



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

**MONDAY, APRIL 22, 2024
7:00 PM**

Individuals Requiring Special Accommodations Should Notify the City's ADA Coordinator at (719) 553-2295 by Noon on the Friday Preceding the Meeting.

A. CALL TO ORDER

President Mark Aliff

B. INVOCATION

Pastor Danny Lucero, Pueblo Praise

C. PLEDGE OF ALLEGIANCE

D. ROLL CALL

E. SPECIAL RECOGNITIONS

E1 Proclamation Presentation: "55th Annual Professional Municipal Clerks Week - May 5-11, 2024" - City of Pueblo Clerk's Office

E2 Proclamation Presentation: "Parkinson's Awareness Month - April 2024" - Nick Herrera, Facilitator of Parkinson's Support Group

E3 Proclamation Presentation: "Creative Industries Week - May 5-10, 2024" - Creative Consortium of 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 April 08, 2024, as distributed.

J1 City Council Meeting Minutes April 08, 2024

K. CONSENT AGENDA

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

Agenda and considered under the Regular Agenda. Unless otherwise indicated, titles are self-explanatory.

L. COMMUNICATIONS

M. RESOLUTIONS

- M1 A Resolution awarding a construction contract in the amount of \$724,041.55 to Pyramid Construction, Inc., for Project No. 24-041, Asphalt Improvements - Court Street, setting forth \$144,958.45 for contingencies, and authorizing the Purchasing Agent to execute same
- M2 A Resolution awarding a construction contract in the amount of \$682,640.60 to Tony J Beltramo & Sons, Inc., for Project No. 24-008, Construction of Adams Avenue and Jackson Street Roundabout, setting forth \$190,359.40 for contingencies, and authorizing the Purchasing Agent to execute same
- M3 A Resolution approving payment in the amount of \$210,576.78 from Project CI2113 - American Rescue Plan Act for the purchase of a Crisis Negotiator Van for the Police Department, as authorized by Section 603(c)(1)(c) of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR §35.6
- M4 A Resolution approving amendment No. 1 to the Pueblo Regional On-Call Transportation Technical Assistance Agreement between the City of Pueblo, A Colorado Municipal Corporation, and Wilson & Compayny, Inc., A Colordo Corporation, in the amount of \$29,300 for bid No. 22-069, technical transportation services for updating travel demand model, and authorizing the Purchasing Agent to execute same
- M5 A Resolution of support for the designation of Colorado Highway 78 between the City of Pueblo and Beulah Township as the "PFC Thomas Michael "Mike" Hanratty, USMC Memorial Highway" and authorizing the Public Works Department to work cooperatively with Pueblo County and the Colorado Department of Transportation to fabricate and install the signage for the new designation
- M6 A Resolution authorizing the issuance of a revocable permit (REV-24-3) to the National MS Society for the closure of S. Victoria Avenue from the River Walk parking lot to S. Elizabeth and S. Elizabeth to the north end of the Acme and Fire Safety Equipment Co building to facilitate the Walk MS Pueblo event on April 27, 2024, from 5:00 a.m. to 2:00 p.m.
- M7 A Resolution authorizing the issuance of a revocable permit (REV-24-6) to The Outlaws Rod & Custom Car Club for the closure of Victoria Avenue from C Street to Greenwood and D Street from the alleyway between Union and Victoria to the alleyway between Victoria and Lamkin to host their annual car show on May 4, 2024, from 5:30 a.m. to 4:00 p.m.
- M8 A Resolution authorizing the issuance of a revocable permit (REV-24-7) to The Greater Pueblo Chamber of Commerce for the closure of the alleys between S. Victoria Ave., W. C St., S. Union Ave., and W. B St. to host the Colorado Creative Industries Summit Conference Welcome Party
- M9 A Resolution approving and authorizing the Mayor to make, execute and deliver in the name of the City of Pueblo, Federal Fiscal Year 2024 Certifications and Assurances for Federal Transit Administration Assistance Programs and to bind the City of Pueblo's compliance therewith
- M10 A Resolution transferring funds in the amount of \$186,000.00 from the Public Works Operating Budget into Project No. CIAN20 - City Building Repairs

- M11 A Resolution adding the name of Mayor Heather Graham as an authorized officer of the City of Pueblo Stormwater Utility Enterprise in connection with the Water Pollution Control Revolving Fund or Drinking Water Revolving Fund Loan Agreement
- M12 A Resolution preliminarily determining that the petition for the annexation of 80.28-acre area commonly known as the Pueblo Recreation Resort No. 1 Annexation, is valid under the provisions of Colorado Revised Statutes sections 31-12-104(1)(a) and 31-12-107(1), tabling final action on the petition for a period of not more than 180 days, and referring the petition to the Planning and Zoning Commission for review and recommendation
- M13 A Resolution preliminarily determining that the petition for the annexation of 219.95-acre area commonly known as the Pueblo Recreation Resort No. 2 Annexation, is valid under the provisions of Colorado Revised Statutes sections 31-12-104(1)(a) and 31-12-107(1), tabling final action on the petition for a period of not more than 180 days, and referring the petition to the Planning and Zoning Commission for review and recommendation
- M14 A Resolution awarding a construction contract in the amount of \$32,686,806 to Nunn Construction, for Project No. 24-010, Construction of Fire Stations 6, 8, and 11, setting forth \$1,518,194 for contingencies, and authorizing the Purchasing Agent to execute same
- M15 A Resolution of the City of Pueblo, A Colorado Municipal Corporation, approving lease/purchase financing with Clayton Holdings, LLC, for Sports Field and Court Lighting Systems from MUSCO Sports Lighting, LLC, and authorizing the execution and delivery of all documents required therewith by the Mayor or Director of Purchasing, and Authorizing all other actions necessary for the consummation of the transaction contemplated by this Resolution
- M16 A Resolution ratifying PACOG's joint appointment of Jason Baker, Jeff Heckler, Michael Messervy, and Miles Lucero to the Community Services Advisory Commission (CSAC)
- M17 A Resolution confirming the reappointment by the Mayor of Jason Schierling to serve a four-year term expiring May 9, 2028 on the Pueblo Depot Activity Authority (aka PuebloPlex) Board of Directors
- M18 A Resolution rescinding an Agreement for Professional Engineering Services by and between City of Pueblo and Olsson, Inc. and awarding an Agreement for Professional Engineering Services by and between City of Pueblo and JR Engineering, Inc in the amount of \$145,890.00, for Project No. 23-146, Design for Intersection of Prairie and St. Clair, and authorizing the Purchasing Agent to execute same
- M19 A Resolution authorizing the issuance of a revocable permit to Collins Aerospace for the use of Lots 8 and 11 and, Parcel G, William White Boulevard, Pueblo, Colorado for the purpose of installing a fence line monitoring system required by the Colorado Department of Health and Environment – AQD

N. ORDINANCES – FIRST PRESENTATION

- N1 An Ordinance of the City of Pueblo amending Title XI, Chapter 1, Section 405 of the Pueblo Municipal Code prohibiting the establishment, operation, use, or participation in syringe exchange or distribution programs within the City of Pueblo and providing penalties therefor
- N2 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 Community Asset Enterprise/Colorado Energy Office relating to a grant to install four Direct Current Fast Charging (DCFC) electric vehicle charging stations at the Main Street Parking Garage; accepting a grant in the amount of \$445,000; establishing Project Account CI2433 - Design and Install Main Street Garage DCFC EV Chargers; transferring

funds in the amount of \$400,000 from Project Account CI2408 - EV Charging Stations (Fleet) to Project Account CI2433 - Design and Install Main Street Garage DCFC EV Chargers; budgeting and appropriating a total of \$845,000.00 into Project Account CI2433 - Design and Install Main Street Garage DCFC EV Chargers; and approving the Mayor to execute the Intergovernmental Agreement on behalf of the City

- N3 An Ordinance approving and authorizing the Mayor to sign a Subrecipient Agreement between the City of Pueblo, a Colorado Municipal Corporation and Catholic Charities of the Diocese of Pueblo, Inc. dba Catholic Charities of Southern Colorado, a Colorado nonprofit corporation as authorized by Section 603 (c)(1)(A) of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6 and authorizing the payment of two hundred thousand dollars (\$200,000) from Project No. CI2113 - American Rescue Plan Act, for purposes thereof
- N4 An Ordinance approving and accepting a 2024 Colorado Department of Public Safety, Division of Criminal Justice Opioid Grant in the amount of \$9,580 for synthetic opiate poisoning investigation and distribution interdiction, establishing project number PS2403, budgeting and appropriating grant funds of \$9,580 to said project, and authorizing Mayor Graham to execute the grant award letter and related documents
- N5 An Ordinance vacating a utility easement within Lot 1, North Pueblo Commercial Park Filing 5
- N6 An Ordinance vacating a portion of the alley within Block 11, Mattice's Subdivision
- N7 An Ordinance creating Part 21 of Section 15-1-8 of the Pueblo Municipal Code regulating the parking in electric motor vehicle charging stations.
- N8 An Ordinance creating Article IX of Chapter 1 of Title XI within the Pueblo Municipal Code, adding Sections 11-1-901 through 11-1-904 thereto, enacting provisions and prohibitions with respect to certain gaming and gambling devices, and providing penalties for the violation thereof
- N9 An Ordinance amending Article 1 through 6 of Chapter 6 of Title IX within the Pueblo Municipal Code, modifying licensing and fees for coin-operated amusement devices and coin-operated music machines.
- N10 An Ordinance amending the fiscal year 2024 Staffing Ordinance by converting one (1) vacant full-time Internal Auditor Position to a new classification entitled Non-Profit Compliance Coordinator within the authorized staffing levels of The Mayor's Office
- N11 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 Non-Profit Compliance Coordinator
- N12 An Ordinance amending the fiscal year 2024 Staffing Ordinance by converting one (1) full-time vacant position entitled Food Project Coordinator to a position entitled Marketing and Social Media Specialist within the authorized staffing levels at the Mayor's Office
- N13 An Ordinance amending section 6-5-16 of Chapter 5, of Title VI of the Pueblo Municipal Code relating to the FY 2024 classifications and pay plan by establishing the pay scale for Marketing and Social Media Specialist.

O. APPROVAL OF CONSENT AGENDA

I move to approve all Resolutions Set Forth in the Consent Agenda; Pass the Ordinances of the Consent Agenda, Setting the Public Hearings for May 13, 2024, and Order the Ordinances to be published BY TITLE.

P. REGULAR AGENDA

Q. RESOLUTIONS

- Q1 A Resolution authorizing payment from the Council Contingencies account in the 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
- Q2 A Resolution authorizing payment from the Council Contingencies account in the 2024 general fund budget to the Pueblo Downtown Association in the amount of \$1,000 to sponsor the 2024 Levee Walk on Saturday, June 8, 2024

R. ORDINANCES – FINAL PRESENTATION

- R1 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 - *Introduced April 08, 2024 by Councilor Dennis Flores*
- R2 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 - *Introduced April 08, 2024 by Councilor Dennis Flores*
- R3 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 - *Introduced April 08, 2024 by Councilor Dennis Flores*
- R4 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 - *Introduced April 08, 2024 by Councilor Dennis Flores*
- R5 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 - *Introduced April 08, 2024 by Councilor Dennis Flores*
- R6 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 - *Introduced April 08, 2024 by Councilor Dennis Flores*

- R7 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 - *Introduced April 08, 2024 by Councilor Dennis Flores*
- R8 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 - *Introduced April 08, 2024 by Councilor Dennis Flores*
- R9 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 - *Introduced April 08, 2024 by Councilor Dennis Flores*
- R10 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 - *Introduced April 08, 2024 by Councilor Dennis Flores*
- R11 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 - *Introduced April 08, 2024 by Councilor Dennis Flores*

S. EMERGENCY ORDINANCES

- S1 An Emergency Ordinance amending Ordinance No. 10582 authorizing the Mayor to declare temporary housing and shelter emergencies as necessary throughout the year for homeless residents of the City of Pueblo

T. ADJOURN



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

A. CALL TO ORDER

President Aliff called the meeting to order at 7:00 pm.

B. INVOCATION

C. PLEDGE OF ALLEGIANCE

D. ROLL CALL

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

Council Members Present via Zoom: None.

Council Members Absent: None.

Administrative Staff Members Present: Mayor Heather Graham, Chief of Staff Brian McCain, City Attorney Carla Sikes, Deputy City Clerk Vincent Petkosek.

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

Ted Freeman - City Government.
Barbara Burch - Public Health.
Erica Otero - Public Health.
Danielle Harwell - Public Health.
George Samaras - Pueblo Recycle Works.
Jimmy Duffner - Needle Exchange.

G. COUNCIL MEMBER AND MAYOR COMMENTARY

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

H. REVIEW OF AGENDA

I. APPROVAL OF AGENDA

Councilor Flores, seconded by Councilor Maestri, moved to postpone item Q6 to the April 22, 2024, agenda and approve the agenda as amended.

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

J. READING AND APPROVAL OF MINUTES

Councilor Gomez, seconded by Councilor Flores, moved to dispense with the reading and approve the Minutes of the Regular Meeting dated **March 25, 2024**, as distributed.

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

J1 CITY COUNCIL MINUTES MARCH 25, 2024

K. CONSENT AGENDA

Deputy City Clerk Vincent Petkosek read the consent agenda into the record.

L. COMMUNICATIONS

L1 MINUTES OF THE PLANNING AND ZONING COMMISSION REGULAR MEETING 02/14/2024

M. RESOLUTIONS

- M1 A RESOLUTION AWARDED 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.**

This Resolution was assigned as 15578.

- M2 A RESOLUTION AWARDED 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**

This Resolution was assigned as 15579.

- M3 A RESOLUTION AWARDED 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**

This Resolution was assigned as 15580.

- 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**

This Resolution was assigned as 15581.

- 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**

This Resolution was assigned as 15582.

- 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

This Resolution was assigned as 15583.

- M7 A RESOLUTION AWARDDING 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**

This Resolution was assigned as 15584.

- 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**

This Resolution was assigned as 15585.

- 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**

This Resolution was assigned as 15586.

- 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**

This Resolution was assigned as 15587.

- 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**

This Resolution was assigned as 15588.

- 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**

This Resolution was assigned as 15589.

- 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**

This Resolution was assigned as 15590.

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

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

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

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

A staff report and detailed review of the Resolution was given by City Attorney Carla Sikes.

Ted Freeman appeared in person to speak against this resolution.

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

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

This Resolution was assigned as 15591.

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

A staff report and detailed review of the Resolution was given by City Attorney Carla Sikes.

Ted Freeman appeared in person to speak against this resolution.

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

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

This Resolution was assigned as 15592.

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)

A staff report and detailed review of the Resolution was given by City Attorney Carla Sikes.

Ted Freeman appeared in person to speak against this resolution.

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

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

This Resolution was assigned as 15593.

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

A staff report and detailed review of the Resolution was given by City Attorney Carla Sikes.

Ted Freeman appeared in person to speak against this resolution.

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

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

This Resolution was assigned as 15594.

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

A staff report and detailed review of the Resolution was given by City Attorney Carla Sikes.

Councilor Gomez, seconded by Councilor Hernandez, moved to approve the Resolution.

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

This Resolution was assigned as 15595.

Q6 A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2024 GENERAL FUND BUDGET TO 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

This resolution was postponed to the April 22, 2024 agenda.

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. DIORIO WATER RECLAMATION FACILITY MASTER PLAN FOR THE CITY OF PUEBLO AND AUTHORIZING THE MAYOR TO EXECUTE SAME

A staff report and detailed review of the Ordinance was given by Andra Ahrens, Wastewater Director.

PUBLIC HEARING:

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

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

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

This Ordinance was assigned as 10681.

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

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

PUBLIC HEARING:

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

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

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

This Ordinance was assigned as 10682.

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

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

PUBLIC HEARING:

Ron Whiley appeared in person to speak against this resolution.

President Aliff declared the hearing closed.

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

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

This Ordinance was assigned as **10683.**

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

A staff report and detailed review of the Ordinance was given by Pueblo Regional Building Official Mark Guerrero.

PUBLIC HEARING:

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

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

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

This Ordinance was assigned as **10684.**

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

A staff report and detailed review of the Ordinance was given by Pueblo Reginal Building Official Mark Guerrero.

PUBLIC HEARING:

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

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

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

This Ordinance was assigned as 10685.

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.

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

PUBLIC HEARING:

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

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

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

This Ordinance was assigned as 10686.

S. ADJOURN

President Aliff adjourned the meeting at 9:39 pm.

Respectfully submitted,



Vincent Petkosek
Deputy City Clerk



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: April 22, 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 \$724,041.55 TO PYRAMID CONSTRUCTION, INC., FOR PROJECT NO. 24-041, ASPHALT IMPROVEMENTS - COURT STREET, SETTING FORTH \$144,958.45 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. 24-041, Asphalt Improvements - Court Street.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

In general, this project consists of asphalt improvements to Court Street, from City Center to 24th St, to include the mill, overlay and striping. This Resolution awards the construction contract to Pyramid Construction, Inc.

FINANCIAL IMPLICATIONS:

Funding (including contingencies) in the amount of \$869,000.00 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. 24-041 Bid Summary

RESOLUTION NO. 15596

A RESOLUTION AWARDDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$724,041.55 TO PYRAMID CONSTRUCTION, INC., FOR PROJECT NO. 24-041, ASPHALT IMPROVEMENTS - COURT STREET, SETTING FORTH \$144,958.45 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, competitive bids for Project No. 24-041, Asphalt Improvements - Court 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. 24-041, Asphalt Improvements - Court Street to be performed; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The City Council authorizes Project No. 24-041, Asphalt Improvements - Court Street, to be performed, and the contract for said project is hereby awarded to Pyramid Construction, Inc., in the amount of \$724,041.55.

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.....\$144,958.45

SECTION 4.

Funds for Project No. 24-041 (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 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: Mark Aliff
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. 24-041 (CI2415)
Asphalt Improvements - Court Street
RESPONSE DEADLINE: April 3, 2024 at 10:00 am
Report Generated: Wednesday, April 3, 2024

VENDOR TOTALS

Vendor	Total
Pyramid Construction, Inc.	\$724,041.55
Martin Marietta Materials, Inc.	\$829,299.00
Tony J Beltramo & Sons, Inc.	\$832,230.90
Oldcastle SW Group Inc dba United Companies	\$1,038,575.35
A&S Construction Co.	\$1,270,133.50

EVALUATION TABULATION
IFB No. 24-041 (CI2415)
Asphalt Improvements - Court Street

BASE BID

Base Bid					A&S Construction Co.		Martin Marietta Materials, Inc.		Oldcastle SW Group Inc dba United Companies		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	Unit Cost	Total
X	1	Asphalt Cold Mill Planing +/- 2 inches	36559	SY	\$4.50	\$164,515.50	\$2.85	\$104,193.15	\$3.00	\$109,677.00	\$1.85	\$67,634.15	\$2.50	\$91,397.50
X	2	Install HMA SX PG 64-28 Asphalt Overlay	4022	TON	\$134.00	\$538,948.00	\$98.75	\$397,172.50	\$147.00	\$591,234.00	\$119.15	\$479,221.30	\$103.25	\$415,271.50
X	3	Adjust Stormwater Manholes to Finished Grade	35	EA	\$2,200.00	\$77,000.00	\$1,085.00	\$37,975.00	\$1,050.00	\$36,750.00	\$335.00	\$11,725.00	\$1,300.00	\$45,500.00
X	4	Adjust Sanitary Manholes to Finished Grade	24	EA	\$2,400.00	\$57,600.00	\$1,085.00	\$26,040.00	\$1,050.00	\$25,200.00	\$335.00	\$8,040.00	\$1,300.00	\$31,200.00
X	5	Adjust Water Valves to Finished Grade	78	EA	\$1,200.00	\$93,600.00	\$461.00	\$35,958.00	\$325.00	\$25,350.00	\$205.00	\$15,990.00	\$300.00	\$23,400.00
X	6	Adjust Survey Boxes to Finished Grade	10	EA	\$1,200.00	\$12,000.00	\$461.00	\$4,610.00	\$325.00	\$3,250.00	\$205.00	\$2,050.00	\$300.00	\$3,000.00

EVALUATION TABULATION
IFB No. 24-041 (CI2415)
Asphalt Improvements - Court Street

Base Bid					A&S Construction Co.		Martin Marietta Materials, Inc.		Oldcastle SW Group Inc dba United Companies		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	Unit Cost	Total
X	7	Install Pavement Markings per City Plan (Epoxy 4" White)	917	SF	\$4.00	\$3,668.00	\$8.65	\$7,932.05	\$4.25	\$3,897.25	\$3.85	\$3,530.45	\$2.00	\$1,834.00
X	8	Install Pavement Markings per City Plan (Epoxy 8" White)	621	SF	\$4.00	\$2,484.00	\$8.65	\$5,371.65	\$4.25	\$2,639.25	\$3.85	\$2,390.85	\$2.00	\$1,242.00
X	9	Install Pavement Markings per City Plan (Epoxy 4" Yellow)	488	SF	\$4.00	\$1,952.00	\$8.65	\$4,221.20	\$4.25	\$2,074.00	\$3.85	\$1,878.80	\$2.00	\$976.00
X	10	Install Thermoplastic Markings per City Plan (Arrows)	177	SF	\$26.00	\$4,602.00	\$25.30	\$4,478.10	\$25.25	\$4,469.25	\$18.00	\$3,186.00	\$16.00	\$2,832.00
X	11	Install Thermoplastic Markings per City Plan (X-Walk)	3060	SF	\$30.00	\$91,800.00	\$16.50	\$50,490.00	\$15.95	\$48,807.00	\$14.50	\$44,370.00	\$13.00	\$39,780.00

EVALUATION TABULATION
IFB No. 24-041 (CI2415)
Asphalt Improvements - Court Street

Base Bid					A&S Construction Co.		Martin Marietta Materials, Inc.		Oldcastle SW Group Inc dba United Companies		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	Unit Cost	Total
X	12	Install Thermoplastic Markings per City Plan (Stop Bars)	282	SF	\$30.00	\$8,460.00	\$16.50	\$4,653.00	\$15.95	\$4,497.90	\$14.50	\$4,089.00	\$13.00	\$3,666.00
X	13	Install Pavement Markings per City Plan (MMA 4" White)	753	SF	\$18.00	\$13,554.00	\$9.95	\$7,492.35	\$9.90	\$7,454.70	\$12.00	\$9,036.00	\$2.30	\$1,731.90
X	14	Install Class 6 Base Material (Place and Compact)	100	TON	\$40.00	\$4,000.00	\$173.00	\$17,300.00	\$63.00	\$6,300.00	\$55.00	\$5,500.00	\$33.00	\$3,300.00
X	15	Asphalt Patching (3-inches HMA)	500	SF	\$9.00	\$4,500.00	\$10.40	\$5,200.00	\$7.00	\$3,500.00	\$4.60	\$2,300.00	\$6.40	\$3,200.00
X	16	Asphalt Patching (3-inches HMA on 8-inches ABC)	500	SF	\$13.00	\$6,500.00	\$30.50	\$15,250.00	\$14.00	\$7,000.00	\$10.50	\$5,250.00	\$9.40	\$4,700.00
X	17	Vehicle Towing Allowance	1	EA	\$250.00	\$250.00	\$112.00	\$112.00	\$475.00	\$475.00	\$450.00	\$450.00	\$200.00	\$200.00
X	18	Erosion and Sediment Control	1	LS	\$3,700.00	\$3,700.00	\$9,485.00	\$9,485.00	\$7,000.00	\$7,000.00	\$12,400.00	\$12,400.00	\$2,000.00	\$2,000.00

EVALUATION TABULATION
IFB No. 24-041 (CI2415)
Asphalt Improvements - Court Street

Base Bid					A&S Construction Co.		Martin Marietta Materials, Inc.		Oldcastle SW Group Inc dba United Companies		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	Unit Cost	Total
X	19	Traffic Control	1	LS	\$61,000.00	\$61,000.00	\$63,275.00	\$63,275.00	\$77,000.00	\$77,000.00	\$25,000.00	\$25,000.00	\$79,900.00	\$79,900.00
X	20	Mobilization	1	LS	\$120,000.00	\$120,000.00	\$28,090.00	\$28,090.00	\$72,000.00	\$72,000.00	\$20,000.00	\$20,000.00	\$77,100.00	\$77,100.00
Total						\$1,270,133.50		\$829,299.00		\$1,038,575.35		\$724,041.55		\$832,230.90

VENDOR QUESTIONNAIRE PASS/FAIL

Question Title	A&S Construction Co.	Martin Marietta Materials, Inc.	Oldcastle SW Group Inc dba United Companies	Pyramid Construction, Inc.	Tony J Beltramo & Sons, Inc.
BID GUARANTEE	Pass	Pass	Pass	Pass	Pass
CONFIRMATION OF UNDERSTANDING AND OFFER	Pass	Pass	Pass	Pass	Pass
NAME, TITLE, AND CONTACT INFORMATION	Pass	Pass	Pass	Pass	Pass
ACKNOWLEDGEMENTS					
AFFIRMATIVE ACTION PLAN REQUIREMENT:	Pass	Pass	Pass	Pass	Pass
INSURANCE REQUIREMENTS	Pass	Pass	Pass	Pass	Pass
COLORADO LABOR REQUIREMENT:	Pass	Pass	Pass	Pass	Pass
SALES AND/OR USE TAX INFORMATION	Pass	Pass	Pass	Pass	Pass
Has/is this firm or any officer or partner of this firm:					
Convicted of a criminal offense	Pass	Pass	Pass	Pass	Pass
Convicted under state or federal statutes	Pass	Pass	Pass	Pass	Pass
Convicted under state or federal antitrust statutes	Pass	Pass	Pass	Pass	Pass
Failed to perform	Pass	Pass	Pass	Pass	Pass
Suspension or Debarment	Pass	Pass	Pass	Pass	Pass
Unqualified	Pass	Pass	Pass	Pass	Pass
Unlicensed	Pass	Pass	Pass	Pass	Pass
Delinquent	Pass	Pass	Pass	Pass	Pass
Confirmation	Pass	Pass	Pass	Pass	Pass



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 22, 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 \$682,640.60 TO TONY J BELTRAMO & SONS, INC., FOR PROJECT NO. 24-008, CONSTRUCTION OF ADAMS AVENUE AND JACKSON STREET ROUNDABOUT, SETTING FORTH \$190,359.40 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

Attached is a resolution awarding a construction contract to Tony J Beltramo & Sons, Inc., for Project No. 24-008, Construction of Adams Avenue and Jackson Street Roundabout.

PREVIOUS COUNCIL ACTION:

Ordinance 10120, dated February 28, 2022, created Project Account CI2206 for Adams Avenue and Jackson Street Roundabout Project, an approved IGA between Pueblo and CDOT relating to the Adams Avenue and Jackson Street Roundabout Project, and budgeted and appropriated funds from CDOT totaling \$900,000 for the Project.

Resolution 14860, dated April 25, 2022, authorized the transfer of \$100,000 from Project Account CI2204 to Project Account CI2206.

Resolution 15069, dated November 28, 2022, awarded an agreement for professional engineering services in the amount of \$123,014.74 to Short-Elliott-Hendrickson, Inc. for the design of Adams Avenue and Jackson Street Roundabout.

BACKGROUND:

The intersection of Adams Avenue and Jackson Street was awarded a Highway Safety Improvement Program (HSIP) grant from the Federal Highway Administration (FHWA) through the Colorado Department of Transportation (CDOT). During the five-year time period 2015 to 2019, there were ten reported accidents, of which, two were fatal

accidents, seven broadside, six property damage only and two injury accidents. FHWA has identified roundabout construction as one of the most significant accident countermeasure concepts.

This project consists of the construction of a 'Mini-Roundabout' at the intersection of Adams Avenue and Jackson Street. The construction components include pavement and concrete removal, excavation and embankment, asphalt pavement with aggregate base course, concrete flatwork involving integral coloring and stamping, storm sewer relocation, signage and pavement markings, and traffic control.

This Resolution awards the construction contract to Tony J Beltramo & Sons, Inc.

FINANCIAL IMPLICATIONS:

Funding in the amount of \$873,000.00 (contract and contingencies) will be paid from Project CI2206, Adams & Jackson Roundabout PRJ.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Denial of this resolution will cancel this project.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. 24-008 Bid Summary

RESOLUTION NO. 15597

A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$682,640.60 TO TONY J BELTRAMO & SONS, INC., FOR PROJECT NO. 24-008, CONSTRUCTION OF ADAMS AVENUE AND JACKSON STREET ROUNDABOUT, SETTING FORTH \$190,359.40 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, competitive bids for Project No. 24-008, Construction of Adams Avenue and Jackson Street Roundabout have been received and examined; and,

WHEREAS, the proposal of Tony J Beltramo & Sons, 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. 24-008, Construction of Adams Avenue and Jackson Street Roundabout to be performed; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The City Council authorizes Project No. 24-008, Construction of Adams Avenue and Jackson Street Roundabout, to be performed, and the contract for said project is hereby awarded to Tony J Beltramo & Sons, Inc., in the amount of \$682,640.60.

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.....\$190,359.40

SECTION 4.

Funds for Project No. 24-008, in the amount of \$873,000.00 shall be from Project Account CI2206, Adams & Jackson Roundabout PRJ.

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 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: Mark Aliff
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. 24-008 (CI2206); CDOT SHO M086-093 (24462)
Construction of Adams Avenue and Jackson Street Roundabout

RESPONSE DEADLINE: March 6, 2024 at 10:00 am
Report Generated: Wednesday, March 6, 2024

VENDOR TOTALS

Vendor	Total
Tony J Beltramo & Sons, Inc.	\$682,640.60
Baha Construction, Inc.	\$690,178.25
JARCCO Construction LLC	\$878,515.00

EVALUATION TABULATION

IFB No. 24-008 (CI2206); CDOT SHO M086-093 (24462)

Construction of Adams Avenue and Jackson Street Roundabout

BASE BID

Base Bid					Baha Construction, Inc.			JARCCO Construction LLC			Tony J Beltramo & Sons, Inc.		
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	CDOT Item Numbers	Unit Cost	Total	CDOT Item Numbers	Unit Cost	Total	CDOT Item Numbers
X	1	CLEAR AND GRUBBING	1	LS	\$5,000.00	\$5,000.00	201-00000	\$15,000.00	\$15,000.00	201-00000	\$7,100.00	\$7,100.00	201-00000
X	2	REMOVAL OF INLET	1	EACH	\$6,600.00	\$6,600.00	202-00019	\$5,000.00	\$5,000.00	202-00019	\$1,300.00	\$1,300.00	202-00019
X	3	REMOVAL OF PIPE	23	LF	\$250.00	\$5,750.00	202-00035	\$125.00	\$2,875.00	202-00035	\$27.00	\$621.00	202-00035
X	4	REMOVAL OF SIDEWALK	203	SY	\$54.00	\$10,962.00	202-00200	\$39.00	\$7,917.00	202-00200	\$10.00	\$2,030.00	202-00200
X	5	REMOVAL OF CURB AND GUTTER	673	LF	\$12.00	\$8,076.00	202-00203	\$16.00	\$10,768.00	202-00203	\$13.00	\$8,749.00	202-00203
X	6	REMOVAL OF CONCRETE PAVEMENT (DRIVEWAY, DITCH)	24	SY	\$72.00	\$1,728.00	202-00211	\$60.00	\$1,440.00	202-00211	\$10.00	\$240.00	202-00211
X	7	REMOVAL OF ASPHALT MAT	2189	SY	\$11.25	\$24,626.25	202-00220	\$36.00	\$78,804.00	202-00220	\$10.40	\$22,765.60	202-00220
X	8	REMOVAL OF MAT FROM BRIDGE (MILLING)	99	SY	\$45.50	\$4,504.50	202-00410	\$17.00	\$1,683.00	202-00410	\$15.40	\$1,524.60	202-00410
X	9	REMOVAL OF GROUND SIGN	2	EACH	\$250.00	\$500.00	202-00810	\$550.00	\$1,100.00	202-00810	\$100.00	\$200.00	202-00810
X	10	SAWING ASPHALT MATERIAL (10 INCH)	230	LF	\$8.50	\$1,955.00	202-05030	\$7.00	\$1,610.00	202-05030	\$8.00	\$1,840.00	202-05030
X	11	UNCLASSIFIED EXCAVATION	283	CY	\$42.00	\$11,886.00	203-00000	\$85.00	\$24,055.00	203-00000	\$43.00	\$12,169.00	203-00000
X	12	EMBANKMENT MATERIAL (COMPLETE IN PLACE)	140	CY	\$45.50	\$6,370.00	203-00060	\$135.00	\$18,900.00	203-00060	\$47.00	\$6,580.00	203-00060
X	13	STRUCTURE BACKFILL (CLASS 1)	20	CY	\$85.00	\$1,700.00	206-00100	\$155.00	\$3,100.00	206-00100	\$35.00	\$700.00	206-00100
X	14	SILT FENCE	333	LF	\$15.00	\$4,995.00	208-00020	\$8.00	\$2,664.00	208-00020	\$5.00	\$1,665.00	208-00020

EVALUATION TABULATION

Public Improvement Invitation for Bid - Construction of Adams Avenue and Jackson Street Roundabout

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EVALUATION TABULATION

IFB No. 24-008 (CI2206); CDOT SHO M086-093 (24462)

Construction of Adams Avenue and Jackson Street Roundabout

Base Bid					Baha Construction, Inc.			JARCCO Construction LLC			Tony J Beltramo & Sons, Inc.		
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	CDOT Item Numbers	Unit Cost	Total	CDOT Item Numbers	Unit Cost	Total	CDOT Item Numbers
X	15	AGGREGATE BAG	112	LF	\$6.00	\$672.00	208-00035	\$15.00	\$1,680.00	208-00035	\$4.00	\$448.00	208-00035
X	16	CONCRETE WASHOUT STRUCTURE	1	EACH	\$1,500.00	\$1,500.00	208-00045	\$3,500.00	\$3,500.00	208-00045	\$2,300.00	\$2,300.00	208-00045
X	17	STORM DRAIN INLET PROTECTION (TYPE I)	32	LF	\$25.00	\$800.00	208-00051	\$18.00	\$576.00	208-00051	\$10.00	\$320.00	208-00051
X	18	EROSION CONTROL SUPERVISOR	40	HOUR	\$72.00	\$2,880.00	208-00205	\$145.00	\$5,800.00	208-00205	\$110.00	\$4,400.00	208-00205
X	19	VEHICLE TRACKING PAD	1	EACH	\$1,000.00	\$1,000.00	208-00070	\$4,500.00	\$4,500.00	208-00070	\$3,000.00	\$3,000.00	208-00070
X	20	SWEEPING	40	HOUR	\$92.00	\$3,680.00	208-00106	\$155.00	\$6,200.00	208-00106	\$50.00	\$2,000.00	208-00106
X	21	RESET FENCE	20	LF	\$50.00	\$1,000.00	210-01000	\$33.00	\$660.00	210-01000	\$35.00	\$700.00	210-01000
X	22	ADJUST VALVE BOX	1	EACH	\$500.00	\$500.00	210-04050	\$950.00	\$950.00	210-04050	\$1,100.00	\$1,100.00	210-04050
X	23	LANDSCAPE RESTORATION	1	LS	\$10,000.00	\$10,000.00	212-01200	\$7,500.00	\$7,500.00	212-01200	\$7,700.00	\$7,700.00	212-01200
X	24	ROCK MULCH (WEED FREE)(3/4 INCH BROWN RIVER ROCK)	2191	SF	\$2.50	\$5,477.50	213-00067	\$5.00	\$10,955.00	213-00067	\$5.00	\$10,955.00	213-00067
X	25	PLANT PROTECTION FENCE (TREE)	116	LF	\$5.00	\$580.00	214-00145	\$13.00	\$1,508.00	214-00145	\$20.00	\$2,320.00	214-00145
X	26	AGGREGATE BASE COURSE (CLASS 6)	440	CY	\$65.00	\$28,600.00	304-06000	\$171.00	\$75,240.00	304-06000	\$97.00	\$42,680.00	304-06000
X	27	HOT MIX ASPHALT (GRADING S)(75)(PG 64-22)	467	TON	\$212.00	\$99,004.00	403-33741	\$185.00	\$86,395.00	403-33741	\$110.00	\$51,370.00	403-33741
X	28	HOT MIX ASPHALT (GRADING SX)(75)(PG 64-22)	191	TON	\$245.00	\$46,795.00	403-34741	\$185.00	\$35,335.00	403-34741	\$110.00	\$21,010.00	403-34741

EVALUATION TABULATION

Public Improvement Invitation for Bid - Construction of Adams Avenue and Jackson Street Roundabout

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EVALUATION TABULATION

IFB No. 24-008 (CI2206); CDOT SHO M086-093 (24462)

Construction of Adams Avenue and Jackson Street Roundabout

Base Bid					Baha Construction, Inc.			JARCCO Construction LLC			Tony J Beltramo & Sons, Inc.		
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	CDOT Item Numbers	Unit Cost	Total	CDOT Item Numbers	Unit Cost	Total	CDOT Item Numbers
X	29	CONCRETE PAVEMENT (6 INCH)(DRIVEWAY, DITCH)	24	SY	\$144.00	\$3,456.00	412-00600	\$135.00	\$3,240.00	412-00600	\$162.00	\$3,888.00	412-00600
X	30	GEOMEMBRANE	110	SY	\$52.00	\$5,720.00	420-00000	\$16.00	\$1,760.00	420-00000	\$60.00	\$6,600.00	420-00000
X	31	15 INCH REINFORCED CONCRETE PIPE	118	LF	\$305.00	\$35,990.00	603-01150	\$275.00	\$32,450.00	603-01150	\$269.00	\$31,742.00	603-01150
X	32	INLET TYPE 16	2	EACH	\$1,000.00	\$2,000.00	604-16005	\$14,000.00	\$28,000.00	604-16005	\$11,500.00	\$23,000.00	604-16005
X	33	CONCRETE SIDEWALK (4-INCH)	219	SY	\$108.00	\$23,652.00	608-00000	\$81.00	\$17,739.00	608-00000	\$113.00	\$24,747.00	608-00000
X	34	CONCRETE 8-INCH THICK(WALK OVER BRIDGE)	19	SY	\$175.00	\$3,325.00	608-00002	\$135.00	\$2,565.00	608-00002	\$217.00	\$4,123.00	608-00002
X	35	CONCRETE CURB RAMP	122	SY	\$250.00	\$30,500.00	608-00010	\$275.00	\$33,550.00	608-00010	\$242.00	\$29,524.00	608-00010
X	36	COLORED CONCRETE MEDIAN (STAMPED FLAGSTONE)	134	SY	\$215.00	\$28,810.00	608-00351	\$214.00	\$28,676.00	608-00351	\$190.00	\$25,460.00	608-00351
X	37	COLORED CONCRETE MEDIAN (STAMPED BRICK)	270	SY	\$215.00	\$58,050.00	608-00352	\$214.00	\$57,780.00	608-00352	\$140.00	\$37,800.00	608-00352
X	38	DETECTABLE WARNING	115	SF	\$30.00	\$3,450.00	609-00015	\$100.00	\$11,500.00	609-00015	\$65.00	\$7,475.00	609-00015
X	39	6 INCH CURBHEAD (CITY OF PUEBLO STANDARD)	53	LF	\$25.00	\$1,325.00	609-20000	\$41.00	\$2,173.00	609-20000	\$75.00	\$3,975.00	609-20000
X	40	CURB AND GUTTER (CITY STANDARD CURB AND GUTTER)	766	LF	\$42.00	\$32,172.00	609-20010	\$43.00	\$32,938.00	609-20010	\$48.90	\$37,457.40	609-20010
X	41	MODIFIED RAMP CURB AND GUTTER (CITY OF PUEBLO STANDARD)	696	LF	\$47.00	\$32,712.00	609-20003	\$45.00	\$31,320.00	609-20003	\$55.00	\$38,280.00	609-20003

EVALUATION TABULATION

Public Improvement Invitation for Bid - Construction of Adams Avenue and Jackson Street Roundabout

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EVALUATION TABULATION

IFB No. 24-008 (CI2206); CDOT SHO M086-093 (24462)

Construction of Adams Avenue and Jackson Street Roundabout

Base Bid					Baha Construction, Inc.			JARCCO Construction LLC			Tony J Beltramo & Sons, Inc.		
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	CDOT Item Numbers	Unit Cost	Total	CDOT Item Numbers	Unit Cost	Total	CDOT Item Numbers
X	42	SIGN PANEL (CLASS I)	182	SF	\$50.00	\$9,100.00	614-00026	\$52.00	\$9,464.00	614-00026	\$26.00	\$4,732.00	614-00026
X	43	STEEL SIGN SUPPORT (2-INCH ROUND)(POST AND SOCKET)	28	EACH	\$250.00	\$7,000.00	614-01503	\$500.00	\$14,000.00	614-01503	\$350.00	\$9,800.00	614-01503
X	44	CONSTRUCTION SURVEYING	1	LS	\$18,000.00	\$18,000.00	625-00000	\$22,300.00	\$22,300.00	625-00000	\$26,500.00	\$26,500.00	625-00000
X	45	MOBILIZATION	1	LS	\$56,000.00	\$56,000.00	626-00000	\$75,000.00	\$75,000.00	626-00000	\$105,400.00	\$105,400.00	626-00000
X	46	RAISED PAVEMENT MARKER (YELLOW)(PERMANENT)(ONE-WAY)	29	EACH	\$175.00	\$5,075.00	627-60005	\$65.00	\$1,885.00	627-60005	\$150.00	\$4,350.00	627-60005
X	47	MODIFIED EPOXY PAVEMENT MARKING (INLAID WHITE)	1	GAL	\$500.00	\$500.00	627-00009	\$950.00	\$950.00	627-00009	\$275.00	\$275.00	627-00009
X	48	MODIFIED EPOXY PAVEMENT MARKING (INLAID YELLOW)	3	GAL	\$500.00	\$1,500.00	627-00010	\$950.00	\$2,850.00	627-00010	\$275.00	\$825.00	627-00010
X	49	THERMOPLASTIC PAVEMENT MARKING (XWALK)	420	SF	\$35.00	\$14,700.00	627-00002	\$23.00	\$9,660.00	627-00002	\$20.00	\$8,400.00	627-00002
X	50	TRAFFIC CONTROL	1	LS	\$20,000.00	\$20,000.00	630-00012	\$43,000.00	\$43,000.00	630-00012	\$30,500.00	\$30,500.00	630-00012
Total						\$690,178.25			\$878,515.00			\$682,640.60	

EVALUATION TABULATION

Public Improvement Invitation for Bid - Construction of Adams Avenue and Jackson Street Roundabout

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EVALUATION TABULATION

IFB No. 24-008 (CI2206); CDOT SHO M086-093 (24462)

Construction of Adams Avenue and Jackson Street Roundabout

VENDOR QUESTIONNAIRE PASS/FAIL

Question Title	Baha Construction, Inc.	JARCCO Construction LLC	Tony J Beltramo & Sons, Inc.
BID GUARANTEE	Pass	Pass	Pass
CONFIRMATION OF UNDERSTANDING AND OFFER	Pass	Pass	Pass
NAME, TITLE, AND CONTACT INFORMATION	Pass	Pass	Pass
AFFIRMATIVE ACTION PLAN REQUIREMENT:	Pass	Pass	Pass
INSURANCE REQUIREMENTS	Pass	Pass	Pass
REQUIRED WORK BY GENERAL CONTRACTOR:	Pass	Pass	Pass
COLORADO LABOR REQUIREMENT:	Pass	Pass	Pass
ACKNOWLEDGEMENT OF PREVAILING WAGES & ADDITIONAL WAGE CLASSIFICATION RESPONSIBILITY	Pass	Pass	Pass
CERTIFICATION OF NONSEGREGATED FACILITIES	Pass	Pass	Pass
SALES AND/OR USE TAX INFORMATION	Pass	Pass	Pass
SAM.gov REGISTRATION	Pass	Pass	Pass
REQUIRED CDOT FORMS			
CDOT FORM 606	Pass	Pass	Pass
CDOT FORM 1413	Pass	Pass	Pass
CDOT FORM 1414	Pass	Pass	Pass

EVALUATION TABULATION

Public Improvement Invitation for Bid - Construction of Adams Avenue and Jackson Street Roundabout

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EVALUATION TABULATION

IFB No. 24-008 (CI2206); CDOT SHO M086-093 (24462)

Construction of Adams Avenue and Jackson Street Roundabout

Question Title	Baha Construction, Inc.	JARCCO Construction LLC	Tony J Beltramo & Sons, Inc.
CDOT FORMS REQUIRED FROM APPARENT LOWEST/MOST RESPONSIVE BIDDER	Pass	Pass	Pass
Has/is this firm or any officer or partner of this firm:			
Convicted of a criminal offense	Pass	Pass	Pass
Convicted under state or federal statutes	Pass	Pass	Pass
Convicted under state or federal antitrust statutes	Pass	Pass	Pass
Failed to perform	Pass	Pass	Pass
Suspension or Debarment	Pass	Pass	Pass
Unqualified	Pass	Pass	Pass
Unlicensed	Pass	Pass	Pass
Delinquent	Pass	Pass	Pass
Confirmation	Pass	Pass	Pass

EVALUATION TABULATION

Public Improvement Invitation for Bid - Construction of Adams Avenue and Jackson Street Roundabout

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**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 22, 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

SUBJECT: A RESOLUTION APPROVING PAYMENT IN THE AMOUNT OF \$210,576.78 FROM PROJECT CI2113 - AMERICAN RESCUE PLAN ACT FOR THE PURCHASE OF A CRISIS NEGOTIATOR VAN FOR THE POLICE DEPARTMENT, 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 \$210,576.78 from Project CI2113 American Rescue Plan Act ("ARPA") for the purchase of a Crisis Negotiator Van for the Police Department. 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. The equipment requested is necessary to provide a command center during crisis intervention events. The Crisis Negotiator Van will allow heightened communications between agencies to assist in resolution of the crisis event. Overall, the Crisis Negotiator Van will provide for efficient operation of the Police Department. The estimated cost of the Crisis Negotiator Van is \$210,576.78.

FINANCIAL IMPLICATIONS:

Funding in the amount of \$210,576.78 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 the purchase of a Crisis Negotiator Van for the Police Department.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

None

RESOLUTION NO. 15598

A RESOLUTION APPROVING PAYMENT IN THE AMOUNT OF \$210,576.78 FROM PROJECT CI2113 - AMERICAN RESCUE PLAN ACT FOR THE PURCHASE OF A CRISIS NEGOTIATOR VAN FOR THE POLICE DEPARTMENT, 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, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plant Act (hereinafter "ARPA"; and

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

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

WHEREAS, under ARPA Section 603 (c)(1)(C) and the Final Rule 31 CFR 35.6 recipients may use Coronavirus Local Fiscal Recovery ("CLFR") Funds on governmental services pursuant to the revenue replacement calculation; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Payment in the amount of \$210,576.78 is hereby authorized from Project CI2113 – American Rescue Plan for the purchase of a Crisis Negotiator Van for the Pueblo Police Department.

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.

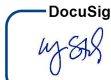
SECTION 3.

This Resolution shall become effective immediately upon final passage.

INTRODUCED: April 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: Mark Aliff
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Eva Cosyleon, MPO Manager

SUBJECT: A RESOLUTION APPROVING AMENDMENT NO. 1 TO THE PUEBLO REGIONAL ON-CALL TRANSPORTATION TECHNICAL ASSISTANCE AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND WILSON & COMPANY, INC., A COLORADO CORPORATION, IN THE AMOUNT OF \$29,300 FOR BID NO. 22-069, TECHNICAL TRANSPORTATION SERVICES FOR UPDATING TRAVEL DEMAND MODEL, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

This Resolution approves Amendment No. 1 to the Pueblo Regional On-Call Transportation Technical Assistance Agreement, Update Travel Demand Model awarded to Wilson & Company, Inc., in the amount of \$29,300 for Bid No. 22-069, Technical Transportation Planning Services for Updating Travel Demand Model.

PREVIOUS COUNCIL ACTION:

Resolution 15259 dated June 12, 2023, approved an agreement for On-Call Transportation Technical Assistance Professional Consulting Services between the City of Pueblo and Wilson & Company, Inc., in the amount of \$188,370, related to the Technical Transportation Planning Services for Updating Travel Demand Model.

BACKGROUND:

In June 2023, the City of Pueblo awarded a contract for on-call transportation technical assistance to update the Travel Demand Model to Wilson & Company. In March 2024, the consultants determined that the Pueblo Area Council of Governments (PACOG) travel demand model needed to implement the Colorado Department of Transportation (CDOT) Statewide Models Transportation Analysis Zones (TAZ) within Pueblo County, additional modeling enhancements to facilitate sensitivity testing of Greenhouse Gas (GHG) mitigation strategies, and GHG conformity demonstration which will result in meeting CDOT's GHG requirements. The purpose of Amendment No. 1 to the

Agreement for Professional Consulting Services.

FINANCIAL IMPLICATIONS:

Funding for the original Agreement (\$188,370) and Amendment No. 1 (\$29,300) will be paid from account TP2241, On-Call Transportation Technical Assistance and FY2024-2025 Operating Budget - Urban Transportation Planning Project.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Denial of this Resolution will result in lack of data that is pivotal to meeting CDOT's GHG requirements.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. Bid No. 22-069 Wilson Amendment No 1 - Travel Model (Approved)

RESOLUTION NO. 15599

A RESOLUTION APPROVING AMENDMENT NO. 1 TO THE PUEBLO REGIONAL ON-CALL TRANSPORTATION TECHNICAL ASSISTANCE AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND WILSON & COMPANY, INC., A COLORADO CORPORATION, IN THE AMOUNT OF \$29,300 FOR BID NO. 22-069, TECHNICAL TRANSPORTATION SERVICES FOR UPDATING TRAVEL DEMAND MODEL, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, an On-Call Transportation Technical Assistance Services Agreement with Wilson & Company, Inc. was executed on June 12, 2023; and,

WHEREAS, additional design work contemplated by Amendment No. 1 is needed; and,

WHEREAS, it is in the best interest of the City to proceed with and complete such design in the manner herein provided; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Amendment No. 1, by and between the City of Pueblo, a Colorado Municipal Corporation, and Wilson & Company, Inc., a professional consulting service firm, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved, and City Council authorizes the additional work contemplated by Amendment No. 1 to be performed in the amount of \$29,300.

SECTION 2.

Funds in the amount of \$29,300 will be paid from account TP2241, On-Call Transportation Technical Assistance and FY2024-25 Operating Budget - Urban Transportation Planning Project.

SECTION 3.

The Purchasing Agent is hereby authorized to execute Amendment No. 1 on behalf of the City of Pueblo, a Colorado Municipal Corporation, and the City Clerk shall affix the seal of the City thereto and attest same.

SECTION 4.

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 5.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: April 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: Mark Aliff
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

AMENDMENT NO. 1 TO THE PROFESSIONAL CONSULTING SERVICES AGREEMENT BY AND BETWEEN THE CITY OF PUEBLO AND WILSON & COMPANY, INC., ENGINEERS & ARCHITECTS

1. Introduction

This Amendment No. 1 to the Professional Consulting Services Agreement ("Amendment") is executed to be effective as of the ____ day of _____, 20____, by and between the City of Pueblo, a Colorado Municipal Corporation ("City") and Wilson & Company, Inc., Engineers & Architects, a Kansas Corporation registered in Colorado ("Consultant"). City and Consultant are sometimes referred to herein as a "Party" and collectively, as the "Parties."

2. Project Statement

WITNESSETH THAT:

WHEREAS, City and Consultant entered into that certain Professional Consulting Services Agreement dated June 13, 2023 (the "Agreement").

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

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

3. AGREEMENT

- A. The Agreement is amended by expanding the scope of work to include the following additional services:
 1. Consultant shall provide TAZ Geographical Revisions, GUI Scripting for Enhanced GHG/Transit Models, and MOVES4 Modeling/GHG Conformity Report as identified in Attachment A.
 2. Attachment A to this Amendment No. 1 shall be additional work as agreed upon by Consultant and City, and Consultant shall complete the work items as generally described in said Attachment A in accordance with the terms of the Agreement.
- B. With respect to services provided under the Amendment No. 1, the fee schedule attached as Attachment B to this Amendment No. 1 shall apply to compensation payable to Consultant. The aggregate compensation payable to the Consultant for performance of the additional services authorized by this Amendment No. 1 shall not exceed the maximum amount of \$29,300.00 as set forth in the Attachment B and notwithstanding whether the service is billed as Time and Material.

1. The compensation payable to the Consultant by this Amendment No. 1 shall be billed at the amounts set forth in the Attachment B.
2. City must respond in writing with written approval prior to Consultant beginning work.
- C. Consultant shall commence and complete each major work in a timely manner; provided, however, Consultant will not be responsible for delays beyond Consultant's control.
- D. This Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- E. Except as expressly modified by this Amendment No. 1, the Agreement shall remain in full force and effect. Except as modified by this Amendment No. 1, any obligations to be performed under the Agreement by either party are not waived nor excused in any manner but shall be performed in accordance with the terms and conditions of the Agreement as it existed prior to this Amendment No. 1.
- F. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document with the same effect as if all Parties had signed the same original. The Parties further agree that transmission of this Amendment by any electronic format, telecopy or via email in a PDF format, shall be deemed transmission of the original Amendment for all purposes. Electronic signatures shall be deemed valid and binding to the same extent as the original

4. Signature Section

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

CITY OF PUEBLO, A MUNICIPAL CORPORATION

WILSON & COMPANY

By _____
Naomi Hedden, Director of Purchasing

By _____
Scott Waterman, PE, Vice President Transportation

Attest _____
Marisa Stoller, City Clerk

[SEAL]

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

APPROVED AS TO FORM
Department of Law

Alexandria Romero, Finance Director

David Wyatt, Assistant City Attorney

Attachments: Attachment A, Attachment B, and Additional Information for Amendment

PACOG Travel Model Update – Supplemental Work Tasks/Fee (3/18/2024)

BASIS FOR SUPPLEMENT

The decision in December to revise the modeling TAZ geography to implement the CDOT Statewide Model TAZs within Pueblo County had cascading effects on work completed on the approved scope of work and budget for the PACOG 2050 Travel Demand Model Update. Additionally, as we learned more about the GHG modeling requirements it became clear that PACOG could best be supported by modeling enhancements that would facilitate staff-level sensitivity testing of GHG mitigation strategies. Finally, PACOG desires that the GHG Conformity Demonstration and supporting modeling be prepared by the consultant with staff engagement to build necessary in-house capabilities to perform future conformity demonstrations.

DESCRIPTION OF SUPPLEMENTAL SCOPE OF WORK

Task A – TAZ Geography Revisions

To revise the PACOG Travel Demand Model (TDM) TAZ geography to match the TAZ the Statewide Model (SWM) TAZ geography within Pueblo county five tasks as follows were required:

- Revise the PACOG TDM TAZ geodatabase (layer) was from 266 internal TAZs to the SWM 385 internal TAZs within Pueblo County.
- Update the PACOG base year highway network geodatabase to interface with the new TAZ centroid connectors.
- Reconnect the PACOG TDM transit routes geodatabase to the revised highway network geodatabase.
- Update the supporting parameter and zonal matrices to match the 385-zone TAZ geography. This includes updating trip matrices for external trips, socioeconomic data matrices, special generator TAZ association, etc.
- Implement the 385-zone TAZ geography within the model resource code/user interface.

Task B – GUI Scripting for Enhanced GHG/Transit Modules

To facilitate rapid scenario testing for GHG mitigation strategies that could be used for sensitivity testing by PACOG staff for GHG Conformity Demonstration and enhanced GUI was developed. To complete this task, four tasks were required as follow:

- The User Interface (GUI) was modified to support enhanced transit scenario modeling for transit based GHG mitigation strategy testing.
- Work-from-Home trends were evaluated to update the based year scenario and to update this travel behavior in the base model and to provide a basis for using telecommuting promotion strategies as part of an overall GHG mitigation strategy set.
- A user friendly GHG scenario builder was implemented to facilitate rapid GHG mitigation strategy scenario testing.
- Proof of concept was demonstrated through sensitivity testing of the GHG scenario builder tool.

Task C – MOVES4 Modeling/GHG Conformity Report

The base scope included output of TDM assignment results required as input to the MOVES4 for estimation of GHG emissions. Additional scope includes the development of SQL Server/Heidi DB scripts to post-process TDM data for input to MOVES runs. It also include iterative MOVES runs for the base year and 2030, 2040 and 2050 TDM scenarios implementing GHG strategies as required to meet Colorado GHG Policy GHG reduction targets, as well as the preparation of a GHG Conformity Demonstration report for adoption by the PACOG Board.

Attachment B - Fee Schedule - Excerpt from Consultant Proposal dated March 18, 2024, Page 2

Supplemental Services for PACOG Travel Model Update Wilson & Company Fee Breakdown by Task/Subtask		Wilson & Company				Converge		
Labor Tasks & Hours Budget		Project Manager Modeling Lead	Senior Modeler	GIS Specialist	Project Accountant	Senior Modeler	Total Hours	Labor Cost
Billable Hourly Rate		\$248.70	\$193.00	\$140.86	\$113.54	\$163.04		
Task A: TAZ Geography Revisions								
Task A.1 Revision of TAZ Geodatabase (266 to 385 Internal Zones)		0	8	0	0	0	8	\$ 1,540
Task A.2 Update of Highway Geodatabase (Centroid Connectors)		0	8	0	0	0	8	\$ 1,540
Task A.3 Reconnection of Highway/Transit Routes Geodatabases		0	4	0	0	4	8	\$ 1,420
Task A.4 Update Supporting Parameter/Matrix Files for CDOT TAZ Geography		8	8	0	0	0	16	\$ 3,530
Task A.5 Implement of New TAZ Geography in Model Code		0	0	0	0	4	4	\$ 650
Total Task A: TAZ Geogrpahy Revisions		8	28	0	0	8	44	\$ 8,680
Task B: GUI Scripting for Enhanced GHG/Transit Modules								
Task B.1 Transit Model GUI Enhancement for GHG Module		0	4	0	0	8	12	\$ 2,080
Task B.2 Work-From Home Analysis and GUI Implementation		0	12	0	0	8	20	\$ 3,620
Task B.3 Develop GHG Strategy Scenario Builder		0	4	0	0	8	12	\$ 2,080
Task B.4 GUI Operation Sensitivity Testing		0	12	0	0	0	12	\$ 2,320
Total Task B: GUI Scripting for Enhanced GHG Modules		0	32	0	0	24	56	\$ 10,100
Task C: MOVES4 Modeling/GHG Conformity Report								
Task C.1 Develop MOVES Input Processing Scripts		8	0	0	0	0	8	\$ 1,990
Task C.2 Complete Iterative MOVES Modeling		12	0	0	0	0	12	\$ 2,980
Task C.3 Prepare GHG Conformity Demonstration Report		20	0	4	0	0	24	\$ 5,540
Total Task C: MOVES4 Modeling/GHG Conformity Report		40	0	4	0	0	44	\$ 10,510
Total Hours / Labor Cost		48	60	4	0	32	144	\$ 29,300
Total - Direct Labor Costs (Billable Hourly Rate x Total Hours)		\$ 11,938	\$ 11,580	\$ 563	\$ -	\$ -		
Total - Direct Expenses								
Total Budget Summary								
Labor Expenses								\$ 29,300
Direct Expenses								\$ -
Grand Total								\$ 29,300

Additional Information for Agreement

Certificate of Good Standing

PERA Questionnaire

Insurance Certificate(s)



For this Record...
Filing history and documents
Get a certificate of good standing
File a form
Subscribe to email notification
Unsubscribe from email notification
Subscribe to text notification
Unsubscribe from text notification

Business Home
Business Information
Business Search

FAQs, Glossary and Information

Back

Summary

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

Registered Agent	
Name	Northwest Registered Agent
Street address	1942 Broadway Ste 314C, Boulder, CO 80302, US
Mailing address	1942 Broadway Ste 314C, Boulder, CO 80302, US

- [Filing history and documents](#)
- [Get a certificate of good standing](#)
- [Get certified copies of documents](#)
- [File a form](#)
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OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

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

WILSON & COMPANY, INC., ENGINEERS & ARCHITECTS

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

This certificate reflects facts established or disclosed by documents delivered to this office on
paper through 03/20/2024 that have been posted, and by documents delivered to this office
electronically through 03/25/2024 @ 10:49:48.

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 03/25/2024 @ 10:49:48 in accordance with applicable law.
This certificate is assigned Confirmation Number 15876381.



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: Wilson & Company, Inc., Engineers & Architects

Authorized Signature: Scott Waterman Title: Vice President

Printed Name: Scott Waterman Date: 1/31/2023



CERTIFICATE OF LIABILITY INSURANCE

6/1/2024

DATE (MM/DD/YYYY)

5/30/2023

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

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

PRODUCER Lockton Companies 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000 kcasu@lockton.com		CONTACT NAME: PHONE (A/C, No. Ext.): FAX (A/C, No.): E-MAIL: ADDRESS:																						
INSURED 4011 WILSON & CO., INC. 4401 MASTHEAD STREET NE SUITE 150 ALBUQUERQUE NM 87109		<table border="1"> <thead> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td colspan="2">INSURER A: Hartford Fire Insurance Company</td> <td>19682</td> </tr> <tr> <td colspan="2">INSURER B: Property and Casualty Ins Co of Hartford</td> <td>34690</td> </tr> <tr> <td colspan="2">INSURER C: Hartford Insurance Co of the Southeast</td> <td>38261</td> </tr> <tr> <td colspan="2">INSURER D:</td> <td></td> </tr> <tr> <td colspan="2">INSURER E:</td> <td></td> </tr> <tr> <td colspan="2">INSURER F:</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A: Hartford Fire Insurance Company		19682	INSURER B: Property and Casualty Ins Co of Hartford		34690	INSURER C: Hartford Insurance Co of the Southeast		38261	INSURER D:			INSURER E:			INSURER F:		
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INSURER D:																								
INSURER E:																								
INSURER F:																								

COVERAGES

CERTIFICATE NUMBER: 19607076

REVISION NUMBER: XXXXXXXX

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC ☐ OTHER:	Y	N	37 UEN OL5652	6/1/2023	6/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY	N	N	37 UEN OL5653	6/1/2023	6/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/EMPLOYEE EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	37 WE OL6H8C	6/1/2023	6/1/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

RE: PROJECT NUMBER: 22-069 PROJECT NAME: PUEBLO REGIONAL ON-CALL TRANSPORTATION TECHNICAL ASSISTANCE - UPDATE TRAVEL DEMAND MODEL. CITY OF PUEBLO, ITS OFFICERS AND EMPLOYEES IS AN ADDITIONAL INSURED AS RESPECTS GENERAL LIABILITY, IF REQUIRED BY WRITTEN CONTRACT. WAIVER OF SUBROGATION APPLIES TO WORKERS COMPENSATION/EMPLOYER'S LIABILITY WHERE ALLOWED BY STATE LAW AND IF REQUIRED BY WRITTEN CONTRACT.

CERTIFICATE HOLDER

CANCELLATION

19607076
 CITY OF PUEBLO, COLORADO
 ATTN: CITY OF PUEBLO, PURCHASING DEPARTMENT
 230 S. MECHANIC STREET
 PUEBLO, CO 81003

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

AUTHORIZED REPRESENTATIVE

Joseph M. Agnello

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CERTIFICATE OF LIABILITY INSURANCE

6/1/2024

DATE (MM/DD/YYYY)

5/30/2023

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PRODUCER Lockton Companies 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000 kcasu@lockton.com	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
INSURED 1048828 WILSON & CO., INC. 4401 MASTHEAD STREET NE SUITE 150 ALBUQUERQUE NM 87109	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Berkshire Hathaway Specialty Insurance Company	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
INSURER F:		

COVERAGES CERTIFICATE NUMBER: 19607078 REVISION NUMBER: XXXXXXXX

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC ☐ OTHER:			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX DAMAGE TO RENTED PREMISES (Ea occurrence) \$ XXXXXXXX MED EXP (Any one person) \$ XXXXXXXX PERSONAL & ADV INJURY \$ XXXXXXXX GENERAL AGGREGATE \$ XXXXXXXX PRODUCTS - COM/OP AGG \$ XXXXXXXX \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			NOT APPLICABLE			COMBINED SINGLE LIMIT (Ea accident) \$ XXXXXXXX BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$
	UMBRELLA LIAB ☐ EXCESS LIAB ☐ ☐ DED ☐ RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			NOT APPLICABLE			PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ XXXXXXXX E.L. DISEASE - EA EMPLOYEE \$ XXXXXXXX E.L. DISEASE - POLICY LIMIT \$ XXXXXXXX
A	PROFESSIONAL LIABILITY	N	N	47-EPP-305301-06	6/1/2023	6/1/2024	\$1,000,000 EACH CLAIM & ANNUAL AGGREGATE FOR ALL PROJECTS.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: PROJECT NUMBER: 22-069 PROJECT NAME: PUEBLO REGIONAL ON-CALL TRANSPORTATION TECHNICAL ASSISTANCE - UPDATE TRAVEL DEMAND MODEL.

CERTIFICATE HOLDER

CANCELLATION

19607078
CITY OF PUEBLO, COLORADO
ATTN: CITY OF PUEBLO, PURCHASING DEPARTMENT
230 S. MECHANIC STREET
PUEBLO, CO 81003

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

AUTHORIZED REPRESENTATIVE

Joseph M. Agnello

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**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM:

SUBJECT: A RESOLUTION OF SUPPORT FOR THE DESIGNATION OF COLORADO HIGHWAY 78 BETWEEN THE CITY OF PUEBLO AND BEULAH TOWNSHIP AS THE "PFC THOMAS MICHAEL "MIKE" HANRATTY, USMC MEMORIAL HIGHWAY" AND AUTHORIZING THE PUBLIC WORKS DEPARTMENT TO WORK COOPERATIVELY WITH PUEBLO COUNTY AND THE COLORADO DEPARTMENT OF TRANSPORTATION TO FABRICATE AND INSTALL THE SIGNAGE FOR THE NEW DESIGNATION

SUMMARY:

This Resolution declares City Council's support for the redesignation of a portion of Colorado Highway 78 between Hog Farm Road and Siloam Road as the "PFC Thomas Michael "Mike" Hanratty, USMC Memorial Highway" and authorizes the Public Works Department to work collaboratively with Pueblo County to fabricate and install supplemental signage to mark the designated segment.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

PFC Thomas Michael "Mike" Hanratty, USMC, was a resident of Pueblo County who attended school at Southern Colorado State College and was a member of the local community who was killed in action during the Vietnam War when the helicopter he was riding in was attacked and crashed. The Beulah Historic Society is working on behalf of his family to seek redesignation of a 14.1-mile section of Colorado Highway 78 between Hog Farm Road and Siloam Road as the "PFC Thomas Michael "Mike" Hanratty, USMC Memorial Highway". The group is anticipating that the state legislature will issue a resolution authorizing this designation.

The Public Works Departments for both the City and the County have been

coordinating with each other to offer public support for this project by coordinating the fabrication and installation of the supplemental signage as well as coordination with CDOT to obtain required permits for installation of the signs. With Council's approval of this Resolution, the City Public Works Department will fabricate the signs and provide the mounting hardware to the Pueblo County Public Works Department which will complete the installation.

June 11, 2024 will be the 57th anniversary of PFC Hanratty's death and all parties are working toward having the signs installed in time for the event.

FINANCIAL IMPLICATIONS:

The anticipated cost of fabricating the signs and purchasing the mounting hardware is expected to be approximately \$1,500.00. Costs associated with installation will be borne by Pueblo County.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Resolution.

STAKEHOLDER PROCESS:

Pueblo County Public Works and the City's Public Works Department will work collaboratively as described above to complete the fabrication and installation of the proposed signs.

