G. Plakorus

CONSULTANTS:

Reinen Consultants LLC

By:_____

Title: Principal

Name: Tim Reinen

The Espinosa Group, LLC

By:_____

Title: Managing Principal

Name: Joseph Espinosa

PROJECT SPONSOR:

City of Pueblo

By:_____

Title: Mayor

Name: Heather Graham

Exhibit 'A' - Scope of Work and Description of Services

5th Street - Pueblo, Colorado

T.A. PRIMARY POINT OF CONTACT: Joseph Espinosa (joseph@theespinosa.group), Tim Reinen (tim@reinenconsulting.com)

SPONSOR CONTACT: TBA

PROJECT PROGRAM (subject to change): Define project goals, site concept/ masterplan, financial modeling, and funder matchmaking.

PROJECT ADDRESS: 1305 E. 4th Street and 1302 E. 5th Street, Pueblo, CO

PROJECT PROGRAM/ NARRATIVE:

The Technical Assistance Team shall work directly with the project sponsor(s) to translate stakeholder voice into a community beneficial action plan (*as clarified in the S.H.I.P. guidelines*) and a feasible concept plan. Project analysis and activities will generally consist of initial concept design or masterplanning, financial viability or modeling, and a recommended action plan to advance the project.

Concept design may include initial site plan and exterior renderings to show the overall concept design of the project. A maximum of three alternative initial design options will be provided in the early stages of this phase of work relating to site exploration and potential density. Financial analysis may include recommendations for funding opportunities, initial project financial modeling, and/ or matchmaking with partners and funders. A final action plan (*or report*) will be submitted to the project sponsor recommending a course of action aligning with initial program objectives. Below is an itemized list of activities that align with project needs, however, are subject to change based on project requirements.

ITEMIZED SCOPE OF WORK:

TOTAL T.A. HOURS ALLOTTED: 100 Hours (*Not to exceed*)

TASK NUMBER	TASK TITLE
1	Stakeholder Meetings and Site Visits
1.1	Stakeholder Meeting Preparation
1.2	Stakeholder Meeting/ Design Workshop/ Project Goals and Measures of Success
2	Concept Design and Masterplanning
2.1	Program Research & Site Viability
2.2	Concept Design and Masterplanning
3	Project Financing and Action Plan
3.1	Prelim Financial Model
3.2	Funding Recommendations
3.3	Identifying potential roles and next steps
4	Reporting
4.1	Final Action Plan creation & graphics



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 8, 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 AMENDING SECTION 17-2-2(84) OF CHAPTER 4 OF TITLE XVII OF THE PUEBLO MUNICIPAL CODE RELATING TO THE USE DEFINITION OF A MANUFACTURED HOME, ONE-FAMILY

SUMMARY:

Attached for consideration is an Ordinance that amends Section 17-2-2 (84) of Chapter 4 of the Pueblo Municipal Code relating to the definition of a manufactured home, one family, that follows Manufactured Housing Construction and Safety Standards.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

Under the existing code a Manufactured home, one family, is not allowed to be "less than twenty-four (24) feet in width and thirty-six (36) feet in length," resulting in a minimum 864 sq. ft. manufactured residential structure. The current minimum size and structure dimensions limits the ability to place different sized manufactured and modular homes on single family lots even when they are built to HUD and IBC standards. Manufactured homes have evolved in the last several years, resulting in a multitude of sizes and architectural styles. The City's definition of manufactured homes includes all residences that are wholly or partially constructed in a factory, which includes manufactured homes, modular homes, panelized homes, and pre-cut homes. Manufactured homes are constructed to HUD standards; however, the other types of factory-built homes are often built to standard building codes adopted by the State of Colorado specifically for residences constructed in a factory. These homes are required to be placed on an engineered foundation and must comply with the City's residential placement standards, Section 17-4-11 of the Pueblo Municipal Code. Current demand trends show a need for smaller, affordable, and alternate designs in this building type. Increased flexibility in the code allows the Planning Department the tools to work with developers to increase housing stock while maintaining appropriate design standards.

FINANCIAL IMPLICATIONS:

There are no financial implications for the City.

BOARD/COMMISSION RECOMMENDATION:

The Planning and Zoning Commission, at their March 13, 2024, 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 17-2-2 (84), relating to the use definition of Manufactured Home, one-family, 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-23-02 Attachments

ORDINANCE NO.

AN ORDINANCE AMENDING SECTION 17-2-2(84) OF CHAPTER 4 OF TITLE XVII OF THE PUEBLO MUNICIPAL CODE RELATING TO THE USE DEFINITION OF A MANUFACTURED HOME, ONE-FAMILY

(brackets indicate matter being deleted, underscoring indicating matter being added)

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

SECTION 1.

Section 17-2-2 (84) of the Pueblo Municipal Code is hereby amended to read as follows:

Sec. 17-2-2. Use definitions

...

(84) Manufactured home, one-family means a single-family dwelling which:

a. Is partially or entirely manufactured in a factory;

[b.] [Is not less than twenty-four (24) feet in width and thirty-six (36) feet in length;]

[c.] b. Is designed for and placed upon an engineered [permanent] foundation;

[d.] c. Has brick, wood or cosmetically equivalent exterior siding on all exterior walls which provides a consistent, continuous facade from the bottom of the soffit (top of wall section) downward to the exposed perimeter wall, foundation or to grade, whichever is applicable, and has a pitched roof; and

[e.] d. Is manufactured after 1976 and certified pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., as amended (commonly referred to as the "HUD" Code; effective in 1976) and all regulations enacted pursuant thereto, including any local modifications that are expressly allowed by federal law, or which have been certified by the State as being in compliance with the requirements of the [Uniform Building Code] Colorado Division of Housing's Building Codes and Standards (BCS) [as adopted by the State and enforced and administered by the Colorado Division of Housing.]

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 _____.

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

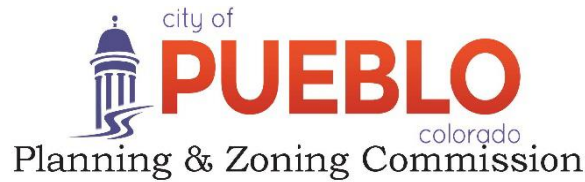
ATTEST

City Clerk

Mike Castellucci
Chair

Patrick Avalos
Vice Chair

Roger Gomez
City Council Representative



Christopher Pasternak

Alexandra Aznar

Elizabeth Bailey

Cheryl Spinuzzi

MINUTES OF REGULAR MEETING

City of Pueblo, Colorado

Wednesday, March 13, 2024 – 3:30 p.m.

City Council Chambers, 1 City Hall Place

The meeting was called to order at 3:31 p.m. with Commissioner Castellucci presiding.

Commissioners Present: Mike Castellucci, Patrick Avalos, Cheryl Spinuzzi, Lisa Bailey, Roger Gomez, Alexander Aznar, Christopher Pasternak.

Commissioners Absent:

Staff Members Present: David Wyatt, Assistant City Attorney; Scott Hobson, Acting Director of Planning and Community Development, Beritt Odom, Principal Planner; Wade Broadhead, Senior Planner, Mikaylin Hackley, Planner, and Cindy Capritta, Land Use Tech. Kelly Grisham, Project Coordinator, Public Works, Joe Martellaro, Engineer, Public Works.

Staff Members Absent: None

Approval of the Agenda: Bailey motioned to approve the agenda, seconded by Avalos.

Motion Passed: 7-0

Public Hearing:

8. TA-23-02 Amendment of Section 17-2-2 (84) of the Pueblo Municipal Code relating to the use definition of a Manufactured Home, One Family. Staff Report by Beritt Odom.

Hearing: Being sworn in, Vincent Hall and Carlos Atilano spoke in support of the Text Amendment. No one spoke in opposition.

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

Motion Passed: 7-0.

Approval of Minutes:

TEXT AMENDMENT TA-23-02

TO: City of Pueblo Planning and Zoning Commission

FROM: Bart Mikitowicz, Senior Planner

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

DATE: March 13th 2024

SUBJECT: AN ORDINANCE AMENDING SECTION 17-2-2 (84) OF CHAPTER 4 OF TITLE XVII OF THE PUEBLO MUNICIPAL CODE RELATING TO THE USE DEFINITION OF MANUFACTURED HOME, ONE-FAMILY

BACKGROUND AND ANALYSIS:

Under the existing code a Manufactured home, one family, is not allowed to be “less than twenty-four (24) feet in width and thirty-six (36) feet in length,” resulting in a minimum 864 sq. ft. manufactured residential structure. The current minimum size and structure dimensions limits the ability to place different sized manufactured and modular homes on single family lots even when they are built to HUD and IBC standards. Manufactured homes have evolved in the last several years, resulting in a multitude of sizes and architectural styles. The City’s definition of manufactured homes includes all residences that are wholly or partially constructed in a factory, which includes manufactured homes, modular homes, panelized homes, and pre-cut homes. Manufactured homes are constructed to HUD standards; however, the other types of factory-built homes are often built to standard building codes adopted by the State of Colorado specifically for residences constructed in a factory. By definition, these homes are required to be placed on an engineered foundation and must comply with the City’s residential placement standards, Section 17-4-11 of the Pueblo Municipal Code.

Current demand trends show a need for smaller, affordable, and alternate designs in this building type. Increased flexibility in the code allows the Planning Department the tools to work with developers to increase housing stock while maintaining appropriate design standards.

RECOMMENDATION:

Staff recommends that the Planning and Zoning Commission forward a recommendation of approval of the proposed text amendment to City Council.

ATTACHMENTS:

Draft Ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION TWO OF CHAPTER TWO OF TITLE XVII OF THE PUEBLO MUNICIPAL CODE RELATING TO THE USE DEFINITION OF A MANUFACTURED HOME, ONE-FAMILY.

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that: (brackets indicate matter being deleted, underscoring indicates new matter being added)

SECTION 1.

Section 17-2-2 (84) of the Pueblo Municipal Code is hereby amended to read as follows:

Sec. 17-2-2. Use definitions

. . .

(84) Manufactured home, one-family means a single-family dwelling which:

- a. Is partially or entirely manufactured in a factory;
- [b.] [Is not less than twenty-four (24) feet in width and thirty-six (36) feet in length;]
- [c.] b. Is designed for and placed upon an engineered [permanent] foundation;
- [d.] c. Has brick, wood or cosmetically equivalent exterior siding on all exterior walls which provides a consistent, continuous facade from the bottom of the soffit (top of wall section) downward to the exposed perimeter wall, foundation or to grade, whichever is applicable, and has a pitched roof; and
- [e.] d. Is manufactured after 1976 and certified pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., as amended (commonly referred to as the "HUD" Code; effective in 1976) and all regulations enacted pursuant thereto, including any local modifications that are expressly allowed by federal law, or which have been certified by the State as being in compliance with the requirements of the [Uniform Building Code] Colorado Division of Housing's Building Codes and Standards (BCS) [as adopted by the State and enforced and administered by the Colorado Division of Housing.]

SECTION 2.

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

SECTION 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: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Marisa Pacheco, Director of Human Resources
Chris Noeller, Chief of Police

SUBJECT: AN ORDINANCE AMENDING THE FISCAL YEAR 2024 STAFFING ORDINANCE BY ADDING ONE (1) FULL-TIME POSITION TO THE AUTHORIZED STAFFING OF THE POLICE DEPARTMENT ENTITLED PD COMMUNITY ENGAGEMENT MANAGER

SUMMARY:

The Police Department requests the addition of one full-time position, entitled PD Community Engagement Manager, to enhance the operational efficiency of the department and provide specifically trained staff to handle the media and public relations needs of the Police Department.

PREVIOUS COUNCIL ACTION:

On December 11, 2023, Ordinance No. 10613 was approved by City Council. This Ordinance provided authorized staffing for Fiscal Year 2024.

BACKGROUND:

The need for professional public relations and communication services for the Police Department has continued to increase. Given the known staffing challenges for sworn personnel in the Pueblo Police Department, the addition of a full-time position to handle public information officer and community engagement duties will facilitate the transition of a sworn team member back to mission critical police work. This is part of the civilianization efforts to move sworn staff back to primary police duties vs. performing office work that could better be performed by specifically trained civilian staff.

The PD Community Engagement Manager will work in the Executive Office of the Chief of Police and report directly to the Chief. The position will be responsible for the information flow between the Pueblo Police Department and internal and external stakeholders. Increasing community engagement is a priority of Mayor Graham's administration and this position will be directly supportive of increasing citizen

engagement with the Police Department. The position will supervise the filled full-time social media specialist and part-time social media content creator to maximize community connection and ensure consistency in messaging. The manager will coordinate department public affairs and media relations to increase brand awareness, promote transparency and foster understanding of public safety issues within the community. In addition, the manager will lead internal communication efforts to ensure the vision and goals of the Chief of Police and the Mayor are effectively communicated throughout the department.

The creation of this position benefits the community by freeing up a sworn member for other duties, providing the department with a person specifically trained and experienced in media and public relations, and increasing transparency both internally and externally. Positions like this have become more and more important in law enforcement with increased community expectations of transparency, the need to communicate quickly and effectively in large-scale critical incidents hitting communities of all sizes, and the need to be present and active in a variety of social media and media platforms. Increasingly, these positions around the country are being converted from sworn positions to civilian because of their training and experience to communicate in front of a camera and build relationships with members of the media and the citizens.

FINANCIAL IMPLICATIONS:

The cost of the additional position for the remainder of 2024 is estimated to be \$52,669 which includes salary and benefits for six months which will account for the time it takes to post and go through the Civil Service hiring process. The department has existing salary savings to cover this cost for 2024.

COSTS

PD Community Engagement Manager

Cost Item	Approximate Annual Cost	Estimated Actual Cost 2024 (6 months)
Salary	\$ 70,639	\$ 35,320
Retirement (PERA)	\$ 10,031	\$ 5,015
Health Insurance	\$ 23,275	\$ 11,638
Dental Insurance	\$ 296	\$ 148
Life Insurance	\$ 72	\$ 36
Medicare	\$ 1,024	\$ 512
Estimated Position Cost per position	\$ 105,338	\$ 52,669

BOARD/COMMISSION RECOMMENDATION:

Not Applicable.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

The no action alternative would be to retain staffing levels as they are which is not operationally desirable, especially given the staffing shortage of certified peace officers.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE AMENDING THE FISCAL YEAR 2024 STAFFING ORDINANCE BY ADDING ONE (1) FULL-TIME POSITION TO THE AUTHORIZED STAFFING OF THE POLICE DEPARTMENT ENTITLED PD COMMUNITY ENGAGEMENT MANAGER

WHEREAS, it is necessary to revise the positions for the ultimate efficiency and functionality for the City of Pueblo Police Department; NOW THEREFORE,

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

SECTION 1.

The following section captioned "Police" of Ordinance No. 10613, being the 2024 Staffing Ordinance, are amended as follows:

<u>Police</u>	
Police Chief	1
Police Deputy Chief	3
Police Captain	8
Police Sergeant	25
Police Corporal	55
Police Patrol Officer	115
Abandoned Vehicle Coordinator	1
Abatement Worker	2
Administrative Technician	2
Building Custodian	1
Code Enforcement Manager	1
Code Enforcement Officer	9
Community Service Officer	6
Crime Analyst	1
Dispatch Manager	1
Dispatch Training Coordinator	1
Emergency Services Dispatcher	24
Emergency Services Dispatcher Supervisor	3
Office Assistant/ Police Records Technician	11
Office Assistant/Investigations Technician	1
Office Assistant/Police Services Technician	1
Office Assistant/Property & Evidence Technician	3
<u>PD Community Engagement Manager</u>	<u>1</u>
Police Payroll Technician	2
Police Records Manager	1
Real Time Crime Center Technician	4
Senior Office Assistant	8
Social Media Specialist	1
Total	[291] 292

SECTION 2.

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

SECTION 3.

This Ordinance shall be deemed to amend the Fiscal Year 2024 Budget and staffing with respect to the number and allocation of positions within the Police Department and shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

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

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

President of City Council

ATTEST

City Clerk



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Chris Noeller, Chief of Police
Marisa Pacheco, Director of Human Resources

SUBJECT: AN ORDINANCE AMENDING SECTION 6-5-16 OF CHAPTER 5, OF TITLE VI OF THE PUEBLO MUNICIPAL CODE RELATING TO THE FY 2024 CLASSIFICATION AND PAY PLAN BY ESTABLISHING THE PAY SCALE FOR PD COMMUNITY ENGAGEMENT MANAGER

SUMMARY:

Attached for consideration is an amended Pay Plan Ordinance that reflects the addition of the pay rate and salary schedule for the classification of PD Community Engagement Manager. The position will be funded by General Fund salary savings for the remainder of 2024.

PREVIOUS COUNCIL ACTION:

On December 11, 2023, Ordinance No.10614 was approved by City Council. This Ordinance provided the classification and pay plan for fiscal year 2024.

BACKGROUND:

The Police Department requests the addition of a full-time position to perform public and media relations duties, manage the social media presence for the department and to increase transparency and community engagement with the citizens of Pueblo. The new classification title will be PD Community Engagement Manager. Historically, a sworn Police Sergeant has performed the work. The civilianization of this work represents a positive way to reassign scarce law enforcement resources to perform other duties and is a consistent staffing model employed in other police departments throughout the state to handle this function.

This position will be a classified position within the City and subject to all Civil Service rules with respect to hiring.

FINANCIAL IMPLICATIONS:

There is no required additional funding for 2024 as costs associated with the position as outlined below are estimated as \$52,669 for the remainder of the 2024 fiscal year and will be covered by existing salary savings.

COSTS

PD Community Engagement Manager

Cost Item	Approximate Annual Cost	Estimated Actual Cost 2024 (6 months)
Salary	\$ 70,639	\$ 35,320
Retirement (PERA)	\$ 10,031	\$ 5,015
Health Insurance	\$ 23,275	\$ 11,638
Dental Insurance	\$ 296	\$ 148
Life Insurance	\$ 72	\$ 36
Medicare	\$ 1,024	\$ 512
Estimated Position Cost per position	\$ 105,338	\$ 52,669

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

The suggested change establishes the 2024 salary range for the classification of PD Community Engagement Manager. If this ordinance is not approved, and assuming the establishment of the PD Community Engagement Manager position is approved, no salary range will be associated with the classification and the position cannot be filled.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE AMENDING SECTION 6-5-16 OF CHAPTER 5, OF TITLE VI OF THE PUEBLO MUNICIPAL CODE RELATING TO THE FY 2024 CLASSIFICATION AND PAY PLAN BY ESTABLISHING THE PAY SCALE FOR PD COMMUNITY ENGAGEMENT MANAGER

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

SECTION 1.

Section 6-5-16 (B) of Chapter 5, of Title VI, of the Pueblo Municipal Code referencing the Fiscal Year 2024 pay scale for the classification of PD Community Engagement Manager.

6-5-16. Schedule, classification, work week and monthly salary.

The following shall constitute:

2. The monthly pay range for the classification of PD Community Engagement Manager for 2024

<i>CLASS TITLE</i>	<i>BASE SALARY</i>	<i>MERIT PAY RANGES GRANTED UNDER SECTION 6-5-1(B)</i>					
(B) ADMINISTRATIVE							
PD Community Engagement Manager	5886.62	6096.86	6307.10	6517.34	6727.58	6937.82	7148.08

SECTION 2.

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

SECTION 3.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

President of City Council

ATTEST

City Clerk



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Carla Sikes, City Attorney

SUBJECT: AN ORDINANCE AMENDING THE FISCAL YEAR 2024 STAFFING ORDINANCE BY CONVERTING ONE (1) FULL-TIME ASSISTANT CITY ATTORNEY I POSITION TO A DEPUTY CITY ATTORNEY WITHIN THE AUTHORIZED STAFFING OF THE LAW DEPARTMENT

SUMMARY:

The City Law Department requests conversion of one full-time vacant Assistant City Attorney I position to the classification of Deputy City Attorney to enhance the operational efficiency of the department and meet the increased demands for legal services within the City organization.

PREVIOUS COUNCIL ACTION:

On December 11, 2023, Ordinance No. 10613 was approved by City Council. This Ordinance provided authorized staffing for Fiscal Year 2024.

BACKGROUND:

The Law Department is currently staffed with seven full-time attorney positions. Every legal document, ordinance, resolution, and legal issue in the City is routed through the Law Department for review, resolution, or approval. Within the City organization, there are eighteen City departments with forty-eight specific functions of specialized law as outlined below:

DEPARTMENT OR FUNCTION
Administrative Enforcement- Liquor and Marijuana
Administrative Enforcement- Abatements (including Demolitions, Lien Enforcement & Collections) and Code Enforcement
Administrative Enforcement- All other Departments
Airport
Animal Shelter

Annexations
City Clerk
City Council (Mayor/Elected Officials/Council Meetings)
City Council (Council Representation/Legislative)
Civil Service Commission
Economic Development
Finance/ARPA
Finance – Business Licensing
Fire Department
Fleet
Franchises
HARP
Housing & Citizen Services
Human Resources
Human Resources – Discipline
Information Technology
Labor Grievances & Arbitrations
Labor Grievances & Arbitrations – Discipline
Legislation
Litigation & Liaison to Outside Counsel
Liquor Board
Marijuana Board
Mayor / Chief of Staff
Municipal Court
Municipal Court Prosecutor
Parks & Recreation
Pension Boards
Planning & Community Development (HPC)
Planning & Zoning Commission and ZBA
Police Department
Police Department – Internal Affairs
Public Records – CCJRA (Regular and IA)
Public Records – SDTs (civil and criminal)
Public Records – CORA
Public Works
Pueblo Area Council of Governments (PACOG)
Purchasing
Regional Building
Sales & Use Tax
Stormwater
Transit
Urban Renewal
Wastewater

Each attorney is assigned 7-10 departments/functions above. The assignment to staff ratio is less than efficient, with a more appropriate ratio of 4-5 to one attorney.

The Law Department has added one attorney position in the last eight years. During the same time period, the City organization has grown and expanded significantly, as have the legal issues to be reviewed and resolved. An analysis of the staffing levels and workload within the Law Department has been performed. The analysis revealed that current service demands exceed existing staff capacity. As a result, there are delays, a decrease in responsiveness and the excessive workload on the current attorney staff is detrimental to the overall operational efficiency of the City.

As the previous request to City Council to add three attorneys was not supported, the City Attorney, with the Mayor's concurrence recommends conversion of one vacant Assistant City Attorney I position to the classification of Deputy City Attorney. This will allow more complex legal work to be disbursed within the office on a more appropriate basis.

Additionally, the ordinance provides a consolidated classification series of an Assistant City Attorney I/II/III to provide flexibility to hire attorneys at the appropriate level based on legal experience and assignment area for future vacancies. This modified staffing request will facilitate a critical rebalancing of workload and will allow the Law Department to timelier respond to requests, to review and respond to community development prospects, avoid preventable project delays, and minimize lost opportunities for the City.

There will be no change in the total staffing of the Legal Department if the requested changes are approved.

FINANCIAL IMPLICATIONS:

The cost of the converted position will be the difference between the vacant Assistant City Attorney I funding to a Deputy City Attorney classification with an estimated cost of \$60,181 for the remainder of 2024.

The department has salary savings through April of approximately \$76,085.22 to cover the conversion cost, therefore there is no additional cost for this conversion for the remainder of 2024.

COSTS

Assistant City Attorney (I/II/III)

Cost Item	Approximate Annual Cost	Estimated Actual Cost 2024 (7 months)
Salary (currentI funded @ ACA I)	\$ 74,793	\$ 43,629
Retirement (PERA)	\$ 10,621	\$ 6,195
Health Insurance	\$ 23,275	\$ 13,577
Dental Insurance	\$ 296	\$ 173
Life Insurance	\$ 72	\$ 42
Medicare	\$ 1,084	\$ 633
Estimated Position Cost per position	\$ 110,141	\$ 64,249

Deputy City Attorney

Cost Item	Approximate Annual Cost	Estimated Actual Cost 2024 (7 months)
Salary	\$ 164,000	\$ 95,667
Retirement (PERA)	\$ 23,288	\$ 13,585
Health Insurance	\$ 23,275	\$ 13,577
Dental Insurance	\$ 296	\$ 173
Life Insurance	\$ 72	\$ 42
Medicare	\$ 2,378	\$ 1,387
Estimated Position Cost per position	\$ 213,309	\$ 124,430

\$ 60,181

There is no cost associated with the change of the Assistant City Attorney series.

BOARD/COMMISSION RECOMMENDATION:

Not Applicable.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

The no-action alternative would be to retain staffing levels as they are which is not operationally beneficial given the significant demand for legal support.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE AMENDING THE FISCAL YEAR 2024 STAFFING ORDINANCE BY CONVERTING ONE (1) FULL-TIME ASSISTANT CITY ATTORNEY I POSITION TO A DEPUTY CITY ATTORNEY WITHIN THE AUTHORIZED STAFFING OF THE LAW DEPARTMENT

WHEREAS, it is necessary to revise the positions for the ultimate efficiency and functionality for the City of Pueblo Law Department; NOW, THEREFORE,

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

SECTION 1.

The following section captioned "Law Department" of Ordinance No. 10613, being the 2024 Staffing Ordinance, are amended as follows:

Law Department

City Attorney	1
Deputy City Attorney	[1]2
Assistant City Attorney I/II/III	[3]4
[Assistant City Attorney II	1]
]Assistant City Attorney III	1]
Legal Assistant	1
Legal Support Assistant	1
Total	9

SECTION 2.

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

SECTION 3.

This Ordinance shall be deemed to amend the Fiscal Year 2024 Budget and staffing with respect to the number and allocation of positions within the Law Department and shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

President of City Council

ATTEST

City Clerk



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 8, 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: A RESOLUTION AUTHORIZING AND APPROVING TRANSFER OF \$3,311,597.29 FROM THE 1992-2026 SALES AND USE TAX CAPITAL IMPROVEMENT PROJECTS FUND TO PROJECT NO. ED2402 TO FUND, IN PART, CONSTRUCTION OF THE HARP CHANNEL EXTENSION AND BOATHOUSE PROJECT, A REGIONAL TOURISM ACT PROJECT

SUMMARY:

This Resolution authorizes the transfer of \$3,311,597.29 from the 1992-2026 Sales and Use Tax Capital Improvement Projects Fund to Project No. ED2402 – HARP Channel Extension and Boathouse Project.

PREVIOUS COUNCIL ACTION:

On December 10, 2012, by Resolution 12554, City Council acknowledged receipt of the Colorado Economic Development Commission's Resolution No. 1 effective May 18, 2012, concerning the dedication of specified state sales tax increment revenue for the titled "Pueblo Professional Bull Riders University and Heritage of Heroes Project" of which the HARP channel extension and boathouse were described as Phase II of the project.

On November 24, 2014, by Ordinance 8801, City Council amended the Half-Cent Sales Tax Criteria Ordinance to authorize the use of half-cent sales tax funds for "a regional tourism project, approved by the Colorado Economic Development Commission, which qualifies for state sales tax increment revenue pursuant to the Colorado Regional Tourism Act, C.R.S. 24-46-301 *et seq.* By the same Ordinance, City Council amended the definition of *Primary Job* to also mean "employment resulting from a regional tourism project..."

BACKGROUND:

The Pueblo Professional Bull Riders University and Heritage of Heroes Project is a

multi-phased project. The HARP Channel Extension and Boathouse Project (the "Project") for which the City is currently seeking funding approval is Phase II of that project. The project will include demolition of the existing eastern channel terminus, construction of a new channel eastward to Santa Fe Drive, new and retrofitted utilities, paving and hardscapes, drainage, site electrical and lighting, landscape improvements, and the construction of a new two-story building. The building will be used to house boats and equipment and HARP offices as well as provide a rooftop open area which can be used for public events.

FINANCIAL IMPLICATIONS:

The total cost of the project is as follows:

PROJECT COSTS	
Base Bid – Channel	\$4,212,227.00
Base Bid – Boathouse	9,088,834.00
Add Alts #1 – 7	<u>943,812.00</u>
Sub-total	\$14,244,873.00
Black Hill Estimate (separate cost)	<u>277,383.73</u>
Sub-total	\$14,522,256.73
10% Contingency	<u>\$1,452,225.00</u>
TOTAL PROJECT COST	\$15,974,481.73
PROJECT REVENUE	
County 1A	\$9,000,000.00
DOLA Grant	1,000,000.00
DOLA Match – City GF/Unappropriated fund	1,000,000.00
ARPA Lost Revenue	945,000.00
ARPA – Basic Funds	517,884.44
PURA	<u>200,000.00</u>
Sub-total	\$12,662,884.44
RTA/Sale & Use Tax	<u>3,311,597.29</u>
	\$15,974,481.73

BOARD/COMMISSION RECOMMENDATION:

Recommend Approval.

STAKEHOLDER PROCESS:

Not applicable to this Resolution.

ALTERNATIVES:

City Council could decide not to authorize the transfer of funds from the 1992-2026 Sales and Use Tax Capital Improvement Projects Fund for payment for construction of

the HARP Channel Extension and Boathouse Project.

RECOMMENDATION:

Approval of this Resolution.

ATTACHMENTS:

None

RESOLUTION NO.

A RESOLUTION AUTHORIZING AND APPROVING TRANSFER OF \$3,311,597.29 FROM THE 1992-2026 SALES AND USE TAX CAPITAL IMPROVEMENT PROJECTS FUND TO PROJECT NO. ED2402 TO FUND, IN PART, CONSTRUCTION OF THE HARP CHANNEL EXTENSION AND BOATHOUSE PROJECT, A REGIONAL TOURISM ACT PROJECT

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The City finds and determines that the expenditure of \$3,311,597.29 for the construction of the HARP Channel Extension and Boathouse Project, a Regional Tourism Act Project, meets and complies with the criteria and standards established by Section 14-4-85 of the Pueblo Municipal Code and will create primary jobs as defined in Section 14-4-85.1(7) of the Pueblo Municipal Code justifying the expenditure of public funds.

SECTION 2.

Funds in the amount of \$3,311,597.29 are hereby authorized to be transferred, expended, and made available out of the 1992-2026 Sales and Use Tax Capital Improvement Projects Fund for the construction of the HARP Channel Extension and Boathouse Project. Funds shall be transferred to Project No. ED2402.

SECTION 3.

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

SECTION 4.

This Resolution shall become effective immediately upon final passage.

INTRODUCED: April 8, 2024

BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 8, 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: A RESOLUTION APPROVING PAYMENT IN THE AMOUNT OF NINE HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$945,000) FROM PROJECT CI2113 - AMERICAN RESCUE PLAN ACT FOR THE CONSTRUCTION OF THE BOATHOUSE 1A PROJECT TO BE COMPLETED IN CONJUNCTION WITH THE HARP CHANNEL EXTENSION, AS AUTHORIZED BY SECTION 603(C)(1)(C) OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR 35.6

SUMMARY:

This Resolution authorizes payment in the amount of \$945,000 from Project CI2113 American Rescue Plan Act ("ARPA") for a government capital improvement project to build a new two-story building on city-owned property to be used by HARP as a boathouse, office space, and a rooftop public event space. This payment is authorized by section 603 (c)(1)(C) of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6.

PREVIOUS COUNCIL ACTION:

Not applicable to this Resolution.

BACKGROUND:

ARPA authorized a revenue replacement calculation that would allow state and local governments to use a portion of ARPA allocation for governmental services. Under ARPA, the City's lost revenue as a result of COVID-19 pandemic has been calculated to be \$10 million.

Under the attached proposed Resolution, ARPA funds will be used to construct a new two-story building on city-owned property to be used by HARP as boat and equipment storage, office space, and a rooftop public event space. The space will encourage outdoor recreation and allow greater social distancing thereby preventing the spread of

new variants of the COVID-19 virus.