ALTERNATIVES:

Failure to pass this Resolution will preclude the City from participating in the project to install the requested signage.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

None

RESOLUTION NO. 15600

A RESOLUTION OF SUPPORT FOR THE DESIGNATION OF COLORADO HIGHWAY 78 BETWEEN THE CITY OF PUEBLO AND BEULAH TOWNSHIP AS THE "PFC THOMAS MICHAEL "MIKE" HANRATTY, USMC MEMORIAL HIGHWAY" AND AUTHORIZING THE PUBLIC WORKS DEPARTMENT TO WORK COOPERATIVELY WITH PUEBLO COUNTY AND THE COLORADO DEPARTMENT OF TRANSPORTATION TO FABRICATE AND INSTALL THE SIGNAGE FOR THE NEW DESIGNATION

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

In honor of his ultimate sacrifice, the Pueblo City Council hereby declares its support for the proposed designation of the segment of Colorado Highway 78 between Hog Farm Road and Siloam Road, located in Pueblo County, as the "PFC Thomas Michael "Mike" Hanratty, USMC Memorial Highway".

SECTION 2.

The Director of Public Works is authorized to provide material, labor, and equipment support to the project and to work collaboratively with the Pueblo County Public Works Department to fabricate and install supplemental signage to mark the designated section of Colorado Highway 78.

SECTION 3.

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

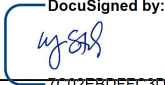
SECTION 4.

This Resolution shall become effective upon passage and approval.

INTRODUCED: April 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: Mark Aliff
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 22, 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-24-3) TO THE NATIONAL MS SOCIETY FOR THE CLOSURE OF S. VICTORIA AVENUE FROM THE RIVER WALK PARKING LOT TO S. ELIZABETH AND S. ELIZABETH TO THE NORTH END OF THE ACME AND FIRE SAFETY EQUIPMENT CO BUILDING TO FACILITATE THE WALK MS PUEBLO EVENT ON APRIL 27, 2024, FROM 5:00 A.M. TO 2:00 P.M.

SUMMARY:

Attached is Revocable Permit (REV-24-3) to the National MS Society.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The applicant has submitted a Revocable Permit application (REV-24-3) for the closure of S. Victoria Avenue from the River Walk parking lot to S. Elizabeth and S. Elizabeth to the north end of the Acme and Fire Safety Equipment Co building to facilitate the Walk MS Pueblo event on April 27, 2024, from 5:00 a.m. to 2:00 p.m.

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 streets listed above.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

None

RESOLUTION NO. 15601

A RESOLUTION AUTHORIZING THE ISSUANCE OF A REVOCABLE PERMIT (REV-24-3) TO THE NATIONAL MS SOCIETY FOR THE CLOSURE OF S. VICTORIA AVENUE FROM THE RIVER WALK PARKING LOT TO S. ELIZABETH AND S. ELIZABETH TO THE NORTH END OF THE ACME AND FIRE SAFETY EQUIPMENT CO BUILDING TO FACILITATE THE WALK MS PUEBLO EVENT ON APRIL 27, 2024, FROM 5:00 A.M. TO 2:00 P.M.

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The attached Revocable Permit (REV-24-3) is authorized to be issued to the National MS Society for the closure of S. Victoria Avenue from the River Walk parking lot to S. Elizabeth and S. Elizabeth to the north end of the Acme and Fire Safety Equipment Co building to facilitate the Walk MS Pueblo event on April 27, 2024, from 5:00 a.m. to 2:00 p.m.

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 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: Mark Aliff
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 22, 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-24-6) TO THE OUTLAWS ROD & CUSTOM CAR CLUB FOR THE CLOSURE OF VICTORIA AVENUE FROM C STREET TO GREENWOOD AND D STREET FROM THE ALLEYWAY BETWEEN UNION AND VICTORIA TO THE ALLEYWAY BETWEEN VICTORIA AND LAMKIN TO HOST THEIR ANNUAL CAR SHOW ON MAY 4, 2024, FROM 5:30 A.M. TO 4:00 P.M.

SUMMARY:

Attached is a Revocable Permit (REV-24-6) to The Outlaws Rod & Custom Car Club.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The applicant has submitted a Revocable Permit application (REV-24-6) requesting the closure of Victoria Avenue from C Street to Greenwood and D Street from the alleyway between Union and Victoria to the alleyway between Victoria and Lamkin to host their annual car show on May 4, 2024, from 5:30 a.m. to 4:00 p.m.

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 streets listed above.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

None

RESOLUTION NO. 15602

A RESOLUTION AUTHORIZING THE ISSUANCE OF A REVOCABLE PERMIT (REV-24-6) TO THE OUTLAWS ROD & CUSTOM CAR CLUB FOR THE CLOSURE OF VICTORIA AVENUE FROM C STREET TO GREENWOOD AND D STREET FROM THE ALLEYWAY BETWEEN UNION AND VICTORIA TO THE ALLEYWAY BETWEEN VICTORIA AND LAMKIN TO HOST THEIR ANNUAL CAR SHOW ON MAY 4, 2024, FROM 5:30 A.M. TO 4:00 P.M.

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The attached Revocable Permit (REV-24-6) is authorized to be issued to The Outlaws Rod & Custom Car Club for the closure of Victoria Avenue from C Street to Greenwood and D Street from the alleyway between Union and Victoria to the alleyway between Victoria and Lamkin to host their annual car show on May 4, 2024, from 5:30 a.m. to 4:00 p.m.

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.

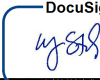
SECTION 4.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: April 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: Mark Duff
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 22, 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-24-7) TO THE GREATER PUEBLO CHAMBER OF COMMERCE FOR THE CLOSURE OF THE ALLEYS BETWEEN S. VICTORIA AVE., W. C ST., S. UNION AVE., AND W. B ST. TO HOST THE COLORADO CREATIVE INDUSTRIES SUMMIT CONFERENCE WELCOME PARTY

SUMMARY:

This Resolution approves the issuance of Revocable Permit (REV-24-7) to The Greater Pueblo Chamber of Commerce to host their Colorado Creative Industries Summit Conference Welcome Party.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The applicant has submitted a Revocable Permit application (REV-24-7) requesting the use of the alleys between S. Victoria Ave., W. C St., S. Union Ave., and W. B St. to host the Colorado Creative Industries Summit Conference Welcome Party, May 9, 2024, from 3:00 p.m. to 10:00 p.m.

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 alleys listed above.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. NOTARIZED REVOCABLE PERMIT - 24 -7

RESOLUTION NO. 15603

A RESOLUTION AUTHORIZING THE ISSUANCE OF A REVOCABLE PERMIT (REV-24-7) TO THE GREATER PUEBLO CHAMBER OF COMMERCE FOR THE CLOSURE OF THE ALLEYS BETWEEN S. VICTORIA AVE., W. C ST., S. UNION AVE., AND W. B ST. TO HOST THE COLORADO CREATIVE INDUSTRIES SUMMIT CONFERENCE WELCOME PARTY

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The attached Revocable Permit (REV-24-7) is authorized to be issued to The Greater Pueblo Chamber of Commerce for the closure of the alleys between S. Victoria Ave., W. C St., S. Union Ave., and W. B St., to host the Colorado Creative Industries Summit Conference Welcome Party, May 9, 2024, from 3:00 p.m. to 10:00 p.m.

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 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: Mark Cliff
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

REVOCABLE PERMIT

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

1. Name, Address and Telephone Number of Permittee: **The Greater Pueblo Chamber of Commerce 302 N Santa Fe Ave 719-542-1704 3 Wren Way Pueblo, Co., 81005**
2. Permitted Area: **Alleys between S. Victoria Ave, W. C St., S. Union Ave., and W. B Street**
3. Purpose of Revocable Permit: **Closure of the permitted area for exclusive use by the Greater Pueblo Chamber of Commerce to host the Colorado Creative Industries Summit Conference Welcome Party**
4. Commencement Date: **May 9, 2024 Time: 3:00pm**
5. Ending Date: **May 9, 2024 Time: 10:00pm**

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

- (a) The Permitted Area shall be used for the above-specified Purpose of Revocable Permit. No use of the Permitted Area shall be made before the time of the Commencement Date.
- (b) All structures, fences, tables, chairs, equipment or other improvements authorized to be placed in the Permitted Area by Permittee (the "Improvements") shall be constructed, installed, and maintained by Permittee in compliance with all applicable codes, ordinances, rules and regulations of City and this Permit.
- (c) If the Revocable Permit is issued for a sidewalk café, the Permittee and sidewalk café shall be subject to all the provisions, conditions and requirements contained in section 9-10-84 of the Pueblo Municipal Code, or as same may be amended, which are incorporated herein by reference. In addition, no Improvement shall be tied-down or chained to any tree within or adjacent to the Permitted Area nor shall any Improvement be installed or located in such a manner as to hinder or interfere with the opening of motor vehicle doors or passenger movement to and from motor vehicles parked adjacent to or near the Permitted Area.
- (d) If this Permit is issued for the use of the public right-of-way for a special event, Permittee shall deposit with the City the sum of \$500.00 ("Deposit"). The Deposit will be forfeited to the City if Permittee does not remove all Permittee's equipment and property from, and clean and restore the Permitted Area to its original condition before the Time of the Ending Date. If so timely removed and cleaned, the Deposit will be returned to Permittee.
- (e) Before the Time of the Ending Date, or immediately upon any other termination of this Permit, Permittee shall, at Permittee's expense, remove all of Permittee's Improvements from the Permitted Area and clean and restore the Permitted Area to its original condition. Failure to timely remove all of Permittee's Improvements from the Permitted Area and clean and restore the Permitted Area to its original condition shall constitute Permittee's abandonment of the Permittee's Improvements, and City may, at Permittee's expense, remove and dispose of Permittee's Improvements and clean and restore the Permitted Area to its original condition. Permittee agrees to pay all City's costs and expenses, including reasonable attorney fees, incurred in the enforcement of this Permit.
- (f) Permittee shall keep all Improvements and Permitted Area in good, clean and safe condition and repair, free from litter, waste and debris.
- (g) Permittee shall indemnify, defend and hold City, its officers, agents and employees harmless from and against any and all suits, claims, liabilities, loss, damages and expenses, including reasonable attorney fees and cost of defense, arising, directly or indirectly, from or caused by the issuance of this Permit or the conditions hereof, or the existence, construction, installation, repair or maintenance of the Improvements in the Permitted Area, or the use of the Permitted Area or Improvements by Permittee, its officers, agents, employees, invitees or general public.
- (h) Neither this Permit nor any of the privileges granted to Permittee hereby, may be conveyed, assigned, transferred or sublet by Permittee without the prior written consent of the City Council of City. Any attempted conveyance, assignment, transfer or subletting of the Permit or Permitted Area without the written consent of the City Council of Pueblo shall be void and of no effect and shall cause this Permit to be automatically revoked.
- (i) Permittee shall keep and maintain commercial general liability insurance covering the Permitted Area and Improvements in amounts not less than \$1,000,000.00 combined single limits per occurrence and aggregate, naming the City as an additional insured and contain a waiver of rights of subrogation against City. A certificate for such insurance and each renewal thereof shall be delivered to the City. Failure to maintain such insurance shall cause this Permit to be automatically revoked.
- (j) Trees, landscaping and shrubbery within or adjacent to the Permitted Area shall be protected from damage or injury by Permittee and shall not be removed except after receipt by the Permittee of the written consent of the City's Director of Parks and Recreation. Covid-19
- (k) Any notice or other document required or permitted herein shall be in writing and delivered personally or by first class mail, postage prepaid, as follows:
 - (i) If to Permittee, at the address shown in paragraph 1 above.
 - (ii) If to City, 1 City Hall Place, Pueblo, Colorado, 81003, Attention: Revocable Permit Review Committee. Each party reserves the right to change its address provided notice of such change is given in accordance with this paragraph (k).

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

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

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

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

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

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

Signed in Pueblo, Colorado this 1 day of April, 2024.

PERMITTEE:

Organization or
Individual:

By:

Title:

Greater Pueblo Chamber of Commerce
[Signature]
President/CEO

STATE OF COLORADO)

COUNTY OF PUEBLO) SS..

The foregoing instrument was acknowledged before me the 1 day of April, 2024 by
Duane Nava as President + CEO

My commission expires: 2/24/25

[Signature]

Notary Public



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

By _____

Heather Graham, Mayor



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Benjamin Valdez, Director of Transit

SUBJECT: A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO MAKE, EXECUTE AND DELIVER IN THE NAME OF THE CITY OF PUEBLO, FEDERAL FISCAL YEAR 2024 CERTIFICATIONS AND ASSURANCES FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS AND TO BIND THE CITY OF PUEBLO'S COMPLIANCE THEREWITH

SUMMARY:

The Resolution authorizes the Mayor to make, execute and deliver in the name of the City of Pueblo, Federal Fiscal Year 2024 Certifications and Assurances for Federal Transit Administration (FTA) Assistance Programs and to bind the City of Pueblo's compliance therewith.

PREVIOUS COUNCIL ACTION:

Federal Transit Administration (FTA) Certifications and Assurances are approved by City Council on an annual basis.

BACKGROUND:

FTA's comprehensive compilation of the Federal Fiscal Year 2024 Certifications and Assurances must be approved and binding on the City for all Federal Assistance Programs FTA administers during Federal Fiscal year 2024, as required by 49 U.S.C. 5323(n).

FINANCIAL IMPLICATIONS:

Failure to approve this Resolution will result in FTA's withholding of an estimated allocation of \$3,100,000 for Transit Operating funds for calendar year 2024.

BOARD/COMMISSION RECOMMENDATION:

Pueblo Transit Board of Directors approve this Resolution.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

None.

Approval of the Resolution.

ATTACHMENTS:

1. FEDERAL FISCAL YEAR 2024 CERTIFICATIONS AND ASSURANCES FOR FTA

RESOLUTION NO. 15604

A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO MAKE, EXECUTE AND DELIVER IN THE NAME OF THE CITY OF PUEBLO, FEDERAL FISCAL YEAR 2024 CERTIFICATIONS AND ASSURANCES FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS AND TO BIND THE CITY OF PUEBLO'S COMPLIANCE THEREWITH

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The City Council of Pueblo approves, and the Mayor is authorized to make, execute, and deliver in the name of the City of Pueblo, Federal Fiscal Year 2024 Certifications and Assurances for Federal Transit Administration (FTA) Assistance Programs, which are attached hereto, and to bind the City of Pueblo's compliance therewith.

SECTION 2.

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

SECTION 3.

This Resolution shall become effective immediately upon final passage and approval

INTRODUCED: April 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: Mark Aliff
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

FEDERAL FISCAL YEAR 2024 CERTIFICATIONS AND ASSURANCES FOR FTA
ASSISTANCE PROGRAMS

(Signature pages alternate to providing Certifications and Assurances in TrAMS.)

Name of Applicant: The City of Pueblo

The Applicant certifies to the applicable provisions of all categories: (check here) X_.

Or,

The Applicant certifies to the applicable provisions of the categories it has selected:

Category Certification

01 Certifications and Assurances Required of Every Applicant

02 Public Transportation Agency Safety Plans

03 Tax Liability and Felony Convictions

04 Lobbying

05 Private Sector Protections

06 Transit Asset Management Plan

07 Rolling Stock Buy America Reviews and Bus Testing

08 Urbanized Area Formula Grants Program

09 Formula Grants for Rural Areas

10 Fixed Guideway Capital Investment Grants and the Expedited

Project Delivery for Capital Investment Grants Pilot Program

11 Grants for Buses and Bus Facilities and Low or No Emission

Vehicle Deployment Grant Programs

12 Enhanced Mobility of Seniors and Individuals with Disabilities

Programs

13 State of Good Repair Grants

14 Infrastructure Finance Programs

15 Alcohol and Controlled Substances Testing

16 Rail Safety Training and Oversight

17 Demand Responsive Service

18 Interest and Financing Costs

19 Cybersecurity Certification for Rail Rolling Stock and

Operations

20 Tribal Transit Programs

21 Emergency Relief Program

CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE

AFFIRMATION OF APPLICANT

Name of the Applicant: The City Of Pueblo

BY SIGNING BELOW, on behalf of the Applicant, I declare that it has duly authorized me to make these

Certifications and Assurances and bind its compliance. Thus, it agrees to comply with all federal laws, regulations,

and requirements, follow applicable federal guidance, and comply with the Certifications and Assurances as

indicated on the foregoing page applicable to each application its Authorized Representative makes to the Federal

Transit Administration (FTA) in the federal fiscal year, irrespective of whether the individual that acted on his or

her Applicant's behalf continues to represent it.

The Certifications and Assurances the Applicant selects apply to each Award for which it now seeks, or may

later seek federal assistance to be awarded by FTA during the federal fiscal year.

The Applicant affirms the truthfulness and accuracy of the Certifications and Assurances it has selected in the

statements submitted with this document and any other submission made to FTA, and acknowledges that the

Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., and implementing U.S. DOT regulations,

"Program Fraud Civil Remedies," 49 CFR part 31, apply to any certification, assurance or submission made to

FTA. The criminal provisions of 18 U.S.C. § 1001 apply to any certification, assurance, or submission made in

connection with a federal public transportation program authorized by 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing Certifications and Assurances, and

any other statements made by me on behalf of the Applicant are true and accurate.

Signature

Date:

Name Benjamin Valdez
Representative of Applicant

Authorized

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): The City of Pueblo

As the undersigned Attorney for the above-named Applicant, I hereby affirm to the Applicant that it has authority

under state, local, or tribal government law, as applicable, to make and comply with the Certifications and

Assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the Certifications and

Assurances have been legally made and constitute legal and binding obligations on it.

I further affirm that, to the best of my knowledge, there is no legislation or litigation pending or imminent that

might adversely affect the validity of these Certifications and Assurances, or of the performance of its FTA

assisted Award.

Signature

Date:

Name Carla L Sikes

Attorney for Applicant

Each Applicant for federal assistance to be awarded by FTA must provide an Affirmation of Applicant's Attorney

pertaining to the Applicant's legal capacity. The Applicant may enter its electronic signature in lieu of the

Attorney's signature within TrAMS, provided the Applicant has on file and uploaded to TrAMS this hard-copy

Affirmation, signed by the attorney and dated this federal fiscal year



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 22, 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 TRANSFERRING FUNDS IN THE AMOUNT OF \$186,000.00 FROM THE PUBLIC WORKS OPERATING BUDGET INTO PROJECT NO. CIAN20 - CITY BUILDING REPAIRS

SUMMARY:

This Resolution makes several transfers from within the Public Works Department operating budget to Project No. CIAN20 - City Building Repairs.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

This transfer will utilize projected salary and operating expense savings within the Public Works Department operating budget to cover emergency and non-deferrable maintenance and repair expenses for City facilities.

FINANCIAL IMPLICATIONS:

Funding in the amount of \$125,000 is being transferred from account 10140103 51040 to CIAN20 - City Building Repairs.

Funding in the amount of \$17,000 is being transferred from account 10140503 51010 to CIAN20 - City Building Repairs.

Funding in the amount of \$44,000.00 is being transferred from account 10140603 51040 to CIAN20 - City Building Repairs.

All funds will be budgeted and appropriated into project account CIAN20.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Failure to pass this Resolution will prevent the funds from being transferred, budgeted, and appropriated.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

None

RESOLUTION NO. 15605

A RESOLUTION TRANSFERRING FUNDS IN THE AMOUNT OF \$186,000.00 FROM THE PUBLIC WORKS OPERATING BUDGET INTO PROJECT NO. CIAN20 - CITY BUILDING REPAIRS

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Funds in the amounts indicated in the table below are hereby transferred from the specified Public Works Department operating budget line items into Project Account CIAN20 - City Building Repairs and budgeted and appropriated into CIAN20:

Transfer Amount:	From Account:	To Account:
\$125,000.00	10140103 51040	CIAN20 - City Building Repairs
\$17,000.00	10140503 51010	CIAN20 - City Building Repairs
\$44,000.00	10140603 51040	CIAN20 - City Building Repairs

SECTION 2.

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

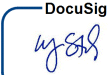
SECTION 3.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: April 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: Mark Aliff
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 22, 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 ADDING THE NAME OF MAYOR HEATHER GRAHAM AS AN AUTHORIZED OFFICER OF THE CITY OF PUEBLO STORMWATER UTILITY ENTERPRISE IN CONNECTION WITH THE WATER POLLUTION CONTROL REVOLVING FUND OR DRINKING WATER REVOLVING FUND LOAN AGREEMENT

SUMMARY:

This Resolution adds the name of Heather Graham as an authorized officer of the Stormwater Utility Enterprise of the City of Pueblo in connection with the Water Pollution Control Revolving Fund or the Drinking Water Revolving Fund Loan Agreement.

PREVIOUS COUNCIL ACTION:

The City Council previously approved Resolution No. 14234 designating Mayor Nicholas A. Gradisar as the Stormwater Utility Enterprise's authorized officer in connection with the Water Pollution Control Revolving Fund or the Drinking Water Revolving Fund Loan Agreement.

BACKGROUND:

This Resolution approves the designation of Mayor Heather Graham as the authorized officer of the City's Stormwater Utility Enterprise for purposes of the loan agreement from the Water Pollution Control Revolving Fund or the Drinking Water Revolving Fund.

FINANCIAL IMPLICATIONS:

None. This Resolution does not alter any of the terms or conditions of the City's Stormwater Utility Enterprise loan from the Water Pollution Control Revolving Fund or the Drinking Water Revolving Fund.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Resolution.

STAKEHOLDER PROCESS:

Not applicable to this Resolution.

ALTERNATIVES:

None. This Resolution has been requested by the Colorado Water Resources and Power Development Authority.

RECOMMENDATION:

Approve the Resolution.

ATTACHMENTS:

None

RESOLUTION NO. 15606

A RESOLUTION ADDING THE NAME OF MAYOR HEATHER GRAHAM AS AN AUTHORIZED OFFICER OF THE CITY OF PUEBLO STORMWATER UTILITY ENTERPRISE IN CONNECTION WITH THE WATER POLLUTION CONTROL REVOLVING FUND OR DRINKING WATER REVOLVING FUND LOAN AGREEMENT

WHEREAS, the City of Pueblo, Colorado acting by and through its Stormwater Utility Enterprise entered into a loan agreement with the Colorado Water Resources and Power Development Authority; and

WHEREAS, the City of Pueblo desires to comply with all requirements of such Colorado Water Resources and Power Development Authority concerning its revolving fund agreement; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The name of Mayor Heather Graham shall be and hereby is added as an authorized officer and representative of the City of Pueblo, acting by and through its Stormwater Utility Enterprise, in connection with the loan agreement with the Colorado Water Resources and Power Development Authority from the Water Pollution Control Revolving Fund or Drinking Water Revolving Fund.

SECTION 2.

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.

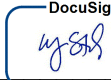
SECTION 3.

This Resolution shall become effective immediately upon final passage and approval.

INTRODUCED: April 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: Mark Cliff
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Scott Hobson, Acting Director Planning and Community Development

SUBJECT: A RESOLUTION PRELIMINARILY DETERMINING THAT THE PETITION FOR THE ANNEXATION OF 80.28-ACRE AREA COMMONLY KNOWN AS THE PUEBLO RECREATION RESORT NO. 1 ANNEXATION, IS VALID UNDER THE PROVISIONS OF COLORADO REVISED STATUTES SECTIONS 31-12-104(1)(A) AND 31-12-107(1), TABLING FINAL ACTION ON THE PETITION FOR A PERIOD OF NOT MORE THAN 180 DAYS, AND REFERRING THE PETITION TO THE PLANNING AND ZONING COMMISSION FOR REVIEW AND RECOMMENDATION

SUMMARY:

The City Clerk received an annexation petition for an 80.28-acre area located north of State Highway 78, southwest of Ventana Subdivision, Filing No. 1, and east of the Southside Landfill. This Resolution will determine if the petition for annexation is valid under the provisions of Colorado Revised Statutes Sections 31-12-104(1)(a) and 31-12-107(1), tables final action on the petition for a period not more than 180 days and refer the petition to the Planning and Zoning Commission for review and recommendation.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The petitioner, Pueblo Recreation Investors, LLC, a Colorado Limited Liability Company submitted an annexation petition for the Pueblo Recreation Resort No. 1 Annexation totaling 80.28-acres. This Resolution preliminarily determines that the petition for annexation is valid under the provisions of the Colorado Revised Statutes Sections 31-12-104(1)(a) and 31-12-107(1). In accordance with the procedure established in the Pueblo Municipal Code, the final action on the petition is tabled for a period of not more than one hundred eighty (180) days and the petition is referred to the Planning and Zoning Commission for review and recommendation.

FINANCIAL IMPLICATIONS:

The filing of the annexation petition and the approval of the Resolution determining the property substantially complies with the provisions of Colorado Revised Statutes Sections 31-12-104(1)(a) and 31-12-107(1) and does not result in any direct financial impact to the City of Pueblo.

BOARD/COMMISSION RECOMMENDATION:

None at this point in the review process.

STAKEHOLDER PROCESS:

Copies of the Petition for Annexation will be sent by registered mail by the City Clerk, the Board of County Commissioners, the County Attorney of Pueblo County and to any school district or special district having territory within the area to be annexed. Copies of an Annexation Impact Report will be filed with all taxing entities as required by Colorado Revised Statutes.

ALTERNATIVES:

None.

RECOMMENDATION:

The City Planning staff has reviewed the annexation petition for compliance with Sections 31-12-104(1)(a) and 31-12-107(1) of the Colorado Revised Statutes and recommends that City Council preliminarily finds that the petition is valid according to Colorado Revised Statutes.

ATTACHMENTS:

1. A-24-02 Petition for Annexation Attachments

RESOLUTION NO. 15607

A RESOLUTION PRELIMINARILY DETERMINING THAT THE PETITION FOR THE ANNEXATION OF 80.28-ACRE AREA COMMONLY KNOWN AS THE PUEBLO RECREATION RESORT NO. 1 ANNEXATION, IS VALID UNDER THE PROVISIONS OF COLORADO REVISED STATUTES SECTIONS 31-12-104(1)(A) AND 31-12-107(1), TABLING FINAL ACTION ON THE PETITION FOR A PERIOD OF NOT MORE THAN 180 DAYS, AND REFERRING THE PETITION TO THE PLANNING AND ZONING COMMISSION FOR REVIEW AND RECOMMENDATION

WHEREAS, a Petition for Annexation of the area described in Section 1 hereof has been filed with the City Clerk; NOW, THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The Petition for Annexation ("Petition") of the following described area situated in Pueblo County, Colorado, is hereby found and determined to be in substantial compliance with the provisions of C.R.S. §31-12-104(1)(a) and §31-12-107(1):

1. AREAS TO BE ANNEXED:

NORTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SECTION 17, TOWNSHIP 21 SOUTH, RANGE 65 WEST OF THE 6TH P.M., LESS COLORADO STATE HIGHWAY No. 78 RIGHT-OF-WAY.
CONTAINING 80.28 ACRES, MORE OR LESS

1. PROPOSED NEW CITY LIMITS LINE:

DESCRIPTION NO. 1:
BEGINNING FROM THE WEST ONE-QUARTER CORNER OF SECTION 17; THENCE N. 89°28'19" E., A DISTANCE OF 2,664.08 FEET TO THE CENTER CORNER OF SECTION 17; THENCE S. 00°37'16" E., A DISTANCE OF 1,062.97 FEET TO THE NORTH RIGHT-OF-WAY LINE OF COLORADO STATE HIGHWAY NO. 78.

AND

DESCRIPTION NO. 2:
BEGINNING FROM THE WEST ONE-SIXTEENTH CORNER OF THE SOUTHWEST ONE-QUARTER OF SECTION 17; THENCE N. 89°07'57" E., A DISTANCE OF 2,294.06 FEET TO THE NORTH RIGHT-OF-WAY LINE OF COLORADO STATE HIGHWAY NO. 78.

AND

DESCRIPTION NO. 3:

COMMENCING FROM THE SOUTH ONE-QUARTER CORNER OF SECTION 17; THENCE N. 05°03'15" W., A DISTANCE OF 1,327.64 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF COLORADO STATE HIGHWAY NO. 78 AND THE POINT OF BEGINNING; THENCE N. 89°07'57" E., A DISTANCE OF 102.62 FEET TO THE SOUTHEAST CORNER OF THE NORTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SECTION 17; THENCE N. 00°37'16" W., A DISTANCE OF 75.08 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF COLORADO STATE HIGHWAY NO. 78.

1. CERTIFICATION OF PERIMETER:

AT LEAST ONE-SIXTH OF THE BOUNDARY OF THE LAND DESCRIBED IN THE ANNEXATION ABOVE IS NOW EXISTING CITY LIMITS LINE. THE COMPLETE ANNEXATION IS WITHIN 3 MILES OF THE PRESENT CITY LIMITS.

SECTION 2.

Final action on the Petition is hereby tabled for a period of not more than one hundred eighty (180) days and the Petition is hereby referred to the Planning and Zoning Commission for review and recommendation.

SECTION 3.

Upon receipt of the recommendation of the Planning and Zoning Commission, the City Council, without undue delay, shall make a final determination by Resolution whether the petition substantially complies with the applicable requirements of Section 31-12-107(1), C.R.S. and establish the date, time and place the City Council will hold a public hearing to determine if the proposed annexation complies with sections 31-12-104 and 31-12-105, C.R.S. or such parts thereof as may be required to establish eligibility for annexation.

SECTION 4.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of the Resolution.

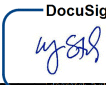
SECTION 5.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: April 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: Mark Duff
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

CITY OF PUEBLO
ANNEXATION INFORMATION SHEET

Attached is a blank Petition for Annexation to be completed and filed with the City Clerk of the City of Pueblo together with an original and twenty-four (24) prints of an annexation map and satisfactory evidence of the names and addresses of all the owners of land within the area proposed to be annexed. All petitioners must sign the Petition for Annexation within 180 days before the date of filing with the City Clerk. Prior to filing with the City Clerk all documents must be reviewed by the City's Director of Land Use.

TO BE COMPLETED BY PETITIONERS

Name of Annexation: **Pueblo Recreation Resort**
Annexation No. **1**

Location and size in acres: Section **SW 1/4 17**, Township **21** South,
Range **65**, West of the **6th** P.M., County of Pueblo, Colorado,
80.28 acres.
100 % of Owners **1**; Less than 100% of owners **0**
School District No. **60**; Special District: **N/A**

Annexation Agreement: The City requires the Petitioner to enter into an Annexation Agreement prior to the effective date of the annexation. Such Agreement shall constitute conditions of annexation as **effectively** as if set forth in the Petition For Annexation.

For Office Use Only: Date Reviewed by Director of Land Use _____
Date Petition Filed _____ Filing Fee \$ _____ Paid _____
Resolution Finding Substantial Compliance adopted _____,
Date of Public Hearing _____; Notice of Public Hearing Published: _____,
_____, _____, and _____.
Copy of published Notice and Petition For Annexation sent by Registered Mail on _____
to Pueblo County Board of County Commissioners, Pueblo County
Attorney, School District _____, Southeastern Water Conservancy District, Pueblo Library
District, Other _____ and special district _____.

Upon receipt of this Annexation Information Sheet, Petition For Annexation, 24 prints of the annexation map, and evidence of ownership, the City Clerk will forward copies of the Annexation Information Sheet and Petition for Annexation together with the evidence of ownership and 20 prints of the annexation map to the Director of Land Use and refer the Petition For Annexation to the City Council as a communication.

**CITY OF PUEBLO
PETITION FOR ANNEXATION**

TO THE CITY COUNCIL OF PUEBLO, COLORADO:

Pursuant to the Municipal Annexation Act of 1965 and C.R.S. §31-12-107(1) the undersigned landowners within the area proposed for annexation hereby petition the City Council of the City of Pueblo for annexation to the City of Pueblo (herein "City") of the following described unincorporated area located in the County of Pueblo, State of Colorado:

***NORTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SECTION 17,
TOWNSHIP 21 SOUTH, RANGE 65 WEST OF THE 6TH P.M., LESS
COLORADO STATE HIGHWAY No. 78 RIGHT-OF-WAY.***

CONTAINING 80.28 ACRES, MORE OR LESS

As ground for this annexation, Petitioners state:

1. It is desirable and necessary that the area herein described be annexed to the City.
2. Not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with existing boundaries of the City.
3. This petition for annexation has been signed by persons comprising more than fifty percent (50%) of the landowners in the area proposed to be annexed and owning more than fifty percent (50%) of the area, excluding public street, alleys, and any land owned by the City.
4. A community of interest exists between the area proposed to be annexed and the City.
5. The area proposed to be annexed is urban or will be urbanized in the near future.
6. The area proposed to be annexed is integrated with or is capable of being integrated with the City.

7. No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate:
 - (a) is divided into separate parts or parcels without the written consent of the landowners thereof, unless such tracts or parcels are separated by a dedicated street, road or other public way; or,
 - (b) comprises twenty (20) acres or more and which, together with the buildings and improvements situated thereon has an assessed value in excess of \$200,000.00 for ad valorem tax purposes for the year preceding the annexation, is included within the territory proposed to be annexed without the written consent of the landowner or landowners.
8. The mailing address of each signer, the legal description of the land owned by each landowner and the date of signing of each signature are shown on this petition.
9. Attached to this petition is the affidavit of the circulator of this petition that each signature hereon is the signature of the person whose name it purports to be.
10. Accompanying this petition are an original and twenty-four (24) prints of an annexation map containing the following information:
 - (a) A written legal description of the boundaries of the area proposed to be annexed;
 - (b) A map showing the boundary of the area proposed to be annexed. (Such map shall be prepared by and contain the seal of a Colorado registered engineer or land surveyor);
 - (c) Within the annexation boundary map there is shown the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks;
 - (d) Next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the City and the area proposed to be annexed with the dimension of such boundary.
11. The area proposed to be annexed is not presently a part of any incorporated city or town.
12. No part of the area proposed to be annexed is more than three miles in any direction from any point of the boundaries of the City as such was established more than one year before this annexation will take place.
13. As condition of and in consideration of the City annexing the area proposed to be annexed, Petitioners, for themselves and their heirs, personal representatives, successors and assigns:
 - (a) Waive and release all previously acquired or existing vested property rights attached to or established with respect to the area proposed to be annexed and acknowledge and agree that the annexation of the area proposed to be annexed is

not a site specific development plan and no vested property right shall attach to or be established with respect to the area proposed to be annexed.

- (b) Acknowledge and agree that upon the annexation of the area proposed to be annexed and, subject to the provisions of the Annexation Agreement, the area shall become subject to the Charter, ordinances, resolutions, rules and regulations of the City, but that the City shall have no obligation to furnish or extend municipal services; including, but not limited to sanitary sewer services, to the area proposed to be annexed.
- (c) “Vested property right” and “site specific development plan” shall have the same meaning as set forth in Chapter 12 of Title XVII of the 1971 Code of Ordinances of the City and Article 60, Title 24, C.R.S.

14. Petitioners consent and agree to the following conditions:

- (a) Petitioners and the City shall enter into an Annexation Agreement prior to the effective date of this annexation.
- (b)
- (c)
- (d)
- (e)

WHEREFORE, Petitioners request that the City Council of Pueblo approve the annexation of the above described area to the City of Pueblo (all Petitioners must sign this Petition within 180 days prior to the date of filing with the City Clerk.

Pueblo Recreation Resort No. 1

SIGNATURE

MAILING
ADDRESS

LEGAL
DESCRIPTION

DATE OF
SIGNING

 6601 EUSHWAY 60 GOLD CANYON AZ 85118 2/19/24

M. Halon 1206 Red Cedar Ct. Oshkosh, WI 54650 2/19/24

Heath A. Herber 2727 Glen Arbor Drive 2/19/24
Colorado Springs, CO 80920

The 80.28 Acres is 100% owned by Pueblo
Recreation Investors LLC, which is 100% owned
by the Three Members who have signed above.

Signed:

by Heath A. Herber, Mgr 2/19/2024
Manager of Pueblo Recreation Investors, LLC

AFTER RECORDING, RETURN TO:

Sara M. Frear
Mulliken Weiner Berg & Jolivet P.C.
102 South Tejon Street, Suite 900
Colorado Springs, CO 80903

STATEMENT OF AUTHORITY

1. This Statement of Authority relates to an entity named: **Pueblo Recreation Investors, LLC.**
2. The type of entity is a:

☐ corporation	☐ registered limited liability limited partnership
☐ nonprofit corporation	☐ limited partnership association
☒ limited liability company	☐ unincorporated nonprofit association
☐ general partnership	☐ government or governmental subdivision/agency
☐ limited partnership	☐ business trust
☐ registered limited liability partnership	☐ trust _____
3. The entity is formed under the laws of the State of Colorado.
4. The entity's mailing address is: 2727 Glen Arbor Drive, Colorado Springs, CO 80920.
5. The ☒ name ☒ position of the person authorized to execute instruments conveying, encumbering, or otherwise affecting title to real property on behalf of the entity is:

Heath A. Herber, as Manager
6. (Optional) The authority of the foregoing person to bind the entity is ☒ not limited ☐ limited as follows:
7. (Optional) Other matters concerning the manner in which the entity deals with interests in real property: None.
8. This Statement of Authority is executed on behalf of the entity pursuant to the provisions of Section 38-30-172, Colorado Revised Statutes.

Executed this 11th day of October, 2023.

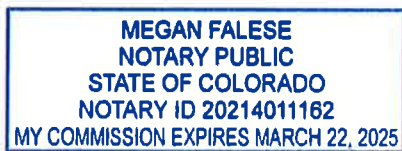
Pueblo Recreation Investors, LLC,
a Colorado limited liability company

By: Heath A. Herber
Name: Heath A. Herber
Title: Manager

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 11th day of October 2023, by Heath A. Herber, as Manager of **Pueblo Recreation Investors, LLC**, a Colorado limited liability company.

Witness my hand and official seal.



[SEAL]

Megan Falese
Notary Public
My Commission Expires: 03-22-25

CIRCULATOR'S OATH

STATE OF COLORADO)
) ss.
COUNTY OF PUEBLO)

The undersigned of lawful age being first duly sworn upon oath deposes and states that I circulated the foregoing Petition For Annexation and that each signature therein is the signature of the person whose name it purports to be.

Heath A Herber
Circulator's Signature

Subscribed and affirmed, or sworn to, before me in the County of El Paso,
State of Colorado, this 28th day of February,
2024,
By Heath Herber.

Witness my hand and official seal.

My commission expires: 11/14/2026.

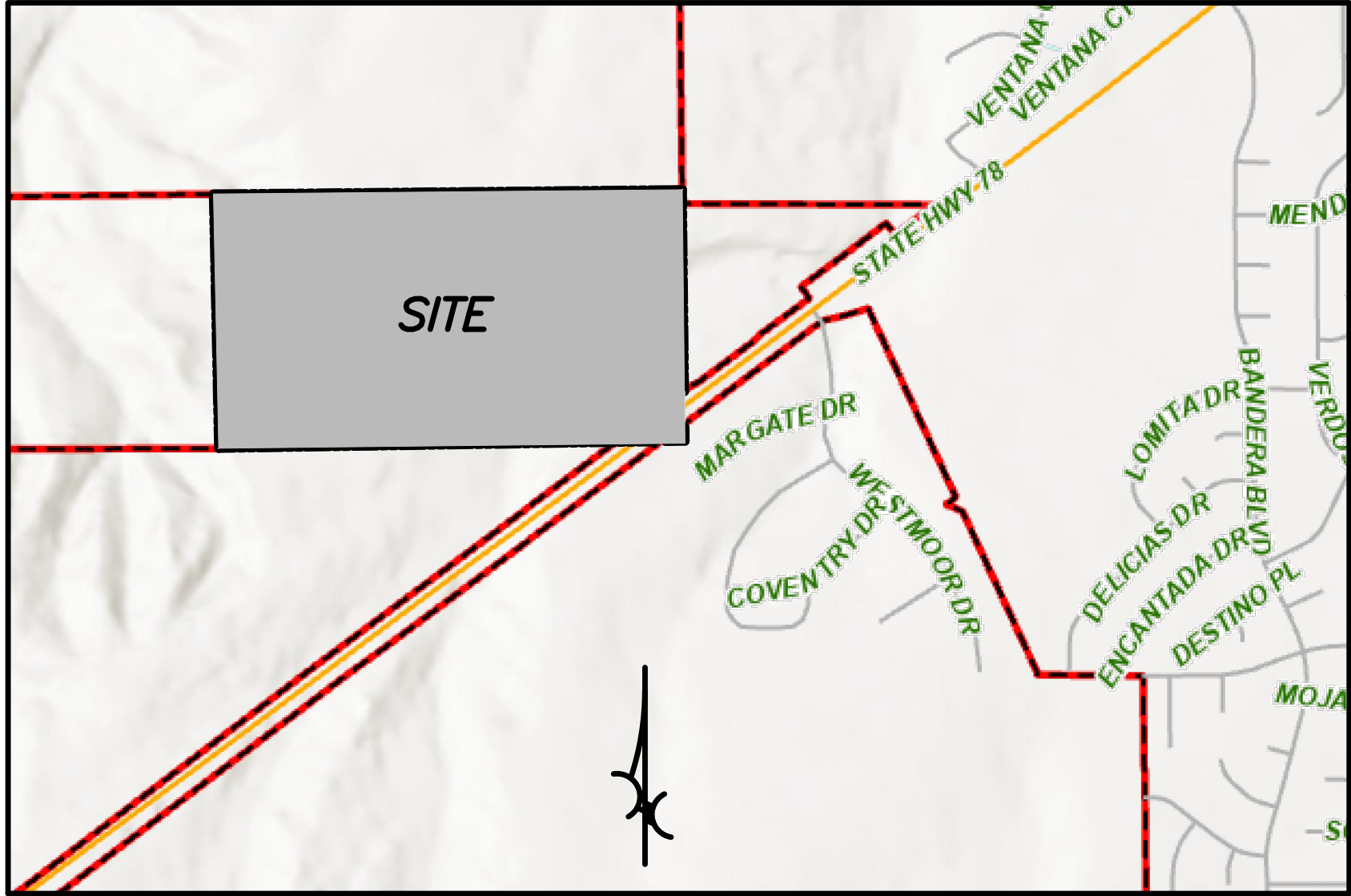
(SEAL)

V. Duran
Notary Public (or official title)



PUEBLO RECREATION RESORT ANNEXATION NO. 1

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 21 SOUTH, RANGE 65 WEST OF THE 6TH P.M.
COUNTY OF PUEBLO, STATE OF COLORADO



VICINITY MAP

BASIS OF BEARINGS:

THE SOUTH LINE OF THE NORTHWEST ONE-QUARTER OF SECTION 17, TOWNSHIP 21 SOUTH, RANGE 65 WEST OF THE 6TH P.M. MONUMENTED ON THE WEST END WITH FOUND 3 1/4\" DIA. ALUMINUM CAP, P.L.S. No. 25948, AND ON THE EAST END WITH A FOUND STONE, BEARS N. 89°28'19\" E.

LEGEND



EXISTING CITY LIMITS LINE

PROPOSED CITY LIMITS LINE

1. AREA TO BE ANNEXED:

NORTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SECTION 17, TOWNSHIP 21 SOUTH, RANGE 65 WEST OF THE 6TH P.M., LESS COLORADO STATE HIGHWAY No. 78 RIGHT-OF-WAY.

CONTAINING 80.28 ACRES, MORE OR LESS

2. PROPOSED NEW CITY LIMITS LINE:

DESCRIPTION NO. 1
BEGINNING FROM THE WEST ONE-QUARTER CORNER OF SECTION 17; THENCE N. 89°28'19\" E., A DISTANCE OF 2,664.08 FEET TO THE CENTER CORNER OF SECTION 17; THENCE S. 00°37'16\" E., A DISTANCE OF 1,062.97 FEET TO THE NORTH RIGHT-OF-WAY LINE OF COLORADO STATE HIGHWAY NO. 78.

AND

DESCRIPTION NO. 2
BEGINNING FROM THE WEST ONE-SIXTEENTH CORNER OF THE SOUTHWEST ONE-QUARTER OF SECTION 17; THENCE N. 89°07'57\" E., A DISTANCE OF 2,294.06 FEET TO THE NORTH RIGHT-OF-WAY LINE OF COLORADO STATE HIGHWAY NO. 78.

AND

DESCRIPTION NO. 3
COMMENCING FROM THE SOUTH ONE-QUARTER CORNER OF SECTION 17; THENCE N. 05°03'15\" W., A DISTANCE OF 1,327.64 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF COLORADO STATE HIGHWAY NO. 78 AND THE POINT OF BEGINNING; THENCE N. 89°07'57\" E., A DISTANCE OF 102.62 FEET TO THE SOUTHWEST CORNER OF THE NORTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SECTION 17; THENCE N. 00°37'16\" W., A DISTANCE OF 75.08 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF COLORADO STATE HIGHWAY NO. 78

3. CERTIFICATION OF PERIMETER:

AT LEAST ONE-SIXTH OF THE BOUNDARY OF THE LAND DESCRIBED IN THE ANNEXATION ABOVE IS NOW EXISTING CITY LIMITS LINE. THE COMPLETE ANNEXATION IS WITHIN 3 MILES OF THE PRESENT CITY LIMITS.

NORTHSTAR ENGINEERING AND SURVEYING, INC.
111 E. 5th Street
Pueblo, Colorado 81003

By:
Michael Leland Cuppy
Colorado Registered Professional
Land Surveyor No. 38485
For and on behalf of NorthStar Engineering
And Surveying, Inc.

NORTHSTAR ENGINEERING AND SURVEYING, INC.			
111 E. 5TH ST. PUEBLO, CO 81003		(719)544-6823 (719)544-6825 FAX	
ANNEXATION PLAT			
TITLE:	1\" = 200'	DRAWN BY: DJA	FILE: 2203200_ANNEX-1.DWG
SCALE:		CHECKED BY: MLC	JOB NO. 2203200
DATE: 01-29-2024			SHEET 1 OF 1



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Scott Hobson, Acting Director Planning and Community Development

SUBJECT: A RESOLUTION PRELIMINARILY DETERMINING THAT THE PETITION FOR THE ANNEXATION OF 219.95-ACRE AREA COMMONLY KNOWN AS THE PUEBLO RECREATION RESORT NO. 2 ANNEXATION, IS VALID UNDER THE PROVISIONS OF COLORADO REVISED STATUTES SECTIONS 31-12-104(1)(A) AND 31-12-107(1), TABLING FINAL ACTION ON THE PETITION FOR A PERIOD OF NOT MORE THAN 180 DAYS, AND REFERRING THE PETITION TO THE PLANNING AND ZONING COMMISSION FOR REVIEW AND RECOMMENDATION

SUMMARY:

The City Clerk received an annexation petition for a 219.95-acre area located east and west of State Highway 78, southwest of Ventana Subdivision, Filing No. 1, and west of the Westmoor Subdivision in unincorporated Pueblo County. This Resolution will determine if the petition for annexation is valid under the provisions of Colorado Revised Statutes Sections 31-12-104(1)(a) and 31-12-107(1), tables final action on the petition for a period not more than 180 days and refer the petition to the Planning and Zoning Commission for review and recommendation.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The petitioner, Pueblo Recreation Investors, LLC, a Colorado Limited Liability Company submitted an annexation petition for the Pueblo Recreation Resort No. 2 Annexation totaling 219.95-acres. This Resolution preliminarily determines that the petition for annexation is valid under the provisions of the Colorado Revised Statutes Sections 31-12-104(1)(a) and 31-12-107(1). In accordance with the procedure established in the Pueblo Municipal Code, the final action on the petition is tabled for a period of not more than one hundred eighty (180) days and the petition is referred to the Planning and

Zoning Commission for review and recommendation.

FINANCIAL IMPLICATIONS:

The filing of the annexation petition and the approval of the Resolution determining the property substantially complies with the provisions of Colorado Revised Statutes Sections 31-12-104(1)(a) and 31-12-107(1) and does not result in any direct financial impact to the City of Pueblo.

BOARD/COMMISSION RECOMMENDATION:

None at this point in the review process.

STAKEHOLDER PROCESS:

Copies of the Petition for Annexation will be sent by registered mail by the City Clerk, the Board of County Commissioners, the County Attorney of Pueblo County and to any school district or special district having territory within the area to be annexed. Copies of an Annexation Impact Report will be filed with all taxing entities as required by Colorado Revised Statutes.

ALTERNATIVES:

None.

RECOMMENDATION:

The City Planning staff has reviewed the annexation petition for compliance with Sections 31-12-104(1)(a) and 31-12-107(1) of the Colorado Revised Statutes and recommends that City Council preliminarily finds that the petition is valid according to Colorado Revised Statutes.

ATTACHMENTS:

1. A-24-03 Petition for Annexation Attchments

RESOLUTION NO. 15608

A RESOLUTION PRELIMINARILY DETERMINING THAT THE PETITION FOR THE ANNEXATION OF 219.95-ACRE AREA COMMONLY KNOWN AS THE PUEBLO RECREATION RESORT NO. 2 ANNEXATION, IS VALID UNDER THE PROVISIONS OF COLORADO REVISED STATUTES SECTIONS 31-12-104(1)(A) AND 31-12-107(1), TABLING FINAL ACTION ON THE PETITION FOR A PERIOD OF NOT MORE THAN 180 DAYS, AND REFERRING THE PETITION TO THE PLANNING AND ZONING COMMISSION FOR REVIEW AND RECOMMENDATION

WHEREAS, a Petition for Annexation of the area described in Section 1 hereof has been filed with the City Clerk; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The Petition for Annexation ("Petition") of the following described area situated in Pueblo County, Colorado, is hereby found and determined to be in substantial compliance with the provisions of C.R.S. §31-12-104(1)(a) and §31-12-107(1):

1. AREAS TO BE ANNEXED:

SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SECTION 17, SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SECTION 17, COLORADO STATE HIGHWAY No. 78 RIGHT-OF-WAY.
CONTAINING 73.07 ACRES, MORE OR LESS

AND

NORTHWEST ONE-QUARTER OF SECTION 20, TOWNSHIP 21 SOUTH, RANGE 65 WEST OF THE 6TH P.M., LESS COLORADO STATE HIGHWAY NO. 78 RIGHT-OF-WAY AND LESS THAT PORTION OF THE NORTHWEST ONE-QUARTER OF SECTION 20 OWNED BY WESTERN POWER AND GAS COMPANY.
CONTAINING 146.88 ACRES, MORE OR LESS

1. PROPOSED NEW CITY LIMITS LINE:

DESCRIPTION NO. 1:
BEGINNING FROM THE WEST ONE-SIXTEENTH CORNER OF THE SOUTHWEST ONE-QUARTER OF SECTION 17; THENCE S. 01°10'57" E., A DISTANCE OF 1,340.14 FEET TO THE SOUTHWEST CORNER OF SECTION 17/NORTHWEST CORNER OF SECTION 20;

THENCE S. 01°20'09" E., A DISTANCE OF 325.60 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF COLORADO STATE HIGHWAY NO. 78.

AND

DESCRIPTION NO. 2:

BEGINNING FROM THE EAST ONE-SIXTEENTH CORNER OF THE SOUTHWEST ONE-QUARTER OF SECTION 17; THENCE S. 00°37'16" E., A DISTANCE OF 1,324.11 FEET TO THE S. 00°37'16" E., A DISTANCE OF 1,324.11 FEET TO THE SOUTH ONE-QUARTER CORNER OF SECTION 17; THENCE S. 01°10'33" E., A DISTANCE OF 2,529.83 FEET; THENCE S. 89°55'17" W., A DISTANCE OF 2,474.00 FEET; THENCE N. 09°05'15" W., A DISTANCE OF 1,167.84 FEET TO A POINT ON THE WEST LINE OF THE NORTHWEST ONE-QUARTER OF SECTION 20; THENCE N. 01°20'09" W., A DISTANCE OF 813.97 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF COLORADO STATE HIGHWAY NO. 78.

1. CERTIFICATION OF PERIMETER:

AT LEAST ONE-SIXTH OF THE BOUNDARY OF THE LAND DESCRIBED IN THE ANNEXATION ABOVE IS NOW EXISTING CITY LIMITS LINE. THE COMPLETE ANNEXATION IS WITHIN 3 MILES OF THE PRESENT CITY LIMITS.

SECTION 2.

Final action on the Petition is hereby tabled for a period of not more than one hundred eighty (180) days and the Petition is hereby referred to the Planning and Zoning Commission for review and recommendation.

SECTION 3.

Upon receipt of the recommendation of the Planning and Zoning Commission, the City Council, without undue delay, shall make a final determination by Resolution whether the petition substantially complies with the applicable requirements of Section 31-12-107(1), C.R.S. and establish the date, time and place the City Council will hold a public hearing to determine if the proposed annexation complies with sections 31-12-104 and 31-12-105, C.R.S. or such parts thereof as may be required to establish eligibility for annexation.

SECTION 4.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of the Resolution.

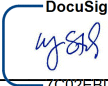
SECTION 5.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: April 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: Mark Aliff
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

CITY OF PUEBLO
ANNEXATION INFORMATION SHEET

Attached is a blank Petition for Annexation to be completed and filed with the City Clerk of the City of Pueblo together with an original and twenty-four (24) prints of an annexation map and satisfactory evidence of the names and addresses of all the owners of land within the area proposed to be annexed. All petitioners must sign the Petition for Annexation within 180 days before the date of filing with the City Clerk. Prior to filing with the City Clerk all documents must be reviewed by the City's Director of Land Use.

TO BE COMPLETED BY PETITIONERS

Name of Annexation: Pueblo Recreation Resort
Annexation No. 2

Location and size in acres: Section SW 1/4 17,
NW 1/4 20, Township 21 South,
Range 65, West of the 6th P.M., County of Pueblo, Colorado,
219.95 acres.
100 % of Owners 1; Less than 100% of owners 0
School District No. 60; Special District: N/A

Annexation Agreement: The City requires the Petitioner to enter into an Annexation Agreement prior to the effective date of the annexation. Such Agreement shall constitute conditions of annexation as effectively as if set forth in the Petition For Annexation.

For Office Use Only: Date Reviewed by Director of Land Use _____
Date Petition Filed _____ Filing Fee \$ _____ Paid _____
Resolution Finding Substantial Compliance adopted _____,
Date of Public Hearing _____; Notice of Public Hearing Published: _____,
_____, _____, and _____.
Copy of published Notice and Petition For Annexation sent by Registered Mail on _____
to Pueblo County Board of County Commissioners, Pueblo County
Attorney, School District _____, Southeastern Water Conservancy District, Pueblo Library
District, Other _____ and special district _____.

Upon receipt of this Annexation Information Sheet, Petition For Annexation, 24 prints of the annexation map, and evidence of ownership, the City Clerk will forward copies of the Annexation Information Sheet and Petition for Annexation together with the evidence of ownership and 20 prints of the annexation map to the Director of Land Use and refer the Petition For Annexation to the City Council as a communication.

**CITY OF PUEBLO
PETITION FOR ANNEXATION**

TO THE CITY COUNCIL OF PUEBLO, COLORADO:

Pursuant to the Municipal Annexation Act of 1965 and C.R.S. §31-12-107(1) the undersigned landowners within the area proposed for annexation hereby petition the City Council of the City of Pueblo for annexation to the City of Pueblo (herein "City") of the following described unincorporated area located in the County of Pueblo, State of Colorado:

***SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SECTION 17,
TOWNSHIP 21 SOUTH, RANGE 65 WEST OF THE 6TH P.M., LESS
COLORADO STATE HIGHWAY No. 78 RIGHT-OF-WAY.***

CONTAINING 73.07 ACRES, MORE OR LESS

***NORTHWEST ONE-QUARTER OF SECTION 20, TOWNSHIP 21 SOUTH,
RANGE 65 WEST OF THE 6TH P.M., LESS COLORADO STATE
HIGHWAY No. 78 RIGHT-OF-WAY AND LESS THAT PORTION OF
THE NORTHWEST ONE-QUARTER OF SECTION 20 INCLUDED IN
THE JACKSON RANCH ANNEXATION.***

CONTAINING 146.88 ACRES, MORE OR LESS

As ground for this annexation, Petitioners state:

1. It is desirable and necessary that the area herein described be annexed to the City.
2. Not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with existing boundaries of the City.
3. This petition for annexation has been signed by persons comprising more than fifty percent (50%) of the landowners in the area proposed to be annexed and owning more than fifty percent (50%) of the area, excluding public street, alleys, and any land owned by the City.
4. A community of interest exists between the area proposed to be annexed and the City.
5. The area proposed to be annexed is urban or will be urbanized in the near future.
6. The area proposed to be annexed is integrated with or is capable of being integrated with the City.

7. No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate:
 - (a) is divided into separate parts or parcels without the written consent of the landowners thereof, unless such tracts or parcels are separated by a dedicated street, road or other public way; or,
 - (b) comprises twenty (20) acres or more and which, together with the buildings and improvements situated thereon has an assessed value in excess of \$200,000.00 for ad valorem tax purposes for the year preceding the annexation, is included within the territory proposed to be annexed without the written consent of the landowner or landowners.
8. The mailing address of each signer, the legal description of the land owned by each landowner and the date of signing of each signature are shown on this petition.
9. Attached to this petition is the affidavit of the circulator of this petition that each signature hereon is the signature of the person whose name it purports to be.
10. Accompanying this petition are an original and twenty-four (24) prints of an annexation map containing the following information:
 - (a) A written legal description of the boundaries of the area proposed to be annexed;
 - (b) A map showing the boundary of the area proposed to be annexed. (Such map shall be prepared by and contain the seal of a Colorado registered engineer or land surveyor);
 - (c) Within the annexation boundary map there is shown the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks;
 - (d) Next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the City and the area proposed to be annexed with the dimension of such boundary.
11. The area proposed to be annexed is not presently a part of any incorporated city or town.
12. No part of the area proposed to be annexed is more than three miles in any direction from any point of the boundaries of the City as such was established more than one year before this annexation will take place.
13. As condition of and in consideration of the City annexing the area proposed to be annexed, Petitioners, for themselves and their heirs, personal representatives, successors and assigns:
 - (a) Waive and release all previously acquired or existing vested property rights attached to or established with respect to the area proposed to be annexed and acknowledge and agree that the annexation of the area proposed to be annexed is

not a site specific development plan and no vested property right shall attach to or be established with respect to the area proposed to be annexed.

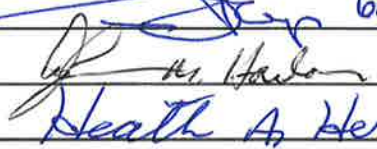
- (b) Acknowledge and agree that upon the annexation of the area proposed to be annexed and, subject to the provisions of the Annexation Agreement, the area shall become subject to the Charter, ordinances, resolutions, rules and regulations of the City, but that the City shall have no obligation to furnish or extend municipal services; including, but not limited to sanitary sewer services, to the area proposed to be annexed.
- (c) “Vested property right” and “site specific development plan” shall have the same meaning as set forth in Chapter 12 of Title XVII of the 1971 Code of Ordinances of the City and Article 60, Title 24, C.R.S.

14. Petitioners consent and agree to the following conditions:

- (a) Petitioners and the City shall enter into an Annexation Agreement prior to the effective date of this annexation.
- (b)
- (c)
- (d)
- (e)

WHEREFORE, Petitioners request that the City Council of Pueblo approve the annexation of the above described area to the City of Pueblo (all Petitioners must sign this Petition within 180 days prior to the date of filing with the City Clerk.

Pueblo Recreation Resort Annexation No. 2

<u>SIGNATURE</u>	<u>MAILING ADDRESS</u>	<u>LEGAL DESCRIPTION</u>	<u>DATE OF SIGNING</u>
	6601 E US HWY 60	Good Canyon	2/19/24
	1206 Red Cedar Ct. Oronoke WI 54650		2/19/24
	2727 Glen Arbor Drive		2/19/24
	Colorado Springs, CO 80920		

The 219.95 Acres is 100% OWNED by Pueblo Recreation Investors LLC which is owned 100% by The Three Member who have signed above.

Signed
by Heath A Herber, mgr 2/19/2024
Manager of Pueblo Recreation Investors LLC

AFTER RECORDING, RETURN TO:

Sara M. Frear
Mulliken Weiner Berg & Jolivet P.C.
102 South Tejon Street, Suite 900
Colorado Springs, CO 80903

STATEMENT OF AUTHORITY

1. This Statement of Authority relates to an entity named: **Pueblo Recreation Investors, LLC.**
2. The type of entity is a:

☐ corporation	☐ registered limited liability limited partnership
☐ nonprofit corporation	☐ limited partnership association
☒ limited liability company	☐ unincorporated nonprofit association
☐ general partnership	☐ government or governmental subdivision/agency
☐ limited partnership	☐ business trust
☐ registered limited liability partnership	☐ trust _____
3. The entity is formed under the laws of the State of Colorado.
4. The entity's mailing address is: 2727 Glen Arbor Drive, Colorado Springs, CO 80920.
5. The ☒ name ☒ position of the person authorized to execute instruments conveying, encumbering, or otherwise affecting title to real property on behalf of the entity is:

Heath A. Herber, as Manager
6. (Optional) The authority of the foregoing person to bind the entity is ☒ not limited ☐ limited as follows:
7. (Optional) Other matters concerning the manner in which the entity deals with interests in real property: None.
8. This Statement of Authority is executed on behalf of the entity pursuant to the provisions of Section 38-30-172, Colorado Revised Statutes.

Executed this 11th day of October, 2023.

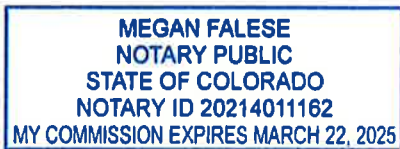
Pueblo Recreation Investors, LLC,
a Colorado limited liability company

By: Heath A. Herber
Name: Heath A. Herber
Title: Manager

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 11th day of October 2023, by Heath A. Herber, as Manager of **Pueblo Recreation Investors, LLC**, a Colorado limited liability company.

Witness my hand and official seal.



[SEAL]

Megan Falese
Notary Public
My Commission Expires: 03-22-25

CIRCULATOR'S OATH

STATE OF COLORADO)
) ss.
COUNTY OF PUEBLO)

The undersigned of lawful age being first duly sworn upon oath deposes and states that I circulated the foregoing Petition For Annexation and that each signature therein is the signature of the person whose name it purports to be.

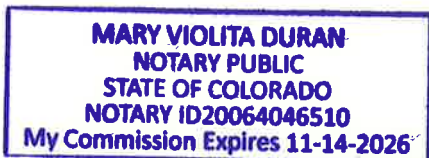
Heath A. Herber
Circulator's Signature

Subscribed and affirmed, or sworn to, before me in the County of El Paso,
State of Colorado, this 28th day of February,
2024,
By Heath Herber.

Witness my hand and official seal.
My commission expires: 11/14/2026.

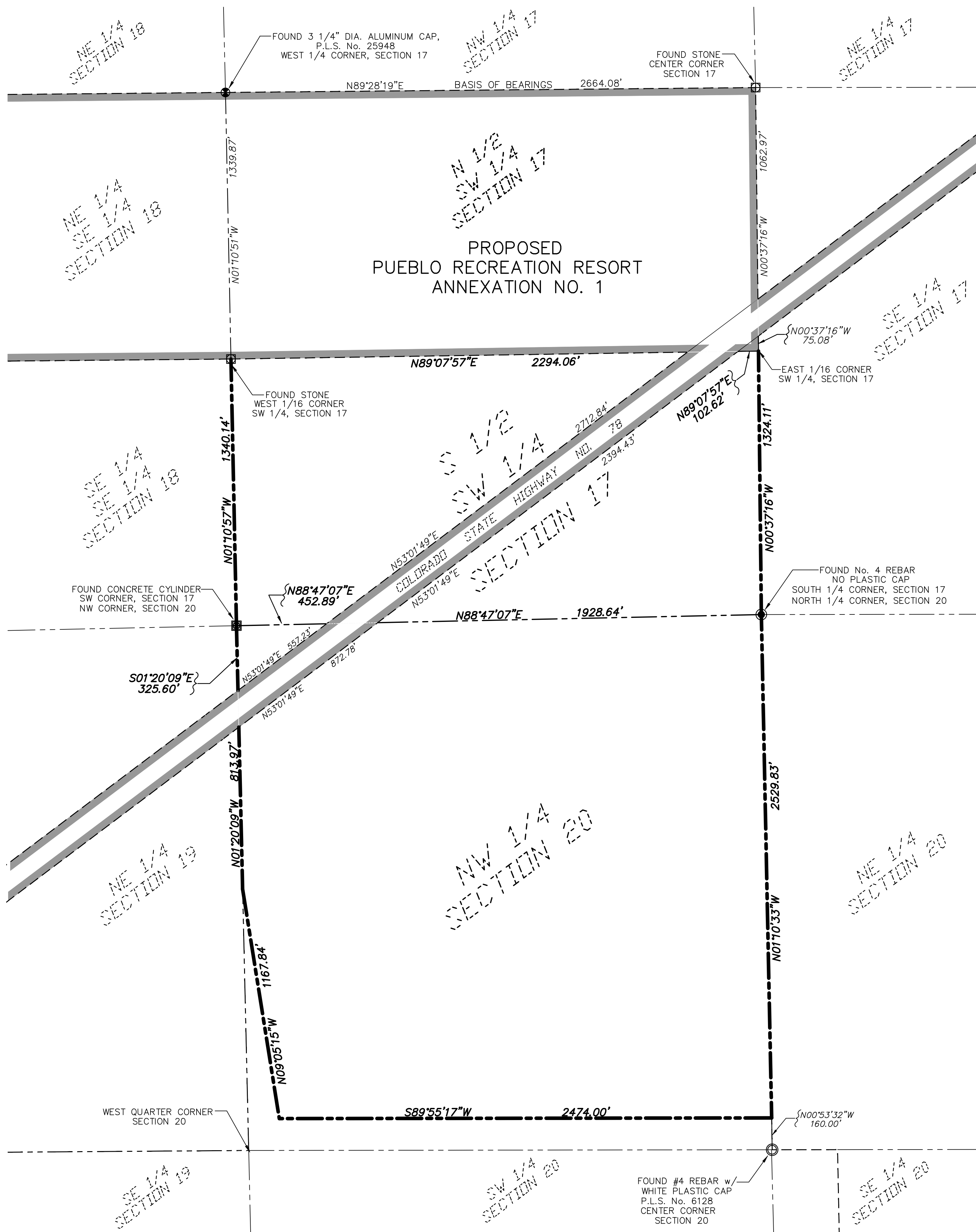
(SEAL)

M. Duran
Notary Public (or official title)



PUEBLO RECREATION RESORT ANNEXATION NO. 2

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 17 AND A PORTION OF THE NORTHWEST QUARTER OF SECTION 20,
TOWNSHIP 21 SOUTH, RANGE 65 WEST OF THE 6TH P.M.
COUNTY OF PUEBLO, STATE OF COLORADO



SCALE: 1" = 300'

0 150' 300' 600'

BASIS OF BEARINGS:

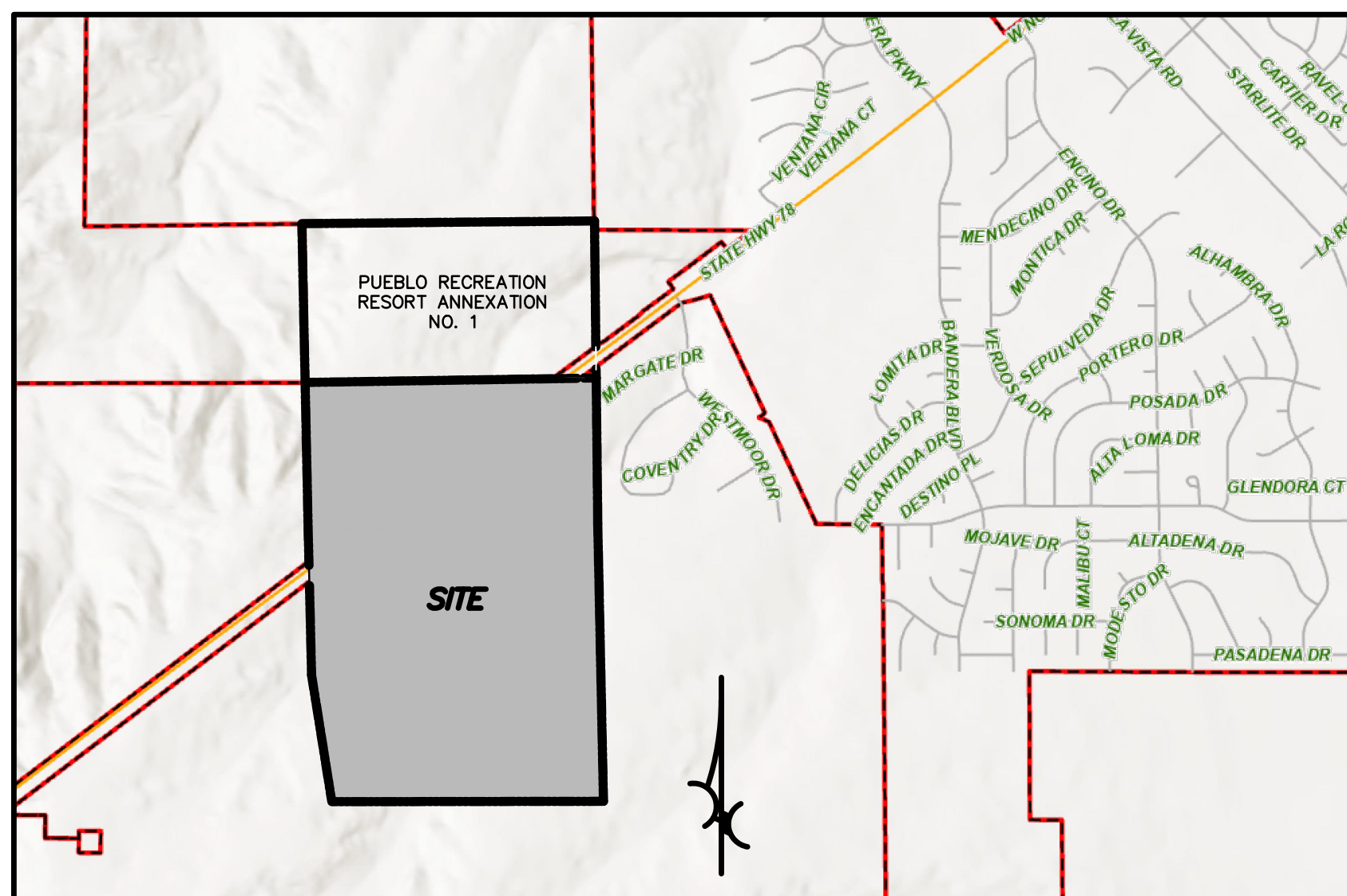
THE SOUTH LINE OF THE NORTHWEST ONE-QUARTER OF SECTION 17, TOWNSHIP 21 SOUTH, RANGE 65 WEST OF THE 6TH P.M. MONUMENTED ON THE WEST END WITH FOUND 3 1/4" DIA. ALUMINUM CAP, P.L.S. No. 25948, AND ON THE EAST END WITH A FOUND STONE, BEARS N. 89°28'19" E.