FINANCIAL IMPLICATIONS:

Funding in the amount of \$945,000 will be paid out of Project CI2113 - American Rescue Plan.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Resolution.

STAKEHOLDER PROCESS:

Not applicable to this Resolution.

ALTERNATIVES:

City Council could decide not to authorize the payment for construction of the boathouse.

RECOMMENDATION:

Approval of this Resolution.

ATTACHMENTS:

None

RESOLUTION NO.

A RESOLUTION APPROVING PAYMENT IN THE AMOUNT OF NINE HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$945,000) FROM PROJECT CI2113 - AMERICAN RESCUE PLAN ACT FOR THE CONSTRUCTION OF THE BOATHOUSE 1A PROJECT TO BE COMPLETED IN CONJUNCTION WITH THE HARP CHANNEL EXTENSION, AS AUTHORIZED BY SECTION 603(C)(1)(C) OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR 35.6

WHEREAS, the American Rescue Plan Act ("ARPA") authorizes a revenue replacement calculation which allows local governments to use a portion of their total ARPA allocation for government services. Under ARPA, the City's lost revenue as a result of the COVID-19 pandemic has been calculated to be \$10 million; and

WHEREAS, under this Resolution, ARPA funds will be used to construct a new two-story building on city-owned property to be used by HARP for office space, boat storage, and a rooftop public event space; and

WHEREAS, the HARP channel extension and Boathouse 1A Project will provide needed boat and equipment storage as well as a community gathering space. The project will encourage outdoor recreation and allow greater social distancing, thereby preventing the spread of new variants of the COVID-19 virus; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The transfer of funds in the amount of nine hundred forty-five thousand dollars (\$945,000) is hereby authorized from Project CI2113 – American Rescue Plan Act to construct the Boathouse 1A Project in conjunction with the HARP channel extension.

SECTION 2.

The officers of the City are authorized and directed 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 immediately upon final passage.

INTRODUCED: April 8, 2024

BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: April 8, 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: A RESOLUTION APPROVING PAYMENT IN THE AMOUNT OF \$517,884.44 FROM PROJECT CI2113 - AMERICAN RESCUE PLAN ACT FOR THE CONSTRUCTION OF NECESSARY INFRASTRUCTURE RELATED TO THE BOATHOUSE 1A AND HARP CHANNEL EXTENSION PROJECT, AS AUTHORIZED BY SECTION 603(C)(1)(A) OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR § 35.6(B)(3)(II)(A)(5)

SUMMARY:

This Resolution authorizes payment in the amount of \$517,884.44 from Project CI2113 American Rescue Plan Act ("ARPA") for the construction of necessary infrastructure related to the Boathouse 1A and HARP Channel Extension Project. This payment is authorized by section 603 (c)(1)(A) of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR §35.6(B)(3)(ii)(A)(5).

PREVIOUS COUNCIL ACTION:

By Ordinance No. 9931, approved 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 Rescue 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:

On March 11, 2021, President Biden signed the U.S. Senate-amended H.R.1319 (P.L.117-2), now known as ARPA, and 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"). Statistics demonstrate that the COVID-19 pandemic was especially devastating to the City and surrounding areas of Pueblo County:

- The infection rate of the Pueblo County population is the second highest in the

state at 12.1% (only .3% less than Adams County);

- Pueblo County suffered the highest death rate in the state, with 2.1% of positive cases resulting in death;
- Pueblo County accounts for just under 3% of Colorado's population, but 6% of the state's COVID-19 deaths occurred here.

To remedy some of the impacts within the City, the City will utilize the \$517,884.44 as follows:

- \$124,265.73 10% of the demolition
- \$258,727.17 sanitary sewer
- \$134,891.54 water improvements

The funds will be used to provide the necessary infrastructure required to construct a new two-story building on city-owned property to be used by HARP as boat and equipment storage, office space, and a rooftop public event space. The space will encourage outdoor recreation and allow greater social distancing and thereby prevent the spread of new variants of the COVID-19 virus.

FINANCIAL IMPLICATIONS:

Funding in the amount of \$517,884.44 will be paid out of Project CI2113 - American Rescue Plan.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Resolution.

STAKEHOLDER PROCESS:

Not applicable to this Resolution

ALTERNATIVES:

City Council could decide not to authorize the payment for construction of the necessary infrastructure.

RECOMMENDATION:

Approval of this Resolution.

ATTACHMENTS:

None

RESOLUTION NO.

A RESOLUTION APPROVING PAYMENT IN THE AMOUNT OF \$517,884.44 FROM PROJECT CI2113 - AMERICAN RESCUE PLAN ACT FOR THE CONSTRUCTION OF NECESSARY INFRASTRUCTURE RELATED TO THE BOATHOUSE 1A AND HARP CHANNEL EXTENSION PROJECT, AS AUTHORIZED BY SECTION 603(C)(1)(A) OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR § 35.6(B)(3)(II)(A)(5)

WHEREAS, under this Resolution, ARPA funds will be used to construct necessary infrastructure required to complete a new two-story building on city-owned property to be used by HARP for office space, boat and equipment storage, and a rooftop public event space; and

WHEREAS, the Boathouse 1A and HARP Channel Extension Project will encourage outdoor recreation and provide a community gathering space, allow greater social distancing and thereby prevent the spread of new variants of the COVID-19 virus; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The transfer of funds in the amount of five hundred seventeen thousand eight hundred eight-four dollars and 44/100 (\$517,844.44) is hereby authorized from Project CI2113 – American Rescue Plan Act to construct the necessary infrastructure for the Boathouse 1A and HARP Channel Extension Project.

SECTION 2.

The officers of the City are authorized and directed 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 immediately upon final passage.

INTRODUCED: April 8, 2024

BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Heather Graham, Mayor

SUBJECT: A RESOLUTION APPROVING AND ACCEPTING THE FUNDS IN THE AMOUNT OF \$200,000 FROM THE PUEBLO AMERICAN RESCUE PLAN ACT (ARPA) COVID-19 RECOVERY TO THE PUEBLO URBAN RENEWAL AUTHORITY FOR THE HISTORIC ARKANSAS RIVERWALK OF PUEBLO ("HARP") EXPANSION OF THE CANAL AND BOATHOUSE ("PROJECT") AND BUDGETING AND APPROPRIATING THE \$200,000 TO PROJECT NO. CI2432 AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME

SUMMARY:

This Resolution accepts the \$200,000 funds from the Pueblo American Rescue Plan ("ARPA") for the Pueblo Urban Renewal Authority to assist in the Historic Arkansas Riverwalk of Pueblo ("ARPA") Project, the demolition of the eastern channel, construction of utilities, landscaping, and a two-story building in the Arkansas Riverwalk.

PREVIOUS COUNCIL ACTION:

The Council has previously approved the expenditure of Pueblo American Rescue Plan ("ARPA") Revenue Replacement/Government Services funds for other governmental projects.

BACKGROUND:

The Pueblo American Rescue Plan ("PURA") COVID-19 RECOVERY is providing \$200,000 to Historic Arkansas Riverwalk of Pueblo ("ARPA") for the benefit of the Project for channel extension and a two-story bathhouse.

FINANCIAL IMPLICATIONS:

Administrative costs for funds transfer and expenditure.

BOARD/COMMISSION RECOMMENDATION:

Recommend approval.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

None.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

None

RESOLUTION NO.

A RESOLUTION APPROVING AND ACCEPTING THE FUNDS IN THE AMOUNT OF \$200,000 FROM THE PUEBLO AMERICAN RESCUE PLAN ACT (ARPA) COVID-19 RECOVERY TO THE PUEBLO URBAN RENEWAL AUTHORITY FOR THE HISTORIC ARKANSAS RIVERWALK OF PUEBLO ("HARP") EXPANSION OF THE CANAL AND BOATHOUSE ("PROJECT") AND BUDGETING AND APPROPRIATING THE \$200,000 TO PROJECT NO. CI2432 AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME

WHEREAS, This Resolution accepts the \$200,000 funds from the Pueblo American Rescue Plan ("PURA") for the Pueblo Urban Renewal Authority to assist in the Historic Arkansas Riverwalk of Pueblo ("ARPA") Project, the demolition of the eastern channel, construction of utilities, landscaping, and a two-story building in the Arkansas Riverwalk and the funds to be paced in Project No. CI2432.

WHEREAS, The HARP Channel Extension and Boathouse Project will leverage community assets to build resilience in the community; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The acceptance of funds from Pueblo American Rescue Plan ("PURA") to PURA is in furtherance of completion of the HARP Project and, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

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

SECTION 3.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: April 8, 2024

BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Regina Maestri, Councilor

SUBJECT: A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2024 GENERAL FUND BUDGET TO THE SOUTHERN COLORADO EQUALITY ALLIANCE IN THE AMOUNT OF \$280 TO SPONSOR THE SPRING FLING BANQUET ON SATURDAY, APRIL 6, 2024 AT COLORADO STATE UNIVERSITY PUEBLO

SUMMARY:

Attached for consideration is a request for support of the Southern Colorado Equality Alliance (SCEA) in the amount of \$280 to sponsor a table at the Spring Fling Banquet on Saturday, April 6, 2024 at Colorado State University Pueblo

PREVIOUS COUNCIL ACTION:

Council sponsored this event in 2023 with \$560.

BACKGROUND:

SCEA's mission is to bring LGBTQ and ally communities together through education, advocacy and empowerment for support and inclusion. The Spring Fling hosts a social hour, dinner, and awards for "person of the year" for a community member who has made a positive impact in the LGBTQ+ community in the past year.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$280 would be paid from the Council Contingencies Account in the 2024 General Fund Budget to the Southern Colorado Equality Alliance.

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 Regina Maestri.

ATTACHMENTS:

1. SCEA - CITY OF PUEBLO SPONSORSHIP REQUEST 2024
2. 2024 Contingencies (Council) SCEA Spring Fling

RESOLUTION NO.

A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2024 GENERAL FUND BUDGET TO THE SOUTHERN COLORADO EQUALITY ALLIANCE IN THE AMOUNT OF \$280 TO SPONSOR THE SPRING FLING BANQUET ON SATURDAY, APRIL 6, 2024 AT COLORADO STATE UNIVERSITY PUEBLO

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Payment in the amount of \$280 from the Council Contingencies Account in the 2024 General Fund Budget is authorized to be paid to Southern Colorado Equality Alliance to sponsor the Spring Fling banquet on Saturday, April 6, 2024 at Colorado State University Pueblo.

SECTION 2.

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

SECTION 3.

This Resolution shall become effective upon passage and approval.

INTRODUCED: April 8, 2024

BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK



CITY OF PUEBLO SPONSORSHIP REQUEST

Date of Request: March 19, 2024

Name: Ray Packard

Business/Non-Profit Name: Southern Colorado Equality Alliance

Phone: 719-821-9730 E-Mail: info@socoequality.com

Name of Event/Program: SCEA's Spring Fling

Date of Event/Program: April 6, 2024 Amount requested: \$500

*****Supporting documents must be attached to this request*****

Make check payable to:

Business/Non-Profit Name: Southern Colorado Equality Alliance

Address: P.O. Box 602, Pueblo, CO 81002

Phone: 719-685-7900

Please note: If the payee listed above is not an established vendor with the City of Pueblo, the application must be completed before payment can be processed. If payee is an active vendor with the City of Pueblo we will confirm the information listed above. If the information does not match our records, it must be updated before payment can be processed.

OFFICE USE ONLY:

Amount approved: _____ Supporting Councilmember: _____

Agenda date: _____ Vendor Confirmation Date: _____

[illegible]



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Sarah Martinez, Councilor

SUBJECT: A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2024 GENERAL FUND BUDGET TO C CUBED TRAINING IN THE AMOUNT OF \$700 TO SPONSOR THE INTERNATIONAL DAY OF GIRLS IN IT CELEBRATION ON THURSDAY, APRIL 25 FROM 10 AM - 2 PM AT THE CYBER CUBE IN WATER TOWER PLACE

SUMMARY:

Attached for consideration is a request for support of the International Day of Girls in IT Celebration on Thursday, April 25 from 10 am - 2 pm at the Cyber Cube in Water Tower Place in the amount of \$700.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

International Girls in ICT Day is an annual event that takes place on the fourth Thursday of April to raise awareness about the gender gap in the information and communications technology (ICT) sector and encourage girls to explore careers in this field.

Women are nearly absent from software development, engineering, technology research, academia as well as at the highest levels of policy making. They also tend to leave science and technology jobs at higher rates than men.

While there is a leadership gender gap in every industry, the largest gaps are found in the STEM fields. Women in ICT often find themselves in junior or support roles rather than in managerial roles, with little opportunity for advancement. They are also less likely to hold an executive position, become ICT entrepreneurs, or be represented among science and technology policymakers.

To thrive in STEM, girls and young women must be exposed to women in leadership positions, fostering inspiration and breaking down barriers that hinder their progress.

The Girls in ICT Day 2024 theme aims to address these challenges, encouraging empowerment and leadership development for a more equitable future in STEM.

FINANCIAL IMPLICATIONS:

Payment of funds in the amount of \$700 would be paid from the Council Contingencies Account in the 2024 General Fund Budget to the C Cubed Training.

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. 2024 Contingencies (Council) C Cubed Training
2. C Cubed Contribution Form
3. International Day of Girls in IT FLYER

RESOLUTION NO.

A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2024 GENERAL FUND BUDGET TO C CUBED TRAINING IN THE AMOUNT OF \$700 TO SPONSOR THE INTERNATIONAL DAY OF GIRLS IN IT CELEBRATION ON THURSDAY, APRIL 25 FROM 10 AM - 2 PM AT THE CYBER CUBE IN WATER TOWER PLACE

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Payment in the amount of \$700 from the Council Contingencies Account in the 2024 General Fund Budget is authorized to be paid to C Cubed Training to sponsor the International Day of Girls in IT Celebration on Thursday, April 25 from 10 am - 2 pm at the Cyber Cube in Water Tower Place.

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: April 8, 2024

BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK

[illegible]



C³Training
Training Future Cyber Warriors Today
www.CCubedTraining.com

Thank you for your support of Pueblo's youth and their exciting future in
Computer Defense and Cyber Security!

International Day of Girls in IT Sponsorship Form

Thursday April 25, 2024

Company Name

Address

Phone Number

Email

Sponsorship Type* (Please Select Box)

- | | |
|---|---|
| ☐ <u>Gold</u> Partner - \$1,000 | Total Sponsorship
Amount:\$_____ |
| ☐ <u>Silver</u> Partner - \$500 | |
| ☐ <u>Bronze</u> Partner - \$250 | |
| ☐ <u>Other</u> - ? | |

Individual Authorizing Sponsorship (printed)

Signature of Individual Authorizing Sponsorship

Date

*Make Check Payable To: **C-Cubed Training***

1922 CR650, Rye, CO 81069

719-252-5168

*C Cubed is a 501c3 Colorado Certified Non-Profit dedicated to K-12
Cybersecurity Education throughout southern Colorado*

GIRLS and GUYS are INVITED!!

Help Us Celebrate

International
HACKED day of
Girls in IT

Register Now!

(deadline is April 19)

<http://tinyurl.com/Cyber-Cube>

Where? at the Cyber Cube!
303 S Santa Fe Ave
Pueblo, CO

When? April 25th, 2024

9:30am - Check in / Snacks
10:00am - Welcome!
10:30am - "What You Need To Know!"
11:00am - Question and Answer
11:30am - Lunch
12:30pm - Introduction to CTF
1:00pm - Game Starts!
(powered by Deloitte International)
2:00pm - Good Bye!



find out more about the International Day of Girls in ICT

<https://nationaltoday.com/international-girls-in-ict-day>



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Andra Ahrens, Director Wastewater

SUBJECT: AN ORDINANCE BUDGETING AND APPROPRIATING \$721,825 FROM UNAPPROPRIATED FUND BALANCE FROM THE SEWER USER FUND, ESTABLISHING PROJECT WW2403 WRF MASTER PLAN, AND APPROVING AN AGREEMENT IN THE AMOUNT OF \$721,825 BETWEEN THE CITY OF PUEBLO AND BROWN AND CALDWELL INC. FOR PROFESSIONAL SERVICES ASSOCIATED WITH UPDATING THE JAMES R. DILORIO WATER RECLAMATION FACILITY MASTER PLAN FOR THE CITY OF PUEBLO AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance accepts an agreement between the City and our Engineer of Record, Brown and Caldwell, Inc. to provide professional services to upgrade the James R. Dilorio Water Reclamation Facility's Master Plan, budgets and appropriates \$721,825 from unappropriated fund balance from the Sewer User Fund, and established project WW2403 WRF Master Plan.

PREVIOUS COUNCIL ACTION:

Resolution No. 15497 awarded an agreement between the City of Pueblo and Brown and Caldwell, Inc., to provide engineering services for the Pueblo Wastewater Department, on February 12, 2024.

BACKGROUND:

The City of Pueblo operates the James R. Dilorio Water Reclamation Facility to provide treatment of municipal wastewater. The Water Reclamation Facility was constructed in the mid-1980s and came online in 1987. The primary goal of this Master Plan is to develop a capital improvement plan that identifies projects related to aging infrastructure, regulatory changes, and growth.

The Master Plan Update will renew the previous 2014 Master Plan done by Brown and

Caldwell Inc. This update to the plan is needed to identify triggers for the expansion of the water reclamation facility due to growth within the City, the technology and cost of treating nutrients to the anticipated water quality limits, and assess and support a 10-year capital improvement plan. The plan will summarize known and anticipated regulatory drivers (e.g., nutrient standards) and identify projects that achieve regulatory compliance, either in part or in whole, while maintaining a functional and operational facility. Review triggers for wastewater facility expansion. Provide capacity needs assessment and summarize known and anticipated flow and loading changes to the facility. Evaluate the capacity of each unit process to inform of any plant expansion needs. Including known and anticipated renewal and replacement costs for existing major process equipment. Prepare a Master Plan, supporting a 10-year capital improvement plan.

FINANCIAL IMPLICATIONS:

Funds for payment for professional services under said Agreement in an amount not to exceed \$721,825 shall be paid by establishing Project WW2403 and budgeting and appropriating \$721,825 from the unappropriated fund balance of the Sewer User fund.

BOARD/COMMISSION RECOMMENDATION:

Not applicable

STAKEHOLDER PROCESS:

None

ALTERNATIVES:

The alternative to performing the Master Plan is to perform capital improvement projects on a reactive basis rather than proactively, causing decisions to be made and work to be performed in a less efficient and/or more costly manner.

RECOMMENDATION:

Approval of Ordinance

ATTACHMENTS:

1. 03-25-24 Pueblo Master Plan_Scope and Fee_FINAL_02.09.24
2. 03-25-24 Ordinance 23-130 BC - Final Agmt FacilityMaster Plan Update - City and BC approved

ORDINANCE NO.

AN ORDINANCE BUDGETING AND APPROPRIATING \$721,825 FROM UNAPPROPRIATED FUND BALANCE FROM THE SEWER USER FUND, ESTABLISHING PROJECT WW2403 WRF MASTER PLAN, AND APPROVING AN AGREEMENT IN THE AMOUNT OF \$721,825 BETWEEN THE CITY OF PUEBLO AND BROWN AND CALDWELL INC. FOR PROFESSIONAL SERVICES ASSOCIATED WITH UPDATING THE JAMES R. DIORIO WATER RECLAMATION FACILITY MASTER PLAN FOR THE CITY OF PUEBLO AND AUTHORIZING THE MAYOR TO EXECUTE SAME

WHEREAS, the City operates the James R. Dilorio Water Reclamation Facility for the purpose of treating municipal wastewater; and

WHEREAS, the City desires to be proactive in preparing a Master Plan that identifies projects related to aging infrastructure, regulatory changes, and growth; and

WHEREAS, the City is obligated to comply with the effluent limits contained in its discharge permit; and

WHEREAS, Brown and Caldwell, Inc. is the Consultant Engineer of Record and is the most qualified to serve the Pueblo Wastewater Department; NOW, THEREFORE,

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

SECTION 1.

The Agreement for Professional Services by and between Pueblo, a Colorado Municipal Corporation, and Brown and Caldwell, Inc., a true copy of which is attached hereto and incorporated herein by reference (the "Agreement") having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

Funds for payment for professional services under said Agreement in an amount not to exceed \$721,825 shall be paid by establishing Project 2403 and budgeting and appropriating \$721,825 from the unappropriated fund balance of the Sewer User fund.

SECTION 3.

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

SECTION 4.

The officers and staff of the City are directed and authorized to perform any and all acts consistent with the intent of this Ordinance and the attached agreement to effectuate the transactions described therein.

SECTION 5.

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

Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on March 25, 2024.

Final adoption of Ordinance by City Council on April 8, 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

2024 City of Pueblo
Water Reclamation Treatment and
Facility Master Plan Update
Scope of Services

Prepared for
City of Pueblo
February 2024

Project Overview

Pueblo has requested Brown and Caldwell (BC) to prepare a 2024 City of Pueblo Water Reclamation Treatment and Facility Master Plan Update (Project) that identifies capital improvements necessary to maintain cost-effective, reliable service, and identify upcoming regulatory requirements. Specifically, in addition to a 10-year Capital Improvement Plan (CIP), this Master Plan Update is to identify system pinch points, including adequate redundancy, ability to serve predicted growth, and impacts of the identified upcoming regulatory requirements.

This Scope of Services covers activities necessary to prepare a Master Plan Update for the James R. Dilorio Water Reclamation Facility (JRDWRF) and contributing lift stations, for the City of Pueblo, Wastewater Department (Pueblo). This Master Plan Update will use results and data from relevant previous work completed for Pueblo, including the 2006 Master Plan by Black & Veatch, the 2014 Master Plan by BC, and the Collection System Master Plan completed by BC in 2020.

The proposed work will address issues throughout the facility to support development of a 10-year CIP. It will also provide a framework for capital and renewal and replacement (R&R) projects over the next decade.

This Scope of Services describes the professional services to be provided by BC for the Project. This Scope of Services includes the following phases:

- Phase 100 – Project Management
- Phase 200 – Planning Objectives and Inputs
- Phase 300 – Process Analysis and Alternatives Evaluation
- Phase 400 – Infrastructure Renewal and Replacement
- Phase 500 – SCADA System Evaluation
- Phase 600 – Triggers and Pinch Points
- Phase 700 – Future Tools and Assessments
- Phase 800 – Capital Improvement Plan

Project Objectives

This scope lays out the categories for review as part of this Master Plan Update, as well as the expectations associated with each task. The specifics of the project objectives will be considered in the first task of the Master Plan Update, which may result in revisions to the attached scope. The following are included in the scope herein:

- Summarize known and anticipated regulatory drivers (e.g., nutrient standards) and identify projects that achieve regulatory compliance, either in part or in whole, while maintaining a functional and operational facility.
- Review triggers for wastewater facility expansion.
- Provide capacity needs assessment - summarize known and anticipated flow and loading changes to the facility.
- Evaluate the capacity of each unit process to inform of any plant expansion needs.
- Coordinate with and summarize the outcomes of the on-going Sustainability Study currently being developed by Brown and Caldwell. Include the Sustainability report findings as needed for potential additions to the CIP.

- Summarize known and anticipated renewal and replacement costs for existing major process equipment. Evaluate facility needs and current processes/procedures:
 - Condition review based on equipment age, interviews with appropriate operational staff, and expected useful life.
 - Asset management system.
 - Preventative maintenance system.
- Prepare a Supervisory Control and Data Acquisition (SCADA) evaluation to identify needs and planning projects that can be implemented within 5 years.
- Identify potential optimization and efficiency opportunities for future consideration.
- Prepare a master plan, supporting a 10-year CIP.

Pueblo will provide BC with available and relevant information to aid in the planning process. This includes but is not limited to:

- Existing CIP
- Information regarding past and ongoing Pueblo projects
- Growth maps and studies from planning department
- 2021 rate study (or the most recent)
- Past four years of operational data, including a wastewater characterization analysis
- Operating costs and best operating practice documentation
- Original costs of equipment where available
- Information regarding public sector outsourcing
- Information on existing electrical, instrumentation, and controls
- Access to operations and other knowledgeable Pueblo staff
- Timely review and comments within agreed upon schedules

Project Assumptions

The following general assumptions were made in the development of this Scope of Services. Additionally, task specific assumptions are listed as part of each task.

Data Assumptions:

- The Master Plan Update will update the previous 2014 Master Plan. The following information will be summarized and included in the Update as described in the scope based on Pueblo provided information:
 - Population projections and land-use planning.
 - Flow projections.
 - Influent wastewater characterization. If recent wastewater characterization data is not available, BC will work with Pueblo to develop an influent sampling plan to collect the most recent influent wastewater characteristics as appropriate or needed.
- Evaluation of underground utilities will be based on maintenance records and record drawings provided to BC by Pueblo. Physical investigation or any other independent verification of underground utilities is not included in this scope of work.
- Pueblo will provide a list of critical equipment for the condition assessment described in Phase 400 (Renewal and Replacement). The equipment list will include equipment numbers, installation year, O&M history, original installation cost, and repair and replacements costs as available. Up to 500 individual pieces of equipment will be reviewed as part of this phase. Pueblo will provide

knowledgeable O&M staff to accompany BC staff for a walkthrough of the facility for the condition assessment tasks.

- BC will use elevations shown on as-built drawings or surveyed elevations provided by Pueblo to construct the hydraulic profile. Independent verification of elevations is not included in this scope of work.

Limits of Scope – in addition to those noted within Scope description:

- Scope is limited to the tasks included herein. Scope items in Agreement Schedule 1 not included herein are not to be performed.
- Discussions of asset management and criticality analysis will be limited to the condition assessment for major process equipment only as defined in Phase 400.
- Site stormwater capacity and process impacts to be reviewed as they may impact future improvement needs and O&M. Stormwater condition assessment not included.
- The viability of producing Class A biosolids is not addressed in this scope (currently part of Sustainability Study).
- Lift stations will be evaluated for capacity only.
- Except for the lift stations, an evaluation of the collection system is also not included.
- Design and implementation of identified projects are not included.
- The following SCADA items are not included in this Master Plan Update scope, but they may be recommended for future phases based on the results in the Update:
 - Detailed examination of Pueblo wastewater remote pumping stations for current conditions assessment, and project identification and long-range control system upgrade needs based on the results of this project.
 - Development of a control system standards binder and general specifications to be used in the design and implementation of future automation projects.
- The Update does not include an optimization and efficiency study. Observations and staff interviews regarding optimization and efficiency will be captured and documented for future study.

Schedule:

- The anticipated start date of the project is April 2024 with an estimated duration of 12 months. See Attachment 1 – Schedule. The accompanying schedule assumes review comments or responses will be provided within 10 business days of submittal of technical memoranda or data requests and 30 business days for the complete Draft Master Plan Update.

Effort and Budget:

- BC may shift budget between work tasks as necessary to complete the work.
- The initial effort is limited to the budget identified in the attached fee estimate. See Attachment 2 – Compensation. If the effort to complete the identified tasks exceeds the estimate, the PM will coordinate with Pueblo to identify areas where BC can limit our effort to the available budget.

Deliverables:

- Pueblo will provide a single set of consolidated comments to BC for each deliverable. The reports and/or technical memoranda will be revised according to comments and scope of work.
- All deliverables in this Scope will be provided electronically. Electronic copies will be in MSWord files and/or Adobe PDF.
- Meeting summary to be provided following each meeting.

Scope of Services

Phase 100 – Project Management and Administration

Project Management and Administration includes the following activities:

- Project Management Planning
- Project Controls and Reporting
- Project Meetings
- Project Closeout

Task 110: Project Management Planning

The Project Management Plan will document the key project information required by all project team members to assist them in executing the project to meet the required objectives: on-time, on-budget, high quality, and meeting Pueblo's critical success factors. The key elements of the project plan are described below:

- Project Charter, which will establish the project goals, objectives, and critical success factors.
- Project team members, their roles, and responsibilities, including a staffing plan (management, engineering, QA/QC, etc.)
- Scope of Services with work breakdown structure
- Project schedule updates will be provided in monthly progress reports if changes have been made and agreed upon by City
- Project budgets
- Communications Plan
- Risk Management Plan
- QA/QC Plan
- Project documentation plan and file structure
- Change management process
- Health and Safety Plan for field work, if applicable

Task 120: Project Control and Reporting

Monthly invoices will be prepared and submitted to Pueblo the format used for current projects.

Monthly project status reports will be prepared and submitted to Pueblo. These reports will include:

- Summary of services completed since the previous report.
- Current project schedule and budget status.
- Project issues and potential change logs.
- Milestones and/or deliverables scheduled in the coming month.

This task also includes periodic project reviews by BC management to provide QA/QC and assure that the project is meeting Pueblo's critical success factors, is on schedule, and within budget.

Task 130: Project Meetings

BC will meet with Pueblo every month in person or by phone to review project status, coordinate project activities, obtain direction, and answer specific questions relating to the project. Two members of the consultant team will participate. The budget covers travel to ten meetings over the course of the project, assuming a 12-month schedule.

Conference call updates will be held monthly, between progress meetings with the designated City Project Manager. Two members of the BC team will participate in a one-hour, monthly conference call with the designated City Project Manager.

Project meetings will be combined with workshops when practical.

Task 140: Project Close-out

During project close-out, BC will resolve all final invoices to Pueblo, consolidate and archive all project files, and meet with Pueblo to review the project performance and achievement of project objectives.

Phase 100 Meetings:

- Monthly status calls; one hour each, 2 BC members

Phase 100 Deliverables:

- Monthly Status call minutes
- Monthly invoices and progress reports
- Change log

Phase 200 – Planning Objectives and Inputs

Task 210: Kickoff Workshop and Planning Objectives

The Master Planning Kickoff Workshop will be conducted by key members of the BC team and Pueblo organization. BC will prepare the agenda and materials for this Kickoff Workshop and will facilitate discussions around project scope, budget, schedule, roles, responsibilities, lines of communication, document management and deliverables. Additionally, the team will have initial discussions around permitting drivers, flow and load information, existing process data and gaps, and process modeling and optimization. An outcome of this workshop (Workshop 1) will be to agree on planning goals and the decision-making criteria and processes expected to be used through the planning effort.

Task Assumptions: Task includes review of existing information and preparation for the workshop.

Meetings:

- Workshop (WS) 210 – Kickoff. In-person, 3 key BC staff, 4-hour workshop.

Deliverables:

- WS 210 agenda, presentation materials, and meeting minutes.
- Technical Memorandum (TM) 210 - Project Charter including planning goals and the decision-making criteria and processes.

Task 220: Potential Regulatory Influencers

BC will summarize the known and potential regulatory influences that may impact the facility CIP and operations that BC is aware of at the time of this task, with an update at the Final Master Plan Update report. BC is currently providing regulatory support in parallel under a separate contract. This section is here to summarize the key findings as they influence this Master Plan Update analysis and report.

Specific regulatory issues addressed include:

- Clean Water Act: nitrogen, phosphorus, arsenic, selenium, sulfate, TDS/conductivity, chloride, nonylphenol, temperature, *E. coli*, PFAS, FOG, and ammonia
- Local Regulations
- Industrial Pretreatment
- Biosolids: 503 regulations
- Air Quality: emissions, odor control, construction permits, and air pollution emissions notices (APENs)

Task Assumptions: Regulatory impacts currently addressed under a different scope. Potential impacts due to regulatory requirements that are identified will be documented for future evaluation or study.

Meetings:

- Virtual Meeting (VM) 220 - Present and verify regulatory influencers. 2 BC staff to attend virtually.