LEGEND



EXISTING CITY LIMITS LINE

PROPOSED CITY LIMITS LINE



VICINITY MAP

1. AREAS TO BE ANNEXED:

SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SECTION 17, TOWNSHIP 21 SOUTH, RANGE 65 WEST OF THE 6TH P.M., LESS COLORADO STATE HIGHWAY NO. 78 RIGHT-OF-WAY.

CONTAINING 73.07 ACRES, MORE OR LESS

AND

NORTHWEST ONE-QUARTER OF SECTION 20, TOWNSHIP 21 SOUTH, RANGE 65 WEST OF THE 6TH P.M., LESS COLORADO STATE HIGHWAY NO. 78 RIGHT-OF-WAY AND LESS THAT PORTION OF THE NORTHWEST ONE-QUARTER OF SECTION 20 OWNED BY WESTERN POWER AND GAS COMPANY.

CONTAINING 146.88 ACRES, MORE OR LESS

2. PROPOSED NEW CITY LIMITS LINE:

DESCRIPTION NO. 1

BEGINNING FROM THE WEST ONE-SIXTEENTH CORNER OF THE SOUTHWEST ONE-QUARTER OF SECTION 17; THENCE S. 00°37'16" E., A DISTANCE OF 1,324.11 FEET TO THE SOUTH ONE-QUARTER CORNER OF SECTION 17; THENCE S. 01°10'33" E., A DISTANCE OF 2,529.83 FEET; THENCE S. 89°55'17" W., A DISTANCE OF 2,474.00 FEET; THENCE N. 09°05'15" W., A DISTANCE OF 1,167.84 FEET TO A POINT ON THE WEST LINE OF THE NORTHWEST ONE-QUARTER OF SECTION 20; THENCE N. 01°20'09" W., A DISTANCE OF 813.97 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF COLORADO STATE HIGHWAY NO. 78.

AND

DESCRIPTION NO. 2

BEGINNING FROM THE EAST ONE-SIXTEENTH CORNER OF THE SOUTHWEST ONE-QUARTER OF SECTION 17; THENCE S. 00°37'16" E., A DISTANCE OF 1,324.11 FEET TO THE SOUTH ONE-QUARTER CORNER OF SECTION 17; THENCE S. 01°10'33" E., A DISTANCE OF 2,529.83 FEET; THENCE S. 89°55'17" W., A DISTANCE OF 2,474.00 FEET; THENCE N. 09°05'15" W., A DISTANCE OF 1,167.84 FEET TO A POINT ON THE WEST LINE OF THE NORTHWEST ONE-QUARTER OF SECTION 20; THENCE N. 01°20'09" W., A DISTANCE OF 813.97 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF COLORADO STATE HIGHWAY NO. 78.

3. CERTIFICATION OF PERIMETER:

AT LEAST ONE-SIXTH OF THE BOUNDARY OF THE LAND DESCRIBED IN THE ANNEXATION ABOVE IS NOW EXISTING CITY LIMITS LINE. THE COMPLETE ANNEXATION IS WITHIN 3 MILES OF THE PRESENT CITY LIMITS.

NORTHSTAR ENGINEERING AND SURVEYING, INC.
111 E. 5th Street
Pueblo, Colorado 81003

By:
Michael Leland Cuppy
Colorado Registered Professional
Land Surveyor No. 38485
For and on behalf of NorthStar Engineering
And Surveying, Inc.

NORTHSTAR ENGINEERING AND SURVEYING, INC.		(719)544-6823 (719)544-6825 FAX
111 E. 5TH ST. PUEBLO, CO 81003		
ANNEXATION PLAT		
TITLE:	FILE: 2203200_ANNEX-2.DWG	
SCALE: 1" = 300'	DRAWN BY: DJA	JOB NO. 2203200
DATE: 01-29-2024	CHECKED BY: MLC	SHEET 1 OF 1



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 22, 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 \$32,686,806 TO NUNN CONSTRUCTION, FOR PROJECT NO. 24-010, CONSTRUCTION OF FIRE STATIONS 6, 8, AND 11, SETTING FORTH \$1,518,194 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

Attached is a Resolution awarding a construction contract to Nunn Construction, for Project No. 24-010, Construction of Fire Stations 6, 8, and 11.

PREVIOUS COUNCIL ACTION:

On October 23, 2023, by Ordinance No. 10570, City Council authorized a site lease and lease purchase agreement between the City, and BOKF, N.A. (solely in its capacity as trustee) for the purpose of financing the construction, improvement, and equipping of three fire stations by issuing Series 2023 Certificates of Participation to not exceed \$37,000,000.

On January 22, 2024, by Ordinance No. 10640, City Council authorized the establishment of the Debt Service Fund No. 304 - COP-Fire Stations.

On March 11, 2024, by Ordinance No. 10670, City Council authorized the establishment of the Capital Projects Fund No. 456 – Fire Stations, budgeted and appropriated the proceeds received from the issuance of the Series 2023 Certificates of Participation and all future funds received into Fund No. 456.

BACKGROUND:

This project consists of the construction of three (3) fire stations of approximately 14,000 square feet each, which will incorporate Net-Zero Energy principals, and are relatively similar in design. Each fire station incorporates similar floor plan and building structure. In August 2023, a request for qualifications from general contractors that

were interested in bidding future construction of three (3) new fire stations. A total of six (6) general contractors submitted a proposal for consideration. Of those six (6), three (3) were deemed to meet the minimum qualifications to construct three (3) fire stations.

The Information for Bid for the Construction of the Fire Stations was published to the three (3) pre-qualified contractors in January 2024. Nunn Construction was selected as the most advantageous for the City of Pueblo and in the best interest of the City of Pueblo, based on the evaluation factors set forth in the Information for Bid.

FINANCIAL IMPLICATIONS:

Funding, in the amount of \$32,686,806, plus \$1,518,194 in contingencies, will be paid from Capital Projects Fund 456 - Fire Stations.

BOARD/COMMISSION RECOMMENDATION

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Denial of this resolution will cancel the project.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

None

RESOLUTION NO. 15609

A RESOLUTION AWARDDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$32,686,806 TO NUNN CONSTRUCTION, FOR PROJECT NO. 24-010, CONSTRUCTION OF FIRE STATIONS 6, 8, AND 11, SETTING FORTH \$1,518,194 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, competitive bids for Project No. 24-010, Construction of Fire Stations 6, 8, and 11 have been received and examined; and,

WHEREAS, the bid of Nunn Construction, was determined to be the most advantageous to the City of Pueblo, in the best interest of the City of Pueblo, based on evaluation factors set forth in the Information for Bid, and the Committee of Awards recommends to the City Council that it authorize Project No. 24-010, Construction of Fire Stations 6, 8, and 11 to be performed; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The City Council authorizes Project No. 24-010, Construction of Fire Stations 6, 8, and 11 to be performed, and the contract for said project is hereby awarded to Nunn Construction, in the amount of \$32,686,806.

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.....\$1,518,194

SECTION 4.

Funds in the amount of \$34,205,000, shall be paid from Capital Projects Fund No. 456 - Fire Stations.

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.

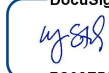
SECTION 6.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: April 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: Mark Aliff
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. 24-010 (CI2205)
Construction of Fire Stations 6, 8, and 11
RESPONSE DEADLINE: March 15, 2024 at 2:00 pm
Report Generated: Wednesday, April 17, 2024

RECOMMENDED VENDOR TOTAL INCLUDING VALUE ENGINEERING REDUCTION

Vendor	Base Bid-Fire Station 6	Allowances-Fire Station 6	Base Bid – Fire Station 8	Allowances-Fire Station 8	Base Bid-Fire Station 11	Allowances-Fire Station 11	Value Engineering Reduction	Total (Base Bids, Allowances, & Value Engineering Reduction)	Calendar Days to Substantial Completion After Value Engineering	
Nunn Construction	\$10,854,400.00	\$155,000.00	\$12,452,400.00	\$155,000.00	\$11,311,400.00	\$155,000.00	(\$2,396,394.00)	\$32,686,806.00	FS # 11	374
									FS # 8	422
									FS # 6	486

Vendor	Bid Alternate-Fire Station 6	Bid Alternate–Fire Station 8	Bid Alternate-Fire Station 11	Total (Bid Alternates)
Nunn Construction	\$6,868.00	\$6,868.00	\$6,868.00	\$20,604.00

EVALUATION TABULATION
 IFB No. 24-010 (CI2205)
 Construction of Fire Stations 6, 8, and 11

OTHER VENDOR TOTAL

Vendor	Base Bid-Fire Station 6	Allowances-Fire Station 6	Base Bid – Fire Station 8	Allowances-Fire Station 8	Base Bid-Fire Station 11	Allowances-Fire Station 11	Total (Base Bids & Allowances)	Calendar Days to Complete All Fire Stations
H. W. Houston Construction, LLC	\$12,399,040.08	\$155,000.00	\$14,062,853.08	\$155,000.00	\$12,904,438.08	\$155,000.00	\$39,831,331.24	457

Vendor	Bid Alternate-Fire Station 6	Bid Alternate–Fire Station 8	Bid Alternate-Fire Station 11	Total (Bid Alternates)
H. W. Houston Construction, LLC	\$30,303.50	\$30,303.50	\$30,303.50	\$90,910.50

EVALUATION TABULATION
 IFB No. 24-010 (CI2205)
 Construction of Fire Stations 6, 8, and 11

BASE BID - FIRE STATION 6

Base Bid - Fire Station 6					H. W. Houston Construction, LLC		Nunn Construction	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total
X	1	01000 General Requirements	1	LS	\$1,615,794.00	\$1,615,794.00	\$1,208,856.00	\$1,208,856.00
X	2	02000 Existing Conditions	1	LS	\$0.00	\$0.00	\$1.00	\$1.00
X	3	Unit Price - Removal of existing fill material	1	CY	\$25.21	\$25.21	\$39.00	\$39.00
X	4	03000 Concrete	1	LS	\$803,154.00	\$803,154.00	\$571,878.00	\$571,878.00
X	5	04000 Masonry	1	LS	\$734,894.00	\$734,894.00	\$643,299.00	\$643,299.00
X	6	05000 Metals	1	LS	\$894,565.00	\$894,565.00	\$764,713.00	\$764,713.00
X	7	06000 Woods, Plastics & Composites	1	LS	\$356,800.00	\$356,800.00	\$357,421.00	\$357,421.00
X	8	07000 Thermal & Moisture Protection	1	LS	\$1,793,472.00	\$1,793,472.00	\$1,624,086.00	\$1,624,086.00
X	9	08000 Openings	1	LS	\$671,319.00	\$671,319.00	\$697,923.00	\$697,923.00
X	10	09000 Finishes	1	LS	\$817,359.00	\$817,359.00	\$584,625.00	\$584,625.00
X	11	10000 Specialties	1	LS	\$70,432.00	\$70,432.00	\$102,949.00	\$102,949.00
X	12	11000 Equipment	1	LS	\$77,064.00	\$77,064.00	\$203,452.00	\$203,452.00
X	13	12000 Furnishings	1	LS	\$173,288.00	\$173,288.00	\$176,634.00	\$176,634.00
X	14	13000 Special Construction	1	LS	\$0.00	\$0.00	\$95,200.00	\$95,200.00
X	15	21000 Fire Suppression	1	LS	\$79,392.00	\$79,392.00	\$64,424.00	\$64,424.00

EVALUATION TABULATION

IFB No. 24-010 (CI2205)

Construction of Fire Stations 6, 8, and 11

Base Bid - Fire Station 6					H. W. Houston Construction, LLC		Nunn Construction	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total
X	16	22000 Plumbing	1	LS	\$1,700,006.00	\$1,700,006.00	\$493,535.00	\$493,535.00
X	17	23000 Heating, Ventilation and Air Conditioning	1	LS	\$0.00	\$0.00	\$1,306,103.00	\$1,306,103.00
X	18	26000 Electrical	1	LS	\$1,443,335.00	\$1,443,335.00	\$1,216,579.00	\$1,216,579.00
X	19	27000 Communications	1	LS	\$0.00	\$0.00	\$62,350.00	\$62,350.00
X	20	28000 Electronic Safety & Security	1	LS	\$0.00	\$0.00	\$1.00	\$1.00
X	21	31000 Earthwork	1	LS	\$722,972.00	\$722,972.00	\$197,952.00	\$197,952.00
X	22	Unit Price - Non-Structural Backfill	1	CY	\$36.14	\$36.14	\$48.00	\$48.00
X	23	Unit Price - Structural Backfill	1	CY	\$43.73	\$43.73	\$60.00	\$60.00
X	24	32000 Exterior Improvements	1	LS	\$445,089.00	\$445,089.00	\$319,603.00	\$319,603.00
X	25	33000 Utilities	1	LS	\$0.00	\$0.00	\$162,669.00	\$162,669.00
Total						\$12,399,040.08		\$10,854,400.00

EVALUATION TABULATION

Public Improvement Invitation for Bid - Construction of Fire Stations 6, 8, and 11

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EVALUATION TABULATION
IFB No. 24-010 (CI2205)
Construction of Fire Stations 6, 8, and 11

ALLOWANCES - FIRE STATION 6

Allowances - Fire Station 6					H. W. Houston Construction, LLC		Nunn Construction	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total
01210 Allowances								
X	1	Moisture Mitigation for Flooring Installation	1	LS	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00
X	2	Drainage Certificates, Grading Certificate and Improvement Location Certificate	1	LS	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00
X	3	Custom Color Sprinkler Heads	1	LS	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
X	4	Bi-Directional Amplifier (BDA)	1	LS	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00
X	5	Motorola R56 Grounding System	1	LS	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00
Total						\$155,000.00		\$155,000.00

BID ALTERNATE - FIRE STATION 6

Bid Alternate - Fire Station 6					H. W. Houston Construction, LLC		Nunn Construction	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total
232400 Unit Price - Ground-loop heat-pump piping								
	1	Additional Boreholes	1	EA	\$30,300.00	\$30,300.00	\$6,820.00	\$6,820.00
	2	Horizontal Piping	1	LF	\$3.50	\$3.50	\$48.00	\$48.00
Total						\$30,303.50		\$6,868.00

EVALUATION TABULATION
IFB No. 24-010 (CI2205)
Construction of Fire Stations 6, 8, and 11

BASE BID - FIRE STATION 8

Base Bid - Fire Station 8					H. W. Houston Construction, LLC		Nunn Construction	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total
X	26	01000 General Requirements	1	LS	\$1,682,570.00	\$1,682,570.00	\$1,296,576.00	\$1,296,576.00
X	27	02000 Existing Conditions	1	LS	\$0.00	\$0.00	\$1.00	\$1.00
X	28	Unit Price - Removal of existing fill material	1	CY	\$25.21	\$25.21	\$25.00	\$25.00
X	29	03000 Concrete	1	LS	\$855,294.00	\$855,294.00	\$678,112.00	\$678,112.00
X	30	04000 Masonry	1	LS	\$454,480.00	\$454,480.00	\$403,502.00	\$403,502.00
X	31	05000 Metals	1	LS	\$875,846.00	\$875,846.00	\$757,783.00	\$757,783.00
X	32	06000 Woods, Plastics & Composites	1	LS	\$356,800.00	\$356,800.00	\$357,421.00	\$357,421.00
X	33	07000 Thermal & Moisture Protection	1	LS	\$2,028,562.00	\$2,028,562.00	\$2,133,400.00	\$2,133,400.00
X	34	08000 Openings	1	LS	\$671,319.00	\$671,319.00	\$697,923.00	\$697,923.00
X	35	09000 Finishes	1	LS	\$808,317.00	\$808,317.00	\$572,749.00	\$572,749.00
X	36	10000 Specialties	1	LS	\$70,432.00	\$70,432.00	\$102,949.00	\$102,949.00
X	37	11000 Equipment	1	LS	\$74,368.00	\$74,368.00	\$203,452.00	\$203,452.00
X	38	12000 Furnishings	1	LS	\$173,288.00	\$173,288.00	\$176,634.00	\$176,634.00
X	39	13000 Special Construction	1	LS	\$0.00	\$0.00	\$95,683.00	\$95,683.00
X	40	21000 Fire Suppression	1	LS	\$79,392.00	\$79,392.00	\$61,347.00	\$61,347.00

EVALUATION TABULATION

IFB No. 24-010 (CI2205)

Construction of Fire Stations 6, 8, and 11

Base Bid - Fire Station 8					H. W. Houston Construction, LLC		Nunn Construction	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total
X	41	22000 Plumbing	1	LS	\$2,001,912.00	\$2,001,912.00	\$493,535.00	\$493,535.00
X	42	23000 Heating, Ventilation and Air Conditioning	1	LS	\$0.00	\$0.00	\$1,306,103.00	\$1,306,103.00
X	43	26000 Electrical	1	LS	\$1,479,856.00	\$1,479,856.00	\$1,213,279.00	\$1,213,279.00
X	44	27000 Communications	1	LS	\$0.00	\$0.00	\$62,350.00	\$62,350.00
X	45	28000 Electronic Safety & Security	1	LS	\$0.00	\$0.00	\$1.00	\$1.00
X	46	31000 Earthwork	1	LS	\$1,891,026.00	\$1,891,026.00	\$778,851.00	\$778,851.00
X	47	Unit Price - Non-Structural Backfill	1	CY	\$36.14	\$36.14	\$35.00	\$35.00
X	48	Unit Price - Structural Backfill	1	CY	\$43.73	\$43.73	\$43.00	\$43.00
X	49	32000 Exterior Improvements	1	LS	\$559,286.00	\$559,286.00	\$447,747.00	\$447,747.00
X	50	33000 Utilities	1	LS	\$0.00	\$0.00	\$612,899.00	\$612,899.00
Total						\$14,062,853.08		\$12,452,400.00

EVALUATION TABULATION

Public Improvement Invitation for Bid - Construction of Fire Stations 6, 8, and 11

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EVALUATION TABULATION
IFB No. 24-010 (CI2205)
Construction of Fire Stations 6, 8, and 11

ALLOWANCES - FIRE STATION 8

Allowances - Fire Station 8					H. W. Houston Construction, LLC		Nunn Construction	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total
01210 Allowances								
X	1	Moisture Mitigation for Flooring Installation	1	LS	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00
X	2	Drainage Certificates, Grading Certificate and Improvement Location Certificate	1	LS	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00
X	3	Custom Color Sprinkler Heads	1	LS	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
X	4	Bi-Directional Amplifier (BDA)	1	LS	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00
X	5	Motorola R56 Grounding System	1	LS	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00
Total						\$155,000.00		\$155,000.00

BID ALTERNATE - FIRE STATION 8

Bid Alternate - Fire Station 8					H. W. Houston Construction, LLC		Nunn Construction	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total
232400 Unit Price - Ground-loop heat-pump piping								
	1	Additional Boreholes	1	EA	\$30,300.00	\$30,300.00	\$6,820.00	\$6,820.00
	2	Horizontal Piping	1	LF	\$3.50	\$3.50	\$48.00	\$48.00
Total						\$30,303.50		\$6,868.00

EVALUATION TABULATION
IFB No. 24-010 (CI2205)
Construction of Fire Stations 6, 8, and 11

BASE BID - FIRE STATION 11

Base Bid - Fire Station 11					H. W. Houston Construction, LLC		Nunn Construction	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total
X	51	01000 General Requirements	1	LS	\$1,622,228.00	\$1,622,228.00	\$1,235,942.00	\$1,235,942.00
X	52	02000 Existing Conditions	1	LS	\$0.00	\$0.00	\$1.00	\$1.00
X	53	Unit Price - Removal of existing fill material	1	CY	\$25.21	\$25.21	\$25.00	\$25.00
X	54	03000 Concrete	1	LS	\$850,761.00	\$850,761.00	\$612,405.00	\$612,405.00
X	55	04000 Masonry	1	LS	\$454,480.00	\$454,480.00	\$403,502.00	\$403,502.00
X	56	05000 Metals	1	LS	\$873,266.00	\$873,266.00	\$759,323.00	\$759,323.00
X	57	06000 Woods, Plastics & Composites	1	LS	\$356,800.00	\$356,800.00	\$357,421.00	\$357,421.00
X	58	07000 Thermal & Moisture Protection	1	LS	\$2,019,714.00	\$2,019,714.00	\$1,864,044.00	\$1,864,044.00
X	59	08000 Openings	1	LS	\$671,319.00	\$671,319.00	\$697,923.00	\$697,923.00
X	60	09000 Finishes	1	LS	\$708,117.00	\$708,117.00	\$572,749.00	\$572,749.00
X	61	10000 Specialties	1	LS	\$79,270.00	\$79,270.00	\$111,287.00	\$111,287.00
X	62	11000 Equipment	1	LS	\$77,064.00	\$77,064.00	\$203,452.00	\$203,452.00
X	63	12000 Furnishings	1	LS	\$173,288.00	\$173,288.00	\$176,634.00	\$176,634.00
X	64	13000 Special Construction	1	LS	\$0.00	\$0.00	\$91,964.00	\$91,964.00
X	65	21000 Fire Suppression	1	LS	\$79,392.00	\$79,392.00	\$61,347.00	\$61,347.00

EVALUATION TABULATION

IFB No. 24-010 (CI2205)

Construction of Fire Stations 6, 8, and 11

Base Bid - Fire Station 11					H. W. Houston Construction, LLC		Nunn Construction	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total
X	66	22000 Plumbing	1	LS	\$1,700,006.00	\$1,700,006.00	\$383,530.00	\$383,530.00
X	67	23000 Heating, Ventilation and Air Conditioning	1	LS	\$0.00	\$0.00	\$1,306,103.00	\$1,306,103.00
X	68	26000 Electrical	1	LS	\$1,449,734.00	\$1,449,734.00	\$1,214,679.00	\$1,214,679.00
X	69	27000 Communications	1	LS	\$0.00	\$0.00	\$62,350.00	\$62,350.00
X	70	28000 Electronic Safety & Security	1	LS	\$0.00	\$0.00	\$1.00	\$1.00
X	71	31000 Earthwork	1	LS	\$1,230,892.00	\$1,230,892.00	\$523,927.00	\$523,927.00
X	72	Unit Price - Non-Structural Backfill	1	CY	\$36.14	\$36.14	\$35.00	\$35.00
X	73	Unit Price - Structural Backfill	1	CY	\$43.73	\$43.73	\$43.00	\$43.00
X	74	32000 Exterior Improvements	1	LS	\$558,002.00	\$558,002.00	\$388,034.00	\$388,034.00
X	75	33000 Utilities	1	LS	\$0.00	\$0.00	\$284,679.00	\$284,679.00
Total						\$12,904,438.08		\$11,311,400.00

EVALUATION TABULATION

Public Improvement Invitation for Bid - Construction of Fire Stations 6, 8, and 11

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EVALUATION TABULATION
IFB No. 24-010 (CI2205)
Construction of Fire Stations 6, 8, and 11

ALLOWANCES - FIRE STATION 11

Allowances - Fire Station 11					H. W. Houston Construction, LLC		Nunn Construction	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total
01210 Allowances								
X	1	Moisture Mitigation for Flooring Installation	1	LS	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00
X	2	Drainage Certificates, Grading Certificate and Improvement Location Certificate	1	LS	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00
X	3	Custom Color Sprinkler Heads	1	LS	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
X	4	Bi-Directional Amplifier (BDA)	1	LS	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00
X	5	Motorola R56 Grounding System	1	LS	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00
Total						\$155,000.00		\$155,000.00

BID ALTERNATE - FIRE STATION 11

Bid Alternate - Fire Station 11					H. W. Houston Construction, LLC		Nunn Construction	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total
232400 Unit Price - Ground-loop heat-pump piping								
	1	Additional Boreholes	1	EA	\$30,300.00	\$30,300.00	\$6,820.00	\$6,820.00
	2	Horizontal Piping	1	LF	\$3.50	\$3.50	\$48.00	\$48.00
Total						\$30,303.50		\$6,868.00

CALENDAR DAYS TO COMPLETE ALL FIRE STATIONS

Provide the overall number of consecutive calendar days to complete all three fire stations. This information will be used to evaluate the proposed time of completion.

Calendar Days to Complete All Fire Stations				H. W. Houston Construction, LLC			Nunn Construction		
Selected	Line Item	Description	Unit of Measure	Quantity	Unit Cost	Total	Quantity	Unit Cost	Total
	1	Consecutive Calendar Days to Complete all Fire Stations	Day	457	\$3,450.00	\$1,576,650.00	392	\$3,450.00	\$1,352,400.00
Total						\$1,576,650.00			\$1,352,400.00

VENDOR QUESTIONNAIRE PASS/FAIL

Question Title	H. W. Houston Construction, LLC	Nunn Construction
BID GUARANTEE	Pass	Pass
CONFIRMATION OF UNDERSTANDING AND OFFER	Pass	Pass
NAME, TITLE, AND CONTACT INFORMATION	Pass	Pass
ACKNOWLEDGEMENTS		
AFFIRMATIVE ACTION PLAN REQUIREMENT:	Pass	Pass
COLORADO LABOR REQUIREMENT:	Pass	Pass
INSURANCE REQUIREMENTS	Pass	Pass
SALES AND/OR USE TAX INFORMATION	Pass	Pass
Has/is this firm or any officer or partner of this firm:		
Convicted of a criminal offense	Pass	Pass
Convicted under state or federal statutes	Pass	Pass
Convicted under state or federal antitrust statutes	Pass	Pass

EVALUATION TABULATION

IFB No. 24-010 (CI2205)

Construction of Fire Stations 6, 8, and 11

Question Title	H. W. Houston Construction, LLC	Nunn Construction
Failed to perform	Pass	Pass
Suspension or Debarment	Pass	Pass
Unqualified	Pass	Pass
Unlicensed	Pass	Pass
Delinquent	Pass	Pass
Confirmation	Pass	Pass
Schedule		
Fire Station #6 - Anticipated Start Date	Pass	Pass
Fire Station #11 - Anticipated Start Date	Pass	Pass
Fire Station #8 - Anticipated Start Date	Pass	Pass
How many Weather Days are included in your time?	Pass	Pass
Complete work in the proposed schedule	Pass	Pass
Project Timing	Pass	Pass

EVALUATION TABULATION

Public Improvement Invitation for Bid - Construction of Fire Stations 6, 8, and 11

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**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Steven Meier, Director of Parks and Recreation

SUBJECT: A RESOLUTION OF THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, APPROVING LEASE/PURCHASE FINANCING WITH CLAYTON HOLDINGS, LLC, FOR SPORTS FIELD AND COURT LIGHTING SYSTEMS FROM MUSCO SPORTS LIGHTING, LLC, AND AUTHORIZING THE EXECUTION AND DELIVERY OF ALL DOCUMENTS REQUIRED THEREWITH BY THE MAYOR OR DIRECTOR OF PURCHASING, AND AUTHORIZING ALL OTHER ACTIONS NECESSARY FOR THE CONSUMMATION OF THE TRANSACTION CONTEMPLATED BY THIS RESOLUTION

SUMMARY:

This Resolution would approve the financing to lease/purchase new LED sports field lighting on City Park Ballfields #3 and #4 and LED sports court lighting for the Mineral Palace Park Pickleball Courts.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

Approximately 99% of the City owned softball fields, outdoor basketball courts, and tennis courts consist of metal halide lamps. Metal halide lamps use large quantities of wattage to operate which results in exceptionally high utility expenses to operate annually.

The Parks and Recreation Department has been working on a plan to replace the metal halide lamps with efficient LED lights throughout the City which will result in the reduction of annual utility expenses while providing safer lighting for the recreational facility users.

The Parks and Recreation Department has determined that the softball field lights at

City Park Fields #3 and #4 are a priority for replacement. These lights and wooden poles were installed in the mid to late 1950s and are becoming a maintenance and safety concern.

The Mineral Palace Park Pickleball Courts were constructed in 2022 without lights. The addition of LED lights to this popular recreational facility will increase awareness and popularity of the new courts.

FINANCIAL IMPLICATIONS:

The total financing amount for the new LED lighting systems total \$649,894.00, which will be amortized over five years. The first payment in the amount of \$143,269.00 is due on June 1, 2024. The City's obligations under the lease shall be subject to annual appropriation by the City Council. The City will make lease payments through Capital Project LT2302 – Athletic Field Lighting Replacement.

Clayton Holdings, LLC will be paid Interest at the annual rate of 4.88% to finance this lease/purchase transaction.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Resolution.

STAKEHOLDER PROCESS:

Not applicable to this Resolution.

ALTERNATIVES:

If the City Council declines to approve this Resolution, the City will not purchase the new LED sports field and court lighting systems required to maintain the community's expectations for quality and safe recreation experiences.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

None

RESOLUTION NO. 15610

A RESOLUTION OF THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, APPROVING LEASE/PURCHASE FINANCING WITH CLAYTON HOLDINGS, LLC, FOR SPORTS FIELD AND COURT LIGHTING SYSTEMS FROM MUSCO SPORTS LIGHTING, LLC, AND AUTHORIZING THE EXECUTION AND DELIVERY OF ALL DOCUMENTS REQUIRED THEREWITH BY THE MAYOR OR DIRECTOR OF PURCHASING, AND AUTHORIZING ALL OTHER ACTIONS NECESSARY FOR THE CONSUMMATION OF THE TRANSACTION CONTEMPLATED BY THIS RESOLUTION

WHEREAS, the City of Pueblo, a Municipal Corporation (hereinafter "City"), is a Colorado home-rule city duly organized and existing under and by Article XX of the Colorado Constitution and is authorized to create Enterprises which have the authority to purchase and lease personal property for municipal purposes for the benefit of the City's inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the City desires to purchase, acquire, and lease new LED sports lighting systems constituting personal property necessary for the purpose of promoting safe outdoor recreation experiences to the citizens of our community; and

WHEREAS, to acquire the new LED lighting systems, the City proposes to enter into a Lease/Purchase Agreement ("Agreement") with Clayton Holdings, LLC ("Lessor") and Escrow Agreement with the Escrow Agent in the form as approved by the City Attorney; and

WHEREAS, City Council deems it for the benefit of the City and for the efficient and effective administration thereof to enter into the Agreement for the purchase, acquisition, and leasing of the new LED lighting systems therein described on the terms and conditions as therein provided; and

WHEREAS, the funds made available under the Agreement will be applied to the acquisition of the equipment per the terms of such Agreement and Escrow Agreement.

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

City Council expressly authorizes the City Attorney to negotiate the form, terms, and provisions of the Agreement and Escrow Agreement with such insertions, omissions, and changes as shall be approved by the City Attorney, the execution of such documents by the Mayor, Director of Finance, and/or Purchasing Director, being conclusive evidence of such approval; and the Mayor is hereby authorized and directed to execute the Agreement and Escrow Agreement and to deliver the Agreement and Escrow Agreement and the City Clerk is authorized and directed to attest same and affix the seal of the City thereto.

SECTION 2.

City Staff is hereby authorized and directed to take any and all actions necessary or reasonably required by the parties to the Agreement and Escrow Agreement to carry out, give effect to and consummate the transactions contemplated thereby and to take any and all actions necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement and Escrow Agreement.

SECTION 3.

The Agreement and Escrow Agreement are expressly made subject to sufficient appropriations in each fiscal year after 2024. Nothing contained in this Resolution and the Agreement and Escrow Agreement, nor any other instrument, shall be construed to the City as incurring a pecuniary liability or charge upon the general credit of the City or against its taxing power, nor shall the breach of any agreement contained in this Resolution and the Agreement and Escrow Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the City or any charge upon its general credit or against its taxing power, except to the extent that the lease payments payable under the Agreement and Escrow Agreement are special limited obligations of the Lessee as provided in such agreements. Nothing in the Agreement and Escrow Agreement is intended, nor shall it be construed, to create any multiple-fiscal year direct or indirect debt or other financial obligation of the City.

SECTION 4.

The Purchasing Director and Director of Finance of the City are each hereby designated to act as authorized representatives of the City for purposes of the Agreement and Escrow Agreement until such time as the City Council shall designate any other or different authorized representative for purposes of said agreements.

SECTION 5.

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

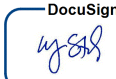
SECTION 6.

This Resolution shall become effective immediately upon final passage.

INTRODUCED: April 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: Mark Aliff
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



Sent via Email: Frank.Hill@CommerceBank.com

April 22, 2024

Ms. Naomi Hedden
Director of Purchasing
Pueblo, A Municipal Corporation
230 S. Mechanic Street
Pueblo, Colorado 81003

Re: Financing for Light Structure System Technology

Dear Ms. Hedden:

Please find the enclosed documentation for your review and completion. An instruction sheet has been included as a guide to assist you with the process. Once you have completed and returned the required documentation to Clayton Holdings, LLC the transaction can be funded. The documentation has been filled out according to the terms and amount shown on the formal proposal. If you have questions or comments please call.

Clayton Holdings, LLC is listed as Lessor in this State and Municipal Lease/Purchase Agreement. **For your convenience, we have listed the documentation that we require before closing:**

- ☐ *The **Lease** WITH ALL SCHEDULES EXECUTED CORRECTLY*
 - ☐ ***8038-G IRS Form to be forwarded to the IRS per the instruction letter***
 - ☐ *The **Escrow Agreement***
-

If you have any questions regarding the above documentation, please feel free to contact me.

Sincerely,

Nancy Mullen
Municipal Lease Administrator
Email: nancy.mullen@commercebank.com
Phone: 617-584-2868

Documentation Instructions

Please complete using **BLUE INK** and return all original documents via **FedEx or Certified Mail** to:
Commerce Bank c/o Beth Blumenthal
8000 Forsyth Blvd., Suite 1210, St. Louis, MO 63105
Call with any questions during completion

State and Municipal Lease/ Purchase Agreement

- ☐ An individual that is authorized by the Lessee should sign and date in the space where indicated.
- ☐ The signed lease should be dated by Lessee with a date that is on or after meeting date of approved ordinance/resolution.
- ☐ Review and verify the EIN number.

Schedule A – Description of the Equipment

- ☐ Add VINs and/or SNs, if applicable.
- ☐ Authorized individual should review location and description of equipment and sign and date the form where indicated.

Schedule C – Amortization/Payment Schedule

- ☐ Authorized individual should sign and date the form where indicated.

Schedule D – Opinion of Counsel

- ☐ The attached is a "Draft" form of the Opinion. This should be provided to your counsel along with a copy of the lease.
- ☐ Your Counsel should provide an original of this Opinion on their letterhead, signed and dated.
- ☐ The Date of the Opinion should be on or after the date the lease is signed by the Lessee.
- ☐ The subject line date reference should be the same date the lease was entered into as stated on page one of the Lease/Purchase Agreement.

Schedule E-1 - Resolution

- ☐ The Resolution should be signed by the authorized signatory.
- ☐ Secretary or Clerk of the Board should attest and sign where indicated.

Schedule E-2 – Incumbency and Authorization Certificate

- ☐ The Secretary or Clerk of the Board should complete the blank lines in the first paragraph and attest at the bottom of the form.
- ☐ In **Section A**, review and confirm authorized signers. This should include any persons who will be signing forms, including payment request forms for the Escrow account.
- ☐ Authorized signers should sign in the signatory column in **Section A**.
- ☐ In **Section B**, list all individuals authorized to confirm disbursement information. Include name, title, phone number and alternative phone number.
- ☐ Signer of this Certificate cannot be listed under **Section A** as authorized to execute the Agreements.

Schedule F – Essential Use/Source of Funds Letter

- ☐ Complete all blank lines in entirety.
- ☐ Authorized individual should sign and date the form where indicated.

Schedule G – Proof of Insurance

- ☐ Complete all blank lines of the insurance agent information.
- ☐ Authorized individual should sign and date the form where indicated.
- ☐ Contact your insurance provider for a certificate of insurance in accordance with Section of the Lease and naming *Clayton Holdings, LLC* as both co-loss payee and additional insured under the property damage, and as additional insured under the general liability policy
- ☐ Upon acceptance of the Equipment and upon each insurance renewal date, Lessee will deliver to Lessor a certificate evidencing such insurance.

Schedule H – Authorization for Preauthorized Payments (if utilizing this free service)

- ☐ Complete all blanks on the form.
- ☐ Include a voided check or deposit slip.
- ☐ Authorized individual should sign and date the form where indicated.

8038-G IRS Form and Questionnaire

- ☐ Verify Lessee's Federal Identification number in Part 1, box 2 of the 8038G form.
- ☐ Sign, date and type the name of the individual signing this document, unless already completed.
- ☐ Verify information on Questionnaire, review instructions, and sign and date where indicated.

Escrow Agreement

- ☐ Authorized individual should sign where indicated.

Escrow Agreement – Exhibit B – Form of Payment Request and Acceptance Certificate

- ☐ **Exhibit B** should be kept. Authorized individual should complete blank lines, sign, date and submit this form *when requesting disbursements* from the Escrow account.

Escrow Agreement – Exhibit C – Final Acceptance Certificate

- ☐ **Exhibit C** should be kept. Authorized individual should date, sign where indicated and submit this form *with the final disbursement request* of the remaining funds from the Escrow account.

W-9 Taxpayer Identification

- ☐ Verify Lessee information and Taxpayer ID number, and sign and date the form where indicated.



CLAYTON HOLDINGS, LLC

STATE & MUNICIPAL LEASE/PURCHASE AGREEMENT

Lease Number: 5000148-003

This State and Municipal Lease/Purchase Agreement (the "Lease") is made and entered into on this, the Twenty-Second day of April, 2024 by and between Clayton Holdings, LLC with offices at 8000 Forsyth Boulevard, Suite 1210, St. Louis, Missouri 63105 (together with its successors and assigns, herein called the "Lessor"), and Pueblo, A Municipal Corporation with its principal address at 230 S. Mechanic Street, Pueblo, Colorado 81003 (together with its permitted successors and assigns, herein called the "Lessee"), wherein it is agreed as follows:

1. **LEASE OF EQUIPMENT:** Lessee hereby requests Lessor to acquire the equipment described in Schedule A attached hereto and made a part hereof. Subject to the terms and conditions hereof, Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor the equipment described in Schedule A, with all replacements, repairs, additions and accessories incorporated therein or affixed thereto (herein collectively called the "Equipment").
2. **DELIVERY AND ACCEPTANCE:** Lessee agrees to order the Equipment on behalf of Lessor from the supplier of such Equipment. Lessor will not be liable for specific performance of this Lease or for damages if for any reason the supplier delays or fails to fill the order. Lessee will cause the Equipment to be delivered at the location specified in Schedule A (the "Equipment Location"). Lessee is solely responsible for the selection of the Equipment and the vendor from which the Equipment is purchased. Lessee will pay all transportation and other costs, if any, incurred in connection with the delivery and installation of the Equipment. Any delay in such delivery will not affect the validity of this Lease. To the extent funds are deposited with a bank or trust company in an escrow fund for the acquisition of the Equipment, such funds shall be disbursed as provided in the agreement pursuant to which such fund is established (the "Escrow Agreement"). Lessee will immediately accept the Equipment as soon as it has been delivered and is operational, or as soon as any manufacturer or vendor pre-acceptance test period has expired. In the event the Equipment is not accepted by Lessee within thirty (30) days from the date of its delivery, Lessor, at Lessor's sole option, will have the right to terminate this Lease. Lessee will evidence its acceptance of the Equipment by executing and delivering to Lessor a delivery and acceptance certificate in the form of Exhibit B or C, as applicable, to the Escrow Agreement (the "Acceptance Certificate"). Lessee hereby authorizes the Lessor to add to this Lease and to any other description of the Equipment the serial number of each item of Equipment, when available.
3. **TERM:** This Lease will become effective upon the execution hereof by Lessee and Lessor. Lessee's obligation to pay rent under this Lease will commence on the date that funds are advanced by Lessor to pay the vendor of the Equipment or are deposited with a bank or trust company in an escrow fund pursuant to the Escrow Agreement, if any (the "Start Date"), and will extend for an initial term through the end of Lessee's fiscal year containing the Start Date. The term of this Lease is subject to renewal on a year-to-year basis for the number of annual fiscal periods necessary to comprise the lease term as set forth in Schedule C attached hereto and made a part hereof (the "Lease Term"). At the end of the initial term and any renewal term, Lessee will be deemed to have exercised its option to renew this Lease for the next annual renewal term, unless Lessee has exercised its right to terminate the Lease pursuant to Section 8 below.
4. **RENT:** Lessee agrees to pay Lessor the rental payments for the Equipment as set forth in Schedule C (the "Rental Payments"). A portion of each Rental Payment is paid as and represents the payment of interest as set forth in Schedule C. The Rental Payments will be payable without notice or demand, at the office of Lessor (or such other place as Lessor may designate in writing, from time to time) and will commence on the Start Date. For clarity, Lessee hereby authorizes Lessor to update Schedule C with the Start Date and actual due dates for Rental Payments based upon the frequency of payments stated on Schedule C. Any notice, invoicing, purchase orders, quotations or other forms or procedures requested by Lessee in connection with payment will be fully explained and provided to Lessor sufficiently in advance of the payment due date for the completion thereof by Lessor prior to such payment date, but none of the foregoing will be a condition to Lessee's obligation to make any such payment. If Lessee fails to pay any Rental Payment or any other sums under this Lease within ten (10) days when the same becomes due, Lessee shall pay to Lessor (in addition to and not in lieu of other rights of Lessor) a late charge equal to the greater of five (5%) percent of such delinquent amount or Twenty-Five Dollars (\$25.00), but in any event not more than the maximum amount permitted by law. Such late charge shall be payable by Lessee upon demand by Lessor and shall be deemed rent hereunder. Lessee acknowledges and agrees that the late charge (i) does not constitute interest, (ii) is an estimate of the costs Lessor will incur as a result of the late payment and (iii) is reasonable in amount. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder will constitute a current expense of Lessee and will not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee. EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 8 HEREOF, LESSEE'S OBLIGATION TO MAKE RENTAL PAYMENTS SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS AND WILL NOT BE SUBJECT TO ANY SETOFF, DEFENSE, COUNTERCLAIM, ABATEMENT OR RECOUPMENT FOR ANY REASON WHATSOEVER.

Notwithstanding the foregoing, the interest portion of the Rental Payments on Schedule C will be adjusted, and Lessor will provide Lessee a revised Schedule C reflecting such adjustment in the event that it is determined that any of the interest portions of Rental Payments set forth in Schedule C may not be excluded from Lessor's gross income under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). Lessee agrees that the interest portion of the Rental Payments on Schedule C will be adjusted commencing with the first day of the next succeeding fiscal year of the Lessee, but only if this Lease is renewed for such fiscal year, and thereafter, so that Lessor will be in the same after-tax position that it would have been in had such payment been excluded from the gross income of Lessor under Section 103 of the Code.

5. **AUTHORITY AND AUTHORIZATION:** Lessee represents, warrants and covenants that (a) it will do or cause to be done all things necessary to preserve and keep in full force and effect (i) its existence, and (ii) subject to Section 8 hereof, this Lease; (b) it has complied with all bidding and budgeting requirements where necessary and by due notification has presented this Lease to Lessee's governing body for approval and adoption as a valid obligation on its part and that all requirements have been met and procedures have been followed to ensure the enforceability of this

Lease; (c) it has sufficient appropriations or other funds available to pay all amounts due hereunder for the current fiscal year period; (d) no event has occurred and no condition exists which, upon the execution of this Lease or with notice or the passage of time or both, would constitute a default under any debt, revenue or purchase obligation which it has issued or to which it is a party (the "Obligation") nor has it been in default under any Obligation at any time during the past five (5) years, and (e) no lease, rental agreement or contract for purchase, to which Lessee has been a party, at any time during the past five (5) years, has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal period.

- 6. REPRESENTATIONS, COVENANTS AND WARRANTIES REGARDING TAX-EXEMPT STATUS:** Lessee warrants and covenants that (i) it is a state, or a political subdivision thereof, within the meaning of Section 103 of the Code, and the related regulations and rulings thereunder; (ii) subject to Section 8 hereof, Lessee intends that its obligation under this Lease will constitute an enforceable obligation issued by or on behalf of a state, or political subdivision thereof, such that the interest portions of Rental Payments as shown in Schedule C, will not be includable in the gross income of Lessor for the purposes of federal income taxation; (iii) this Lease represents a valid deferred payment obligation of Lessee for the amount herein set forth; (iv) Lessee has the legal capacity to enter into this Lease and is not in contravention of any state, county, district, city or town statute, rule, regulation or other governmental provision; (v) during the Lease Term, the Equipment will not be used in a trade or business of any other person or entity; (vi) Lessee will complete and file on a timely basis, Internal Revenue Service form 8038G or 8038GC, as appropriate, in the manner set forth in Section 149(e) of the Code; and (vii) Lessee will not take any action or permit the omission of any action reasonably within its control which action or omission will cause the interest portion of any Rental Payment hereunder to be includable in gross income for federal income taxation purposes.

Lessee hereby designates the Lease as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Code. The aggregate face amount of all tax-exempt obligations (including the Lease, but excluding private activity bonds other than qualified 501(c)(3) bonds) issued or to be issued by Lessee and all subordinate entities thereof during the calendar year in which the Start Date occurs is not reasonably expected to exceed \$10,000,000. Lessee and all subordinate entities thereof will not issue in excess of \$10,000,000 of tax-exempt obligations (including the Lease, but excluding private activity bonds other than qualified 501(c)(3) bonds) during the calendar year in which the Start Date occurs, without first providing Lessor with an opinion of nationally recognized counsel in the area of tax-exempt municipal obligations acceptable to Lessor, that the designation of the Lease as a "qualified tax-exempt obligation" will not be adversely affected.

Lessee further represents as follows:

- (a) The estimated total costs of the Equipment will not be less than the total principal amount of the Rental Payments.
 - (b) The Equipment has been ordered or is expected to be ordered within six months of the effective date of this Lease, and the Equipment is expected to be delivered and installed, and the Vendor fully paid, within eighteen months of the effective date of this Lease.
 - (c) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Rental Payments, or (ii) that may be used solely to prevent a default in the payment of Rental Payments.
 - (d) The Equipment has not been, and is not expected to be, sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the final Rental Payment.
 - (e) To the best of Lessee's knowledge, information and belief, the above expectations are reasonable.
- 7. APPROPRIATIONS AND ESSENTIAL USE:** Lessee reasonably believes that sufficient funds can be obtained to make all Rental Payments during the Lease Term. The responsible financial officer of Lessee will do all things lawfully within his or her power to obtain funds from which the Rental Payments, including any Rental Payments required by Section 4 hereof, may be made, including making provisions for such payments, to the extent necessary, in each proposed annual budget submitted for approval in accordance with applicable procedures of Lessee. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds or to extend this Lease for any subsequent annual fiscal period is solely within the discretion of the then current governing body of Lessee. Lessee currently intends to make the Rental Payments for the full Lease Term if funds are legally available therefor, and in that regard Lessee represents that (a) the use of the Equipment is essential to its proper, efficient, and economic functioning or to the services that it provides to its citizens; (b) Lessee has an immediate need for and expects to make immediate use of substantially all the Equipment, which need is not temporary or expected to diminish in the foreseeable future; and (c) the Equipment will be used by the Lessee only for the purpose of performing one or more of its governmental or proprietary functions consistent with the permissible scope of its authority.
- 8. NONAPPROPRIATION OF FUNDS:** In the event insufficient funds are appropriated and budgeted to pay Rental Payments required by Section 4 hereof and any other amounts payable under this Lease, for any fiscal period in which the Rental Payments for the Equipment are due under this Lease, then, without penalty, liability or expense to Lessee, this Lease will thereafter terminate on the last day of the fiscal period for which appropriations were made, except as to (i) the portions of the Rental Payments herein agreed upon for which funds have been appropriated and budgeted or are otherwise available and (ii) Lessee's other obligations and liabilities under this Lease relating to, accruing or arising prior to such termination. Lessee will, not less than sixty (60) days prior to the end of such applicable fiscal period, in writing, notify Lessor of such occurrence, but failure to give such notice will not prevent such termination. In the event of such termination, Lessee agrees to immediately cease use of the Equipment and peaceably surrender possession of the Equipment to Lessor on the day of such termination, packed for shipment in accordance with manufacturer's specifications and eligible for manufacturer's maintenance, and freight prepaid and insured to any location in the continental United States designated by Lessor, all at Lessee's expense. Lessor may exercise all available legal and equitable rights and remedies in retaking possession of the Equipment. If Lessee fails to cease use and deliver possession of the Equipment to Lessor upon termination of this Lease under this section, the termination shall nevertheless be effective but Lessee shall be responsible for the payment of damages in an amount equal to (a) the portion of Rental Payments thereafter coming due that is attributable to the number of days after the termination during which Lessee fails to cease use and deliver possession of the Equipment and (b) any other loss suffered by Lessor as a result of Lessee's failure to deliver possession of the Equipment.
- 9. EXCLUSION OF WARRANTIES; LIMITATIONS OF LIABILITY; DISCLAIMER OF CONSEQUENTIAL DAMAGES:** LESSEE HAS SELECTED BOTH THE EQUIPMENT AND THE VENDOR(S) FROM WHOM LESSOR IS TO PURCHASE THE EQUIPMENT IN RELIANCE HEREON. LESSEE ACKNOWLEDGES AND AGREES THAT THE EQUIPMENT IS OF A SIZE, DESIGN AND CAPACITY SELECTED BY LESSEE, THAT LESSOR IS NOT A MANUFACTURER, VENDOR, DISTRIBUTOR OR LICENSOR OF SUCH EQUIPMENT, AND THAT LESSOR LEASES THE

EQUIPMENT AS IS AND HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, QUALITY, DURABILITY, DESIGN, OPERATION, FITNESS FOR USE, OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT WHATSOEVER OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF LESSEE, OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT THERETO INCLUDING ANY WARRANTIES OF TITLE OR AGAINST INFRINGEMENT OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR PRACTICE, ALL OF WHICH ARE SPECIFICALLY DISCLAIMED BY LESSOR AND IN NO EVENT SHALL LESSOR BE OBLIGATED OR LIABLE FOR ACTUAL, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF OR TO LESSEE OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO THE SALE, LEASE, USE, PERFORMANCE OR MAINTENANCE OF THE EQUIPMENT, INCLUDING INTERRUPTION OF SERVICE, LOSS OF DATA, LOSS OF REVENUE OR PROFIT, LOSS OF TIME OR BUSINESS, OR ANY SIMILAR LOSS, EVEN IF ANY SUCH PERSON IS ADVISED IN ADVANCE OF THE POSSIBILITY OR CERTAINTY OF SUCH DAMAGES AND EVEN IF LESSEE ASSERTS OR ESTABLISHES A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS LEASE.

Lessee acknowledges that neither the original vendor nor licensor of the Equipment (including the salespersons of any of them) is an agent of Lessor, nor are they authorized to waive or alter any terms of this Lease. Lessee hereby waives any claim (including any claim based on strict or absolute liability in tort) it might have against Lessor or any assignee of the Lessor for any loss, damage or expense caused by or with respect to the Equipment. Lessor hereby assigns to Lessee during the Lease Term, to the extent permitted by law and so long as no Event of Default has occurred pursuant to Section 20 below, all manufacturer's warranties, if any, that it may have with respect to the Equipment, and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties at Lessee's expense. Lessor authorizes Lessee, to the extent permitted by law, to enforce in its own name any warranty, representation or other claim enforceable against the manufacturer. Lessor assumes no responsibility for shipment, delivery, installation or maintenance, and all claims of Lessee with respect thereto, whether for delay, damage or otherwise, will be made against the manufacturer. Lessor, at its option, may provide in its purchase order that the manufacturer agrees that any of such claims may be made by Lessee directly against the manufacturer. The obligation of Lessee to pay the Rental Payments as defined in Section 4 will not be abated, impaired or reduced by reason of any claims of Lessee with respect to the Equipment, including but not limited to its condition, quality, workmanship, delivery, shipment, installation, defects or otherwise.

10. **TITLE TO THE EQUIPMENT.** The Equipment shall be acquired pursuant to a contract or purchase order issued by the City of Pueblo, A Municipal Corporation, CO, (the "City") which contract or purchase order shall provide that legal title to the Equipment acquired thereunder be vested in Lessor, subject to the beneficial interest of Lessee hereunder. Notwithstanding this method of acquisition, neither "The City" nor the Lessee shall be deemed to be the "Vendor" of the equipment under this Lease pursuant to the terms of such contract or purchase order. During the Lease Term, title to the Equipment and any and all additions, repairs, replacements or modifications thereto shall be in Lessor; provided, however, that in the event this Lease is terminated by reason of the occurrence of an event described in Sections 3, 20, or 21 hereof, title to the Equipment will be transferred to the Lessee. In the event that the provisions of Section 20 are availed of by Lessor, or in the case of an Event of Nonappropriation as set forth in Section 8 hereof, Lessee will surrender its interest in and possession of the Equipment to Lessor.
11. **PERSONAL PROPERTY:** Lessor and Lessee agree that the Equipment is, and will remain, personal property and will not be deemed to be affixed or attached to real property or any building thereon. Notwithstanding the foregoing, for purposes of providing notice to third parties, Lessee agrees that, upon Lessor's request, it will provide the legal description of all real property where any of the Equipment is or will be installed, and Lessee agrees that financing statements evidencing Lessor's security interest may be filed in the real property records. If requested by Lessor, Lessee will, at Lessee's expense, furnish to Lessor landlord or mortgagee waiver with respect to the Equipment.
12. **USE; REPAIRS:** Lessee will use the Equipment in a careful manner for the use contemplated by the manufacturer of the Equipment and will comply with all laws, ordinances, insurance policies and regulations relating to, and will pay all costs, claims, damages, fees and charges arising out of, its possession, use or maintenance. Lessee, at its sole costs and expense, will maintain the Equipment according to the manufacturer's recommended guidelines or the equivalent and meet any and all recertification requirements and will furnish proof of such maintenance, if requested by Lessor and will furnish all needed servicing and parts, which parts will become part of the Equipment. If the Equipment is such as is customarily covered by a maintenance agreement, Lessee will furnish Lessor with a maintenance agreement with a party satisfactory to Lessor.
13. **ALTERATIONS:** Lessee will not make any alterations, additions or improvements to the Equipment without Lessor's prior written consent, and any permitted alteration or attachment which cannot be readily removed without damaging the Equipment's originally intended function or value will become part of the Equipment.
14. **LOCATION; INSPECTION:** The Equipment will not be removed from, or if the Equipment consists of rolling stock, its permanent base will not be changed from the Equipment Location without Lessor's prior written consent, which consent will not be unreasonably withheld. Lessor will be entitled to enter upon the Equipment Location or elsewhere during reasonable business hours to inspect the Equipment or observe its use and operations.
15. **LIENS AND TAXES:** Lessee will keep the Equipment free and clear of all levies, liens and encumbrances except those created under this Lease. Lessee will pay, when due, all charges and taxes (federal, state and local) which may now or hereafter be imposed upon the ownership, leasing, rental, sale, purchase, possession or use of the Equipment, excluding however, all taxes on or measured by Lessor's income. If Lessee fails to pay said charges and taxes when due, Lessor will have the right, but will not be obligated, to pay said charges and taxes. If Lessor pays any charges or taxes for which Lessee is responsible or liable under this Lease, Lessee will, upon demand, reimburse Lessor therefor.
16. **RISK OF LOSS; DAMAGE; DESTRUCTION:** Lessee assumes all risk of loss of or damage to the Equipment from any cause whatsoever, and no such loss of or damage to the Equipment will relieve Lessee of the obligation to make the Rental Payments or to perform any other obligation under this Lease. In the event of damage to any item of Equipment, Lessee will immediately place the same in good repair (the proceeds of any insurance recovery will be applied to the cost of such repair). If Lessor determines that any item of Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee, at the option of Lessor, will (a) replace the same with like equipment in good repair; or (b) on the next Rental Payment date pay to Lessor (i) all amounts owed by Lessee under this Lease, including the Rental Payment due on such date, and (ii) an amount not less than the balance of the Rental Payments then remaining unpaid hereunder. In the event that Lessee is obligated to make such payment with respect to less than all of the Equipment, Lessor will provide Lessee with the pro rata amount of the Rental Payment and the balance of the Rental Payments then remaining unpaid hereunder, as applicable, to be made by Lessee with respect to the Equipment which has suffered the event of loss.

- 17. INSURANCE:** Lessee will, at its expense, maintain at all times during the Lease Term (a) fire and extended coverage, public liability and property damage insurance with respect to the Equipment in such amounts, covering such risks, and with such insurers as will be satisfactory to Lessor. In no event will the insurance limits be less than the greater of (i) an amount equal to the balance of the Rental Payments then remaining for the Lease Term or (ii) any minimum required by any co-insurance provisions of such insurance, (b) liability insurance that protects Lessor from liability in all events in form and amount satisfactory to Lessor, and (c) workers' compensation coverage as required by the laws of the state in which Lessee is located. Each insurance policy required by clause (b) of the preceding sentence will name Lessee as an insured and Lessor or its assigns as an additional insured and loss payee, as appropriate, and each insurance policy required by the preceding sentence will contain a clause requiring the insurer to give Lessor at least thirty (30) days prior written notice of any alteration in the terms of such policy or the cancellation thereof. The proceeds of any such policies will be payable to Lessee and Lessor or its assigns, as their interest may appear. Upon acceptance of the Equipment and upon each insurance renewal date, Lessee will deliver to Lessor a certificate evidencing such insurance. In the event of any loss, damage, injury or accident involving the Equipment, Lessee will promptly provide Lessor with written notice hereof and make available to Lessor all information and documentation relating thereto. Notwithstanding the foregoing, with Lessor's prior written consent, Lessee may self-insure against any and all risks for which insurance is required.
- 18. ADVANCES:** In the event Lessee fails to maintain the insurance required by this Lease or fails to keep the Equipment in good repair and operating condition, Lessor may (but will be under no obligation to) purchase the required policies of insurance and pay the premiums on the same and make such repairs or replacements as are necessary and pay the cost thereof. All amounts so advanced by Lessor will become additional rent payable by Lessee. Lessee agrees to pay such amounts with interest thereon from the date paid at the rate of 1.5% per month or the maximum permitted by law, whichever is less. Unless Lessee provides evidence of the insurance coverage required by this Lease, Lessor may purchase insurance at Lessee's expense to protect Lessor's interests hereunder. This insurance may, but need not, protect Lessee's interests. The coverage that Lessor may purchase may not pay any claim that Lessee may make or any claim that may be made against Lessee in connection with the Equipment. Lessee may later cancel any insurance purchased by Lessor, but only after providing evidence that Lessee has obtained insurance as required by this Lease. If Lessor purchases insurance for the Equipment, Lessee will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges Lessor may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance will be added as additional rent. The costs of the insurance may be more than the cost of insurance Lessee may be able to obtain on its own.
- 19. INDEMNIFICATION:** To the extent permitted by law, and solely from legally available funds, Lessee agrees to indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, proceedings, expenses, damages, liabilities or losses (including, but not limited to, attorneys' fees and court costs) arising in connection with the Equipment, including, but not limited to, its selection, purchase, delivery, possession, use, operation or return and the recovery of claims under insurance policies thereon.
- 20. EVENTS OF DEFAULT:** The Term "Event of Default" as used in this Lease, means the occurrence of any one or more of the following events: (a) Lessee fails to make any Rental Payment (or any other payment) as it becomes due in accordance with the terms of this Lease, and any such failure continues for ten (10) days after the date thereof; (b) Lessee fails to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure is not cured within ten (10) days after written notice thereof by Lessor; (c) the discovery by Lessor that any statement, representation or warranty made by Lessee in this Lease or in any document delivered by Lessee pursuant hereto or in connection herewith is false, misleading or erroneous in any material respect; (d) Lessee becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of Lessee or of all or substantial part of its assets, a petition for relief is filed by Lessee under federal bankruptcy, insolvency or similar laws, or a petition in a proceeding under any bankruptcy, insolvency or similar laws, is filed against Lessee and is not dismissed within thirty (30) days thereafter; (e) Lessee suffers an adverse material change in its financial condition or operations from the date hereof and, as a result, Lessor deems itself insecure; or (f) Lessee is in default under any other agreement executed at any time with Lessor or its affiliates, or under any other agreement or instrument by which it is bound.
- 21. REMEDIES:** Upon the occurrence of an Event of Default, Lessor shall have the right, at its sole option, to exercise any one or more of the following remedies: (a) by written notice to Lessee, declare an amount equal to all amounts then due under this Lease and all remaining Rental Payments which will become due during the then current fiscal year of Lessee to be immediately due and payable, whereupon the same will become immediately due and payable and such amounts shall thereafter bear interest at the rate of 1.5% per month or the maximum rate permitted by applicable law, whichever is less; (b) by written notice to Lessee, request Lessee to (and Lessee agrees that it will), at Lessee's expense, promptly cease use and return the Equipment to Lessor in the manner set forth in Section 8 hereof, or Lessor, at its option and with or without terminating the Lease Term, may enter upon the premises where the Equipment is located and take immediate possession of and remove the same, without liability to Lessor or its agents for such entry or for damage to property or otherwise; (c) sell or lease the Equipment or sublease it for the account of Lessee, holding Lessee liable for (i) all Rental Payments and other payments due to the effective date of such selling, leasing or subleasing, and (ii) for the difference between the net purchase price, rental and other amounts paid by the purchaser, lessee or sublessee pursuant to such sale, lease or sublease and the remaining amounts payable by the Lessee through the end of the then current fiscal year of Lessee hereunder; and (d) exercise any other right, remedy or privilege which may be available to it under applicable law, including the right to (i) proceed by appropriate court action to enforce the terms of this Lease, (ii) recover damages for the breach of this Lease, and (iii) rescind this Lease as to any or all of the Equipment. If Lessee fails to cease use and deliver possession of the Equipment upon the occurrence of an Event of Default, Lessee shall be responsible for the payment of damages in an amount equal to (a) the portion of Rental Payments that is attributable to the number of days after the termination during which Lessee fails to cease use and deliver possession of the Equipment and (b) any other loss suffered by Lessor as a result of Lessee's failure to cease use and deliver possession of the Equipment.
- In addition, Lessee will remain liable for all covenants and indemnities under this Lease and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.
- 22. EARLY PURCHASE OPTION; PREPAYMENT:** Lessee may, upon sixty (60) days prior written notice to Lessor, and provided Lessee has fully paid and performed all other obligations hereunder and provided no Event of Default has occurred and is continuing, pay to Lessor on any regularly scheduled Rental Payment date the applicable amount set forth on Schedule C attached hereto, whereupon title to the Equipment will become unconditionally vested in Lessee, and Lessor will transfer any and all of its right, title and interest in the Equipment to Lessee as is, where is, without warranty, express or implied, except that Lessor will warrant to Lessee that the Equipment is free and clear of any liens created by Lessor.

Upon delivery by Lessee of a final acceptance certificate, any remaining monies in any escrow fund established under the Escrow Agreement shall be paid to Lessor, for credit, first, to the next Rental Payment due, and, second, to the prepayment of the principal portion of future Rental Payments hereunder in the manner directed by Lessor, in its sole discretion, unless Lessor directs that payment of such amount be made in such other manner directed by Lessor that, in the opinion of nationally recognized counsel in the area of tax-exempt municipal obligations satisfactory to Lessor, will not adversely affect the exclusion of the interest portions of Rental Payments from gross income for federal income tax purposes. If any amount is applied against the outstanding principal components of Rental Payments, Schedule C attached hereto will be revised accordingly.

23. DETERMINATION OF FAIR PURCHASE PRICE: Lessee and Lessor hereby agree and determine that the Rental Payments payable during the Lease Term represent the fair value of the use of the Equipment and that the amount required to exercise Lessee's option to purchase the Equipment pursuant to Section 22 represents the fair purchase price of the Equipment. Lessee hereby determines that the Rental Payments do not exceed a reasonable amount so as to place Lessee under a practical economic compulsion to renew this Lease or to exercise its option to purchase the Equipment. In making such determinations, Lessee and Lessor have given consideration to (a) the costs of the Equipment, (b) the uses and purposes for which the Equipment will be employed by Lessee, (c) the benefit to Lessee by reason of the acquisition and installation of the Equipment and the use of the Equipment pursuant to the terms and provisions of this Lease, and (d) Lessee's option to purchase the Equipment. Lessee hereby determines and declares that this Lease will result in equipment of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition and installation of the Equipment were performed by Lessee other than pursuant to this Lease. Lessee hereby determines and declares that the Lease Term does not exceed the useful life of the Equipment.

24. ASSIGNMENT: Except as expressly provided herein, Lessee will not (a) assign, transfer, pledge, hypothecate or grant any security interest in, or otherwise dispose of, this Lease or the Equipment or any interest in this Lease or the Equipment or (b) sublet or lend the Equipment or permit the Equipment to be used by anyone other than Lessee or Lessee's employees, unless Lessee obtains the prior written consent of Lessor and an opinion of nationally recognized counsel in the area of tax-exempt municipal obligations satisfactory to Lessor that such action will not adversely affect the exclusion of the interest portions of the Rental Payments from gross income for federal income tax purposes.