Deliverables:

- TM 220– Regulatory Influence Summary

Task 230: Define Planning Area, Flow, and Load Projections

BC will provide the City with a data request summarizing the data required to establish the planning area and the flow and load projections that are expected from that area. These will be reviewed and confirmed during the Kickoff Workshop, along with population forecast data from most recent Master Plan. Where previous work by BC has been performed or is underway, such as the plant simulation modeling, BC will use that data in addition to any other data which is available and necessary for the evaluations. In addition to the sources previously listed, these documents may include:

- Most recent four years of facility operational data
- Most recent four years of process monitoring data
- Internal studies
- O&M Manuals
- Interviews with Pueblo staff

BC will incorporate the data for existing liquid and solids processes from the previous Master Plan, including population growth, and update this information as needed based on interviews with City staff and field verification.

BC will review the provided data and reports, including the analyses conducted by Pueblo, and determine if any additional data will need to be collected or provided by Pueblo. Pueblo will assist BC with obtaining existing and readily available reports and data.

BC will consider flow, load, and wastewater characteristics from the 2006 and 2014 Master Plans and most recent process models prepared by BC to update flow and mass loading rates for wastewater characteristics and peaking factors.

Levels of service will be defined for a host of performance parameters including effluent water quality, biosolids quality (e.g., VSS destruction, % total solids), spills, or other measures of performance defined by the project team. The levels of service will be defined in terms of reliability of the treatment processes, facilities, and utilities.

The reliability criteria will be based on the ability to provide uninterrupted service while continuing to meet discharge requirements and will consider: 1) the values used in WRF design; 2) City experience with routine and unscheduled outages; 3) reliability information from other similar sized WRFs; 4)

accepted engineering practices (as documented in EPA's Reliability Manuals); and 5) City and BC input on risk management priorities.

BC will document the basis of the flow and load projections into a TM that will be incorporated into the final Master Plan Update. The data and resultant analyses will be used to update the hydraulic and organic models for the plant in Phase 300 (Process Analysis and Alternatives Evaluation).

Task Assumptions: All background information to be provided by Pueblo from previous planning documents, current land use documents, and staff interviews. Methods for flow and load projections will follow the previous master plan, utilizing new data where appropriate. Where current information is not available or significant, the results of previous calculations will be used but not verified.

Meetings:

- VM 230 - Verify information and gaps. 3 BC staff to attend virtually.

Deliverables:

- Planning Data Request
- Draft and Final TM - Flow and Load Projections

Task 240: Define Basis of Cost Evaluations

BC will develop a basis of cost evaluations to be used for development of opinion of capita costs. The construction cost estimates will be based upon Association for the Advancement of Cost Engineering International (AACE) criteria for Class 5 estimates. These conceptual estimates are used to prepare long-range capital improvements planning. The expected accuracy for a Class 5 estimate can range from -50 to +100 percent. BC will develop the factors used in the parametric cost models.

Where available, BC will use Pueblo provided actual costs of unit costs for energy, chemicals, labor, transportation, and other operating expenditures as the basis of cost evaluations.

All factors and assumptions used in the development of the cost models will be documented in TM that will be incorporated into the final Master Plan Update.

Task Assumptions: Basis of cost evaluations will rely on actual data provided by Pueblo where available. Additional data will be used only where actual data is not available. One virtual meeting is anticipated for this task.

Meetings:

- VM 240 – Verify information and gaps. 3 BC staff to attend virtually. Meeting may be combined with Task 220.

Deliverables:

- Cost Data Request
- TM 240 - Basis of Cost

Phase 300 – Process Analysis and Alternatives Evaluation

The objective for this phase is to review the current operation of the facility and assess current capacity against growth, regulatory changes, and other drivers. This phase is the foundation of the Master Plan Update and includes reviewing background information, updating the existing whole plant model of the JRDWRF to include future scenarios, performing gap analyses of individual treatment processes, and evaluating alternatives to meet future conditions. Process evaluations to determine the biological capacity of the facility will include modifications that BC made during the 2017 Upgrades Project.

Task 310: Develop a Facility Hydraulic Profile Model

BC will develop a facility hydraulic profile model and evaluate the facility hydraulic capacity for the current condition and anticipated flow conditions at five-year intervals through year 2035 using hydraulic modeling software. Flow conditions will include annual average day and peak hour hydraulic flow states.

Task Assumptions: Operations data and facility information provided by Pueblo (Phase 200) to be used to build the model. Visual Hydraulics will be used to develop the base model. One virtual meeting is assumed to present and verify expected hydraulic profile model.

Meetings:

- VM 310 - Verify expected profile model. 2 BC staff to attend virtually.

Deliverables:

- TM 310 – Hydraulic Model Assumptions and Profile Baseline

Task 320: Update Process Model

BC will apply the existing process facility-wide mass balance model, developed by BC for the Process Optimization Study (under separate scope). The purpose is to evaluate process performance for current conditions and projected flow and load conditions through the planning year 2035 at five-year intervals. Simulations under annual average day, maximum month average day, and maximum month day scenarios will be prepared. This work will build upon work completed from the ongoing Process Optimization Study.

Task Assumptions: Operations data and facility information provided by Pueblo (Phase 200). Existing model from Process Optimization Study is assumed accurate regarding its assumptions as reviewed by Pueblo. Minimal updating expected with any new data provided. It is not assumed that base scope herein will include any regulatory updates beyond what is expected in the Process Optimization Study.

Meetings: None anticipated. Presentation of results part of Task 330.

Deliverables:

- TM 320 – Model Assumptions and Process Model baseline

Task 330: Gap Analysis for Liquid Processes, Solids Handling, and Infrastructure

Using the hydraulic and process models, BC will perform gap analysis of liquid processes, solids handling, and infrastructure and evaluate up to four (4) alternative evaluations to meet projected needs and planning drivers from Phase 200.

Alternative Evaluation #1 is anticipated to include the evaluation of rehabilitating the existing grit removal process and adding a redundant grit removal train as compared to replacing the existing process with a different grit removal technology such as Aerated Grit Removal.

Alternative Evaluations #2, #3 and #4 are TBD, pending the review of other existing unit processes and potentially new process units.

BC will develop conceptual level design criteria, schematics, general arrangement layouts, and descriptions for each alternative. BC will evaluate the process performance of each alternative using the Phase 300 process model and the existing facility configuration as a basis. BC will develop estimated capital costs for each alternative. Suggested timing and phasing for the improvements will be developed.

BC will evaluate the current process with an emphasis on meeting changing regulations (as identified in Phase 200) and gaining efficiency through equipment improvements and operational efficiencies. Alternatives may include both changes to process facilities and regulatory options for meeting future conditions.

BC will present and discuss the suggested alternatives and analyses with Pueblo in a workshop format to collaboratively identify the recommended alternative. Result of the workshop and alternatives analysis will be summarized in a TM following the meeting.

Task Assumptions: Model assumes that the existing process configuration stays in place through the planning horizon. Three (3) alternatives or less will be identified for consideration for the alternative analysis. This scope does not address Reg 31 impacts. One virtual meeting anticipated in this task.

Meetings:

- VM 330 - Model setups and alternatives to evaluate. 5 BC staff to attend virtually.
- WS 330 - Process model, Gap Analysis, Alternatives Evaluation: In-person, 4 key BC staff, 4-hour workshop

Deliverables:

- WS 330 - Agenda, meeting materials, and minutes
- TM 330a - Hydraulic Capacity and Needs Evaluation for Liquid Stream Processes
- TM 330b - Process Capacity, Capability, and Needs Evaluation for Solids Processes

Phase 400 – Infrastructure Renewal and Replacement

The objective of this phase is to prepare a summary of recommended improvements to satisfy the planning drivers and develop a CIP through calendar year 2034.

A cursory review of nine (9) offsite lift station facility capacities, pump age, and staff interviews to estimate remaining life and immediate concerns will be included in this analysis.

Critical process units and equipment at the WRF will be reviewed by means of preliminary visual inspection and staff interviews to ascertain their condition and need for upgrades, replacement, or rehabilitation.

Task 410: Summarize Existing Components

BC will summarize existing infrastructure including the treatment process, electrical power distribution system, SCADA system (related to the remote lift stations including telecommunications), security systems, stormwater systems, natural gas, potable water, and non-potable water systems. In advance of a site visit, BC will review existing drawings, and interview staff to collect the necessary information. Visual condition assessments will be conducted for critical process equipment as identified above. The condition assessment results will help identify a replacement schedule for critical process equipment.

Task Assumptions: This is a capital improvements review at the process level, not a total asset management effort. This summary is based on the previous Master Plan, but will include additional infrastructure updated since the previous Master Plan. A full evaluation of previous data is not included in this scope. New verified data based on information provided in Phase 200, site visits, and interviews with staff to be incorporated. A full condition assessment of the lift stations is not included in this scope. Evaluation of the collection system is not included. No confined entry involved during site visits.

Meetings:

- Site Visit 410 – Visually Assess Condition: 3 days, with 3 BC staff assumed to participate. (1 day for the plant, 2 days for the lift stations)

Deliverables:

- Site Visit meeting minutes
- TM 410 – Existing Infrastructure Components

Task 420: Evaluate Assets and Develop Capital Improvement Plan

BC will use the condition assessment results to identify capital improvement projects that will be used to update the CIP in Phase 800. Existing assets will be evaluated and categorized based on their replacement schedule and/or failure impact. A virtual meeting is included to present and confirm the analytical process to be used. Industry failure frequency data will also be presented for comparison. The outcome of this task will be an inventory of equipment analyzed, a method for analysis, and a TM detailing the results.

Task Assumptions: Lift station evaluation will be based on staff interviews, Pueblo provided data, and visual inspections / photos. Stormwater summary will be based on previous evaluations and/or completed plans and staff interviews only.

Meetings:

- VM 420 - Verify assessment approach and identify helpful additional operations information. 3 BC staff to attend virtually.
- WS 420 - Asset Evaluation and CIP: In-person, 5 key BC staff, 4-hour workshop

Deliverables:

- WS 420 - meeting agenda, meeting materials, and minutes.
- TM 420 – Conditions Assessment and Replacement Schedule Determinations.

Phase 500 – SCADA System Evaluation

This phase utilizes the existing condition assessment that was developed as part of the Treatment Plant SCADA System Upgrade Project. Staff interviews will be conducted to identify the future state of the SCADA system. The recommended planning level projects will be included in the evaluation.

Task 510: Site Assessments and Staff Interviews

This task will review the city's SCADA inventory for the remote lift stations and interview City of Pueblo staff to define the current state of the hardware and software systems employed at the wastewater treatment plant.

BC will provide a request for information to City of Pueblo staff, including a request for drawings, specifications, vendor cut sheets and other information that relates to the existing SCADA system. BC will perform virtual interviews of plant staff.

Task Assumptions:

- Scope includes a maximum of five interviews at 1 hour each.
- BC will utilize the existing condition assessment developed during the SCADA Upgrade Project.

Meetings:

- VM 510 - Verify future condition goals and discuss gaps. 3 BC staff to attend virtually.
- WS (Virtual) 510 - SCADA Existing Conditions and Recommendations, 2-hour workshop, 3 key BC staff to attend virtually.

Deliverables:

- Workshop agenda and meeting minutes
- Staff interview notes

Task 520: Gap Assessment and Planning Level Projects

Based on the information obtained from Task 510, BC will define the desired future SCADA condition based on outcomes from Phase 200 and the high-level gaps between current condition and desired

future system. BC will then define the planning level projects that need to be executed to close these gaps.

BC will facilitate two, one-hour Teams Meetings to 1) identify and confirm desired future SCADA needs defined are accurate and 2) to present recommended planning level projects. Planning level projects will include a rough order of magnitude cost and a simple project approach (what projects need to be done in a certain sequence).

Task Assumptions: Gap assessment will be limited to defining the gaps at a very high level, with high-level estimates of cost and risk. Alternatives to address the identified gaps will include 3-5 planning level projects. Recommended improvements and projects and will not include any design for implementation.

Meetings:

- VM 520a: Future needs and gaps 1-HR; 3 BC Staff to attend virtually.
- VM 520b: Recommended Projects 1-HR; 3 BC staff to attend virtually.

Deliverables:

- TM 520a – Draft SCADA Master Plan Chapter 8 SCADA Recommendations
- TM 520b – Final SCADA Master Plan Chapter 8 SCADA Recommendations

Phase 600 – Triggers and Pinch Points

The purpose of this phase is to identify potential triggers that could significantly change that condition, causing a significant impact to the resulting CIP needs such as a need for expansion of the Treatment Plant. The objective of this task is to consider what-if scenarios that may trigger different future conditions than assessed in Phase 200.

Task 610: Identify Potential Triggers

The Master Plan Update will provide high-level review of system sensitivities to changes in population and population location. BC will work with Pueblo to identify triggers and timing for potential wastewater plant impacts and expansion needs.

Task Assumptions: Scope includes evaluation of three (3) scenarios. Costs of potential expansion not included.

Meetings:

- VM 610 – Potential System Triggers; 3 BC staff to attend virtually

Deliverables:

- TM 610 – Potential System Impact Triggers

Task 620: Pinch Points Identification

Should growth occur beyond current build out projections, the system may have areas that, if addressed, could open additional capacity with relatively lower investment – referred to as pinch points. BC will work with Pueblo to identify potential pinch points in the system that, if addressed and optimized, may open additional capacity or significantly improve operations.

Meetings:

- VM 620: Pinch Points Identification and Evaluation; 3 BC Staff to attend virtually

Deliverables:

- TM 620 – Pinch Points

Task 630: Project Prioritization

BC will review with Pueblo prioritization criteria and guidelines and help develop a process for determining project prioritization based on such criteria, particularly when competing interests may interfere with project timelines and implementation. These criteria will be reviewed with Pueblo during a workshop, during which Pueblo will be able to comment on and make recommendations related to the prioritization criteria and guidelines. Upon completion of the workshop, BC will incorporate the prioritization criteria and recommendations into the Master Plan update.

Task Assumptions:

Meetings:

- WS 630 - Project Prioritization Approach. 3 BC Staff to attend in person, 2 BC Staff virtually for 4-hour workshop

Deliverables:

- Workshop agendas, meeting materials and workshop meeting minutes.
- TM 630– Project Prioritization Criteria

Phase 700 - Future Tools and Assessments

Task 710: Review Opportunities for Future Optimization, Efficiencies, and Other Benefits

Through the reviews and assessments in the above phases, BC may recommend opportunities for additional optimization, efficiencies, or benefit. These opportunities may include:

- Integrated planning: This would include reviewing other plans for their basis of design and decision-making to ensure this Master Plan Update is aligned. If design or decision-making criteria change, BC will incorporate those projects/initiatives into this Master Plan Update using current decision-making and design basis.
- Asset management: BC would evaluate existing asset management practices through previously completed work (i.e., master plans) and interviews with facility staff to understand the condition and criticality of replacement or repair of asset processes. Additionally, BC would help Pueblo identify maintenance strategies for asset base, where appropriate.
- Funding: Where possible, BC will identify funding opportunities for projects identified in the CIP, such as WIFIA, SRF, and IJJA.
- Technology and tools: Throughout BC's work on this Master Plan Update, BC will identify tools and technologies, where appropriate, to enhance system operations, regulatory compliance, preventative maintenance and/or asset management operations. Any tools or technologies identified will be recommended within the CIP and within the text of the Master Plan Update with further context (i.e., order of implementation and considerations such as needed software).

Task Assumptions: These are brief descriptions of categories that Pueblo may want to consider for potential added benefit. There are no assessments included in this section.

Meetings: None anticipated

Deliverables:

- TM 710 –Beneficial Future Assessment Recommendations

Phase 800 – Capital Improvement Plan

The purpose of this phase is to take the TMs from previous phases to produce a complete Master Plan Update document that includes prioritized list of projects, a timeline of improvements, a summary of costs, and recommendations.

Task 810: Update Capital Improvement Plan

BC will update the existing CIP with the recommended improvements based on the results of the investigations and recommended improvements. The capital improvements will be scheduled to include estimated costs for administration, planning, engineering, and construction phases of each project. This task includes preparation of the report. Following the submission of the draft CIP, a virtual meeting will be held to discuss City comments.

Task Assumptions: The CIP will be in Excel format to allow for updates. Class 5 cost estimates will be applied to recommended projects using the basis of cost estimate developed in Task 240.

Meetings:

- VM 810: Capital Improvement Plan Review. 3 BC Staff to attend virtually.

Deliverables:

- Capital Improvement Plan

Task 820: Treatment and Facility Master Plan Update Draft Report

BC will prepare a draft report utilizing the contents of the technical memoranda from the prior phases. This includes the assembly of the elements of the Draft Master Plan Update that were developed as part of previous tasks. This effort also includes QA/QC reviews and technical edits. BC will perform a readability and quality review of the draft document before submittal to Pueblo for review. The outline of the Draft Master Plan Update will be based on preliminary outline presented below:

- Executive Summary
- Chapter 1. Introduction
- Chapter 2. Planning Assumption, Goals, and Objectives
- Chapter 3. Potential Regulatory Influencers
- Chapter 4. Flow and Load Projections
- Chapter 5. Hydraulic and Process Models Assumptions and Baselines
- Chapter 6. Gap analysis for Liquid Processes and Solids Handling
- Chapter 7. Infrastructure Components and Conditions Assessment Summary
- Chapter 8. SCADA Recommendations
- Chapter 9. Potential System Impact Triggers and Pinch Points
- Chapter 10. Project Prioritization
- Chapter 11. Future Tools and Assessment Recommendations
- Chapter 12. Recommended CIP
- Appendix A. Preliminary Cost Estimates
- Appendix B. SCADA Existing Conditions Assessment

Task Assumptions: Master Plan Update Report will be based on Final TMs of previous phases and will not include new analysis.

Meetings:

- VM 820 Review of Draft Report. 5 BC staff to attend virtually.

Deliverables:

- Draft Master Plan Update Report

Task 830: Coordinate with Rates and Fees Consultant

BC will provide the City with the capital costs and timing for their use in determining rates and fees. This scope includes a meeting with Pueblo and their rates and fee consultant, Raftelis, to determine the desired information and information format.

Task Assumptions: This scope does not include rate and fee analysis or recommendations. Information provided for rates and fees will be a spreadsheet output from the CIP analysis. No additional analysis will be required.

Meetings:

- VM 830: Data needs to support rates and fee analysis. 2 BC staff to attend virtually

Deliverables:

- Rates and Fees Support Information - Excel spreadsheet in format determined in above meeting.

Task 840: Treatment and Facility Master Plan Update Final Report

BC will address and incorporate City comments on the draft report and prepare a final report. The preparation of final report will include internal quality control and assurance reviews.

Task Assumptions: This task assumes one (1) iteration of most comments is adequate as previous TMs will have been reviewed by the City. Two (2) brief meetings are included to address gaps or to refine small portions of the report.

Meetings:

- VM 840a and 840b: Clarify and address the City's comments. 2 BC staff to attend virtually.

Deliverables:

- Final Master Plan Update, including Appendices. Electronic copies and up to three (3) hard copies.

Attachment 1 - Schedule

City of Pueblo

ID	Phase No	Task Name	Duration	Start	Finish	Qtr 2, 2024			Qtr 3, 2024			Qtr 4, 2024			Qtr 1, 2025			Qtr 2, 2025
						Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
0		2024 Pueblo Wastewater Treatment and Facility Master Plan Update	256 days	Mon 4/15/24	Fri 4/18/25													
1	100	Project Management	255 days	Mon 4/15/24	Fri 4/18/25													
2	200	Planning Objectives and Inputs	60 days	Mon 4/15/24	Tue 7/9/24													
3	300	Process Analysis and Alternatives Evaluation	150 days	Wed 5/1/24	Tue 12/3/24													
4	400	Renewal and Replacement	150 days	Wed 5/1/24	Tue 12/3/24													
5	500	SCADA System Evaluation	150 days	Wed 5/1/24	Tue 12/3/24													
6	600	Triggers and Pinch Points	150 days	Wed 5/1/24	Tue 12/3/24													
7	700	Future Tools and Assessments	90 days	Mon 9/30/24	Fri 2/7/25													
8	800	Capital Improvement Plan	90 days	Mon 12/9/24	Thu 4/17/25													

Attachment 2 - Compensation

City of Pueblo

Pueblo Wastewater Master Plan																																				
		Enoch Dixon H	Keli Lambert	Mike Thorstenso	Jennifer Short	Sri Koduri	Dawn Wall	Jose Jimenez	Kevin Keil	Kirk Olds	Andrew Neuha	Lexandra Ratcl	Haley Dunn	Kayla Bauhs	Dan Goodburn	William Agster	Adriane Perry	Brandon Billing	Dan Jackson	Pusker Regni	Ashraf Qadan	Chandler Wilson	Daniel Clayton	Erin Tracy	Jerry Simon	Lia Brune	Leo Rodgers	Marvin Llave	Samantha Kopley	Total Labor Hours	Total Labor Effort	Other Travel Expenses	Total ODCs	Total Expense Cost	Total Expense Effort	Total Effort
100	Project Management	\$215.00	\$130.00	\$290.00	\$130.00	\$235.00	\$100.00	\$290.00	\$235.00	\$280.00	\$255.00	\$195.00	\$150.00	\$165.00	\$235.00	\$235.00	\$195.00	\$215.00	\$150.00	\$235.00	\$195.00	\$280.00	\$280.00	\$235.00	\$280.00	\$195.00	\$255.00	\$195.00	\$215.00	302	56,700	0	0	0	0	56,700
110	Project Management Planning	80	24	2	18	24	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	106	20,900	0	0	0	0	20,900
120	Project Controls & Reporting	54	60	2	18	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	134	22,330	0	0	0	0	22,330
130	Status Meetings	24	0	0	0	24	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	48	10,800	0	0	0	0	10,800
140	Project Closeout	10	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	14	2,670	0	0	0	0	2,670	
200	Planning Objectives and Inputs	28	0	0	0	66	16	12	13	12	3	40	36	48	32	4	0	0	0	0	0	0	0	0	0	0	0	0	0	310	63,370	295	295	295	295	63,665
210	Kickoff Workshop and Planning Objectives	20	0	0	0	28	4	10	13	6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	81	18,915	295	295	295	295	19,210
220	Potential Regulatory Influencers	2	0	0	0	8	4	2	0	0	3	40	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	59	11,855	0	0	0	0	11,855
230	Define Planning Area, Flow and Load Projections	2	0	0	0	28	4	0	0	6	0	0	36	48	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	124	22,410	0	0	0	0	22,410
240	Define Bases of Cost Estimation	4	0	0	0	2	4	0	0	0	0	0	0	0	32	4	0	0	0	0	0	0	0	0	0	0	0	0	0	46	10,190	0	0	0	0	10,190
300	Process Analysis and Alternatives Evaluation	18	0	0	0	138	16	84	68	0	0	0	220	244	24	4	92	16	24	120	0	0	0	0	0	0	0	0	0	1,068	211,260	320	320	320	320	211,580
310	Develop Facility Hydraulic Profile Model	0	0	0	0	6	4	0	4	0	0	0	4	0	0	0	44	6	24	0	0	0	0	0	0	0	0	0	0	92	16,820	0	0	0	0	16,820
320	Update Process Model	0	0	0	0	4	4	8	4	0	0	0	2	56	0	0	0	0	0	24	0	0	0	0	0	0	0	0	0	102	19,780	0	0	0	0	19,780
330	Gap Analysis for Liquid Process, Solids Handling, and Infrastructure	18	0	0	0	128	8	76	60	0	0	0	214	188	24	4	48	10	0	96	0	0	0	0	0	0	0	0	0	874	174,660	320	320	320	320	174,980
400	Renewal and Replacement	12	0	0	0	52	8	0	20	0	0	0	92	0	0	0	0	0	36	0	62	90	12	12	10	82	0	0	0	488	101,760	4,025	4,025	4,025	4,025	105,785
410	Summarize Existing Components	0	0	0	0	24	4	0	6	0	0	0	36	0	0	0	0	0	24	0	48	48	4	4	4	40	0	0	0	242	50,230	3,570	3,570	3,570	3,570	53,800
420	Evaluate Assets and Develop Capital Improvem	12	0	0	0	28	4	0	14	0	0	0	56	0	0	0	0	0	12	0	14	42	8	8	8	42	0	0	0	246	51,530	455	455	455	455	51,985
500	SCADA System Evaluation	2	0	0	0	22	8	14	10	0	0	0	40	0	24	2	0	0	0	20	0	0	0	0	0	0	54	136	0	332	69,910	0	0	0	0	69,910
510	Site Assessment and Staff Interviews	2	0	0	0	12	4	14	6	0	0	0	12	0	0	0	0	0	0	20	0	0	0	0	0	0	10	36	0	116	25,190	0	0	0	0	25,190
520	Gap Assessment and Planning Level Projects	0	0	0	0	10	4	0	4	0	0	0	28	0	24	2	0	0	0	0	0	0	0	0	0	0	44	100	0	216	44,720	0	0	0	0	44,720
600	Triggers and Pinch Points	56	0	0	0	82	12	16	36	20	2	6	112	32	0	0	58	10	0	26	0	0	0	0	0	0	0	0	0	468	94,540	295	295	295	295	94,835
610	Identify Potential Triggers	12	0	0	0	24	4	8	20	4	2	6	30	0	0	0	6	2	0	6	0	0	0	0	0	0	0	0	0	124	25,950	0	0	0	0	25,950
620	Pinch Points Identification	0	0	0	0	36	4	8	16	0	0	0	60	32	0	0	52	8	0	20	0	0	0	0	0	0	0	0	0	236	45,780	0	0	0	0	45,780
630	Project Prioritization	44	0	0	0	22	4	0	0	16	0	0	22	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	108	22,810	295	295	295	295	23,105
700	Future Tools and Assessments	24	0	0	0	26	4	0	0	2	0	0	44	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	56	156	30,870	0	0	0	0	30,870
710	Review Opportunities for Future Optimization Efficiencies and other Benefits	24	0	0	0	26	4	0	0	2	0	0	44	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	56	156	30,870	0	0	0	0	30,870
800	Capital Improvement Plan	100	0	0	0	88	16	16	0	34	0	0	98	32	0	0	0	0	60	0	0	0	0	0	0	0	8	0	452	88,480	0	0	0	0	88,480	
810	Update Capital Improvement Plan	40	0	0	0	30	4	0	0	18	0	0	38	0	0	0	0	0	24	0	0	0	0	0	0	0	0	0	0	154	30,390	0	0	0	0	30,390
820	Treatment and Facility MP Update Draft	32	0	0	0	32	8	8	0	12	0	0	40	16	0	0	0	0	24	0	0	0	0	0	0	8	0	0	180	34,680	0	0	0	0	34,680	
830	Coordinate with Rates and Fees Consultant	6	0	0	0	12	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	18	4,110	0	0	0	0	4,110	
840	Final Report- Treatment and Facility MP Update	22	0	0	0	14	4	8	0	4	0	0	20	16	0	0	0	0	12	0	0	0	0	0	0	0	0	0	100	19,300	0	0	0	0	19,300	
GRAND TOTAL		408	88	4	18	498	80	142	147	68	5	46	642	356	80	10	150	26	120	166	62	90	12	12	10	82	54	144	56	3,576	716,890	4,935	4,935	4,935	4,935	721,825
Hours and Dollars are rounded to nearest whole number. To display decimals, change the format of the cells.																																				



**AGREEMENT FOR PROFESSIONAL CONSULTING
SERVICES BY AND BETWEEN CITY OF PUEBLO AND
BROWN AND CALDWELL, INC.**

23-130

WASTEWATER DEPARTMENT ENGINEER OF RECORD - FACILITY
MASTER PLAN UPDATE

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES BY AND BETWEEN CITY OF PUEBLO AND BROWN AND CALDWELL, INC.

1. INTRODUCTION

THIS AGREEMENT ("Agreement") made and entered this _____ day of _____, 20____, by and between the City of Pueblo, a Municipal Corporation (hereinafter referred to as "City") and Brown and Caldwell, Inc., a registered California Corporation (hereinafter referred to as "Consultant"), for Consultant to render certain professional project management, analysis, evaluation, advising, assessments, planning, reports, and related services for City in connection with Bid 23-130 Wastewater Department Engineer of Record - Facility Master Plan Update, hereinafter referred to as the "Project." In consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

- A. Consultant shall satisfactorily perform professional project management, analysis, evaluation, advising, assessments, planning, reports, and related services for the Project described in more detail in Schedule 1 attached hereto and incorporated herein by reference (the "Services"). Such Services shall include all usual and customary professional services incidental to the work on the Project. In the event this Agreement follows the selection of Consultant by City 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.

2. CONSULTANT 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, for the Scope of Services in Phases 100 - 800 as outlined in Schedule 1, and other services, irrespective of City's approval of or acquiescence in same. Consultant shall be responsible, in accordance with applicable law, to City for all loss or damage to City to the extent caused by Consultant's negligent act or omission. 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.
- B. Consultant acknowledges that performance of each phase shall be observed as represented in Schedule 3 attached hereto. Schedule 3 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 of each phase. 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 City'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.

- C. Before undertaking any work or incurring any expense which Consultant considers beyond or in addition to the Services described in Schedule 1 or otherwise contemplated by the terms of this Agreement, Consultant shall advise City in writing that (1) Consultant considers the work beyond the scope of this Agreement, (2) the reasons that Consultant believes the out of scope or additional work should be performed, and (3) 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 City. 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.
- D. Consultant acknowledges that, due to the nature of the services for this Project, related professional services, and the impact of same on the Project, the City 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 Consultant has selected and intends to employ or assign qualified key personnel and subconsultants. Within 10 days of execution of this Agreement, City shall have the right to object in writing to employment on the Project of any such key person, subconsultant, or assignment of principal responsibility, in which case Consultant will employ alternate personnel for such function or reassign such responsibility to another to whom City has no reasonable objection. Thereafter, Consultant shall not assign or reassign Project work to any person to whom City has reasonable objection.

3. CITY'S RESPONSIBILITIES

- A. City agrees to advise Consultant regarding City's Project requirements and to provide all relevant information, data and previous reports accessible to City which Consultant may reasonably require. Consultant shall rely on information provided without verification unless otherwise agreed in Schedule 1. City shall notify Consultant of any known or potential health or safety hazards existing at or near the project site.
- B. City shall designate a Project Representative to whom all communications from Consultant shall be directed and who shall have limited administrative authority on behalf of City to receive and transmit information and make decisions with respect to the Project. Said representative shall not, however, have authority to bind City 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 agreement price.

- C. City shall examine all documents presented by Consultant and render decisions pertaining thereto within a reasonable time. The City's approval of any project management, analysis, evaluation, advising, assessments, planning, reports, or product furnished hereunder shall not in any way relieve Consultant of responsibility for the professional adequacy of its work.
- D. City shall perform its obligations and render decisions within a reasonable time under the circumstances presented. Based upon the nature of City 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 City to responsibly render a decision has been furnished. A period of 46 days shall be presumed reasonable for City 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 City but must be procured from others.

4. TIME FOR PERFORMANCE

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

5. PAYMENT

- A. City will pay to Consultant as full compensation for all services required to be performed by Consultant under this Agreement, except for services for additional work or work beyond the scope of this Agreement as shown in A1 below, an amount not to exceed \$721,825.00 in the aggregate as set forth in the grand total shown in Schedule 2 "Fee Schedule".
 - 1. The maximum amount of each phase shall not exceed the amount specified in Schedule 2 for such phase unless agreed upon by Consultant and City with a written Change Order or written Amendment.
 - 2. A written Change Order may be considered for an increase amount of the applicable phase for up to 10% of the grand total cost of the project.
 - 3. A written Amendment approved by City Council, Consultant, and Department Director shall be utilized for any agreed upon change to each phase exceeding 10% of the grand total.
- B. Consultant shall submit periodic, but not more frequently than monthly, applications for payment, aggregating to not more than the maximum amount set forth above, for actual professional services rendered and reimbursable expenses incurred.