Lessor, without the consent of Lessee, may assign all or any portion or portions of its right, title and interest in and to this Lease, the Equipment and any other documents executed with respect to this Lease, and/or grant or assign all or any portion or portions of its security interest in this Lease and the Equipment, in whole or in part to various assignees, their agents or trustees (each and any one hereinafter referred to as an "Assignee"). Any such assignment to an Assignee may provide that the Lessor or the Assignee will act as a collection and paying agent for owners of certificates of participation in this Lease, or may provide that a third-party trustee or agent will act as collection and paying agent for any Assignee, provided that any such trustee or agent will maintain registration books as a register of all persons who are owners of certificates of participation or other interest in Rental Payments and Lessee receives written notification of the name and address of the trustee or agent and a copy of the pooling and fractionalization agency or trustee agreement, if any. Any such Assignee will have all of the assigned rights of Lessor under this Lease. Subject to the foregoing, this Lease will inure to the benefit of and will be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto. Any assignment or reassignment of any of Lessor's right, title or interest in this Lease or the Equipment will be effective upon receipt by Lessee of a duplicate original of the counterpart document by which the assignment or reassignment is made, disclosing the name and address of each such Assignee and, where applicable, to whom further payments hereunder should be made. During the Lease Term, Lessee covenants that it will keep a complete and accurate record of all assignments in form necessary to comply with Section 149(a) of the Code and the regulations, proposed or existing, from time to time promulgated thereunder. Lessee agrees to acknowledge in writing any assignments if so required.

Lessee agrees that, upon notice of assignment, if so instructed it will pay directly to the Assignee, or its trustee or agent without abatement, deduction or setoff all amounts which become due hereunder. Lessee further agrees that it will not assert against any Assignee, or its trustee or agent, any defense, claim, counterclaim or setoff Lessee may have against Lessor.

25. FINANCIAL STATEMENTS: Each year during the term of this Lease, Lessee hereby agrees to deliver to Lessor a copy of: (i) annual audited financial statements within one hundred twenty (120) days of Lessee's fiscal year-end; and (ii) within a reasonable period of time, any other financial information Lessor requests from time to time.

26. NATURE OF AGREEMENT: Lessor and Lessee agree that upon the due and punctual payment and performance of the installments of Rental Payments and other amounts and obligations under this Lease, title to the Equipment will vest permanently in Lessee as provided in this Lease, free and clear of any interest, lien or security of Lessor therein.

27. AMENDMENTS: This Lease may be amended or any of its terms modified in any manner by written agreement of Lessee and Lessor. Any waiver of any provision of this Lease or of any right or remedy hereunder must be affirmatively and expressly made in writing and will not be implied from inaction, course of dealing or otherwise.

28. NOTICES: All notices to be given under this Lease must be made in writing and mailed by certified mail to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notice is effective upon receipt.

29. SECTION HEADINGS: All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

30. GOVERNING LAW: This Lease will be governed by the provisions hereof and by the laws of the State where Lessee is located.

31. FURTHER ASSURANCES: Lessee will deliver to Lessor (i) an opinion of counsel in substantially the form of Schedule D attached hereto or as Lessor may otherwise request; and (ii) if applicable, a certificate of a duly authorized official as to designation as a qualified tax-exempt obligation. Moreover, Lessee will execute or provide, as requested by Lessor, any documents and information that are reasonably necessary with respect to the transaction contemplated by this Lease.

32. ENTIRE AGREEMENT: This Lease, together with the Schedules attached hereto and made a part hereof and other attachments hereto and other documents or instruments executed by Lessee and Lessor in connection herewith, constitute the entire agreement between the parties with respect to the lease of the Equipment, and this Lease will not be modified, amended, altered or changed except with the written consent of Lessee or Lessor.

- 33. SEVERABILITY:** Any provision of this Lease found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Lease.
- 34. WAIVER:** The waiver by Lessor of any breach by Lessee of any term, covenant or condition, hereof will not operate as a waiver of any subsequent breach hereof.
- 35. ELECTRONIC TRANSACTIONS.** The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.
- 36. ROLE OF LESSOR:** Lessor has not acted and will not act as a fiduciary for Lessee or as Lessee's agent or municipal advisor. Lessor has not and will not provide financial, legal, tax, accounting or other advice to Lessee or to any financial advisor or placement agent engaged by Lessee with respect to this Lease. Lessee, its financial advisor, placement agent or municipal advisor, if any, shall each seek and obtain its own financial, legal, tax, accounting and other advice with respect to this Lease from its own advisors (including as it relates to structure, timing, terms and similar matters).

ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT, ARE NOT ENFORCEABLE. TO PROTECT YOU (LESSEE(S) AND US (LESSOR) FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT.

BY SIGNING BELOW, YOU AND WE AGREE THAT THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN US.

<i>Lessor: <u>Clayton Holdings, LLC</u></i> <i>Authorized Signature:</i> _____ <i>Printed Name:</i> _____ <i>Title:</i> _____ <i>Date:</i> _____	<i>Lessee: <u>Pueblo, A Municipal Corporation</u></i> <i>Authorized Signature:</i> _____ <i>Printed Name:</i> _____ <i>Title:</i> _____ <i>Date:</i> _____ <i>EIN: <u>84-6000615</u></i>
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**SCHEDULE A TO
STATE & MUNICIPAL LEASE/PURCHASE AGREEMENT
Lease No. 5000148-003**

Location of Equipment	
Street: City Park Softball Fields, 800 Goodnight Ave. City: Pueblo State: CO Zip Code: 81005	
Description of Equipment Musco Sports Lighting, LLC Light-Structure System with Total Light Control – TLC for LED technology Guaranteed light levels for 30 Footcandles on the infield and 20 footcandles on the outfield and all accessions thereto.	Equipment Cost \$510,835.00

Location of Equipment	
Street: Mineral Palace Park Pickleball Courts, 151 E. 19th Street City: Pueblo State: CO Zip Code: 81003	
Description of Equipment Musco Sports Lighting, LLC Light-Structure System with Total Light Control – TLC for LED technology Guaranteed light levels for Pickleball 30 Footcandles and 2:1 uniformity and all accessions thereto.	Equipment Cost \$139,059.00

<u>Total</u>	<u>\$649,894.00</u>
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Lessee hereby certifies that the description of the property set forth above constitutes a complete and accurate description of all Equipment as subject to in the Lease.

<i>Lessee:</i> <u>Pueblo, A Municipal Corporation</u> <i>Authorized Signature:</i> _____ <i>Printed Name:</i> _____ <i>Title:</i> _____ <i>Date:</i> _____

PURCHASE AGREEMENT

THIS AGREEMENT entered this 22nd day of April 2024 by and between the City of Pueblo, a Colorado Municipal Corporation (hereinafter referred to as “City”), and Musco Sports Lighting, LLC, a Colorado Corporation (hereinafter referred to as “Company”).

WHEREAS, the equipment referenced herein is being purchased through a national cooperative purchasing agreement with Sourcewell Master Project: 199030, Contract Number: 071619-MSL, and Musco Sports Lighting.

NOW THEREFORE, the Parties hereby agree to the following terms and conditions:

1. In consideration of the payment of the fixed purchase price for the lighting equipment for the City Park Ballfields 3 and 4 and the Mineral Palace Pickleball Courts as provided herein, Company agrees to furnish and deliver to City, complete in every aspect, the equipment listed in the equipment schedule attached hereto as Exhibit A (hereinafter “Equipment”), in accordance and fully complying with and subject to the terms, conditions and requirements set forth in this Purchase Agreement.

2. Company warrants that the Equipment is free from any and all defects, is fit for its intended purpose and complies with all industry standards. In addition, Company represents and warrants that the Equipment meets and complies in all material respects with the Quote attached hereto as Exhibit B and incorporated herein by this reference (the “Quote”). In the event of any conflict between said Quote and the terms of this instrument, this instrument shall control; in the event of any conflict between the Quote and any product literature of Company, or any custom or usage, or standards of any trade association or group relating to the Equipment purchased hereinafter, this instrument and the Quote shall control.

3. (a) The Equipment shall be delivered by Company, at Company’s expense, to such place within the City as shall be designated by the City’s Director of Purchasing and/or Director of Parks and Recreation, within the period between the Early Delivery Date and Deadline as set forth below:

<u>Items</u>	<u>Early Delivery Date</u>	<u>Deadline (outside Delivery Date)</u>
See Exhibit A attached	8 weeks after receiving Purchase Order	12 weeks after receiving Purchase Order

The delivery deadline for any item shall only be extended by the City for delay in delivery caused by (A) unavailability of materials due to war or national emergency, (B) unavailability of transportation for the Equipment to Pueblo, Colorado caused by strike, (C) nuclear detonation or (D) catastrophic acts of God affecting the availability of materials or labor critical to the timely manufacture and the delivery of the Equipment.

(b) Time is of the essence with respect to delivery of the Equipment under this Purchase Agreement.

(c) Risk of loss shall be upon Company until delivery of items to the designated Pueblo location and acceptance of same by the City. Acceptance shall be made by the City only if the items conform to this Purchase Agreement and the Quote, and satisfactorily pass the Performance Test and Requirements set forth in the Quote.

4. A competent representative of Company shall, upon City's request, provide necessary instruction to City's employees as to the operation and use of the Equipment, in Pueblo, Colorado, and at no additional charge to the City.

5. Payment to Company shall be made at the following time and in the following manner: In one lump sum payable upon delivery of Equipment or the funding of the Escrow Account through a Lease Purchase Agreement established with the City of Pueblo and an affiliated leasing company ("Lessor"), whichever occurs later. This Purchase Agreement is made expressly contingent upon City entering into the Lease Purchase Agreement with Lessor; in the event the Lease Purchase Agreement fails to close or proceeds are not made available for the purchase of the Equipment on or before April 30, 2024, this Purchase Agreement shall be deemed terminated and of no effect, and both parties shall be released from all obligations hereunder.

6. Company shall pay for all royalties and licensing of patents for any patented material or product used by Company or incorporated into the equipment purchased under this Purchase Agreement. Company shall also indemnify, defend, and hold City harmless against any and all claims that the Equipment, or any part or portion thereof, infringe upon any patent. City shall: (a) Promptly notify Company of any claim for which indemnification may be sought, (b) cooperate fully in the defense of such claim provided that such cooperation shall not require the incurring of any expense on the part of City, and (c) permit Company to settle or compromise such claim on terms and conditions which, in good faith, it determines to be appropriate; provided, however, that any settlement shall not result in any cost or expense to City nor result in the City being deprived of the use of the equipment reasonably comparable to the infringing equipment.

7. This Purchase Agreement and the rights, title and interests of the parties therein, shall not be assigned or transferred by either party, except upon prior written consent of the other party; provided, however, that Company herein provides and grants such consent to City assigning and transferring this Purchase Agreement and its rights hereunder, or a portion thereof, to any third party leasing or financing source with whom the City agrees, on City's behalf, to provide payment to Company of amounts owed or to be owed by City to Company hereunder, or otherwise relating to City's leasing or financing of the equipment contemplated hereby, and Company hereby agrees to execute all documents reasonably necessary to effect such agreement. In the event of any such assignment by City, City may also assign Company's Performance Bond (if any required).

8. This Purchase Agreement, including the warranties required by the foregoing, constitute the entire agreement between the parties, and there are no representations, conditions, or collateral agreements, expressed or implied, with respect to this Purchase Agreement other than as contained herein, and this Purchase Agreement shall supersede all previous communications, representations, or agreements, either written or oral, between the parties to this Purchase Agreement. This Purchase Agreement may not be modified or changed in any way except by written agreement signed by the persons authorized to sign agreements on behalf of Company and City.

9. This Purchase Agreement shall be governed by the laws of the State of Colorado and shall be construed in accordance therewith. The parties agree that venue for all actions or causes of action relating to or arising from this Purchase Agreement, or the equipment purchased hereunder, shall be in Pueblo County, Colorado. All such actions filed in the District Court, County of Pueblo, State of Colorado, and the parties submit to the jurisdiction of that Court. The parties to this Purchase Agreement hereby waive their rights to a jury trial in the event of any litigation.

(Signatures follow on next page)

Musco Sports Lighting, LLC
A Colorado Corporation

By:

Name: _____

Title: _____

City of Pueblo, a Colorado Municipal Corporation

Naomi Hedden, Director of Purchasing

Balance of Appropriation Exists and
Funds are Available in Escrow Account

Director of Finance

Approved as to form:

City Attorney

EXHIBIT A
EQUIPMENT SCHEDULE

City Park BallFields-30/20 footcandle..... \$510,835
(Field 4:200'/249'/200'r, Field 3: 249'/245'/246'r, Dog Park:180'x100')

Pickleball Courts 1-8-30 footcandles\$139,059
(Courts 1-8: 136' x143' includes future fixture accommodation on 2 poles')

Project Total \$649,894

EXHIBIT B
QUOTES

(Attached to this Page)

Date: 2/2024
To: City of Pueblo

Project: City Park Ballfields
Pueblo, CO
Ref: 188076

Sourcewell

Master Project: 199030, Contract Number: 071619-MSL, Expiration: 08/27/2023

Category: Sports lighting with related supplies and services

All purchase orders should note the following:
Sourcewell purchase – contract number: 071619-MSL

Quotation Price – Materials Delivered to Job Site and Installation

City Park BallFields-30/20 footcandle.....\$510,835

(Field 4:200'/249'/200'r, Field 3: 249'/245'/246'r, Dog Park:180'x100')

Sales tax, bonding, and unloading of the equipment are not included.
Pricing furnished is effective for 60 days unless otherwise noted and is considered confidential.

Light-Structure System™ with Total Light Control – TLC for LED™ technology

Guaranteed Lighting Performance

Guaranteed light levels for 30 Footcandles on the infield and 20 footcandles on the outfield

System Description

- Pre-cast concrete bases with integrated lightning grounding
- Galvanized steel poles
- Factory wired and tested remote electrical component enclosures
- Pole length, factory assembled wire harnesses
- Factory wired poletop luminaire assemblies
- Factory aimed and assembled luminaires, including BallTracker® luminaires
- Auxiliary mounting brackets
- UL Listed assemblies

Environmental Light Control

- Spill light minimized
- Off-site glare light minimized

Control Systems and Services

- Control-Link® control and monitoring system to provide remote on/off and dimming (high/medium/low) control and performance monitoring with 24/7 customer support

Installation Services Provided



[See below scope of work]

Payment Terms

Musco's Credit Department will provide payment terms.

Email or fax a copy of the Purchase Order to Musco Sports Lighting, LLC:

Musco Sports Lighting, LLC

Fax: 800-374-6402

Email: musco.contracts@musco.com

All purchase orders should note the following:

Sourcewell purchase – contract number: 071619-MSL

Delivery Timing

8 - 12 weeks for delivery of materials to the job site from the time of order, submittal approval, and confirmation of order details including voltage, phase, and pole locations.

Notes

Quote is based on:

- Shipment of entire project together to one location.
- 480 Volt, 3 Phase electrical system requirement.
- Structural code and wind speed = 2021 IBC, 115 mi/h, Exposure C.
- Owner is responsible for getting electrical power to the site, coordination with the utility, and any power company fees, if required.
- Pricing assumes no relocation of existing distribution service.

Thank you for considering Musco for your lighting needs. Please contact me with any questions or if you need additional details.

Stephen Baker

Sales Representative

Musco Sports Lighting, LLC

Phone: 720-614-1115

E-mail: stephen.baker@musco.com



Date: 2/2024
To: City of Pueblo

Project: Mineral Palace Park Pickleball Courts
Pueblo, CO
Ref: 217525

Sourcewell

Master Project: 199030, Contract Number: 071619-MSL, Expiration: 08/27/2023
Category: Sports lighting with related supplies and services

All purchase orders should note the following:
Sourcewell purchase – contract number: 071619-MSL

Quotation Price – Materials Delivered to Job Site and Installation

Pickleball Courts 1-8-30 footcandles\$139,059
(Courts 1-8: 136' x143' includes future fixture accommodation on 2 poles')

Sales tax, bonding, and unloading of the equipment are not included.
Pricing furnished is effective for 60 days unless otherwise noted and is considered confidential.

Light-Structure System™ with Total Light Control – TLC for LED™ technology

Guaranteed Lighting Performance

Guaranteed light levels for Pickleball 30 Footcandles and 2:1 uniformity

System Description

- Pre-cast concrete bases with integrated lightning grounding
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- Factory wired and tested remote electrical component enclosures
- Pole length, factory assembled wire harnesses
- Factory wired poletop luminaire assemblies
- Factory aimed and assembled luminaires
- Auxiliary mounting brackets
- UL Listed assemblies

Environmental Light Control

- Spill light minimized
- Off-site glare light minimized

Control Systems and Services

- Control-Link® control and monitoring system to provide remote on/off and dimming (high/medium/low) control and performance monitoring with 24/7 customer support



Installation Services Provided

[See below scope of work]

Payment Terms

Musco's Credit Department will provide payment terms.

Email or fax a copy of the Purchase Order to Musco Sports Lighting, LLC:

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Fax: 800-374-6402

Email: musco.contracts@musco.com

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Notes

Quote is based on:

- Shipment of entire project together to one location.
- 480 Volt, 3 Phase electrical system requirement.
- Structural code and wind speed = 2021 IBC, 115mi/h, Exposure C.
- Owner is responsible for getting electrical power to the site, coordination with the utility, and any power company fees, if required.
- Pricing assumes no relocation of existing distribution service.

Thank you for considering Musco for your lighting needs. Please contact me with any questions or if you need additional details.

Stephen Baker

Sales Representative

Musco Sports Lighting, LLC

Phone: 720-614-1115

E-mail: stephen.baker@musco.com



**SCHEDULE B TO
STATE & MUNICIPAL LEASE/PURCHASE AGREEMENT
Lease No. 5000148-003
DELIVERY AND ACCEPTANCE CERTIFICATE**

See Exhibits B and C to the Escrow Agreement.

SCHEDULE C PAYMENT SCHEDULE

Lessee: Pueblo, A Municipal Corporation

Lessor: Clayton Holdings, LLC

Lease Number: 5000148-003

Capital Cost of Equipment (Principal Portion of Rental Payments): \$649,894.00

Start Date: April 26, 2024

Subject to Section 8 of the Lease, Rental Payments are due on the dates and in the amounts shown below:

Rental Payment Date	Payment Amount	Amount Credited to Interest	Amount Credited to Capital Cost	Outstanding Principal Balance
6/1/2024	\$143,346.35	\$3,171.48	\$140,174.87	\$509,719.13
6/1/2025	\$143,346.35	\$24,874.29	\$118,472.06	\$391,247.07
6/1/2026	\$143,346.35	\$19,092.86	\$124,253.49	\$266,993.58
6/1/2027	\$143,346.35	\$13,029.29	\$130,317.06	\$136,676.52
6/1/2028	\$143,346.35	\$6,669.83	\$136,676.52	\$0.00
TOTALS:	\$716,731.75	\$66,837.75	\$649,894.00	

In the event Lessee desires to prepay this Lease, it may do so in whole, but not in part, at a purchase price equal to (a) the then current outstanding principal balance shown above; plus (b) a prepayment premium calculated as a percentage of the then current outstanding principal balance, in the following amount: 3%, with respect to any prepayment during the first full year of the Lease Term; 2%, with respect to any prepayment during the second full year of the Lease Term; and 1%, with respect to any prepayment during the third full year of the Lease Term and thereafter; plus (c) unpaid interest accrued on the outstanding principal balance to the prepayment date; and plus (d) all other amounts then payable under this Lease. There is no prepayment penalty if Lessee is using funds other than proceeds of a grant or an actual or anticipated refinancing.

Lessee: Pueblo, A Municipal Corporation

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____



One City Hall Place, Third Floor
Pueblo, Colorado 81003

DEPARTMENT OF LAW

Telephone: (719)562-3899
Fax No. (719)562-3889

April 22, 2024

Clayton Holdings, LLC
8000 Forsyth Boulevard, Suite 510
St. Louis, Missouri 63105

Re: Lease/Purchase Agreement No. 5000148-003 dated April 22, 2024 between Clayton Holdings, LLC, and the City of Pueblo

Ladies and Gentleman:

I have represented the City of Pueblo, Colorado ("Lessee"), in connection with Lessee's authorization, execution, and delivery of the following:

- (1) A Lease/Purchase Agreement dated as of April 22, 2024 (the "Lease"), between Lessee and Clayton Holdings, LLC ("Lessor"); and
- (2) An Escrow Agreement dated as of April 22, 2024 (the "Escrow Agreement"), by and between Lessee, Lessor, and UMB Bank, N.A.

In connection with these agreements, I have reviewed (a) the Constitution of the State of Colorado and other applicable law; (b) certain proceedings taken by Lessee, include the Resolution duly adopted by Lessee, pertaining to the authorization of the above documents and related transactions; (c) executed copies of the Lease Agreement and Escrow Agreement; and (d) such other opinions, documents, information, and matters of law as I have deemed relevant in order to render this opinion.

Based upon the foregoing, it is my opinion that:

1. Lessee is a public body corporate and politic, duly organized, and existing under the laws of the State and has a substantial amount of one or more of the following sovereign powers: (a) power to tax, (b) the power of eminent domain, and (c) police power.
2. Lessee has the requisite power and authority to purchase the Equipment and to execute and deliver the Lease and the Escrow Agreement and to perform its obligations under the Lease, and the Escrow Agreement and the execution, delivery and compliance with the provisions of the Lease and the Escrow Agreement will not conflict with or result in the breach of any of the provisions of, or constitute a default under any indenture or other agreement or instrument to which Lessee is a party, or by which it or its property is bound.
3. The Lease, the Escrow Agreement and the other documents either attached thereto or required therein have been duly authorized approved and executed by and on behalf of Lessee, and the Lease is a valid and binding obligation of Lessee enforceable in accordance with its terms. The enforceability of the City's obligations with respect to the Agreements is subject to the provisions of bankruptcy, insolvency, reorganization, moratorium, and similar laws affecting the enforcement of creditors' rights. The enforceability of such obligations is also subject to usual equity principles, which may limit the specific enforcement of certain remedies.
4. The authorization, approval, and execution of the Lease, the Escrow Agreement, and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws, and all other applicable state and federal laws.
5. To the best of my knowledge, there is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Lease, the Escrow Agreement or the security interest of Lessor or its assigns, as the case may be, in the Equipment.

Furthermore, I confirm that the name of the Lessee as stated in the Lease, as City of Pueblo, a Colorado municipal corporation, is the exact legal name of the lessee for all purposes contemplated herein. All capitalized terms herein shall have

the same meaning as in the Lease. Lessor, its successors and assigns and any counsel rendering an opinion on the tax-exempt status of the interest portions of Rental Payments are entitled to rely on this opinion.

Very truly yours,

Carla L. Sikes
City Attorney

**SCHEDULE E-1 TO
STATE & MUNICIPAL LEASE/PURCHASE AGREEMENT
Lease No. 5000148-003**

WHEREAS, Pueblo, A Municipal Corporation (the "Lessee") is a political subdivision duly organized under the constitution and laws of the State where Lessee is located;

WHEREAS, it is necessary and desirable and in the best interest of the Lessee, as lessee, to enter into a State & Municipal Lease/Purchase Agreement (the "Lease") with Clayton Holdings, LLC, as lessor (the "Lessor"), for the purposes described therein, including the leasing of the Equipment; and

WHEREAS, the Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current fiscal year to make the Rental Payments scheduled to come due during the current fiscal year and to meet its other obligations, and such funds have not been expended for other purposes

NOW, THEREFORE, BE IT RESOLVED, BY THE GOVERNING BODY OF PUEBLO, A MUNICIPAL CORPORATION, AS FOLLOWS:

Section 1. The Lease and the Escrow Agreement, in substantially the same form as presented to this meeting, and the terms and performance thereof are hereby approved, and the President of City Council of the Lessee is hereby authorized to execute and deliver the Lease and the Escrow Agreement, on behalf of the Lessee, with such changes therein as shall be approved by such officer, such approval to be conclusively evidenced by such officer's execution thereof.

Section 2. The Lessee shall, and the officers, agents and employees of the Lessee are hereby authorized and directed to take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution, and to carry out, comply with and perform the duties of the Lessee with respect to the Lease and the Escrow Agreement.

Section 3. Lessee hereby designates the Lease as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Internal Revenue Code. The aggregate face amount of all tax-exempt obligations (including the Lease, but excluding private activity bonds other than qualified 501(c)(3) bonds) issued or to be issued by Lessee and all subordinate entities thereof during the current calendar year is not reasonably expected to exceed \$10,000,000. Lessee and all subordinate entities thereof will not issue in excess of \$10,000,000 of tax-exempt obligations (including the Lease, but excluding private activity bonds other than qualified 501(c)(3) bonds) during the current calendar year without first providing Lessor with an opinion of nationally recognized counsel in the area of tax-exempt municipal obligations acceptable to Lessor, that the designation of the Lease as a "qualified tax-exempt obligation" will not be adversely affected.

Section 4. Moneys sufficient to pay all Rental Payments required to be paid under the Lease during Lessee's current fiscal year are hereby appropriated to such payment, and such moneys will be applied in payment of all Rental Payments due and payable during the current fiscal year.

Section 5. This Resolution shall take effect and be in full force immediately after its adoption by the governing body of the Lessee.

PASSED AND ADOPTED by the governing body of Pueblo, A Municipal Corporation this ____ day of _____, 2024.

ATTEST:

Pueblo, A Municipal Corporation

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

**SCHEDULE E-2 TO
STATE & MUNICIPAL LEASE/PURCHASE AGREEMENT
Lease No. 5000148-003**

INCUMBENCY AND AUTHORIZATION CERTIFICATE

The undersigned, a duly elected or appointed and acting _____ of Pueblo, A Municipal Corporation ("Lessee") certifies as follows:

A. **Authorized Signers.** The following listed persons are duly elected or appointed and acting officials of Lessee (the "Officials") in the capacity set forth opposite their respective names below, and the signature of each such Official appearing below is the true and genuine signature of that Official. By order of Lessee's governing body, the Officials identified below have been duly authorized, on behalf of Lessee, to negotiate, execute and deliver the Equipment Lease/Purchase Agreement dated as of April 22, 2024, by and between Lessee and Clayton Holdings, LLC ("Lessor"), the Escrow Agreement dated as of April 22, 2024 among Lessor, Lessee and UMB Bank, N.A., as Escrow Agent (the "Escrow Agreement"), and all documents related thereto and delivered in connection therewith (collectively, the "Agreements").

Name of Official	Title	Signature
Mark Aliff	President of City Council	
Heather Graham	Mayor	
Naomi Hedden	Purchasing Director	
Alexandra Romero	Finance Director	

B. **Call-Back Verification.** Lessor may, but is not required, to call back any one of the below-named employees or officials of Lessee prior to approving the disbursement of any funds from the Acquisition Fund established under the Escrow Agreement to verify the request for disbursement, including but not limited to amount, payee, address, ABA and account numbers of the payee or Lessee.

Name	Title	Phone Number
Alexandra Romero	Finance Director	719-553-2656
Naomi Hedden	Purchasing Director	719-553-2343

Dated: _____

By: _____

Name: _____

Title: _____

(The signer of this Certificate cannot be listed under Paragraph A above as authorized to execute the Agreements.)

SCHEDULE F
STATE & MUNICIPAL LEASE/PURCHASE AGREEMENT
Lease No. 5000148-003

ESSENTIAL USE/SOURCE OF FUNDS LETTER

April 22, 2024

Clayton Holdings, LLC
8000 Forsyth Boulevard, Suite 1210
St. Louis, Missouri 63105

Re: State and Municipal Lease/Purchase Agreement No. 5000148-003, dated the Twenty-Second day of April, 2024 (the "Lease"), between Clayton Holdings, LLC ("Lessor") and Pueblo, A Municipal Corporation ("Lessee")

Ladies and Gentlemen:

This confirms and affirms that the Equipment described in the Lease is essential to the function of the undersigned or to the service we provide to our citizens.

Further, we have an immediate need for, and expect to make immediate use of, substantially all such Equipment, which need is not temporary or expected to diminish in the foreseeable future. Such Equipment will be used by us only for the purpose of performing one or more of our governmental or proprietary functions consistent with the permissible scope of our authority. Specifically, such Equipment was selected by us to be used as follows:

The estimated useful life of such Equipment based upon manufacturer's representations and our projected needs is not less than the maximum Lease Term.

Our source of funds for payments of the Rental Payments due under the Lease for the current fiscal year is

We currently expect and anticipate adequate funds to be available for all future payments of rent due after the current fiscal year for the following reasons:

Very truly yours,

Lessee: Pueblo, A Municipal Corporation

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____

**SCHEDULE G
PROOF OF INSURANCE**

Insurance Agent Name: _____

Agency Name: _____

Address: _____

Phone Number: _____

E-Mail: _____

Ladies and Gentlemen:

Please add CLAYTON HOLDINGS, LLC as both co-loss payee and additional insured under the property insurance covering the Equipment listed on attached Schedule A, and as additional insured under the general liability insurance policy. The minimum liability coverage is \$1,000,000.00. Please mail or fax an insurance certificate to:

Clayton Holdings, LLC
P.O. Box 11309
St. Louis, MO 63105
Fax # 314-746-3744

Upon acceptance of the Equipment and upon each insurance renewal date, Lessee will deliver to Lessor a certificate evidencing such insurance.

Please note that the Bank requires 30 day written notice of cancellation of the policy covering leased equipment.

Lessee: Pueblo, A Municipal Corporation

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____



SCHEDULE H

ACH Payment Authorization Form

Lease No. / Loan No: 5000148-003

Lessee / Borrower: Pueblo, A Municipal Corporation

I authorize Commerce Bank ("Commerce") to initiate debit entries and to initiate, if necessary, credit entries and adjustments for any debit entries in error on behalf of CBI Equipment Finance, Clayton Holdings or Commerce Bank as lender or lessor in the amount shown, and from the checking or savings account with the depository institution ("Bank") named below, on the payment due date.

Bank Name: _____

Address: _____

ABA Routing No.: _____

Account No.: _____ (X) Checking () Savings

This is a (X) New or () Updated authorization form.

Annual Debit Amount(s): In Accordance with Schedule C

Begin Auto Debit with Invoice Date Due: In Accordance with Schedule C

The final or balloon payment, if different from the Annual payment, will not be auto debited.

I understand that this authorization will remain in full force and effect until I notify COMMERCE BANK at the address or phone number below that I wish to revoke this authorization. I understand that COMMERCE BANK requires at least 5 days prior notice in order to process any such cancellation.

X _____ X _____

Borrower / Lessee Signature

Date

Note that there is NO charge for this service.

Also, your "Bank" need not be Commerce Bank to benefit from this feature. Any bank account can be auto debited. To commence service please return this form with your document package or **send this signed form and a voided check (unless COMMERCE BANK is already currently debiting this same account for another lease schedule) to:**

COMMERCE BANK

P.O. Box 11309

Clayton, MO 63105 or

LeasingACH@Commercebank.com

To discontinue or amend service, please email the request to the address above or call COMMERCE BANK at 314.746.3726.

ESCROW AGREEMENT

This Escrow Agreement (the "Escrow Agreement"), dated as of the Twenty-Second day of April, 2024 and entered into among **Clayton Holdings, LLC**, a Missouri Limited Liability Company (together with its successors and assigns, "Lessor"), **Pueblo, A Municipal Corporation** a municipal corporation and political subdivision existing under the laws of Colorado ("Lessee"), and **UMB Bank, N.A.**, a national banking association, as escrow agent (together with its successors and assigns, the "Escrow Agent").

Name of Acquisition Fund: "Pueblo, A Municipal Corporation 003"

Amount of Deposit into the Acquisition Fund: \$649,894.00

TERMS AND CONDITIONS

1. This Escrow Agreement relates to the State and Municipal Lease/Purchase Agreement dated as of the Twenty-Second day of April, 2024, (the "Lease"), between Lessor and Lessee.

2. Lessor, Lessee and the Escrow Agent agree that the Escrow Agent will act as sole Escrow Agent under the Lease and this Escrow Agreement, in accordance with the terms and conditions set forth in this Escrow Agreement. The Escrow Agent shall not be deemed to be a party to the Lease, and this Escrow Agreement shall be deemed to constitute the entire agreement between Lessor and Lessee and the Escrow Agent.

3. There is hereby established in the custody of the Escrow Agent a special trust fund designated as set forth above (the "Acquisition Fund") to be held and administered by the Escrow Agent in trust for the benefit of Lessor and Lessee in accordance with this Escrow Agreement.

4. Lessor shall deposit in the Acquisition Fund the amount specified above. Moneys held by the Escrow Agent hereunder shall be invested and reinvested by the Escrow Agent upon written order of an authorized Lessee representative, in accordance with the Arbitrage Instructions attached as **Exhibit A**, in Qualified Investments (as defined below) maturing or subject to redemption at the option of the holder thereof prior to the date on which it is expected that such funds will be needed. If an Authorized Lessee Representative fails to timely direct the investment of any moneys held hereunder, the Escrow Agent shall invest and reinvest such moneys in Goldman Sachs Financial Square Treasury Fund #525, which is a Qualified Investment described in 5(vi) below. Such investments shall be held by the Escrow Agent in the Acquisition Fund; any interest and gain earned on such investments shall be deposited in the Acquisition Fund, and any losses on such investments shall be charged to the Acquisition Fund. The Escrow Agent may act as purchaser or agent in the making or disposing of any investment.

5. "Qualified Investments" means, to the extent the same are at the time legal for investment of the funds being invested: (i) direct general obligations of the United States of America; (ii) obligations the timely payment of principal of and interest on which is fully and unconditionally guaranteed by the United States of America; (iii) general obligations of the agencies and instrumentalities of the United States of America acceptable to Lessor; (iv) certificates of deposit, time deposits or demand deposits with any bank or savings institution including the Escrow Agent or any affiliate thereof, provided that such certificates of deposit, time deposits or demand deposits, if not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, are fully secured by obligations described in (i), (ii) or (iii) above; or (v) repurchase agreements with any state or national bank or trust company, including the Escrow Agent or any affiliate thereof, that are secured by obligations of the type described in (i), (ii) or (iii) above, provided that such collateral is free and clear of claims of third parties and that the Escrow Agent or a third party acting solely as agent for the Escrow Agent has possession of such collateral and a perfected first security interest in such collateral; or (vi) money market mutual funds that are invested in securities described in (i), (ii) or (iii) and that are rated "Aaa" by Moody's Investors Service or "AAAm-G" by Standard & Poor's Ratings Services or the comparable rating by Fitch IBCA, Inc.

6. Moneys in the Acquisition Fund shall be used to pay for the cost of acquisition of the Equipment listed in the Lease. Such payment shall be made from the Acquisition Fund upon presentation to the Escrow Agent of one or more properly executed Payment Request and Acceptance Certificates, a form of which is attached as **Exhibit B**, executed by Lessee and approved in writing by Lessor, together with the Vendor's invoice specifying the acquisition price of the Equipment described in the Payment Request and Acceptance Certificate. In making any disbursement pursuant to this **Section 6**, the Escrow Agent may conclusively rely as to the completeness and accuracy of all statements in such Payment Request and Acceptance Certificate, and the Escrow Agent shall not be required to make any inquiry, inspection or investigation in connection therewith. Without limiting the foregoing, the Escrow Agent shall have no duty to review, and shall not be responsible for the contents of, invoices delivered to it hereunder. The approval of each Payment Request and Acceptance Certificate by the Lessor shall constitute unto the Escrow Agent an irrevocable determination by the Lessor that all conditions precedent to the payment of the amounts set forth therein have been completed.

7. The Acquisition Fund shall terminate upon the occurrence of the earlier of (a) the presentation of a proper Payment Request and Acceptance Certificate and the Final Acceptance Certificate, a form of which is attached as **Exhibit C**, properly executed by Lessee, (b) 12 months from the date hereof (or such later date as may be agreed to in writing by Lessor and Lessee with notice in writing to Escrow Agent), or (c) the presentation of written notification by the Lessor that the Lease has been terminated pursuant to **Section 8** or **20** of the Lease. Upon termination as described in clause (a) or (b) of this paragraph, any amount remaining in the Acquisition Fund shall be paid to Lessor for application as provided in the Lease. Upon termination as described in clause (c) of this paragraph, any amount remaining in the Acquisition Fund shall immediately be paid to Lessor. The Escrow Agent may rely conclusively upon Lessor's written instructions in disbursing any amounts remaining in the Acquisition Fund upon termination and shall not be responsible in any manner for the exclusion from gross income of interest portions of Rental Payments under the Lease.

8. The Escrow Agent may at any time resign by giving at least 30 days written notice to Lessee and Lessor, but such resignation shall not take effect until the appointment of a successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of Lessor and Lessee. In addition, the Escrow Agent may be removed at any time, with or without cause, by an instrument in writing executed by Lessor and Lessee. In the event of any resignation or removal of the Escrow Agent, a successor Escrow Agent shall be appointed by an instrument in writing executed by Lessor and Lessee. Such successor Escrow Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to Lessor, Lessee and the predecessor Escrow Agent. Thereupon such successor Escrow Agent shall, without any further act or deed, be fully vested with all the trusts, powers, rights, duties and obligations of the Escrow Agent under this Escrow Agreement and the predecessor Escrow Agent shall deliver all moneys and securities held by it under this Escrow Agreement to such successor Escrow Agent whereupon the duties and obligations of the predecessor Escrow Agent shall cease and terminate. If a successor Escrow Agent has not been so appointed within 90 days of such resignation or removal, the Escrow Agent may petition a court of competent jurisdiction to have a successor Escrow Agent appointed.

9. Any corporation or association into which the Escrow Agent may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become successor Escrow Agent hereunder and shall be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

10. The Escrow Agent incurs no responsibility to make any disbursements pursuant to the Escrow Agreement except from funds held in the Acquisition Fund. The Escrow Agent makes no representations or warranties as to the title to any Equipment listed in the Lease or as to the performance of any obligations of Lessor or Lessee.

11. The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instructions in connection

with the provisions hereof has been duly authorized to do so. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of this Escrow Agreement other than its own execution thereof or any instrument deposited with it, nor as to the identity, authority or right of any person executing the same; and its duties hereunder shall be limited to those specifically provided herein.

12. Unless the Escrow Agent is guilty of negligence or willful misconduct with regard to its duties hereunder, Lessee, to the extent permitted by law, and Lessor jointly and severally hereby agree to indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Escrow Agreement; and in connection therewith, to indemnify the Escrow Agent against any and all expenses, including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

13. The aggregate amount of the costs, fees, and expenses of the Escrow Agent in connection with the creation of the escrow described in and created by this Escrow Agreement and in carrying out any of the duties, terms or provisions of this Escrow Agreement is a one time fee in the amount of \$250 to be paid by Clayton Holdings, LLC concurrently with the execution and delivery of this Escrow Agreement.

Notwithstanding the preceding paragraph, the Escrow Agent shall be entitled to reimbursement from Lessee of reasonable out-of-pocket, legal or extraordinary expenses incurred in carrying out the duties, terms or provisions of this Escrow Agreement (including attorneys' fees and expense). Claims for such reimbursement may be made to Lessee and in no event shall such reimbursement be made from funds held by the Escrow Agent pursuant to this Escrow Agreement. The Escrow Agent agrees that it will not assert any lien whatsoever on any of the money or Qualified Investments on deposit in the Escrow Fund for the payment of fees and expenses for services rendered by the Escrow Agent under this Escrow Agreement or otherwise.

14. If Lessee, Lessor, the Escrow Agent or any other person shall be in disagreement about the interpretation of the Lease or this Escrow Agreement, or about the rights and obligations, or the propriety of any action contemplated by the Escrow Agent hereunder, the Escrow Agent may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Escrow Agent shall be entitled to refuse to comply with any demand or claim, as long as such disagreement shall continue, and in so refusing to make any delivery or other disposition of any money, papers or property involved or affected thereby, the Escrow Agent shall not be or become liable to the undersigned or to any other person for its refusal to comply with such demands, and the Escrow Agent shall be entitled to refuse and refrain to act until (a) such civil action has been resolved by full and final adjudication in a court assuming and having jurisdiction over such subject matter, or (b) all differences shall have been adjusted by agreement and the Escrow Agent shall have been notified thereof in writing, signed by all the interested parties. The Escrow Agent shall be indemnified by Lessor and Lessee, to the extent permitted by law, for all costs, including reasonable attorneys' fees and expenses, in connection with such civil action, and shall be fully protected in suspending all or part of its activities under this Escrow Agreement until a final judgment in such action is received.

15. The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection for any action or non-action taken by the Escrow Agent in accordance with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of facts or errors of judgment, or for any acts or omissions of any kind unless caused by its negligence or willful misconduct.

16. This Escrow Agreement shall be governed by and construed in accordance with the laws of the state of Colorado.

17. In the event any provision of this Escrow Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

18. This Escrow Agreement may be executed in several counterparts, each of which so executed shall be an original. The transactions described herein may be conducted and related documents may be sent and stored by electronic means.

19. This Escrow Agreement may be executed in several counterparts, each of which so executed shall be an original.

20. The parties hereto agree that, for tax reporting purposes, all interest or other income, if any, attributable to the Escrowed Funds or any other amount held in escrow by the Escrow Agent pursuant to this Agreement shall be allocable to the Lessee. The Lessee and Lessor agree to provide the Escrow Agent completed Forms W-9 (or Forms W-8, in the case of non-U.S. persons) and other forms and documents that the Escrow Agent may reasonably request (collectively, "Tax Reporting Documentation") at the time of execution of this Agreement. Additionally, the parties hereto agree that they will provide any information reasonably requested by the Escrow Agent to comply with the USA Patriot Act of 2001, as amended from time to time, and the Bank Secrecy Act of 1970, as amended from time to time (together the "Acts"), which information will be used to verify the identities of the parties to ensure compliance with the terms of such Acts. The parties hereto understand that if such Tax Reporting Documentation is not so certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code, as it may be amended from time to time, to withhold a portion of any interest or other income earned on the investment of monies or other property held by the Escrow Agent pursuant to this Escrow Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Lessor, Lessee and the Escrow Agent have caused this Escrow Agreement to be executed by their duly authorized representatives.

Clayton Holdings, LLC
LESSOR

By: _____

Title: _____

Pueblo, A Municipal Corporation
LESSEE

By: _____

Printed Name: _____

Title: _____

UMB Bank, N.A.
ESCROW AGENT

By: _____

Title: _____

EXHIBIT A

ARBITRAGE INSTRUCTIONS

These Arbitrage Instructions provide procedures for complying with § 148 of the Internal Revenue Code of 1986, as amended (the "Code"), in order to preserve the exclusion from federal gross income of the interest portions of the Rental Payments under the Lease.

1. Temporary Period/Yield Restriction. Except as described in this paragraph, money in the Acquisition Fund must not be invested at a yield greater than the yield on the Lease. Proceeds of the Lease in the Acquisition Fund and investment earnings on such proceeds may be invested without yield restriction for three years after the Start Date of the Lease. If any unspent proceeds remain in the Acquisition Fund after three years, such amounts may continue to be invested without yield restriction so long as Lessee pays to the IRS all yield reduction payments under § 1.148-5(c) of the Treasury Regulations.

2. Opinion of Bond Counsel. These Arbitrage Instructions may be modified or amended in whole or in part upon receipt of an opinion of nationally recognized counsel in the area of tax-exempt municipal obligations, satisfactory to Lessor, that such modifications and amendments will not adversely affect the exclusion of the interest portions of Rental Payments from gross income for federal income tax purposes.

EXHIBIT B

FORM OF PAYMENT REQUEST AND ACCEPTANCE CERTIFICATE

To: Clayton Holdings, LLC, as Lessor
8000 Forsyth Blvd., Suite 1210
St. Louis, Missouri 63105

UMB Bank, N.A., as Escrow Agent
928 Grand Blvd., 12th Floor
Kansas City, MO 64106

Re: Pueblo, A Municipal Corporation 003 Acquisition Fund established by the Escrow Agreement, dated April 22, 2024 (the "Escrow Agreement") among Clayton Holdings, LLC, as lessor ("Lessor"), Pueblo, A Municipal Corporation ("Lessee") and UMB Bank, N.A., as Escrow Agent (the "Escrow Agent")

Ladies and Gentlemen:

The Escrow Agent is hereby requested to pay from the Acquisition Fund to the person or corporation designated below as Payee, the sum set forth below in payment of a portion or all of the cost of the acquisition of the equipment or the interest portions of Rental Payment(s) described below. The amount shown below is due and payable under the invoice of the Payee attached hereto with respect to the cost of the acquisition of the equipment or payment of the interest portions of Rental Payment(s) and has not formed the basis of any prior request for payment.

The equipment described below is part or all of the "Equipment" that is listed in State and Municipal Lease/Purchase Agreement dated as of the Twenty-Second day of April, 2024 (the "Lease") described in the Escrow Agreement.

Equipment: _____

Payee: _____

Amount: \$ _____

Lessee hereby certifies and represents to and agrees with Lessor and the Escrow Agent as follows:

1. All of the above-listed Equipment has been delivered to and received by the undersigned; all installation or other work necessary prior to the use thereof has been completed; said Equipment has been examined and/or tested and is in good operating order and condition and is in all respects satisfactory to the undersigned and as represented, and said Equipment has been accepted by the undersigned and complies with all terms of the Lease. Consequently, you are hereby authorized to pay for the Equipment in accordance with the terms of any purchase orders for the same.

2. In the future, in the event the Equipment fails to perform as expected or represented we will continue to honor the Lease in all respects and continue to make our rental and other payments thereunder in the normal course of business and we will look solely to the vendor, distributor or manufacturer for recourse.

3. We acknowledge that Lessor is neither the vendor nor manufacturer or distributor of the Equipment and has no control, knowledge or familiarity with the condition, capacity, functioning or other characteristics of the Equipment.

4. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Lease) exists at the date hereof.

5. Lessee is currently maintaining the insurance coverage required by **Section 17** of the Lease
6. The serial number for each item of Equipment which is set forth on Schedule A to the Lease is correct.

APPROVED:

Dated: _____, 20__

Clayton Holdings, LLC
LESSOR

Pueblo, A Municipal Corporation
LESSEE

By: _____

By: _____

Title: _____

Printed Name: _____

Title: _____

EXHIBIT C

FINAL ACCEPTANCE CERTIFICATE

[THIS CERTIFICATE IS TO BE EXECUTED ONLY WHEN ALL EQUIPMENT
HAS BEEN ACCEPTED]

The undersigned hereby certifies that the equipment described above, together with the equipment described in and accepted by Payment Request and Acceptance Certificates previously filed by Lessee with the Escrow Agent and Lessor pursuant to the Escrow Agreement, constitutes all of the Equipment subject to the Lease.

Dated: _____

Pueblo, A Municipal Corporation
LESSEE

By: _____

Printed Name: _____

Title: _____



8000 Forsyth Boulevard, Suite 1210
Saint Louis, Missouri 63105-1797

April 26, 2024

Ms. Alexandra Romero
Finance Director
Pueblo, A Municipal Corporation
230 S. Mechanic Street
Pueblo, Colorado 81003

Dear Ms. Romero:

Enclosed is a draft IRS form 8038G related to the lease financing described above. **The enclosed form is required to be filed by you, as the lessee, with the IRS in connection with the lease financing.** As a courtesy, we have prepared and forwarded the enclosed draft to you for your review, execution and filing. The information included in the form is based on information you provided in connection with the application for the lease financing and the execution and delivery of the lease documents (including the 8038 Questionnaire).

Once executed, an original of the executed form is required to be filed with the Internal Revenue Service at the following address no later than August 15, 2024.

If sent by US postal service to:

Department of the Treasury
Internal Revenue Service Center
Ogden, Utah 84201

If sent by overnight delivery service to:

Department of the Treasury
Ogden Internal Revenue Submission
Center
1973 Rulon White Boulevard
Ogden, Utah 84201

We recommend that you obtain proof of mailing as you would with any tax return filed with the IRS, in the event that the form is lost in transmission or misfiled by the IRS and that such proof be filed with other documents related to the lease financing.

If you have any questions regarding this form or the requirement to file it, please feel free to contact me.

Sincerely,

Nancy Mullen
Municipal Lease Administrator
Email: nancy.mullen@commercebank.com
Phone: 617-584-2868

Part I Reporting Authority		Check box if Amended Return ☐	
1 Issuer's name Pueblo, A Municipal Corporation		2 Issuer's employer identification number (EIN) 84-6000615	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a	
4 Number and street (or P.O. box if mail is not delivered to street address)	Room/suite	5 Report number (For IRS Use Only)	
230 S. Mechanic Street		3	
6 City, town, or post office, state, and ZIP code Pueblo, Colorado 81003		7 Date of issue April 26, 2024	
8 Name of issue		9 CUSIP number	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information Alexandra Romero, Finance Director		10b Telephone number of officer or other employee shown on 10a 719-553-2656	

Part II Type of Issue (Enter the issue price.) See the instructions and attach schedule.	
11 Education	11
12 Health and hospital	12
13 Transportation	13
14 Public safety	14
15 Environment (including sewage bonds)	15
16 Housing	16
17 Utilities	17
18 Other. Describe ▶ Three light structure system	18 \$649,894.00
19a If bonds are TANs or RANs, check only box 19a ▶ ☐	
b If bonds are BANs, check only box 19b ▶ ☐	
20 If bonds are in the form of a lease or installment sale, check box ▶ ☐	

Part III Description of Bonds. Complete for the entire issue for which this form is being filed.				
(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21 06/01/2028	\$ 649,894.00	\$ N/A	4.0833333 years	4.8800 %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)	
22 Proceeds used for accrued interest	22
23 Issue price of entire issue (enter amount from line 21, column (b))	23
24 Proceeds used for bond issuance costs (including underwriters' discount)	24
25 Proceeds used for credit enhancement	25
26 Proceeds allocated to reasonably required reserve or replacement fund	26
27 Proceeds used to refund prior tax-exempt bonds. Complete Part V	27
28 Proceeds used to refund prior taxable bonds. Complete Part V	28
29 Total (add lines 24 through 28)	29
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30

Part V Description of Refunded Bonds. Complete this part only for refunding bonds.	
31 Enter the remaining weighted average maturity of the tax-exempt bonds to be refunded ▶	years
32 Enter the remaining weighted average maturity of the taxable bonds to be refunded ▶	years
33 Enter the last date on which the refunded tax-exempt bonds will be called (MM/DD/YYYY) ▶	
34 Enter the date(s) the refunded bonds were issued ▶ (MM/DD/YYYY)	

Part VI Miscellaneous

- | | | | |
|------------|--|------------|--------------------------|
| 35 | Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) | 35 | |
| 36a | Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC). See instructions | 36a | |
| b | Enter the final maturity date of the GIC ► (MM/DD/YYYY) _____ | | |
| c | Enter the name of the GIC provider ► _____ | | |
| 37 | Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units | 37 | |
| 38a | If this issue is a loan made from the proceeds of another tax-exempt issue, check box ► ☐ and enter the following information: | | |
| b | Enter the date of the master pool bond ► (MM/DD/YYYY) _____ | | |
| c | Enter the EIN of the issuer of the master pool bond ► _____ | | |
| d | Enter the name of the issuer of the master pool bond ► _____ | | |
| 39 | If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box | | ☐ |
| 40 | If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box | | ☐ |
| 41a | If the issuer has identified a hedge, check here ► ☐ and enter the following information: | | |
| b | Name of hedge provider ► _____ | | |
| c | Type of hedge ► _____ | | |
| d | Term of hedge ► _____ | | |
| 42 | If the issuer has superintegrated the hedge, check box | | ☐ |
| 43 | If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box | | ☐ |
| 44 | If the issuer has established written procedures to monitor the requirements of section 148, check box | | ☐ |
| 45a | If some portion of the proceeds was used to reimburse expenditures, check here ► ☐ and enter the amount of reimbursement ► _____ | | |
| b | Enter the date the official intent was adopted ► (MM/DD/YYYY) _____ | | |

Signature and Consent

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

Signature of issuer's authorized representative _____	Date _____	Type or print name and title _____
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Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
Firm's name ►	Firm's EIN ►			
Firm's address ►	Phone no.			

8038-G QUESTIONNAIRE

Name of Lessee: Pueblo, A Municipal Corporation
 Address of Lessee: 230 S. Mechanic Street, Pueblo, Colorado 81003
 Contact Person: Alexandra Romero, Finance Director
 Telephone Number: 719-553-2656
 Email Address: aromero@pueblo.us
 Lessee's FEIN: 84-6000615

GENERAL

In October 2021, the Internal Revenue Service ("IRS") updated Form 8038-G (the form used by Lessees to report the issuance of a tax-exempt obligation). The revised Form 8038-G asks specific questions about written procedures to: (1) monitor private use of assets financed with proceeds of a tax-exempt obligation and, as necessary, to take remedial actions to correct any violations of federal tax restrictions on the use of financed assets; and (2) monitor the yield on the investment of gross proceeds of tax-exempt obligations and, as necessary, make payments of arbitrage rebate earned to the United States. In addition, the revised Form 8038-G asks Lessees to report whether any proceeds will be used to reimburse the Lessee for an expenditure paid prior to issuance. This questionnaire is designed to obtain the information necessary to complete Form 8038-G for the Lease. Lessee will be required to review and approve the information entered prior to signing the 8038-G form.

At this time, the consequences of not having adopted written procedures to monitor private use of financed assets and yield on the investment of gross proceeds of tax-exempt obligations are unknown. If you have further questions, please consult your regular bond or legal counsel.

Part 1 – Written Tax Compliance Procedures

Note: If either of these questions is not answered, we will assume the Lessee has not adopted the described procedures.

1. Has the Lessee established written procedures to monitor compliance with federal tax restrictions for the term of the lease? The written procedures should identify a particular individual within Lessee's organization to monitor compliance with the federal tax requirements related to use of the financed assets and describe actions to be taken in the event failure to comply with federal tax restrictions is contemplated or discovered. **Yes ____ No ____**
2. Has the Lessee established written procedures to monitor the yield on the investment of proceeds of the Lease on deposit in an escrow account or similar fund prior to being spent and to ensure that any positive arbitrage rebate earned is paid to the United States? **Yes ____ No ____**

Part 2 – Reimbursement of Prior Expenditures

1. As of the funding date, were any of the proceeds of the Lease used to reimburse Lessee for expenditures paid to acquire the financed assets prior to the funding date of the Lease? **Yes ____ No ____**

If yes, please attach a spreadsheet listing the expenditure(s) together with the date paid, vendor paid and purpose of the expenditure or other proof of the expenditure(s) containing this information (i.e. invoices, receipts, cancelled checks).

Items 2 and 3 need to be completed ONLY if the answer to item 1 above is YES.

2. Please attach a copy of Lessee's resolution of intent to finance the financed assets, which includes date of adoption.
3. What is the amount of proceeds of the Lease reimbursed to Lessee? \$ _____

BY: _____

NAME: _____

TITLE: _____

DATE: _____

Request for Taxpayer Identification Number and Certification

Go to www.irs.gov/FormW9 for instructions and the latest information.

Give form to the
requester. Do not
send to the IRS.

Before you begin. For guidance related to the purpose of Form W-9, see *Purpose of Form*, below.

Print or type. See Specific Instructions on page 3.	1 Name of entity/individual. An entry is required. (For a sole proprietor or disregarded entity, enter the owner's name on line 1, and enter the business/disregarded entity's name on line 2.) Pueblo, a Municipal Corporation	
	2 Business name/disregarded entity name, if different from above.	
	3a Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only one of the following seven boxes. ☐ Individual/sole proprietor ☐ C corporation ☐ S corporation ☐ Partnership ☐ Trust/estate ☐ LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership) Note: Check the "LLC" box above and, in the entry space, enter the appropriate code (C, S, or P) for the tax classification of the LLC, unless it is a disregarded entity. A disregarded entity should instead check the appropriate box for the tax classification of its owner. ☒ Other (see instructions) Municipality	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from Foreign Account Tax Compliance Act (FATCA) reporting code (if any) _____ (Applies to accounts maintained outside the United States.)
	3b If on line 3a you checked "Partnership" or "Trust/estate," or checked "LLC" and entered "P" as its tax classification, and you are providing this form to a partnership, trust, or estate in which you have an ownership interest, check this box if you have any foreign partners, owners, or beneficiaries. See instructions ☐	
	5 Address (number, street, and apt. or suite no.). See instructions. 230 S. Mechanic Street 6 City, state, and ZIP code Pueblo, Colorado 81003 7 List account number(s) here (optional)	Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN) Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> , later. Note: If the account is in more than one name, see the instructions for line 1. See also <i>What Name and Number To Give the Requester</i> for guidelines on whose number to enter.	<table><tr><td colspan="10">Social security number</td></tr><tr><td></td><td></td><td></td><td></td><td>-</td><td></td><td></td><td></td><td>-</td><td></td><td></td><td></td><td></td></tr><tr><td colspan="13">or</td></tr><tr><td colspan="13">Employer identification number</td></tr><tr><td>8</td><td>4</td><td></td><td></td><td>-</td><td>6</td><td>0</td><td>0</td><td>0</td><td>6</td><td>1</td><td>5</td><td></td></tr></table>	Social security number														-				-					or													Employer identification number													8	4			-	6	0	0	0	6	1	5	
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Employer identification number																																																															
8	4			-	6	0	0	0	6	1	5																																																				

Part II Certification Under penalties of perjury, I certify that: 1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and 2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and 3. I am a U.S. citizen or other U.S. person (defined below); and 4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct. Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and, generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.			
Sign Here	<table><tr><td>Signature of U.S. person</td><td>Date</td></tr></table>	Signature of U.S. person	Date
Signature of U.S. person	Date		

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

What's New

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

New line 3b has been added to this form. A flow-through entity is required to complete this line to indicate that it has direct or indirect foreign partners, owners, or beneficiaries when it provides the Form W-9 to another flow-through entity in which it has an ownership interest. This change is intended to provide a flow-through entity with information regarding the status of its indirect foreign partners, owners, or beneficiaries, so that it can satisfy any applicable reporting requirements. For example, a partnership that has any indirect foreign partners may be required to complete Schedules K-2 and K-3. See the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they

must obtain your correct taxpayer identification number (TIN), which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid).
- Form 1099-DIV (dividends, including those from stocks or mutual funds).
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds).
- Form 1099-NEC (nonemployee compensation).
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers).
- Form 1099-S (proceeds from real estate transactions).
- Form 1099-K (merchant card and third-party network transactions).
- Form 1098 (home mortgage interest), 1098-E (student loan interest), and 1098-T (tuition).
- Form 1099-C (canceled debt).
- Form 1099-A (acquisition or abandonment of secured property).

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

Caution: If you don't return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding*, later.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued);
2. Certify that you are not subject to backup withholding; or
3. Claim exemption from backup withholding if you are a U.S. exempt payee; and
4. Certify to your non-foreign status for purposes of withholding under chapter 3 or 4 of the Code (if applicable); and
5. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting is correct. See *What Is FATCA Reporting*, later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Establishing U.S. status for purposes of chapter 3 and chapter 4 withholding. Payments made to foreign persons, including certain distributions, allocations of income, or transfers of sales proceeds, may be subject to withholding under chapter 3 or chapter 4 of the Code (sections 1441–1474). Under those rules, if a Form W-9 or other certification of non-foreign status has not been received, a withholding agent, transferee, or partnership (payor) generally applies presumption rules that may require the payor to withhold applicable tax from the recipient, owner, transferor, or partner (payee). See Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.

The following persons must provide Form W-9 to the payor for purposes of establishing its non-foreign status.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the disregarded entity.
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the grantor trust.
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust and not the beneficiaries of the trust.

See Pub. 515 for more information on providing a Form W-9 or a certification of non-foreign status to avoid withholding.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person (under Regulations section 1.1441-1(b)(2)(iv) or other applicable section for chapter 3 or 4 purposes), do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515). If you are a qualified foreign pension fund under Regulations section 1.897(l)-1(d), or a partnership that is wholly owned by qualified foreign pension funds, that is treated as a non-foreign person for purposes of section 1445 withholding, do not use Form W-9. Instead, use Form W-8EXP (or other certification of non-foreign status).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a saving clause. Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if their stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first Protocol) and is relying on this exception to claim an exemption from tax on their scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called “backup withholding.” Payments that may be subject to backup withholding include, but are not limited to, interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third-party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester;
2. You do not certify your TIN when required (see the instructions for Part II for details);
3. The IRS tells the requester that you furnished an incorrect TIN;
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only); or
5. You do not certify to the requester that you are not subject to backup withholding, as described in item 4 under “*By signing the filled-out form*” above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

See also *Establishing U.S. status for purposes of chapter 3 and chapter 4 withholding*, earlier.

What Is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all U.S. account holders that are specified U.S. persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you are no longer tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

• **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note for ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040 you filed with your application.

• **Sole proprietor.** Enter your individual name as shown on your Form 1040 on line 1. Enter your business, trade, or "doing business as" (DBA) name on line 2.

• **Partnership, C corporation, S corporation, or LLC, other than a disregarded entity.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

• **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. Enter any business, trade, or DBA name on line 2.

• **Disregarded entity.** In general, a business entity that has a single owner, including an LLC, and is not a corporation, is disregarded as an entity separate from its owner (a disregarded entity). See Regulations section 301.7701-2(c)(2). A disregarded entity should check the appropriate box for the tax classification of its owner. Enter the owner's name on line 1. The name of the owner entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For

example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2. If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, enter it on line 2.

Line 3a

Check the appropriate box on line 3a for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3a.

IF the entity/individual on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation.
• Individual or • Sole proprietorship	Individual/sole proprietor.
• LLC classified as a partnership for U.S. federal tax purposes or • LLC that has filed Form 8832 or 2553 electing to be taxed as a corporation	Limited liability company and enter the appropriate tax classification: P = Partnership, C = C corporation, or S = S corporation.
• Partnership	Partnership.
• Trust/estate	Trust/estate.

Line 3b

Check this box if you are a partnership (including an LLC classified as a partnership for U.S. federal tax purposes), trust, or estate that has any foreign partners, owners, or beneficiaries, and you are providing this form to a partnership, trust, or estate, in which you have an ownership interest. You must check the box on line 3b if you receive a Form W-8 (or documentary evidence) from any partner, owner, or beneficiary establishing foreign status or if you receive a Form W-9 from any partner, owner, or beneficiary that has checked the box on line 3b.

Note: A partnership that provides a Form W-9 and checks box 3b may be required to complete Schedules K-2 and K-3 (Form 1065). For more information, see the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

If you are required to complete line 3b but fail to do so, you may not receive the information necessary to file a correct information return with the IRS or furnish a correct payee statement to your partners or beneficiaries. See, for example, sections 6698, 6722, and 6724 for penalties that may apply.

Line 4 Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third-party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space on line 4.

1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2).

2—The United States or any of its agencies or instrumentalities.

3—A state, the District of Columbia, a U.S. commonwealth or territory, or any of their political subdivisions or instrumentalities.

4—A foreign government or any of its political subdivisions, agencies, or instrumentalities.

5—A corporation.

6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or territory.

7—A futures commission merchant registered with the Commodity Futures Trading Commission.

8—A real estate investment trust.

9—An entity registered at all times during the tax year under the Investment Company Act of 1940.

10—A common trust fund operated by a bank under section 584(a).

11—A financial institution as defined under section 581.

12—A middleman known in the investment community as a nominee or custodian.

13—A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
• Interest and dividend payments	All exempt payees except for 7.
• Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
• Barter exchange transactions and patronage dividends	Exempt payees 1 through 4.
• Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5. ²
• Payments made in settlement of payment card or third-party network transactions	Exempt payees 1 through 4.

¹ See Form 1099-MISC, Miscellaneous Information, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) entered on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37).

B—The United States or any of its agencies or instrumentalities.

C—A state, the District of Columbia, a U.S. commonwealth or territory, or any of their political subdivisions or instrumentalities.

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i).

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i).

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state.

G—A real estate investment trust.

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940.

I—A common trust fund as defined in section 584(a).

J—A bank as defined in section 581.

K—A broker.

L—A trust exempt from tax under section 664 or described in section 4947(a)(1).

M—A tax-exempt trust under a section 403(b) plan or section 457(g) plan.

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, enter "NEW" at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have, and are not eligible to get, an SSN, your TIN is your IRS ITIN. Enter it in the entry space for the Social security number. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.SSA.gov. You may also get this form by calling 800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/EIN. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or Form SS-4 mailed to you within 15 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and enter "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, you will generally have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon. See also *Establishing U.S. status for purposes of chapter 3 and chapter 4 withholding*, earlier, for when you may instead be subject to withholding under chapter 3 or 4 of the Code.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third-party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor ²
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
6. Sole proprietorship or disregarded entity owned by an individual	The owner ³
7. Grantor trust filing under Optional Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))**	The grantor*

For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity ⁴
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing Form 1041 or under the Optional Filing Method 2, requiring Form 1099 (see Regulations section 1.671-4(b)(2)(i)(B))**	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name on line 1, and enter your business or DBA name, if any, on line 2. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

* **Note:** The grantor must also provide a Form W-9 to the trustee of the trust.

** For more information on optional filing methods for grantor trusts, see the Instructions for Form 1041.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information, such as your name, SSN, or other identifying information, without your permission to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax return preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity, or a questionable credit report, contact the IRS Identity Theft Hotline at 800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 877-777-4778 or TTY/TDD 800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Go to www.irs.gov/IdentityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and territories for use in administering their laws. The information may also be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payors must generally withhold a percentage of taxable interest, dividends, and certain other payments to a payee who does not give a TIN to the payor. Certain penalties may also apply for providing false or fraudulent information.



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Alyssa Parga, Secretary to the Mayor

SUBJECT: A RESOLUTION RATIFYING PACOG'S JOINT APPOINTMENT OF JASON BAKER, JEFF HECKLER, MICHAEL MESSERVY, AND MILES LUCERO TO THE COMMUNITY SERVICES ADVISORY COMMISSION (CSAC)

SUMMARY:

This resolution ratifies the joint City-County appointment of members to serve on the the Community Services Advisory Commission (CSAC).

PREVIOUS COUNCIL ACTION:

Joint City-County appointments to the Community Services Advisory Commission (CSAC) are made on an annual basis selecting individuals to serve expiring or vacant terms. Resolutions to ratify the joint appointments are passed by each entity.

BACKGROUND:

There are four vacancies available on the Community Services Advisory Commission (CSAC) for joint City-County appointments for a citizen to complete a four-year term due to resignations and term expirations. There is one term available expiring April 30, 2027 and three terms available expiring April 30, 2028.

FINANCIAL IMPLICATIONS:

This a volunteer committee and members serve without compensation.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAKEHOLDER PROCESS:

N/A

ALTERNATIVES:

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

RECOMMENDATION:

Approval of the resolution.

ATTACHMENTS:

None

RESOLUTION NO. 15611

A RESOLUTION RATIFYING PACOG'S JOINT APPOINTMENT OF JASON BAKER, JEFF HECKLER, MICHAEL MESSERVY, AND MILES LUCERO TO THE COMMUNITY SERVICES ADVISORY COMMISSION (CSAC)

WHEREAS, PACOG duly convened and appointed Jason Baker to complete a four-year term expiring on April 30, 2027; it is now the desire of the Pueblo City Council to ratify said appointment; and

WHEREAS, PACOG duly convened and appointed Jeff Heckler, Michael Messervy, and Miles Lucero to serve a four-year term expiring on April 30, 2028; it is now the desire of the Pueblo City Council to ratify said appointment; NOW, THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The appointment of Jason Baker to the Community Services Advisory Commission (CSAC) to complete a four-year term expiring April 30, 2027, shall be and hereby is ratified.

SECTION 2.

The appointment of Jeff Heckler, Michael Messervy, and Miles Lucero to the Community Services Advisory Commission (CSAC) to serve a four-year term expiring April 30, 2028, shall be and hereby is ratified.

SECTION 3.

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

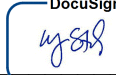
SECTION 4.

This Resolution shall become effective immediately upon final passage.

INTRODUCED: April 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: Mark Aliff
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Alyssa Parga, Secretary to the Mayor

SUBJECT: A RESOLUTION CONFIRMING THE REAPPOINTMENT BY THE MAYOR OF JASON SCHIERLING TO SERVE A FOUR-YEAR TERM EXPIRING MAY 9, 2028 ON THE PUEBLO DEPOT ACTIVITY AUTHORITY (AKA PUEBLOPLEX) BOARD OF DIRECTORS

SUMMARY:

This Resolution confirms the appointment by the Mayor of Jason Schierling to serve four-year term expiring May 9, 2028, on the Pueblo Depot Activity Authority (aka PuebloPlex) Board of Directors.

PREVIOUS COUNCIL ACTION:

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

BACKGROUND:

Due to the term expiration of Jason Shierling, there is one spot available to serve a four-year term expiring May 9, 2028 on the Pueblo Depot Activity Development Authority Board of Directors aka PuebloPlex.