1. Such applications shall be submitted based upon the hourly rates and expense reimbursement provisions for each phase as set forth in Schedule 2 and shall contain appropriate documentation that such services have been performed and expenses incurred.
 2. Such applications for payment of each phase shall not exceed 90% of said phase until final work of the phase has been completed. The final application for payment for each phase shall be the remaining 10% of the phase and shall be paid upon satisfactory completion of the phase as approved by City.
 3. The applications for payment shall be submitted monthly with consideration of City for review of satisfactory completion and payment within 45 days of the date of such application is received provided that sufficient documentation has been furnished.
 4. The final application for payment for the final 10% of the final phase, shall be held by City until all previous phases and current final phase have been completed to City's reasonable satisfaction and all required Consultant submittals have been provided.
- C. No separate or additional payment shall be made for profit, overhead, local telephone expenses, lodging, routine photocopying, computer time, or similar expenses unless otherwise provided and listed in Schedule 2 - "Fee Schedule."
- D. No compensation shall be paid to Consultant for services required and expenditures incurred in correcting Consultant's negligent errors or omissions.
- E. Compensation for authorized Services beyond the scope of this Agreement shall be governed by Section 2.

6. TERMINATION

- A. City reserves the right to terminate this Agreement and Consultant's performance hereunder, at any time upon 10 days' written notice, either for cause or for convenience. Upon such termination, Consultant and its subcontractors shall cease all work, stop incurring expenses, and shall promptly deliver to City all project management, analysis, evaluation, advising, assessments, planning, reports, or work product and materials as Consultant may have accumulated in performing this Agreement, together with all finished work and work in progress. Consultant shall at all times act in good faith with respect to the orderly transfer of work to the City or any entity designated by City.
- B. Upon termination of this Agreement for events or reasons not the fault of Consultant, Consultant shall be paid at the rates specified in Schedule 2 for all services rendered and reasonable costs incurred to the date of termination; together with any reasonable costs incurred within 10 days of termination provided such latter costs could not be avoided or were incurred in mitigating loss or expenses to Consultant or City. Consultant shall provide a detailed

final invoice to the City within fourteen (14) calendar days from the effective date of termination, itemizing the work completed, costs incurred, and any outstanding payments due. In no event shall payment to Consultant upon termination exceed the maximum compensation provided for complete performance in Section 5, and the Consultant expressly waives any right to claim damages, including but not limited to lost profits, anticipated revenue, or indirect or consequential damages arising out of or relating to the termination for convenience.

- 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 services, or to pay its employees and Consultants, or to perform services with that level of care and skill ordinarily exercised by consultants performing similar services at the time services are performed in a manner deemed satisfactory by City's Project Representative, then in that event, Consultant's entire right to compensation shall be limited payment at the rates specified in Schedule 2 for services satisfactorily performed and reimbursable expenses reasonably incurred, prior to date of termination.
- D. Consultant's responsibility for its completed work and services shall survive any termination.

7. GENERAL PROVISIONS

7.1. Ownership of Documents

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

7.2. Advertising

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

7.3. Equal Employment Opportunity

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

7.4. Notices

Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either the City or the Consultant by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service when deposited in the United States mail, first-class postage prepaid, addressed to the City of Pueblo, City of Pueblo, Department of Wastewater, Attn: Andra Ahrens, Director, 1300 S. Queens Avenue, Pueblo, Colorado, 81001; or to the Consultant, Brown and Caldwell, Inc., Attn: Michael Thorstenson, Principal-In-Charge, 1527 Cole Blvd., Suite 300, Lakewood, Colorado, 80401. Either party may change their address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

7.5. Entire Agreement

This instrument contains the entire agreement for the work in Schedule 1 between the City and the Consultant respecting the Project, and any other written or oral agreement or representation respecting the Project or the duties of either the City or the Consultant in relation thereto not expressly set forth in this instrument are null and void. Notwithstanding the foregoing, the terms of Bid 23-130 Wastewater Department Engineer of Record and 23-130 Master Contract, are hereby incorporated herein, and Consultant agrees to abide by and comply with the same. In the event of any conflict between any provision of this Agreement and a provision of any Schedule or attachment to this Agreement, the provision in any schedule or attachment shall control and supersede the conflicting provision in Agreement.

7.6. Subcontracts

- A. City acknowledges that Consultant is the prime contractor and the only party with whom City 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 City, and City shall be a third-party beneficiary of those subcontract provisions.
- B. Consultant shall indemnify and defend City from all claims and demands for payment for services provided by subcontractors of Consultant to the extent City has paid Consultant for services performed by Consultant's subconsultants and subcontractors.
- C. Consultant acknowledges that, due to the nature of the services to be provided under this Agreement, the City 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 City prior to execution of this Agreement to induce City to enter this Agreement. Consultant shall not change such consultants or key personnel except after giving notice of a proposed change to City and receiving City's consent thereto. Consultant shall not assign or reassign Project work to any person to whom City has reasonable objection.

7.7. Successors and Assigns

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

7.8. Amendments

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

7.9. Choice of Law, Jurisdiction, and Venue

Colorado law, the Pueblo City Charter, the Pueblo Municipal Code, 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 that 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 County of Pueblo. In the event of litigation the court shall award the prevailing party its court costs and reasonable attorney fees.

7.10. Severability

If any provision of this Agreement, 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.

7.11. Appropriations

The City is prohibited by law from making commitments beyond the term of the current City Fiscal Year. Payment to Consultant beyond the current City Fiscal Year is contingent on the appropriation and continuing availability of agreement funds in any subsequent year. The City's obligation to pay Consultant shall be contingent upon 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 City's liability for such payments shall be limited to the amount remaining of such Agreement Funds. If City funds are

not appropriated, or otherwise become unavailable to fund this Agreement, the City may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The City shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination. Consultant shall confirm availability of Agreement Funds before proceeding and/or making obligations for work exceeding the initial and subsequent annual appropriations.

7.12. Force Majeure

Neither party shall be responsible for delays caused by circumstances beyond its reasonable control including but not limited to governmental action, statute, ordinance, rule or regulation, strike or other labor troubles, fire, acts of God, or other incidents outside of either party's control that makes performance or acceptance impossible or impractical. The Consultant shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control created from any force majeure event.

8. DISPUTES

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which the designated Agreement representatives cannot resolve shall be referred in writing to the Mayor's Office for the City for a final determination of the issue. The Parties agree that participation in this administrative procedure shall be a condition precedent to the initiation of litigation or mediation, as mutually agreed, except in the case of an emergency or other conditions that entitle either Party to seek injunctive or emergency relief from a court of competent jurisdiction, in which no participation in the preceding alternative dispute resolution process shall be required.

9. INSURANCE

9.1. Conditions

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

9.2. Minimum Requirements

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

respect to all work performed by it and all its subcontractors under the Contract, to be written on a commercial general liability policy form. This insurance shall be written in amounts not less than a combined single limit of \$1,000,000 for each occurrence and aggregate for bodily injury including death and 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, and blanket contractual coverage. The policy shall also provide "Completed Operations and Projects Liability" coverage.

- B. Commercial Automobile Liability Insurance. The Consultant shall procure and maintain during the period of the Contract and for such additional time as work on the project is being performed, Commercial Automobile Liability Insurance. This insurance shall be written with limits of liability of \$1,000,000 each accident for bodily injury and property damage. This insurance shall include uninsured/underinsured motorist coverage and shall protect the Consultant from any and all claims arising from the use both on and off the site of the project of automobiles, trucks, tractors, backhoes, and similar equipment whether owned, leased, hired or used by Consultant.
- C. Workers' Compensation Insurance complying with statutory requirements in Colorado and in any other state or states where the work is performed. The Workers' Compensation Insurance policy shall contain an endorsement waiving subrogation against the City.
- D. Professional Liability Insurance with coverage of not less than \$1,000,000 each claim and aggregate in a form and with a self-insured retention acceptable to City.
- E. Consultant shall furnish to City a certificate or certificates of insurance showing compliance with this Section. Consultant shall obtain a special endorsement from its insurance carrier that provides that the insurance shall not be changed or cancelled until ten (10) days after written notice has been given to City and provide a copy of such endorsement to City. Consultant shall immediately notify City of any substantial change in, or cancellation, or non-renewal of any such insurance.

10. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the City, 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). 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.

11. ACCESSIBILITY

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

12. IMMIGRATION REFORM AND CONTROL ACT OF 1986

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

13. PERA LIABILITY

The Consultant shall reimburse the City for the full amount of any employer contribution required to be paid by the City of Pueblo to the Public Employees' Retirement Association ("PERA") for salary or other compensation paid to a PERA retiree performing contracted services for the City under this Agreement. The Consultant shall fill out the Colorado PERA Questionnaire and submit the completed form to City as part of the signed Agreement.

14. SCHEDULES

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

- Schedule 1 - "Scope of Services" consisting of 14 pages.
- Schedule 2 - "Fee Schedule" consisting of 1 page.
- Schedule 3 - "Work Schedule" consisting of 1 page.

15. ELECTRONIC SIGNATURE

This Agreement and all other documents contemplated hereunder may be executed using electronic signatures with delivery via facsimile transmission, by scanning and transmission of electronic files in Portable Document Format (PDF) or other readily available file format, or by copy transmitted via email, or by other electronic means and in one or more counterparts, each of which shall be: (1) an original, and all of which taken together shall constitute one and the same agreement, (2) a valid and binding agreement and fully admissible under state and federal law, and (3) enforceable in accordance with its terms.

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

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

CITY OF PUEBLO, A MUNICIPAL CORPORATION

BROWN AND CALDWELL, INC.

By _____
Naomi Hedden, Director of Purchasing

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

Attest _____
Marisa Stoller, City Clerk

[SEAL]

BALANCE OF APPROPRIATION EXISTS FOR THIS
CONTACT AND FUNDS ARE AVAILABLE

Alexandria Romero, Finance Director

APPROVED AS TO FORM
Department of Law

David Wyatt, Assistant City Attorney

Attachments: Schedule 1 - Scope of Service
Schedule 2 - Fee Schedule
Schedule 3 - Project Schedule
Additional Information for Agreement

Schedule 1

Scope of Service

Excerpt from Consultant's Proposal dated February 2024, Pages 2 – 15

Project Overview

Pueblo has requested Brown and Caldwell (BC) to prepare a 2024 City of Pueblo Water Reclamation Treatment and Facility Master Plan Update (Project) that identifies capital improvements necessary to maintain cost-effective, reliable service, and identify upcoming regulatory requirements. Specifically, in addition to a 10-year Capital Improvement Plan (CIP), this Master Plan Update is to identify system pinch points, including adequate redundancy, ability to serve predicted growth, and impacts of the identified upcoming regulatory requirements.

This Scope of Services covers activities necessary to prepare a Master Plan Update for the James R. Dilorio Water Reclamation Facility (JRDWRF) and contributing lift stations, for the City of Pueblo, Wastewater Department (Pueblo). This Master Plan Update will use results and data from relevant previous work completed for Pueblo, including the 2006 Master Plan by Black & Veatch, the 2014 Master Plan by BC, and the Collection System Master Plan completed by BC in 2020.

The proposed work will address issues throughout the facility to support development of a 10-year CIP. It will also provide a framework for capital and renewal and replacement (R&R) projects over the next decade.

This Scope of Services describes the professional services to be provided by BC for the Project. This Scope of Services includes the following phases:

- Phase 100 – Project Management
- Phase 200 – Planning Objectives and Inputs
- Phase 300 – Process Analysis and Alternatives Evaluation
- Phase 400 – Infrastructure Renewal and Replacement
- Phase 500 – SCADA System Evaluation
- Phase 600 – Triggers and Pinch Points
- Phase 700 – Future Tools and Assessments
- Phase 800 – Capital Improvement Plan

Project Objectives

This scope lays out the categories for review as part of this Master Plan Update, as well as the expectations associated with each task. The specifics of the project objectives will be considered in the first task of the Master Plan Update, which may result in revisions to the attached scope. The following are included in the scope herein:

- Summarize known and anticipated regulatory drivers (e.g., nutrient standards) and identify projects that achieve regulatory compliance, either in part or in whole, while maintaining a functional and operational facility.
- Review triggers for wastewater facility expansion.
- Provide capacity needs assessment - summarize known and anticipated flow and loading changes to the facility.
- Evaluate the capacity of each unit process to inform of any plant expansion needs.
- Coordinate with and summarize the outcomes of the on-going Sustainability Study currently being developed by Brown and Caldwell. Include the Sustainability report findings as needed for potential additions to the CIP.

- Summarize known and anticipated renewal and replacement costs for existing major process equipment. Evaluate facility needs and current processes/procedures:
 - Condition review based on equipment age, interviews with appropriate operational staff, and expected useful life.
 - Asset management system.
 - Preventative maintenance system.
- Prepare a Supervisory Control and Data Acquisition (SCADA) evaluation to identify needs and planning projects that can be implemented within 5 years.
- Identify potential optimization and efficiency opportunities for future consideration.
- Prepare a master plan, supporting a 10-year CIP.

Pueblo will provide BC with available and relevant information to aid in the planning process. This includes but is not limited to:

- Existing CIP
- Information regarding past and ongoing Pueblo projects
- Growth maps and studies from planning department
- 2021 rate study (or the most recent)
- Past four years of operational data, including a wastewater characterization analysis
- Operating costs and best operating practice documentation
- Original costs of equipment where available
- Information regarding public sector outsourcing
- Information on existing electrical, instrumentation, and controls
- Access to operations and other knowledgeable Pueblo staff
- Timely review and comments within agreed upon schedules

Project Assumptions

The following general assumptions were made in the development of this Scope of Services. Additionally, task specific assumptions are listed as part of each task.

Data Assumptions:

- The Master Plan Update will update the previous 2014 Master Plan. The following information will be summarized and included in the Update as described in the scope based on Pueblo provided information:
 - Population projections and land-use planning.
 - Flow projections.
 - Influent wastewater characterization. If recent wastewater characterization data is not available, BC will work with Pueblo to develop an influent sampling plan to collect the most recent influent wastewater characteristics as appropriate or needed.
- Evaluation of underground utilities will be based on maintenance records and record drawings provided to BC by Pueblo. Physical investigation or any other independent verification of underground utilities is not included in this scope of work.
- Pueblo will provide a list of critical equipment for the condition assessment described in Phase 400 (Renewal and Replacement). The equipment list will include equipment numbers, installation year, O&M history, original installation cost, and repair and replacements costs as available. Up to 500 individual pieces of equipment will be reviewed as part of this phase. Pueblo will provide

knowledgeable O&M staff to accompany BC staff for a walkthrough of the facility for the condition assessment tasks.

- BC will use elevations shown on as-built drawings or surveyed elevations provided by Pueblo to construct the hydraulic profile. Independent verification of elevations is not included in this scope of work.

Limits of Scope – in addition to those noted within Scope description:

- Scope is limited to the tasks included herein. Scope items in Agreement Schedule 1 not included herein are not to be performed.
- Discussions of asset management and criticality analysis will be limited to the condition assessment for major process equipment only as defined in Phase 400.
- Site stormwater capacity and process impacts to be reviewed as they may impact future improvement needs and O&M. Stormwater condition assessment not included.
- The viability of producing Class A biosolids is not addressed in this scope (currently part of Sustainability Study).
- Lift stations will be evaluated for capacity only.
- Except for the lift stations, an evaluation of the collection system is also not included.
- Design and implementation of identified projects are not included.
- The following SCADA items are not included in this Master Plan Update scope, but they may be recommended for future phases based on the results in the Update:
 - Detailed examination of Pueblo wastewater remote pumping stations for current conditions assessment, and project identification and long-range control system upgrade needs based on the results of this project.
 - Development of a control system standards binder and general specifications to be used in the design and implementation of future automation projects.
- The Update does not include an optimization and efficiency study. Observations and staff interviews regarding optimization and efficiency will be captured and documented for future study.

Schedule:

- The anticipated start date of the project is April 2024 with an estimated duration of 12 months. See Attachment 1 – Schedule. The accompanying schedule assumes review comments or responses will be provided within 10 business days of submittal of technical memoranda or data requests and 30 business days for the complete Draft Master Plan Update.

Effort and Budget:

- BC may shift budget between work tasks as necessary to complete the work.
- The initial effort is limited to the budget identified in the attached fee estimate. See Attachment 2 – Compensation. If the effort to complete the identified tasks exceeds the estimate, the PM will coordinate with Pueblo to identify areas where BC can limit our effort to the available budget.

Deliverables:

- Pueblo will provide a single set of consolidated comments to BC for each deliverable. The reports and/or technical memoranda will be revised according to comments and scope of work.
- All deliverables in this Scope will be provided electronically. Electronic copies will be in MSWord files and/or Adobe PDF.
- Meeting summary to be provided following each meeting.

Scope of Services

Phase 100 – Project Management and Administration

Project Management and Administration includes the following activities:

- Project Management Planning
- Project Controls and Reporting
- Project Meetings
- Project Closeout

Task 110: Project Management Planning

The Project Management Plan will document the key project information required by all project team members to assist them in executing the project to meet the required objectives: on-time, on-budget, high quality, and meeting Pueblo's critical success factors. The key elements of the project plan are described below:

- Project Charter, which will establish the project goals, objectives, and critical success factors.
- Project team members, their roles, and responsibilities, including a staffing plan (management, engineering, QA/QC, etc.)
- Scope of Services with work breakdown structure
- Project schedule updates will be provided in monthly progress reports if changes have been made and agreed upon by City
- Project budgets
- Communications Plan
- Risk Management Plan
- QA/QC Plan
- Project documentation plan and file structure
- Change management process
- Health and Safety Plan for field work, if applicable

Task 120: Project Control and Reporting

Monthly invoices will be prepared and submitted to Pueblo the format used for current projects.

Monthly project status reports will be prepared and submitted to Pueblo. These reports will include:

- Summary of services completed since the previous report.
- Current project schedule and budget status.
- Project issues and potential change logs.
- Milestones and/or deliverables scheduled in the coming month.

This task also includes periodic project reviews by BC management to provide QA/QC and assure that the project is meeting Pueblo's critical success factors, is on schedule, and within budget.

Task 130: Project Meetings

BC will meet with Pueblo every month in person or by phone to review project status, coordinate project activities, obtain direction, and answer specific questions relating to the project. Two members of the consultant team will participate. The budget covers travel to ten meetings over the course of the project, assuming a 12-month schedule.

Conference call updates will be held monthly, between progress meetings with the designated City Project Manager. Two members of the BC team will participate in a one-hour, monthly conference call with the designated City Project Manager.

Project meetings will be combined with workshops when practical.

Task 140: Project Close-out

During project close-out, BC will resolve all final invoices to Pueblo, consolidate and archive all project files, and meet with Pueblo to review the project performance and achievement of project objectives.

Phase 100 Meetings:

- Monthly status calls; one hour each, 2 BC members

Phase 100 Deliverables:

- Monthly Status call minutes
- Monthly invoices and progress reports
- Change log

Phase 200 – Planning Objectives and Inputs

Task 210: Kickoff Workshop and Planning Objectives

The Master Planning Kickoff Workshop will be conducted by key members of the BC team and Pueblo organization. BC will prepare the agenda and materials for this Kickoff Workshop and will facilitate discussions around project scope, budget, schedule, roles, responsibilities, lines of communication, document management and deliverables. Additionally, the team will have initial discussions around permitting drivers, flow and load information, existing process data and gaps, and process modeling and optimization. An outcome of this workshop (Workshop 1) will be to agree on planning goals and the decision-making criteria and processes expected to be used through the planning effort.

Task Assumptions: Task includes review of existing information and preparation for the workshop.

Meetings:

- Workshop (WS) 210 – Kickoff. In-person, 3 key BC staff, 4-hour workshop.

Deliverables:

- WS 210 agenda, presentation materials, and meeting minutes.
- Technical Memorandum (TM) 210 - Project Charter including planning goals and the decision-making criteria and processes.

Task 220: Potential Regulatory Influencers

BC will summarize the known and potential regulatory influences that may impact the facility CIP and operations that BC is aware of at the time of this task, with an update at the Final Master Plan Update report. BC is currently providing regulatory support in parallel under a separate contract. This section is here to summarize the key findings as they influence this Master Plan Update analysis and report.

Specific regulatory issues addressed include:

- Clean Water Act: nitrogen, phosphorus, arsenic, selenium, sulfate, TDS/conductivity, chloride, nonylphenol, temperature, *E. coli*, PFAS, FOG, and ammonia
- Local Regulations
- Industrial Pretreatment
- Biosolids: 503 regulations
- Air Quality: emissions, odor control, construction permits, and air pollution emissions notices (APENs)

Task Assumptions: Regulatory impacts currently addressed under a different scope. Potential impacts due to regulatory requirements that are identified will be documented for future evaluation or study.

Meetings:

- Virtual Meeting (VM) 220 - Present and verify regulatory influencers. 2 BC staff to attend virtually.

Deliverables:

- TM 220– Regulatory Influence Summary

Task 230: Define Planning Area, Flow, and Load Projections

BC will provide the City with a data request summarizing the data required to establish the planning area and the flow and load projections that are expected from that area. These will be reviewed and confirmed during the Kickoff Workshop, along with population forecast data from most recent Master Plan. Where previous work by BC has been performed or is underway, such as the plant simulation modeling, BC will use that data in addition to any other data which is available and necessary for the evaluations. In addition to the sources previously listed, these documents may include:

- Most recent four years of facility operational data
- Most recent four years of process monitoring data
- Internal studies
- O&M Manuals
- Interviews with Pueblo staff

BC will incorporate the data for existing liquid and solids processes from the previous Master Plan, including population growth, and update this information as needed based on interviews with City staff and field verification.

BC will review the provided data and reports, including the analyses conducted by Pueblo, and determine if any additional data will need to be collected or provided by Pueblo. Pueblo will assist BC with obtaining existing and readily available reports and data.

BC will consider flow, load, and wastewater characteristics from the 2006 and 2014 Master Plans and most recent process models prepared by BC to update flow and mass loading rates for wastewater characteristics and peaking factors.

Levels of service will be defined for a host of performance parameters including effluent water quality, biosolids quality (e.g., VSS destruction, % total solids), spills, or other measures of performance defined by the project team. The levels of service will be defined in terms of reliability of the treatment processes, facilities, and utilities.

The reliability criteria will be based on the ability to provide uninterrupted service while continuing to meet discharge requirements and will consider: 1) the values used in WRF design; 2) City experience with routine and unscheduled outages; 3) reliability information from other similar sized WRFs; 4)

accepted engineering practices (as documented in EPA's Reliability Manuals); and 5) City and BC input on risk management priorities.

BC will document the basis of the flow and load projections into a TM that will be incorporated into the final Master Plan Update. The data and resultant analyses will be used to update the hydraulic and organic models for the plant in Phase 300 (Process Analysis and Alternatives Evaluation).

Task Assumptions: All background information to be provided by Pueblo from previous planning documents, current land use documents, and staff interviews. Methods for flow and load projections will follow the previous master plan, utilizing new data where appropriate. Where current information is not available or significant, the results of previous calculations will be used but not verified.

Meetings:

- VM 230 - Verify information and gaps. 3 BC staff to attend virtually.

Deliverables:

- Planning Data Request
- Draft and Final TM - Flow and Load Projections

Task 240: Define Basis of Cost Evaluations

BC will develop a basis of cost evaluations to be used for development of opinion of capita costs. The construction cost estimates will be based upon Association for the Advancement of Cost Engineering International (AACE) criteria for Class 5 estimates. These conceptual estimates are used to prepare long-range capital improvements planning. The expected accuracy for a Class 5 estimate can range from -50 to +100 percent. BC will develop the factors used in the parametric cost models.

Where available, BC will use Pueblo provided actual costs of unit costs for energy, chemicals, labor, transportation, and other operating expenditures as the basis of cost evaluations.

All factors and assumptions used in the development of the cost models will be documented in TM that will be incorporated into the final Master Plan Update.

Task Assumptions: Basis of cost evaluations will rely on actual data provided by Pueblo where available. Additional data will be used only where actual data is not available. One virtual meeting is anticipated for this task.

Meetings:

- VM 240 – Verify information and gaps. 3 BC staff to attend virtually. Meeting may be combined with Task 220.

Deliverables:

- Cost Data Request
- TM 240 - Basis of Cost

Phase 300 – Process Analysis and Alternatives Evaluation

The objective for this phase is to review the current operation of the facility and assess current capacity against growth, regulatory changes, and other drivers. This phase is the foundation of the Master Plan Update and includes reviewing background information, updating the existing whole plant model of the JRDWRF to include future scenarios, performing gap analyses of individual treatment processes, and evaluating alternatives to meet future conditions. Process evaluations to determine the biological capacity of the facility will include modifications that BC made during the 2017 Upgrades Project.

Task 310: Develop a Facility Hydraulic Profile Model

BC will develop a facility hydraulic profile model and evaluate the facility hydraulic capacity for the current condition and anticipated flow conditions at five-year intervals through year 2035 using hydraulic modeling software. Flow conditions will include annual average day and peak hour hydraulic flow states.

Task Assumptions: Operations data and facility information provided by Pueblo (Phase 200) to be used to build the model. Visual Hydraulics will be used to develop the base model. One virtual meeting is assumed to present and verify expected hydraulic profile model.

Meetings:

- VM 310 - Verify expected profile model. 2 BC staff to attend virtually.

Deliverables:

- TM 310 – Hydraulic Model Assumptions and Profile Baseline

Task 320: Update Process Model

BC will apply the existing process facility-wide mass balance model, developed by BC for the Process Optimization Study (under separate scope). The purpose is to evaluate process performance for current conditions and projected flow and load conditions through the planning year 2035 at five-year intervals. Simulations under annual average day, maximum month average day, and maximum month day scenarios will be prepared. This work will build upon work completed from the ongoing Process Optimization Study.

Task Assumptions: Operations data and facility information provided by Pueblo (Phase 200). Existing model from Process Optimization Study is assumed accurate regarding its assumptions as reviewed by Pueblo. Minimal updating expected with any new data provided. It is not assumed that base scope herein will include any regulatory updates beyond what is expected in the Process Optimization Study.

Meetings: None anticipated. Presentation of results part of Task 330.

Deliverables:

- TM 320 – Model Assumptions and Process Model baseline

Task 330: Gap Analysis for Liquid Processes, Solids Handling, and Infrastructure

Using the hydraulic and process models, BC will perform gap analysis of liquid processes, solids handling, and infrastructure and evaluate up to four (4) alternative evaluations to meet projected needs and planning drivers from Phase 200.

Alternative Evaluation #1 is anticipated to include the evaluation of rehabilitating the existing grit removal process and adding a redundant grit removal train as compared to replacing the existing process with a different grit removal technology such as Aerated Grit Removal.

Alternative Evaluations #2, #3 and #4 are TBD, pending the review of other existing unit processes and potentially new process units.

BC will develop conceptual level design criteria, schematics, general arrangement layouts, and descriptions for each alternative. BC will evaluate the process performance of each alternative using the Phase 300 process model and the existing facility configuration as a basis. BC will develop estimated capital costs for each alternative. Suggested timing and phasing for the improvements will be developed.

BC will evaluate the current process with an emphasis on meeting changing regulations (as identified in Phase 200) and gaining efficiency through equipment improvements and operational efficiencies. Alternatives may include both changes to process facilities and regulatory options for meeting future conditions.

BC will present and discuss the suggested alternatives and analyses with Pueblo in a workshop format to collaboratively identify the recommended alternative. Result of the workshop and alternatives analysis will be summarized in a TM following the meeting.

Task Assumptions: Model assumes that the existing process configuration stays in place through the planning horizon. Three (3) alternatives or less will be identified for consideration for the alternative analysis. This scope does not address Reg 31 impacts. One virtual meeting anticipated in this task.

Meetings:

- VM 330 - Model setups and alternatives to evaluate. 5 BC staff to attend virtually.
- WS 330 - Process model, Gap Analysis, Alternatives Evaluation: In-person, 4 key BC staff, 4-hour workshop

Deliverables:

- WS 330 - Agenda, meeting materials, and minutes
- TM 330a - Hydraulic Capacity and Needs Evaluation for Liquid Stream Processes
- TM 330b - Process Capacity, Capability, and Needs Evaluation for Solids Processes

Phase 400 – Infrastructure Renewal and Replacement

The objective of this phase is to prepare a summary of recommended improvements to satisfy the planning drivers and develop a CIP through calendar year 2034.

A cursory review of nine (9) offsite lift station facility capacities, pump age, and staff interviews to estimate remaining life and immediate concerns will be included in this analysis.

Critical process units and equipment at the WRF will be reviewed by means of preliminary visual inspection and staff interviews to ascertain their condition and need for upgrades, replacement, or rehabilitation.

Task 410: Summarize Existing Components

BC will summarize existing infrastructure including the treatment process, electrical power distribution system, SCADA system (related to the remote lift stations including telecommunications), security systems, stormwater systems, natural gas, potable water, and non-potable water systems. In advance of a site visit, BC will review existing drawings, and interview staff to collect the necessary information. Visual condition assessments will be conducted for critical process equipment as identified above. The condition assessment results will help identify a replacement schedule for critical process equipment.

Task Assumptions: This is a capital improvements review at the process level, not a total asset management effort. This summary is based on the previous Master Plan, but will include additional infrastructure updated since the previous Master Plan. A full evaluation of previous data is not included in this scope. New verified data based on information provided in Phase 200, site visits, and interviews with staff to be incorporated. A full condition assessment of the lift stations is not included in this scope. Evaluation of the collection system is not included. No confined entry involved during site visits.

Meetings:

- Site Visit 410 – Visually Assess Condition: 3 days, with 3 BC staff assumed to participate. (1 day for the plant, 2 days for the lift stations)

Deliverables:

- Site Visit meeting minutes
- TM 410 – Existing Infrastructure Components

Task 420: Evaluate Assets and Develop Capital Improvement Plan

BC will use the condition assessment results to identify capital improvement projects that will be used to update the CIP in Phase 800. Existing assets will be evaluated and categorized based on their replacement schedule and/or failure impact. A virtual meeting is included to present and confirm the analytical process to be used. Industry failure frequency data will also be presented for comparison. The outcome of this task will be an inventory of equipment analyzed, a method for analysis, and a TM detailing the results.

Task Assumptions: Lift station evaluation will be based on staff interviews, Pueblo provided data, and visual inspections / photos. Stormwater summary will be based on previous evaluations and/or completed plans and staff interviews only.

Meetings:

- VM 420 - Verify assessment approach and identify helpful additional operations information. 3 BC staff to attend virtually.
- WS 420 - Asset Evaluation and CIP: In-person, 5 key BC staff, 4-hour workshop

Deliverables:

- WS 420 - meeting agenda, meeting materials, and minutes.
- TM 420 – Conditions Assessment and Replacement Schedule Determinations.

Phase 500 – SCADA System Evaluation

This phase utilizes the existing condition assessment that was developed as part of the Treatment Plant SCADA System Upgrade Project. Staff interviews will be conducted to identify the future state of the SCADA system. The recommended planning level projects will be included in the evaluation.

Task 510: Site Assessments and Staff Interviews

This task will review the city's SCADA inventory for the remote lift stations and interview City of Pueblo staff to define the current state of the hardware and software systems employed at the wastewater treatment plant.