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. 15612

A RESOLUTION CONFIRMING THE REAPPOINTMENT BY THE MAYOR OF JASON SCHIERLING TO SERVE A FOUR-YEAR TERM EXPIRING MAY 9, 2028 ON THE PUEBLO DEPOT ACTIVITY AUTHORITY (AKA PUEBLOPLEX) BOARD OF DIRECTORS

WHEREAS, Mayor Heather Graham has requested confirmation by the City Council of her appointment of Jason Schierling to the Pueblo Depot Activity Authority (aka PuebloPlex) Board of Directors; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The reappointment by the Mayor of Jason Schierling to the Pueblo Depot Activity Authority (aka PuebloPlex) Board of Directors to serve a four-year term expiring May 9, 2028, 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 22, 2024

BY: Regina Meastri
MEMBER OF CITY COUNCIL

APPROVED: Mark Bliff
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: April 22, 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 RESCINDING AN AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES BY AND BETWEEN CITY OF PUEBLO AND OLSSON, INC. AND AWARDING AN AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES BY AND BETWEEN CITY OF PUEBLO AND JR ENGINEERING, INC IN THE AMOUNT OF \$145,890.00, FOR PROJECT NO. 23-146, DESIGN FOR INTERSECTION OF PRAIRIE AND ST. CLAIR, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

This Resolution rescinds an Agreement for Professional Consulting Services to Olsson, Inc. and awards an Agreement for Professional Consulting Services to JR Engineering, Inc., to render certain professional planning, design, engineering and related services. Olsson, Inc. was determined to be unable to fulfill the awarded contract; therefore, the agreement with Olsson, Inc. is being rescinded and thereby awarded to JR Engineering, Inc.

PREVIOUS COUNCIL ACTION:

Resolution 15519, dated February 26, 2024, awarded an Agreement for Professional Engineering Services in the amount of \$142,250.00 to Olsson, Inc. for Project No. 23-146, Design for Intersection of Prairie and St. Clair.

BACKGROUND:

The project includes the evaluation and design of intersection upgrades for S. Prairie Avenue and St. Clair Avenue to help alleviate traffic congestion, improve the curb ramps at the intersection, and improve safety in the area. Four proposals were evaluated on their statement of qualifications, previous experience, project approach, project work schedule and fee schedule. After the interviews with the top two proposers, Olsson, Inc. was selected for award by the evaluation committee. The scope of services includes the preliminary design phase, final design phase, preparation of

contract documents and bidding phase, and construction services phase.

The City of Pueblo is rescinding the award to Olsson Inc. due to Olsson Inc. being unable to complete the scope of work required by the RFP.

FINANCIAL IMPLICATIONS:

Funding, in the amount of \$145,890.00, will be paid from project account CI2204, Street Rehabilitation.

BOARD/COMMISSION RECOMMENDATION

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Denial of this resolution will cancel the project.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. 23-146 Letter rescinding award

RESOLUTION NO 15613

A RESOLUTION RESCINDING AN AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES BY AND BETWEEN CITY OF PUEBLO AND OLSSON, INC. AND AWARDING AN AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES BY AND BETWEEN CITY OF PUEBLO AND JR ENGINEERING, INC IN THE AMOUNT OF \$145,890.00, FOR PROJECT NO. 23-146, DESIGN FOR INTERSECTION OF PRAIRIE AND ST. CLAIR, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, Resolution 15519, dated February 26, 2024, is hereby rescinded, AND,

WHEREAS, the proposal of JR Engineering, Inc., for Project No. 23-146, Design for Intersection of Prairie and St. Clair has been received and examined; AND,

WHEREAS, the proposal of JR Engineering, Inc., was determined to be the most advantageous to the City of Pueblo, and in the best interest of the City of Pueblo, based on the evaluation factors set forth in the Request for proposals; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The City Council rescinds the previously awarded Agreement for Professional Engineering Services to Olsson, Inc.

SECTION 2.

The City Council authorizes Project No. 23-146, Design for Intersection of Prairie and St. Clair to be performed, and the agreement for said project is hereby awarded to JR Engineering, Inc., in the amount of \$145,890.00.

SECTION 3.

The Purchasing Agent is hereby authorized to execute said agreement 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 4.

Funding, in the amount of \$145,890.00, will be paid from project account CI2204, 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.

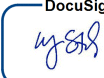
SECTION 6.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: April 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: Mark Duff
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



PURCHASING DEPARTMENT

Naomi Hedden
Director of Purchasing
230 S. Mechanic Street
719-553-2350
719-553-2351
purchasing@pueblo.us
www.pueblo.us/purchasing

April 12, 2024

Olsson, Inc.
Attn: Karen Aspelin
121 South Tejon Street, Ste. 1111
Colorado Springs, CO 80903

Email: kaspelin@olsson.com

Ref: Bid No: 23-146

Dear Mr. Singleton,

The City of Pueblo has received and reviewed your letter dated March 26, 2024, stating that the proposal you submitted on December 12, 2023, did not include the additional scope of work requested in your Change Order. Based on emails and discussions with our Public Works team it appears that you cannot complete the total scope of work required within the RFP for the amount of your proposal. Due to the misunderstanding by Olsson of what Scope of Work your original proposal would cover, the Agreement awarded to you on March 11, 2024, in the amount of \$142,250.00 for the total project, is hereby rescinded and will be presented to City Council on approximately April 22, 2024 to complete the rescinding process.

It is my understanding that you have done some preliminary work on the traffic study. Please provide a final invoice for services already rendered. If Public Works has any questions regarding the invoice, they will reach out to you for discussion.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Naomi Hedden" with a long, horizontal flourish extending to the right.

Naomi Hedden
Director of Purchasing



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: April 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Harley Gifford, Deputy City Attorney

SUBJECT: A RESOLUTION AUTHORIZING THE ISSUANCE OF A REVOCABLE PERMIT TO COLLINS AEROSPACE FOR THE USE OF LOTS 8 AND 11 AND, PARCEL G, WILLIAM WHITE BOULEVARD, PUEBLO, COLORADO FOR THE PURPOSE OF INSTALLING A FENCE LINE MONITORING SYSTEM REQUIRED BY THE COLORADO DEPARTMENT OF HEALTH AND ENVIRONMENT – AQD

SUMMARY:

Attached is a proposed resolution to approve a revocable permit to allow Collins Aerospace the use of Lot 8, Lot 11, and Parcel G, William White Boulevard for the purpose of installing a fence line monitoring system required for compliance with the Colorado Department of Public Health and Environment-AQD.

PREVIOUS COUNCIL ACTION:

Not Applicable.

BACKGROUND:

City and Collins Aerospace are negotiating a lease agreement for the property subject to this resolution. However, the timeline required for the approval of the proposed lease agreement will not allow Collins Aerospace to remain in compliance with the Colorado Department of Public Health and Environment-AQD.

FINANCIAL IMPLICATIONS:

City shall receive \$7,842 in return for the issuance of this Revocable Permit.

BOARD/COMMISSION RECOMMENDATION:

Not Applicable.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

A “no action” alternative would cause Collins Aerospace to be non-compliant.

RECOMMENDATION:

Approve.

ATTACHMENTS:

1. Goodrich Revocable Permit

RESOLUTION NO 15614

A RESOLUTION AUTHORIZING THE ISSUANCE OF A REVOCABLE PERMIT TO COLLINS AEROSPACE FOR THE USE OF LOTS 8 AND 11 AND, PARCEL G, WILLIAM WHITE BOULEVARD, PUEBLO, COLORADO FOR THE PURPOSE OF INSTALLING A FENCE LINE MONITORING SYSTEM REQUIRED BY THE COLORADO DEPARTMENT OF HEALTH AND ENVIRONMENT – AQD

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The attached Revocable Permit is authorized to be issued to Collings Aerospace for the use of Lot 8, Lot 11, and Parcel G, William White Boulevard, Pueblo Colorado (the “Permitted Area”) for the purpose of installing a fence line monitoring system required by the Colorado Department of Public Health and Environment - AQD.

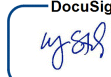
SECTION 2.

The use of the Permitted Area granted hereby is subject to all limitations, terms and conditions set forth in the attached Revocable Permit.

INTRODUCED: April 22, 2024

BY: Regina Maestri
MEMBER OF CITY COUNCIL

APPROVED: Mark Aliff
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

REVOCABLE PERMIT

Pursuant to the authority granted by Section 16-9 of the Charter of Pueblo, a Colorado 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: **Collins Aerospace (Goodrich Corporation), 50 William White Blvd, Pueblo CO 81001. 719-948-3500.**
2. Permitted Area: **Lot 8, Lot 11, and Parcel G, William White Boulevard, Pueblo, Colorado 81001.**
3. Purpose of Revocable Permit: **To install a fence line monitoring system required for compliance with the Colorado Department of Public Health and Environment-AQD**
4. Authorized Improvements: **Install four 12' x 12' huts on Permitted Area to house fence line monitoring transducers & receivers and related equipment. Huts will be installed on concrete foundations for leveling & stability. A chain link fence will be used for security purposes around each hut.**
5. Commencement Date: **April 23, 2024.** Time: **8:00 a.m.**
6. Ending Date: **August 1, 2024.** Time: **5:00 p.m.**

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

- 1) The Permitted Area shall be used solely for the above-specified Purpose of Revocable Permit. No use of the Permitted Area shall be made before the time of the Commencement Date or after the Ending Date.
- 2) All structures, fences, tables, chairs, equipment or other improvements authorized to be placed in the Permitted Area by Permittee (the "**Improvements**") shall be constructed, installed, and maintained by Permittee in compliance with all applicable codes, ordinances, rules and regulations of City and this Permit.
- 3) This City and Permittee intend for this Permit to is issued for the use of the Permitted Area during the negotiations for a lease agreement between the City and Permittee for use consistent with the Purpose of this Permit.
- 4) Permittee shall pay to the City the sum of Seven Thousand, Eight Hundred Forty-Two and 00/100 Dollars (\$7,842.00) which shall be equal to the proposed lease

agreement monthly lease amount (the “**Permit Fee**”). The Permit Fee shall be non-refundable and in the event of default by Permittee or failure to execute the proposed lease agreement, Permittee shall be obligated to pay a fee to be determined by the City for use of the Permitted Area.

5) Payment of the Permit Fee and any fees is due no later than June 1, 2024. If payment is not received by June 1, 2024, the City may revoke the permit.

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

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

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 Permit or the conditions hereof, or the existence, construction, installation, repair or maintenance of the Improvements in the Permitted Area, or the use of the Permitted Area or Improvements by Permittee, its officers, agents, employees, invitees or general public.

9) Permittee shall not damage or impair the Permitted Area in any way, and is liable for the cost to repair any damage or impairment caused by Permittee. Permittee agrees that no noxious or offensive activity shall be allowed upon the Permitted Area.

10) Neither this Permit nor any of the privileges granted to Permittee hereby, may be conveyed, assigned, or transferred 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.

11) Permittee shall keep and maintain commercial general liability insurance covering the Permitted Area and Improvements in amounts not less than \$1,000,000.00 combined single limits per occurrence and \$2,000,000.00 aggregate, naming the City as an additional insured and contain a waiver of rights of subrogation against City. A certificate for such insurance and each renewal thereof shall be delivered to the City. Failure to maintain such insurance shall cause this Permit to be automatically revoked.

12) 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.

13) 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:

- a) If to Permittee, at the address shown in paragraph 1 above.
- b) Each party reserves the right to change its address provided notice of such change is given in accordance with this paragraph (o).

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

15) This Permit shall terminate upon the occurrence of any one of the following events:

- a) The execution of a lease agreement between the City and Permittee for the Permitted Area;
- b) The Time of the Ending Date;
- c) Abandonment or non-use by Permittee for a period of three (3) consecutive months;
- d) Surrender or cancellation of the Permit in writing by Permittee;
- e) Automatic revocation as provided in this Permit; or
- f) Revocation or termination of this Permit by resolution of the City Council of City.

16) City is not liable for delays in delivery, and/or non-delivery in the event of Force Majeure, action by any governmental or quasi-governmental entity, fire, flood, insurrection, riot, explosion, strikes (whether legal or illegal), labor or material shortage, transportation interruption of any kind, work slowdown, or any condition beyond the control of City affecting the Permitted Area or Purpose of the Permit in any way.

17) Permittee shall comply with all applicable municipal, state, and federal law. This includes, but is not limited to, municipal prohibitions on racing, littering, and dangerous activities.

18) The Permit shall be governed by the laws of the City of Pueblo and 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.

19) 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 any time, without liability to City, and without notice to or hearing by Permittee. Permittee waives any and all right or claim to such

notice, hearing, and liability of the City.

Signed in Pueblo, Colorado this _____ day of April 2024.

PERMITEE:

Collins Aerospace

By: _____

Title: _____

STATE OF COLORADO)
)ss.
COUNTY OF PUEBLO)

The forgoing instrument was acknowledged before me this _____ day of April 2024
by _____ as _____.

My commission expires: _____

[SEAL]

Notary Public

Approved this _____ day of April 2024.

Pueblo, a Colorado Municipal Corporation

By _____

President of Council



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Roger Gomez, Councilor

SUBJECT: AN ORDINANCE OF THE CITY OF PUEBLO AMENDING TITLE XI, CHAPTER 1, SECTION 405 OF THE PUEBLO MUNICIPAL CODE PROHIBITING THE ESTABLISHMENT, OPERATION, USE, OR PARTICIPATION IN SYRINGE EXCHANGE OR DISTRIBUTION PROGRAMS WITHIN THE CITY OF PUEBLO AND PROVIDING PENALTIES THEREFOR

SUMMARY:

Proposed Ordinance to prohibit syringe exchange programs within the City.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

Syringe exchange programs within the City are contributing to the improper disposal of used hypodermic needles and syringes. The City is experiencing an increase in the number of dirty hypodermic needles, syringes, and other drug paraphernalia being discarded in the City's public places, such as the City Park, Mineral Palace Park, and the Pueblo River Trail System, presenting a threat to the health, property, safety, and welfare of the public in the City of Pueblo.

FINANCIAL IMPLICATIONS:

Not applicable.

BOARD/COMMISSION RECOMMENDATION:

Not applicable.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

City Council could continue to allow the operation of syringe exchange programs within the City.

RECOMMENDATION:

Pass the Ordinance.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF PUEBLO AMENDING TITLE XI, CHAPTER 1, SECTION 405 OF THE PUEBLO MUNICIPAL CODE PROHIBITING THE ESTABLISHMENT, OPERATION, USE, OR PARTICIPATION IN SYRINGE EXCHANGE OR DISTRIBUTION PROGRAMS WITHIN THE CITY OF PUEBLO AND PROVIDING PENALTIES THEREFOR

WHEREAS, Title 25, Article 1, Section 520, C.R.S., allows a county board of health to approve a hypodermic needle or syringe exchange program ("Needle Exchange") proposed by a county public health agency to provide intravenous drug users hypodermic needles or syringes, collect used hypodermic needles or syringes, and develop education programs to encourage the disclosure of the possession of hypodermic needles or syringes to first responders; and

WHEREAS, Title 25, Article 1, Section 520, C.R.S., allows any nonprofit organization with experience operating a Needle Exchange or health facilities certified by the state to operate a Needle Exchange without local approval; and

WHEREAS, the improper exchange and disposal of used hypodermic needles and syringes results in dirty hypodermic needles being discarded in the public rights of way and facilities, presenting a threat to the health, property, safety, and welfare of the public in the City of Pueblo; and

WHEREAS, Needle Exchanges near public facilities, schools, parks, and playgrounds have an especially negative effect due to the resulting improper disposal of dirty hypodermic needles and syringes as well as the congregation of intravenous drug users near public facilities, schools, parks, and playgrounds; and

WHEREAS, the operation of Needle Exchanges increases the risk of overdose and death by facilitating the use of deadly and dangerous synthetic opioids which are difficult to detect by drug users leading to the unknowing use of drugs containing fentanyl; and

WHEREAS, the City of Pueblo is experiencing an increase in the number of syringes and other drug paraphernalia found in its public places, specifically in the City Park, Mineral Palace Park, and the Pueblo River Trail System, all of which are located within the City of Pueblo; and

WHEREAS, pursuant to the City of Pueblo's Home Rule power, as granted broadly under Article XX, Section 6 of the Colorado Constitution, the City is authorized to impose, enforce, and collect fines and penalties for the violation of any of the provisions of the charter, or of any ordinance adopted in pursuance of the charter; and

WHEREAS, the City of Pueblo's Home Rule Charter authorizes City Council to adopt ordinances, resolutions, or other legislation conducive to the welfare of the people of the City and not inconsistent with the City of Pueblo's Charter; and

WHEREAS, Pueblo Municipal Code, Title VII, Chapter 1, Section 1 authorizes the City, through its legislative body, to declare actions and activities that constitute a public nuisance; and

WHEREAS, the Pueblo Municipal Code sets forth regulatory, penal, and administrative ordinances to promote and protect the public health, safety, peace, comfort, and general welfare of the City; and

WHEREAS, Needle Exchanges are not an enumerated use under the Zoning Code nor does the Pueblo Municipal Code or Charter authorize Needle Exchanges within the City; NOW, THEREFORE,

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

SECTION 1.

Pueblo Municipal Code Title XI, Chapter 1, Section 405 - Nuisances is amended as follows:

(a) Definitions. As used in this Section:

-
....

(3) "Syringe services program" means any and all needle and syringe exchange or distribution programs or projects whereby hypodermic needles and/or syringes are exchanged or dispensed such that persons participating in and/or operating such programs are exempted from criminal prosecution for acts related to the possession of needles and/or syringes. "Syringe services program" does not include any facility, place, or building providing diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation.

(b) Specific nuisances. The following substances, activities or conditions are hereby expressly deemed to be detrimental to the health or safety of the inhabitants of this City and are nuisances:

-
....

(7) The creation, establishment, operation, or participation in a syringe services program within the City of Pueblo.

SECTION 2.

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

SECTION 3.

This Ordinance shall become effective 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 22, 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 COMMUNITY ASSET ENTERPRISE/COLORADO ENERGY OFFICE RELATING TO A GRANT TO INSTALL FOUR DIRECT CURRENT FAST CHARGING (DCFC) ELECTRIC VEHICLE CHARGING STATIONS AT THE MAIN STREET PARKING GARAGE; ACCEPTING A GRANT IN THE AMOUNT OF \$445,000; ESTABLISHING PROJECT ACCOUNT CI2433 - DESIGN AND INSTALL MAIN STREET GARAGE DCFC EV CHARGERS; TRANSFERRING FUNDS IN THE AMOUNT OF \$400,000 FROM PROJECT ACCOUNT CI2408 - EV CHARGING STATIONS (FLEET) TO PROJECT ACCOUNT CI2433 - DESIGN AND INSTALL MAIN STREET GARAGE DCFC EV CHARGERS; BUDGETING AND APPROPRIATING A TOTAL OF \$845,000.00 INTO PROJECT ACCOUNT CI2433 - DESIGN AND INSTALL MAIN STREET GARAGE DCFC EV CHARGERS; AND APPROVING THE MAYOR TO EXECUTE THE INTERGOVERNMENTAL AGREEMENT ON BEHALF OF THE CITY

SUMMARY:

This Ordinance approves an Intergovernmental Agreement between the City of Pueblo, a Colorado Municipal Corporation, and the State of Colorado, acting by and through the Community Asset Enterprise/Colorado Energy Office relating to a grant to install four Direct Current Fast Charging (DCFC) electric vehicle charging stations at the Main Street Parking Garage; accepts a grant in the amount of \$445,000; establishes Project Account CI2433 - Design and Install Main Street Garage DCFC EV Chargers; transfers funds in the amount of \$400,000 from Project Account CI2408 - EV Charging Stations (Fleet) to Project Account CI2433 - Design and Install Main Street Garage DCFC EV Chargers; budgets and appropriates a total of \$845,000.00 into Project Account CI2433 - Design and Install Main Street Garage DCFC EV Chargers; and approves the Mayor

to execute the Intergovernmental Agreement on behalf of the City.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

This Ordinance accepts the Colorado Energy Office's grant for the construction of four DCFC electric vehicle charging stations at the Main Street Parking Garage. It also accepts, budgets, and appropriates the funds for the work in a new project account.

The new DCFC chargers will be available for public use, adding to the City's inventory of publicly-accessible electric vehicle chargers at three locations around the City. Currently, the City only has Level 2 chargers available for public use, but these four new chargers will facilitate rapid charging for electric vehicle drivers who may be transiting through Pueblo on I-25 or US-50, or for local drivers seeking a fast recharge.

As a condition of accepting the award, the City is required to provide a local funding match of at least 35% of the total project cost. Upon execution of the agreement, the Public Works Department will begin the process to acquire design services for the project, work with the selected consultant to create biddable construction drawings, acquire construction services, and oversee construction/installation of the new chargers.

FINANCIAL IMPLICATIONS:

Project Account CI2433 - Design and Install Main Street Garage DCFC EV Chargers is established.

Funds in the amount of \$445,000 will be accepted from the Colorado Energy Office and budgeted and appropriated into CI2433.

Matching funds in the amount of \$400,000.00 will be transferred from Project Account CI2408 - EV Charging Stations (Fleet) and budgeted and appropriated into CI2433.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Currently, there are no alternatives for completing the improvements without the funding from the CAE/CEO grant.

RECOMMENDATION:

Approve the Ordinance.

ATTACHMENTS:

1. CAE-City of Pueblo Intergovernmental Grant Agreement Final 4.10

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 COMMUNITY ASSET ENTERPRISE/COLORADO ENERGY OFFICE RELATING TO A GRANT TO INSTALL FOUR DIRECT CURRENT FAST CHARGING (DCFC) ELECTRIC VEHICLE CHARGING STATIONS AT THE MAIN STREET PARKING GARAGE; ACCEPTING A GRANT IN THE AMOUNT OF \$445,000; ESTABLISHING PROJECT ACCOUNT CI2433 - DESIGN AND INSTALL MAIN STREET GARAGE DCFC EV CHARGERS; TRANSFERRING FUNDS IN THE AMOUNT OF \$400,000 FROM PROJECT ACCOUNT CI2408 - EV CHARGING STATIONS (FLEET) TO PROJECT ACCOUNT CI2433 - DESIGN AND INSTALL MAIN STREET GARAGE DCFC EV CHARGERS; BUDGETING AND APPROPRIATING A TOTAL OF \$845,000.00 INTO PROJECT ACCOUNT CI2433 - DESIGN AND INSTALL MAIN STREET GARAGE DCFC EV CHARGERS; AND APPROVING THE MAYOR TO EXECUTE THE INTERGOVERNMENTAL AGREEMENT ON BEHALF OF THE CITY

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

SECTION 1.

Project Account CI2433 - Design and Install Main Street Garage DCFC EV Chargers 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 by and through the Community Asset Enterprise/Colorado Energy Office relating to a grant to install four Direct Current Fast Charging (DCFC) electric vehicle charging stations at the Main Street Parking Garage, 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 \$445,000.00 are hereby accepted and deposited into Project Account CI2433 - Design and Install Main Street Garage DCFC EV Chargers, and budgeted and appropriated into said account.

SECTION 4.

Funds in the amount of \$400,000.00 are hereby transferred from Project Account CI2408 - EV Charging Stations (Fleet) to Project Account CI2433 - Design and Install Main Street Garage DCFC EV Chargers, and budgeted and appropriated into Project Account CI2433.

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

GRANT AWARD LETTER

SUMMARY OF GRANT AWARD TERMS AND CONDITIONS

State Agency Community Access Enterprise	Grant Amount State Fiscal Year 2024: \$445,000.00 State Fiscal Year 2025: any unspent funds from SFY24 State Fiscal Year 2026: any unspent funds from SFY25 State Fiscal Year 2027: any unspent funds from SFY26 State Fiscal Year 2028: any unspent funds from SFY27 State Fiscal Year 2029: any unspent funds from SFY28 Total for all State Fiscal Years: \$445,000.00
Grantee City of Pueblo	
Grant Issuance Date The date the State Controller or an authorized delegate signs this Grant Letter	
Grant Expiration Date December 31, 2029	
Grant Authority Pursuant to section 24-38.5-303(6)(b), C.R.S., the Community Access Enterprise Board may contract with public or private entities to conduct the affairs of the enterprise.	
Grant Purpose The purpose of this Agreement is for Grantee to develop fast charging in Colorado to provide critical infrastructure for electric vehicles and enable statewide travel in and electric vehicle. The Grantee was awarded grant funding as a result of the competitive Electric Vehicle (EV) Direct Current-Fast Charging Plazas Grant Program Request for Applications (RFA) issued by the Colorado Energy Office (CEO) on March 8, 2023.	
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Grant: - Exhibit A, Statement of Work. - Exhibit B, Budget. - Exhibit C, Grantee's Application - Exhibit D, EV Plazas Request for Applications (RFA) In the event of a conflict or inconsistency between this Grant and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority: - Colorado Special Provisions in §17 of the main body of this Grant - The provisions of the other sections of the main body of this Grant. - Exhibit A, Statement of Work. - Exhibit B, Budget - Exhibit C, Grantee's Application. - Exhibit D, EV Plazas Request for Applications (RFA)	

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

GRANTEE Heather Graham, Mayor City of Pueblo _____ By: Heather Graham, Mayor Date: _____	STATE OF COLORADO Jared S. Polis, Governor Community Access Enterprise _____ By: Rev. Eugene Downing, Jr., Board Chair Date: _____
STATE OF COLORADO Jared S. Polis, Governor Colorado Energy Office Will Toor, Executive Director _____ By: Dominique Gómez, Deputy Director Date: _____	LEGAL REVIEW Philip J. Weiser, Attorney General _____ By: Assistant Attorney General Date: _____
In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD _____ By: Office of the Governor, Jonathon Bray, Controller Effective Date: _____	

1. GRANT

As of the Grant Issuance Date, the State Agency shown on the first page of this Grant Award Letter (the “State”) hereby obligates and awards to Grantee shown on the first page of this Grant Award Letter (the “Grantee”) an award of Grant Funds in the amounts shown on the first page of this Grant Award Letter. By accepting the Grant Funds provided under this Grant Award Letter, Grantee agrees to comply with the terms and conditions of this Grant Award Letter and requirements and provisions of all Exhibits to this Grant Award Letter.

2. TERM

A. Initial Grant Term and Extension

The Parties’ respective performances under this Grant Award Letter shall commence on the Grant Issuance Date and shall terminate on the Grant Expiration Date unless sooner terminated or further extended in accordance with the terms of this Grant Award Letter. Upon request of Grantee, the State may, in its sole discretion, extend the term of this Grant Award Letter by providing Grantee with an updated Grant Award Letter showing the new Grant Expiration Date.

B. Early Termination in the Public Interest

The State is entering into this Grant Award Letter to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Grant Award Letter ceases to further the public interest of the State or if State, Federal or other funds used for this Grant Award Letter are not appropriated, or otherwise become unavailable to fund this Grant Award Letter, the State, in its discretion, may terminate this Grant Award Letter in whole or in part by providing written notice to Grantee that includes, to the extent practicable, the public interest justification for the termination. If the State terminates this Grant Award Letter in the public interest, the State shall pay Grantee an amount equal to the percentage of the total reimbursement payable under this Grant Award Letter that corresponds to the percentage of Work satisfactorily completed, as determined by the State, less payments previously made. Additionally, the State, in its discretion, may reimburse Grantee for a portion of actual, out-of-pocket expenses not otherwise reimbursed under this Grant Award Letter that are incurred by Grantee and are directly attributable to the uncompleted portion of Grantee’s obligations, provided that the sum of any and all reimbursements shall not exceed the maximum amount payable to Grantee hereunder. This subsection shall not apply to a termination of this Grant Award Letter by the State for breach by Grantee.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “**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. “**CORA**” means the Colorado Open Records Act, §§24-72-200.1 *et seq.*, C.R.S.
- D. “**Grant Award Letter**” means this letter which offers Grant Funds to Grantee, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future updates thereto.

- E. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Grant Award Letter.
- F. **“Grant Expiration Date”** means the Grant Expiration Date shown on the first page of this Grant Award Letter.
- G. **“Grant Issuance Date”** means the Grant Issuance Date shown on the first page of this Grant Award Letter.
- H. **“Exhibits”** exhibits and attachments included with this Grant as shown on the first page of this Grant
- I. **“Extension Term”** means the period of time by which the Grant Expiration Date is extended by the State through delivery of an updated Grant Award Letter
- J. **“Goods”** means any movable material acquired, produced, or delivered by Grantee as set forth in this Grant Award Letter and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
- K. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- L. **“Initial Term”** means the time period between the Grant Issuance Date and the Grant Expiration Date.
- M. **“Matching Funds”** means the funds provided Grantee as a match required to receive the Grant Funds.
- N. **“Party”** means the State or Grantee, and **“Parties”** means both the State and Grantee.
- O. **“Plaza”** means a geographic hub/site with multiple, four or more DCFC. Sometimes referred to as a Hub or Depot.
- P. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101 C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, et. seq., C.R.S.
- Q. **“Services”** means the services to be performed by Grantee as set forth in this Grant Award Letter, and shall include any services to be rendered by Grantee in connection with the Goods.
- R. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to 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.

- S. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a) C.R.S.
- T. **“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.
- U. **“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.
- V. **“Subcontractor”** means third-parties, if any, engaged by Grantee to aid in performance of the Work. “Subcontractor” also includes sub-grantees.
- W. **“Work”** means the delivery of the Goods and performance of the Services described in this Grant Award Letter.
- X. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Grant Issuance Date that is used, without modification, in the performance of the Work.

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

4. **STATEMENT OF WORK**

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

5. **PAYMENTS TO GRANTEE**

A. **Maximum Amount**

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Grantee any amount under this Grant that exceeds the Grant Amount for each State Fiscal Year shown on the first page of this Grant Award Letter. Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. The State shall not be liable to pay or reimburse Grantee for any Work performed or expense incurred before the Grant Issuance Date or after the Grant Expiration Date; 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. **Matching Funds.**

Grantee shall provide the Local Match Amount shown on the first page of this Grant Award Letter and described in Exhibit B (the “Local Match Amount”). Grantee’s obligation to pay

all or part of any matching funds, whether direct or contingent, only extends to funds duly and lawfully appropriated for the purpose of this Agreement by the authorized representatives of Grantee and paid into Grantee's treasury or bank account. Grantee shall appropriate and allocate all Local Match Amounts to the purpose of this Grant Award Letter each fiscal year prior to accepting any Grant Funds for that fiscal year. Grantee does not by accepting this Grant Award Letter irrevocably pledge present cash reserves for payments in future fiscal years, and this Grant Award Letter is not intended to create a multiple-fiscal year debt of Grantee. Grantee shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Grantee's laws or policies.

D. Reimbursement of Grantee Costs

Upon prior written approval, the State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount described in this Grant Award Letter for all allowable costs described in this Grant Award Letter and shown in the Budget, except that Grantee may adjust the amounts between each line item of the Budget without formal modification to this Agreement as long as the Grantee provides notice to the State of the change, the change does not modify the total maximum amount of this Grant Award Letter or the maximum amount for any state fiscal year, and the change does not modify any requirements of the Work. The State shall only reimburse allowable costs if those costs are: **(i)** reasonable and necessary to accomplish the Work and for the Goods and Services provided; and **(ii)** equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred).

E. Close-Out.

Grantee shall close out this Grant within 45 days after the Grant Expiration Date. To complete close out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Grant Award Letter and Grantee's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete.

6. REPORTING - NOTIFICATION

A. Performance and Final Status

Grantee shall submit all financial, performance and other reports to the State 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 Agency, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Award. The State may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. GRANTEE RECORDS

A. Maintenance and Inspection

Grantee shall make, keep, and maintain, all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to this Grant for a period of three years following the completion of the close out of this

Grant. Grantee shall permit the State to audit, inspect, examine, excerpt, copy and transcribe all such records during normal business hours at Grantee's office or place of business, unless the State determines that an audit or inspection is required without notice at a different time to protect the interests of the State.

B. Monitoring

The State will monitor Grantee's performance of its obligations under this Grant Award Letter using procedures as determined by the State. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work.

C. Final Audit Report

Grantee shall promptly submit to the State a copy of any final audit report of an audit performed on Grantee's records that relates to or affects this Grant or the Work, whether the audit is conducted by Grantee or a third party.

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Grantee shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Grantee for the sole and exclusive benefit of the State, unless those State Records are otherwise publically available at the time of disclosure or are subject to disclosure by Grantee under CORA. Grantee shall not, without prior written approval of the State, use for Grantee's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Grant Award Letter. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

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

C. Use, Security, and Retention

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

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

D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding PII

If Grantee or any of its Subcontractors will or may receive PII under this Agreement, Grantee shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall be a “Third-Party Service Provider” as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S. In addition, as set forth in § 24-74-102, *et seq.*, C.R.S., Contractor, including, but not limited to, Contractor’s employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement.

9. CONFLICTS OF INTEREST

Grantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Grant. Grantee acknowledges that, with respect to this Grant, even the appearance of a conflict of interest shall be harmful to the State’s interests and absent the State’s prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee’s obligations under this Grant. If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State’s consideration. Grantee acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Grantee further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Grant.

10. INSURANCE

Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the “GIA”). Grantee shall ensure that any Subcontractors maintain all insurance customary for the completion of the Work done by that Subcontractor and as required by the State or the GIA.

11. REMEDIES

In addition to any remedies available under any exhibit to this Grant Award Letter, if Grantee fails to comply with any term or condition of this Grant, the State may terminate some or all of this Grant and require Grantee to repay any or all Grant funds to the State in the State's sole discretion. The State may also terminate this Grant Award Letter at any time if the State has determined, in its sole discretion, that Grantee has ceased performing the Work without intent to resume performance, prior to the completion of the Work.

12. DISPUTE RESOLUTION

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

13. NOTICES AND REPRESENTATIVES

Each Party shall identify an individual to be the principal representative of the designating Party and shall provide this information to the other Party. All notices required or permitted to be given under this Grant Award Letter shall be in writing, and shall be delivered either in hard copy or by email to the representative of the other Party. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §13.

14. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

Grantee hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Grantee or any Subcontractors or Subgrantees and paid for with Grant Funds provided by the State pursuant to this Grant.

15. GOVERNMENTAL IMMUNITY

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

16. GENERAL PROVISIONS

A. Assignment

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

B. Captions and References

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

C. Entire Understanding

This Grant Award Letter represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Grant Award Letter.

D. Modification

The State may modify the terms and conditions of this Grant by issuance of an updated Grant Award Letter, which shall be effective if Grantee accepts Grant Funds following receipt of the updated letter. The Parties may also agree to modification of the terms and conditions of the Grant in a formal amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules.

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

Any reference in this Grant Award Letter to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Grant Issuance Date. Grantee shall strictly comply with all applicable Federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. Digital Signatures

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

G. Severability

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

H. Survival of Certain Grant Award Letter Terms

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

I. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described above, this Grant Award Letter does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

J. Waiver

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

K. Accessibility

- i. Contractor shall comply with and the Work Product provided under this Contract shall be in compliance with all applicable provisions of §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. Contractor shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.
- ii. The State may require Contractor's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Contractor's Work Product and software is in compliance with §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability* as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

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

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

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

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

Financial obligations of the State payable after the current 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 (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) 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.

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.

EXHIBIT A, STATEMENT OF WORK

I. Work Tasks, Deliverables and Timeline

Task 1 – Contract Administration

Task 1.1: Kick-off Meeting

The purpose of this task is to establish the expectations for communication and procedures for implementing this Agreement. The meeting shall include, but not be limited to, an updated project timeline and Grantee's strategy to execute the Agreement and associated deliverables. The meeting will review contract requirements and expectations.

1.1 Deliverables: Meeting minutes.

Task 1.2: Check-In Calls

The Community Access Enterprise (CAE) in partnership with the Colorado Energy Office (CEO) and the Grantee shall conduct project check-in calls once every month or on as needed basis. The Grantee shall be responsible for ensuring that all relevant staff attend each call. Meeting agendas will generally include updates on each project task, challenges and barriers the Grantee is encountering, and any decisions or guidance needed from CAE/CEO. CAE/CEO may decide to have more or less frequent calls over the course of the project and will schedule them with the Grantee as needed. The Grantee must take meeting minutes and submit to CAE/CEO within 1 week following completion of the meeting.

1.2 Deliverables: Meeting minutes.

Task 1.3: Critical Project Review (CPR) Meeting(s) (As Necessary)

CPRs provide the opportunity for CAE/CEO and Grantee to meet if the project is behind schedule or is experiencing regular or extensive challenges. The purpose of this task is to formally check in on the project status and identify any needed modifications to the tasks, products, schedule or budget.

CAE/CEO may schedule CPR meetings as necessary, though the Grantee may request a meeting as well. Participants shall include CAE/CEO, the Grantee's key personnel, and may include other State representatives as determined by CAE/CEO. CAE/CEO and the Grantee shall work together to develop the agenda and meeting materials for each CPR. During the CPR, CAE/CEO will work with the Grantee to agree on action items and any deliverables needed following the meeting. The Grantee shall take minutes and submit to CAE/CEO Program Manager within 1 week following the meeting.

1.3 Deliverables: Meeting minutes and any other deliverables agreed on at the meeting.

Task 1.4: Final Meeting

The purpose of this task is to close out key milestones of the Agreement upon completion of all Plazas and start of operations. The meeting agenda will include a review of project findings to date, conclusions and lessons learned, and recommendations including those from Plaza operations and data from quarterly

Plaza use reports. The Grantee shall take minutes and submit to CAE/CEO Program Manager 1 week following the meeting.

1.4 Deliverables: Meeting minutes and materials.

Task 2 Site Acquisition and Match Commitment

Task 2.1: Execute Site Host Agreements

The purpose of this task is to finalize site host agreements for each of the Plazas listed in Table 1 below. The Grantee shall complete all steps necessary to secure site host agreements for each of the sites listed in the table below.

2.1 Deliverables:

- Signed cover letter from Grantee certifying all provisions in this State of Colorado Grant Agreement to fulfill the obligations of the grant have been met and are included in the signed agreement with each site host, if different than grantee. If applicable, the letter shall also summarize the site host's match for the project.
- A copy of the signed agreement page with each site host.

Grantee's Plaza locations are:

Location	Address	#DCFC	kW
Pueblo Main Street	120 S Main Street, Pueblo, CO	4	150

Table 1. Grantee Plaza Locations

Task 2.2 Submit Utility Application for Each Site

Grantee shall submit utility applications for each Plaza. If Grantee is participating in programs such as Xcel's EV Supply Infrastructure Program or other similar utility programs, Grantee shall prepare the necessary supporting documentation required. Grantee shall follow up with the utility as needed to complete the Plaza(s). Grantee should coordinate with the Utility to ensure a timely delivery of necessary equipment such as transformers, switchgear and panels to avoid unnecessary project delays.

Task 3 Station Site Assessments, and Design and Engineering

3.1 Conceptual Site Plans/Assessments

Grantee shall provide conceptual site plans or engineering drawings to CAE/CEO. These plans shall include a comprehensive project description including the location and size of any areas of disturbance, the depth of disturbance, how power is brought to the chargers, any boring or trenching needed, and any other details pertinent to the construction of the plazas. The plans for all awarded individual Plazas should be submitted as one single batch from the Grantee, if feasible.

3.1 Deliverables:

- Draft conceptual site plans, engineering drawings, construction drawings, Station site assessments and/or installation packages including but not limited to the following information:
 - i. Comprehensive project description
 - ii. Site plan or preliminary drawing for each plaza including any right-of-way or easements needed
 - iii. Conceptual plans and engineering drawings
 - iv. Photo and description of the site
 - v. Explanation of any site walk findings and existing conditions
 - vi. Location and size of any areas of disturbance
 - vii. Depth of disturbance
 - viii. Utility requirements and electrical capacity such as kVa and how power is brought to the chargers
 - ix. Any boring or trenching needed
 - x. Description of construction techniques
 - xi. Removal of any vegetation or trees
 - xii. Aesthetics of the equipment being installed
 - xiii. Adherence to the Americans with Disability Act (ADA)
 - xiv. Any other details pertinent to the construction of the plazas
 - xv. EV charging only signage
 - xvi. Project schedule

3.2 Final Design and Construction Documents

Following notification to proceed from CAE/CEO, Grantee shall complete the final design for each Plaza.

3.2 Deliverables:

- Final Design and Construction Documents
- Edits to final construction documents as requested by CAE/CEO.

3.3 Colorado branding on each station.

The Colorado Brand Compliance Officer for the State of Colorado (Integrated Document Solutions) is the designated authority for reviewing and approving usage of the Colorado logo for this charger deployment by Grantee, including review and approval of all artwork/design files. This mandatory review and approval will be coordinated through CAE/CEO.

CAE/CEO will provide Grantee original Colorado logo artwork for use in charger branding, which must include all logo elements, including the COLORADO logotype. Grantee shall then provide to CAE/CEO original charger branding artwork/design files for mandatory brand compliance review. Grantee shall make necessary modifications as communicated by CAE/CEO. Final approval in writing by CAE/CEO is required before chargers are branded with the State of Colorado logo.

3.3 Deliverables:

- Approved charger branding artwork/design incorporated into final station design and install.

3.4 Pre-Construction Checkpoint and Notice to Proceed

Grantee and CAE/CEO shall review and confirm that all aspects of the project will comply with the requirements of the DCFC Plazas program prior to construction beginning and upon completion of each site. Failure to ensure that the project incorporates the following could result in delayed reimbursement or forfeiture of the grant award. This shall include the following deliverables:

3.4 Deliverables:

- Confirmation that the hardware and network comply with all applicable cybersecurity requirements.
- Confirmation that the selected chargers shall be capable of Plug & Charge.
- Written notification that design and engineering is complete and Grantee is ready to begin installation for each plaza.
- Final copies of all construction and design documents.
- Copy of permit for each site.
- Verification to CAE/CEO that all minimum Plaza requirements have been met as outlined in the RFA and described in Grantee's application to the program including but not limited to charging speeds, Open Charge Point Protocol (OCPP) compliance, sufficient parking spaces and American with Disabilities Act (ADA) compliance. The Grantee's Application and the original RFA are incorporated as **Exhibits C and D**.
- Updated project timeline.

Task 4 Plaza Construction and Equipment Installation/Project Signage

The purpose of Task 4 is to complete construction activities and installation of DCFC at the Plaza(s). Upon completion of each Plaza, Grantee shall work with site host, local jurisdictions, and CDOT to install highway/interstate and other wayfinding signage, if eligible.

Task 4.1: Site Construction and Equipment Installation

Following completion of Task 3.5, Grantee shall work with its subcontractors to complete all aspects of Plaza construction and equipment installation. This includes but is not limited to the following:

- i. Utilize the final construction drawings to prepare the Plaza(s) for installation and install the DCFC.
- ii. Procure all required materials and equipment for installation.
- iii. Coordinate project meetings as needed with hosts, suppliers, subcontractors, utilities and local authority having jurisdiction for the Plaza(s) to kick-off, track, and evaluate project status.
- iv. Coordinate utility interconnection, service drop, transformer sizing, service activation,

- billing, and other utility requirements as needed.
- v. Install DCFC at the Plaza(s) that meets the minimum specifications approved in Tasks 2 and 3 as well as the overall requirements of the original RFA and Grantee's application and attachments
- vi. Pass final inspections.
- vii. Commission each system by verifying the installation meets the Site Drawings, approved Installation Plan, and is actively collecting required data.
- viii. Integrate each Plaza location with the Grantee's network and confirm that each DCFC is viewable on Grantee's mobile app and other applications used by drivers to find stations.
- ix. Prepare and submit to CAE/CEO a Written Notification of Intent to Operate for the Plaza(s) that declares installation for the site has been completed and is ready to be brought online, activated and available to the public for use. This shall also include the public rate to charge as well as the utility rates for demand and Kilowatt-hour (kWh) at each site.
- x. Accessible design standards must be incorporated, as detailed by the U.S. Access Board. Accessible design standards require that 5%, but no fewer than one (1) stall at each awarded address must be accessible and that the Grantee must incorporate the accessible design standards into the parking stall(s) serving the highest power output charging port(s) at each awarded address.

XI. (OPTIONAL): NACS CABLES

The Grantee may opt to install NACS cables with written pre-approval from CAE/CEO if doing so doesn't impact the site's compliance with the minimum CCS port requirements of the Plazas program, if doing so deviates from the original proposal. Grantee may determine that installing NACS cables will increase Station Site utilization, improve return on investment, or otherwise support the grantee's goals at their respective Site(s) as well as State priorities.

Pursuant to this Agreement, costs to replace CCS/CHAdEMO cables with NACS cables are ineligible to be claimed as reimbursable or match under the Agreement, if the costs are not incurred during the initial installation.

4.1 Deliverables:

- Intent to Operate document including photos of the site and installed equipment
- Proof of final inspection by local jurisdiction

Task 4.2: Project Signage

For Plaza locations that qualify, Grantee shall coordinate in good faith with the Colorado Department of Transportation (CDOT) to produce and install directional signage along nearby highways. For the installation of wayfinding, regulatory and signage on local roads, Grantee shall coordinate installation with the cities and counties that have jurisdiction over the site and surrounding roadways. Grantee shall also coordinate with site hosts to install appropriate wayfinding, regulatory and on-site signage. Each site host shall comply with the state's policies, procedures, and project-related rules concerning signage,

including but not limited to signage and advertising that touches or concerns the DCFC; nearby interpretive signage; directional signage; use of logos; and advertising. All applicable signage shall meet Federal MUTCD standards and/or local jurisdiction standards.

4.2 Deliverables:

- As applicable, pictures of installed highway signage once installed by CDOT
- As applicable, pictures of installed signage once installed by the local jurisdictions
- Pictures of onsite signage

Task 5 Plaza Operations

The purpose of this task is to manage and maintain each of the DCFCs at the Plaza(s) for a minimum of 5 years from the point that construction of each Plaza is complete and open to the public.

Task 5.1 Operating Requirements

Grantee shall adhere to all operations and maintenance, payment options, and customer service requirements as described in Grantee's Application (**Exhibit C**) to the program including but not limited to % uptime, 24/7 customer service, and corrective maintenance strategies.

Grantee must ensure that the equipment is operational at least 97% of the time based on a week of 24 hours a day and 7 days (no more than 5 hours' cumulative downtime in a 7-day period). The 97% uptime requirement applies to each port at a site and not the site as a whole. It is the grantee's responsibility to ensure the 97% uptime requirement is met.

A charging port is considered "up" when its hardware and software are both online and available for use, or in use, and the charging port successfully dispenses electricity in accordance with requirements for minimum power level (see §680.106(d) of the NEVI Guidance). Charging port uptime must be calculated on a monthly basis for the previous twelve months.

Any changes that would serve to reduce and limit the proposed operation and maintenance, and customer service plans that were originally proposed by the Grantee must be approved by CAE/CEO in writing. The Grantee shall email CEO requesting the change(s) and CAE/CEO will respond with its decision within two weeks. Any changes to the cost to charge shall be communicated to CAE/CEO promptly.

5.1 Deliverables:

- Once each Plaza is completed and operational, Grantee shall provide login credentials to an online portal containing relevant reporting data and an export feature. Grantee shall further provide quarterly reports to CAE/CEO as described in Section IV. Reporting shall include summary information about station utilization, uptime rates, and any issues that resulted in DCFC downtime.

- Grantee shall report individual uptime rates for each DCFC in the quarterly reports. For DCFC that were down for a prolonged period that may affect the % uptime, Grantee shall describe the issue and efforts made to bring the DCFC back online.

Task 5.2 Cybersecurity

Grantee shall incorporate cybersecurity protocols throughout the project to ensure ongoing security of the assets, drivers and site infrastructure. The five overarching principles for cybersecurity in this project includes:

- Identity, Credential and Access Management (ICAM)
- Configuration, Vulnerability and Update Management (CVUM)
- Secure Payment (SP)
- Secure Communications (SC)
- Physical Security (PS)

To be responsive to the cybersecurity risk areas, Grantee shall follow and adhere to the NIST 800-53 cybersecurity protocols during the design, development and operations of the Station(s).

5.2 Deliverables

- Grantee must address DCFC security and document potential risks throughout the project duration. Assessments and presumed risks shall be detailed in monthly and quarterly reports as needed.
- Grantee shall provide an annual self-assessment and/or third-party assessment to CAE/CEO within 60 days of completion of the annual assessment.
- Cybersecurity plans shall be revised and updated to account for newly identified risks, requirements and standards and provided to CAE/CEO with the annual report.
- If a security incident occurs, the Grantee shall report the incident to CAE/CEO within 72 hours of discovery.
- Cybersecurity is a continuously evolving space. CAE/CEO reserves the right to incorporate additional requirements to ensure the ongoing security of the station(s) complies with any updated cyber security protocols.

Task 6 Community Outreach and Marketing

The goal of this task is to implement outreach and education strategies to communicate the development of new EV infrastructure. Grantee shall execute its outreach and marketing strategies for each Plaza location as described in Grantee's application to the program. Grantee shall also add the:

- i. Site to Grantee's App and Grantee's Website, if applicable, to show the new station name, location, number and type of chargers, hours, cost to charge, parking fees (if any), wayfinding information, and station availability.
- ii. Site Addition to PlugShare, Google Maps and the Alternative Fuels Data Center (AFDC)

Grantee shall organize and facilitate promotional opportunities, where beneficial, for this project with CAE/CEO. Activities may include but are not limited to the following:

- i. **Press Release and Media Outreach.** Develop a press release with site host and/or other key stakeholders to promote new sites.
- ii. **Ribbon Cutting Events.** Host a ribbon cutting to celebrate the new Plaza. Photos should be taken of the ribbon being cut, and follow up should take place with media and social media coverage.

Task 6 Deliverables:

- Summary of outreach and marketing efforts in all quarterly progress reports.

Timeline

Grantee shall adhere to the following timeline. If the project schedule changes over the Initial Grant Term of the Agreement, Grantee shall provide an updated Gantt chart for review and approval by CAE/CEO beforehand.

Item	Expected Completion Date
Execution of Grant Agreement (estimated)	May 31, 2024
CEO-City of Pueblo Kickoff Meeting	June 14, 2024
Order of Long-Lead Items (e.g., chargers, transformer, etc.)	June 28, 2024
Award of Engineering Service Contract for Design and Site Planning	July 15, 2024
Engineering Design and Site Planning	January 31, 2025
CEO Review and Approval of Engineering Plans/Notice to Proceed	February 28, 2025
Award of Construction Contract	July 31, 2025
Delivery of Long-Lead Items	October 31, 2025
Construction Complete	March 31, 2026
Commissioning/Testing	May 31, 2026
Post-Construction Report (with required photos)	May 31, 2026
Ribbon Cutting/Public Opening	June 30, 2026
Develop Data Reporting Template and Quarterly Reporting	Through July 2031

II. Key Personnel

Grantee shall not invoice the State for any soft costs relating to any Personnel not listed below (“Key Personnel”) without the State’s express written approval. Such approval is at the State’s Sole Discretion, as the State issued this agreement in part reliance on Grantee’s representations regarding Personnel.

Name/Title	E-mail	Phone	Role
George Andrews, Energy Coordinator	gandrews@pueblo.us	719-553-2245	Grant administration, program management, reporting
Chuck Roy, Deputy Director of Public Works	croy@pueblo.us	719-553-2271	Engineering design, permitting, construction management, commissioning
Todd Berisford, Construction Manager	tberisford@pueblo.us	719-553-2289	Construction management, commissioning

Grantee may update this list from time to time as personnel assignments change within the Public Works Department.

III. Testing & Acceptance Criteria

- i. The DCFC will be acceptable to CAE/CEO if they are installed, operational, and available for use by the public within the Timeline identified in the above Section I and meets all requirements described herein.
- ii. Grantee's invoices to CAE/CEO will be acceptable if invoices or receipts properly support them and the costs are associated with allowable costs as outlined in Exhibit B, Budget.
- iii. The deliverables and reports will be acceptable to CAE/CEO if they include the information requested herein and demonstrate adherence to the minimum specifications described in the above tasks and associated attachments.
- iv. If the equipment, invoice, and deliverables are acceptable, CAE/CEO Program Manager will submit the invoice to the accounting department for payment.
- v. If the equipment, invoices, deliverables or reports are unacceptable, CAE/CEO will work with the Grantee to correct, modify, or replace as needed. If Grantee fails to perform, CAE/CEO Program Manager will submit a report to CEO's Director of Transportation Fuels and Technology and Director of Accounting & Budget explaining why funding should be denied or reduced. The two directors and CAE/CEO Program Manager will determine whether funding should be denied or reduced, and CAE/CEO Program Manager will inform the Grantee of their decision.

IV. Reporting

A. Quarterly Reporting Requirements

Grantee shall submit, on a quarterly basis, a written progress report via the Grant Management Portal of all activities under this grant up to the point that all Plazas are open to the public. The preparation of reports in a timely manner will be the responsibility of Grantee and failure to comply may result in the delay of payment of funds and/or termination of the Agreement.

The report shall refer to the status of work to be performed pursuant to this Agreement and will include a description of the deliverables and tasks completed during the reporting period. The report will include

a description of any findings or results, any unanticipated outcomes or roadblocks encountered, and any potential future applications of project results. The report will indicate clearly whether work is proceeding according to schedule, ahead of schedule or behind schedule. If the work is behind schedule, the report must include a summary of the reasons for the delay and a plan of action to bring the project back on schedule, which will be subject to review and approval by CAE/CEO prior to implementation. The report shall summarize current and cumulative budget expenditures to date. The report shall have a chart summarizing the project site status for all Plazas including major design and construction milestones, as well as a chart updating the status of milestones and products. CAE/CEO will work with Grantee to develop a reporting template at time of contract execution. Quarterly reports are due by the 10th of each month for the previous quarter.

B. Plaza Final Report

Grantee shall produce and submit to CAE/CEO a project completion report once all Plazas have been completed that provides a technical account of the total work performed including a comprehensive description of the work tasks specified herein, the results achieved, successes, lessons learned, technology implementation of the project, and a financial status summary outlining expenditures for grant funds and non-grant cost-shares. The report shall include a project summary narrative detailing the project achievements.

C. Quarterly Reporting for Plaza Service

Following the notification of Intent to Operate in Task 4.1, Grantee shall provide login credentials to an online portal containing relevant reporting data and an export feature, to be accessed by CAE/CEO at its convenience. Grantee shall also provide written reports to CAE/CEO every three months for the Initial Grant Term of this Agreement.

Following the beginning of service, required data reports shall be submitted to CAE/CEO within 30 days after the end of each quarter. The first quarterly report shall include information from the first 90 days of operation for the first Plaza and the final report shall conclude with the final 90 days of operation of the last Plaza. No individual Plaza shall be required to provide more than 5 years of data.

This information will be used to benchmark Plaza and program effectiveness, inform the public of project results via various strategies including press releases, case studies and CEO's website, and meet the reporting requirements of FHWA and/or CAE.

Quarterly data reporting will also be required throughout the duration of the Agreement with the State as an opportunity to document achievements through the project's work. Reporting criteria shall include, but may not be limited to, the following:

- a. Plaza and DCFC Usage Report: A usage report including but not limited to, number of charging events, total amount of connected time, peak power, total energy (kWh) per charging event, date/time stamp, unique ID for charging event, Unique ID for identifying the EVSE, other non-dynamic EVSE information (GPS, ID, type, etc).

- b. **Summary of Quantifiable Metrics:** This shall include monthly kWh used, fees charged at each site, and GHG, NOx and Gallons of gas saved. Grantee may also report other metrics it deems relevant to the project such as number and type of jobs created (if applicable).
- c. **Project Constituent Testimonials/Quotes:** As applicable, include statements about the project's importance from users and managers that could be used for communications (if such statements are made available to Grantee by such users and managers). For example, a report may include a statement from the site host, customers, etc.
- d. **Summary of Communications:** Include a summary of any communications to and from the public associated with each Plaza. For example, this could include press releases, advertising, or newsletters.
- e. **Summary of Operability:** Include a summary of operability and any down time or lapse regarding service to the public. This shall include, but may not be limited to, duration, reasons for the down time, and steps taken to minimize future interruptions.
- f. Grantee shall provide updates to the utility rates for demand and kWh at each Plaza, as applicable.

For the final Quarterly Report, in addition to the items above, Grantee shall summarize data trends from all Plazas throughout the Initial Term of the Agreement.

At any time, CAE/CEO may determine that additional data or reporting information is required and reserves the right to request such additional data or reporting information from Grantee, and Grantee shall consider any such request in good faith.

The Grantee shall develop a data collection plan and reporting template for review and approval within 30 days of the first report being due after Plaza completion. Upon CAE/CEO approval, the Grantee shall use this format for quarterly reporting.

EXHIBIT B, BUDGET

The total project budget is \$445,000. For each Plaza, CAE will pay the Grantee the percentage of allowable project costs up to the award cap indicated in the chart below. Grantee is responsible for any cost overruns. Grantee is entitled to payment after successfully completing each milestone for the Plaza installation and submitting an acceptable invoice to CAE/CEO.

Location	#DCFC	kW	CAE Funding Cap	Match Share	Total Eligible Costs	CAE % of allowable project costs
Pueblo Main St.	4	150	\$445,000	\$259,500	\$704,500	65%

A. Eligible Costs

The following items are eligible for reimbursement:

- i. DCFC, power conversion hardware, and associated equipment. Chargers must be purchased and not leased.
- ii. Networking and data plans
- iii. Warranties for equipment and parts and labor (at least 5 years required)
- iv. Service Level Agreements
- v. Utility upgrades such as transformers and extensions
- vi. Solar and storage equipment that are exclusively dedicated to the charging equipment (for example, solar panels on roofs serving the entire building or installation of offsite solar farms will not be acceptable).
- vii. Other hard costs (switchgear, concrete, conduit, wire, signage, etc.)
- viii. Video surveillance equipment of the site for security and remote monitoring
- ix. Landscaping remediation directly resulting from the installation of the charging stations
- x. Parking stall striping directly resulting from the installation of the charging stations
- xi. Other equipment and non-labor project costs including design and engineering, site surveys and permitting
- xii. Future-proofing including additional conduit and wiring
- xiv. Shipping of equipment
- xv. Public outreach and education as it directly relates to the proposed project
- xvi. Labor associated with site preparation, such as trenching, or equipment installation (applicants will be required to clearly separate equipment, non-labor project costs, and labor costs in their proposals)

- xvii. Labor associated with project management

B. Non-Eligible Costs

The following project types **ARE NOT** eligible for funding under this Agreement:

- i. Operating and maintenance costs including, but not limited to, leases, rents, royalties, licenses, fees, any taxes, revenue sharing, utilities, and electric power supply for the charging equipment and supporting elements, such as area lighting.

Grantee costs covered by rebates or other support, such as make-ready investments, from the utility will not be eligible for reimbursement and will be deducted from the total project cost. The cost-share will then be calculated up to the eligible percentage and funding caps.

Grantee shall provide the following invoice documentation for each of the Plaza(s) to substantiate eligible project costs:

- i. **Equipment:** Detailed invoice and/or inventory report from Grantee showing costs for the DC Fast Chargers, Power Modules, Power Blocks, Full Service Warranty, and Charging Station Shipping.
- ii. **Signage:** Detailed invoice for signage at each station.
- iii. **Installation, Design, Engineering, Permitting:** Detailed invoice showing all design, engineering, and permitting fees for each individual site.
- iv. **Installation Labor:** Recipient shall provide a detailed invoice showing the project labor for each project site.
- v. **Installation Hard Costs:** Detailed invoice showing costs incurred for concrete, conduit, and other miscellaneous costs (bolts, screws, etc).
- vi. **Utility Interconnection Equipment:** Where applicable, a detailed invoice showing project hard costs pertaining to utility upgrades and interconnection equipment.
- vii. **Grantee Project Management (Direct Labor & Fringe Benefits):** Grantee shall report Direct Labor and Fringe on an Excel Template approved by CAE/CEO.

C. Payment

Each Plaza is eligible for 95% reimbursement upon completion of construction and the Plaza's opening to the public. CAE will retain 5% of the total grant award, distributing 1% annually each calendar year from completion of the Plaza throughout the Initial Term of the Agreement based on Grantee's timely completion of reporting, uptime requirements being met, and continuous operation. For any period where Plazas are not performing or data reporting is not being met, Grantee shall forfeit the 1% retainage for that year.

Grantee, if interested, may submit for milestone payments during the implementation and construction of the project. Each Plaza is eligible for payment upon completion of construction milestones up to 95% reimbursement upon completion of construction and the Plaza's opening to the public. The payment milestones are outlined below.

Payment Milestones	
Milestone	Percentage
Delivery and Demonstrated Payment for Charging Stations	20%
Design, Engineering, Permitting and Utility Interconnection Approval	20%
Final Commissioning and Activation	55%
Retainage for Ongoing Operations and Reporting	5%

CAE will retain 20% at each milestone up to cap allowable from each invoice applicable to the project. The State shall pay the milestone retainage upon the completion and acceptance by the State of all deliverables to ensure successful completion of each project.

CAE will retain 5% of the total grant award, distributing 1% annually each year from completion of the awarded Plaza(s) based on Grantee's timely completion of reporting, required uptime, and continuous operation. If, at the time the Grant is closed-out or terminated, it is determined that the Work is unfinished, incomplete, or unsatisfactory, or if Grantee fails to complete its obligations under this Statement of Work, in the State's sole discretion, the State shall have the right to recover from Grantee up to 100% of the Grant Funds that have been expended.

Grantees proposing projects that are eligible for the enhanced incentive for 3+ sites along a Corridor will be eligible to request payment for this enhanced incentive upon completion of the final site.

D. Billing Procedures

Payments must be made in accordance with the provisions set forth in the Agreement. The State will reimburse Grantee for the reasonable, allocable, and allowable costs based on satisfactory submission of monthly progress reports and required documentation of the work defined in the Agreement, as determined by CAE. The Grantee will be compensated only for completed work by the Grantee and accepted by CAE/CEO pursuant to the terms of the Agreement. Payment will also be contingent upon CAE/CEO's timely receipt and acceptance of the required reports and deliverables described herein.



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City of Pueblo - 120 S Main Street

Funding Request Name	City of Pueblo - 120 S Main Street	Funding Program	EV Fast Charging Plazas
Application Date	5/5/2023	Close Date	
Status	Awarded	Awarded Amount	\$445,000.00
Signature	L. Martinez	Awarded Date	8/2/2023
Applying to expand an existing site	No		

Funding Request Overview

Total Project Cost	\$3,107,692	Total Ineligible Costs	\$0
Total Funding Requested	\$2,020,000	Total Number of DCFC Requested	4
Total Funding Match	\$1,087,692		

Project Narrative, Scope and Project Justification

Overview of Project	Range anxiety, or the inability to find public charging, currently discourages the purchase of electric vehicles, particularly in areas with low EV uptake, like Pueblo. Expanding charging infrastructure is a cornerstone of the strategy to alleviate range anxiety and allows electric vehicles to proliferate. Pending funding, the City will install four DCFC plazas that will increase access to high-speed charging throughout the state and to fill gaps along Colorado's federally-designated Alternative Fuel Corridors and within Pueblo. Despite the history of Pueblo as an economy historically reliant on aging industries like mining and steel, it is now a city with significant opportunity for large-scale EV adoption. On the macro level, Pueblo City Council's commitment to clean energy will both minimize the city's dependence of fossil fuels and reduce our carbon footprint in energy production. Pueblo is already home to a plant for CS Wind, one of the world's largest wind turbine makers. The Southeastern Colorado Water Conservancy District building a \$12 million hydroelectric generation facility at Pueblo Dam that will be capable of producing 7.5 megawatts. The Neptune Solar PV Park, located in Pueblo, is a Battery Energy Storage System, 125,000kW energy storage project. The project was announced in 2018 and will be commissioned this year. The project is a part of Xcel Energy's \$2.5 billion Colorado Energy Plan, which calls for	Charging Station Location	Each proposed location furthers drivers' ability to travel throughout Colorado and the region. Pueblo is the county seat of Pueblo County and the most urbanized community in Southeastern Colorado. As our neighbors drive from the south, east and west to shop, dine, see medical providers and more, the DCFC Plazas address charging gaps for round-trip excursions. Plaza 1. Main Street Public Parking Garage, Free Parking, 0.48 mi from I25, 0.1 mi from Multifamily/Affordable Housing., and will primarily serve Personal/Light Duty Vehicles This is in the heart of downtown with many amenities nearby. 0.0mi •Historic Arkansas Riverwalk, dotted with restaurants, where families can ferry down the canal in a rented boat or paddleboard. The nights are exceptional as the whole area lights up with glittering lightwork. 0.1mi •Center for American Values, home of the "Portraits of Valor" Gallery, an extraordinary collection of 154 artistic portraits of America's Medal of Honor Recipients. It is the only place outside the Pentagon the collection is held. 0.2mi •Memorial Hall, a 1600 seat premier performing arts facility in the heart of Historic Downtown Pueblo. •Pueblo Municipal Justice Center, home to the Pueblo Police Department, Municipal Court and City Information and Technology Departments, jury and non-jury municipal courtrooms and auxiliary facilities, the building spans the length of
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phasing out 660 MW of coal-fired capacity, acquisition of two gas-fired facilities and installation of 1,000 MW of wind, 700 MW of solar and 275 MW of battery storage, all by 2022. The key applications of the project are renewables capacity firming and renewable energy time shift. As Pueblo continues to grow and attract new industry, it optimizes clean energy opportunities and smart grid technologies to build resilience into its energy infrastructure. On the micro level, providing the necessary infrastructure for electric vehicle technology will meet this same goal.

Attracted by zero tailpipe emissions, quieter streets and lower fueling costs, Pueblo City Council embraced an ambitious vision to be a leader in the adoption of electric vehicles when it unanimously resolved on February 13, 2017 with Resolution No. 13612 that the community of roughly 100,000 residents will be entirely powered by renewable sources of energy by 2035. The all-renewables plan tethers Pueblo to planning strategies that promote a more equitable, democratic energy marketplace. In April 2018, Pueblo County Commissioners passed Resolution 18-114, with the goal of powering the County's electric needs with 100 percent renewable energy by 2035.

This DCFC Plaza project is closely aligned with local and regional long-range planning documents and local government priorities including:

- The Pueblo Community Energy Plan, produced Nov 2020 by Xcel Energy Partners in Energy Community Collaboration, outlines tangible steps for Pueblo County to move the community toward its energy efficiency and resiliency goals including the community's support for electrification of transportation.

- The Pueblo County Electric Vehicle Readiness Plan produced Jan 2021 provides guidance on the development, siting, and implementation of appropriate EV charging infrastructure for public use and within Pueblo County.

These studies were used to site the proposed DCFC Plazas.

The City of Pueblo will invest several hundred thousand dollars to rapidly expand electric vehicle (EV) charging station access across the City. Selected sites will be developed and owned solely by the City; City staff have the expertise and wherewithal to monitor usage, direct maintenance, be nimble with the fee schedule, and make changes (including additions) as needed without the agreement of other partners.

This project is aligned with CEO's mission. While select EVs are capable of

an entire city block. •Union Avenue Historic District, encompassing 83 buildings, preserved and renovated, anchored by the historical Union Train Depot. It is difficult to find available leases in this center of boutiques, cafes, law offices, a cross-fit gym, and outfitter shops. •The PBR Sports Performance Center, an 18,000 sq. foot destination facility for athletes from all over the world. In addition to the hundreds of American athletes that compete for the PBR, Bull Riders from Canada, Mexico, Brazil, Australia and more will find value in the state-of-the-art facility and all that it offers.

0.3mi •The Professional Bull Riders, an international professional bull riding organization, is headquartered on Pueblo's Riverwalk. •City Hall, housing the Mayor and his staff, Finance, the Law offices, and City Council chambers. •The Pueblo Convention Center, a popular venue for meetings, events, weddings and receptions. Although the Convention Center has privately owned parking across the street from their building (smaller than the city-owned parking just a few blocks away), it is inadequate for the very large functions they host and has electric battery chargers only for Tesla vehicles. •Heroes Plaza and Medal of Honor Memorial, paying homage to four Congressional Medal of Honor whose hometown is Pueblo, Colorado. In addition to the gigantic bronze statues, the names of the over 3,500 recipients are incorporated on granite. A multi-generational, interactive Medal of Honor Information Center was unveiled June 17, 2022.

Plaza #2. Union Avenue Public Parking Lot, Free Parking, 0.50 mi from I25, 0.2mi from Multifamily/Affordable housing and will primarily serve Personal/Light Duty Vehicles. This is the heart of the Historic District.

0.1mi• The Historic Arkansas Riverwalk, dotted with dining, shopping, art, lodging, event centers (2) and local businesses. There's also plenty of opportunities for family-friendly activities, walking paths with views of public art displays and the famous Veterans' Bridge — a patriotic pedestrian bridge that proudly displays the names of thousands of veterans from all five branches of the U.S. Military alongside Pueblo's four Medal of Honor recipients. Visitors can take an excursion boat, book a booze cruise, rent a paddleboat on Lake Elizabeth or grab their favorite canoe, kayak, or paddle board to hit the river. It's also a great place for a casual stroll along the mile-long channel on a cool summer evening. 0.2mi•El Pueblo History Museum, devoted to showcasing the area's rich ethnic and cultural history through innovative exhibits including the

traveling 200 to 300 miles per charge, EXHIBIT C

the majority of models on the road today range from 60 to 120 miles per charge. Therefore, the proposed locations will accommodate for lower ranges and decrease range anxiety. The City of Pueblo sees the expansion of EV infrastructure as a way of solidifying electricity as an additional fueling category for the city and allows for the continued increase of EVs and electric hybrids within the City Fleet. The Pueblo Energy Advisory Commission will continue to provide technical and infrastructure support and expertise as residents continue to add more EVs onto its roads. Additionally, Colorado is a popular travel destination especially for those seeking outdoor recreation and the increased ease of EV travel through improved infrastructure will facilitate access to Colorado's range of visitor destinations, from popular destinations. By targeting priority locations at Pueblo's gateways and downtown with opportunities to dine or explore cultural attractions while charging, improved EV infrastructure can further support economic growth in Pueblo and the State.

Furthermore, behind every action of this project is the City's continued goal to decrease emissions through vehicle transportation as an effort to improve air quality for Colorado. Motor vehicles are the largest source of emissions in the state. Electrifying transportation will assist with reducing emissions that contribute to both ozone and PM2.5.

CEO and the Colorado Department of Transportation (CDOT) have identified gaps in the statewide transportation corridor charging network. These gaps include locations with no charging or where existing charging does not meet NEVI requirements. The NEVI Project Planning Resource Map shows three DCFC charging stations in Pueblo:

- Noncompliant: Dave Solon Nissan, 2525 W US Highway 50, 81008,
- Noncompliant: 7-11 3522 N Elizabeth St, 81003
- Compliant: Sam's Club #6549, 412 Eagleridge, \$0.48/kW, minimal nearby amenities.

No other NEVI compliant stations exist within an 80-mile radius of Pueblo.

DCFC Plazas will be installed where advantageous proximity to amenities for local residents, downtown businesspeople, and tourists who are visiting Pueblo's most popular areas exist.

Borderlands of Southern Colorado and the award-winning Children of Ludlow. The property includes a re-created 1840s adobe trading post and plaza, and the archaeological excavation site of the original 1842 El Pueblo trading post, and an archeological dig of the original trading post.

0.3mi •Bustang™, an interregional and intercity express bus service transportation from Pueblo to Lamar, Colorado (through the Lower Arkansas Valley) and back, as well as from Pueblo to Alamosa, Colorado (through the Upper Arkansas Valley) and back. •The Public Transit Center, where riders can "hop on, hop off" to see other popular attractions like Rosemont Museum and the Steel Works Center •Pueblo Ice Arena, the only ice rink in the region. It is a year-round indoor first-class facility at 39,800sf with a single NHL size rink with open skate, youth and adult hockey, figure skating lessons, and home to the Pueblo Bulls junior ice hockey team in the US Premier Hockey League. •Sangre deCristo Arts and Conference Center is a seat of entertainment in Southern Colorado, hosting important art events and educational conferences. •The Buell Children's Museum, for families and kids to spend an engaging day exploring its exciting hands-on exhibits. It is recognized as the second-best children's museum dedicated to arts by the reputed Child Magazine. • Coors Tavern, home of Pueblo's famous "slopper," featured on Food Network's FoodWars (Season 1, Episode 11).

0.4mi •Cathedral of the Sacred Heart, the mother church of the Diocese of Pueblo, built 1912-13, is listed on the National Register of Historic Places.

Plaza #3: Pueblo Mall, Free Parking, 0.10 mi from I25 and 0.10 mi from H50, 0.3mi from Multifamily/Affordable housing and will serve Personal/Light Duty Vehicles, Commercial Light-Duty Vehicles, and Commercial Medium-Heavy Duty Vehicles. Pueblo Mall is a safe, comfortable, and inviting place to gather with friends and family for fellowship, shopping, dining and entertainment. Anchored by JCPenney, Dillard's, Planet Fitness, and Altitude Trampoline Park, the Mall has dozens of apparels, foot ware, automotive, solons, and novelty stores, and a food court. This is the only mall in Southeast Colorado.

0.1mi •Big Box stories (Hobby Lobby, Target, and Natural Grocers) •Wells Fargo Bank •Vehicle Rental (Avis Car Rental and Budget Truck Rental) •Free Federal and County administered COVID-19 testing and immunizations for SE Colorado. •Future cite of a new Pueblo Transit Center, built to better serve Areas of Persistent Poverty with

EXHIBIT C

better mobility options.

0.2mi •King Soopers/Kroger Grocery, the nearest full service grocery store for the entire Eastside (where a food desert exists) and the Northside. • Locally owned stores (Tattooing, Tile House, Spa Palace Hot Tubs, and Mattress Firm) •Goodwill Thrift Store •Multiple options for fast food and dine-in restaurants.

0.3mi • Cinemark Tinseltown, upscale movie theaters with recliner seating and concessions that include cold beer and wine. •QwikCareMD Urgent Care Center •Big Box stores (Barnes & Noble Booksellers, PetSmart, Big 5 Sporting Goods, Ross Dress for Less, WalMart Supercenter, and U-Haul Moving & Storage)

0.4mi •Big Box stores (Home Depot, Verizon (full service) Store, American Furniture Warehouse) •Dining (Texas Roadhouse and Ruby Tuesdays •Lodging (Holiday Inn Express & Suites and Candlewood Suites) • NuVue Pharma medical and recreational marijuana dispensary

0.5mi • Colorado State University-Pueblo's campus, spanning more than 275 acres, crowns the north end of the City. With an enrollment of nearly 4,000 students, Colorado State University Pueblo is a fully accredited, regional comprehensive state university that provides social, educational, and cultural opportunities to its constituents.

Plaza #4: Steelworks Center of the West, Free Parking, 0.05 mi from I25, 0.1mi from Multifamily/Affordable housing, and will serve Personal/Light Duty Vehicles, Commercial Light-Duty Vehicles, and Commercial Medium-Heavy Duty Vehicles. The Steelworks Museum is housed in the former Colorado Fuel & Iron (CF&I) Medical Dispensary, built in 1901. The museum features exhibits related to all facets of CF&I and related industries' impacts on the American West.

0.0mi • Nestled snugly against the massive stacks and stoves of the old Colorado Fuel and Iron Steel Mill, the Bessemer neighborhood of 6,116 people (2010 Census) is one of the most ethnically diverse – and poorest – neighborhoods in Colorado and the Rocky Mountain West. With some of the city's finest culinary destinations, many small mercantile and other businesses—especially ones rooted in Hispanic cultural heritage—and friendly neighborhood bars, there is a healthy amount of pedestrian activity in the neighborhood's commerce center along Northern Avenue.

0.1mi •EVRAZ North America headquarters •D&RGW Depot Historical Landmark •Estela's Mill Stop Café, an eatery nestled in the shadows of the defunct towering smoke stacks that once

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operated at the historic CF&I Steel Mill, is a Pueblo institution.
 0.2mi •Ray Aguilera Municipal Park with sports fields, swimming, and playgrounds. •Some of the city's finest culinary destinations are located in this Bessemer neighborhood and it is home to friendly, neighborhood bars which function as gateways to the past.
 1.5mi •Colorado State Fair, where 66,000 Coloradoans visit during the 10-day event. The Steelworks Center of the West is near the I25 Exit directing travelers to the Fair. This site will be the closest charger to the Fair Grounds. An aerial photo of each plaza site is attached with a labeled site plan that identifies the location of charging equipment, dedicated parking spaces, required accessible design features, site lighting, nearby amenities, and areas for future expansion. Documented proof of access to property is also attached.

Access to Property

The City of Pueblo owns and operates the sites for Plaza #1 (Main Street Public Parking Garage) and Plaza #2 (Union Avenue Public Parking Lot) and has unequivocal access. The Pueblo Mall is owned and operated by Centennial and will lease a parcel of the parking area for Plaza #3. This arrangement will be mutually beneficial as it will likely result in more shoppers in the Mall. It is notable that the City intends to purchase the same land and adjacent land and structure for the future site of an additional Pueblo Transit Transfer Station in the abandoned Sears auto service garages. The City will also lease a portion of the parking area at the Steelworks Center of the West for Plaza #4. The Steelworks Center of the West and City of Pueblo have a long-standing, collaborative relationship as collaborators on heritage tourism and service to Bessemer neighborhood residents.

Station Maintenance Plan

- The City of Pueblo will be responsible for ensuring payment of all operating and maintenance costs including, but not limited to, payment of leases, rents, royalties, licenses, fees, taxes, revenue sharing, utilities, and electric power supply for the charging equipment and supporting elements, such as area lighting.
- The City of Pueblo will be responsible for ensuring the maintenance of the Plazas including cables, ancillary equipment, and any lighting, awnings, canopies, shelters and information display kiosks for signage associated with the Plazas.
- The City of Pueblo will clearly describe roles and responsibilities of each contracted vendor including a description of response times for creating a work order, having a technician on site if necessary, etc.
- The City of Pueblo will ensure necessary warranties and service level agreements (SLA) are in place to meet the required uptime and ongoing operations of the stations.
- The City of Pueblo will address any issues such as, but not limited to, malfunctions and repairs. A plan will be in place to ensure that the equipment is operational at least 97% of the time based on a week of 24 hours a day and 7 days (no more than 5 hours' cumulative downtime in a 7-day period).
- For significant or complex issues leading to extended downtime, the City of Pueblo will notify appropriate sources including website and application hosts so that drivers are aware and able to make alternative charging plans, and the City will inform CEO via email within one business day to explain the situation and management plan to mitigate the problem.
- Customers will have a mechanism to

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report outages, malfunctions and other issues with the charging infrastructure.

- The City of Pueblo incorporate snow removal at all Plazas into its snow removal plan to ensure access during/after inclement weather.
- The City of Pueblo will offer the full nameplate kW to customers at all times. Applicants will clearly describe how they will address this issue and how demand events will be managed.
- The City of Pueblo will ensure that the minimum power capabilities are continually met within the 97% uptime.

Contact Information and Background Information

Applying Organization	City of Pueblo	Secondary Contact First Name	Andrew
Unique Entity Identifier	NJK3BNUDRHJ7	Secondary Contact Last Name	Hayes
Applying Organization Website	https://www.pueblo.us	Secondary Contact Title	Director of City of Pueblo Bureau of Public Works
Organization Address	1 City Hall Place Pueblo, Colorado 81003	Secondary Contact Phone	7195532267
Organization County	Pueblo	Secondary Contact Email	ahayes@pueblo.us
Applying Contact	Luann Martinez	Anticipated Date of Completion	10/1/2024
Title	Grant and Development Administrator		
Contact Phone Number	7195687726		
Contact Email Address	lmartinez@pueblo.us		

Consumer Friendliness

24 Hour Access	All Plazas will be publicly accessible 24hrs/day 7day/week.	Restrooms and Drinking_Water	All Plazas are near well-maintained, illuminated restrooms and drinking water that are open during the business hours.
Safety	Each site has ample overhead lighting. The sites are already well supervised by security. All Plazas will also have access to shelter for inclement weather during business hours. Bus stops already exist near each proposed plaza; bus stop shelter can also provide shelter during inclement weather.	Access Design	• Each Plaza will have adequate parking to allow for four vehicles to charge simultaneously. • Ports will be consolidated in a single area to allow the use of multi-port stations to reduce total electrical load and may also allow the simplification of the electrical infrastructure with associated cost savings. • Charging stations will be located in the most visible location to the garage or lot entrance, to increase awareness and encourage the adoption of EVs. • At least one space in each site will be ADA-ABA compliant. • The footprint of each of the proposed sites can all be expanded in the future to increase the number of DCFC as demand increases, as measured by the data collected and feedback received by the Pueblo Energy Advisory Commission. • Two of the four Plazas will have pull-

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through parking design to accommodate trailers and/or medium and heavy-duty electric vehicles.

Signage	• The City of Pueblo will coordinate with CDOT to erect directional signage produced and installed along the highway. • The City of Pueblo will coordinate with local jurisdictions and site hosts to install wayfinding, regulatory, and on-site signage that meets federal Manual on Uniform Traffic Control Devices (MUTCD) guidelines.	Payment Options	• All DCFC equipment must be capable of supporting multiple point-of-sale and authentication methods such as credit or debit cards, pay per use subscription methods, RFID or smart cards and smart phone applications. • All DCFC equipment must adhere to all NEVI payment method requirements including Plug and Charge by the date indicated in the Federal Register. • All equipment will allow for pricing by kWh.
Customer Service	The City of Pueblo will provide customer support service that is accessible 24/7 and capable of providing or dispatching service to address customer concerns at the charging station.	Other	• All sites will include a CSS connector. • All sites will be non-proprietary and open to all drivers.

Project Communication and Strategic Partnerships

Strategic Partnerships	In strong partnership with Pueblo's electric utility provider, the City has been thorough in analysis of its electrification plans to ensure the best possible economic, social and environmental for Puebloans. That said, electrification infrastructure plans have been made with the understanding that the market is rapidly maturing, and future solutions may better accommodate the city's needs. By rule, Pueblo's Energy Advisory Commission consists of not less than ten and not more than fifteen members to serve 4-year terms. By practice, its members are from a variety of sectors. Currently, its membership includes local titans that create relevant alliances and partnerships as Pueblo moves forward with its clean energy strategy plan: L. Atencio Retired educator and current City Council representative for a voting district with all census tracts qualifying as Areas of Persistent Poverty K. Danti Retired electrical engineer, formally educated at Colorado School of Mines and has been involved in hundreds of important electric projects and is Chair of Pueblo's Energy Future, a grassroots network of concerned citizens working to secure an affordable alternative to fossil fuel usage. L. Getts Currently works with San Isabel Electric Company S. Nawrocki Chair of the Commission, former City Council president and current Executive Director of Senior Resource Development Agency. J. Vigil Currently in a leadership position with Black Hills Energy E. Walrath Vice Chair of the Commission, retired from Xcel after ~30 years The City will promote availability of DCFC PLAZAS through the City's website www.pueblo.us; the City's local government or public-access TV channel 17 (Comcast) or online at pueblo.us/1153/Government-Access-Channel-17 (live stream); FaceBook City of Pueblo, Colorado – City Government; Twitter @cityofpueblo; and Instagram @cityofpueblo. The airport will communicate that it is on the leading edge of technology in all of its literature.
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Budget & Pricing

Budget Narrative	Each of the Plaza budget account for Professional Fees (design and engineering, site preparation, equipment installation, project management); Equipment (DCFC, power conversion hardware, other associated equipment); shipping of equipment; utility upgrades such as transformers and extensions; supplies; permitting; networking and data plans; warranties for equipment (5 years); other hard costs (concrete, conduit, wire, signage, etc.); video surveillance equipment of the site for security and remote monitoring; and other supplies; marketing (public outreach and education as it directly relates to the proposed project); traffic
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Control during construction; project management/indirect costs. EXHIBIT C

Operating and maintenance costs including, but not limited to, leases, rents, royalties, licenses, fees, taxes, revenue sharing, utilities, and electric power supply for the charging equipment and supporting elements, such as area lighting, are not included in this application.

Pricing Structure See attachment

Organization, Staff Experience, Qualifications

Manage Project Justification

Communities are of vital importance in the global shift to EVs. EV adoption—and its environmental and economic benefits—are primarily driven by the practices and policies of cities and local jurisdictions who choose to take responsibility for installing EV charging infrastructure. With the shift to clean energy in full swing, it's important for Pueblo to install electric car charging stations and promote the purchases of zero-emission vehicles.

Pueblo City Council, the Mayor and his leadership team are committed to clean power.

- Pueblo has a clean air commitment. Exhaust from gas- and diesel-powered cars contains a mix of dangerous gases and chemicals. The bottom line: Air pollution is harmful to human health. Communities can take a decisive step toward cleaner air by shifting as much local driving as possible to zero-emission electric vehicles.
- Use of EVs will lower cost of driving for residents. A compendium of data shows that EVs are cheaper to fuel and maintain than gas cars.
- EVs are just one facet of a broader trend in mobility – usage will pave the way to other forms of clean transportation. Residents can share cars and rides, and e-scooters, e-bikes, and electric mopeds can provide last-mile solutions. Connected electric vehicles also generate data that can be used by planners to help reconfigure streets and parking.
- Electric vehicles support environmental justice. People living near highways and trucking routes suffer significant health impact from transportation pollution. Vehicle emissions not only impact health and quality of life but they also affect nearby communities by causing traffic congestion, safety issues, pavement damage, noise, and indoor air and outdoor pollution.
- Electric vehicles and smart charging help create a resilient local grid.
- EV communities get great Public Relations. to do. Communities offering green amenities then become preferred places to live, visit, and shop.

Andrew E. Hayes, PE, LEED AP O+M, is the Director of Bureau of Public Works. Andrew Hayes began serving as the Director of Public Works for the City of Pueblo in February 2021. Hayes brings a wealth of knowledge and experience working in public works management, asset management, capital investment planning, utility management, procurement, engineering, and construction management to the City's Public Works team. Immediately prior to his current role with the City of Pueblo, Andrew worked as a consultant focused on critical infrastructure resilience and risk management issues.

Andrew retired from the U.S. Navy's Civil Engineer Corps in September 2018 with more than 21 years on active duty. In his final assignment before retiring, he worked for the Defense Threat Reduction Agency at Fort Belvoir, Virginia where he assessed critical infrastructure systems across the globe for the Department of Defense and other federal government agencies. His prior work experience includes leadership roles in public works departments and expeditionary construction units located both in the U.S. and abroad.

Andrew studied civil engineering as an undergraduate at the University of Colorado at Denver where he graduated in 2004, and later received his master's degree from Clemson University in 2015. He is a registered professional engineer in the state of Colorado and a member of the American Society of Civil Engineers (ASCE), American Public Works Association (APWA), and the Society of American Military Engineers (SAME).Three Level II charging stations installed in the City in 2020 have been very successful. The feedback we've received indicates that the public needs and wants more. The City is compliant with all similarly restricted grant awards and looks forward to extending the relationship with CEO.

Innovation, Sustainability and Equity

Demand Reduction Measures

The business relationship between the City of Pueblo and the local utility is strong. Ongoing community engagement will ensure the sustainability of the

Increase Equitable Access to Electrific.

Pueblo, Colorado is majority-minority community composed of a broad diversity of residents with many linguistic, racial, ethnic, and cultural

project now and as more infrastructure is added in the future.

EXHIBIT C

backgrounds. The U.S. Census Bureau 2020 reported the local Hispanic/Latinx residency to be 52.2%, the highest in all census places in Colorado with a population over 100,000. It is largely this same population that makes up much of the rate of Puebloans living in poverty - an alarming 24.4%, despite expanded federal aid in response to the COVID-19-induced recession. Consistent with OMB's Interim Guidance for the Justice Initiative, Pueblo meets the definition of a Historically Disadvantaged Community. Of the 54 census tracts in Pueblo County, 28 are Areas of Persistent Poverty. The City of Pueblo has eight designated Opportunity Zones. Pueblo has residents impacted by environmental injustice, being addressed now by the Colorado Smelter Superfund Site. Transportation makes up 20% of Puebloans' household expenses, compared to 16% in more urbanized areas. Puebloans spend 44% more on transportation fuel than households in bigger cities, and they drive 10 more miles per day on average than others. Part of the city's rationale for pursuing the switch to renewables is to insulate residents from volatile energy prices. More than 7,000 Pueblo residents have their utilities shut off annually because they can't keep up with rising costs. Providing more and better transportation options is necessary and desirable. Pueblo is primed for electric vehicles. The plan to power the city with renewable energy greenlighted by the City Council, while not prescriptive per se, outlines specific goals including more efficient public infrastructure, businesses, homes, and appliances. The mandate emphasizes that the transition must be just and equitable for all residents and businesses. The Mayor and his leadership team are committed to infusing diversity, equity, inclusion and justice into its research, programs and community partnerships while redesigning systems around the needs and interests of people living on low income. To that end, they have formed a diverse community of stakeholders, including people of color, poor or low-income people, and women, who amplify the voices and choices of those most in need to organize and executive long-lasting change. Collectively, they refuse and reject the practice, presence, and/or acceptance of discrimination.

Additional Relevant Information

Additional Information

Files

EXHIBIT C

2023 CEO DCfC Plazas budgetsLast Modified **5/5/2023, 4:36 PM**Created By **Luann Martinez****2023 CEO DCFC Plazas project schedule**Last Modified **5/5/2023, 4:35 PM**Created By **Luann Martinez****2023 CEO DCFC Plazas access to sufficient electrical supply**Last Modified **5/5/2023, 4:04 PM**Created By **Luann Martinez****2023 CEO DCFC Plazas evidence of property ownership**Last Modified **5/5/2023, 4:02 PM**Created By **Luann Martinez****2023 CEO DCFC Plazas site plans and aerial photos**Last Modified **5/5/2023, 4:01 PM**Created By **Luann Martinez****2023 CEO DCFC Plazas notes of support**Last Modified **5/4/2023, 5:11 PM**Created By **Luann Martinez****2023 CEO DCFC Plazas technical merits**Last Modified **5/4/2023, 4:40 PM**Created By **Luann Martinez****Locations****120 S Main Street Pueblo, Colorado 81003**Location No **1**Disproportionately Impacted Community ☒Charging Stations Requested at Location **4**

Charging Ports Awarded at Location

Award Status

Street **120 S Main Street**City **Pueblo**State **Colorado**Zip Code **81003****310 S Union Ave Pueblo, Colorado 81003**Location No **2**Disproportionately Impacted Community ☐Charging Stations Requested at Location **4**

Charging Ports Awarded at Location

Award Status

Street **310 S Union Ave**City **Pueblo**State **Colorado**Zip Code **81003****3201 Dillon Dr Pueblo, Colorado 81003**Location No **3**Disproportionately Impacted Community ☐Charging Stations Requested at Location **4**

Charging Ports Awarded at Location

Award Status

Street **3201 Dillon Dr**City **Pueblo**State **Colorado**Zip Code **81003****215 Canal St Pueblo, Colorado 81004**Location No **4**

EXHIBIT C

Disproportionately Impacted Community



Charging Stations Requested at Location **4**

Charging Ports Awarded at Location

Award Status

Street **215 Canal St**

City **Pueblo**

State **Colorado**

Zip Code **81004**

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DCFC Plazas Grant Application

EXHIBIT D

The Colorado Energy Office (CEO) provides grants for electric vehicle (EV) charging stations through the DCFC Plazas (“Plazas”) program.

The purpose of this application is to provide the grant evaluation team with an understanding of the applicant’s proposed project, level of planning and commitment to the project, adherence to all program requirements and specifications, as well as their preparedness to implement the proposed project. All Plazas projects must be completed within 24 months of contract execution. We strongly encourage substantial due diligence and project planning efforts to be conducted prior to moving forward with application submission.

All applications must be submitted using CEO’s grant portal. Applicants must review the DCFC Plazas Grant Program Application Guide (“Guide”) in full prior to submitting an application. This Guide is intended to provide participants with a thorough understanding of the program’s objectives, requirements, and funding process. The guide includes a checklist that includes all documentation that applicants will be required to upload to the grant portal. Prior to submitting an application, applicants must confirm that they have read the Application Guide.

Application Submission: Applications must be received online by the stated due date on the website. CEO is not responsible for technical or transmittal issues when submitting a grant application and strongly encourages applicants to submit prior to the deadline. Upon submission, applicants will receive a confirmation email. **The application will close at 5:00 PM MT on the date listed on the website.**

The following document is solely for purposes of preparing an application to be submitted via the online application.

EXHIBIT D

Contact Information

Organization Name:	
Organization Type:	
Organization Address:	
County:	
Contact Name:	
Contact Title:	
Contact Phone Number:	
Contact Email Address:	
Organization Website:	
Secondary Contact Name:	
Secondary Contact Title:	
Secondary Contact Email:	
Secondary Contact Phone:	

Total Project Cost:	
Total Funding Request:	
Total Funding Match:	
Total Ineligible Cost	
Number of DC Fast-Charging (DCFC) Stations Requested:	
Disproportionately Impacted Community Enhanced Incentive Funding Request:	
Battery Storage Enhanced Incentive Funding Request:	
Are you applying to expand an existing site? (Yes/No)	
Anticipated Date of Project Completion:	

1. Project Narrative

Please provide a detailed description of the proposed project with a thorough explanation of how the project will help meet CEO's EV infrastructure objectives. Describe the project's relationship with the objectives of key stakeholders including local governments, utilities, local communities amongst others.

Discuss the proposed ownership model (e.g. owner-operator) and how the model best achieves the objectives outlined. Applicants should also discuss how the Plaza's utilization and reliable operation will be monitored, whether future proofing for additional chargers will be incorporated, and what market conditions would lead to Plaza expansion.

EXHIBIT D

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2. Plaza Location(s) and Access to Amenities

Indicate the number of Plazas Locations and following details (per site):

Address:	
City:	
State:	
County:	
Funding Request Amount for the Plazas Location:	
Funding Match Amount for the Plazas Location:	
Electric Utility:	
Total Number of Chargers at this Location:	
kW/Port	
Indicate if you are applying for more than one power output at this location	
Indicate if this location is in a disproportionately impacted (DI) community	

Location Description

Describe the location(s) and provide the address of each proposed Plaza, as well as the number of DCFC at each location. Discuss why the site was selected, advantages of the site, proximity to any [alternative fuels corridors](#) and benefits it brings to EV drivers, local communities, and Colorado's network of DCFC sites. Applicants should reference the [NEVI Project Planning Resource Map](#), [DOE Alternative Fuels Data Center Station Locator](#) and [Plugshare](#) for information on whether there are any current or planned DCFC nearby and explain how the new Plaza(s) will help to expand the existing market. For all Plazas, discuss nearby amenities that are available to drivers at the site(s).

Applicants should clearly describe the benefits of the proposed location and how it furthers drivers' ability to travel throughout their community and the state. This may include addressing charging gaps, access for multifamily housing (MFH) residents or those without access to home charging, and potential fleet and medium- and heavy-duty (M/HD) vehicle

EXHIBIT D

users. Additionally, indicate if any site is located in a disproportionately impacted (DI) community by utilizing CEO's [Enhanced Incentive Screening Tool](#).

Please indicate which, if any, site(s) would be able to incorporate a pull-through design for the use of the Plaza(s) by trucks, delivery fleets, and other large vehicles, such as those towing trailers.

Site Plans

- **[Upload Function]:** For each Plaza, include an aerial photo of the site, a labeled site plan that identifies the location of charging equipment, dedicated parking spaces, required accessible design features, site lighting, nearby amenities, and areas for future expansion. Also include documented proof of access to property.

Access To Property

Applicants should clearly describe the access to the proposed property. For each Plaza, note the status of access to the property. Proof of access must be provided by evidence of property ownership, a lease, or an MOU with or letter from the property owner indicating commitment to good faith negotiations and reflects a clear understanding of all relevant project details and expectations of the property owner.

Alternative sites will not be entertained. If a primary site is unable to proceed, applicants will be encouraged to apply during a subsequent application round with alternate sites.

- **[Upload Function]:** Proof of access demonstrated by evidence of property ownership, a lease, or an MOU with a letter from the property owner indicating commitment to good

faith negotiations and reflects a clear understanding of all relevant project details and expectations of the property owner.

3. Plaza Design, Facilities Requirements, Minimum Station Specifications

Provide a detailed description of each proposed Plaza including, but not limited to, the elements listed below.

Minimum Station Specifications

Verify that all equipment meets the Minimum Specifications including Charging Equipment Requirements, Physical Appearance, Function and Design, and Networking. If specification sheets apply to all Plazas, one set may be submitted.

Technical Merits

Please upload specification sheets for DCFC and related equipment proposed for each plaza. Describe the project including the type and capacity of the DCFC and related equipment for each Plaza including the charging capabilities (i.e. simultaneous charging). Please describe any additional battery storage that will be incorporated into the site and the project benefits derived from incorporating BESS into the site (project timelines, demand charge mitigation, lack of access to three phase power etc.).

- **[Upload Function] Required Documentation and Attachments:** Specification sheets for DCFC and related equipment proposed for each plaza. If all plazas will include the same equipment, one set will suffice.

Access to Sufficient Electrical Supply

Plazas must have access to existing, nearby utility power required to meet the Minimum Specifications and any proposed future expansion or be capable of producing and storing energy to serve the proposed site. If the project proposal includes a technology that is not grid-tied or utilizing technologies to offset the total power required onsite, demonstration of the technology's ability to meet the requirements of the program is required.

- **[Upload Function] Required Documentation and Attachments:** Utility confirmation such as a letter or service notice indicating adequate power supply may be obtained for each site.

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Station Maintenance Plan

The applicant shall provide the CEO with a written plan for Plaza maintenance. The plan shall also provide a summary of planned maintenance activities including preventative maintenance by frequency and a communications strategy to keep CEO informed about operations and maintenance activities. The applicant should specifically address the reliability of the equipment being proposed and how one plans to ensure the ongoing

EXHIBIT D

operability of the charging stations. If anyone other than the applicant will own, operate, or maintain the site and equipment, provide a clear description of the roles and responsibilities of each party. Reliable, well-maintained charging stations will be a primary consideration.

- If you are implementing a Service Level Agreement, where are the staff located who will be servicing and maintaining these chargers? Where are the parts located and is there sufficient stock on hand to respond to necessary repairs?

Station Reliability

Describe the strategies employed to ensure a high level of reliability of the station and network that is proposed and how it will develop confidence amongst EV drivers about the reliability of the statewide network of DCFC stations. Applicants should speak directly to the ability or site hosts' ability, if different from the applicant, to ensure the ongoing operability of the stations (training, past experience, technical capacity). Describe the equipment warranty and provisions that help to ensure equipment reliability, role of customer service and associated customer service number, and any other strategies the vendor will employ to ensure the minimum 97% uptime requirement. Applicants should clearly discuss their customer service strategy and plan to ensure a reliable, user friendly experience.

Warranty specifications including what is covered and what is not covered and the term of each. Demonstrations of past performance for the stations proposed and statistical evidence of station reliability, if available, in station collateral.

Cybersecurity

Describe the cybersecurity of the network and compliance with NIST 800 series standards before, during, and after completion of station construction.

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Consumer Friendliness and Accessibility

Describe how each Plaza meets the following Minimum Specifications: 24-hour access to DCFC, restrooms, and drinking water during business hours. Also, specifically address area lighting and description of safety precautions including aerial views of available lighting; the parking lots' ability to comply with [Design Recommendations for Accessible EV Charging Stations per the Access Board](#) and how you intend to meet this requirement; site and highway signage; payment options; and customer service availability and response.

24 Hour Access (not to exceed 10,000 characters)

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Restrooms and Drinking Water (not to exceed 10,000 characters)

--

Safety (not to exceed 10,000 characters)

--

Accessible Design (not to exceed 10,000 characters)

--

Signage (not to exceed 10,000 characters)

--

Payment Options (not to exceed 10,000 characters)

--

Customer Service (not to exceed 10,000 characters)

--

Other (not to exceed 10,000 characters)

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4. Project Communication and Strategic Partnerships

Applicants should clearly summarize strategic partnerships and arrangements with local county and municipal governments, utility companies, and other stakeholders including TNCs, non-profits, state agencies, auto manufacturers and dealerships, economic development corporations, fleets, or private businesses. Additionally, this could include the following:

- **Consultation with Utility:** Applicants are strongly encouraged to partner with utilities to ensure long-term viability of the Plaza(s). While applicants are required to consult with the local electrical utility regarding service to the proposed Plazas, opportunities may exist for additional utility partnerships such as utility-funded make-ready, utility ownership of or funding for charging equipment, and innovative rates. Details of utility partnership, including rebates, incentives, or other relevant details should be included.
- **Collaboration with Local and County Government:** Applicants are encouraged to collaborate with local or county governments for each site. This collaboration should address the local economic, environmental, and/or social benefits arising from the Plaza. Where applicable, applicants are encouraged to provide a letter of support from the local government describing the collaboration and benefits to the local community.
- **Other Engagement:** Applicants are encouraged to document engagement with other local and regional stakeholders involved in ensuring successful Plaza development, operation, and utilization. Engagement and outreach to community based organizations, local stakeholders and others is beneficial to ensure broad community awareness. Where applicable, applicants are encouraged to provide a letter of support from the local government describing the collaboration and benefits to the local community.

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- [Upload Function] Optional: Provide Letter of Support

EXHIBIT D

- Have you created, or will you create, partnerships with Colorado companies to complete the construction to comply with the EVITP and Colorado labor requirements?

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5. Budget, Budget Narrative, Business Model and Anticipated Utilization

Budget

- Provide a project budget for each individual Plaza and for the project as a whole if multiple Plazas are proposed. For each Plaza, applicants must clearly delineate eligible reimbursement costs from ineligible costs and include applicant match and the amount of funding requested from CEO. Funding sources and amounts for applicant match and ineligible costs should be included.
- **[Upload Function] Required Documentation and Attachments:** Itemized spreadsheet of all project costs including a detailed budget for the grant request. This shall include a summary of all project match. For each source of match funding, the source (e.g. Site Host) and corresponding funding amount must be included. Applicants should note their anticipated participation in any utility programs and how such participation may influence their project budget.

Budget Narrative

- Provide a detailed explanation of the project budget. The narrative should clearly explain the applicant's match funds for the proposed project and where they come from.

The business model should clearly describe the anticipated utility tariff, the projected demand charge rates, and how demand charge rates will be managed, if at all. Applicants should clearly explain how they will balance managing peak demand with delivering a high quality charging experience for the driver.

Describe the relationship between the lead applicant and other parties to the application including site hosts or other parties with a financial stake in the project. Describe steps taken to ensure the Plaza remains viable during periods of low utilization, particularly if revenue derived from charging is the sole revenue source.

The contract term resulting from this RFA will be the period of installation plus five years of continuous operation for the awarded Plaza(s). Describe plans to continue operation beyond the term of the CEO's funding agreement.

Pricing Structure

The price to charge for drivers should be fair and reasonable and should be designed to be competitive with other fuels. The cost to charge should be easy to understand by drivers. Session fees and time-based fees that are assessed when a charging session is initiated are discouraged. Please describe your anticipated pricing structure for each Plaza.

6. Organization, Staff Experience, Qualifications

Clearly describe your organization and why you are well-suited to develop and manage the proposed project. Describe your project team including lead applicant and other parties to the application, including contractors, subcontractors, site hosts, etc. If the team varies by each Plaza location, provide a breakdown for each.

Prior charging station development experience (i.e. number of years, number of stations / sites developed, duties, locations, etc.) should be clearly indicated. Results from past projects should be highlighted. This shall include, but is not limited to, references from project partners, locations and descriptions of other active stations, safety and reliability records, and other unique qualifications. In the case of joint ventures, relevant prior work experience between involved entities is preferred.

- **[Upload Function] Optional:** Please provide any supplemental materials on your organization and staff experience.
- **[Upload Function] Optional:** Upload organization collateral.

7. Sustainability and Equity

Applicants should discuss innovative strategies that go beyond the Minimum Specifications and add to the long-term sustainability, viability, resiliency, or customer friendliness of the Plaza(s).

- **Sustainability:** Include any measures taken to reduce and manage utility demand charges, offset on-peak electricity usage, and mitigate other adverse grid impacts while ensuring a positive charging experience. These may include, but are not limited to, renewable / distributed energy generation and integration, storage, charge management strategies to mitigate on-peak electricity demand, innovative business models that lead to reduced equipment and installation costs or reduced operation and maintenance costs. Incorporation of battery storage to reduce emissions, expedite project timelines or provide resiliency to the stations on site should be clearly addressed. In addition to environmental considerations, the benefits of including such technology should also address any economic benefits from foregone utility infrastructure upgrades and capabilities to reduce peak demand. Applicants may also include innovative pricing strategies, while adhering to the requirement to price charging as a cost per kWh, that may shift charging to offpeak periods of the day.

- **Equity:** Applicants who provide a description of how the project will support more equitable access to transportation electrification will be evaluated more favorably. Examples of equity strategies include, but are not limited to:
 - Locating Plazas within 2-3 blocks (ideally closer) of high-density residential areas (apartment complexes, multifamily housing, etc.)
 - Community engagement strategies that include the participation of community members of diverse demographics that typically do not have access to EV charging infrastructure.
 - Demonstrated partnership and collaboration with local community stakeholders and/or organizations, including but not limited to:
 - Letters of Support
 - Community Benefit Agreements
 - Community Hiring Agreements
 - Hosting of scooter share, bike share, car share, and/or truck share at the charging location
 - Free or reduced cost charging for neighborhood residents
 - Overnight L2 charging opportunities for neighborhood residents without dedicated parking

- Inclusion of site amenities requested through community engagement
 - Opportunities for local workforce training and/or ZEV education
 - On-site retail or dining opportunities for small and local businesses
 - Other project elements identified in collaboration with community stakeholders
- Locating chargers in underserved areas, such as within ¼ of a mile of affordable housing, housing authorities, or areas where low- and moderate-income (LMI) populations reside, commute and shop
 - Locating Plazas nearby to transit-oriented developments or existing multi-modal infrastructure
 - Locating Plazas in [Colorado opportunity zones](#)
 - Locating Plazas in charging gaps to provide more equitable access to DCFC stations for rural communities
 - Locating Plazas in disproportionately impacted communities as identified using CEO's [Enhanced Incentive Screening Tool](#), which incorporates the following definitions:
 - SB21-260 Disproportionately Impacted Community (DIC) Definition
 - National Electric Vehicle Infrastructure (NEVI) DAC Definition
 - Enviroscreen DI Community (80th percentile +)
 - Transportation Equity Community (75th percentile +)
 - Tribal Lands



8. Project Schedule

A project schedule that includes a list of project tasks and milestones must be submitted. The schedule should identify a reasonable and timely plan for contracting, NEPA compliance, permitting, construction, and opening for each Plaza; lead individual and/or agency; and the amount of time and an estimated completion date for each Plaza. A chart (Gantt or similar) should be used to outline project tasks and milestones.

Applicants should note issues or conditions that will need to be resolved before the project can begin and describe any barriers or challenges that could potentially delay the proposed timeline. All Plazas must be completed within 24 months of contract execution. Proposals with timelines beyond 24 months must provide a rationale for the extended timeline.

EXHIBIT D

Applicants are strongly encouraged to complete the project earlier than 24 months, if possible.

- **[Upload Function] Required Documentation and Attachments:** Attach Project Schedule

Optional: Additional Information

- Please provide any additional information that would be informative to the evaluation committee.

9. Certifications and Reporting Requirements

Upon project completion, CEO requires read-only and downloadable access to the network dashboard for information on the charging station(s) usage including at a minimum the time of use, duration of use, # of customers / unique users, and kWh used. The grantee will be required to provide such access to the data to CEO for utilization information for a minimum of five years. CEO may share this information at an anonymized and/or aggregated County level on the EValuateCO dashboard or other platform at the discretion of CEO or with anyone requesting such data. Should anyone request more detailed data or information, CEO will withhold or redact confidential business information, trade secrets, or personal information as required or allowed under the Colorado Open Records Act, C.R.S. § 24-72-201 to 206.

As the project applicant, I hereby certify and agree to the aforementioned Reporting Requirements.

Sign and Print Name

Organization in Good Standing Attestation

"I understand that my organization must be registered and in Good Standing with the [Colorado Secretary of State's Office](#)."

- Check to confirm

Accessibility Attestation

I understand that accessible design features must be incorporated into the charging station project in order to receive grant funding. Not less than 5%, but no fewer than one (1) of all charging station stalls provided on site must be accessible. Please refer to the [Access Board](#) for details on accessibility and charging stations.

- **Check to confirm**

Qualified Workforce Attestation

I understand the requirement to ensure a qualified workforce is involved in the installation of the Plaza(s). I further understand this to mean that the workforce installing, maintaining and operating the chargers has appropriate licenses, certifications and training to ensure the installation and maintenance of chargers is performed by a qualified workforce.

- All electricians installing, operating, or maintaining EVSE must meet one of the following requirements:
 - Certification from the EVITP.
 - Graduation or a continuing education certificate from a registered apprenticeship program for electricians that includes charger-specific training and is developed as a part of a national guideline standard approved by the Department of Labor in consultation with the Department of Transportation.
- For projects requiring more than one electrician, at least one electrician must meet the requirements above, and at least one electrician must be enrolled in an electrical registered apprenticeship program.
- **Check to confirm**



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 22, 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 AND AUTHORIZING THE MAYOR TO SIGN A SUBRECIPIENT AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND CATHOLIC CHARITIES OF THE DIOCESE OF PUEBLO, INC. DBA CATHOLIC CHARITIES OF SOUTHERN COLORADO, A COLORADO NONPROFIT CORPORATION AS AUTHORIZED BY SECTION 603 (C)(1)(A) OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR 35.6 AND AUTHORIZING THE PAYMENT OF TWO HUNDRED THOUSAND DOLLARS (\$200,000) FROM PROJECT NO. CI2113 - AMERICAN RESCUE PLAN ACT, FOR PURPOSES THEREOF

SUMMARY:

This Ordinance approves and authorizes the Mayor to sign a Subrecipient Agreement with Catholic Charities of the Diocese of Pueblo, Inc. dba Catholic Charities of Southern Colorado, as authorized by Section 603(c)(1)(A) of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6. Funds in the amount of \$200,000 will be paid out of Project No. CI2113, the American Rescue Plan Act.

PREVIOUS COUNCIL ACTION:

On October 24, 2022, Council approved Resolution No. 15039 authorizing \$1,000,000 of the American Rescue Plan Act funds for Neighborhood Cleanup Project that included work opportunity and program for those experiencing poverty or hardships. This partnership with the Catholic Charities helps us meet this goal.

BACKGROUND:

Catholic Charities is proposing to provide a Job Readiness Program for homeless individuals within the City. Participants of the program will work alongside City employees and volunteers to complete cleanup projects throughout the City. In return participants will be paid a daily stipend or wages depending upon their status in the program. Catholic Charities will also provide support services for the participants

including but not limited to food assistance, housing assistance, clothing, resume building, job search assistance, and transportation assistance. This Ordinance approves a new Subrecipient Agreement with Catholic Charities for the operation of the Job Readiness Program and grants to them up to \$200,000 to be used for operational and program costs.

FINANCIAL IMPLICATIONS:

If approved, Catholic Charities of Southern Colorado will receive \$200,000 in ARPA funds from Project No.CI2113 – Neighborhood Cleanup account.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

City Council could decide not to support or fund the Job Readiness Program.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. FINAL Subrecipient Agreement- Catholic Charities Job Readiness Program for homeless

ORDINANCE NO.

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO SIGN A SUBRECIPIENT AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND CATHOLIC CHARITIES OF THE DIOCESE OF PUEBLO, INC. DBA CATHOLIC CHARITIES OF SOUTHERN COLORADO, A COLORADO NONPROFIT CORPORATION AS AUTHORIZED BY SECTION 603 (C)(1)(A) OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR 35.6 AND AUTHORIZING THE PAYMENT OF TWO HUNDRED THOUSAND DOLLARS (\$200,000) FROM PROJECT NO. CI2113 - AMERICAN RESCUE PLAN ACT, FOR PURPOSES THEREOF

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

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

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

WHEREAS, under ARPA Section 603 (c)(1)(A) and the Final Rule 31 CFR 35.6 recipients may use Coronavirus Local Fiscal Recovery (“CLFR”) Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and the Final Rule 31 CFR 35.6 the City may use CLFR Funds to implement the program described in the attached Subrecipient Agreement; and

WHEREAS, on October 24, 2022, Council approved Resolution No. 15039 authorizing \$1,000,000 of the American Rescue Plan Act funds for a Neighborhood Cleanup Project that included work opportunities and programs for those experiencing poverty or hardships; NOW THEREFORE,

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

SECTION 1.

The Subrecipient Agreement (“Agreement”) between and the City of Pueblo, a Colorado municipal corporation and Catholic Charities of the Diocese of Pueblo dba Catholic Charities of Southern Colorado dated May 6, 2024 for the Job Readiness Program, attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute said Agreement for and on behalf of the City and the City Clerk is authorized to affix the seal of the City thereto and attest same.

SECTION 3.

Funds in the amount of \$200,000 are hereby authorized to be paid from Project No. CI2113 – American Rescue Plan Act, for purposes of funding the project described in the Agreement.

SECTION 4.

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

SECTION 5.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

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

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

President of City Council

ATTEST

City Clerk

SUBRECIPIENT AGREEMENT (Job Readiness Program)

THIS SUBRECIPIENT AGREEMENT ("Agreement") is made and entered into this 6th day of May 2024, by and between the City of Pueblo, a Colorado municipal corporation, hereinafter referred to as the "City" and Catholic Charities of the Diocese of Pueblo, Inc. dba Catholic Charities of Southern Colorado, a Colorado nonprofit corporation, hereinafter referred to as the "Subrecipient." City and Subrecipient are sometimes each referred to as a "Party" and collectively "Parties."

RECITALS

The following recitals are incorporated in and made a part of this Agreement.

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

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

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Interim Final Rule 31 CFR 35.6(b)(7) recipients may use Coronavirus Local Fiscal Recovery ("CLFR") Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and the Interim Final Rule 31 CFR 35.6(b)(7) and (12) recipients may provide CLFR Funds to programs or services to disproportionately impacted communities; and

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

WHEREAS, the Covid-19 pandemic caused severe economic damage with some of the most severe impacts falling on low-income and underserved communities causing pre-existing disparities to amplify the impact of the pandemic; and

WHEREAS, the Covid-19 pandemic left many of those from low-income and underserved communities unemployed and homeless; and

WHEREAS, Subrecipient has developed a program to provide support and job readiness services that may lead to the employment of individuals experiencing homelessness; and

WHEREAS, Subrecipient has requested that the City use CLRF Funds for staff salaries, operating costs, materials and supplies, stipends, wage subsidies, and supportive costs (i.e. bus passes, food assistance, and work clothing); and

WHEREAS, the City desires to disburse funds from Project No. CI2113 Neighborhood Clean-Up account to the Subrecipient to administer the Project and perform certain services in connection therewith as set forth in this Agreement and in the Scope of Services attached hereto as Exhibit A.

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

1. SCOPE OF SERVICES: RESPONSIBILITIES OF SUBRECIPIENT

(a) Subrecipient agrees to satisfactorily perform routine trash clean-ups in the community using homeless or unhoused individuals, 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 – Job Readiness Program 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 a nonprofit organization exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code; (iv) that it is fully aware of and understands its duty to perform all functions and services in accordance with the regulatory requirements of 31 CFR Part 35 and those identified in Exhibit "C" hereto; and (iv) that it is accepting federal financial assistance hereunder subject to certain mandatory repayment provisions.

(c) At least 24 hours prior to the start of each workday, the Subrecipient shall coordinate with the City's designated representative to determine the schedule and location of the cleanup. Subrecipient shall ensure all participants are properly dressed for the job and weather.

2. RESPONSIBILITIES OF THE CITY

(a) The City shall designate a representative of the City who will be authorized to make all necessary decisions required of the City on behalf of the City in connection with the performance of this Agreement and the disbursement of funds in connection with the Project. In the absence of such a designation, the City Mayor shall be deemed as the City's authorized representative.

(b) The City shall coordinate with the subrecipient to identify trash

cleanup locations and schedules.

(c) The City's representative shall have the authority to reject any worker from the daily cleanup schedule that they determine, in their sole discretion, is not in the correct state of mind or not dressed appropriately.

(d) The City will remove all trash that is collected during the workday and dispose of it correctly.

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 the following requirements, which shall be conditions precedent to payment: (i) that Subrecipient has expended funds for eligible approved expenditures, (ii) that Subrecipient is not in default of any material provision of this Agreement nor applicable law or regulation, (iii) that Subrecipient has timely submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items in a format approved by City, (iv) that Subrecipient has certified with each payment or reimbursement request compliance with the requirements identified in Exhibit "C" and that all expenditures for which reimbursement is sought were made for and in furtherance of the approved Project and are an eligible use of federal assistance under ARPA and federal regulations.

(b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable Federal regulations including but not limited to those at 31 CFR Part 35, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the Scope of Services. All payments received by Subrecipient hereunder are subject to repayment by Subrecipient as provided in 31 CFR Part 35.

(c) The aggregate of all payments made hereunder shall not exceed Two Hundred Thousand Dollars (U.S. \$200,000). The grant funds shall not be distributed in a lump sum. The City shall disburse half of the funds (\$100,000) within 30 days following approval of this Agreement by Pueblo City Council. The City may disburse the remaining funds (\$100,000) in full or increments after November 6, 2024, if Subrecipient is compliant with the terms of this Agreement to include the filing of all reports together with data supporting the progress of the program. The use of said funds shall be limited to expenditures as set forth in this Subrecipient Agreement.

(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.

4. TERM OF PROJECT AND AGREEMENT

(a) The terms of the Project shall be from May 6, 2024, to May 31, 2025, unless this Agreement is sooner terminated as herein provided.

(b) The term of this Agreement shall be from May 6, 2024, to May 31, 2025, 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 Mayor whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both the City and Subrecipient. Cause for termination shall include any material failure by Subrecipient to comply with any term of this Agreement.

(b) For Convenience: This Agreement may be terminated by City for convenience upon ten (10) days written notice to Subrecipient, which decision shall not be subject to appeal.

(c) Post Expiration and Termination Procedures: Upon expiration or in the event of a prior termination, all remaining and unspent grant funds, shall immediately become the sole and separate property of the City and the Subrecipient shall perform all acts and execute all instruments necessary to transfer and assign such funds to the City. All finished or unfinished documents, data, studies, reports, and work product prepared by the Subrecipient under this Agreement or with grant funds shall, at the option of the City, become City's property.

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 the 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 Board of Directors, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities assisted pursuant to this Agreement, nor has an interest in any contract, subcontract or agreement with respect thereunto, nor the proceeds thereunder, either for themselves or for those with whom they have family or

business ties, during their tenure and for one year thereafter. Subrecipient shall avoid all conflicts of interest which are prohibited by applicable federal regulations including but not limited to those set forth in 31 CFR Part 35 as presently promulgated and as same may be revised from time to time in the future.

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 31 CFR 35. The Compliance Provisions attached as Exhibit "B" hereto are made a part of this Agreement and Subrecipient agrees to perform and comply with same. The City, Comptroller General of the United States, the Inspector General of the U.S. Treasury, and any of their authorized representatives, shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers, and records of the Subrecipient which relate to this Agreement for making an audit or examination. Upon completion of the work and end of the term of this Agreement, the City may require copies of all Subrecipient's financial records relating to this Agreement to be turned over to City.

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 City's and other applicable monitoring and evaluation criteria and standards. The City shall at least quarterly review the Subrecipient's performance using on-site visits, progress reports required to be submitted by the Subrecipient, audit findings, disbursements, transactions and contact with the Subrecipient as necessary. The Subrecipient shall furnish to the City quarterly program and financial reports of its activities in such form and manner as may be requested by the City. Subrecipients shall fully cooperate with the City in relation 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 and activity reports. These records shall be retained by the Subrecipient for a period of three years after the completion of the Project. Financial and activity reports shall be submitted quarterly no later than the ninth (9th) day of the month following the end of the quarter for which the report is submitted.

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. CERTIFICATIONS

The Subrecipient agrees to execute and abide by the certifications contained in Exhibit "C" hereto, and Subrecipient's application for ARPA funds, both of which are hereby made a part of this Agreement. In the event of any conflict between the terms of this Agreement and Subrecipient's Application, this Agreement shall control.

13. REVERSION OF ASSETS

(a) Upon expiration of the term of this Agreement, or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

(b) In the event City incurs any costs or expenses in enforcing the requirements of this paragraph 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 attorney's fees.

14. 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 City's Finance Office as part of the signed Agreement.

15. NO LIABILITY TO THIRD PARTIES

The provisions of this Agreement are for the benefit of City and Subrecipient only and no third party shall have any right or remedy hereunder or the right to enforce any provisions of this Agreement.

16. NOTICES

Any notice required or permitted to be given or delivered under this Agreement shall be in writing and shall be given by personal delivery, or by registered or certified mail, postage prepaid using the United States Postal Service or by reputable national overnight courier service:

(a) If to City:

City of Pueblo
Attn: Mayor
One City Hall Place, Second Floor
Pueblo, CO 81003

with a copy to:

City Attorney:
One City Hall Place, Third Floor
Pueblo, CO 81003

(b) If to Subrecipient:

Joe Domko
Executive Director
Catholic Charities of Southern Colorado
429 W. 10th Street
Pueblo, CO 81003

or to such other person or address as either Party shall specify in written notice given to the other Party pursuant to the provisions of this Section 14. Any notice shall be deemed delivered on the day on which personal delivery is made or three (3) days after deposit in the mail in the case of registered or certified mail, or one (1) business day after deposit with a reputable national overnight courier service.

17. GOVERNING LAW

This Agreement shall be construed in accordance with and be governed by the laws of the State of Colorado without regard to conflict of law principles.

18. TIME OF THE ESSENCE

Time is of the essence hereof. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, provided Subrecipient may not assign this Agreement or any interest herein without the express written consent of the City.

19. LITIGATION AND VENUE

In the event of any litigation arising under this Agreement, the court shall award to the prevailing Party its costs and reasonable attorney fees. Exclusive venue for any such litigation shall be Pueblo County, Colorado. All such litigation shall be filed in the District Court, County of Pueblo, State of Colorado, and each Party submits to the personal and subject matter jurisdiction of such District Court. To the fullest extent permitted by law, the Parties hereby waive their right to a trial by jury.

20. WAIVER OF MONETARY CLAIMS AGAINST THE CITY

In no event shall City, its officers, agents, or employees be liable to Subrecipient for damages, including without limitation, compensatory, punitive, indirect, special, or consequential damages, resulting from or arising out of or related to this Agreement or the performance or breach thereof by City or the failure or delay of City in the performance of any covenant or provision under this Agreement on City's part to be performed. In consideration of City entering into this Agreement, Subrecipient hereby waives and discharges City, its officers, agents, and employees from all claims for any and all such damages. No breach, default, delay, or failure of City under this Agreement shall be or be construed to be a waiver, discharge, or release of Subrecipient's obligations under this Agreement. In the event of a breach of this Agreement by the City, Subrecipient's sole and exclusive remedy shall be to bring an equitable action for specific performance in the District Court of Pueblo County, Colorado. Such violations may be restrained, or such obligations enforced by injunction at the instance and request of the Subrecipient without the showing of any special damages or an inadequate remedy at law.

21. RULES OF CONSTRUCTION

(a) If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the other provisions of this Agreement which shall remain in full force and effect.

(b) Each Party acknowledges that this Agreement was fully negotiated by the Parties and, therefore, no provision of this Agreement shall be interpreted against any Party because such Party or its legal representative drafted such provision.

22. INDEMNIFICATION

Subrecipient shall defend, indemnify and save harmless the City and its agents and employees against all costs (including, without limitation, reasonable attorneys' fees), damages or claims of every kind or nature, whether sounding in tort or contract or statute, for personal injury, bodily injury or property damage or contractual or statutory damages, resulting from the operation of Subrecipient's business or resulting from, growing out of, or in any way connected with or incident to Subrecipient's performance of this Agreement. No term or condition of this Agreement shall be construed or interpreted as a waiver, either express or implied, of any of the immunities, rights, benefits, or protections provided to City under the Colorado Governmental Immunity Act.

23. 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.

24. SIGNATURES

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

25. COUNTERPARTS

This Agreement may be executed in two (2) or more counterparts and each such counterpart shall be deemed for all purposes to be an original and all such counterparts shall together constitute but one and the same original.

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

ATTEST:

CITY OF PUEBLO, A COLORADO
MUNICIPAL CORPORATION

City Clerk

By: _____
Heather Graham, Mayor

[S E A L]

Subrecipient:

CATHOLIC CHARITIES OF THE DIOCESE
OF PUEBLO, INC. dba CATHOLIC CHARITIES
OF SOUTHERN COLORADO

By: _____
Joe Domko, Executive Director

STATE OF COLORADO)
) ss
COUNTY OF PUEBLO)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024 by _____ as _____ of the Catholic Charities of the Diocese of Pueblo, Inc. dba Catholic Charities of Southern Colorado, a Colorado nonprofit corporation.

Witness my hand and official seal.
My commission expires: _____

[SEAL]

Notary Public

EXHIBIT A
SCOPE OF SERVICES
Job Readiness Program

I. Purpose of Agreement

Catholic Charities of Southern Colorado (“CCSoCo”) will partner with the City of Pueblo to conduct outreach and recruitment for a job readiness program for homeless individuals as outlined herein (the “Program”). The overall purpose of this program is to provide support and job readiness services that may lead to employment to individuals experiencing homelessness.

II. Services Provided by Catholic Charities of Southern Colorado

A. Volunteer Activities

- Provide outreach and recruitment to individuals experiencing homelessness to participate in the program daily.
- Coordinate with City of Pueblo departments such as Parks and Recreation to provide up to 5 volunteer slots, 2 days per week during the first six months of the program and 3 days per week during the remaining six months. Workdays will commence at 8:30 a.m. and conclude at 12:30 p.m.
- Ensure participants sign the approved Release and Waiver of Liability for Volunteers form. Signed waivers should be kept on file at CCSoCo and be available for inspection.
- Provide volunteers with a daily stipend in the amount of \$50 per day.
- Provide assistance to volunteer participants. Assistance includes but is not limited to transportation vouchers, food assistance, shoes and clothing appropriate for working outdoors, and interview attire. Distribution and documentation process is noted in paragraph IID.

B. Subsidized Employment

- Provide a wage subsidy to those participants deemed appropriate after an individual participant assessment and who choose to continue in the program after they complete their volunteer hours. All wage subsidies shall be paid through CCSoCo payroll.
- CCSoCo may choose to start participants in subsidized employment based on the initial participant needs assessment.
- Participants receiving subsidized employment will be paid at the minimum wage rate of \$14.42/hour for calendar year 2024 and \$15.69/hour for calendar year 2025 while working at any

- City facilities.
- Participants will be able to remain in subsidized employment for a maximum of 12 weeks.
- Participants will be required to search for regular employment and apply for employment opportunities.
- Workdays will commence at 8:30 a.m. and conclude at 12:30 p.m., following the same schedule as volunteer participants.

C. Workforce Readiness

- Provide resume/cover letter building support. Each participant will have a resume and cover letter upon completing the program.
- Assist participants in job search at the local workforce center. Job searches will be conducted at least twice per week.
- Assist participants in securing documentation necessary for employment, i.e. social security card, birth certificate, and identification.
- Assist participants with applying for employment with public/private sector employers to secure permanent employment.
- Provide 90 days of follow-up and support to employers and participants once participants are placed in regular employment.

D. Other Activities

- Hire staff to function as a coach to participants at volunteer sites and subsidized employment sites.
- Provide a meal to participants during volunteer and subsidized employment activities.
- Provide job readiness and needs assessment to program participants.
- Develop a plan for each participant that outlines needs, goals, and responsibilities.
- Provide transportation support services to participants such as bus passes, bus tickets, Uber rides, etc. to volunteer sites or subsidized employment; as well as to appointments for benefits/public assistance.
- Procure reflective vests that include the name of the program, the City logo and CCSoco logo. The design must be in compliance with the City of Pueblo Logo Guidelines and the final design must be approved by the City prior to its use.
- Provide additional support services such as, housing assistance, clothing and other benefits for program participants as identified in the needs assessment.
- Maintain participant progress notes, assessments, service activities and related outcomes into Catholic Charities data collection system, Salesforce.

- Ensure a Supportive Service Agreement is signed and dated by every participant and the staff person who administered the assistance.
- Request reimbursement from the City for participant assistance per the attached budget only after documentation of the distribution of volunteer assistance is obtained.
- Daily distribution and collection of vests and other work gear.
- CCSoco Staff will attend and participate in public events such as expos, conferences, etc. to promote the program and other services for the homeless.

III. Process and Outcome Measures

Process Measures

1. Implement a volunteer service model at designated City parks and other City locations that may lead participants to competitive employment.
2. Serve up to 30 participants throughout the contract period.
3. Submit complete Invoices on or before the 15th day of each month for services rendered the preceding calendar month unless otherwise requested by the City.
4. The Contractor shall use the City of Pueblo's preferred invoice template, or otherwise comply with all City reimbursement requirements.

Outcome Measures

1. Engage at least 30 participants in volunteer activities or subsidized employment as measured by participants' daily attendance, volunteer waivers and/or timesheets entered into the CCSoco's EWS and/or Salesforce data system.
2. Retain up to 20 participants in the first year for at least 1,500 hours in volunteer activities or subsidized employment as measured by participants' daily attendance and the distribution of assistance determined by the number of hours volunteered and documented. Subsidized employment will be documented through Catholic Charities payroll records.
3. Provide at least 25 participants with additional support service assistance such as Medicaid, SNAP, and Veterans Assistance through on-site enrollment. This will be documented in a needs assessment and case files entered into CCSoco's Salesforce data system.
4. Up to 7 participants will obtain a wage subsidy through Subsidized Employment. Individual progress notes, service activities and related outcomes will be entered into CCSoco's Salesforce data system. Individuals engaged in Subsidized employment will

receive additional services that may lead to permanent employment. Measurement will be individual progress notes, service activities and related outcomes entered into CCSoco's Salesforce data system.

5. Up to 3 participants will obtain permanent job placement. Measurement will be individual progress notes, service activities and related outcomes entered into CCSoco's Salesforce data system.
6. Up to 2 participants placed in a permanent job will retain employment for 90 days. Measurement will be individual progress notes, service activities and related outcomes entered into CCSoco's Salesforce data system.

CCSoco will evaluate outcomes and measurements every six (6) months to determine if modification of expectations and outcomes is necessary. CCSoco will report any such modifications to the City in its next quarterly report. The City may require CCSoco to further define or modify the outcomes and measurements contained herein based upon information provided to it.

IV. Performance Management and Reporting

A. Performance Management

Monitoring will be performed by the Program Director, Program Manager and the City of Pueblo Designee. Contractor may be reviewed for:

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program.
2. **Contract & Financial Monitoring:** Review and analysis of (a) current program information to determine the extent to which Contractor is achieving established contractual goals; (b) financial records and billings to ensure that contract funds are allocated and expended in accordance with the terms of the agreement. The City of Pueblo, in conjunction with CCSoco, will manage any performance issues and will develop interventions that will resolve concerns.
3. **Compliance Monitoring:** Monitoring to ensure that performance goals are met, and the requirements of the contract meet all Federal, State and local laws and regulations, and City policies.

B. Reporting

The following reports shall be developed and

delivered to the City as stated in this section.

Report Name	Description	Frequency	Reports to be sent to:
1. Quarterly Report	Report shall track the following: • Number of individuals that were recruited for the program. • Number of individuals that participated in volunteer activities. • Number of documented volunteer hours. • Number of individuals that participated in subsidized employment. • Number of individuals that were placed in permanent employment. • Number of individuals that succeeded in meeting the 90-day job retention benchmark. • Number of individuals that received additional support services through a needs assessment. • Number of gift cards distributed. • Number of bus passes distributed.	Quarterly	City of Pueblo
2. Contract Summary Report	Report shall demonstrate all functions performed, and how services provided met the overall goals of this agreement, best practices	Contract End, within 45 days after Term	City of Pueblo

	and issues. Other data will include a total of all quarterly benchmarks noted in #1 and total budget per line item, amount spent, and an explanation as to unspent funds, etc.	End.	
3. Other Reports as reasonably requested by the City.	Form and Substance To be determined (TBD) as needed	TBD	TBD

V. Budget

- A. Contractor shall provide the identified services for the City of Pueblo using best practices and other methods for fostering a sense of collaboration and communication.
- B. Budget

Line Item #	Category	Detail	Total	Budget Narrative
	CCSoCo Staff Salaries and Fringe			
1	Program Coordinator	0.20 FTE @ \$54,106	\$10,821	Program Coordinator will work 0.20 FTE on this project. The Coordinator will oversee the entire program and ensure that CCSOCO is in full compliance with the program contract. Duties will include facilitating continual communication with City of Pueblo personnel, managing all CCSoCo staff involved in the program, coordinating the on-site supervision of all participants, coordinating all data collection, coordinating all outreach efforts, coordinating benefits assessment and navigation and project reporting protocols,

				attending all meetings with City personnel, and reporting directly to Program Manager.
2	Employment Specialist	1 FTE @ \$38,000	\$38,000	Employment Specialists will work full-time on this project. Duties will include direct supervision of all participants at a minimum of one job site per workday. The Employment Specialist will be assisting participants to acquire necessary documentation for hiring, assisting in benefits needs assessments, participating in outreach activities and tracking participation activities. The Employment Specialists will report directly to the Program Coordinator.
3	Fringe Benefits	Average Fringe Rate of 33%	\$16,111	Fringe benefits and payroll taxes for staff includes; FICA, Health Insurance, Workers Compensation, Unemployment and 403B Retirement Plan benefits. Calculated at approximately 33% of total wages
	Participant Costs			
4	Volunteer Stipends (first six months, while building capacity)	5 clients per day, 2 days per week for 26 weeks at \$50 per day per client.	\$13,000	Volunteers will receive a stipend daily for each day they volunteer. Volunteers are individuals experiencing

	Volunteer Stipends (remainder of the year)	5 clients per day, 3 days per week for 26 weeks at \$50 per day per client.	\$19,500	homelessness.
5	Participant Subsidized wages (first six months, while building capacity)	2 participants x 16 hours per week x \$14.42/hr x 12 weeks	\$5,537	Volunteers that demonstrate a willingness and ability to transition to subsidized employment based on completion of an employment assessment would be paid minimum wage. Current minimum wage is \$14.42/hr and expected calendar year 2025 minimum wage is \$15.69/hr.
	Participant Subsidized wages (remainder of the year)	5 participants x 16 hours per week x \$15.69 x 12 weeks	\$15,063	
6	Taxes	9.18%	\$1,891	Fringe benefits and payroll taxes for Participant Wage Subsidy includes; FICA, Workers Compensation, Unemployment and other associated costs calculated at approximately 9.18% of total participant wages.
7	Supportive Services	Bus passes, food assistance, work clothing, fees associated with document acquisition	\$6,320	Participant assistance in the form of work clothing such as boots, fees associated with acquiring an ID, certificate or other documents required for work, bus passes, etc.
	Travel			
8	Mileage	Mileage (30 miles/month @ \$.60 per mile x 12 months x 1 employment specialists)	\$216	Mileage for staff when using their personal vehicle to purchase supplies, attend meetings, etc.
	Equipment			
9		Passenger Van (Used 15 Pax van)	\$25,000	Van to be used to transport participants to and from worksites.
	Materials & Supplies			

10	Office Supplies	\$80/month x 12 months	\$960	General office supplies
11	Program Supplies	Safety equipment, consumables, worksite vests	\$8,000	Consumables consists of providing a meal for all participants on each work site each workday. This may also include food and non-alcoholic drinks provided in outreach effort activities. This includes, but not limited to work related clothing for participants of the program such as t-shirts, coats, hats, gloves, shoes.
	Other Direct Costs			
12	Fuel	\$60 per week x 52 weeks	\$3,120	Fuel for Passenger van
13	Vehicle maintenance, Registration and Insurance	\$100 per month for vehicle maintenance, \$750 for registration and \$849 for insurance.	\$2,799	Oil changes and other general vehicle maintenance expenses for passenger van, annual registration and insurance costs.
14	Office Space	\$3,000 per year	\$3,000	Rent for an office space for staff.
15	Laptops	\$1,000 per laptop	\$1,000	Includes tablets or laptops that staff may utilize in the field to track program activities.
16	Wifi	\$200 per hotspot x1	\$200	Mobile hot spot to be used by staff in the field.
17	Phone and Internet	\$90 per month x 12	\$1,080	Cell phone and internet expenses for Employment Specialist.
18	Personnel Development	Conferences, trainings, etc.	\$200	Expenses related to trainings that staff may attend.
19	Workers Compensation Insurance		\$5,000	Expected Workers Comp. Insurance policy increase associated with participants that are subsidized employees.