BC will provide a request for information to City of Pueblo staff, including a request for drawings, specifications, vendor cut sheets and other information that relates to the existing SCADA system. BC will perform virtual interviews of plant staff.

Task Assumptions:

- Scope includes a maximum of five interviews at 1 hour each.
- BC will utilize the existing condition assessment developed during the SCADA Upgrade Project.

Meetings:

- VM 510 - Verify future condition goals and discuss gaps. 3 BC staff to attend virtually.
- WS (Virtual) 510 - SCADA Existing Conditions and Recommendations, 2-hour workshop, 3 key BC staff to attend virtually.

Deliverables:

- Workshop agenda and meeting minutes
- Staff interview notes

Task 520: Gap Assessment and Planning Level Projects

Based on the information obtained from Task 510, BC will define the desired future SCADA condition based on outcomes from Phase 200 and the high-level gaps between current condition and desired

future system. BC will then define the planning level projects that need to be executed to close these gaps.

BC will facilitate two, one-hour Teams Meetings to 1) identify and confirm desired future SCADA needs defined are accurate and 2) to present recommended planning level projects. Planning level projects will include a rough order of magnitude cost and a simple project approach (what projects need to be done in a certain sequence).

Task Assumptions: Gap assessment will be limited to defining the gaps at a very high level, with high-level estimates of cost and risk. Alternatives to address the identified gaps will include 3-5 planning level projects. Recommended improvements and projects and will not include any design for implementation.

Meetings:

- VM 520a: Future needs and gaps 1-HR; 3 BC Staff to attend virtually.
- VM 520b: Recommended Projects 1-HR; 3 BC staff to attend virtually.

Deliverables:

- TM 520a – Draft SCADA Master Plan Chapter 8 SCADA Recommendations
- TM 520b – Final SCADA Master Plan Chapter 8 SCADA Recommendations

Phase 600 – Triggers and Pinch Points

The purpose of this phase is to identify potential triggers that could significantly change that condition, causing a significant impact to the resulting CIP needs such as a need for expansion of the Treatment Plant. The objective of this task is to consider what-if scenarios that may trigger different future conditions than assessed in Phase 200.

Task 610: Identify Potential Triggers

The Master Plan Update will provide high-level review of system sensitivities to changes in population and population location. BC will work with Pueblo to identify triggers and timing for potential wastewater plant impacts and expansion needs.

Task Assumptions: Scope includes evaluation of three (3) scenarios. Costs of potential expansion not included.

Meetings:

- VM 610 – Potential System Triggers; 3 BC staff to attend virtually

Deliverables:

- TM 610 – Potential System Impact Triggers

Task 620: Pinch Points Identification

Should growth occur beyond current build out projections, the system may have areas that, if addressed, could open additional capacity with relatively lower investment – referred to as pinch points. BC will work with Pueblo to identify potential pinch points in the system that, if addressed and optimized, may open additional capacity or significantly improve operations.

Meetings:

- VM 620: Pinch Points Identification and Evaluation; 3 BC Staff to attend virtually

Deliverables:

- TM 620 – Pinch Points

Task 630: Project Prioritization

BC will review with Pueblo prioritization criteria and guidelines and help develop a process for determining project prioritization based on such criteria, particularly when competing interests may interfere with project timelines and implementation. These criteria will be reviewed with Pueblo during a workshop, during which Pueblo will be able to comment on and make recommendations related to the prioritization criteria and guidelines. Upon completion of the workshop, BC will incorporate the prioritization criteria and recommendations into the Master Plan update.

Task Assumptions:

Meetings:

- WS 630 - Project Prioritization Approach. 3 BC Staff to attend in person, 2 BC Staff virtually for 4-hour workshop

Deliverables:

- Workshop agendas, meeting materials and workshop meeting minutes.
- TM 630– Project Prioritization Criteria

Phase 700 - Future Tools and Assessments

Task 710: Review Opportunities for Future Optimization, Efficiencies, and Other Benefits

Through the reviews and assessments in the above phases, BC may recommend opportunities for additional optimization, efficiencies, or benefit. These opportunities may include:

- Integrated planning: This would include reviewing other plans for their basis of design and decision-making to ensure this Master Plan Update is aligned. If design or decision-making criteria change, BC will incorporate those projects/initiatives into this Master Plan Update using current decision-making and design basis.
- Asset management: BC would evaluate existing asset management practices through previously completed work (i.e., master plans) and interviews with facility staff to understand the condition and criticality of replacement or repair of asset processes. Additionally, BC would help Pueblo identify maintenance strategies for asset base, where appropriate.
- Funding: Where possible, BC will identify funding opportunities for projects identified in the CIP, such as WIFIA, SRF, and IJJA.
- Technology and tools: Throughout BC's work on this Master Plan Update, BC will identify tools and technologies, where appropriate, to enhance system operations, regulatory compliance, preventative maintenance and/or asset management operations. Any tools or technologies identified will be recommended within the CIP and within the text of the Master Plan Update with further context (i.e., order of implementation and considerations such as needed software).

Task Assumptions: These are brief descriptions of categories that Pueblo may want to consider for potential added benefit. There are no assessments included in this section.

Meetings: None anticipated

Deliverables:

- TM 710 –Beneficial Future Assessment Recommendations

Phase 800 – Capital Improvement Plan

The purpose of this phase is to take the TMs from previous phases to produce a complete Master Plan Update document that includes prioritized list of projects, a timeline of improvements, a summary of costs, and recommendations.

Task 810: Update Capital Improvement Plan

BC will update the existing CIP with the recommended improvements based on the results of the investigations and recommended improvements. The capital improvements will be scheduled to include estimated costs for administration, planning, engineering, and construction phases of each project. This task includes preparation of the report. Following the submission of the draft CIP, a virtual meeting will be held to discuss City comments.

Task Assumptions: The CIP will be in Excel format to allow for updates. Class 5 cost estimates will be applied to recommended projects using the basis of cost estimate developed in Task 240.

Meetings:

- VM 810: Capital Improvement Plan Review. 3 BC Staff to attend virtually.

Deliverables:

- Capital Improvement Plan

Task 820: Treatment and Facility Master Plan Update Draft Report

BC will prepare a draft report utilizing the contents of the technical memoranda from the prior phases. This includes the assembly of the elements of the Draft Master Plan Update that were developed as part of previous tasks. This effort also includes QA/QC reviews and technical edits. BC will perform a readability and quality review of the draft document before submittal to Pueblo for review. The outline of the Draft Master Plan Update will be based on preliminary outline presented below:

- Executive Summary
- Chapter 1. Introduction
- Chapter 2. Planning Assumption, Goals, and Objectives
- Chapter 3. Potential Regulatory Influencers
- Chapter 4. Flow and Load Projections
- Chapter 5. Hydraulic and Process Models Assumptions and Baselines
- Chapter 6. Gap analysis for Liquid Processes and Solids Handling
- Chapter 7. Infrastructure Components and Conditions Assessment Summary
- Chapter 8. SCADA Recommendations
- Chapter 9. Potential System Impact Triggers and Pinch Points
- Chapter 10. Project Prioritization
- Chapter 11. Future Tools and Assessment Recommendations
- Chapter 12. Recommended CIP
- Appendix A. Preliminary Cost Estimates
- Appendix B. SCADA Existing Conditions Assessment

Task Assumptions: Master Plan Update Report will be based on Final TMs of previous phases and will not include new analysis.

Meetings:

- VM 820 Review of Draft Report. 5 BC staff to attend virtually.

Deliverables:

- Draft Master Plan Update Report

Task 830: Coordinate with Rates and Fees Consultant

BC will provide the City with the capital costs and timing for their use in determining rates and fees. This scope includes a meeting with Pueblo and their rates and fee consultant, Raftelis, to determine the desired information and information format.

Task Assumptions: This scope does not include rate and fee analysis or recommendations. Information provided for rates and fees will be a spreadsheet output from the CIP analysis. No additional analysis will be required.

Meetings:

- VM 830: Data needs to support rates and fee analysis. 2 BC staff to attend virtually

Deliverables:

- Rates and Fees Support Information - Excel spreadsheet in format determined in above meeting.

Task 840: Treatment and Facility Master Plan Update Final Report

BC will address and incorporate City comments on the draft report and prepare a final report. The preparation of final report will include internal quality control and assurance reviews.

Task Assumptions: This task assumes one (1) iteration of most comments is adequate as previous TMs will have been reviewed by the City. Two (2) brief meetings are included to address gaps or to refine small portions of the report.

Meetings:

- VM 840a and 840b: Clarify and address the City's comments. 2 BC staff to attend virtually.

Deliverables:

- Final Master Plan Update, including Appendices. Electronic copies and up to three (3) hard copies.

Schedule 2

Fee Schedule

Excerpt from Consultant's Proposal dated February 2024, Page 4

Pueblo Wastewater Master Plan																																				
		Enoch Dixon H	Keli Lambert	Mike Thorstenso	Jennifer Short	Sri Koduri	Dawn Wall	Jose Jimenez	Kevin Keil	Kirk Olds	Andrew Neuha	Lexandra Ratcl	Haley Dunn	Kayla Bauhs	Dan Goodburn	William Agster	Adriane Perry	Brandon Billing	Dan Jackson	Pusker Regmi	Ashraf Qadan	Chandler Wilson	Daniel Clayton	Erin Tracy	Jerry Simon	Lia Brune	Leo Rodgers	Marvin Llave	Samantha Kepley	Total Labor Hours	Total Labor Effort	Other Travel Expenses	Total ODCs	Total Expense Cost	Total Expense Effort	Total Effort
100	Project Management	\$215.00	\$130.00	\$290.00	\$130.00	\$235.00	\$100.00	\$290.00	\$235.00	\$280.00	\$255.00	\$195.00	\$150.00	\$165.00	\$235.00	\$235.00	\$195.00	\$215.00	\$150.00	\$235.00	\$195.00	\$280.00	\$280.00	\$235.00	\$280.00	\$195.00	\$255.00	\$195.00	\$215.00	302	56,700	0	0	0	0	56,700
110	Project Management Planning	80	24	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	106	20,900	0	0	0	0	20,900
120	Project Controls & Reporting	54	60	2	18	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	134	22,330	0	0	0	0	22,330
130	Status Meetings	24	0	0	0	24	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	48	10,800	0	0	0	0	10,800
140	Project Closeout	10	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	14	2,670	0	0	0	0	2,670	
200	Planning Objectives and Inputs	28	0	0	0	66	16	12	13	12	3	40	36	48	32	4	0	0	0	0	0	0	0	0	0	0	0	0	0	310	63,370	295	295	295	295	63,665
210	Kickoff Workshop and Planning Objectives	20	0	0	0	28	4	10	13	6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	81	18,915	295	295	295	295	19,210
220	Potential Regulatory Influencers	2	0	0	0	8	4	2	0	0	3	40	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	59	11,855	0	0	0	0	11,855
230	Define Planning Area, Flow and Load Projections	2	0	0	0	28	4	0	0	6	0	0	36	48	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	124	22,410	0	0	0	0	22,410
240	Define Bases of Cost Estimation	4	0	0	0	2	4	0	0	0	0	0	0	0	32	4	0	0	0	0	0	0	0	0	0	0	0	0	0	46	10,190	0	0	0	0	10,190
300	Process Analysis and Alternatives Evaluation	18	0	0	0	138	16	84	68	0	0	0	220	244	24	4	92	16	24	120	0	0	0	0	0	0	0	0	0	1,068	211,260	320	320	320	320	211,580
310	Develop Facility Hydraulic Profile Model	0	0	0	0	6	4	0	4	0	0	0	4	0	0	0	44	6	24	0	0	0	0	0	0	0	0	0	0	92	16,820	0	0	0	0	16,820
320	Update Process Model	0	0	0	0	4	4	8	4	0	0	0	2	56	0	0	0	0	0	24	0	0	0	0	0	0	0	0	0	102	19,780	0	0	0	0	19,780
330	Gap Analysis for Liquid Process, Solids Handling, and Infrastructure	18	0	0	0	128	8	76	60	0	0	0	214	188	24	4	48	10	0	96	0	0	0	0	0	0	0	0	0	874	174,660	320	320	320	320	174,980
400	Renewal and Replacement	12	0	0	0	52	8	0	20	0	0	0	92	0	0	0	0	0	36	0	62	90	12	12	10	82	0	0	0	488	101,760	4,025	4,025	4,025	4,025	105,785
410	Summarize Existing Componenets	0	0	0	0	24	4	0	6	0	0	0	36	0	0	0	0	0	24	0	48	48	4	4	4	40	0	0	0	242	50,230	3,570	3,570	3,570	3,570	53,800
420	Evaluate Assets and Develop Capital Improvem	12	0	0	0	28	4	0	14	0	0	0	56	0	0	0	0	0	12	0	14	42	8	8	8	42	0	0	0	246	51,530	455	455	455	455	51,985
500	SCADA System Evaluation	2	0	0	0	22	8	14	10	0	0	0	40	0	24	2	0	0	0	20	0	0	0	0	0	0	54	136	0	332	69,910	0	0	0	0	69,910
510	Site Assessment and Staff Interviews	2	0	0	0	12	4	14	6	0	0	0	12	0	0	0	0	0	0	20	0	0	0	0	0	0	10	36	0	116	25,190	0	0	0	0	25,190
520	Gap Assessment and Planning Level Projects	0	0	0	0	10	4	0	4	0	0	0	28	0	24	2	0	0	0	0	0	0	0	0	0	0	44	100	0	216	44,720	0	0	0	0	44,720
600	Triggers and Pinch Points	56	0	0	0	82	12	16	36	20	2	6	112	32	0	0	58	10	0	26	0	0	0	0	0	0	0	0	0	468	94,540	295	295	295	295	94,835
610	Identify Potential Triggers	12	0	0	0	24	4	8	20	4	2	6	30	0	0	0	6	2	0	6	0	0	0	0	0	0	0	0	0	124	25,950	0	0	0	0	25,950
620	Pinch Points Identification	0	0	0	0	36	4	8	16	0	0	0	60	32	0	0	52	8	0	20	0	0	0	0	0	0	0	0	0	236	45,780	0	0	0	0	45,780
630	Project Prioritization	44	0	0	0	22	4	0	0	16	0	0	22	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	108	22,810	295	295	295	295	23,105
700	Future Tools and Assessments	24	0	0	0	26	4	0	0	2	0	0	44	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	56	156	30,870	0	0	0	0	30,870
710	Review Opportunities for Future Optimization Efficiencies and other Benefits	24	0	0	0	26	4	0	0	2	0	0	44	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	56	156	30,870	0	0	0	0	30,870
800	Capital Improvement Plan	100	0	0	0	88	16	16	0	34	0	0	98	32	0	0	0	0	60	0	0	0	0	0	0	0	8	0	452	88,480	0	0	0	0	88,480	
810	Update Capital Improvement Plan	40	0	0	0	30	4	0	0	18	0	0	38	0	0	0	0	0	24	0	0	0	0	0	0	0	0	0	0	154	30,390	0	0	0	0	30,390
820	Treatment and Facility MP Update Draft	32	0	0	0	32	8	8	0	12	0	0	40	16	0	0	0	0	24	0	0	0	0	0	0	8	0	0	180	34,680	0	0	0	0	34,680	
830	Coordinate with Rates and Fees Consultant	6	0	0	0	12	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	18	4,110	0	0	0	0	4,110
840	Final Report- Treatment and Facility MP Update	22	0	0	0	14	4	8	0	4	0	0	20	16	0	0	0	0	12	0	0	0	0	0	0	0	0	0	100	19,300	0	0	0	0	19,300	
GRAND TOTAL		408	88	4	18	498	80	142	147	68	5	46	642	356	80	10	150	26	120	166	62	90	12	12	10	82	54	144	56	3,576	716,890	4,935	4,935	4,935	4,935	721,825
Hours and Dollars are rounded to nearest whole number. To display decimals, change the format of the cells.																																				

Schedule 3

Work Schedule

Excerpt from Consultant's Proposal dated February 2024, Page 3

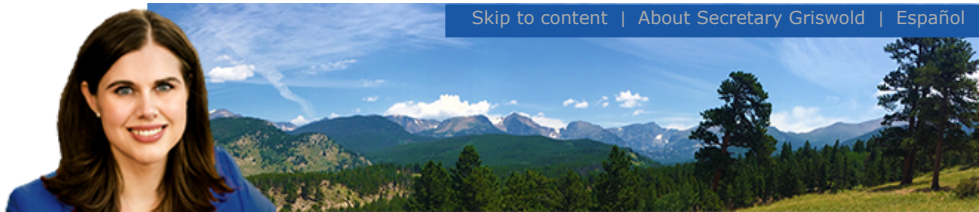
ID	Phase No	Task Name	Duration	Start	Finish	Qtr 2, 2024			Qtr 3, 2024			Qtr 4, 2024			Qtr 1, 2025			Qtr 2, 2025
						Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
0		2024 Pueblo Wastewater Treatment and Facility Master Plan Update	256 days	Mon 4/15/24	Fri 4/18/25													
1	100	Project Management	255 days	Mon 4/15/24	Fri 4/18/25													
2	200	Planning Objectives and Inputs	60 days	Mon 4/15/24	Tue 7/9/24													
3	300	Process Analysis and Alternatives Evaluation	150 days	Wed 5/1/24	Tue 12/3/24													
4	400	Renewal and Replacement	150 days	Wed 5/1/24	Tue 12/3/24													
5	500	SCADA System Evaluation	150 days	Wed 5/1/24	Tue 12/3/24													
6	600	Triggers and Pinch Points	150 days	Wed 5/1/24	Tue 12/3/24													
7	700	Future Tools and Assessments	90 days	Mon 9/30/24	Fri 2/7/25													
8	800	Capital Improvement Plan	90 days	Mon 12/9/24	Thu 4/17/25													

Additional Information for Agreement

Certificate of Good Standing

PERA Questionnaire

Insurance Certificate(s)- **Requesting Update from Consultant 3/1/2024**



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Summary

Details			
Name	BROWN AND CALDWELL, INC.		
Status	Good Standing	Formation date	03/20/1978
ID number	19871067502	Form	Foreign Corporation
Periodic report month	March	Jurisdiction	California
Principal office street address	201 North Civic Drive, Suite 300, Walnut Creek, CA 94596, US		
Principal office mailing address	201 North Civic Drive, Suite 300, Walnut Creek, CA 94596, US		

Registered Agent	
Name	Corporation Service Company
Street address	1900 W Littleton Blvd, Littleton, CO 80120, US
Mailing address	1900 W Littleton Blvd, Littleton, CO 80120, US

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OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

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

BROWN AND CALDWELL, INC.

is an entity formed or registered under the law of California , has complied with all
applicable requirements of this office, and is in good standing with this office. This entity has
been assigned entity identification number 19871067502 .

This certificate reflects facts established or disclosed by documents delivered to this office on
paper through 11/27/2023 that have been posted, and by documents delivered to this office
electronically through 11/28/2023 @ 14:52:40 .

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 11/28/2023 @ 14:52:40 in accordance with applicable law.
This certificate is assigned Confirmation Number 15522494 .



Jena Griswold

Secretary of State of the State of Colorado

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

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

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

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

(a) Are you, or do you employ or engage in any capacity, including an independent contractor, a PERA Retiree who will perform any services for the City of Pueblo? Yes____, No X. (If you answered "no" please proceed to signature section at bottom of this page.)

(b) If you answered "yes" to (a) above, please answer the following question: Are you an individual, sole proprietor or partnership, or a business or company owned or operated by a PERA Retiree or an affiliated party? For purposes of responding to this question, an "affiliated party" includes (1) any person who is the named beneficiary or cobeneficiary on the PERA account of the PERA Retiree; (2) any person who is a relative of the PERA Retiree by blood or adoption to and including parents, siblings, half-siblings, children, and grandchildren; (3) any person who is a relative of the PERA Retiree by marriage to and including spouse, spouse's parents, stepparents, stepchildren, stepsiblings, and spouse's siblings; and (4) any person or entity with whom the PERA Retiree has an agreement to share or otherwise profit from the performance of services for the City of Pueblo by the PERA Retiree other than the PERA Retiree's regular salary or compensation. Yes _____, No____.

If you answered "yes" please state which of the above entities best describes your business:

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

Please provide the name, address, date of birth, and social security number of each such PERA Retiree. If more than two, please attach a supplemental list.

Name	Address	DOB	Social Security Number
Name	Address	DOB	Social Security Number

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

Company Name: Brown and Caldwell

Authorized Signature:  Title: Managing Director, CS

Printed Name: Michael J. Thorstenson Date: September 22, 2023



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 8, 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 APPROVING AND ACCEPTING A GRANT FROM THE COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT IN THE AMOUNT OF \$271,889.00 TO DEVELOP AND EXPAND TRAINING AND WORK-BASED PROGRAMS FOR RESKILLING, UPSKILLING, AND NEXT-SKILLING INDIVIDUALS AND HOUSEHOLDS ADVERSELY AFFECTED BY COVID; AUTHORIZING THE MAYOR TO SIGN THE GRANT AGREEMENT, ESTABLISHING PROJECT NO. CI2329, AND BUDGETING AND APPROPRIATING \$271,889.00 TO PROJECT NO. CI2329

SUMMARY:

Attached is an Ordinance approving and accepting a grant in the amount of \$271,889.00 from the Colorado Department of Labor and Employment to develop and expand training and work-based programs in partnership with Pueblo Community College for reskilling, upskilling, and next-skilling individuals and households adversely affected by COVID. This Ordinance budgets and appropriates the grant funds to Project No. CI2329 and authorizes the Mayor to sign the Grant Agreement.

PREVIOUS COUNCIL ACTION:

City Council has not taken previous action.

BACKGROUND:

The City of Pueblo shall provide recruitment, eligibility determination, and enrollment for individuals who are eligible under the grant requirements when the worker or employer has been economically impacted by the COVID-19 pandemic. Participants will be individuals and households of underserved populations that were disproportionately impacted by the COVID-19 Public Health Emergency. This includes individuals who experienced household income loss or job loss since March 2020, or inability to access or continue education or training due to the impact of the COVID-19 pandemic. Target audiences include populations typically underrepresented in their industry, veterans,

youth, dislocated workers, and justice-involved individuals.

Direct delivery of classroom training will be provided on campus by Pueblo Community College (PCC). Off-campus programs will be delivered through various means, including the Mobile Learning Lab. The programs have been designed to serve the community in the most practical and economically efficient manner possible.

FINANCIAL IMPLICATIONS:

There are no matching funds required for this grant. Accepting this grant will bring additional funding to the community for professional improvement and skill-building to disadvantaged individuals and workers in the community. The City will manage the grant and Pueblo Community College will deliver the training and skill-building on campus and off-campus through PCC's mobile learning lab.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If the proposed Ordinance is not approved, the grant will not be accepted.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. CDLE.Grant.CTGG1 KARA 2023-4054.271889.ProjectCI2329_ (002)
2. PCC subreipient agreement

ORDINANCE NO.

AN ORDINANCE APPROVING AND ACCEPTING A GRANT FROM THE COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT IN THE AMOUNT OF \$271,889.00 TO DEVELOP AND EXPAND TRAINING AND WORK-BASED PROGRAMS FOR RESKILLING, UPSKILLING, AND NEXT-SKILLING INDIVIDUALS AND HOUSEHOLDS ADVERSELY AFFECTED BY COVID; AUTHORIZING THE MAYOR TO SIGN THE GRANT AGREEMENT, ESTABLISHING PROJECT NO. CI2329, AND BUDGETING AND APPROPRIATING \$271,889.00 TO PROJECT NO. CI2329

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

SECTION 1.

Grant Agreement Number CTGG1 KARA 2023-4054 dated November 1, 2023 ("Agreement") between the City of Pueblo, a Municipal Corporation, and the Colorado Department of Labor and Employment to develop training and work-based skill building programs, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved

SECTION 2.

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

SECTION 3.

Project No. CI2329 is hereby established.

SECTION 4.

Funds in the amount of \$271,889.00 shall be accepted pursuant to the Agreement and budgeted and appropriated to Project No. CI2329.

SECTION 5.

The Mayor is hereby authorized to execute a subrecipient agreement to Pueblo Community College to deliver services and training identified in the grant application. The agreement, approved as to form by the City Attorney, shall be in an amount not to exceed two hundred, seventy-one thousand, eight hundred and eighty-nine dollars (\$271,889.00).

SECTION 6.

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

SECTION 7.

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

Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on March 25, 2024.

Final adoption of Ordinance by City Council on April 8, 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

COVER PAGE

Page 507 of 598

FEDERAL AWARD(S) APPLICABLE TO THIS GRANT AWARD

Federal Awarding Office	US Department of the Treasury
Grant Program	Coronavirus State and Local Fiscal Recovery Funds
Assistance Listing Number	21.027
Federal Award Number	SLFRP0126
Federal Award Date *	May 18, 2021
Federal Award End Date	December 31, 2024
Federal Statutory Authority	Title VI of the Social Security Act, Section 602
Total Amount of Federal Award (this is <u>not</u> the amount of this grant agreement)	\$3,828,761,790

* Funds may not be available through the Federal Award End Date subject to the provisions in §2 and §5 below.

SIGNATURE PAGE**THE SIGNATORIES LISTED BELOW AUTHORIZE THIS GRANT**

GRANTEE City of Pueblo <u>Nicholas Gradisar</u> By: Nicholas Gradisar, Mayor Date: <u>10/26/2023</u>	STATE OF COLORADO Jared S. Polis, Governor Colorado Department of Labor and Employment Joe Barela, Executive Director <u>Kelly Folks</u> By: Kelly Folks, Director Division of Employment and Training Date: <u>11/1/2023</u>
2nd State or Grantee Signature if Needed <u>N/A</u> By: Name & Title of Person Signing for Signatory Date: _____	LEGAL REVIEW Philip J. Weiser, Attorney General By: <u>N/A</u> Assistant Attorney General Date: _____
In accordance with §24-30-202, C.R.S., this Grant is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD <u>Kelly Folks</u> By: Kelly Smith-Biesemeyer, State Controller Delegate Effective Date: <u>11/1/2023</u>	

1. GRANT

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

2. TERM

A. Initial Grant Term and Extension

The Parties' respective performances under this Intergovernmental Grant Agreement shall commence on the Grant Issuance Date and shall terminate on the Grant Expiration Date unless sooner terminated or further extended in accordance with the terms of this Intergovernmental Grant Agreement. Upon request of Grantee, the State may, in its sole discretion, extend the term of this Intergovernmental Grant Agreement by providing Grantee with an updated Intergovernmental Grant Agreement showing the new Grant Expiration Date. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in Exhibit A.

B. Early Termination in the Public Interest

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

C. Grantee's Termination Under Federal Requirements

Grantee may request termination of this Grant 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 Grant is terminated in this manner, then Grantee shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Budget”** means the budget for the Work described in Exhibit B.
- B. **“Business Day”** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- C. **“CJI”** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- D. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
- E. **“Grant Expiration Date”** means the Grant Expiration Date shown on the first page of this Intergovernmental Grant Agreement.
- F. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Intergovernmental Grant Agreement.
- G. **“Grant Issuance Date”** means the Grant Issuance Date shown on the first page of this Intergovernmental Grant Agreement.
- H. **“Exhibits”** exhibits and attachments included with this Grant as shown on the first page of this Grant
- I. **“Extension Term”** means the period of time by which the Grant Expiration Date is extended by the State through delivery of an updated Intergovernmental Grant Agreement
- J. **“Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Regulations 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.
- K. **“Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. The US Department of the Treasury is the Federal Awarding Agency for the Federal Award which is the subject of this Grant.
- L. **“Goods”** means any movable material acquired, produced, or delivered by Grantee as set forth in this Intergovernmental Grant Agreement and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
- M. **“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.
- N. **“Initial Term”** means the time period between the Grant Issuance Date and the Grant Expiration Date.
- O. **“Intergovernmental Grant Agreement”** means this Agreement which offers Grant Funds to Grantee, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future updates thereto.

- P. **“Matching Funds”** means the funds provided Grantee as a match required to receive the Grant Funds.
- Q. **“Party”** means the State or Grantee, and **“Parties”** means both the State and Grantee.
- R. **“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.
- S. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S. **“PII”** shall also mean **“personal identifying information”** as set forth at § 24-74-102, et. seq., C.R.S.
- T. **“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.
- U. **“Recipient”** means the State Agency shown on the first page of this Intergovernmental Grant Agreement, for the purposes of the Federal Award.
- V. **“Services”** means the services to be performed by Grantee as set forth in this Intergovernmental Grant Agreement, and shall include any services to be rendered by Grantee in connection with the Goods.
- W. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- X. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- Y. **“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.

- Z. **“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.
- AA. **“Sub-Award”** means this grant by the State (a Recipient) to Grantee (a Subrecipient) 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.
- BB. **“Subcontractor”** means third-parties, if any, engaged by Grantee to aid in performance of the Work. “Subcontractor” also includes sub-grantees.
- CC. **“Subrecipient”** means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization entity that receives a Sub-Award from a Recipient to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency. For the purposes of this Grant, Grantee is a Subrecipient. For SLFRF Grants, a subrecipient relationship continues to exist for Expenditure Category 6.1 Revenue Replacement.
- DD. **“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.
- EE. **“Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, commonly known as the “Super Circular, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- FF. **“Work”** means the delivery of the Goods and performance of the Services described in this Intergovernmental Grant Agreement.
- GG. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Grant Issuance Date that is used, without modification, in the performance of the Work.

Any other term used in this Intergovernmental Grant 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 Intergovernmental Grant Agreement and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate or reimburse Grantee for the delivery of any goods or the performance of any services that are not specifically set forth in this Intergovernmental Grant 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 Grant that exceeds the Grant Amount for each State Fiscal Year shown on the first page of this Intergovernmental Grant Agreement. Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. The State shall not be liable to pay or reimburse Grantee for any Work performed or expense incurred before the Grant Issuance Date or after the Grant Expiration Date; provided, however, that Work performed and expenses incurred by Grantee before the Grant Issuance Date that are chargeable to an active Federal Award may be submitted for reimbursement as permitted by the terms of the Federal Award.

B. 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. Reimbursement of Grantee Costs

The State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount described in this Intergovernmental Grant Agreement for all allowable costs described in this Intergovernmental Grant Agreement and shown in the Budget, except that Grantee may adjust the amounts between each line item of the Budget without formal modification to this Agreement with written approval from the State. The change shall not modify the total maximum amount of this Intergovernmental Grant Agreement, the maximum amount for any State fiscal year, or modify any requirements of the Work. The State shall reimburse Grantee for the Federal share of properly documented allowable costs related to the Work after the State's review and approval thereof, subject to the provisions of this Grant. The State shall only reimburse allowable costs if those costs are: (i) reasonable and necessary to accomplish the Work and for the Goods and Services provided; and (ii) equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred).

D. Close-Out

Grantee shall close out this Grant within 45 days after the Grant Expiration Date. To complete close out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Intergovernmental Grant 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 1 year and 90 days after the Grant Expiration Date 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. Performance and Final Status

Grantee shall submit all financial, performance and other reports to the State no later than the end of the close out described in §5.E, containing an evaluation and review of Grantee's performance and the final status of Grantee's obligations hereunder.