20	Contingency		\$5,000	This is to account for miscellaneous expenses for this pilot program that may be incurred that are not budgeted in the submitted budget at time contract is executed. May only be used for existing line items # 1-19
	Total Direct Costs		\$181,818	
21	Indirect and Administrative Costs	10 Percent	\$18,182	
		Total Costs	\$200,000	

EXHIBIT B
COMPLIANCE PROVISIONS INCORPORATED
IN THE SUBRECIPIENT AGREEMENT

1. An accounting system using the accrual basis of generally accepted accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project is mandatory. A receipts and disbursements ledger must be maintained. A general ledger with an income and expense account for each budgeted line item is necessary. Paid invoices revealing check number, date paid, and item is necessary. Similarly, cash receipts for the payment of wages is mandatory. Paid invoices revealing check number, date paid, and evidence of goods or services received are to be filed per the expense account they were charged. 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 Project as determined by the City. All costs must be budgeted items. Request for advance or reimbursements of expenses must be accompanied by:

1. Original invoice marked with funding source
2. Detailed listing of each expense showing:
 - a) recipient
 - b) brief description of purchase
 - c) amount with method of computation detailed

Cost Summary must be submitted 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-party contractors of the Subrecipient. The subrecipient is further cautioned against obligating funds beyond the contract date of the agreement between the City and the Subrecipient.

7. The Subrecipient will furnish the City such statements, records, data, and information, and permit such interviews with personnel as the City may request to effectively monitor and evaluate the project.

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 Subrecipient for a period of three years following the last day of the Agreement. (Cost summary reports must reflect actual general ledger balances.)

EXHIBITC CERTIFICATIONS

Subrecipient hereby certifies that the grant will be conducted and administered in compliance with:

- (1) Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d, et seq.) and implementing regulations issued at 24 CFR Part 1;
- (2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284; 42 U.S.C. 3601, et seq.) as amended; and that the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
- (3) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto;
- (4) Section 3 of the Housing and Urban Development Act of 1968, as amended;
- (5) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and implementing regulations issued at 41 CFR Chapter 60;
- (6) Executive Order 11063, as amended by Executive Orders 12259, and implementing regulations at 24 CFR Part 107;
- (7) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;
- (8) The Age Discrimination in Employment Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;
- (9) The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the HUD implementing regulations set forth in 24 CFR Part 42;
- (10) Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;
- (11) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
- (12) The applicable regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, Revised, 24 CFR 85 and Subpart J of 24 CFR 570, A-87, A-110, A-122, A-128 and A-133 as they relate to the acceptance and use of federal funds under this federally-assisted program;
- (13) The Clean Air Act (42 U.S.C. 7401 et seq.) as amended; particularly section 176 (c) and (d) [42 U.S.C. 7506 (c) and (d)];
- (14) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 (f) et seq., and 21 U.S.C. 349) as amended; particularly section 1424 (e) (42 U.S.C. 300 (h)-303 (e));
- (15) The Endangered Species Act of 1973 (16 U.S.C. 1531 et. Seq.) as amended; including but not limited to section 7 (16 U.S.C. 1536) thereof;

(16) The Reservoir Salvage Act of 1960 916 U.S.C. 469 et.seq.); particularly section 3 (16 U.S.C. 469a-1); as amended by the Archeological and Historical Preservation Act of 1974;

(17) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et.seq.) as amended; particularly sections 102(a) and 202(a) [42 U.S.C. 4012a(a) and 4106(a)];

(18) Executive order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. Seq.); particularly sections 2 and 5;

(19) Lead-Based Paint Poisoning Prevention requirements of 25 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et.seq.);

(20) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended; particularly section 106 (16 U.S.C. 470f); and

(21) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.); particularly section 2(c).

(22) Construction work financed in whole or in part with federal funds is subject to the prevailing wage requirements of the Davis-Bacon Act (29 CFR, Parts 3 and 5), the Copeland Act (29 CFR Part 3), and the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96). When a project meets this applicability requirement, the labor standards provision of the HUD 4010 and the Davis- Bacon Wage Decision issued for the project will be incorporated into this contract document and shall be incorporated into all construction contracts and subcontracts of any tier thereunder.

(23) No ARPA funds may be expended for lobbying purposes and payments from other sources for lobbying must be disclosed (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.

(24) Where asbestos is present in property undergoing rehabilitation, Federal requirements apply regarding worker exposure, abatement procedures and disposal. (CPD-90-44 EPA/OSHA).

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

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

- a) Are you, or do you employ or engage in any capacity, including an independent Agreement or, a PERA Retiree who will perform any services for the City of Pueblo? Yes __, No __.
- b) If you answered "yes" to (a) above, please answer the following question: Are you an individual, sole proprietor or partnership, or a business or company owned or operated by a PERA Retiree or an affiliated party? Yes __, No __.
If you answered "yes" please state which of the above entities best describes your business:

- c) If you answered "yes" to both (a) and (b), please provide the name, address, and social security number of each such PERA Retiree.

Name

Address

Social Security Number

Name

Address

Social Security Number

(If more than two, please attach a supplemental list)

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

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

Signed _____, 20____.

By: _____
Name: _____
Title: _____

For purposes of responding to question (b) above, an "affiliated party" includes (1) any person who is the named beneficiary or co-beneficiary on the PERA account of the PERA Retiree; (2) any person who is a relative of the PERA Retiree by blood or adoption to and including parents, siblings, half-siblings, children, and grandchildren; (3) any person who is a relative of the PERA Retiree by marriage to and including spouse, spouse's parents, stepparents, stepchildren, stepsiblings, and spouse's siblings; and (4) any person or entity with whom the PERA Retiree has an agreement to share or otherwise profit from the performance of services for the City of Pueblo by the PERA Retiree other than the PERA Retiree's regular salary or compensation.



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 22, 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

SUBJECT: AN ORDINANCE APPROVING AND ACCEPTING A 2024 COLORADO DEPARTMENT OF PUBLIC SAFETY, DIVISION OF CRIMINAL JUSTICE OPIOID GRANT IN THE AMOUNT OF \$9,580 FOR SYNTHETIC OPIATE POISONING INVESTIGATION AND DISTRIBUTION INTERDICTION, ESTABLISHING PROJECT NUMBER PS2403, BUDGETING AND APPROPRIATING GRANT FUNDS OF \$9,580 TO SAID PROJECT, AND AUTHORIZING MAYOR GRAHAM TO EXECUTE THE GRANT AWARD LETTER AND RELATED DOCUMENTS

SUMMARY:

Attached is a 2024 Synthetic Opiate Poisoning Investigation and Distribution Interdiction Grant, the related Grant Award Letter (Intergovernmental Grant Agreement), and accompanying documents for the Colorado Department of Public Safety, Division of Criminal Justice Grant # 2024- FD-23-48, known as the Synthetic Opiate Poisoning Investigation and Distribution Interdiction Grant Program.

PREVIOUS COUNCIL ACTION:

City Council has approved ordinances accepting Colorado Department of Public Safety, Division of Criminal Justice Grant funds each year beginning in June 2023.

BACKGROUND:

The Colorado Department of Public Safety, Division of Criminal Justice Program provides funds to units of local government for the purpose of Synthetic Opiate Poisoning Investigation and Distribution. The program is designed to help local communities address problems specific to their areas. Acceptance of the Synthetic Opiate Poisoning Investigation and Distribution Interdiction Grant Program grant is now needed to obtain funding for the opioid grant. Acceptance of the award and scheduling of and budgeting for the Synthetic Opiate Poisoning Investigation and Distribution Interdiction Grant will be based upon adoption of this Ordinance, establishing Project

No. PS2403, and budgeting and appropriating funds in the amount of \$9,580.00 into project PS2403. This project will fund Fentanyl test strips, multi-drug tester kits, and heat-sealing evidence bags for the safe handling of fentanyl and other dangerous drugs.

FINANCIAL IMPLICATIONS:

If approved, grant funds in the amount of \$9,580.00 will be budgeted and appropriated into Project No. PS2403 to fund the purchases. Reimbursement of the \$9,580.00 will be made to the City of Pueblo through the Synthetic Opiate Poisoning Investigation and Distribution Interdiction Grant.

Matching funds from the City are not required for this grant.

BOARD/COMMISSION RECOMMENDATION:

Not applicable.

STAKEHOLDER PROCESS:

Not applicable.

ALTERNATIVES:

Decline this grant offer from Colorado Department of Public Safety, Division of Criminal Justice. If that occurs, the City will not receive the \$9,580.00 in grant funds offered.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. 2024-FD-23-48-IGA-Pueblo-LJC (1)
2. 2024-FD-23-48-IGA-Pueblo-LJC (2)
3. 2024-FD-23-48-IGA-Pueblo-LJC (3)

ORDINANCE NO.

AN ORDINANCE APPROVING AND ACCEPTING A 2024 COLORADO DEPARTMENT OF PUBLIC SAFETY, DIVISION OF CRIMINAL JUSTICE OPIOID GRANT IN THE AMOUNT OF \$9,580 FOR SYNTHETIC OPIATE POISONING INVESTIGATION AND DISTRIBUTION INTERDICTION, ESTABLISHING PROJECT NUMBER PS2403, BUDGETING AND APPROPRIATING GRANT FUNDS OF \$9,580 TO SAID PROJECT, AND AUTHORIZING MAYOR GRAHAM TO EXECUTE THE GRANT AWARD LETTER AND RELATED DOCUMENTS

WHEREAS, the City Council of Pueblo has the authority on behalf of the City of Pueblo, including its Police Department, to accept grants from the state government for public and municipal purposes and to enter into agreements relating thereto; and

WHEREAS, the Department of Public Safety, Division of Criminal Justice Grant program has tendered a Grant Award Letter ("Agreement") for Project No. 2024-FD-23-48 / Synthetic Opiate Poisoning Investigation and Distribution Interdiction Grant Program (Pueblo) in the amount of \$9,580.00 upon conditions recited therein or incorporated therein by reference; and

WHEREAS, the State has made additional awards of funds in the past under previous grant agreements and the Police Department anticipates the award of additional funds in the future pursuant to this Agreement if the same are made available by the State; and

WHEREAS, acceptance of the Agreement for the purposes for which it has been made is in the best interest of the City and will benefit the health, welfare and safety of the citizens of the City; NOW, THEREFORE,

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

SECTION 1.

The Grant Award Letter (Intergovernmental Grant Agreement), DCJ Grant #: 2024-FD-23-48, ("Agreement") between the State of Colorado, Department of Public Safety, Division of Criminal Justice, and the City of Pueblo, a Municipal Corporation, for Synthetic Opiate Poisoning Investigation and Distribution Interdiction Grant Program, a true copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved and accepted.

SECTION 2.

The Mayor is hereby authorized to execute the Agreement and any necessary documents or certifications in the name of and on behalf of the City, and the City Clerk shall affix the Seal of the City to and attest the same.

SECTION 3.

Project No. PS2403 is hereby established.

SECTION 4.

Grant funds in the amount of \$9,580.00 shall be accepted pursuant to the Agreement and budgeted and appropriated to Project No. PS2403.

SECTION 5.

Pursuant to the Agreement, the State of Colorado, Department of Public Safety, Division of Criminal Justice ("State") may unilaterally amend the terms of the Agreement or the amount of grant funds pursuant to an updated Grant Award Letter or other change letter. In the event the State increases the grant award via such a letter, the additional funds may be accepted pursuant to this Ordinance and budgeted and appropriated into Project No. PS2403, where said funds shall only be expended and used for this project.

SECTION 6.

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

SECTION 7.

This Ordinance shall become effective upon final action by the Mayor and City Council.

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

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

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

President of City Council

ATTEST

City Clerk

Grantee: City of Pueblo
 Project: Pueblo's War on Opiates

DCJ Grant #: 2024-FD-23-48

GRANT AWARD LETTER
(Intergovernmental Grant Agreement)
SUMMARY OF GRANT AWARD TERMS AND CONDITIONS

State Agency Department of Public Safety, Division of Criminal Justice	DCJ Grant Number 2024-FD-23-48
Grantee City of Pueblo	Federal Unique Entity Identifier (UEI) NJK3BNUDRHJ7
Grant Issuance Date (Start Date) The later of January 1, 2024 or the date the State Controller or an authorized delegate signs this Grant Letter	Grant Expiration Date (End Date) June 30, 2024
Grant Amount Total for Fiscal Year 2024: \$9,580	Grant Authority (State Authority) The Division of Criminal Justice is authorized to disburse these funds by Colorado Revised Statute 24-33.503 and 507. C.R.S. 24-33.5-533. Synthetic Opiate Poisoning Investigation and Distribution Interdiction Grant Program
Grant Description Pueblo Police Department seeks funding to increase the tools needed to investigate, enforce and prosecute opiate importation and distribution. The purchase of drug testing supplies will help PPD increase opioid arrests and officer safety, and reduce opioid use and deaths.	
Grant Purpose To provide grants to law enforcement agencies for the purpose of investigating deaths and serious injuries caused by illegal synthetic opiate poisoning and for disrupting synthetic opiate supplies.	
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Grant: 1. Exhibit A1, Sample Option Letter. 2. Exhibit A2, Sample Grant Funding Change Letter 3. Exhibit B, Grant Requirements. 4. Exhibit C, Special Conditions. 5. Exhibit D, Statement of Work. 6. Exhibit E, Budget. In the event of a conflict or inconsistency between this Grant and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority: 1. Exhibit C, Special Conditions. 2. The provisions of the other sections of the main body of this Agreement. 3. Exhibit B, Grant Requirements. 4. Exhibit D, Statement of Work. 5. Exhibit E, Budget.	

Grantee: City of Pueblo
Project: Pueblo's War on Opiates

DCJ Grant #: 2024-FD-23-48

SIGNATURE PAGE

THE SIGNATORIES LISTED BELOW AUTHORIZE THIS GRANT

STATE OF COLORADO

Jared S. Polis, Governor
Department of Public Safety
Stan Hilkey, Executive Director

DocuSigned by:

Matthew M. Lunn, PhD

8C8341EFA6124C4...

By: Division of Criminal Justice
Matthew M. Lunn, Ph.D., Director

12/21/2023 | 6:21:54 PM PST

Date: _____

In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER

Robert Jaros, CPA, MBA, JD

DocuSigned by:

Lyndsay J. Clelland

363D680603F0405...

By: Lyndsay J. Clelland, Contract and Grant Coordinator, Division of Criminal Justice

12/21/2023 | 10:06:38 PM MST

Effective Date: _____

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1. GRANT

As of the Grant Issuance Date, the State Agency shown on the first page of this Grant Award Letter (the “State”) hereby obligates and awards to Grantee shown on the first page of this Grant Award Letter (the “Grantee”) an award of Grant Funds in the amounts shown on the first page of this Grant Award Letter. By accepting the Grant Funds provided under this Grant Award Letter, Grantee agrees to comply with the terms and conditions of this Grant Award Letter and requirements and provisions of all Exhibits to this Grant Award Letter.

2. TERM

A. Initial Grant Term and Extension

The Parties’ respective performances under this Grant Award Letter shall commence on the Grant Issuance Date and shall terminate on the Grant Expiration Date unless sooner terminated or further extended in accordance with the terms of this Grant Award Letter. Upon request of Grantee, the State may, in its sole discretion, extend the term of this Grant Award Letter in accordance with **§16.D**.

B. Early Termination in the Public Interest

The State is entering into this Grant Award Letter to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Grant Award Letter ceases to further the public interest of the State or if State or other funds used for this Grant Award Letter are not appropriated, or otherwise become unavailable to fund this Grant Award Letter, the State, in its discretion, may terminate this Grant Award Letter in whole or

in part by providing written notice to Grantee that includes, to the extent practicable, the public interest justification for the termination. If the State terminates this Grant Award Letter in the public interest, the State shall pay Grantee an amount equal to the total reimbursement payable under this Grant Award Letter that corresponds to the Work satisfactorily completed, as determined by the State, less payments previously made. This subsection shall not apply to a termination of this Grant Award Letter by the State for breach by Grantee.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Budget"** means the budget for the Work described in **Exhibit E, Budget**.
- B. **"Business Day"** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- C. **"CJI"** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- D. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
- E. **"Grant Award Letter"** means this letter which offers Grant Funds to Grantee, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future updates thereto.
- F. **"Grant Funds"** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Grant Award Letter.
- G. **"Grant Expiration Date"** means the Grant Expiration Date shown on the first page of this Grant Award Letter.
- H. **"Grant Issuance Date"** means the Grant Issuance Date shown on the first page of this Grant Award Letter.
- I. **"Exhibits"** exhibits and attachments included with this Grant as shown on the first page of this Grant
- J. **"Extension Term"** means the period of time by which the Grant Expiration Date is extended by the State through delivery of an updated Grant Award Letter
- K. **"Goods"** means any movable material acquired, produced, or delivered by Grantee as set forth in this Grant Award Letter and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
- L. **"Incident"** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- M. **"Initial Term"** means the time period between the Grant Issuance Date and the Grant Expiration Date.
- N. **"Party"** means the State or Grantee, and **"Parties"** means both the State and Grantee.

- O. “**PCI**” means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- P. “**PII**” means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S.
- Q. “**PHI**” means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- R. “**Services**” means the services to be performed by Grantee as set forth in this Grant Award Letter, and shall include any services to be rendered by Grantee in connection with the Goods.
- S. “**State Confidential Information**” means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- T. “**State Fiscal Rules**” means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- U. “**State Fiscal Year**” means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- V. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- W. “**Subcontractor**” means third-parties, if any, engaged by Grantee to aid in performance of the Work. This establishes a **procurement** relationship. The subcontractor provides goods or services for the benefit of the purchaser.
- X. “**Subgrantee**” means third-parties, if any, engaged by Grantee to aid in performance of the Work. This establishes a **grant** relationship. The beneficiary, not the purchaser, receives

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benefit from the work. There may be multiple tiers of subgrantees that do not include procurement transactions.

- Y. **“Work”** means the delivery of the Goods and performance of the Services described in this Grant Award Letter.
- Z. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Grant Issuance Date that is used, without modification, in the performance of the Work.

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

4. STATEMENT OF WORK

Grantee shall complete the Work as described in this Grant Award Letter and in accordance with the provisions of **Exhibit E, Budget**. The State shall have no liability to compensate or reimburse Grantee for the delivery of any goods or the performance of any services that are not specifically set forth in this Grant Award Letter.

5. PAYMENTS TO GRANTEE

A. Maximum Amount

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Grantee any amount under this Grant that exceeds the Grant Amount for each State Fiscal Year shown on the first page of this Grant Award Letter. Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. The State shall not be liable to pay or reimburse Grantee for any Work performed or expense incurred before the Grant Issuance Date or after the Grant Expiration Date.

B. Reimbursement of Grantee Costs

The State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount described in this Grant Award Letter for all allowable costs described in this Grant Award Letter and shown in the Budget, except that Grantee may adjust the amounts between each line item of the Budget without formal modification to this Agreement as long as the Grantee provides notice to and receives approval from the State of the change, the change does not modify the total maximum amount of this Grant Award Letter or the maximum amount for any state fiscal year, and the change does not modify any requirements of the Work. The State shall only reimburse allowable costs if those costs are: **(i)** reasonable and necessary to accomplish the Work and for the Goods and Services provided; and **(ii)** equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred).

C. Close-Out

Grantee shall close out this Grant within 45 days after the Grant Expiration Date. To complete close out, Grantee shall submit to the State all deliverables (including documentation) as

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defined in this Grant Award Letter and Grantee's final reimbursement request or invoice. The State will withhold allowable costs until all final documentation has been submitted and accepted by the State as substantially complete.

6. REPORTING - NOTIFICATION

A. Performance and Final Status

Grantee shall submit all financial, performance and other reports to the State no later than the end of the close out described in **§5.C**, containing an evaluation and review of Grantee's performance and the final status of Grantee's obligations hereunder.

B. Violations Reporting

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

7. GRANTEE RECORDS

A. Maintenance and Inspection

Grantee shall make, keep, and maintain, all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to this Grant for a period of three years following the completion of the close out of this Grant. Grantee shall permit the State to audit, inspect, examine, excerpt, copy and transcribe all such records during normal business hours at Grantee's office or place of business, unless the State determines that an audit or inspection is required without notice at a different time to protect the interests of the State.

B. Monitoring

The State will monitor Grantee's performance of its obligations under this Grant Award Letter using procedures as determined by the State. Grantee shall allow the State to perform all monitoring based on the State's risk analysis of Grantee. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work. If Grantee enters into a subcontract or subgrant then Grantee shall contain provisions permitting both Grantee and the State to perform all monitoring of that subcontractor or subgrantee.

C. Final Audit Report

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

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Grantee shall hold and maintain, and cause all Subgrantees and Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Grantee for the sole and exclusive benefit of the State, unless those State Records are otherwise publically available at the time of disclosure or are subject to disclosure by Grantee under CORA. Grantee shall not, without prior written approval of the State, use for Grantee's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Grant Award Letter. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Grantee or any of its Subgrantees or Subcontractors will or may receive the following types of data, Grantee or its Subgrantees or Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Grant as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Grant, if applicable. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

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

C. Use, Security, and Retention

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

Confidential Information, Grantee warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding PII

If Grantee or any of its Subgrantees or Subcontractors will or may receive PII under this Agreement, Grantee shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S.

9. CONFLICTS OF INTEREST

Grantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Grant. Grantee acknowledges that, with respect to this Grant, even the appearance of a conflict of interest shall be harmful to the State's interests and absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations under this Grant. If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration.

10. INSURANCE

Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"). Grantee shall ensure that any Subgrantees and Subcontractors maintain all insurance customary for the completion of the Work done by that Subgrantee or Subcontractor and as required by the State or the GIA.

11. REMEDIES

In addition to any remedies available under any exhibit to this Grant Award Letter, if Grantee fails to comply with any term or condition of this Grant, the State may terminate some or all of this Grant and require Grantee to repay any or all Grant funds to the State in the State's sole discretion. The State may also terminate this Grant Award Letter at any time if the State has determined, in its sole discretion, that Grantee has ceased performing the Work without intent to resume performance, prior to the completion of the Work.

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12. DISPUTE RESOLUTION

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

13. NOTICES AND REPRESENTATIVES

Each Party shall identify an individual to be the principal representative of the designating Party and shall provide this information to the other Party. All notices required or permitted to be given under this Grant Award Letter shall be in writing, and shall be delivered either in hard copy or by email to the representative of the other Party. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §13.

14. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

Grantee hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Grantee or any Subcontractors or Subgrantees and paid for with Grant Funds provided by the State pursuant to this Grant.

15. GOVERNMENTAL IMMUNITY

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

16. GENERAL PROVISIONS

A. Assignment

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

B. Captions and References

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

C. Entire Understanding

This Grant Award Letter represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Grant Award Letter.

D. Modification

The State may modify the terms and conditions of this Grant by issuance a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

- i. The State may, at the State's discretion, issue an updated **Exhibit D, Statement of Work** and **Exhibit E, Budget** by Option Letter substantially equivalent to **Exhibit A1, Sample Option Letter** to reflect changes during the fiscal year. The provisions of the Option Letter shall become part of and be incorporated into this Grant.
- ii. Grantee may terminate the grant if the Grantee cannot adhere to the approved **Exhibit D, Statement of Work** and **Exhibit E, Budget** as updated from time to time.
- iii. The State may, at the State's discretion, use an Option Letter or Grant Funding Change letter substantially equivalent to **Exhibit A1, Sample Option Letter** or **Exhibit A2, Sample Grant Funding Change Letter** to modify the grant agreement. If exercised, the provisions of the Option Letter or Grant Funding Change Letter shall become part of and be incorporated into the grant agreement.
- iv. The State may increase or decrease the quantity of goods/services described **Exhibit D, Statement of Work** and **Exhibit E, Budget** based upon the rates established in the Grant. If the State exercises the option, it will provide written notice to Grantee at least 15 days prior to the end of the current grant term in a form substantially equivalent to **Exhibit A1, Sample Option Letter**.
- v. The State may add or delete the goods/services described **Exhibit D, Statement of Work** and **Exhibit E, Budget** as long as the change does not change the overall scope of the approve grant. If the State exercises the option, it will provide written notice to Grantee at least 15 days prior to the end of the current grant term in a form substantially equivalent to **Exhibit A1, Sample Option Letter**.

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

Any reference in this Grant Award Letter to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Grant Issuance Date. Grantee shall strictly comply with all applicable Federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. Digital Signatures

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

G. Severability

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

H. Survival of Certain Grant Award Letter Terms

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

I. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described above, this Grant Award Letter does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

J. Waiver

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

K. Accessibility

Grantee shall comply with and adhere to Section 508 of the U.S. Rehabilitation Act of 1973, as amended, and §§24-85-101, *et seq.*, C.R.S. Grantee shall comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards and available at <https://www.w3.org/TR/WCAG21/>.

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EXHIBIT A1, SAMPLE OPTION LETTER

State Agency Insert Department's or IHE's Full Legal Name	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Grantee Insert Grantee's Full Legal Name, including "Inc.", "LLC", etc...	Original Agreement Number Insert CMS number or Other Agreement Number of the Original Contract
Current Agreement Maximum Amount Initial Term State Fiscal Year 20xx \$0.00 Extension Terms State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 Total for All State Fiscal Years \$0.00	Option Agreement Number Insert CMS number or Other Agreement Number of this Option Agreement Performance Beginning Date Month Day, Year Current Agreement Expiration Date Month Day, Year

1. **OPTIONS:**

A. Option to extend for an Extension Term

B. Option to change the quantity of Goods under the Agreement

C. Option to change the quantity of Services under the Agreement

D. Option to modify Agreement rates

E. Option to initiate next phase of the Agreement
2. **REQUIRED PROVISIONS:**

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

B. **For use with Options 1(B and C):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to Increase/Decrease the quantity of the Goods/Services or both at the rates stated in the Original Agreement, as amended.

C. **For use with Option 1(D):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to modify the Agreement rates specified in Exhibit/Section Number/Letter. The Agreement rates attached to this Option Letter replace the rates in the Original Agreement as of the Option Effective Date of this Option Letter.

D. **For use with Option 1(E):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc, which shall begin on Insert start date and end on Insert ending date at the cost/price specified in Section Number.

E. **For use with all Options that modify the Agreement Maximum Amount:** The Agreement Maximum Amount table on the Agreement’s Signature and Cover Page is hereby deleted and replaced with the Current Agreement Maximum Amount table shown above.
3. **OPTION EFFECTIVE DATE:**

F. The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

STATE OF COLORADO Jared S. Polis, Governor INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE By: Name & Title of Person Signing for Agency or IHE Date: _____	In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Name of Agency or IHE Delegate-Please delete if agreement will be routed to OSC for approval Option Effective Date: _____
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EXHIBIT A2, GRANT FUNDING CHANGE LETTER

State Agency Insert Department's or IHE's Full Legal Name	Grant Funding Change Letter Number Insert the Option Number (e.g. "1" for the first option)
Contractor Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc...	Original Grant Number Insert CMS number or Other Contract Number of the Original Contract
Current Contract Maximum Amount Initial Term State Fiscal Year 20xx \$0.00 Extension Terms State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 Total for All State Fiscal Years \$0.00	Grant Funding Change Letter Contract Number Insert CMS number or Other Contract Number of this Option Contract Performance Beginning Date Month Day, Year Current Contract Expiration Date Month Day, Year

1. GRANT FUNDING CHANGE

In accordance with **§Insert Section Number** of the Original Grant referenced above, the State Agency listed above commits the following funds to the grant:

A. The funding available for State Fiscal Year 20xx is Increased/Decreased by \$Amount of Change, because Insert Reason For Change.

B. The total funding avail for all State Fiscal Years as of the effective date of this Grant Funding Change Letter is shown as the current contract maximum above.

2. TERMINOLOGY

All terminology used in this Grant Funding Change Letter shall be interpreted in accordance with the Original Grant referenced above.

3. NO ORDER FOR WORK

This Grant Funding Change Letter modifies the available funding only and does not constitute an order or authorization for any specific services or goods under the Grant.

4. GRANT FUNDING CHANGE LETTER EFFECTIVE DATE:

The effective date of this Grant Funding Change Letter is upon approval of the State Controller or , whichever is later.

STATE OF COLORADO Jared S. Polis, Governor INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE By: Name & Title of Person Signing for Agency or IHE Date: _____
In accordance with §24-30-202 C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval Grant Funding Change Letter Effective Date: _____

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EXHIBIT B, GRANT REQUIREMENTS

The following terms as used herein shall be construed and interpreted as follows:

1. AUDIT REQUIREMENTS

A. DUE DATE:

I. PROJECT START:

The Grantee must submit the most recent audit or financial review, including the corresponding governance/management letter, to DCJ within thirty (30) days of request; and, if the most recent audit/financial review has not already been submitted to DCJ, it must be submitted within thirty (30) days of the start of this project.

II. PROJECT DURATION AND END:

The Grantee assures that it will procure an audit or financial review, incorporating this grant award, by an independent Certified Public Accountant (CPA), licensed to practice in Colorado. The audit or financial review incorporating this grant award must be completed and received by DCJ within nine (9) months of the end of the fiscal years that includes the end date of the grant, or within thirty (30) days of the completion of such audit or review, whichever is earlier. Failure to do

B. REPORT/AUDIT TYPE:

I. If your entity expended \$750,000 or more in Federal funds (from all sources including pass-through subawards) in your organization's fiscal year (12-month turnaround reporting period), your organization is required to arrange for a single organization-wide audit conducted in accordance with the provisions of Title 2 C.F.R. Subpart F (§ 200.500 et seq.)

II. [NOT APPLICABLE TO SUBGRANTEES AS DEFINED IN §3.DD. "SUBGRANTEE"] If your entity expends less than \$750,000 in Federal funds (from all sources including pass-through subawards) in your organization's fiscal year (12-month turnaround reporting period), your organization is required to arrange for either an audit or financial review as follows:

- 1.** Grantees that have revenue greater than \$300,000 from all sources during the entity's fiscal year are required by DCJ to obtain a financial audit.
- 2.** Grantees that have revenue less than \$300,000 from all sources during the entity's fiscal year are required by DCJ to obtain a financial audit or financial review. A compilation is not sufficient to satisfy this requirement.

C. REPORT/AUDIT COSTS:

The Grantee accepts responsibility for the costs of a financial program audit to be performed by the Department of Public Safety in the event that the audit report or financial review:

- I.** does not meet the applicable federal audit or DCJ standards;
- II.** is not submitted in a timely manner; or,
- III.** does not provide an audit response plan with corresponding corrections made sufficient to satisfy any audit findings.

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D. FAILURE TO COMPLY:

The grantee understands and agrees that DCJ or the federal awarding office (DOJ) may withhold award funds, or may impose other related requirements, if the grantee does not satisfactorily and promptly address outstanding issues from audits required by Part 200 Uniform Requirements, by the terms of this award, by the current addition of the DOJ Grants Financial Guide, or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

2. ADDITIONAL REPORTING REQUIREMENTS

In addition to quarterly report requirements these grant funds may have additional report requirements. The additional reports may include, but is not limited to, reporting progress and statistics directly into a federal Performance Management Tool (PMT).

3. FINANCIAL AND ADMINISTRATIVE MANAGEMENT

- A. The Grantee assures that fund accounting, auditing, monitoring, evaluation procedures and such records as necessary will be maintained to assure adequate internal fiscal controls, proper financial management, efficient disbursement of funds received, and maintenance of required source documentation for all costs incurred. These principles must be applied for all costs incurred whether charged on a direct or indirect basis.
- B. All expenditures must be supported by appropriate source documentation. Only actual, approved, allowable expenditures will be permitted.
- C. The Grantee assures that it will comply with the applicable Administrative Guide of the Division of Criminal Justice (Guide), located at the Division of Criminal Justice Grants website. However, such a guide cannot cover every foreseeable contingency, and the Grantee is ultimately responsible for compliance with applicable state and federal laws, rules and regulations. In the event of conflicts or inconsistencies between the Guide and any applicable state and federal laws, rules and regulations, such conflicts or inconsistencies shall be resolved by applicable state and federal laws, rules and regulations.

4. PROCUREMENT AND CONTRACTS

- A. Grantee assures that open, competitive procurement procedures will be followed for all purchases under the grant. All contracts for professional services, of any amount, and equipment purchases over five thousand dollars (per item, with a useful life of at least one year) must receive prior approval by the DCJ. Grantee shall submit Form 16 – Professional Services/Consultant Certification and/or Form 13 – Equipment Procurement Certification Form.
- B. Grantee may not assign its rights or duties under this grant without the prior written consent of the DCJ.

5. AWARD CHANGE REQUESTS

- A. Grantee may request budget modifications by submitting a request to DCJ. DCJ reserves the right to make and authorize modifications, adjustments, and/or revisions to the Contract for the purpose of making changes in budget categories, extensions of grant award dates, changes in goals and objectives, and other modifications as described in the body of the Contract.

EXHIBIT C, SPECIAL CONDITIONS

The following program specific requirements are imposed by the State concerning special requirements of law, program requirements, and other administrative requirements. These requirements apply to this Agreement and must be passed on to subgrant award recipients.

The Synthetic Opiate Poisoning Investigation and Distribution Interdiction Grant Program, referred to in this Section as the "grant program":

The intent of the grant program is to provide grant funding to law enforcement agencies for the purpose of investigating deaths and serious injuries caused by illegal synthetic opiate poisoning and for disrupting synthetic opiate supplies.

Funds must be utilized for the following:

- Investigating deaths and serious injuries caused by illegal synthetic opiate poisoning;
- Investigating, enforcing, and prosecuting synthetic opiate importation and high-level distribution networks, including multijurisdictional and multistate investigations and enforcement operations, to reduce the supply of illegal synthetic opiates and precursor chemicals in Colorado;
- Technology, equipment, and training to enhance intelligence, information-sharing capabilities, and interagency collaboration among federal, state, and local law enforcement partners regarding synthetic opiate importation and high-level distribution networks;
- Analyzing emergent trends in markets, including the use of the postal service, private courier, commercial cargo, and the internet, for the import and distribution of illegal synthetic opiates through a systematic and standardized approach, including the use of novel, high-frequency, and real-time systems to enhance market surveillance.
- Law enforcement agencies that are awarded grants under the grant program may be subject to an audit by the state auditor to ensure that the grant money is used for the purposes articulated in this section.
- Agencies who are awarded a grant under the Synthetic Opiate Poisoning Investigation and Distribution Interdiction Grant Program are required to submit quarterly reports outlining expenditures of grant funds and to report on the status of Goals and Outcomes set forth by the grantee in the grant application. Funds shall be withheld if quarterly reports are not submitted in a timely and complete manner.

Additional Program Specific Conditions applicable to this Agreement.

1. Grantee and all Subgrantees or Subgrants shall comply with Colorado law including, SB20-200 (CO Secure Savings Program). <https://treasury.colorado.gov/colorado-secure-savings-program>

Grantee: City of Pueblo
Project: Pueblo's War on Opiates

DCJ Grant #: 2024-FD-23-48

EXHIBIT D, STATEMENT OF WORK

The Statement of Work contained within the DocuSign Envelope is incorporated herein.

Grantee: City of Pueblo
Project: Pueblo's War on Opiates

DCJ Grant #: 2024-FD-23-48

EXHIBIT E, BUDGET

The Budget and Budget Narrative contained within the DocuSign Envelope is incorporated herein.

EXHIBIT D, STATEMENT OF WORK

Project Summary

Pueblo Police Department seeks funding to increase the tools needed to investigate, enforce and prosecute opiate importation and distribution. The purchase of drug testing supplies will help PPD increase opioid arrests and officer safety, and reduce opioid use and deaths.

Project Description

A drug significantly more potent and addicting than heroin is on the streets of Pueblo. Fentanyl, a synthetic opioid pain reliever – meant for severe pain from diseases like cancer – is not how people are using it.

Nationally, the death rate from these drugs has increased by 1,125% between 2011 and 2017, according to mortality data from the Centers for Disease Control and Prevention. While Fentanyl and other synthetic opioids are used in prescription drugs, these substances are increasingly being illegally manufactured and distributed with illegal drugs like heroin, with or without the user’s knowledge, to increase its euphoric effects. Pueblo Police Department (PPD) has recognized and accepted that to fight this epidemic, they play a vital role. The funding opportunity through HB22-1326 Fentanyl Accountability and Prevention, Synthetic Opiate Poisoning Investigation and Distribution Interdiction Grant Program affords PPD an opportunity to make a significant impact on its war on drugs.

Pending funding, it will be used to purchase MobileDetect, a new field drug testing kit produced by DetechaChem, that eliminates exposure to chemicals and broken glass and allow for the testing of trace substances. The Fentanyl test strips have high fentanyl detection specificity, detecting ultra-low trace levels of fentanyl in powders, pills, packaging materials, surface areas, paraphernalia and more. This allows presumptive testing to be completed at the time of contact and charges to be filled at that time, significantly increasing the number of arrests. Along with the above testing kits we will use the funding to purchase different types and sizes of Heat Sealable bags to help preserve drug evidence for safety of the officers and during court proceedings.

Goals & Outcomes

GOAL 1	
Goal 1:	Increase Officer Safety
Outcome 1.1	
Outcome:	Contactless field-testing kits will help to eliminate potential contact with Fentanyl and other dangerous drugs along with using Heat Sealed bags to help with the safe containment of the drugs.
Measurement:	Actual numbers and severity of injuries can be counted from reports made, but the real impact may be in anecdotal, qualitative information provided by narcotics officers.

Grantee: City of Pueblo
Project: Pueblo's War on Opiates

DCJ Grant #: 2024-FD-23-48

Timeframe:	01/01/24 - 06/30/24
GOAL 2	
Goal 2:	Increase opioid arrests during the 6-month grant period.
Outcome 2.1	
Outcome:	The addition of field testing kits and investigative tools will help increase this arrests.
Measurement:	Measured by the number of arrests made compared to previous 6 month.
Timeframe:	01/01/24 - 06/30/24

Certificate Of Completion

Envelope Id: A94A796D7EB448738661BBEF609E1820

Status: Completed

Subject: DCJ Grant - Fentanyl #2021-FD-23-48 - Pueblo's War on Opiates

Source Envelope:

Document Pages: 23

Signatures: 2

Certificate Pages: 5

Initials: 0

AutoNav: Enabled

Envelopeld Stamping: Enabled

Time Zone: (UTC-07:00) Mountain Time (US & Canada)

Envelope Originator:

OAJJA Grants

700 Kipling St

Lakewood, CO 80215

cdps_dcj_oajjagrants@state.co.us

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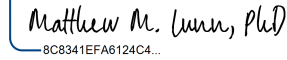
Signer Events

Matthew M. Lunn, PhD

matthew.lunn@state.co.us

Security Level: Email, Account Authentication
(None)**Signature**

DocuSigned by:


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Using IP Address: 174.231.86.17

Signed using mobile

Timestamp

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Viewed: 12/21/2023 7:21:34 PM

Signed: 12/21/2023 7:21:54 PM

Electronic Record and Signature Disclosure:

Accepted: 12/21/2023 7:21:34 PM

ID: e8f37e25-71cd-4184-8f75-f50652ce9d9e

Lyndsay J. Clelland

lyndsay.clelland@state.co.us

Contract, Grant and Compliance Coordinator

Division of Criminal Justice

Security Level: Email, Account Authentication
(None)

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Signature Adoption: Pre-selected Style

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Viewed: 12/21/2023 10:06:22 PM

Signed: 12/21/2023 10:06:38 PM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp**

Cindy Johnson

Cindya.johnson@state.co.us

Security Level: Email, Account Authentication
(None)**COPIED**

Sent: 12/21/2023 10:06:40 PM

Electronic Record and Signature Disclosure:

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Carbon Copy Events	Status	Timestamp
Kayleigh McKenzie kmckenzie@pueblo.us Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 12/21/2023 10:06:40 PM
Jason Smith jsmith@pueblo.us Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 12/21/2023 10:06:40 PM
Michael Burtis Michael.Burtis@state.co.us Analyst IV DCJ CDPS Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 12/21/2023 10:06:41 PM
Lyndsay Clelland lyndsay.clelland@state.co.us Contract, Grant and Compliance Coordinator Division of Criminal Justice Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 12/21/2023 10:06:41 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	12/21/2023 9:17:25 AM
Certified Delivered	Security Checked	12/21/2023 10:06:22 PM
Signing Complete	Security Checked	12/21/2023 10:06:38 PM
Completed	Security Checked	12/21/2023 10:06:41 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

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If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

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Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

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You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: sarah.white@state.co.us

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To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at sarah.white@state.co.us and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

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To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to sarah.white@state.co.us and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

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- ii. send us an email to sarah.white@state.co.us and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

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- You can access and read this Electronic Record and Signature Disclosure; and
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Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Scott Hobson, Acting Director Planning and Community Development

SUBJECT: AN ORDINANCE VACATING A UTILITY EASEMENT WITHIN LOT 1, NORTH PUEBLO COMMERCIAL PARK FILING 5

SUMMARY:

The applicant is requesting to vacate a 10,795 square foot utility easement within Lot 1, North Pueblo Commercial Park Filing 5.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

This proposed 0.25-acre private utility easement vacation is located within the 22-acre Lot 1 of the North Pueblo Commercial Park subdivision recorded in 1997. The easement bisects the southern edge of the proposed expansion to the Walmart commercial building, preventing any new development on the area. The easement was created for service utilities and is no longer needed for the property. These types of easements are not typically recorded on subdivision plats. This vacation was proposed to remove the platted easement and facilitate development, as the owners are in the process of securing building permits for two commercial projects within the property, specifically a building addition and new vehicle pull-up spaces for Walmart pickup orders. City staff and other utility referral agencies have no objection to vacating this private easement.

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 to all property owners located within 300 feet of the subject property.

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

ALTERNATIVES:

If City Council does not approve this Ordinance, the easement will remain, which will impede development of the site.

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

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. V-23-12 Attachments

ORDINANCE NO.

AN ORDINANCE VACATING A UTILITY EASEMENT WITHIN
LOT 1, NORTH PUEBLO COMMERCIAL PARK FILING 5

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

SECTION 1.

The following described portion of street right of way:

An easement being a portion of Lot 1, North Pueblo Commercial Park Filing No. 5, a subdivision plat recorded under Reception No. 1194667 of the records of Pueblo County, Colorado, and also being a portion of a private utility easement described under Reception No. 1194667, and further being situated in the Northeast Quarter of Section 13, Township 20 South, Range 65 West of the 6th Principal Meridian, City and County of Pueblo, Colorado, being more particularly described as follows:

BASIS OF BEARINGS:

All bearings referred to herein are based on the easterly line of Lot 1, North Pueblo Commercial Park Filing No. 5 as recorded under Reception No. 1194667 of the records of Pueblo County, Colorado, recorded to bear S 23°31'55" W. Said line being defined by found monuments as follows: a found 5/8" rebar with a blue plastic cap stamped "PLS 37928" at the north end of said line and a mag nail with 1-1/4" washer in concrete, stamped, "PLS 37928", at the south end of said line.

COMMENCING at the northeast corner of said Lot 1, North Pueblo Commercial Park Filing No. 5;

Thence **S 23°31'55" W**, coincident with the easterly line of said Lot 1, a distance of **441.39 feet**;

Thence **N 73°58'25" W**, departing said easterly line, a distance of **109.70 feet**, to an angle point on the easterly line of a private utility easement described under Reception No. 1194667 of the records of Pueblo County, Colorado and being the **POINT OF BEGINNING** of the herein described easement vacation;

Thence coincident with the southeasterly courses of said private utility easement the following thirteen courses:

Thence **S 02°54'24" E**, a distance of **154.78 feet**;

Thence **S 87°05'36" W**, a distance of **20.00 feet**;

Thence **N 02°54'24" W**, a distance of **105.50 feet**;

Thence **S 37°42'48" W**, a distance of **15.00 feet**;

Thence **N 52°17'12" W**, a distance of **10.00 feet**;

Thence **S 37°42'48" W**, a distance of **12.00 feet**;

Thence **S 52°17'12" E**, a distance of **10.00 feet**;

Thence **S 37°42'48" W**, a distance of **14.00 feet**;

Thence **S 52°17'12" E**, a distance of **10.50 feet**;

Thence **S 37°42'48" W**, a distance of **20.00 feet**;

Thence **N 52°17'12" W**, a distance of **10.50 feet**;

Thence **S 37°42'48" W**, a distance of **194.02 feet**;

Thence **N 52°17'12" W**, a distance of **72.72 feet**, to an angle point on the easterly line of said private utility easement;

Thence **N 24°19'27" E**, crossing said private utility easement, a distance of **30.22 feet** to an angle point on north line of said private utility easement;

Thence coincident with the northerly and westerly courses of said private utility easement the following three courses:

Thence **S 52°17'12" E**, a distance of **58.98 feet**;

Thence **N 37°42'48" E**, a distance of **232.46 feet**;

Thence **N 02°54'24" W**, a distance of **41.32 feet**, to an angle point on the northerly line of said private utility easement;

Thence **S 73°58'25" E**, crossing said private utility easement, a distance of **33.08 feet**, to the **POINT OF BEGINNING**.

The above described easement contains 10,795 square feet, more or less.

is hereby vacated.

SECTION 2.

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

SECTION 3.

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

SECTION 4.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

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

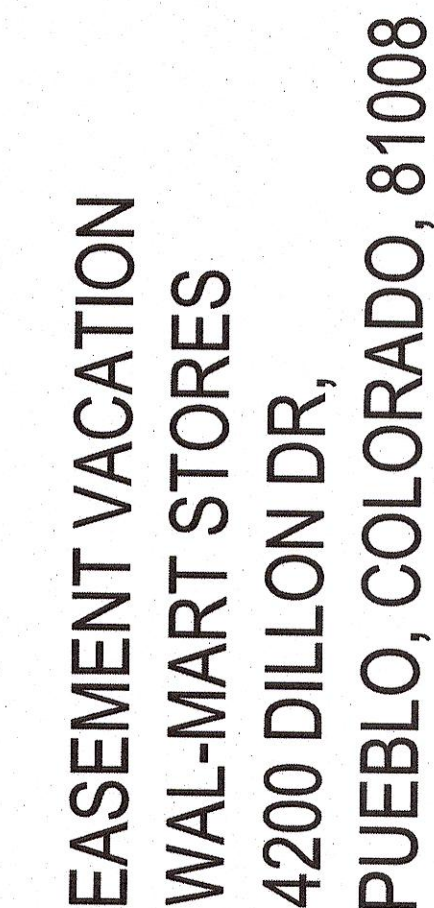
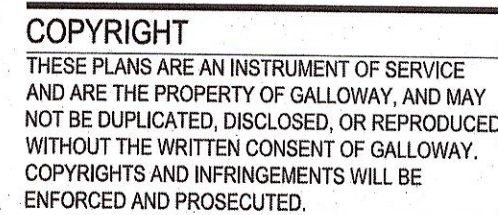
☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

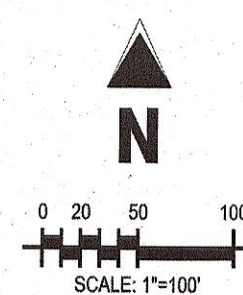
ATTEST

City Clerk

LOT 1, NORTH PUEBLO COMMERCIAL PARK FILING NO. 5
LOCATED IN OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 20 SOUTH, RANGE 65 WEST
AND PART OF THE NORTHWEST QUARTER, SECTION 18, TOWNSHIP 20 SOUTH, RANGE 64 WEST OF THE 6TH P.M.
CITY OF PUEBLO, COUNTY OF PUEBLO, STATE OF COLORADO



LINE TABLE		
LINE #	BEARING	LENGTH (FT)
L1	S37°42'48"W	15.00
L2	N52°17'12"W	10.00
L3	S37°42'48"W	12.00
L4	S52°17'12"E	10.00
L5	S37°42'48"W	14.00
L6	S52°17'12"E	10.50
L7	S37°42'48"W	20.00
L8	N52°17'12"W	10.50



 INDICATES PORTION OF UTILITY EASEMENT TO BE VACATED

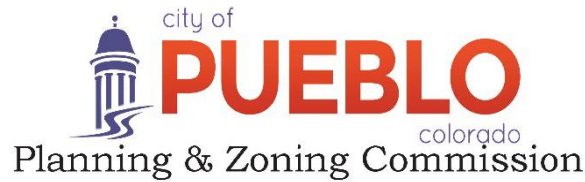
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Project No:	WMT00842.10
Drawn By:	AAV
Checked By:	BB
	02/01/2024

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:

1. V-23-12 Utility Easement Vacation: 4200 Dillon Dr. Walmart. Vacation of a 10,795 sq. ft. utility easement within Lot 1, North Pueblo Commercial Park Filing 5. Staff Report by Mikaylin Hackley, Planner.

Hearing: Applicant, Geoff Solomonson 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 City Council, seconded by Spinuzzi.

Motion Passed: 7-0.



DEPARTMENT OF PUBLIC WORKS

MEMORANDUM

TO: Beritt Odom, Principal Planner

CC: Michelle Cruz, Administrative Technician
Subdivision File

FROM: Joe Martellaro, Associate Engineer II

SUBJECT: V-23-12 Walmart Water Line Vacation

DATE: April 2, 2024

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

V-23-12

TO: City of Pueblo, Planning and Zoning Commission
FROM: Mikaylin Hackley, Planner
THROUGH: Scott Hobson, Acting Planning and Community Development Director
DATE: March 13, 2024
SUBJECT: Vacate a utility easement in Lot 1, North Pueblo Commercial Park Filing 5
APPLICANT: Geoff Solomonson
OWNER: Cole WM Pueblo LLC
LOCATION: Located at 4200 Dillon Dr., Northside Pueblo Walmart
CONCURRENT REQUESTS: C-24-01 & C-23-07; Commercial additions

Request:

Vacate of a 10,795 sq. ft. utility easement within Lot 1, North Pueblo Commercial Park Filing 5.

Background and Staff Analysis:

This proposed 0.25-acre private utility easement vacation is located within the 22-acre Lot 1 of the North Pueblo Commercial Park subdivision recorded in 1997. The easement bisects the southern edge of the existing Walmart building, preventing any new development on the area. The easement was created for service utilities and is no longer needed for the property. These types of easements are not typically recorded on subdivision plats.

This vacation was proposed to remove the platted easement and facilitate development, as the owners are in the process of pulling building permits for two commercial projects within the property, specifically a building addition and new vehicle pull-up spaces for Walmart pickup orders. City staff and other utility referral agencies have no objection to vacating this private easement.

Applicable Regulations:

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

Referral Agencies and Comments:

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

- Black Hills Energy No comment
- CDOT No comment

Recommended Action:

Staff recommends that the Vacation be approved with no conditions.

Attachments:

- A. Aerial Photo
- B. Zoning Map
- C. Comprehensive Plan Map
- D. Public Notice and Site Photo
- E. Vacation Plat
- F. Supporting Documents

A. Aerial Photo



B. Zoning Map



C. Comprehensive Plan Map



D. Public Notice and Street View (Google Maps, June 2023)





E. Vacation Plat & Supporting Documents

December 19, 2023

Wade Broadhead
Senior Planner
City of Pueblo
211 East D Street
Pueblo, CO 81003

RE: Walmart 842 – Waterline Relocation Easement Vacation and Rededication

The Walmart store at 4200 Dillon Drive is proposing to add an approximately 5,000 square foot expansion to the southeast corner of the existing building. The addition is to expand the online pick-up for the store.

An existing 8 inch waterline runs through the area of the proposed building expansion. This proposal is to vacate a portion of the waterline easement from the Plat of North Pueblo Commercial Park Filing No. 5, recorded as document 1194667 that is in the proposed building expansion area, re-route the waterline to the south, and tie back in to the existing line to the north and west.

With the waterline re-routing, a new easement is proposed for the relocated waterline and connect with the current easement as shown in recorded document 1194667 to the north and west.

Sincerely,
GALLOWAY

Geoff Solomonson
Development Services Coordinator

5500 Greenwood Plaza Blvd, Suite 200
Greenwood Village, CO 80111

303.770.8884 GeoffSolomonson@GallowayUS.com



LOT 1, NORTH PUEBLO COMMERCIAL PARK FILING NO. 5
LOCATED IN OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 20 SOUTH, RANGE 65 WEST
AND PART OF THE NORTHWEST QUARTER, SECTION 18, TOWNSHIP 20 SOUTH, RANGE 64 WEST OF THE 6TH P.M.
CITY OF PUEBLO, COUNTY OF PUEBLO, STATE OF COLORADO

Utility Easement Vacation Descriptions:

An easement being a portion of Lot 1, North Pueblo Commercial Park Filing No. 5, a subdivision plat recorded under Reception No. 1194667 of the records of Pueblo County, Colorado, and also being a portion of a private utility easement described under Reception No. 1194667, and further being situated in the Northeast Quarter of Section 13, Township 20 South, Range 65 West of the 6th Principal Meridian, City and County of Pueblo, Colorado, being more particularly described as follows:

BASIS OF BEARINGS:

All bearings referred to herein are based on the easterly line of Lot 1, North Pueblo Commercial Park Filing No. 5 as recorded under Reception No. 1194667 of the records of Pueblo County, Colorado, recorded to bear S 23°31'55" W. Said line being defined by found monuments as follows: a found 5/8" rebar with a blue plastic cap stamped "PLS 37928" at the north end of said line and a mag nail with 1-1/4" washer in concrete, stamped, "PLS 37928", at the south end of said line.

COMMENCING at the northeast corner of said Lot 1, North Pueblo Commercial Park Filing No. 5; Thence S 23°31'55" W, coincident with the easterly line of said Lot 1, a distance of 441.38 feet; Thence N 73°58'25" W, departing said easterly line, a distance of 109.70 feet, to an angle point on the easterly line of a private utility easement described under Reception No. 1194667 of the records of Pueblo County, Colorado and being the POINT OF BEGINNING of the herein described easement location;

Thence coincident with the southeasterly courses of said private utility easement the following thirteen courses

Thence S 02°54'24" E, a distance of 154.78 feet;
Thence S 87°05'36" W, a distance of 20.00 feet;
Thence N 02°54'24" W, a distance of 105.50 feet;
Thence S 37°42'48" W, a distance of 15.00 feet;
Thence N 52°17'12" E, a distance of 10.00 feet;
Thence S 37°42'48" W, a distance of 12.00 feet;
Thence S 52°17'12" E, a distance of 10.00 feet;
Thence S 37°42'48" W, a distance of 14.00 feet;
Thence S 52°17'12" E, a distance of 10.50 feet;
Thence S 37°42'48" W, a distance of 20.00 feet;
Thence N 52°17'12" W, a distance of 10.50 feet;
Thence S 37°42'48" W, a distance of 194.02 feet;

Thence N 52°17'12" W, a distance of 72.72 feet, to an angle point on the easterly line of said private utility easement;
Thence N 24°19'27" E, crossing said private utility easement, a distance of 30.22 feet to an angle point on north line of said private utility easement;

Thence coincident with the northerly and westerly courses of said private utility easement the following three courses:

Thence S 52°17'12" E, a distance of 58.98 feet;

Thence N 37°42'48" E, a distance of 232.46 feet

Thence N 02°54'24" W, a distance of 41.32 feet, to an angle point on the northerly line of said private utility easement;

Thence S 73°58'25" E, crossing said private utility easement, a distance of 33.08 feet, to the POINT OF BEGINNING.

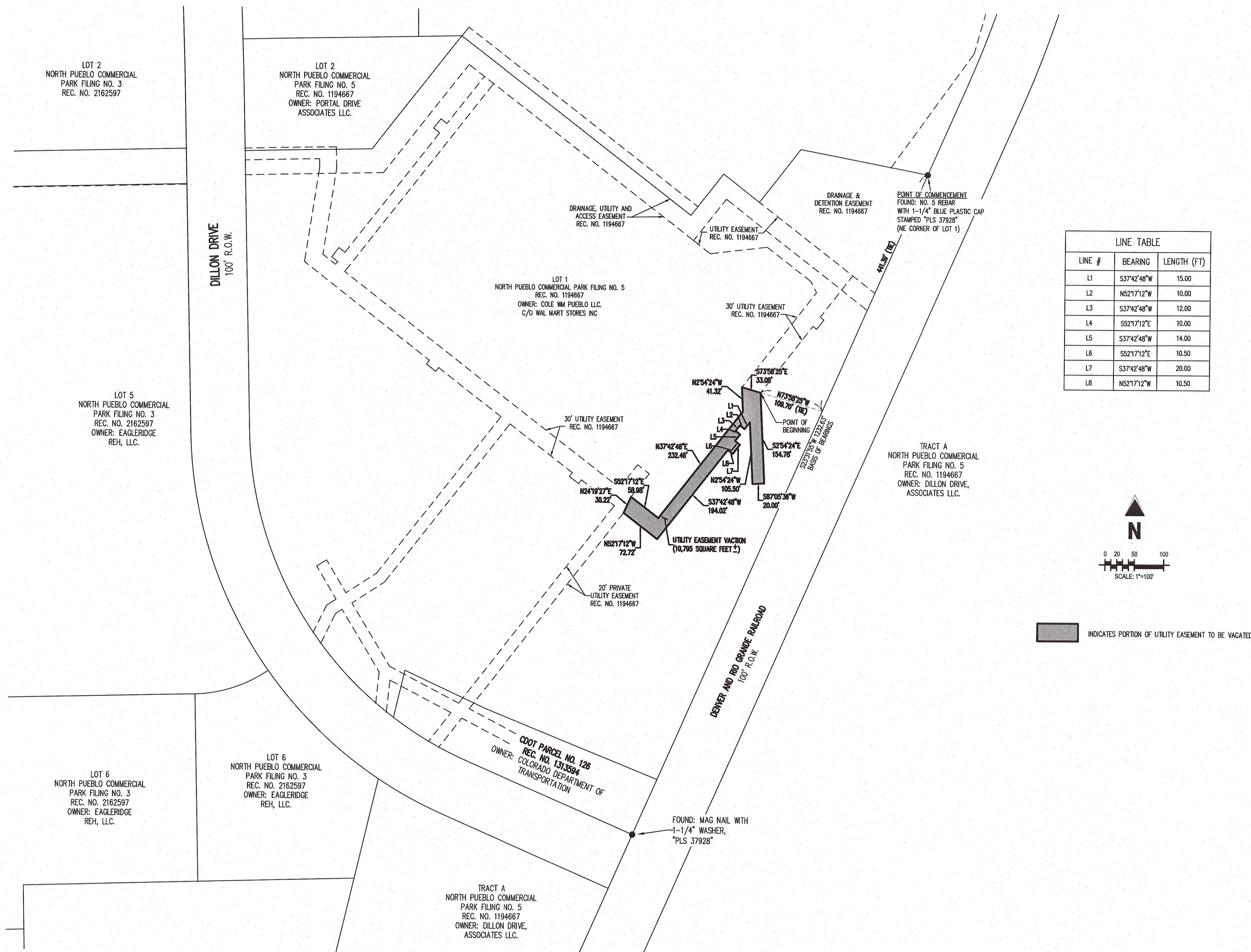
The above described easement contains 10,795 square feet, more or less.

RESERVATIONS: NONE

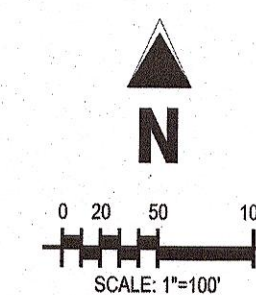
PURPOSE: EASEMENT VACATION



William Brooks, PLS
Colorado Professional Land Surveyor No. 37928
For and on behalf of Galloway & Company, Inc.
PRJ NO.: WMT00000842.10



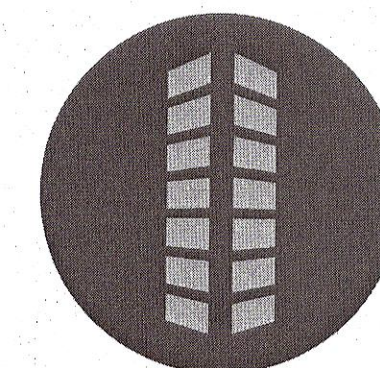
LINE TABLE		
LINE #	BEARING	LENGTH (FT)
L1	S37°42'48"W	15.00
L2	N52°17'12"W	10.00
L3	S37°42'48"W	12.00
L4	S52°17'12"E	10.00
L5	S37°42'48"W	14.00
L6	S52°17'12"E	10.50
L7	S37°42'48"W	20.00
L8	N52°17'12"W	10.50



INDICATES PORTION OF UTILITY EASEMENT TO BE VACATED

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EASEMENT VACATION
WAL-MART STORES
4200 DILLON DR,
PUEBLO, COLORADO, 81008

[illegible]

Project No: WMT00842.10

Drawn By: AAY

Checked By: _____ RR

02/01/2024

February 16, 2024

The City Planning and Zoning Commission will hold a public hearing on a request from **Geoff Solomonson** for the approval of the following application generally located northeast of Dillon Dr. and west of Fountain Creek.

V-23-12 Easement Vacation: Vacation of a 10,795 sq. ft. utility easement within Lot 1, North Pueblo Commercial Park Filing 5.

The Planning and Zoning Commission meeting will be held on **March 13, 2024, at 3:30 p.m.** in City Council Chambers at 1 City Hall Place. The meeting will be recorded and can be viewed via Zoom, but no testimony will be heard virtually:
<https://pueblo.zoom.us/j/92717867722?pwd=WUdnaHVGbnlCdHRrUHNfZnpPWG1Ydz09>, Meeting ID: 927 1786 7722, Passcode: 195462, Telephone: 1 346 248 7799 US (Houston), 1 669 900 6833 US (San Jose). You are welcome to attend this public hearing and express your viewpoint concerning this proposal. To review the plans and staff report for the proposed application, please visit www.pueblo.us/PandZ and click on “Most Recent Agenda” no sooner than the Friday prior to the hearing. **Please contact the planner listed below if you have questions.**

Scott Hobson, Acting Director
Planning & Community Development
By Mikaylin Hackley, Planner
(719) 553-2259

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Scott Hobson, Acting Director
Planning & Community Development
By Mikaylin Hackley, Planner
(719) 553-2259

CASE NUMBER: V-23-12

CERTIFICATION

I hereby certify that I did this day cause written notice of the public hearing on the Easement Vacation: 4200 Dillon Dr. to be sent to the attached list of owners of the property lying within hundred (300) feet of the said property on which the vacation is proposed by depositing the same properly addressed and postage paid in the post office, as set forth in the Code of Ordinances, Section 17-6-2.

February 16, 2024
(Date)

PUEBLO PLANNING & ZONING COMMISSION

By Cindy Caputo

I hereby certify that I did this day verify and photograph the posted notice of the public hearing on the Vacation, upon which action is pending as set forth in the Code of Ordinances, Section 17-6-2.

February 16, 2024
(Date)

PUEBLO PLANNING & ZONING COMMISSION

By Cindy Caputo

Owner	OwnerStreetAddress	OwnerCity	OwnerZip	OwnerState
DEPARTMENT OF TRANSPORTATION STATE	4201 E ARKANSAS AVE	DENVER	80222-340	CO
EAGLERIDGE REH LLC	530 B ST STE 2050	SAN DIEGO	92101-449	CA
	909 WALNUT ST STE			
E P T 909 INC	200	KANSAS CITY	64106-200	MO
T M T LLC	948 SE 9TH AVE	POMPANO BEACH	33060-950	FL
H D DEV OF MARYLAND INC + C/O HOME				
DEPOT USA ATTN PROPERTY TAX DEPT	PO BOX 105842	ATLANTA	30348-584	GA
PORTAL DRIVE ASSOCIATES LLC	PO BOX 65207	LUBBOCK	79464-520	TX
DILLON DRIVE ASSOCIATES LLC	PO BOX 65207	LUBBOCK	79464-520	TX
COLE WM PUEBLO LLC + C/O WAL MART				
STORES INC	PO BOX 8050 MS0555	BENTONVILLE	72712-805	AR



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Scott Hobson, Acting Director Planning and Community Development

SUBJECT: AN ORDINANCE VACATING A PORTION OF THE ALLEY WITHIN BLOCK 11, MATTICE'S SUBDIVISION

SUMMARY:

The applicant is requesting to vacate 100 feet of the alley between Lots 1-4 and Lots 28-25 within Block 11, Mattice's Subdivision to decrease illegal activities within the alley.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

Platted as part of the Mattice's Subdivision, the alley in question was subdivided heading west from Erie Avenue, into Fountain Creek (Fontaine Qui Bouille). In 1988 approximately 200 feet of the alley extending west from Lot 5, Block 11, was vacated, as the alley was located within Fountain Creek and the City Trail system. The purpose of this alley vacation is to allow the property owner of the two adjacent parcels to fence his parcels and the alley to deter illegal activities within the alley. The portion of the alley, proposed to be vacated, dead ends at the City's Fountain Creek Trail and does not contain any utilities or provide primary access to any properties or structures. The parcel north of the alley gains access from Erie Avenue and East 5th Street. The parcel adjacent to the south side of the alley has access from East 4th Street and Erie Avenue.

FINANCIAL IMPLICATIONS:

There are no financial implications for the City.

BOARD/COMMISSION RECOMMENDATION:

The Planning and Zoning Commission, at their January 10, 2024 Regular Meeting,

voted 5-0 to recommend approval. Commissioners Aznar and Pasternak absent.

STAKEHOLDER PROCESS:

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

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

ALTERNATIVES:

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

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. V-23-07 Attachments

ORDINANCE NO.

AN ORDINANCE VACATING A PORTION OF THE ALLEY
WITHIN BLOCK 11, MATTICE'S SUBDIVISION

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

SECTION 1.

The following described portion of street right of way:

All of the 16 ft. Alley adjacent to Lots 1 through 4 and Lots 25 through 28, Block 11, Mattice's Subdivision, County of Pueblo, State of Colorado.

is hereby vacated.

Reservation: The alley to be vacated is reserved for the use by utilities presently existing in said alley and the reservation will terminate upon removal of all existing utilities.

SECTION 2.

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

SECTION 3.

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

SECTION 4.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

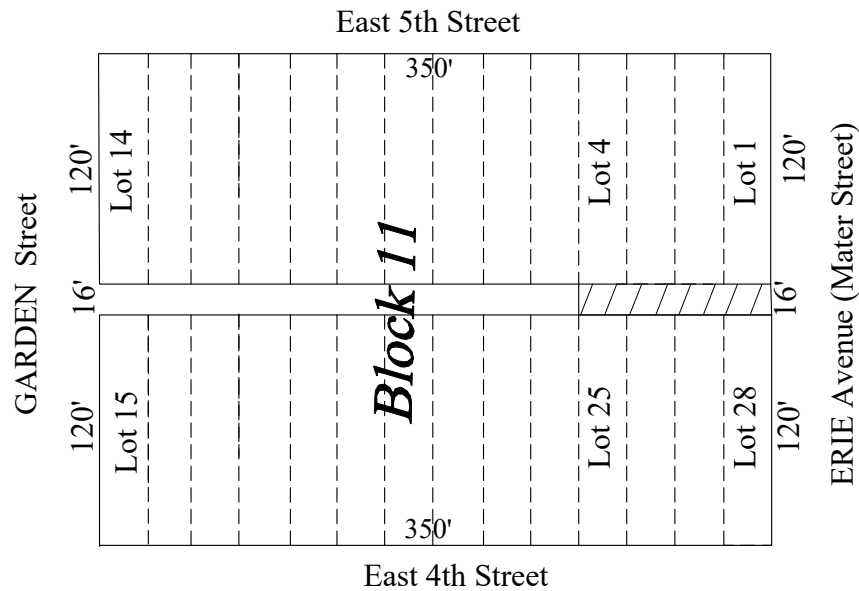
- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk

MATTICE'S SUBDIVISION Alley Vacation
All of the 16' alley adjacent to Lots 1 thru 4 and Lots 25 thru 28
BLOCK 11, MATTICE'S SUBDIVISION
County of Pueblo, State of Colorado



LEGAL DESCRIPTION

All of the 16 ft. Alley adjacent to Lots 1 thru 4 and Lots 25 thru 28, Block 11, Mattice's Subdivision, County of Pueblo, State of Colorado.