B. Violations Reporting

Grantee shall disclose, in a timely manner, in writing to the State 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 and Inspection

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

B. Monitoring

The State will monitor Grantee's performance of its obligations under this Intergovernmental Grant Agreement using procedures as determined by the State. Grantee shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Grantee. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work. If Grantee enters into a subcontract or subgrant with an entity that would also be considered a Subrecipient, then the subcontract or subgrant entered into by Grantee shall contain provisions permitting both Grantee and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

C. Final Audit Report

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

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Grantee shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Grantee for the sole and

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

B. Other Entity Access and Nondisclosure Agreements

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

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include,

but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding PII

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

9. CONFLICTS OF INTEREST

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

10. INSURANCE

Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"). Grantee shall ensure that any Subcontractors maintain all insurance customary for the completion of the Work done by that Subcontractor and as required by the State or the GIA.

11. REMEDIES

In addition to any remedies available under any exhibit to this Intergovernmental Grant Agreement, if Grantee fails to comply with any term or condition of this Grant or any terms of the Federal Award, the State may terminate some or all of this Grant and require Grantee to repay any or all Grant funds to the State in the State's sole discretion. The State may also terminate this Intergovernmental Grant Agreement at any time if the State has determined, in its sole discretion,

that Grantee has ceased performing the Work without intent to resume performance, prior to the completion of the Work.

12. DISPUTE RESOLUTION

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

13. NOTICES AND REPRESENTATIVES

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

14. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

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

15. GOVERNMENTAL IMMUNITY

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

16. GENERAL PROVISIONS

A. Assignment

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

B. Captions and References

The captions and headings in this Intergovernmental Grant Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Intergovernmental Grant 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.

C. Entire Understanding

This Intergovernmental Grant 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 Intergovernmental Grant Agreement.

D. Modification

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

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

Any reference in this Intergovernmental Grant 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 Grant Issuance Date. Grantee shall strictly comply with all applicable Federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. Digital Signatures

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

G. Severability

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

H. Survival of Certain Intergovernmental Grant Agreement Terms

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

I. Third Party Beneficiaries

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

J. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Intergovernmental Grant 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.

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

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

L. 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. 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.

M. Federal Provisions

Grantee shall comply with all applicable requirements of Exhibit C at all times during the term of this Grant.

EXHIBIT A, STATEMENT OF WORK

The Colorado Department of Labor/Colorado Rural Workforce Consortium has awarded the City of Pueblo \$271,889.00 to provide services to unemployed or underemployed persons. Strategies will include developing or expanding training and work-based programs for reskilling, upskilling and next-skilling individuals. Quality education and training for in-demand skills will be provided in partnership with Pueblo Workforce Centers, Pueblo Community College, corporate partners, and Non-Profit Organizations (NPOs). In the last category is Children First, a local NPO championing the lack of quality childcare in the community.

1. Overview:

The City of Pueblo shall provide recruitment, eligibility determination, and enrollment for individuals who are eligible when the workers that have been negatively impacted or economically harmed by the COVID-19 pandemic. To be eligible for assistance, participants 16 years or older, must be unemployed or underemployed, and who are in an impacted or disproportionately impacted class as a result of the COVID-19 Public Health Emergency. This includes individuals who experienced household income loss or job loss since March 2020, or inability to access or continue education or training due to the COVID-19 pandemic. Target audiences include populations typically underrepresented in their industry, veterans, youth, dislocated workers, and justice-involved individuals. Participant eligibility may be self-attested as a last resort however the reason must be documented.

Direct delivery of class-room training will be provided by Pueblo Community College (PCC), a public, non denominational, coeducational, two-year institution currently operating on the semester system. PCC is accredited by the Higher Learning Commission. Off-campus programs have been designed to serve the college-area communities in the most practical and economically efficient manner possible.

The *Colorado Talent Pipeline Report* shows this year's Top Jobs in the State with the highest number of recent job postings. Their Top Jobs list is woven together with Pueblo employers' needs and these are the occupational areas we will focus on:

- Heavy and Tractor-Trailer Truck Drivers
- Registered Nurses and nursing support
- Construction
- A Berkshire Hathaway subsidiary, Clayton Homes builds one- and two-story modular and manufactured houses and other buildings that range in price from \$20,000 to more than \$130,000
- Steel Work
- Manufacturing .

- Retail Trade (self-explanatory, city-wide)
- Administrative and Support (self-explanatory, city-wide)

2. Background/General Information

On June 23, 2021, Colorado House Bill 21-1264 was signed into law by Governor Jared Polis. The bill appropriated \$75 million in federal State and Local Fiscal Recovery Funds from the American Rescue Plan to support talent development. This includes \$60 million to the Colorado Workforce Development Council to invest in programs and grants that support training for the unemployed and underemployed during times of substantial unemployment.

Colorado's unemployment rate remains higher than pre-COVID levels, and the impacts of low-quality jobs and demands for skilled workers create stress within the labor market. The 2020 Colorado Talent Pipeline Report highlights impacts of the pandemic, top jobs and in-demand credentials, and discusses the plan for recovery in 2021. The execution of all workforce-related legislation from the 2021 session will build on the data in the Talent Pipeline Report and work to achieve the overarching goals of the state and local areas to support Coloradans.

Contact information:

The agency point of contact is:

David Griffin

David.griffin@state.co.us

303-503-2739

City of Pueblo

Laura Solano, Chief of Staff

Lsolano@pueblo.us

719-553-2609

3. Grant Objectives/Outcomes

The objective of this grant is to provide services and occupational training for approximately 225 eligible individuals. Much of the upskilling, reskilling and next skilling will take place on a PCC campus. Some eligible individuals will obtain upskilling, reskilling, and next skilling on a jobsite and delivered by a corporate educator at their expense. Their reward is the potential of recruiting and retaining their workforce.

Financial assistance for childcare for learners covered in this proposal will be paid at 100% during the times s/he is learning whether on campus or on a job site. The learning experience is meant to be a conduit to employment; when a learner changes from a trainee to an employee, their childcare costs will be covered 100% in the first month of employment, 50% in the second month of employment, and 25% in the third month of employment. This staggered deceleration of financial assistance will give the employee time to budget appropriately into his/her new employment role.

Childcare assistance will be provided and one option to learners who have no adequate childcare – Children First will help them secure childcare and pay for it. Some learners may already have quality childcare, and their stipend will help pay for care in the facility they have already chosen so that the child does not need to be uprooted to a different facility – this includes family or friends who are caring for their child. PCC Corporate College already has this system of childcare assistance in place and is administered smoothly. It is notable that they have agreements in place for occasional/part-time placement suitable for learners studying/training a few days or hours each week; full time placement 5-7 days/work; and evening and weekend placement.

Pueblo Transit will provide passes for public transportation free of charge to learners. The city subsidizes corporate sponsored van pools to assist employees riding to and from work an average of three or more days a week and with a round trip of more than 15 miles for the commute. Vanpools serve all three of Pueblo's industrial parks. A portion of this CDLE budget will cover an employee's share of the ride while s/he attends their OJT, 50% of rides during their first month of employment, and 25% of their rides during their third month of employment.

- Enrollment Goals:

Enroll up to 225 individuals who reside in Pueblo City or County into occupational training.

Provide books, fees, equipment, lab fees for up to 225 trainees

Enroll up to 50 into digital equity courses

Provide books, fees, equipment, lab fees for up to 50 digital equity trainees

4. Grantee Responsibilities

- A. Recruit Pueblo County citizens who were negatively economically impacted by the pandemic are unemployed, underemployed, or live in eligible qualified census tracts.
- B. Determine grant-related eligibility for each applicant and conduct a duplication of benefits assessment for each eligible individual to ensure no duplication of benefits are made. The Pueblo Community College Financial Aid Handbook outlines that Federal Student Aid is only available for Title IV eligible programs. Non-credit classes such as those provided under this grant are not eligible for Title IV aid.
- C. Subrecipient will work directly with Pueblo Community College Financial Aid Office and other training providers to ensure participants are not receiving the same benefits from any other source of funds"
- D. Enter all required applicant data into Connecting Colorado System, to include but not limited to: First and Last Name, Address, County, DOB, Highest level of education, race/ethnicity (multiple can be selected), sex (must be M or F - the system currently does not include options for non-binary identities, so whatever participant is comfortable selecting), and employment status. Also required: if participant is homeless, receiving SNAP or TANF, lives in a Qualified Census Tract (may need to look up address [here](#)), and if the participant signed a COVID-impact self attestation form.
- E. Shall adhere to CRWC defined procedures and utilize developed forms, such as:

- 1) Formal/Occupational Training

- a. Roles of the sub recipient/grantee
 - 1. Utilize the SI-Training Payment Agreement, see attached for reference, when invoicing training costs.
 - 2. Submit SI-Training Payment Agreement with supporting documentation from the training vendor.
- b. Roles of the Training Provider
 - 1. Utilize the SI-ITA Individual Training Account or Classroom Based Training Payment Agreement
 - 2. Provide each enrolled participant a schedule of training.
 - 3. Notify the Subrecipient if participant drops course and/or credentials for participants who complete training.
- c. Roles of the participant
 - 1. Participant will adhere to training schedule set by training provider
 - 2. Participant will sign all required documents for program enrollment and completion
 - 3. Participant will sign upon receipt of supportive services

2) Supportive Services

- a. Roles of the sub recipient
 - 1. Provide the Participant Payment Request Supportive Services to the training provider or in the case the sub recipient is purchasing the supportive service they will utilize the Participant Payment Request Supportive Services.
 - 2. Pay vendor based on the completed Payment Request Supportive Services form along with backup documentation for purchase.
 - 3. All purchases must have receipt accompanying the form
 - 4. If gasoline is purchased must include proof of insurance, MapQuest to worksite/training site, mileage will be reimbursed by the mile at the current state per mile reimbursement rate.
- b. Roles of the training provider or vendor
 - 1. Utilize the Participant Payment Request Supportive Services when purchasing supportive Subrecipient shall adhere to State and Consortium policies relative to adequate internal controls and gift cards when providing bus passes and gas cards to participants

2. services for Innovation participants.
3. Submit Payment Request Supportive Services form along with backup documentation for purchase.
 - a. All purchases must have receipt accompanying the form
 - b. If gasoline is purchased must include proof of insurance, MapQuest to worksite/training site, mileage will be reimbursed by the mile at the current state per mile reimbursement rate.

c. Roles of the participant

1. Participant will adhere to training schedule set by training provider
2. Participant will sign all required documents for program enrollment and completion
3. Participant will sign upon receipt of supportive services

E. Subrecipient shall adhere to State and Consortium policies relative to adequate internal controls and gift cards when providing bus passes to participants

F. Maintain financial records for all allowable costs

G. Request reimbursement for actual expenses, providing all necessary documentation

5. CRWC Responsibilities

- A. Review and approve submitted reimbursement requests for allowable costs
- B. Request reimbursement payment from accounts payable within a timely manner
- C. Provide Connecting Colorado system data entry requirement training to Grantee
- D. Provide student enrollment and expenditure data to the Colorado Workforce Development Council
- E. CRWC will provide training to Grantee regarding all appropriate participant eligibility documentation and how to enter this documentation and data entry requirements into the State's data capture system, Connecting Colorado.
- F. CRWC will provide access to Connecting Colorado once Grantee has completed and submitted the required request form for each individual who will be entering data and uploading documents into Connecting Colorado
- G. CRWC will monitor the sub recipient/grantee on an annual basis at a minimum

6. Additional Reporting and Monitoring

- A. Grantee shall provide a quarterly enrollment report of individuals who are eligible under this grant.

Reporting Period	Report Due Date
October 1, 2023 to December 31, 2023	January 5, 2024
January 1, 2024 to March 31, 2024	April 5, 2024
April 1, 2024 to June 30, 2024	July 5, 2024
July 1, 2024 to September 30, 2024	October 5, 2024
October 1, 2024 to December 31, 2024	January 5, 2025

- B. Grantee participant files and financial records will be monitored on an annual basis at a minimum. Participant files monitoring will include participant eligibility determinations and supporting documentation entered into Connecting Colorado.

7. Payments and Reimbursement Requests

- A. This is a cost reimbursement grant. Reimbursements to Grantee shall be made in accordance with the provisions of §5 of the Grant Agreement and Exhibit A, §7.
- B. Grantee/sub recipient shall submit monthly reimbursement requests that detail expenses with justification based on the approved budget by the 5th of the month following the month of expenditures. The reimbursement requests should clearly detail the actual approved costs related to the grant incurred during the time since the last reimbursement request was submitted. If there have been no incurred expenses for a given month, then a reimbursement request is not required for that month.
- C. Reimbursement requests must include an expenditure report, typically generated from financial tracking software, to include, where appropriate and relevant: time sheets/timcards, staff/employee time allocation forms, payroll reports from “official” payroll system or system of record, proof of purchases, itemized receipts, detailed account of all related expenses, related grant project objective & date of expenditure, or any other documentation that CRWC shall request in its sole discretion. Such

supporting documentation shall be considered part of the Grantee Records and shall be kept for the duration of the Record Retention Period as set forth in §7 of this Agreement.

- D. Reimbursement Requests shall be submitted via the distributed form to David Griffin, david.griffin@state.co.us for review. If CRWC staff approves the request, it will submit it to CDLE Controller's/Finance Office for review, approval, and payment.

8. Budget and Narrative

8.1 Budget

FUNDING REQUEST	
Colorado Department of Labor and Employment	\$271,889
Total Funding	\$271,889
EXPENSE BUDGET	
Training, reskilling, upskilling and next-skilling (custom)	
Tuition (includes faculty and indirect costs) (225ppl@ an average of \$600ea)	\$135,000
Books, fees, equipment, lab fees (225ppl@ an average of \$180ea)	\$40,500
work-site programs (OJT)	\$0
Career counseling (direct costs are included in PCC's budget)	\$0
Transportation assistance (public transportation bus or van pool)	\$3,000
Digital Equity Classes: Supplemental training for contemporary digital skills for 50 learners	
Tuition (includes faculty and indirect costs) (50ppl@\$40ea)	\$2,000
Books, fees, equipment, lab fees (50ppl@\$10ea)	\$500
Childcare Support	
Childcare stipends for part time learners	\$55,889
Childcare stipends for full time employees	\$35,000
Total Expense	\$271,889

8.2 Narrative

Occupational Skills Tuition = \$135,000.00

Pueblo Corroborate College, as a part of Pueblo Community College, continues to leverage funding from Pueblo County government, the Higher Education Emergency Relief Fund (HEERF) and other donors for student financial aid. This CDLE funding will allow for increased service to approximately 225 learners and many area companies to keep up with demand. 225 individuals X \$600.00 average for each = \$135,000.00

Books, equipment, lab fees = \$40,500.00

Much of the upskilling, reskilling and next skilling will take place on a PCC campus. The balance will take place on a job-site and delivered by a corporate educator at their expense. Their reward is the potential of recruiting and retaining their workforce. 225 X \$180.00 average for each = \$40,500.00

Transportation = \$3,000.00

Pueblo Transit will provide passes for public transportation free of charge to learners who live more than 15 miles from their training. 100 X \$30.00 each = \$3,000.00. Providing bus passes will be distributed per Office of State Controller's Office's guidelines.

Digital Equity Classes Tuition = \$2,000.00

Digital literacy classes for 50 individuals identified who will benefit from digital literacy training. 50 individuals X \$40.00 each = \$2,000.00

Books, fees, lab fees for digital literacy = \$500.00

Fees, books, lab fees needed in order to attend and succeed in digital literacy classes. 50 individuals X \$10.00 each = \$500.00

Childcare Support = \$90,889.00

Childcare assistance will be provided in the form of stipends to learners. The greatest benefit will be to learners who have no adequate childcare – It is notable that they have agreements in place for occasional/part-time placement suitable for learners studying/training a few days or hours each week; full time placement 5-7 days/work; and evening and weekend placement.

Childcare stipends for part-time learners = \$55,889.00

Childcare stipends for full-time learners = \$35,000.00

No administrative/indirect costs have been requested in this proposal. All agencies involved will absorb indirect costs to fulfill their missions.

EXHIBIT B, SAMPLE OPTION LETTER

State Agency Insert Department's or IHE's Full Legal Name	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Grantee Insert Grantee's Full Legal Name, including "Inc.", "LLC", etc...	Original Agreement Number Insert CMS number or Other Agreement Number of the Original Agreement
Current Agreement Maximum Amount Initial Term State Fiscal Year 20xx \$0.00	Option Agreement Number Insert CMS number or Other Agreement Number of this Option
Extension Terms State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00	Agreement Performance Beginning Date Month Day, Year
Total for All State Fiscal Years \$0.00	Current Agreement Expiration Date Month Day, Year

1. OPTIONS:

- A. Option to extend for an Extension Term
- B. Option to change the quantity of Goods under the Agreement
- C. Option to change the quantity of Services under the Agreement
- D. Option to modify Agreement rates
- E. Option to initiate next phase of the Agreement

2. REQUIRED PROVISIONS:

- A. **For use with Option 1(A):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current Agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.
- B. **For use with Options 1(B and C):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to Increase/Decrease the quantity of the Goods/Services or both at the rates stated in the Original Agreement, as amended.
- C. **For use with Option 1(D):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to modify the Agreement rates specified in Exhibit/Section Number/Letter. The Agreement rates attached to this Option Letter replace the rates in the Original Agreement as of the Option Effective Date of this Option Letter.
- D. **For use with Option 1(E):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc, which shall begin on Insert start date and end on Insert ending date at the cost/price specified in Section Number.
- E. **For use with all Options that modify the Agreement Maximum Amount:** The Agreement Maximum Amount table on the Agreement's Signature and Cover Page is hereby deleted and replaced with the Current Agreement Maximum Amount table shown above.

3. OPTION EFFECTIVE DATE:

- A. The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

STATE OF COLORADO Jared S. Polis, Governor INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE By: Name & Title of Person Signing for Agency or IHE Date: _____	In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Name of Agency or IHE Delegate-Please delete if agreement will be routed to OSC for approval Option Effective Date: _____
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EXHIBIT C, BUDGET

1. BUDGET BY US TREASURY EXPENDITURE CATEGORY

1.1 Expenditure Categories identified in Exhibit C will determine what is reported on as outlined in Exhibits D-G.

Project Number	Project Title	US Treasury Expenditure Category Number and Name	Budget
NEK0202	Workforce Innovation Acct Program	2.10: Assistance to Unemployed or underemployed Workers	\$271,889.00
Total			\$271,889.00

2. BUDGET BY FUNCTION

N/A

3. EXPENDITURE CATEGORY MODIFICATIONS

- 3.1 Increases or decreases in any Expenditure Category must be requested and approved by the State Agency by using the SLFRF Expenditure Modification Form. This form can be found at: <https://osc.colorado.gov/american-rescue-plan-act> (see SLFRF Grant Agreement Templates tab)

Exhibit D, Federal Provisions

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.
- 1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
 - 2.1.1. "Award" means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
 - 2.1.2. "Entity" means:
 - 2.1.2.1. a Non-Federal Entity;
 - 2.1.2.2. a foreign public entity;
 - 2.1.2.3. a foreign organization;
 - 2.1.2.4. a non-profit organization;
 - 2.1.2.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
 - 2.1.2.6. a foreign non-profit organization (only for 2 CFR part 170) only);
 - 2.1.2.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
 - 2.1.2.8. a foreign for-profit organization (for 2 CFR part 170 only).
 - 2.1.3. "Executive" means an officer, managing partner or any other employee in a management position.
 - 2.1.4. "Expenditure Category (EC)" means the category of eligible uses as defined by the US Department of Treasury in "Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

- 2.1.5. "Federal Awarding Agency" means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
- 2.1.6. "Grant" means the Grant to which these Federal Provisions are attached.
- 2.1.7. "Grantee" means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.8. "Non-Federal Entity" means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 2.1.9. "Nonprofit Organization" means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
 - 2.1.9.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.9.2. Is not organized primarily for profit; and
 - 2.1.9.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.10. "OMB" means the Executive Office of the President, Office of Management and Budget.
- 2.1.11. "Pass-through Entity" means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.12. "Prime Recipient" means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.13. "Subaward" means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. "Subrecipient" or "Subgrantee" means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.15. "System for Award Management (SAM)" means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>. "Total Compensation" means the cash and noncash dollar value earned by an Executive during the Prime Recipient's or Subrecipient's preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
 - 2.1.15.1. Salary and bonus;
 - 2.1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the

fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

- 2.1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
- 2.1.15.4. Change in present value of defined benefit and actuarial pension plans;
- 2.1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
- 2.1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.16. "Transparency Act" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 2.1.17. "Uniform Guidance" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
- 2.1.18. "Unique Entity ID" 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 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 F to report to the State Agency within ten (10) days following each quarter ended September, December, March and June. Additional information on specific requirements are detailed in the SLFRF Subrecipient Quarterly Report Workbooks and "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds report" available at www.treasury.gov.

EC 1 – Public Health**All Public Health Projects**

- a) Description of structure and objectives
- b) Description of relation to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

COVID-19 Interventions and Mental Health (1.4, 1.11, 1.12, 1.13)

- a) Amount of total project used for evidence-based programs
- b) Evaluation plan description

COVID-19 Small Business Economic Assistance (1.8)

- a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

- a) Number of non-profits served

COVID-19 Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (1.10)

- a) Sector of employer
- b) Purpose of funds

EC 2 – Negative Economic Impacts**All Negative Economic Impacts Projects**

- a) Description of project structure and objectives
- b) Description of project's response to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Amount of total project used for evidence-based programs and description of evaluation plan (*not required for 2.5, 2.8, 2.21-2.24, 2.27-2.29, 2.31, 2.34-2.36*)
- e) Number of workers enrolled in sectoral job training programs
- f) Number of workers completing sectoral job training programs
- g) Number of people participating in summer youth employment programs
- h) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

Household Assistance (2.1-2.8)

- a) Number of households served

- b) Number of people or households receiving eviction prevention services (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*
- c) Number of affordable housing units preserved or developed (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*

Healthy Childhood Environments (2.11-2.13)

- a) Number of children served by childcare and early learning *(Federal guidance may change this requirement in July 2022)*
- b) Number of families served by home visiting *(Federal guidance may change this requirement in July 2022)*

Education Assistance (2.14, 2.24-2.27)

- a) National Center for Education Statistics (“NCES”) School ID or NCES District ID
- b) Number of students participating in evidence-based programs *(Federal guidance may change this requirement in July 2022)*

Housing Support (2.15, 2.16, 2.18)

- a) Number of people or households receiving eviction prevention services *(Federal guidance may change this requirement in July 2022)*
- b) Number of affordable housing units preserved or developed *(Federal guidance may change this requirement in July 2022)*

Small Business Economic Assistance (2.29-2.33)

- a) Number of small businesses served

Assistance to Non-Profits (2.34)

- a) Number of non-profits served

Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (2.35-2.36)

- a) Sector of employer
- b) Purpose of funds
- c) If other than travel, tourism and hospitality (2.36) – description of hardship

EC 3 – Public Health – Negative Economic Impact: Public Sector Capacity

Payroll for Public Health and Safety Employees (EC 3.1)

- a) Number of government FTEs responding to COVID-19

Rehiring Public Sector Staff (EC 3.2)

- a) Number of FTEs rehired by governments

EC 4 – Premium Pay

All Premium Pay Projects

- a) List of sectors designated as critical by the chief executive of the jurisdiction, if beyond those listed in the final rule
- b) Numbers of workers served
- c) Employer sector for all subawards to third-party employers
- d) Written narrative justification of how premium pay is responsive to essential work during the public health emergency for non-exempt workers or those making over 150 percent of the state/county’s average annual wage

- e) Number of workers to be served with premium pay in K-12 schools

EC 5 – Infrastructure Projects

All Infrastructure Projects

- a) Projected/actual construction start date (month/year)
- b) Projected/actual initiation of operations date (month/year)
- c) Location (for broadband, geospatial data of locations to be served)
- d) Projects over \$10 million
 - i. Prevailing wage certification or detailed project employment and local impact report
 - ii. Project labor agreement certification or project workforce continuity plan
 - iii. Prioritization of local hires
 - iv. Community benefit agreement description, if applicable

Water and sewer projects (EC 5.1-5.18)

- a) National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- b) Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
- c) Median Household Income of service area
- d) Lowest Quintile Income of the service area

Broadband projects (EC 5.19-5.21)

- a) Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
 - i. If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
 - ii. Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- b) Additional programmatic data will be required for broadband projects and will be defined in a subsequent version of the US Treasury Reporting Guidance, including, but not limited to (*Federal guidance may change this requirement in July 2022*):
 - i. Number of households (broken out by households on Tribal lands and those not on Tribal lands) that have gained increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, with the number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download and number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
 - ii. Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) that have projected increased access to broadband meeting the minimum speed standards in areas that previously

lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization, with the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

- iii. Narrative identifying speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering, technology to be deployed, miles of fiber, cost per mile, cost per passing, number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download, number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload, and number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization. Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

All Expenditure Categories

- a) Program income earned and expended to cover eligible project costs

8.1.2. A Subrecipient shall report the following data elements to Prime Recipient no later than five days after the end of the month following the month in which the Subaward was made.

- 8.1.2.1. Subrecipient 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 IDas 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 G – SLFRF Reporting Modification Form.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.
- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS.

- 10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

11. SINGLE AUDIT REQUIREMENTS.

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

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

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.
 - 12.1.1. [Applicable to federally assisted construction Agreements.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.
 - 12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).

- 12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements,” and any implementing regulations issued by the Federal Awarding Agency.
- 12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 12.1.7. Never 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 CFR 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 E, AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS

Section 602(b) of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021), authorizes the Department of the Treasury (Treasury) to make payments to certain Subrecipients from the Coronavirus State Fiscal Recovery Fund. The State of Colorado has signed and certified a separate agreement with Treasury as a condition of receiving such payments from the Treasury. This agreement is between your organization and the State and your organization is signing and certifying the same terms and conditions included in the State's separate agreement with Treasury. Your organization is referred to as a Subrecipient.

As a condition of your organization receiving federal recovery funds from the State, the authorized representative below hereby (i) certifies that your organization will carry out the activities listed in section 602(c) of the Act and (ii) agrees to the terms attached hereto. Your organization also agrees to use the federal recovery funds as specified in bills passed by the General Assembly and signed by the Governor.

Under penalty of perjury, the undersigned official certifies that the authorized representative has read and understood the organization's obligations in the Assurances of Compliance and Civil Rights Requirements, that any information submitted in conjunction with this assurances document is accurate and complete, and that the organization is in compliance with the nondiscrimination requirements.

Subrecipient Name Colorado Department of Labor and Employment

Authorized Representative: Kelly Folks

Title: Employment and Training Division Director

Signature: Kelly Folks

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
TERMS AND CONDITIONS

1. Use of Funds.

- a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 602(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.
- b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.

2. Period of Performance. The period of performance for this subaward is shown on page one of this Agreement. Subrecipient may use funds to cover eligible costs incurred, as set forth in Treasury's implementing regulations, during this period of performance.

3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award. Subrecipient also agrees to comply with any reporting requirements established by the Governor's Office and Office of the State Controller. The State will provide notice of such additional reporting requirements via Exhibit G – Reporting Modification Form.

4. Maintenance of and Access to Records

- a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.
- c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.

5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.

6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs. Subrecipient shall follow guidance on administrative costs issued by the Governor's Office and Office of the State Controller.

7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.
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.
 - v. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

- vi. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
 - ix. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
 - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

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

10. provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.
11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.
13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number SLFRF0126 awarded to the State of Colorado by the U.S. Department of the Treasury."
14. Debts Owed the Federal Government.
 - a. Any funds paid to the Subrecipient (1) in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.
 - b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.
15. Disclaimer.
 - a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or Subcontractor under this award.
 - b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.
16. Protections for Whistleblowers.
 - a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably

believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.

- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Treasury employee responsible for Agreement or grant oversight or management;
 - v. An authorized official of the Department of Justice or other law enforcement agency;
 - vi. A court or grand jury; or
 - vii. A management official or other employee of Subrecipient, Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.
 - c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
 18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees, Subrecipients, and Contractors to adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance, regulated programs, licenses, procurement Agreements by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.
3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Contractors, Subcontractors, successors, transferees, and assignees:

The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42

U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.
7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.
9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such

discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub- Subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

EXHIBIT F, SLFRF SUBRECIPIENT QUARTERLY REPORT

1. SLFRF SUBRECIPIENT QUARTERLY REPORT WORKBOOK

- 1.1 The SLFRF Subrecipient Quarterly Report Workbook must be submitted to the State Agency within ten (10) days following each quarter ended September, December, March and June. The SLFRF Subrecipient Quarterly Report Workbook can be found at: <https://osc.colorado.gov/american-rescue-plan-act> (see SLFRF Grant Agreement Templates tab)

Exhibit G – SAMPLE SLFRF REPORTING MODIFICATION FORM

Grantee:		Grant Agreement No:	
Project Title:		Project No:	
Project Duration:	To:	From:	
State Agency:			

This form serves as notification that there has been a change to the reporting requirements set forth in the original SLFRF Grant Agreement.

The following reporting requirements have been (add/ remove additional rows as necessary):

Updated Reporting Requirement (Add/Delete/Modify)	Project Number	Reporting Requirement

By signing this form, the Grantee agrees to and acknowledges the changes to the reporting requirements set forth in the original SLFRF Grant Agreement. All other terms and conditions of the original SLFRF Grant Agreement, with any approved modifications, remain in full force and effect. Grantee shall submit this form to the State Agency within 10 business days of the date sent by that Agency.

Grantee

Date

State Agency Grant Manager

Date

EXHIBIT H-PII CERTIFICATION

STATE OF COLORADO

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

Pursuant to § 24-74-105, C.R.S., I, Kelly Folks, on behalf of Colorado Department of Labor and Employment (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:

Kelly Folks

Printed Name:

Kelly Folks

Title:

Employment and Training Division Director

Date:

11/1/2023

AGREEMENT FOR COMMUNITY DEVELOPMENT SERVICES
(Subrecipient Agreement)
(Non-profit entity)

THIS AGREEMENT (“Agreement”) is made and entered into this 8th day of April 2024, by and between the City of Pueblo, a Municipal Corporation, hereinafter referred to as the “City” and **Pueblo Corporate College of Pueblo Community College**, with an address of **900 W Orman Ave, Pueblo, Colorado 81004**, hereinafter referred to as the “Subrecipient” for **PCC Corporate College Program**.

WITNESSETH THAT:

WHEREAS, the City has entered grant agreements with the U.S. Department of Housing and Urban Development (“HUD”) whereby federal financial assistance may be made available to the City under Title I of the Housing and Community Development Act of 1974, as amended to date; and

WHEREAS, pursuant to such grant agreements the City is undertaking certain activities necessary for the execution of a project situated in the project area described in the Scope of Services; and

WHEREAS, the City desires to disburse funds to the Subrecipient to execute certain projects and/or perform certain services in connection with such undertaking of the City; and

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

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

1. SCOPE OF SERVICES; RESPONSIBILITIES OF SUBRECIPIENT

- (a) Subrecipient agrees to satisfactorily perform and complete all services and items of work, and furnish all labor and materials encompassed within or reasonably necessary to accomplish the tasks and functions described in the Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference, in full compliance with all provisions of this Agreement.
- (b) Subrecipient warrants and represents that it: (i) has the requisite authority and capacity to perform all terms and conditions on Subrecipient’s part to be performed hereunder; (ii) that it is duly organized as a non-profit organization under state law and is in good standing with the Secretary of State of Colorado; (iii) that it is fully aware of and understands its duty to perform all functions and services in accordance with the regulatory requirements of 24 CFR Part 570 and those identified in Exhibit “C” hereto; and (iv) that it is accepting federal financial assistance hereunder subject to certain mandatory repayment provisions.

2. RESPONSIBILITIES OF THE CITY

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

3. SUBRECIPIENT’S COMPENSATION AND METHOD OF PAYMENT

- (a) The City will pay to Subrecipient an amount up to that specified in subparagraph (c) of this paragraph as full compensation for all services and work to be performed or undertaken by Subrecipient

under this Agreement. Payment of funds to Subrecipient is subject to all of the following requirements, which shall be conditions precedent to payment: (i) that Subrecipient has expended funds for eligible approved expenditures, (ii) that Subrecipient is not in default of any material provision of this Agreement nor applicable law or regulation, (iii) that Subrecipient has timely submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items in a format approved by City, (iv) that Subrecipient has certified with each payment or reimbursement request compliance with the requirements identified in Exhibit "C" and that all expenditures for which reimbursement is sought were made for and in furtherance of an approved project and are an eligible use of federal assistance under the Act and federal regulations, and (v) that City has timely received from HUD sufficient federal assistance under the Act to make the payment or reimbursement hereunder.

(b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable HUD regulations including but not limited to those at 24 CFR Part 570, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the Scope of Services. All payments received by Subrecipient hereunder are subject to repayment by Subrecipient as provided in 24 CFR Part 570.

(c) The aggregate of all payments made hereunder shall not exceed **Two Hundred Sixty-Six Thousand Three Hundred Eighty Nine and 00/100 Dollars (U.S. \$266,389.00)**.

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

4. TERM OF AGREEMENT

The term of this Agreement shall be from **January 1, 2024, to December 31, 2024**, unless sooner terminated as herein provided.

5. TERMINATION OF AGREEMENT

(a) For Cause: This Agreement may be terminated by City for cause, including any nonperformance by the Subrecipient, upon ten (10) days written notice to Subrecipient including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the City's Director of Housing and Citizen Services whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Subrecipient. In accordance with 24 CFR Part 570, cause for termination shall include any material failure by Subrecipient to comply with any term of this Agreement.

(b) For Convenience: This Agreement may be terminated for convenience in accordance with the provisions of 24 CFR Part 570. This Agreement shall automatically terminate at the end of its term as well as in the event of any suspension, reduction or non-receipt of Community Development funds by City.

(c) Post Termination Procedures: In the event of termination, all property acquired by Subrecipient with grant funds, all grant funds, program income, and loans originated with grant funds or by payments therefrom and payments received under such mortgage loans held, owned or retained by the Subrecipient shall immediately become the sole and separate property of the City and the Subrecipient shall perform all acts and execute all instruments necessary to transfer and assign such property, funds, income, and mortgage loans to City. Everything finished or unfinished, documents, data, studies, reports, and work product prepared by the Sub recipient under this Agreement or with grant funds shall, at the option of the City, become City's property and the Subrecipient shall be entitled to receive just and equitable compensation only for satisfactory work completed for which compensation has not previously been paid nor reimbursement made.

6. ASSIGNABILITY

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

7. CONFLICT OF INTEREST

The Subrecipient certifies and warrants that neither it nor any members of its Boards of Directors, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities assisted pursuant to this Agreement, nor has an interest in any contract, subcontract or agreement with respect thereunto, nor the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure and for one year thereafter. Subrecipient shall avoid all conflicts of interest which are prohibited by applicable federal regulations including but not limited to those set forth in 24 CFR Part 570 as presently promulgated and as same may be revised from time to time in the future.

8. SUBRECIPIENT RECORDS

Subrecipient shall maintain records as to all services provided, reimbursable expenses incurred in performing the Scope of Services and complete accounting records. Accounting records shall be kept on a generally recognized accounting basis and as requested by the City's auditor. The Subrecipient agrees to comply with all applicable uniform administrative requirements described or referenced in 24 CFR 570.502. The Compliance Provisions attached as Exhibit "B" hereto are made a part of this Agreement and Subrecipient agrees to perform and comply with same. The City, HUD, Comptroller General of the United States, the Inspector General of HUD and any of their authorized representatives, shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers and records of the Subrecipient which relate to this Agreement for making an audit or examination. Upon completion of the work and end of the term of this Agreement, the City may require all Subrecipient's financial records relating to this Agreement to be turned over to City.

9. MONITORING AND EVALUATION

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

10. SUBRECIPIENT FILES AND INFORMATION REPORTS

The Subrecipient shall maintain files containing information which shall clearly document all activities performed in conjunction with this Agreement, including, but not limited to, financial transactions, conformance with assurances, activity reports, and program income. These records shall be retained by the Subrecipient for a period of three years after the completion of the project. Activity reports shall be submitted monthly or quarterly no later than the fifteenth day of the month following the end of month or quarter for which the report is submitted, and no later than the following dates:

1. **First Quarter:** April 15, 2024
2. **Second Quarter:** July 15, 2024
3. **Third Quarter:** October 15, 2024
4. **Fourth Quarter:** January 15, 2025
5. **Close-out Report:** February 15, 2025

11. INDEPENDENCE OF SUBRECIPIENT

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

12. LIABILITY, INSURANCE

(a) As to the City, Subrecipient agrees to assume the risk of all personal injury, including death and bodily injury, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in conjunction with or arising out of the performance or nonperformance of this Agreement by Subrecipient or by the conditions created thereby. Subrecipient further agrees to indemnify, defend, and save harmless the City, its officers, agents and employees, from and against all claims, liabilities, costs expenses, penalties and attorney fees arising from such injuries to persons or damages to property or based upon or arising out of the performance or nonperformance of this Agreement by Subrecipient or out of any violation by Subrecipient of any statute, ordinance, rule or regulation.

(b) Subrecipient 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 (c).

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

- (i) Workers' Compensation Insurance complying with statutory requirements in Colorado.
- (ii) Comprehensive General and Automobile Liability Insurance with limits not less than Six Hundred Thousand and No/100 Dollars (\$600,000) per person and occurrence for personal injury, including but not limited to death and bodily injury, and Six Hundred Thousand and No/100 Dollars (\$600,000) per occurrence for property damage.

(d) In the event Subrecipient's obligations under this Agreement are secured by a deed of trust or mortgage instrument as provided in paragraph 14 (c) of this Agreement, Subrecipient agrees to procure and maintain, at its own expense, hazard and fire insurance upon the property described in said deed of trust on an all-risk form in such amounts of all liens against the property and the amount of funds provided by City pursuant to this Agreement. Subrecipient shall furnish a certificate of insurance certifying such coverage to City's Director of Finance prior to disbursement of any funds to Subrecipient. Both said certificate of insurance and the policy procured by Subrecipient shall name the City as an additional insured and loss payee.

13. CERTIFICATIONS

The Subrecipient agrees to execute and abide by the certifications contained in Exhibit "C" hereto, which are hereby made a part of this Agreement. Subrecipient will have any contractors or subcontractors agree to execute and abide by the certifications contained in Exhibit "C" to this Agreement.

14. PROGRAM INCOME; REVERSION OF ASSETS

(a) Unless otherwise authorized by City in writing, all program income shall be returned to City within 30 days of receipt by Subrecipient. In the event City authorizes Subrecipient to retain any portion of

program income, it shall only be used to accomplish the work set forth in the Scope of Services, and the amount of grant funds payable by City to Subrecipient shall be adjusted as provided by 24 CFR 570.504(b)(2)(i) and (ii).

(b) Upon expiration of the term of this Agreement, or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination together with any accounts receivable attributable to the use of funds provided hereunder.

(c) Any real property under Subrecipient's control that was acquired or improved in whole or in part with funds provided pursuant to this Agreement in excess of U.S. \$25,000 shall either: (i) be used to meet one of the national objectives set forth in 24 CFR 570.208 until five years after expiration or termination of this Agreement, or (ii) not be used in accordance with subparagraph (c)(i), in which event Subrecipient shall pay to City an amount equal to the current market value of the property less any portion of the value attributable to expenditures of funds not provided under this Agreement for the acquisition of, or improvement to the property. The use restriction and repayment obligation set forth in this subparagraph shall survive termination or expiration of this Agreement and shall be fully enforceable and subject to collection by City or HUD in accordance with applicable laws. If requested by City, Subrecipient shall execute a deed of trust or mortgage instrument which shall be and constitute a lien upon all real property acquired or improved with funds provided hereunder, and which shall secure all obligations of Subrecipient hereunder.

(d) In the event City incurs any costs or expenses in enforcing the requirements of this paragraph 14 or in bringing any action to recover the property or amount of any repayment obligation, City shall be entitled to recover its costs and expenses, including reasonable attorneys' fees.

15. SPECIAL REQUIREMENTS APPLICABLE TO IMPROVEMENTS TO PROPERTY

(a) In addition to all procurement requirements otherwise applicable to Subrecipient pursuant to any other provision of this Agreement or pursuant to any requirement of law or regulation incorporated in this Agreement by reference, if any portion of the funds provided to Subrecipient under this Agreement is to be used for making improvements to real property, including new construction, rehabilitation, or remodeling, then in such event Subrecipient shall comply with all requirements of this Paragraph 15.

(b) No improvements shall be undertaken to real property with funds (or reimbursement) provided hereunder unless and until: (i) plans and specifications therefore have been prepared by a registered Professional Engineer in good standing and duly licensed to practice in the State of Colorado or an Architect duly licensed and authorized to conduct a practice of architecture in the state of Colorado; (ii) such plans and specifications have been filed with the City and approved by both the City's designated representative and the City's Director of Public Works; and (iii) all construction contracts for improvements for which payment is sought from City shall have been awarded only after an open, competitive bidding process which has been approved by City's Director of Purchasing and which allows qualified contractors to reasonably participate in the competitive bidding procedures.

(c) If this Paragraph 15 is applicable, no disbursement of funds to Subrecipient shall be made by City hereunder unless and until all conditions precedent to payment specified elsewhere in this Agreement have been satisfied and Subrecipient files with City's Director of Housing and Citizen Services a written request for payment signed by an officer of Subrecipient that certifies: (i) that the amounts included in the request for payment have not been included in any prior request for payment, and (ii) that the improvements listed therein for which payment is sought have been completed in accordance with the approved plans and specifications therefore.

(d) In every contract for construction of improvements for which payment or reimbursement from City is to be provided under this Agreement, Subrecipient shall include a contract clause or clauses, approved by City's Director of Purchasing, requiring the contractor, and all of the contractor's

subcontractors of all tiers, to comply with the requirements of the Davis-Bacon Act and implementing regulations, and to pay all laborers and mechanics engaged in work upon the improvements at the prevailing wage rates for such work as determined by the U.S. Department of Labor.

16. RECOGNITION OF HUD, CITY

In all printed materials, project descriptions and other activities undertaken with funds provided under this Agreement, Subrecipient shall provide recognition that funds have been provided by U.S. Department of Housing and Urban Development and the City of Pueblo. Recognition shall be accomplished by prominent disclosure of the role of HUD and City in all such printed materials and project signage, if any.

17. PERA LIABILITY

The Subrecipient shall reimburse the City for the full amount of any employer contribution required to be paid by the City of Pueblo to the Public Employees' Retirement Association ("PERA") for salary or other compensation paid to a PERA retiree performing contracted services for the city under this Agreement. The Subrecipient shall fill out the questionnaire attached as Exhibit "D" and submit the completed form to Finance Office as part of the signed Agreement.

18. ENTIRE AGREEMENT; AMENDMENTS

The provisions set forth in this Agreement, and all Exhibits and attachments to this Agreement, constitute the entire and complete agreement of the parties hereto and supersede all prior written and oral agreements, understandings or representations related thereto. No amendment or modification of this Agreement, and no waiver of any provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of both the Subrecipient and City.

19. GOVERNING LAW 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.

20. AUTHORITY FOR SIGNATURES; ELECTRONIC SIGNATURES

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

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

21. FUND AVAILABILITY; SUBJECT TO LAW

(a) Financial obligations of City, if any, after the current year in which this Agreement is signed by both parties are contingent upon funds for that purpose being appropriated, budgeted and otherwise

made available by HUD, Pueblo City Council and City executive departments. Nothing herein shall be deemed to create an ongoing financial obligation of City.

(b) This Agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Pueblo, contrary to Article X, §20 of the Colorado Constitution or any other constitutional, statutory or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of City which may arise under this Agreement in any fiscal year, in the event the budget or other means of appropriations for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default by or breach of this Agreement, including any sub-agreement, attachment, schedule or exhibit thereto, by the City. City may in its sole and absolute discretion terminate this Agreement for reasons of non-appropriation immediately upon written notice without causing default or breach.

(c) Nothing in this Agreement is intended, nor should it be construed, to create or extend any rights, claims or benefits or assume any liability for or on behalf of any third party, or to waive any immunities or limitations otherwise conferred upon the City of Pueblo, a Municipal Corporation under or by virtue of federal or state law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq.

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

ATTEST:

CITY OF PUEBLO,
A MUNICIPAL CORPORATION

City Clerk

By _____
Heather Graham Mayor

[S E A L]

SUBRECIPIENT:
PCC, Pueblo Corporate College

ATTEST:

By _____
Signature

By _____
Signature

Name _____

Name _____

Title _____

Title _____

EXHIBIT A SCOPE OF SERVICES

A. Principal Tasks

The Subrecipient will be responsible for administering Coronavirus State and Local Fiscal Recovery Funds to provide services to unemployed or underemployed persons. To be eligible these individuals will have been negatively impacted or economically harmed by the COVID-19 pandemic. Participants must be 16 years or older, must be unemployed or underemployed, and who are in an impacted or disproportionately impacted class as a result of the COVID-19 Public Health Emergency. This includes individuals who experienced household income loss or job loss since March 2020, or inability to access or continue education or training due to the COVID-19 pandemic. Participant eligibility may be self-attested as a last resort however the reason must be documented. Strategies will include developing or expanding training and work-based programs for reskilling, upskilling and next skilling individuals. Quality education and training for in-demand skills will be provided. The Subrecipient will administer all tasks for the aforesaid program in compliance with all applicable federal, state, and local rules and regulations governing these funds and, in a manner, satisfactory to the City.

The major goals of the Subrecipient's efforts under this Agreement will be as follows:

1. Subrecipient will provide direct delivery of classroom training in non-credit courses. Provide books, fees, equipment, and lab fees.
2. The occupational areas of focus are:
 - a. Heavy and Tractor-Trailer Truck Drivers
 - b. Registered Nurses and nursing support
 - c. Construction
 - d. Steel Work
 - e. Manufacturing
 - f. Retail Trade (self-explanatory, city wide)
 - g. Administrative and Support (self-explanatory, city wide)
3. Subrecipient objective is to provide services and occupations training for approximately 225 eligible individuals. Some eligible individuals will obtain upskilling, reskilling and next skilling on a jobsite and delivered by a corporate educator at their expense.
4. Financial assistance for childcare for learners will be paid at 100% during the times s/he is learning whether on campus or on job site.

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 City.

B. Budget and Method of Compensation

The Subrecipient will submit reimbursement requests for services rendered, operating expenditures and materials purchased supported by original invoices.

Approved budget is as follows:

• Tuition, training, reskilling, upskilling, next skilling. (includes faculty and indirect costs)	\$135,000.00
• Books, Fees, equipment, lab fees	\$ 40,500.00
• Childcare stipends for learners employed part time or less	\$ 55,889.00
• Childcare stipends for learners employed full time	\$ 35,000.00
Total	\$266,389.00

C. Performance Monitoring:

The City will monitor the performance of the Subrecipient against goals and performance standards required herein. Substandard performance as determined by the City will be considered non-compliance with this agreement. If actions to correct such substandard performance are not taken by the Subrecipient within a reasonable period of time after being notified by the City contract suspension or termination procedures will be initiated.

D. Time of Performance:

Services shall start on January **1, 2024**, and end on December **31, 2024**. The term of this agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds and other assets including program income.

EXHIBIT B
COMPLIANCE PROVISIONS INCORPORATED
IN A CONTRACT FOR SERVICES

1. An accounting system using the accrual basis of generally accepted accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the project should the project terminate the next day is mandatory. A receipts and disbursements ledger must be maintained. A general ledger with an income and expense account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and item are necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed per the expense account they were charged. The City must review and approve your account system and internal controls prior to the release of funds.

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

3. A log listing all long-distance telephone calls must be maintained (showing date, city and agency called, person making call and person called).

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

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

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

5. All employees handling funds are required to be insured by a fidelity bond.

6. The City shall not be obligated to any third parties of the Subrecipient. Each Subrecipient is further cautioned against obligating funds beyond the contract date of the agreement between the City and the Subrecipient. (Example: rent or lease agreements, service contracts, insurance, etc.)

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

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

9. All records must be retained by the agency for a period of three years following the last day of each contract. (Cost summary reports must reflect actual general ledger balances.)

10. Subrecipient will have any contractors or subcontractors agree to execute and abide by the certifications contained in Exhibit "C" to this Agreement.

EXHIBIT C CERTIFICATIONS

Subrecipient hereby certifies that the grant will be conducted and administered in compliance with:

- (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d, et seq.) and implementing regulations issued at 24 CFR Part 1;
- (2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284; 42 U.S.C. 3601, et seq.), as amended; and that the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
- (3) Section 109 of the Housing and Community Development Act of 1974, as amended, and the regulations issued pursuant thereto;
- (4) Section 3 of the Housing and Urban Development Act of 1968, as amended;
- (5) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and implementing regulations issued at 41 CFR Chapter 60;
- (6) Executive Order 11063, as amended by Executive Orders 12259, and implementing regulations at 24 CFR Part 107;
- (7) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;
- (8) The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;
- (9) The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the HUD implementing regulations set forth in 24 CFR Part 42;
- (10) Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;
- (11) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
- (12) The applicable regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, Revised, 24 CFR Part 570, and Subpart J of 24 CFR 570, A-87, A-110, A-122, A-128 and A-133 as they relate to the acceptance and use of federal funds under this federally-assisted program;
- (13) The Clean Air Act (42 U.S.C. 7401 et seq.) as amended, particularly section 176 (c) and (d) [42 U.S.C. 7506 (c) and (d)];
- (14) HUD environmental criteria and standards [24 CFR Part 51, Environmental Criteria and Standards];
- (15) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 (f) et seq., and 21 U.S.C. 349) as amended, particularly section 1424 (e) (42 U.S.C. 300 (h)-303 (e));
- (16) The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as amended, including but not limited to section 7 (16 U.S.C. 1536) thereof;

- (17) The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1272 et seq.) as amended, particularly section 7 (b) and (c) [16 U.S.C. 1278 (b) and (c)];
- (18) The Reservoir Salvage Act of 1960 (916 U.S.C. 469 et seq.), particularly section 3 (16 U.S.C. 469a-1), as amended by the Archeological and Historical Preservation Act of 1974;
- (19) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.) as amended, particularly sections 102(a) and 202(a) [42 U.S.C. 4012a(a) and 4106(a)];
- (20) Executive order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et seq.), particularly sections 2 and 5;
- (21) It will comply with the Lead-Based Paint Poisoning Prevention requirements of 25 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.);
- (22) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended, particularly section 106 (16 U.S.C. 470f); and
- (23) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.), particularly section 2(c).
- (24) Construction work financed in whole or in part with federal funds is subject to the prevailing wage requirements of the Davis-Bacon Act (29 CFR, Parts 3 and 5), the Copeland Act (29 CFR Part 3), and the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96). When a project meets this applicability requirement, the labor standards provision of the HUD 4010 and the Davis-Bacon Wage Decision issued for the project will be incorporated into this contract document and shall be incorporated into all construction contracts and subcontracts of any tier thereunder.
- (25) No CDBG funds may be expended for lobbying purposes and payments from other sources for lobbying must be disclosed (24 CFR Part 87).
- (a) No federally appropriated funds have been or will be paid, by or on behalf of subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (26) Where asbestos is present in property undergoing rehabilitation, Federal requirements apply regarding worker exposure, abatement procedures and disposal. (CPD-90-44 EPA/OSHA).
- (27) When HOME Investment Partnership Act funds are used, the Subrecipient will comply with implementing regulations and requirements under (24 CFR 92).

Signature: _____
Subrecipient

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, 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 ____.
- 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 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.

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.

ADDITIONAL REPORTING REQUIREMENTS

You must submit the following forms and/or information with your signed contract(s).

- A. Board of Directors Roster;
- B. Staff Roster;
- C. Budget.

You must submit the following forms and information with each request for disbursement of funds.

- A. Request for reimbursement form;
- B. Student application and documentation of the negative COVID impact
- C. Copies of canceled checks;
- D. Copies of invoices or receipts;
- E. Signed payroll sheets;
- F. Demographic information of clients served;
- G. Any other report or information as required by the grantor or federal agency.

Requests for disbursements of funds will not be processed until all necessary information and forms are complete. Incomplete requests will be returned to the agency.

Executive Director



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: AN ORDINANCE ESTABLISHING PROJECT ACCOUNT CI2428 - FABRICATE AND INSTALL NEW SIGNAGE FOR MLK BYPASS, TRANSFERRING \$40,000 FROM THE UNAPPROPRIATED FUND BALANCE OF THE GENERAL FUND, AND BUDGETING AND APPROPRIATING SAID FUNDS IN THE AMOUNT OF \$40,000 TO PROJECT ACCOUNT CI2428

SUMMARY:

This Ordinance establishes Project Account CI2428 - Fabricate and Install New Signage for MLK Bypass, transfers \$40,000.00 from the unappropriated fund balance of the General Fund, and budgets and appropriates total funds in the amount of \$40,000.00 into the newly-created project account.

PREVIOUS COUNCIL ACTION

The City Council approved Ordinance No. 10630 on January 10, 2024, approving the renaming of the U.S. Highway 50 Bypass to "Dr. Martin Luther King Jr. Bypass".

BACKGROUND:

This project will include the fabrication and installation of six street name signs to be installed by the City along US-50B at Hudson/Bonforte, Norwood, and Troy. The project will also fabricate and install two supplemental signs designating the highway as "Dr. Martin Luther King Jr. Bypass" between I-25 and the junction with CO-47/CO-96.

As part of its I-25/US-50B interchange replacement project, CDOT will be replacing the existing highway signage on I-25. The new signage to be installed will refer to US-50B by its new name. That project is expected to start this year.

The proposed Dr. Martin Luther King Jr. bypass is a prominent I-25 interchange within the City and is a gateway for motorists traveling into Pueblo from the east. This section of highway, which has over 10,000 vehicle trips per day, is utilized by motorists

traveling to the Pueblo Memorial Airport and the Pueblo Memorial Airport Industrial Park.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$40,000.00 will be transferred from the unappropriated fund balance of the General Fund and budgeted and appropriated into the newly-created project account.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

Failure to approve this Ordinance will prevent the City from installing the signage

RECOMMENDATION:

Approval of the Ordinance

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE ESTABLISHING PROJECT ACCOUNT CI2428 -
FABRICATE AND INSTALL NEW SIGNAGE FOR MLK BYPASS,
TRANSFERRING \$40,000 FROM THE UNAPPROPRIATED
FUND BALANCE OF THE GENERAL FUND, AND BUDGETING
AND APPROPRIATING SAID FUNDS IN THE AMOUNT OF
\$40,000 TO PROJECT ACCOUNT CI2428

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

SECTION 1.

The Fabricate and Install New Signage for MLK Bypass project, CI2428, is hereby established.

SECTION 2.

Funds in the amount of \$40,000.00 are hereby transferred from the unappropriated fund balance of the General Fund and budgeted and appropriated into the Fabricate and Install New Signage for MLK Bypass project account CI2428.

SECTION 3.

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

SECTION 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 March 25, 2024.

Final adoption of Ordinance by City Council on April 8, 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



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Mark Guerrero
Pueblo Regional Building Department

SUBJECT: AN ORDINANCE AMENDING CHAPTER 4 OF TITLE IV OF THE PUEBLO MUNICIPAL CODE RELATING TO PLUMBING REGULATIONS AND ADOPTING BY REFERENCE PORTIONS OF THE 2023 COLORADO PLUMBING CODE ESTABLISHED BY THE COLORADO STATE PLUMBING BOARD, AND THE 2021 INTERNATIONAL PLUMBING CODE, THE 2021 INTERNATIONAL RESIDENTIAL CODE, AND THE 2021 INTERNATIONAL SWIMMING POOL AND SPA CODE, ALL PUBLISHED BY THE INTERNATIONAL CODE COUNCIL, INC., AND THE 2013 NFPA 24 STANDARD FOR THE INSTALLATION OF PRIVATE FIRE SERVICE MAINS AND THEIR APPURTENANCES PUBLISHED BY THE NATIONAL FIRE PROTECTION ASSOCIATION AND PROVIDING PENALTIES AND REMEDIES FOR THE VIOLATION THEREOF

SUMMARY:

Attached for consideration is a proposed Ordinance to adopt the Colorado Plumbing Code, which incorporates by reference portions of the 2021 International Plumbing Code and the 2021 International Residential Code and to adopt associated minor codes.

PREVIOUS COUNCIL ACTION:

Periodically, the Council considers adoption of the current version of the International Plumbing Code with minor amendments. The Council adopted the 2018 International Plumbing Code on July 12, 2021.

BACKGROUND:

The State allows for the City to adopt standards which are at least equal to those adopted by the State Plumbing Board and requires local jurisdictions to adopt the current version of the Colorado Plumbing Code with any more restrictive provisions

within twelve months after the State Plumbing Board has adopted the Colorado Plumbing Code. *Section 12-155-106, C.R.S.* The State Plumbing Board adopted the Colorado Plumbing Code, effective April 14, 2023. The State is requiring that the Colorado Plumbing Code be adopted by reference with allowed amendments.

FINANCIAL IMPLICATIONS:

There will be expected financial implications regarding construction due to changes from the 2018 International Plumbing Code to Colorado Plumbing Code. The amount will be determined by the size of the project.

BOARD/COMMISSION RECOMMENDATION:

The Pueblo Regional Building Plumbing Board of Appeals approved the adoption of the Colorado Plumbing Code with minor amendments at the meeting on February 13, 2024, and recommends this Ordinance be approved.

STAKEHOLDER PROCESS:

The Pueblo General Contractors Association and the Pueblo Association of Home Builders are aware that this Ordinance will be considered by the Council. Reference letters have been provided.

- Flowright code adoption letter
- RH Builders code adoption letter

ALTERNATIVES:

None.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. 2021 Code Adoption Letter - Flowright
2. 2021 IPC 2023 NEC Endorsement - RH Builders

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 4 OF TITLE IV OF THE PUEBLO MUNICIPAL CODE RELATING TO PLUMBING REGULATIONS AND ADOPTING BY REFERENCE PORTIONS OF THE 2023 COLORADO PLUMBING CODE ESTABLISHED BY THE COLORADO STATE PLUMBING BOARD, AND THE 2021 INTERNATIONAL PLUMBING CODE, THE 2021 INTERNATIONAL RESIDENTIAL CODE, AND THE 2021 INTERNATIONAL SWIMMING POOL AND SPA CODE, ALL PUBLISHED BY THE INTERNATIONAL CODE COUNCIL, INC., AND THE 2013 NFPA 24 STANDARD FOR THE INSTALLATION OF PRIVATE FIRE SERVICE MAINS AND THEIR APPURTENANCES PUBLISHED BY THE NATIONAL FIRE PROTECTION ASSOCIATION AND PROVIDING PENALTIES AND REMEDIES FOR THE VIOLATION THEREOF

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

SECTION 1.

Section 1 of Chapter 4, Title IV of the Pueblo Municipal Code, as amended, is hereby amended to read as follows:

Sec. 4-4-1. [International Plumbing Code] Colorado Plumbing Code; adoption by reference.

The Colorado Plumbing Code, established by the Colorado State Plumbing Board, 1560 Broadway, suite 1350, Denver, Colorado 80202, effective 4/14/2023 and as amended 12/15/2023 and published at 3 CCR 720-1, which includes portions of the 2021 Edition of the International Plumbing Code, published by the International Code Council, Inc. (March 2020), 4051 West Flossmoor Road, Country Club Hills, IL 60478, referred to as the "International Plumbing Code" or "I.P.C." and the 2021 Edition of the International Residential Code, published by the International Code Council, Inc. (January 2021), 4051 West Flossmoor Road, Country Club Hills, IL 60478, all as adopted by the Colorado State Plumbing Board, [The International Plumbing Code, 2018 Edition, as including all appendices and tables, promulgated and published by the International Code Council, Inc., 4051 West Flossmoor Road, Country Club Hills, IL 60478, referred to as the "International Plumbing Code" or "I.P.C.,"] together with the minor codes entitled, "International Swimming Pool and Spa Code," 2021 Edition, published by the International Code Council, Inc. (2020), 4051 West Flossmoor Road., Country Club Hills, IL 60478 (I.S.P.S.C.) and NFPA 24 Standard for the Installation of Private Fire Service Mains and Their Appurtenances, 2013 Edition, published by the National Fire Protection Association (May 2012), One Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02169-7471 (N.F.P.A.), are hereby adopted and enacted by reference, and made a part hereof as if set forth in full; provided, however, that the following portions of the Colorado Plumbing Code [I.P.C.] are not adopted and are expressly deleted:

Sections 1.2 D. 6. Fee Establishment and 7. Information Only Sections.

Sections 1.2 E. 1. b. IPC Section 106.5 Permit issuance, p. IPC Section 312.9 Shower liner test, y. IPC Section 504.6.1 Collection of Relief Valve Discharge Exceptions 1 and 2, and aa. IPC Section 504.7 Required pan.

Section 1.2 E. 2. a. IRC Section 105.1 Required, j. IRC Section P2503.6 Shower liner test, t. IRC Section P2801.6 Required pan, u. IRC Section 2803.6.2 Collection of Relief Valve Discharge Exceptions 1 and 2, and uu. IRC Section P3008.1 Where required (backwater

valves).

[Section 109 entitled "Means of Appeal," Chapter 12 entitled "Special Piping and Storage Systems," Appendix A entitled "Plumbing Permit Fee Schedule" and Appendix E entitled "Sizing of Water Piping System".]

In addition, Chapters 1 Scope and Administration, 4 Public Swimming Pools, 5 Public Spas and Public Exercise Spas, 6 Aquatic Recreation Facilities, 7 Onground Storable Residential Swimming Pools, and 9 Permanent Residential Spas and Permanent Residential Exercise Spas of the I.S.P.S.C. are not adopted and are expressly deleted.

Copies of these codes are available in the office of the Pueblo Regional Building Department for distribution and sale to the public. All plumbing and drainage pipes, equipment and systems or parts thereof within the City shall be regulated by and installed, constructed, altered and repaired in conformance with the terms and provisions of this Chapter and the [I.P.C.] **Colorado Plumbing Code** as adopted herein.

SECTION 2.

Section 2 of Chapter 4, Title IV of the Pueblo Municipal Code, as amended, is hereby amended to read as follows:

Sec. 4-4-2 Amendments to [I.P.C.] Colorado Plumbing Code, Section 1.2 E.1.to add following:

[(a)] Section 103.1 [General] **Creation of Agency** of the I.P.C. is amended **and adopted** to read as follows:

103.1 Pueblo Regional Building Department - Enforcement Agency: Administration and enforcement of this code and all related and secondary codes are hereby delegated to the Pueblo Regional Building Department. Wherever in this code the phrase "Building Official" appears, it shall be construed to refer to the Building Official of the Pueblo Regional Building Department or the Building Official's designated representative. The Building Official, the Building Official's designated representatives, and such plumbing inspectors as the Building Official may appoint, shall be vested with the authority of a law enforcement officer with respect to enforcing this code and Chapter 4 of Title IV of the Pueblo Municipal Code, including the authority to issue summons and complaints for the violation thereof.

[(b)] Section **109 Fees** [106.6.2 Fee Schedule] of the I.P.C. is [amended] **hereby adopted.** [to read as follows:

106.6.2 Fee Schedule. Fees shall be as set forth in the fee schedule adopted by the City.]

vvv. Section 202 General Definitions of the I.P.C. is amended to revise the definition of plumbing system to provide as follows:

PLUMBING SYSTEM. A system that includes the water distribution pipes; plumbing fixtures and traps; water-treating or water-using equipment; soil, waste and vent pipes; and building drains; in addition to their respective connections, devices and appurtenances within a structure or premises; and the water service, building sewer and building storm sewer serving such structure or premises. This includes all portions of private water mains, sewer mains, storm sewer and fire mains.

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[(c)]**www.** Section 305.4 Freezing of the I.P.C. is amended to read as follows:

305.4 Freezing. Water, soil and waste pipes shall not be installed outside of a building, in attics or crawl spaces, concealed in outside walls, or in any other place subjected to freezing temperatures unless adequate provision is made to protect such pipes from freezing by insulation or heat or both. Exterior water supply system piping shall be installed not less than 48 inches below grade.

[(d)]**xxx.** Section 305.4.1 Sewer depth of the I.P.C. is amended to read as follows:

305.4.1 Sewer Depth. *Building sewers* that connect to private sewage disposal systems shall be installed not less than 12 inches below finished grade at the point of septic tank connection. *Building sewers* shall be installed not less than 12 inches below grade.

yyy. Section 306.3 Backfilling of the I.P.C. is amended to add a subsection as follows:

306.3.1 Time to Backfill. Backfilling shall be completed within seventy-two (72) hours after approved inspection.

[(e)] **zzz.** Table 403.1 of the I.P.C. is amended to add Footnote g as follows:

g. Mop sinks or service sinks shall not be installed in restrooms.

[(f)] **aaaa.** Subsection 405.3.1 of the I.P.C., entitled "Water closets, urinals, lavatories and bidets," is amended by the addition of a paragraph to read as follows:

Where more than one (1) water closet or water closets and urinals are installed in a room, they shall be separated by an approved partition wall. Urinals set next to each other or another fixture shall have an approved splash guard.

[(g)] **bbbb.** Section 605.3 Water service pipe of the I.P.C. is amended by the addition of the following exception to read as follows:

EXCEPTION: All new or replaced water service piping smaller than two (2) inches (51 mm) from the main to the meter shall be no lighter than Type L Copper or PEX, PE-AL-PE, and PEX-AL-PEX pipe. A blue 14-gauge tracer wire shall be installed with all nonmetallic water services. All service piping two (2) inches (51 mm) or larger shall be Type K Copper, Class 50 or Ductile Iron, Class 150 Asbestos Cement, or PVC American Water Works Association approved pressure pipe or other approved material. Water service piping shall be installed to a minimum of forty-eight (48) inches (1219.2 mm) depth from the top of the pipe.

[(h)] **cccc.** Section 608.1 General of the I.P.C. is amended by the following addition:

All new or remodeled public buildings shall have a reduced pressure-type backflow preventer installed on the water service supplying such buildings or any portion thereof.

[(i)] **dddd.** Section 701.2 **Connection to** Sewer Required is amended by the addition of a new Section to read as follows:

701.2.1 Connections. Taps made to existing sanitary sewers for building sewers draining into the existing sanitary sewer system of the City shall be made by an approved mechanical cutting device and an approved saddle or by removing a section of sewer pipe, and the installation of a new pipe section or sections with a wye fitting and an approved coupling to make the joint at the juncture of the new pipe with the existing system. Such work shall be done by either a Plumbing Contractor or Plumbing Utility Contractor who is licensed to do such work as provided by Title

IV, Chapter 1 of the Pueblo Municipal Code. Connections to new sanitary sewers or newly repaired sanitary systems and installations of building sewers from the main sewer to the building drain shall be installed by a Plumbing Contractor or a Plumbing Utility Contractor who is licensed to do such work. When a sewer main is installed in the street or alley right-of-way, the building sewer, as defined in this code, shall be installed to the property line and properly marked with magnetic ductile tape for the full length of said sewer line. Building sewers, including each tap and wye, shall be inspected by personnel of either the Pueblo Regional Building Department or the City Department of Wastewater.

[(j)] **eeee.** Section 903.1.1 Roof extension **unprotected** of the I.P.C. is amended to read as follows:

903.1.1 Roof extension unprotected. Open vent pipes that extend through a roof shall be terminated not less than 6 inches above the roof. [Where a roof is to be used for assembly or as a promenade, observation deck, sunbathing deck or similar purposes, open vent pipes shall terminate not less than 7 feet (2134 mm) above the roof.]

ffff. **Section 904.1.1 Installation of the I.P.C. is deleted in its entirety.**

[(k)] **gggg.** Section 903.2 Frost Closure of the I.P.C. is deleted in its entirety.

[(l)] **hhhh.** Section 904.1.2 Size of the I.P.C., is amended to read as follows:

904.1.2 Size. The required vent size shall not be less than the aggregate cross-sectional area of the largest required building drain.

[(m)] **iiii.** Section 918.3 Where Permitted of the I.P.C. is amended to read as follows:

918.3 Where permitted. Air Admittance Valves may be permitted for use on fixtures located on the same floor at the following locations: Islands, Peninsulas, under windows, at bearing walls and other applications where conventional venting methods are not possible due to the existing constructions and structural locations.

jjjj. **Chapter 12 Special Piping and Storage Systems of the I.P.C. is deleted in its entirety.**

kkkk. **Appendix E Sizing of Water Piping System of the I.P.C. is deleted in its entirety.**
SECTION 3.

Section 4 of Chapter 4, Title IV of the Pueblo Municipal Code, as amended, is hereby amended to read as follows:

Sec. 4-4-4. Interpretation of the [International] Colorado Plumbing Code.

Wherever in the [International] **Colorado** Plumbing Code it is provided that anything must be done to the approval of or subject to the direction of the authority having jurisdiction, this shall be construed to give such officer only the discretion to determine whether the rules and standards established by the [International] **Colorado** Plumbing Code have been complied with; and no such provision shall be construed as giving any officer discretionary powers as to what such regulations or standards shall be, or power to require conditions not prescribed by the [International] **Colorado** Plumbing Code or to enforce the provisions of the [International] **Colorado** Plumbing Code in an arbitrary or discriminatory manner.

SECTION 4.

Section 9 of Chapter 4, Title IV of the Pueblo Municipal Code, as amended, is hereby amended to read as follows:

Sec. 4-4-9. Offenses; criminal penalties; permit revocation; other enforcement.

(a) It shall be unlawful for any person to knowingly violate, disobey, omit, neglect, refuse or fail to comply with or resist the enforcement of any provision of this Chapter or of the [International] **Colorado** Plumbing Code.

(b) It shall be unlawful for any person to refuse or fail to timely comply with an order issued by the Building Official or other designated plumbing inspector pursuant to the provisions of this Chapter or the [International] **Colorado** Plumbing Code.

(c) It shall be unlawful for any person to knowingly make any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to any requirement of this Chapter or the [International] **Colorado** Plumbing Code.

(d) Any permit issued pursuant to the provisions of this Chapter or the [International] **Colorado** Plumbing Code may be suspended, terminated or revoked by the Building Official for (1) any of the reasons stated in Section 106.5.5 of the International Plumbing Code, or (2) any material violation of the terms of said permit or requirements applicable thereto.

(e) In the event any owner or occupant of premises within the City shall refuse entry to the Building Official or any plumbing inspector, or if any premises are locked and the Building Official or any plumbing inspector has been unable to obtain permission of the owner or occupant to enter, the Pueblo Municipal Court is authorized to issue a search or inspection warrant authorizing such entry in accordance with the procedures set forth in the Colorado Municipal Court Rules of Procedure.

(f) In the event any owner or occupant of premises within the City, or any licensed contractor or any permittee, shall fail or refuse to comply with any provision of this Chapter, the [I.P.C.] **Colorado** Plumbing Code or any license or permit issued thereunder, the City may initiate an action for injunctive relief in any court of competent jurisdiction to compel compliance with this Chapter or the [I.P.C.] **Colorado** Plumbing Code, license or permit.

(g) The enforcement remedies in this Section are expressly declared to be cumulative, and the exercise of any one (1) or more of them is not dependent upon the exercise of any other remedy, nor does the exercise of any one (1) or more of them constitute any bar or limitation to the exercise of any other.

SECTION 5.

A public hearing to consider the adoption of this Ordinance and the Colorado Plumbing Code, the 2021 International Swimming Pool and Spa Code and the 2013 NFPA 24 Standard for the Installation of Private Fire Service Mains and Their Appurtenances with modifications, shall be held in the Council Chambers, City Hall, 1 City Hall Place, Pueblo, Colorado at 7:00 p.m. on _____. The City Clerk is directed to publish notice of such hearing pursuant to Section 1-1-7 of the Pueblo Municipal Code.

SECTION 6.

The adoption of this Ordinance, the Colorado Plumbing Code, the 2021 International Swimming Pool and Spa Code and the 2013 NFPA 24 Standard for the Installation of Private Fire Service Mains and Their Appurtenances shall not create any duty to any person, firm,

corporation, or other entity with regard to the enforcement or nonenforcement of this Ordinance or said codes. No person, firm, corporation, or other entity shall have any private right of action, claim, or civil liability remedy against the City of Pueblo or the Pueblo Regional Building Department, or their officers, employees, or agents, for any damage arising out of or in any way connected with the adoption, enforcement, or nonenforcement of this Ordinance or said codes. Nothing in this Ordinance or in said codes 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, Section 24-10-101, C.R.S. et seq., or to waive any immunities or limitations on liability otherwise available to the City of Pueblo or the Pueblo Regional Building Department, or their officers, employees, or agents.

SECTION 7.

If any part, section, subsection, sentence, clause or phrase of this Ordinance or the adopted Colorado Plumbing Code, the 2021 International Swimming Pool and Spa Code and the 2013 NFPA 24 Standard for the Installation of Private Fire Service Mains and Their Appurtenances is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance or of said codes.

SECTION 8.

The Council finds and declares that certified true copies of the Colorado Plumbing Code, the 2021 International Plumbing Code, the 2021 International Residential Code, the 2021 International Swimming Pool and Spa Code, and the 2013 NFPA 24 Standard for the Installation of Private Fire Service Mains and Their Appurtenances, have been on file in the office of the City Clerk of the City of Pueblo at or before the first presentation of this Ordinance, and shall remain in said office for public inspection. After adoption of this Ordinance, copies of said codes shall be kept in the office of the Building Official at the Pueblo Regional Building Department, 830 N. Main Street, Suite 100, Pueblo, Colorado 81003 and shall be available through the Pueblo Regional Building Department for purchase by the public.

SECTION 9.

It shall be unlawful and a municipal offense for any person, firm, partnership, corporation, limited liability company or other entity to violate, disobey, omit, neglect, refuse or fail to comply with or resist the enforcement of any provision of this Ordinance or of the Colorado Plumbing Code, the 2021 International Swimming Pool and Spa Code and the 2013 NFPA 24 Standard for the Installation of Private Fire Service Mains and Their Appurtenances adopted herein. Any person found guilty of a violation of this Ordinance or of said codes shall be punished as provided in Section 4-4-9 of the Pueblo Municipal Code, as amended. In addition thereto, the City is authorized to enforce this Ordinance through the exercise of any one or more of the remedies set forth in Section 4-4-9 of the Pueblo Municipal Code, as amended, which remedies are hereby expressly declared to be cumulative, the exercise of any one or more not constituting any bar or limitation to the exercise of any other.

SECTION 10.

This Ordinance shall become effective 30 days after final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on March 25, 2024.

Final adoption of Ordinance by City Council on April 8, 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



www.FlowRightPHI.com | PHONE: (719) 564-2101 | Fax: (719) 564-0161
2406 W 11th St. Pueblo, CO 81003

Dear Pueblo City Council,

I am writing this letter in support of the adoption of the 2021 IPC (International Plumbing Code), 2021 IRC (International Residential Code) and the ordinance to amend in Pueblo County. The Colorado Department of Regulatory Agencies has adopted these codes and contractors throughout Colorado are currently being held to these standards. The 2021 IPC and IRC adoption will allow consistency of code compliance in Pueblo county giving contractors the ability to provide a safer and more cost effective product to the Pueblo County consumer.

Flow Right Plumbing, Heating, AC and Electric strongly supports the adoption of the 2021 codes and is certain it will benefit the Citizens and Contractors living and working in Pueblo County.

Sincerely,


Lance Harvey

President/CEO



PLUMBING • HEATING • COOLING • ELECTRIC

Flow Right Plumbing, Heating, Cooling & Electric

2406 W. 11th St. Pueblo, CO 81003

Office: (719) 564-2101

Cell: (719) 369-0944

lance@flowrightphi.com

<https://flowrightphi.com/>

Thank you for your business!

MAKE IT RIGHT!



220 S. Union Ave
Pueblo, CO 81001

719.240.7290

rhbuilders@hotmail.com

January 31, 2024
Regional Building Department
830 N Main St
Pueblo, CO 81003

Subject: Recommendation to Adopt the 2021 IPC and the 2023 NEC

Dear Mark Guerrero

I hope this letter finds you well. My name is Randy Nobiensky, and I am the owner of RH Builders, a custom home builder based in Pueblo, Colorado. I am writing to express our full support for the adoption of the 2021 International Plumbing Code (IPC) and the 2023 National Electrical Code (NEC) by our regional building department.

As a custom home builder, we have proactively implemented these updated codes in our projects, being ahead in the implementation while anticipating their adoption. Our experience with these changes has been positive, and we have found that they have had no adverse impact on our client base. In fact, our clients appreciate the higher standards and increased efficiency that these codes bring to their homes.

Additionally, we have not encountered any significant increase in costs associated with the plumbing code changes. Through careful planning and proactive adjustments, we have been able to seamlessly incorporate the new requirements without incurring any significant financial burden. We firmly believe that the benefits these codes bring to the safety, efficiency, and quality of construction outweigh any additional costs.

As responsible members of the building industry and advocates for the well-being of our community, we fully support code adoption that prioritizes the benefit and safety of our residents. The 2021 IPC and the 2023 NEC set higher standards for plumbing and electrical systems, addressing advancements in technology and safety practices. By adopting these codes, our regional building department will demonstrate its commitment to keeping up with the evolving industry standards and ensuring the safety and satisfaction of our community.

Thank you for your attention to this matter. We eagerly await the official adoption of the 2021 IPC and the 2023 NEC and would be happy to provide any assistance or information required during this process.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Randy Nobiensky', is written over a horizontal line.

Randy Nobiensky



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Mark Guerrero
Pueblo Regional Building Department

SUBJECT: AN ORDINANCE AMENDING CHAPTER 3 OF TITLE IV OF THE PUEBLO MUNICIPAL CODE RELATING TO ELECTRICAL REGULATIONS AND ADOPTING BY REFERENCE PORTIONS OF THE 2023 NATIONAL ELECTRICAL CODE PUBLISHED BY THE NATIONAL FIRE PROTECTION ASSOCIATION, ONE BATTERYMARCH PARK, QUINCY, MASSACHUSETTS 02169-7471, AND THE 2003 INTERNATIONAL CODE COUNCIL ELECTRICAL CODE ADMINISTRATIVE PROVISIONS PUBLISHED BY THE INTERNATIONAL CODE COUNCIL, INC., 4051 FLOSSMOOR ROAD, COUNTRY CLUB HILLS, IL 60478-5795, AND PROVIDING PENALTIES AND REMEDIES FOR THE VIOLATION THEREOF

SUMMARY:

Attached for consideration is a proposed Ordinance to adopt the 2023 National Electrical Code and 2003 International Code Council Electrical Code Administrative Provisions.

PREVIOUS COUNCIL ACTION:

Periodically, Council considers adoption of the current version of the National Electrical Code with minor amendments. The Council adopted the 2020 National Electrical Code February 22, 2021.

BACKGROUND:

The State allows for the City to adopt standards which are more restrictive than those adopted by the State Electrical Board and requires local jurisdictions to adopt the current version of the National Electrical Code with any more restrictive provisions within twelve months after the State Electrical Board has adopted the National Electrical Code. *Section 12-115-107, C.R.S.* The State Electrical Board adopted the 2023 National Electrical Code, effective July 30, 2023.

FINANCIAL IMPLICATIONS:

There will be expected financial implications regarding construction due to changes from the 2020 to 2023 National Electrical Code. The amount will be determined by the size of the project.

BOARD/COMMISSION RECOMMENDATION:

The Pueblo Regional Building Electrical Board of Appeals approved the adoption of the 2023 National Electrical Code with minor amendments at the meeting on Feb 8th, 2024 and recommends this Ordinance be approved.

STAKEHOLDER PROCESS:

The Pueblo General Contractors Association, the Pueblo Association of Home Builders and the Electrical Union are aware that this Ordinance will be considered by the Council. Reference letters have been provided.

- RH Builders reference letter
- Mathew Brothers Electric reference letter.

ALTERNATIVES:

None.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. 2021 IPC 2023 NEC Endorsement - RH Builders
2. 2023 Code Adoption Letter - Matthew Brothers Electric

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 3 OF TITLE IV OF THE PUEBLO MUNICIPAL CODE RELATING TO ELECTRICAL REGULATIONS AND ADOPTING BY REFERENCE PORTIONS OF THE 2023 NATIONAL ELECTRICAL CODE PUBLISHED BY THE NATIONAL FIRE PROTECTION ASSOCIATION, ONE BATTERYMARCH PARK, QUINCY, MASSACHUSETTS 02169-7471, AND THE 2003 INTERNATIONAL CODE COUNCIL ELECTRICAL CODE ADMINISTRATIVE PROVISIONS PUBLISHED BY THE INTERNATIONAL CODE COUNCIL, INC., 4051 FLOSSMOOR ROAD, COUNTRY CLUB HILLS, IL 60478-5795, AND PROVIDING PENALTIES AND REMEDIES FOR THE VIOLATION THEREOF

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

SECTION 1.

Section 1 of Chapter 3, Title IV, of the Pueblo Municipal Code, as amended, is hereby amended to read as follows:

Sec. 4-3-1. National Electrical Code and International Code Council Electrical Code Administrative Provisions; adoption by reference.

The National Electrical Code, **2023** Edition (**September 1, 2022**), promulgated and published by the National Fire Protection Association, One Batterymarch Park, Quincy, Massachusetts 02169-7471, referred to as the "N.E.C.," is adopted in its entirety, including Informative Annexes A through G inclusive and Informative Annex I, but excluding Informative Annexes H and J, together with the International Code Council Electrical Code Administrative Provisions, 2003 Edition (**December 2002**), except the sample ordinance form contained therein, promulgated by the International Code Council, Inc., 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795, hereinafter referred to as the "I.C.C.E.C.A.P.," as amended by this Chapter, are adopted and enacted by reference; provided, however, that the following portions of the I.C.C.E.C.A.P. are not adopted and are expressly deleted:

Paragraph 5 of Section 401.3, entitled "Work Exempt From Permit," Section 404.2, entitled "Schedule of Permit Fees," Section 1102, entitled "Membership" and Section 1103, entitled "Procedures."

Copies of the N.E.C., including adopted Informative Annexes A through G and Informative Annex I and the I.C.C.E.C.A.P., are available in the office of the Pueblo Regional Building Department ("Department") for distribution and sale to the public. Any reference in this Chapter to the "N.E.C." shall mean the National Electrical Code, **2023** Edition, adopted by this Section.

SECTION 2.

Section 2 of Chapter 3, Title IV, of the Pueblo Municipal Code, as amended, is hereby amended to read as follows:

Sec. 4-3-2. N.E.C. amendments.

(a) Section 230.70(A) of the N.E.C. is amended by the addition of a new Subparagraph (4), to read as follows:

"(4) Meter Base. The length of service entrance conductors from the **load side terminals of the** meter base to the main disconnecting means shall be located immediately back to back, [or] side to side, **or top to bottom** of the meter."

[(b) Section 312.5 of the N.E.C., Cabinets, Cutout Boxes, and Meter Socket Enclosures, is amended by the addition of a new Paragraph (D), to read as follows:

"(D) Meter socket height for new structures. The height of meter enclosure shall be installed between four (4) feet and five and one-half (5½) feet from bottom of the meter enclosure to finish grade."]

[(c)] **(b)** Section [408.18] **110.26** of the N.E.C., [Clearances] **Spaces About Electrical Equipment**, is amended by the addition of a new [Paragraph] **Subparagraph [(C)] (6)(B)(1)**, to read as follows:

"[(C)] **(1)** Above finish grade. Clearances shall be provided between bottom of panel and finish grade a minimum of 24 inches above finish grade."

[(d)] **(c)** Section [408.36] **408.54** of the N.E.C. is amended by the addition of a new Paragraph [(E)] **(A)** thereto, to read as follows:

"[(E)] **(A)** Additional Space in Panelboards. A new panelboard shall have sufficient ampacity and space for at least four (4) full-size circuit breakers for future usage."

SECTION 3.

Section 3 of Chapter 3, Title IV, of the Pueblo Municipal Code, as amended, is hereby amended to revise subparagraph (b) to read as follows:

Sec. 4-3-3. N.E.C. amendments.

. . .

(a) Section 401.1, Permits required, of the I.C.C.E.C.A.P. is hereby amended by the addition of two (2) new paragraphs, to read as follows:

"Permits for low voltage control and signaling systems, as defined in Articles **724** through 830 of the N.E.C., may be issued to persons not licensed as electrical contractors, provided such persons register with the Department, and otherwise comply with all codes with respect to installation and permits.

"All systems supplying power that may normally be supplied by an electrical utility, such as, but not limited to, solar, wind, hydro and other generated sources, shall require a permit and inspection."

SECTION 4.

A public hearing to consider the adoption of this Ordinance, the National Electrical Code, 2023 Edition, and the International Code Council Electrical Code Administrative Provisions, 2003 Edition with modifications, shall be held in the Council Chambers, City Hall, 1 City Hall Place, Pueblo, Colorado at 7:00 p.m. on _____, 2024. The City Clerk is directed to publish notice of such hearing pursuant to Section 1-1-7 of the Pueblo Municipal Code.

SECTION 5.

The adoption of this Ordinance, the 2023 National Electrical Code and the 2003 International Code Council Electrical Code Administrative Provisions shall not create any duty to any person, firm, corporation, or other entity with regard to the enforcement or nonenforcement of this Ordinance or said codes. No person, firm, corporation, or other entity shall have any private right of action, claim, or civil liability remedy against the City of Pueblo or Pueblo Regional Building Department, or their officers, employees or agents, for any damage arising out of or in any way connected with the adoption, enforcement, or nonenforcement of this Ordinance or said codes. Nothing in this Ordinance or in said codes 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, Section 24-10-101, C.R.S. et seq., or to waive any immunities or limitations on liability otherwise available to the City of Pueblo or the Pueblo Regional Building Department, or their officers, employees or agents.

SECTION 6.

If any part, section, subsection, sentence, clause or phrase of this Ordinance, the adopted 2023 National Electrical Code, or the adopted 2003 International Code Council Electrical Code Administrative Provisions is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance, the 2023 National Electrical Code or the 2003 International Code Council Electrical Code Administrative Provisions.

SECTION 7.

The Council finds and declares that certified true copies of the National Electrical Code, 2023 Edition, and the International Code Council Electrical Code Administrative Provisions, 2003 Edition, have been on file in the office of the City Clerk of the City of Pueblo at or before the first presentation of this Ordinance, and shall remain in said office for public inspection. After adoption of this Ordinance, a copy of the 2023 National Electrical Code and a copy of the 2003 International Code Council Electrical Code Administrative Provisions shall be kept in the office of the Pueblo Regional Building Department, 830 N. Main Street, Suite 100, Pueblo, Colorado 81003. Copies of the 2023 National Electrical Code and the 2003 International Code Council Electrical Code Administrative Provisions shall be available through the Pueblo Regional Building Department for purchase by the public.

SECTION 8.

It shall be unlawful and a municipal offense for any person, firm, partnership, corporation, limited liability company or other entity to violate, disobey, omit, neglect, refuse or fail to comply with or resist the enforcement of any provision of this Ordinance or of the National Electrical Code, 2023 Edition, or the International Code Council Electrical Code Administrative Provisions, 2003 Edition adopted herein. Any person found guilty of a violation of this Ordinance or of the National Electrical Code, 2023 Edition, or the International Code Council Electrical Code Administrative Provisions, 2003 Edition shall be punished as provided in Section 4-3-8 of the Pueblo Municipal Code, as amended. In addition thereto, the City is authorized to enforce this Ordinance through the exercise of any one or more of the remedies set forth in Section 4-3-8 of the Pueblo Municipal Code, as amended, which remedies are hereby expressly declared to be cumulative, the exercise of any one or more not constituting any bar or limitation to the exercise of any other.

SECTION 9.

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

consistent with this Ordinance which are necessary or desirable to implement same.

SECTION 10.

This Ordinance shall become effective 30 days after final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on March 25, 2024.

Final adoption of Ordinance by City Council on April 8, 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



220 S. Union Ave
Pueblo, CO 81001
719.240.7290

rhbuilders@hotmail.com

January 31, 2024
Regional Building Department
830 N Main St
Pueblo, CO 81003

Subject: Recommendation to Adopt the 2021 IPC and the 2023 NEC

Dear Mark Guerrero

I hope this letter finds you well. My name is Randy Nobiensky, and I am the owner of RH Builders, a custom home builder based in Pueblo, Colorado. I am writing to express our full support for the adoption of the 2021 International Plumbing Code (IPC) and the 2023 National Electrical Code (NEC) by our regional building department.

As a custom home builder, we have proactively implemented these updated codes in our projects, being ahead in the implementation while anticipating their adoption. Our experience with these changes has been positive, and we have found that they have had no adverse impact on our client base. In fact, our clients appreciate the higher standards and increased efficiency that these codes bring to their homes.

Additionally, we have not encountered any significant increase in costs associated with the plumbing code changes. Through careful planning and proactive adjustments, we have been able to seamlessly incorporate the new requirements without incurring any significant financial burden. We firmly believe that the benefits these codes bring to the safety, efficiency, and quality of construction outweigh any additional costs.

As responsible members of the building industry and advocates for the well-being of our community, we fully support code adoption that prioritizes the benefit and safety of our residents. The 2021 IPC and the 2023 NEC set higher standards for plumbing and electrical systems, addressing advancements in technology and safety practices. By adopting these codes, our regional building department will demonstrate its commitment to keeping up with the evolving industry standards and ensuring the safety and satisfaction of our community.

Thank you for your attention to this matter. We eagerly await the official adoption of the 2021 IPC and the 2023 NEC and would be happy to provide any assistance or information required during this process.

Sincerely,

A handwritten signature in dark ink, appearing to be 'Randy Nobiensky', written over a horizontal line.

Randy Nobiensky



MATHEWS BROTHERS ELECTRIC, INC
831 MYRTLE LANE
CANON CITY, CO 81212
OFFICE: (719) 275-6987
FAX: (719) 275-4561

1/24/2024

RE: Adoption of the 2023 National Electric Code

Mr. Guerrero,

I am writing this letter in support of Pueblo City/County adopting the 2023 National Electric Code. As a Journeyman Electrician and Commercial Manager, I have been a part of the electrical industry for over 18 years and know the importance of code adoption. In an ever changing field of work, be it new products, methods, or technologies, it is of the upmost importance that common standards and practices be implemented across all electrical installations for safety of people and property. The adoption of the newest revision of the National Electric Code helps keep Pueblo's electrical industry at the highest standards.

When adopting a new code, there is always a concern of the financial burden on contractors and their customers. The 2023 National Electric Code adoption will be at significantly less costs to the construction industry of Pueblo in comparison to the last 3 to 4 electrical code adoptions. The majority of the code changes that will incur these extra expenses are related to renewable energies such as EV charging and Solar safety requirements. In my opinion the changes are necessary and beneficial for the communities within Pueblo County to grow.

In summary, Mathews Brothers Electric is in full support of the adoption and enforcement of the 2023 National Electric Code by Pueblo Regional Building Department.

Thank you,

A handwritten signature in dark ink, appearing to read 'Ace Spriggs', with a long, sweeping horizontal line extending to the right.

Ace Spriggs
Commercial Manager
Mathews Brothers Electric
Phone: (719) 371-2969
aspriggs@mathewsbrotherselectric.com



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 8, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: AN ORDINANCE ACCEPTING FUNDS IN THE AMOUNT OF \$60,000 FROM EL CAMINO HOMEOWNERS ORGANIZATION, INC., A COLORADO NONPROFIT CORPORATION, FOR COSTS ASSOCIATED WITH TRAFFIC CALMING, LANDSCAPING, AND OTHER ROADWAY IMPROVEMENTS ON BANDERA PARKWAY, ESTABLISHING ACCOUNT PROJECT CI2427 - BANDERA PARKWAY TRAFFIC CALMING IMPROVEMENTS AND BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$60,000 INTO SAID ACCOUNT.

SUMMARY:

This Ordinance will accept funds in the amount of \$60,000.00 from El Camino Homeowners Organization ("ECHO") to cover certain costs associated with the installation of traffic calming, landscaping, and other roadway improvements on Bandera Parkway where it enters the El Camino neighborhood. The Ordinance also establishes a new account Project CI2427 - Bandera Parkway Traffic Calming Improvements, and budgets and appropriates ECHO's contribution into the account project.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

ECHO has requested to coordinate a project with the City of Pueblo to install traffic calming measures, landscaping, and other associated roadway improvements on Bandera Parkway where the roadway enters the El Camino neighborhood. ECHO's share of the project costs will be \$60,000.00, which will cover the cost of installing the traffic calming and landscaping improvements. The Public Works Department is contemplating other related work that will take place in the vicinity and will request the Council's approval to fund said improvements once the scope of work is identified and

an engineering cost estimate is prepared.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$60,000.00 will be budgeted and appropriated into account Project CI2427 - Bandera Parkway Traffic Calming Improvements.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Failure to approve this Ordinance will prevent the City from receiving the funds from El Camino Homeowners Organization, Inc.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE ACCEPTING FUNDS IN THE AMOUNT OF \$60,000 FROM EL CAMINO HOMEOWNERS ORGANIZATION, INC., A COLORADO NONPROFIT CORPORATION, FOR COSTS ASSOCIATED WITH TRAFFIC CALMING, LANDSCAPING, AND OTHER ROADWAY IMPROVEMENTS ON BANDERA PARKWAY, ESTABLISHING ACCOUNT PROJECT CI2427 - BANDERA PARKWAY TRAFFIC CALMING IMPROVEMENTS AND BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$60,000 INTO SAID ACCOUNT.

WHEREAS, El Camino Homeowners Organization, Inc. has asked the City to consider its request to install traffic calming measures and landscaping improvements on Bandera Parkway where the roadway enters the El Camino neighborhood; AND,

WHEREAS, El Camino Homeowners Organization, Inc. has agreed to contribute funds in the amount of \$60,000.00 toward the cost of installing said improvements in conjunction with other City road work taking place in the area; NOW THEREFORE,

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

SECTION 1.

Funds in the amount of \$60,000.00 are accepted from El Camino Homeowners Organization, Inc.

SECTION 2.

Account Project CI2427 - Bandera Parkway Traffic Calming Improvements is hereby established and accepted funds in the amount of \$60,000.00 shall be budgeted and appropriated to said account.

SECTION 3.

The officers and staff of the City are authorized to perform any and all acts consistent with this Ordinance to implement the policies and procedures described 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 March 25, 2024.

Final adoption of Ordinance by City Council on April 8, 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