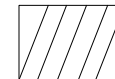
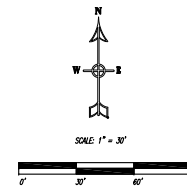
Purpose: To fence the perimeter of applicant's ownership of Block 11.

Reservation: The alley to be vacated is Reserved for the use by utilities presently existing in said alley and reservation will terminate upon removal of all existing utilities.

Prepared by: Amella Surveying

Gary C. Amella
Gary C. Amella Professional Land Surveyor

3/26/24
Date



Alley to be vacated

3/28/24

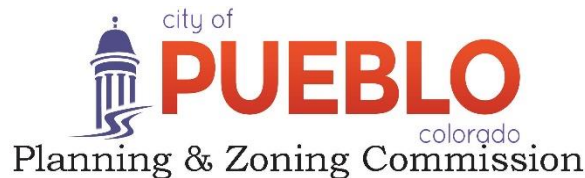
Amella
SURVEYING
54 Mac Arthur
Pueblo, Colorado
(719) 543-1974

Armenta

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, January 10, 2024 – 3:30 p.m.

City Council Chambers, 1 City Hall Place

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

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

Commissioners Absent: Alexandra Aznar, Christopher Pasternak

Staff Members Present: David Wyatt, Assistant City Attorney; Scott Hobson, Acting Director of Planning and Community Development, Beritt Odom, Principal Planner; Kelly Grisham.

Staff Members Absent: None

Approval of the Agenda: Bailey motioned to move item Z-23-10, S-23-07, S-22-07 and Z-23-12 to the February 14, 2024, meeting and approve the agenda as amended. seconded by Spinuzzi.

Motion Passed: 5-0

Public Hearing:

1. V-23-07 Alley Vacation: Vacation of a portion of the alley within Block 11, Mattice's Subdivision. Staff report by Beritt Odom, Principal Planner.

Hearing: Applicant, Mark Armenta 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 with Conditions, seconded by Spinuzzi.

Motion Passed: 5-0



DEPARTMENT OF PUBLIC WORKS

MEMORANDUM

TO: Beritt Odom, Principal Planner

CC: Michelle Cruz, Administrative Technician
Subdivision File

FROM: Joe Martellaro, Associate Engineer II

SUBJECT: V-23-07 Mattice's Subdivision Alley Vacation

DATE: April 4, 2024

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

V-23-07

TO: City of Pueblo, Planning and Zoning Commission

FROM: Beritt Odom, Principal Planner

THROUGH: Scott Hobson, Acting Planning and Community Development Director

DATE: January 10, 2024

SUBJECT: Vacate a portion of the alley within Block 11, Mattice's Subdivision.

APPLICANT: Gary Amella, Amella Surveying
Mark Armenta, adjacent property owner

OWNER: City of Pueblo

LOCATION: Generally located west of Erie Avenue and south of East 5th Street.

CONCURRENT REQUESTS: None

Request:

Vacate 100-feet of the alley between Lots 1-4 and Lots 28-25 Mattice's Subdivision to decrease illegal activities within the alley.

Staff review and findings:

Platted as part of the Mattice's Subdivision, the alley in question was subdivided heading west from Erie Avenue, into Fountain Creek (Fontaine Qui Bouille). In 1988 approximately 200 feet of the alley extending west from Lot 5, Block 11, was vacated, as the alley was located within Fountain Creek and the City Trail system.

The purpose of this alley vacation is to allow the property owner of the two adjacent parcels to fence his parcels and the alley to deter illegal activities within the alley. The portion of the alley, proposed to be vacated, dead ends at the City's Fountain Creek Trail and does not contain any utilities or provide primary access to any properties or structures. The parcel north of the alley gains access from Erie Ave and E. 5th Street. The parcel adjacent to the south side of the alley has access from E. 4th Street and Erie Ave.

Applicable Regulations:

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

REFERRAL AGENCIES AND COMMENTS:

- All redlined comments from Joe Martellaro, Associate Engineer II and Beritt Odom, Principal Planner, from the 12-21-2023 review must be addressed prior to City Council review and approval.
- City Transportation-No comment
- City Law Department-No comment
- Pueblo Regional Building Department-No comment
- City Fire Department-No comment

- City Wastewater-No comment
- City Stormwater-No comment
- City Parks and Recreation Department-No comment
- Xcel Energy-No comment
- Black Hills Energy-No comment
- CDOT-No comment

Recommended Action:

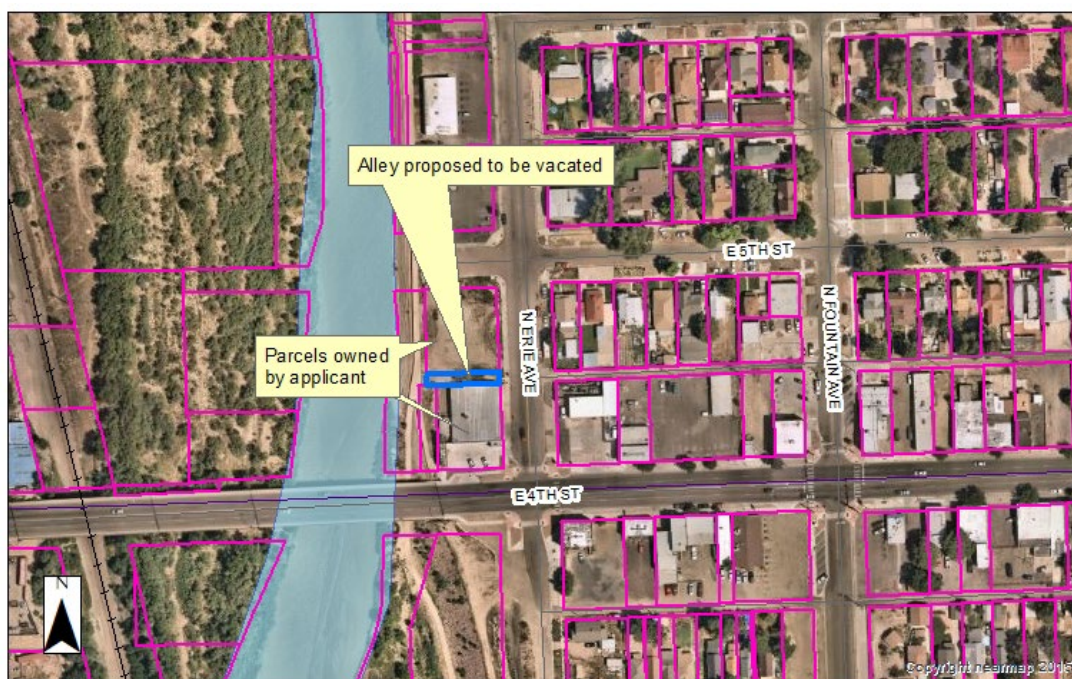
Staff recommends that the Vacation be APPROVED with the following condition.

- All redlined comments from Joe Martellaro, Associate Engineer II and Beritt Odom, Principal Planner, from the 12-21-2023 review must be addressed prior to City Council review and approval.

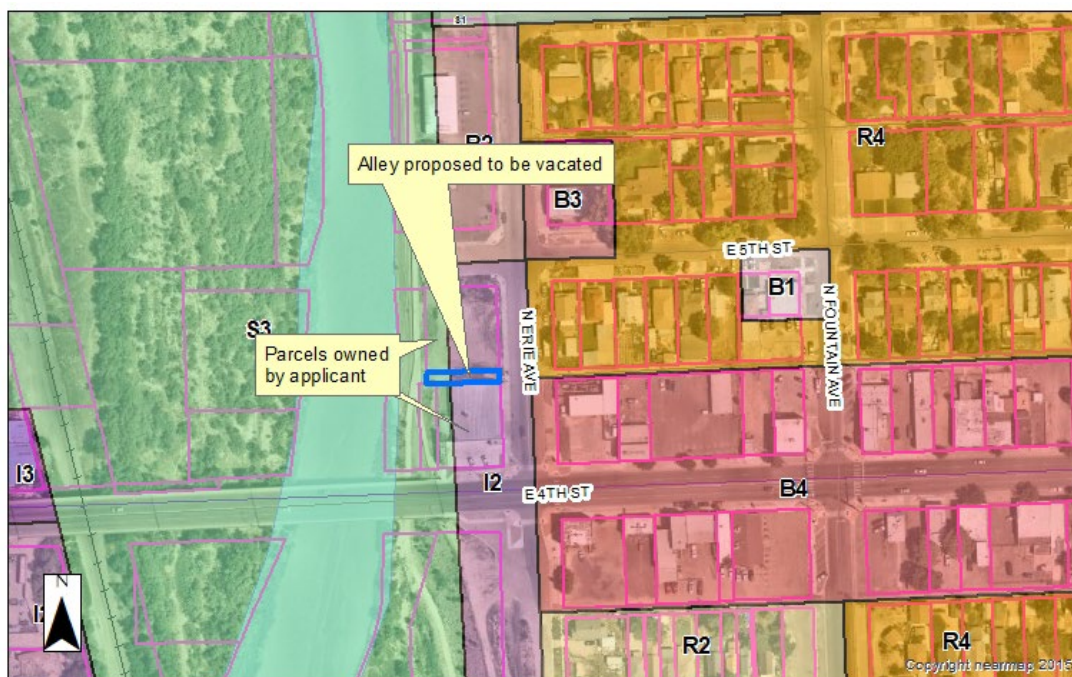
ATTACHMENTS:

- A. Aerial Map
- B. Zoning Map
- C. Site Photographs
- D. Vacation Plat (redlined Public Works and Planning)
- E. Mattices Subdivision and Previous Alley Vacation Plat

ATTACHMENTS:



A. Aerial Photograph



B. Zoning Map

Attachment C. Site Photos



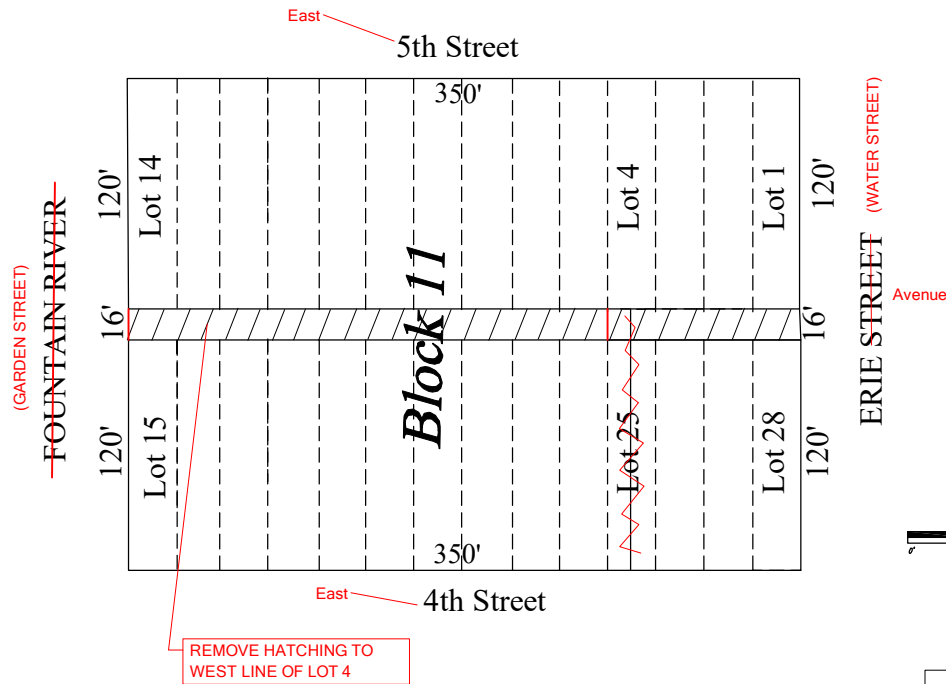
Public Notice



Alley looking west from N. Erie Ave.

MATTICE'S SUBDIVISION Alley Vacation
A Vacation of the 16' alley ~~WITHIN~~ BLOCK 11, MATTICE'S SUBDIVISION
County of Pueblo, State of Colorado

ADJACENT TO LOTS 1 THRU 4 AND LOTS 25 THRU 28,



LEGAL DESCRIPTION

ADJACENT TO LOTS 1 THRU 4 AND LOTS 25 THRU 28,

The 16 ft. Alley ~~WITHIN~~ Block 11, Mattice's Subdivision, County of Pueblo, State of Colorado.

Purpose: ~~Better land utilization~~ TO FENCE THE PERIMETER OF APPLICANT'S OWNERSHIP OF BLOCK 11

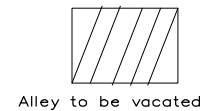
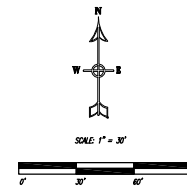
RESERVATION: THE ALLEY TO BE VACATED IS RESERVED FOR USE BY UTILITIES PRESENTLY EXISTING IN SAID ALLEY AND RESERVATION WILL TERMINATE UPON REMOVAL OF ALL EXISTING UTILITIES.

Prepared by: Amella Surveying

~~Reservation: A coon cable within the alley to be vacated and belongs to CELLCO~~
~~Wireless AT&T Verizon Wireless~~


Gary C. Amella
Gary C. Amella Professional Land Surveyor

12/3/23
Date



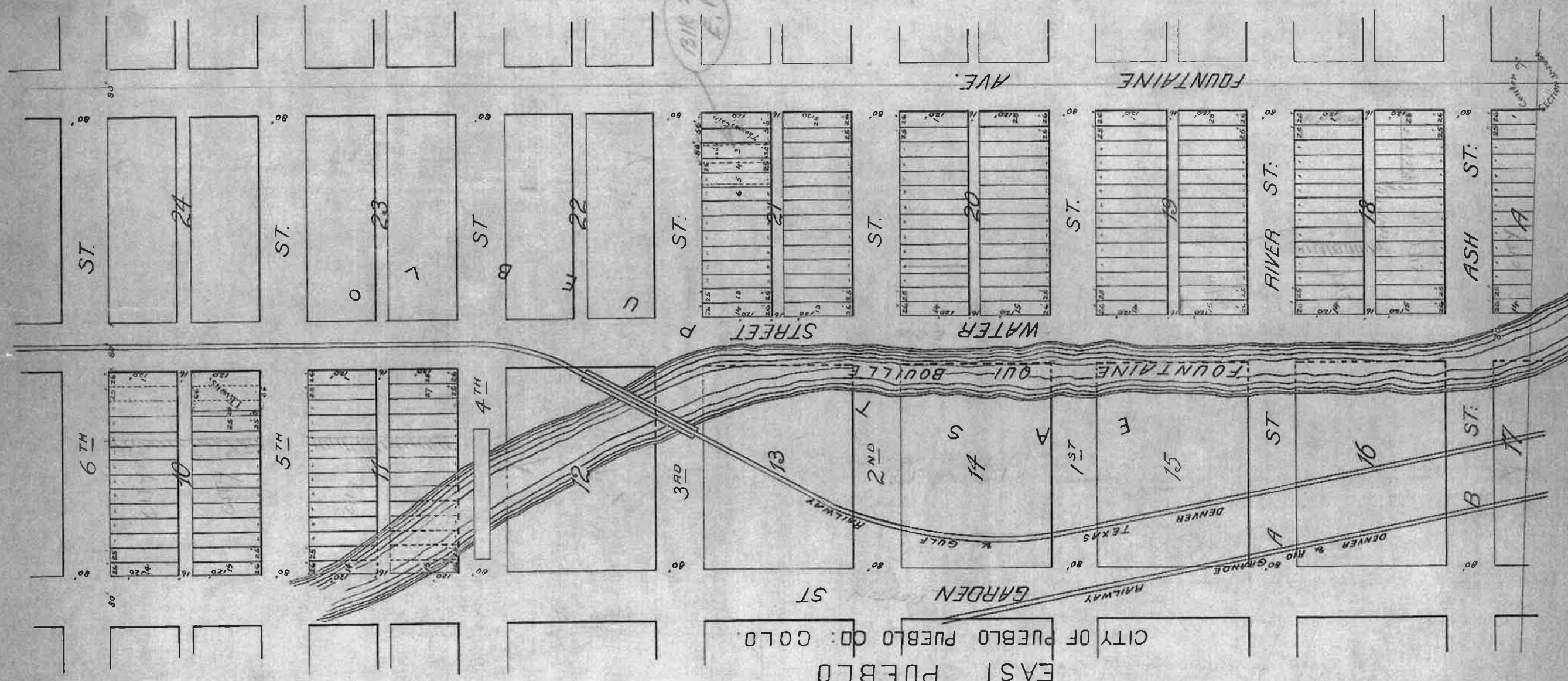
12/3/23
Amella
SURVEYING
54 Mac Arthur
Pueblo, Colorado
(719) 543-1974
Armenta

2-W-14 Mattices

2-W-14

MATTICES SUBDIVISION

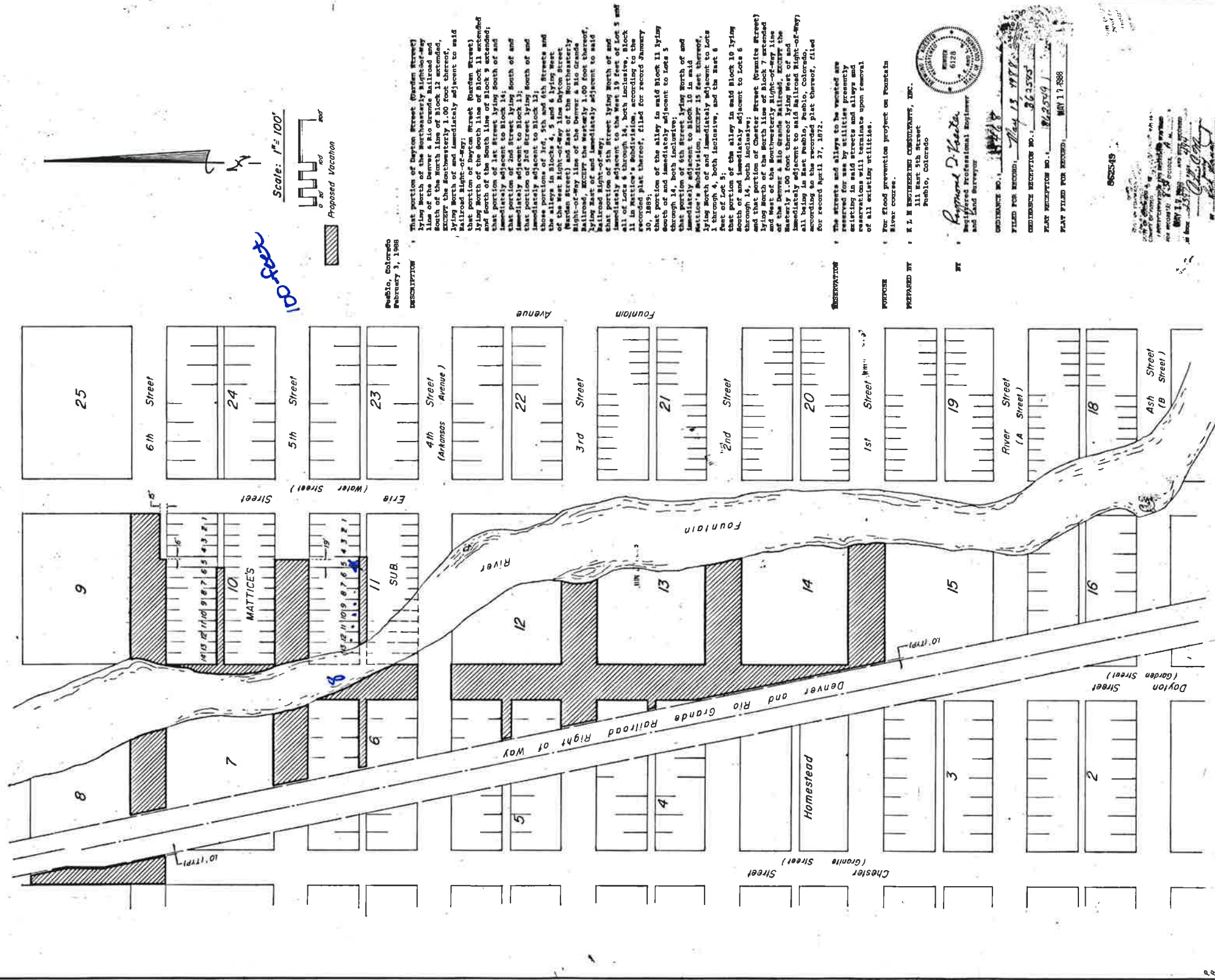
BLOCKS 10, 11, 18, 19, 20 & 21
EAST PUEBLO
CITY OF PUEBLO PUEBLO CO: COLO.



Book 3, Page 28

Scale
3/4 of an inch = 100 feet

In East Pueblo Subdivision and Mattice's Subdivision



DESCRIPTION

That portion of Durston Street (Garden Street) lying North of the Northerly right-of-way line of Lot 6 through Lot 9, both inclusive, and South of the North line of Block 12 extended, EXCEPT 1.00 foot thereof, LYING North of and immediately adjacent to said railroad right-of-way; except Garden Street) lying North of the South line of Block 12 extended and South of the South line of Block 9 extended; that portion of 1st Street lying South of and immediately adjacent to Block 14; that portion of 2nd Street lying North of and immediately adjacent to Block 11; that portion of 3rd Street lying South of and immediately adjacent to Block 13; those portions of 4th, 5th and 6th Streets and 7th Street, all lying North of and immediately adjacent to the West Right-of-Way line of the Garden Street) and East of the Northerly Right-of-Way line of the Denver & Rio Grande Railroad. EXCEPT the Westerly 1.00 foot thereof, LYING North of and immediately adjacent to said railroad right-of-way; that portion of 5th Street lying North of and immediately adjacent to the West 19 feet of Lot 5 and all of Lots 6 through 14, both inclusive, Block 10; that portion of 6th Street, according to the recorded plat thereof, filed for record January 30, 1889; that portion of the alley in mid Block 11 lying south of and immediately adjacent to Lots 5 through 14, both inclusive; LYING North of and immediately adjacent to Block 10 in said section's subdivision, EXCEPT 15 feet thereof, LYING North of and immediately adjacent to Lots 5 through 8, both inclusive, and the East 6 feet thereof; that portion of the alley in mid Block 10 lying south of and immediately adjacent to Lots 6 through 14, both inclusive; that portion of Chester Street (Frontier Street) and the alley between the East and West of the Northerly Right-of-Way line of the Denver & Rio Grande Railroad, EXCEPT the Easterly 1.00 foot thereof lying West of and immediately adjacent to said railroad Right-of-Way line, LYING North of and immediately adjacent to said railroad right-of-way, according to the recorded plat thereof, filed for record April 27, 1872.

REPRODUCTION

THE STREETS AND ALLEYS TO BE RESERVED ARE RESERVED FOR USE BY UTILITIES EXISTING IN SAID STREETS AND ALLEYS AND RESERVATIONS WILL TERMINATE UPON REMOVAL OF ALL EXISTING UTILITIES.

FOR FLOOD PREVENTION PROJECT ON PONTIAC SILVER COURSE.

K. L. M. BENTON-HUGHES CONSULTANTS, INC.
111 West 1st Street
Pueblo, Colorado

Raymond D. Hester
Professional Engineer
and Land Surveyor

COBLENCE NO. 14448
FILED FOR RECORD. May 15 1988
COBLENCE RECEPTION NO. 363793
FLAT RECEPTION NO. 1423549
MAY 17 1988

[illegible]

December 26, 2023

The City Planning and Zoning Commission will hold a public hearing on requests from **Mark Armenta** for the approval of the following application generally located north of East 4th Street and west of Erie Ave.

V-23-07 Alley Vacation: Vacation of the entire alley within Block 11, Mattice’s Subdivision.

The Planning and Zoning Commission meeting will be held on January 10, 2023 at 3:30 p.m., in City Council Chambers, 1 City Hall Place, Pueblo, CO. To view by Zoom: <https://pueblo.zoom.us/j/92717867722?pwd=WUdnaHVGBnlCdHRrUHNFZnpPWG1Ydz09>, Meeting ID: 927 1786 7722, Passcode: 195462, Telephone: 1 346 248 7799 US (Houston), 1 669 900 6833 US (San Jose). You are welcome to attend this public hearing and express your viewpoint concerning this proposal. To review the plans and staff report for the proposed application, please visit www.pueblo.us/PandZ and click on “Most Recent Agenda” no sooner than the Friday prior to the hearing. **Please contact the planner listed below if you have questions.**
Scott Hobson, Acting Director
Planning & Community Development
By **Beritt Odom**, Principal Planner
(719) 553-2339

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Planning & Community Development
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(719) 553-2339

CASE NUMBER: V-23-07

CERTIFICATION

I hereby certify that I did this day cause written notice of the public hearing on the Alley Vacation: 527 E. 4th St. to be sent to the attached list of owners of the property lying within hundred (300) feet of the said property on which the vacation is proposed by depositing the same properly addressed and postage paid in the post office, as set forth in the Code of Ordinances, Section 17-6-2.

12/26/2023

(Date)

PUEBLO PLANNING & ZONING COMMISSION

By Cindy Caputo

I hereby certify that I did this day verify and photograph the posted notice of the public hearing on the Alley Vacation, upon which action is pending as set forth in the Code of Ordinances, Section 17-6-2.

12/26/2023
(Date)

PUEBLO PLANNING & ZONING COMMISSION

By Cindy Caputo

Owner	OwnerStree	OwnerCity	OwnerStat
ERIE CAR WASH LLC	4643 S ULSTER ST STE 1295	DENVER	CO
BURGOS JOSE	616 E 5TH ST	PUEBLO	CO
CARRILLO ALBERT	614 E 5TH ST	PUEBLO	CO
DE LIMA ANDERSON	610 E 5TH ST	PUEBLO	CO
ARMENTA MARK/ARMENTA CYNTHIA	2208 GALE RD	PUEBLO	CO
ALBILLAR DEBORAH P / SANCHEZ ANTHO	608 1/2 E 4TH	PUEBLO	CO
NEW PANDA LLC	3716 GALLEY RD	COLORADC	CO
VASQUEZ PATRICIA E	2124 E ORMAN AVE	PUEBLO	CO
LERMA PABLO S	1617 MESQUITE PL	PUEBLO	CO
R 2 W PROPERTIES LLC	4643 S ULSTER ST STE 1295	DENVER	CO
RODRIGUEZ WILBERT ADOLPH/ JOHN G L	1315 DOYLE PL	COLORADC	CO
BRICK SOLID INVESTMENTS LLC	PO BOX 533	PUEBLO	CO
ZAMUDIO PABLO	618 E 5TH ST	PUEBLO	CO
MESTAS JOSEPH G/MESTAS MARY L	606 E 5TH ST	PUEBLO	CO
PLANCARTE YESICA MARIBEL + DIAZ VICTOR DAN	1192 W MEADOWMOOR DR	PUEBLO W	CO
POPP JAMES L	1902 E RIVER ST	PUEBLO	CO
PUEBLO COUNTY	215 W 10TH ST	PUEBLO	CO
ARCHULETA JOANN + CRABTREE DOLORES ,	747 S RUDIOSO DR	PUEBLO W	CO
ESTEP AMANDA I	308 N ERIE AVE	PUEBLO	CO
ROMERO NANCY	607 E 3RD ST	PUEBLO	CO
DURAN DARLENE D/DURAN MANUEL	649 S INCA DR	PUEBLO W	CO
LERMA PABLO S	1617 MESQUITE PL	PUEBLO	CO
PEREZ JOSE DE JESUS/PEREZ JUANA	PO BOX 8835	PUEBLO	CO
ARMENTA MARK/ARMENTA CYNTHIA	2208 GALE RD	PUEBLO	CO

OwnerZip

80237-4333
81001-3720
81001-3721
81001-3756
81006-1935
81001-3966
80909-4471
81004-3716
81006-1210
80237-4333
80915-2330
81002-0533
81001-3721
81001-3721
81007-2064
81001-4452
81003-2945
81007-7045
81001-3939
81001-3945
81007-1620
81006-1210
81008-8835
81006-1935



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 22, 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 CREATING PART 21 OF SECTION 15-1-8 OF THE PUEBLO MUNICIPAL CODE REGULATING THE PARKING IN ELECTRIC MOTOR VEHICLE CHARGING STATIONS.

SUMMARY:

This ordinance empowers the City of Pueblo parking enforcement to issue citations for non-electric vehicles found parked in designated EV charging spaces.

Considering the growing need for prioritized access to electric vehicle (EV) charging spaces, the City of Pueblo seeks to implement more robust enforcement measures.

This ordinance aligns with the City's commitment to fostering a supportive environment for electric vehicle adoption and ensuring that charging infrastructure is readily accessible to those who require it. Implementing effective enforcement measures is crucial to maintaining the functionality and purpose of these spaces.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

With additional EV's on the road, access to charging stations is an issue of increasing concern. Currently, the City has no regulations prohibiting non-electric vehicles from parking in spaces designated for EV charging. Although the Colorado Revised Statutes have a provision making it a Class B traffic infraction to park in a spot designated as an EV charging station, local parking enforcers do not have the authority to write parking tickets for violation of state statutes, making this law difficult to enforce. This ordinance, following the language of the state statute, will make it enforceable within the City of Pueblo.

FINANCIAL IMPLICATIONS:

Revenues generated from Non-Electric Vehicle impoundment fees would be deposited into the City's General Fund.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

If City Council does not approve this Ordinance, the procedures for non-electric vehicles parking in designated electric vehicle charging spaces will remain uncoded and not readily enforceable.

RECOMMENDATION:

Approve the ordinance.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE CREATING PART 21 OF SECTION 15-1-8 OF
THE PUEBLO MUNICIPAL CODE REGULATING THE PARKING
IN ELECTRIC MOTOR VEHICLE CHARGING STATIONS.

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

SECTION 1.

Section 15-1-8 (21) of the Pueblo Municipal Code is hereby created, which shall read as follows (brackets indicate matter being deleted, underscoring indicates new matter being added):

(21)

(1) As used in this Section:

- a. Official Sign shall mean a sign identifying a parking space for electric motor vehicle charging that cites this section.
- b. Plug-in electric motor vehicle shall mean a motor vehicle that has received an acknowledgment for certification from the Federal Internal Revenue Service that the vehicle qualifies for the plug-in electric drive vehicle credit set forth in 26 U.S.C. Sec. 30D, as amended, or any successor statute; or any motor vehicle that can be recharged from an external source of electricity and that uses electricity stored in a rechargeable battery pack to propel or contribute to the propulsion of the vehicle's drive wheels.

(2) The owner of public or private property may install official signs that identify a parking space as a dedicated charging station. The installation operates as a waiver of any objection the owner may assert concerning enforcement of this section. A police officer or specially-commissioned officer may enforce this section on private property.

(3)

- a. A person shall not park a motor vehicle within a parking space designated for charging a plug-in electric motor vehicle unless the motor vehicle is a plug-in electric motor vehicle.
- b. Except as provided in subsection (4) of this section, a person shall not park a plug-in electric motor vehicle in a parking space with a dedicated charging connector for the parking space unless the person is parked in the charging station for the purpose of charging the plug-in electric motor vehicle.
- c. A plug-in electric motor vehicle is rebuttably presumed to not be charging if the motor vehicle is:
 - i. Parked in a charging station parking space with a dedicated charging connector for the space; and
 - ii. Not continuously and electrically connected to the charger for longer than thirty (30) minutes.

(4)

- a. A person may park a plug-in electric motor vehicle at a charging station after the motor vehicle is fully charged in a parking lot:
 - i. That serves a lodging business if the person is a client of the lodging business and has parked the plug-in electric motor vehicle in the lot to charge overnight;

- ii. That serves an airport if the person is a client of the airport and has parked the plug-in electric motor vehicle in the lot to charge when traveling; or
- iii. Between the hours of 11 p.m. and 5 a.m.
- b. The exception in subsection (4)(a) of this section is an affirmative defense to a violation of subsection (3) of this section.

(5) Any person who violates this section commits a Class 2 municipal offense with a fine to be set by Administrative Order of the Pueblo Municipal Court

SECTION 2.

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 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 22, 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

SUBJECT: AN ORDINANCE CREATING ARTICLE IX OF CHAPTER 1 OF TITLE XI WITHIN THE PUEBLO MUNICIPAL CODE, ADDING SECTIONS 11-1-901 THROUGH 11-1-904 THERETO, ENACTING PROVISIONS AND PROHIBITIONS WITH RESPECT TO CERTAIN GAMING AND GAMBLING DEVICES, AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF

SUMMARY:

Attached for consideration is a set of new Code provisions with respect to certain gaming and gambling devices. These provisions will allow for enforcement through the Municipal Court.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

Limited gaming is authorized within the cities of Central, Black Hawk, and Cripple Creek under Article XVIII, Section 9 of the Colorado Constitution. In 2015, the Colorado Assembly determined there was a need for additional legislation with respect to simulated gambling devices, and subsequently passed HB15-1047. Despite state law prohibiting the offering of such simulated gambling devices, and through independent investigation, the Pueblo Police Department has determined such devices are in use within the City of Pueblo. This Ordinance seeks to give municipal enforcement authority to the Pueblo Police Department and jurisdiction to the Pueblo Municipal Court.

FINANCIAL IMPLICATIONS:

The financial implications are unknown at this time. Enforcement of these provisions may result in criminal prosecutions being instituted in Municipal Court which may

increase costs to some degree. The provisions under consideration allow for the confiscation of the devices and gambling proceeds. Any gambling proceeds forfeited by order of the Municipal Court are to be remitted to the City's general fund. Additionally, it is anticipated that these ordinances will lead to a reduction in other crimes associated with such activities.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

Council can choose to reject the proposed provisions and violations thereof will not be enforceable in Municipal Court.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE CREATING ARTICLE IX OF CHAPTER 1 OF TITLE XI WITHIN THE PUEBLO MUNICIPAL CODE, ADDING SECTIONS 11-1-901 THROUGH 11-1-904 THERETO, ENACTING PROVISIONS AND PROHIBITIONS WITH RESPECT TO CERTAIN GAMING AND GAMBLING DEVICES, AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF

WHEREAS, City of Pueblo ("City") is a Colorado home rule municipality, with all powers and authority vested under Colorado law; and

WHEREAS, the use of simulated gambling devices is prohibited by state law; and

WHEREAS, the State of Colorado has declared through the Legislature that there is a close relationship between professional gambling and other crime; and

WHEREAS, City finds it is in the best to restrain all persons from seeking profit from gambling activities; to safeguard the public against the evils induced by common gamblers and common gambling houses; and at the same time to preserve the freedom of the press and to avoid restricting participation by individuals in sport and social pastimes which are not for profit, do not affect the public, and do not breach the peace; and

WHEREAS, the absence of regulation and ongoing governmental oversight presents a danger to consumers within the City, putting at risk the financial resources of vulnerable persons and customers who have no avenue of appeal when there are questionable practices by the operators of these sites; and

WHEREAS, the Pueblo Police Department has investigated and determined that simulated gambling devices are being used within the City and associated with other crimes; NOW THEREFORE,

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

SECTION 1.

Article IX of Chapter 1 of Title XI of the Pueblo Municipal Code is hereby created and enacted to read as follows:

ARTICLE IX – Gambling Devices

SECTION 2.

Section 11-1-901 of the Pueblo Municipal Code is hereby enacted to read as follows:

Sec. 11-1-901. – Definitions.

As used in this Code, unless the context otherwise requires:

(a) *Electronic gaming machine* means an electrically or electronically operated machine or device that is used by a sweepstakes entrant and that displays the results of a game entry or game outcome to a participant on a screen or other mechanism at a business location, including a private club, that is owned, leased, or otherwise possessed, in whole or in part, by a person conducting the sweepstakes or by that person's partners, affiliates, subsidiaries, agents, or contractors. A device qualifies under this code if any part, program, game or the like qualify. The term includes a machine or device that:

(1) Uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries;

(2) Uses software that simulates a game that influences or determines the winning or value of the prize, or appears to influence or determine the winning or value of the prize;

(3) Selects prizes from a predetermined, finite pool of entries;

- (4) Uses a mechanism that reveals the content of a predetermined sweepstakes entry;

- (5) Predetermines the prize results and stores those results for delivery when the sweepstakes entry is revealed;

- (6) Uses software to create a game result;

- (7) Requires a deposit of any currency or token or the use of any credit card, debit card, prepaid card, or other method of payment to activate the machine or device;

- (8) Requires direct payment into the machine or device or remote activation of the machine or device upon payment to the person offering the sweepstakes game;

- (9) Requires the purchase of a related product at additional cost in order to participate in the sweepstakes game or makes a related product available for no cost but under restrictive conditions;

- (10) Reveals a sweepstakes prize incrementally even though the progress of the images on the screen does not influence whether a prize is awarded, or the value of any prize awarded; or

- (11) Determines and associates the prize with an entry or entries at the time the sweepstakes is entered.

(b) Enter or entry means the act or process by which a person becomes eligible to receive a prize offered in a sweepstakes.

(c) Entrant means a person who is or seeks to become eligible to receive a prize offered in a sweepstakes (as defined by this Code).

(d) Gain means the direct realization of winnings.

(e) Gambling, whether used alone or as part of the phrase simulated gambling or simulated gambling device, means risking any money, credit, deposit, or other thing of value for gain contingent in whole or in part upon lot, chance, the operation of a gambling device, or the happening or outcome of an event, including a sporting event, over which the person taking a risk has no control, but does not include:

(1) Bona fide contests of skill, speed, strength, or endurance in which awards are made only to entrants or the owners of entries, in the case of electronic gaming this Subsection 1 of Section e does not apply;

(2) Bona fide business transactions which are valid under the law of contracts;

(3) Other acts or transactions now or hereafter expressly authorized by law;

(4) Any game, wager, or transaction that is incidental to a bona fide social relationship, is participated in by natural persons only, and in which no person is participating, directly or indirectly in professional gambling;

(5) Any use of or transition involving a crane game, as defined in section 44-39-109(9) of the Colorado Revised Statutes, as revised;

(6) Sports Betting conducted in accordance with 44-30-1501 et. seq. of the Colorado Revised Statutes and applicable rules of the limited gaming control commission.

(f) Prize means a gift, award, gratuity, good, service, credit, or anything else of value, including a thing of value for a gain, as defined in this section, that may be transferred to an entrant, whether or not possession of the prize is actually transferred or placed on an account or other record as evidence of the intent to transfer the prize. Prize does not include:

(1) Free or additional play;

(2) Any intangible or virtual award that cannot be converted into money, goods, or services; or

(3) A paper or electronic coupon, whether issued to a player as a single ticket or token or as multiple tickets or tokens, that is won in return for a single play of a device; has a value that does not exceed the equivalent of twenty-five dollars; cannot be exchanged or returned for money, monetary credits, or any financial consideration; and cannot be used to acquire or exchanged for any product that is, contains, or can be used as a constituent part of or accessory for:

1. Alcohol beverages;

2. Tobacco, tobacco products, marijuana, or smoking; or

3. Firearms or ammunition.

(g) Gambling Premises means any building, room enclosure, vehicle, vessel, or other place, whether open or enclosed, used or intended to be used for professional gambling. In the application of this definition, any place where a gambling device is found is presumed to be intended to be used for professional gambling.

(h) Gambling Proceeds means all money or other things of value at stake or displayed in on in connection with professional gambling.

(i) Professional Gambling means:

(1) Aiding or inducing another to engage in gambling, with the intent to derive a profit therefrom; or

(2) Participating in gambling and having, other than by virtue of skill or luck, a lesser chance of losing or a greater chance of winning than one or more of the other participants.

(j) *Profit* means any other realized or unrealized benefit, direct or indirect, including without limitation benefits from proprietorship, management, or unequal advantage in a series of transactions.

(k) *Simulated gambling device* means a mechanically or electronically operated machine, network, system, program, or device that is used by an entrant and that displays simulated gambling displays on a screen or other mechanism at a business location, including a private club, that is owned, leased, or otherwise possessed, in whole or in part, by a person conducting the game or by that person's partners, affiliates, subsidiaries, agents, or contractors; except that the term does not include bona fide amusement devices, as authorized in Pueblo Municipal Code 9-6-1 et. seq., that pay nothing of value, cannot be adjusted to pay anything of value, and are not used for gambling. Simulated gambling device includes:

- (1) A video poker game or any other kind of video card game;
- (2) A video bingo game;
- (3) A video craps game;
- (4) A video keno game;
- (5) A video lotto game;
- (6) A video roulette game;
- (7) A pot-of-gold;
- (8) An eight-liner;
- (9) A video game based on or involving the random or chance matching of different pictures, words, numbers, or symbols;
- (10) An electronic gaming machine, including a personal computer of any size or configuration that performs any of the functions of an electronic gaming machine;
- (11) A slot machine, where results are determined by reason of the skill of the player or the application of the element of chance, or both, as provided by Section 9 (4)(c) of Article XVIII of the Colorado constitution; and
- (12) A device that functions as, or simulates the play of, a slot machine, where results are determined by reason of the skill of the player or the application of the element of chance, or both, as provided by Section 9 (4)(c) of Article XVIII of the Colorado constitution.
- (13) *Simulated gambling device* does not include any pari-mutuel totalisator equipment that is used for pari-mutuel wagering on live or simulcast racing events and that has been approved by the State of Colorado director of the division of racing events for entities authorized and licensed under Article 32 of Title 44 of the Colorado Revised Statutes.

(l) *Slot Machine* means any mechanical, electric, video, electronic, or other device, contrivance, or machine which, after insertion of a coin, token, or similar object, or upon

payment of any required consideration whatsoever by a player, is available to be played or operated, and that, whether by reason of the skill of the player or application of the element of chance, or both may deliver or entitle the player operating the machine to receive cash premiums, merchandise, tokens, or redeemable game credits, or any other thing of value other than unredeemable free games, whether the payoff is made automatically from the machines or in any other manner. Slot machine does not include:

(1) A vintage slot machine model that was introduced on the market before 1984, does not contain component parts manufactured in 1984 or thereafter, and is not used for gambling purposes or in connection with limited gaming; or

(2) Crane games.

(i) Sweepstakes means any game, advertising scheme or plan, or other promotion that, with or without payment of any consideration, allows a person to enter to win or become eligible to receive a prize.

(k) Vintage Slot Machine means any model slot machine that was introduced on the market prior to January 1, 1984.

SECTION 3.

Section 11-2-902 of the Pueblo Municipal Code is hereby enacted to read as follows:

Sec. 11-1-902. Gaming Prohibition – penalties - exemptions.

(a) Gambling prohibited. It shall be unlawful for any person to engage in gambling, or professional gambling as defined by this Code. Gambling is a Class 2 municipal offense.

(b) Possession of a gambling device. It shall be unlawful for any person to own, manufacture, sell, transport, possess or engage in any transaction designed to affect the ownership, custody, or use of a gambling device, knowing that it is to be used in professional gambling. Possession of a gambling device is a Class 1 municipal offense.

(c) Gambling premises. It shall be unlawful for any person, as owner, lessee, agent, employee, operator or occupant, knowingly to maintain or aid or permit the maintaining of a gambling premises. Violation of this subsection is a Class 1 municipal offense.

SECTION 4.

Section 11-2-903 of the Pueblo Municipal Code is hereby enacted to read as follows:

Sec. 11-1-903. Electronic Gaming – Prohibition – penalties - exemptions.

(a) A person commits unlawful offering of a simulated gambling device if the person offers, facilitates, contracts for, or otherwise makes available to or for members of the public or members of an organization or club any simulated gambling device where:

(1) The person receives, directly or indirectly, a payment or transfer of consideration in connection with an entrant's use of the simulated gambling device, admission to premises on which the simulated gambling device is located, or the purchase of any product or service associated with access to or use of the simulated gambling device, regardless of whether consideration in connection with such use, admission, or purchase is monetary or nonmonetary and regardless of whether it is paid

or transferred before the simulated gambling device is used by an entrant; and

(2) As a consequence of, in connection with, or after the play of the simulated gambling device, an award of a prize is expressly or implicitly made to a person using the device.

(b) Unlawful offering of a simulated gambling device is a Class 1 municipal offense.

(c) Without regard to any penalty imposed under subsections (2) and (3) of this section, the City Attorney may apply to a court of competent jurisdiction for appropriate additional relief, including:

(1) Injunctive relief to restrain and enjoin violations of this article;

(2) Such other and further relief as is available at law or in equity.

(d) The remedies set forth in this article shall not be exclusive, shall be cumulative, and shall be in addition to any other relief or penalty imposed upon the person in violation. City may further abate, seize or declare a nuisance the devices, or proceeds, or both. City may suspend or revoke any business license issued to those businesses associated with a gaming premises whether they own the devices or not including, but not limited to business, liquor, marijuana, and tobacco licenses.

(e) Conducting or assisting in the conduct of gaming wagering activities and live or simulcast racing and pari-mutuel wagering activities otherwise authorized by Colorado law is not a violation of this section.

(f) Nothing in this section:

(1) Prohibits, limits, or otherwise affects any purchase, sale, exchange, or other transaction related to stocks, bonds, futures, options, commodities, or other similar instruments or transactions occurring on a stock or commodities exchange, brokerage house, or similar entity; or

(2) Limits or alters the application of the requirements for sweepstakes, contests, and similar activities that are otherwise established under the laws of this state.

(g) The provision of internet or other online access, transmission, routing, storage, or other communication-related services or website design, development, storage, maintenance, billing, advertising, hypertext linking, transaction processing, or other site-related services by a telephone company, internet service provider, software developer or licensor, or other party providing similar services to customers in the normal course of its business does not violate this section even if those customers use the services to conduct a prohibited game, contest, lottery, or other activity in violation of this article; except that this subsection (8) does not exempt from criminal prosecution or civil liability a software developer, licensor, or other party whose primary purpose in providing such service is to support the offering of simulated gambling devices.

SECTION 5.

Section 11-2-904 of the Pueblo Municipal Code is hereby enacted to read as follows:

Sec. 11-1-904. Seizure of gambling devices, proceeds.

(a) All gambling devices, instruments and things used for the purpose of gambling, as well as gambling proceeds, are hereby declared to be contraband and shall be subject to seizure by any peace officer and may be confiscated and destroyed by order of any judge of the Municipal Court. All gambling proceeds shall be forfeited to the City and transferred by court order to the general fund of the City.

(b) If a gambling device is a vintage slot machine and is not operated for gambling purposes for profit or for business purposes, it shall not be confiscated or destroyed pursuant to Subsection 1 of this section. If a gambling device is confiscated and the owner shows the Municipal Court that such gambling device is a vintage slot machine and is not sued for gambling purposes, the Court shall order such vintage slot machine returned to the person from whom it was confiscated.

SECTION 6.

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

SECTION 7.

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 _____.

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 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Mark Aliff, President

SUBJECT: AN ORDINANCE AMENDING ARTICLE 1 THROUGH 6 OF CHAPTER 6 OF TITLE IX WITHIN THE PUEBLO MUNICIPAL CODE, MODIFYING LICENSING AND FEES FOR COIN-OPERATED AMUSEMENT DEVICES AND COIN-OPERATED MUSIC MACHINES.

SUMMARY:

Attached for consideration is a proposed amendment of the Pueblo Municipal Code 9-6-1 through 9-6-6 regarding licensing fees and requirements for coin-operated amusement devices and coin-operated music machines.

PREVIOUS COUNCIL ACTION:

This portion of the Pueblo Municipal Code was written in 1957 and does not appear to have been modified since.

BACKGROUND:

Currently, a coin-operated music device or amusement device requires an annual \$15 license sticker along with an annual license fee for the business. Each time a machine is replaced, either because it needs repair or otherwise, a new sticker must be purchased. These fees are burdensome to licensees.

City does collect revenue tax from rental of spaces for such devices, therefore, it is important to know the number and location of said devices, while knowing the exact machine in that location is not as critical.

City needs to emphasize that abolishing the \$15 license sticker fee does not mean that a licensee can have so many devices as to violate other regulations such as fire and safety codes at a location.

FINANCIAL IMPLICATIONS:

City will no longer collect a \$15 license sticker fee per machine.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Not approving these changes will require all devices to still obtain the \$15 license sticker including when swapping one device for another and continue to burden business.

RECOMMENDATION:

Accept the changes.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE AMENDING ARTICLE 1 THROUGH 6 OF CHAPTER 6 OF TITLE IX WITHIN THE PUEBLO MUNICIPAL CODE, MODIFYING LICENSING AND FEES FOR COIN-OPERATED AMUSEMENT DEVICES AND COIN-OPERATED MUSIC MACHINES.

WHEREAS, City of Pueblo ("City") has certain regulations on coin operated amusement devices that license individual devices; and

WHEREAS, City has determined that the current licensing requirements put an undue burden on businesses; and

WHEREAS, City collects revenue from rental of these types of devices and, therefore, has an interest in tracking the number and location of said devices; NOW, THEREFORE,

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

SECTION 1.

Sec. 9-6-1. Definitions.

- a. *Coin-operated music machine* or *music machine* shall mean any mechanical device for music production operated by coins, tokens, slugs or similar means, for use of the public within the City, in a public or quasi-public place or in any building, store or other place where the public is invited, wherein the public may enter, or where the public customarily resorts. The first group of ten (10) (or less) receiving sets for coins, tokens, slugs or similar means, connected directly or indirectly (including telephone connection) with one (1) common music production source is hereby defined as one (1) music machine.
- b. *Coin-operated amusement device* shall mean any mechanical device or contrivance operated by coins, tokens, slugs or similar means, for the sole purpose of amusement and without other return, except replays, for consideration of the coin or other thing deposited, and for use of the public within the City in any public place or quasi-public place, or in any building, store or other place where the public is invited, wherein the public may enter, or where the public customarily resorts, operated by such coins or other such means, except coin-operated music machines as herein defined.
- c. *Dealer* shall mean any person on whose premises as proprietor thereof, the amusement device or music machine of an operator is placed for use.
- d. *Operator* shall mean any person using, renting or offering for use or rent, music machines or amusement devices for use on premises not under control of the operator, but under the control of a dealer, as herein defined.
- e. *Owner* shall mean any person owning or controlling less than three (3) amusement devices or music machines used on premises under the control of such person.

Sec. 9-6-2.

It shall be unlawful for any person to use, rent or display for use within the City, any music machine or coin-operated amusement device, without a license and the presence of a machine on the premises shall be conclusive evidence that a license is required. Upon application to the License Officer, there shall be issued an annual license and other insignia, subject to the limitations hereinafter set forth. Such application shall state the aggregate number of music machines and amusement devices to be authorized by the license, a general description of such machines [by name and model], and the addresses and names of the establishments

where such machines are to be in use.

Sec. 9-6-3. Fees.

a. Operators:

1. For music machines: seventy-five dollars (\$75.00) per year and, [in addition thereto, fifteen dollars (\$15.00) per year for each machine covered by the application and license; plus one dollar (\$1.00) for each receiving set for coins, tokens, slugs or similar means, in excess of ten (10) connected directly or indirectly (including telephone connection) with one (1) common music production source.]
2. For coin-operated amusement devices: one hundred twenty-five dollars (\$125.00) per year [and, in addition thereto, fifteen dollars (\$15.00) per year, for each machine covered by such application and license].
3. [It shall be unlawful for any operator to place in such amusement devices or music machines in excess of the aggregate number stated in his or her license; but additions may be made to such number licensed by application to the License Officer, and payment for the additional amusement devices at the rate of fifteen dollars (\$15.00) per year per machine, to be prorated for the unexpired term of such license.]

b. Owner:

1. The applicant for an owner's license shall pay to the City an owner's license fee **of seventy-five dollars (\$75.00) per year.** [graduated upon the number of machines listed in such owner's application, as follows, to wit: thirty dollars (\$30.00) per year for each amusement device or music machine used.]
2. It shall be [unlawful] **a Class 2 municipal offense** for any owner to use or place in use amusement devices or music machines in excess of the number stated in his or her license **or in locations not listed on the license. A licensee may amend or update their license throughout the year to inform City of the location and number of devices.** [; but additions may be made to such number licensed by application to the License Officer and payment for the additional amusement devices at the rate of thirty dollars (\$30.00) per year per machine, to be prorated for the unexpired term of said license.]

Sec. 9-6-4. Payment, [times] timelines; information; refund; insignia.

- a. All license fees herein required shall be annual license fees due and payable in advance on January 1 of each calendar year and shall be delinquent on the succeeding February 1 of each calendar year; and no license shall be issued to any person unless required license fees due and accrued shall be paid. No refund shall be made upon revocation of licenses, or cessation of use of any or all such amusement devices thereunder.
- b. [In addition to the usual license, the License Officer shall issue a decal or insignia for each machine licensed which shall be placed on the amusement device or music machine in such a manner as to be plainly visible to any person inserting a coin into or playing upon such machines. In the case of a machine with multiple receiving sets, only the principal receiving set shall be so identified. Such insignia shall be numbered and shall clearly show the year for which the same is effective. No outdated insignia shall be permitted to remain visible upon any machine.]

Sec. 9-6-5. Nuisance; revocation; refund; transfer of music machines.

- a. Every person shall be responsible for the use of such a machine on his or her premises and shall so use and control the same as not to create a public annoyance and disturbance to property owners or residents of the locality. Upon complaint, notice thereof by the City Council to the licensee and dealer, and such hearing thereon by the City Council as the City Council may reasonably prescribe, the use of any music machine or amusement device may be limited or prohibited. In case of prohibition thereof by the City Council of the use of a machine in any locality, the amount of the license fee for such machine shall be refunded on a pro-rata basis for the unexpired term of such license.
- b. Nothing herein shall be construed to prevent a licensee from replacing, exchanging or transferring **the location of music machines or coin operated amusement devices, provided the location and number of devices or machines is declared on the license.** [from one (1) place covered by a license to another such place, provided that the number used in each such place does not exceed the number licensed for such place.]
- c. **All licensees are still required to comply with all applicable laws, regulations and ordinances, including, but not limited to, fire, safety, tax. Failure to comply with any law, regulation and ordinance could result in revocation of any and all City issued licenses including business, tobacco, and liquor licenses. Additionally, City may further abate, seize or declare a nuisance the coin-operated music machine or coin-operated amusement devices or both, including proceeds.**

Sec. 9-6-6. Gambling; revocation; transfer of amusement devices/machines.

Every person shall be responsible for the use of such music machines or amusement devices on his or her premises. The use of any machine, directly or indirectly, for the purpose of gambling or gain other than amusement, shall constitute a violation of this Code. Upon complaint of such violation by any person, including police officials, such reasonable notice thereof to the licensee, and hearing thereof by the License Officer, the use of any such amusement devices at the place of any dealer or owner as herein defined may be prohibited and any license pertaining thereto may be suspended or revoked.

SECTION 2.

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

SECTION 3.

This Ordinance shall become effective 30 days after final action by the Mayor and City Council.

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

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

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

President of City Council

ATTEST

City Clerk



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Heather Graham, Mayor
Marisa Pacheco, Director of Human Resources

SUBJECT: AN ORDINANCE AMENDING THE FISCAL YEAR 2024 STAFFING ORDINANCE BY CONVERTING ONE (1) VACANT FULL-TIME INTERNAL AUDITOR POSITION TO A NEW CLASSIFICATION ENTITLED NON-PROFIT COMPLIANCE COORDINATOR WITHIN THE AUTHORIZED STAFFING LEVELS OF THE MAYOR'S OFFICE

SUMMARY:

The previous administration established the position of Internal Auditor during the 2023 budget process. To date, the position has never been posted or filled. This ordinance would convert the vacant position of Internal Auditor to a new classification entitled Non-Profit Compliance Coordinator. This position will be responsible for tracking, vetting, and monitoring compliance of non-profit organizations that receive funding from the City of Pueblo through either the annual budget process or off-cycle funding requests occurring during the year.

This position will be a classified, non-bargaining position and will be subject to all hiring procedures under Civil Service rules and regulations.

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 following chart shows the non-departmental funding allocated by the City to various non-profit organizations and to various agencies through specific contracts, such as animal control, CSAC, Pueblo Zoo, Colorado Municipal League etc. Since 2021, the budget allocation for this line item has increased over two million dollars or over 38%.

2021 Actual	2022 Actual	2023 Actual	2024 Revised Budget
\$ 5,840,644.18	\$ 6,946,883.65	\$ 7,510,725.25	\$ 8,065,619.00

The City of Pueblo is responsible for ensuring the taxpayer funding received by non-profits and other non-departmental organizations is expended in a manner consistent with the outlined request or contractual agreement. This is particularly important in instances where a contractual relationship is not in place. Historically, there has not been a dedicated staff person to manage this important compliance function for the City of Pueblo. Therefore, the Mayor requests that the never-filled Internal Auditor position be converted to the full-time position of Non-Profit Compliance Coordinator for this purpose. In addition to developing a standardized funding request process for outside agencies to use for all City of Pueblo funding requests, the position will then measure the performance of programs and provide recommendations regarding funding and will report on whether the funding was used for the committed purposes.

The position will coordinate all non-departmental budget requests by performing due diligence on behalf of the City with respect to the requestors' financial position, board governance, level of sustainability, and review of status with the City, Secretary of State's office and other regulatory agencies with respect to licensing and compliance status. Additionally, the position will be responsible for developing a standardized reporting instrument, requirements, and frequency of required reporting for agencies awarded funding to be submitted to the City about the use of approved funds. While the position will not be a sitting member on the Community Services Advisory Commission (CSAC), the position will attend meetings of the commission and will monitor funding granted through that process to determine if duplicate funding is being requested of the City. Connected to that review will be the responsibility to cultivate an understanding of community funding resources beyond those provided by the City of Pueblo to support outside agency needs.

The addition of this compliance position is an important first step in better understanding, monitoring, and providing the Mayor and City Council with timely, accurate information needed to make informed decisions with respect to outside agency funding requests moving forward.

FINANCIAL IMPLICATIONS:

There is no net change in staffing for the Mayor's Office as a result of these changes and no additional funding is required. Annual savings of approximately \$23,182 per year will be realized due to the conversion of the vacant Internal Auditor position.

ESTIMATED COST

Non-Profit Compliance Coordinator

Cost Item	Approximate Annual Cost	Estimated Actual Cost 2024 (6 months)
Salary	\$ 67,432	\$ 33,716
Retirement (PERA)	\$ 9,575	\$ 4,788
Health Insurance	\$ 23,275	\$ 11,638
Dental Insurance	\$ 296	\$ 148
Life Insurance	\$ 72	\$ 36
Medicare	\$ 978	\$ 489
Estimated Position Cost per position	\$ 101,629	\$ 50,814
Internal Auditor Off-Set Funding	\$ 124,811	\$ 62,405
Total Savings	\$ (23,182)	\$ (11,591)

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 efficient.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE AMENDING THE FISCAL YEAR 2024 STAFFING ORDINANCE BY CONVERTING ONE (1) VACANT FULL-TIME INTERNAL AUDITOR POSITION TO A NEW CLASSIFICATION ENTITLED NON-PROFIT COMPLIANCE COORDINATOR WITHIN THE AUTHORIZED STAFFING LEVELS OF THE MAYOR'S OFFICE

WHEREAS, it is necessary to revise the positions for the ultimate efficiency and functionality for the City of Pueblo Mayor's Office; NOW THEREFORE,

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

SECTION 1.

The following section captioned "Mayor's Office " of Ordinance No. 10613, being the 2024 Staffing Ordinance, is amended as follows:

Mayor's Office

Mayor	1
Chief of Staff	1
Deputy Mayor	1
Administrative Assistant	1
Director/Just Transitions Program	1
Director/Public Affairs	1
Grant & Resource Development Administrator	1
Grant Coordinator/Financial Empowerment	1
Food Project Coordinator	1
[Internal Auditor] <u>Non-Profit Compliance Coordinator</u>	1
Outdoor Recreation Administrator	1
Secretary to the Mayor	1
Total	

12

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 Mayor's Office 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 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Heather Graham, Mayor
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 NON-PROFIT COMPLIANCE COORDINATOR

SUMMARY:

Attached for consideration is an amended Pay Plan Ordinance that reflects the addition of the pay rate and salary schedule for the classification of Non-Profit Compliance Coordinator.

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:

This position will be responsible for tracking, vetting, and monitoring compliance of non-profit organizations and non-departmental outside agencies that receive funding from the City of Pueblo through either the annual budget process or off-cycle funding requests occurring during the year.

This position will be a classified, non-bargaining position and will be subject to all hiring procedures under Civil Service rules and regulations.

FINANCIAL IMPLICATIONS:

No additional funding is required in 2024 to fill this position.

ESTIMATED COST**Non-Profit Compliance Coordinator**

Cost Item	Approximate Annual Cost	Estimated Actual Cost 2024 (6 months)
Salary	\$ 67,432	\$ 33,716
Retirement (PERA)	\$ 9,575	\$ 4,788
Health Insurance	\$ 23,275	\$ 11,638
Dental Insurance	\$ 296	\$ 148
Life Insurance	\$ 72	\$ 36
Medicare	\$ 978	\$ 489
Estimated Position Cost per position	\$ 101,629	\$ 50,814
Internal Auditor Off-Set Funding	\$ 124,811	\$ 62,405
Total Savings	\$ (23,182)	\$ (11,591)

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

The suggested change establishes the 2024 salary range for the classification of Non-Profit Compliance Coordinator. If this ordinance is not approved, and assuming the establishment of the 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 NON-PROFIT COMPLIANCE COORDINATOR

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 Non-Profit Compliance Coordinator.

6-5-16. Schedule, classification, work week and monthly salary.

The following shall constitute:

B. The monthly pay range for the classification of Non-Profit Compliance Coordinator for 2024

CLASS TITLE	BASE SALARY	MERIT PAY RANGES GRANTED UNDER SECTION 6-5-1(B)					
(B) ADMINISTRATIVE							
Non-Profit Compliance Coordinator	5619.36	5920.95	6254.63	6598.01	6961.04	7343.73	7747.60

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 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Heather Graham, Mayor
Marisa Pacheco, Director of Human Resources

SUBJECT: AN ORDINANCE AMENDING THE FISCAL YEAR 2024 STAFFING ORDINANCE BY CONVERTING ONE (1) FULL-TIME VACANT POSITION ENTITLED FOOD PROJECT COORDINATOR TO A POSITION ENTITLED MARKETING AND SOCIAL MEDIA SPECIALIST WITHIN THE AUTHORIZED STAFFING LEVELS AT THE MAYOR'S OFFICE

SUMMARY:

The Mayor requests the conversion of one (1) full-time vacant position currently entitled Food Project Coordinator to a new position entitled Marketing and Social Media Specialist within the Mayor's Office. The Food Project Coordinator vacancy is eligible for conversion as the Pueblo Food Project program and staff have exited the City organization as of March 31, 2024, and are now a standalone entity.

The new position of Marketing and Social Media Specialist will provide critical staff support with respect to marketing, branding, videography, and social media presence city-wide. This position will coordinate with other positions around the City with connected responsibilities to ensure consistent messaging and to leverage capabilities to enhance engagement with the community.

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 City of Pueblo is responsible for maintaining the public government channel, Channel 17, which needs a complete overhaul. Currently the City of Pueblo contracts with Pueblo Community College for quarterly studio time of one hour, but otherwise the City of Pueblo does not have a full-time videographer or creative design specialist. The

suggested position will enhance the City's image through social media, Channel 17, advertising and overall promotion of the city. Currently, this is overseen by the Director of Public Affairs. The additional personnel will allow for more intentional and continual support to highlight the services of the City to the community.

If approved, the converted position will work collaboratively with other departments on communications needs related to video assets, graphic design, and promotional needs to engage the public and citizens of Pueblo. Work of the Marketing and Social Media Specialist will promote awareness of services such as Public Works during paving season, highlights of our abatement crew with Code Enforcement, additional support to Parks and Recreation with their programming and events and other promotion across the city departments. This information will be used for social media, Channel 17, the City website, advertising and to enhance the work of the quarterly City newsletter. Additional information includes public safety announcements, press release assistance, and media needs.

This position will specifically be specialized in filming, directing, editing, production of media and graphic design. A trained professional with experience in InDesign, Adobe, photography, Photoshop, and other related software is needed to elevate communication from the City of Pueblo. Specific attention to ADA accessibility as it relates to adherence for municipal government with alt text, image description, appropriate colors, and text for all public to view information is crucial for the marketing and social media specialist.

Tracking of relevant data to make informed decisions for relevant media placement based on certain platforms such as reels for Instagram, short segments and interviews for YouTube and Channel 17 production and curated photos or graphics for the newsletter, Facebook, or other social media platforms will be a key benefit of this full-time position. This will maximize the effectiveness of marketing and content needs of departments with more consistent social media posting, branding and transparency with citizens regarding municipal government operations of the City.

The Pueblo Food Project is now a standalone entity and no longer associated with the City of Pueblo as of March 31, 2024. The conversion of the Food Project Coordinator position will allow the Mayor's Office to meet objectives around community engagement in more impactful ways.

FINANCIAL IMPLICATIONS:

There is no net change in staffing for the Mayor's Office as a result of these changes and no additional funding is required.

The cost of the Marketing and Social Media Specialist position is approximately \$45,654 for the remainder of 2024. The department has \$38,000 budgeted in the temporary staffing line item to support the new position, with the remaining funding requirement of \$7,654 covered by salary savings generated through the converted Internal Auditor position.

ESTIMATED COST**Marketing and Social Media Specialist**

Cost Item	Approximate Annual Cost	Estimated Actual Cost 2024 (6 months)
Salary	\$ 58,509	\$ 29,255
Retirement (PERA)	\$ 8,308	\$ 4,154
Health Insurance	\$ 23,275	\$ 11,638
Dental Insurance	\$ 296	\$ 148
Life Insurance	\$ 72	\$ 36
Medicare	\$ 848	\$ 424
Estimated Position Cost per position	\$ 91,309	\$ 45,654
Available funding in temp-part time staffing		\$ (38,000)
Total Additional Funding Required for 2024		\$ 7,654
Available funding from converted Internal Auditor position		\$ (11,591)
Salary savings		\$ (4,207)

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 efficient, nor reflective of program functions within the Mayor's Office.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE AMENDING THE FISCAL YEAR 2024 STAFFING ORDINANCE BY CONVERTING ONE (1) FULL-TIME VACANT POSITION ENTITLED FOOD PROJECT COORDINATOR TO A POSITION ENTITLED MARKETING AND SOCIAL MEDIA SPECIALIST WITHIN THE AUTHORIZED STAFFING LEVELS AT THE MAYOR'S OFFICE

WHEREAS, it is necessary to revise the positions for the ultimate efficiency and functionality for the City of Pueblo Mayor's Office; NOW THEREFORE,

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

SECTION 1.

The following section captioned "Mayor's Office" of Ordinance No. 10613, being the 2024 Staffing Ordinance, is amended as follows:

Mayor's Office

Mayor	1
Chief of Staff	1
Deputy Mayor	1
Administrative Assistant	1
Director/Just Transitions Program	1
Director/Public Affairs	1
Grant & Resource Development Administrator	1
Grant Coordinator/Financial Empowerment	1
[Food Project Coordinator] <u>Marketing & Social Media Specialist</u>	1
Non-Profit Compliance Coordinator	1
Outdoor Recreation Administrator	1
Secretary to the Mayor	1
Total	12

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 Mayor's Office 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 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Heather Graham, Mayor
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 CLASSIFICATIONS AND PAY PLAN BY ESTABLISHING THE PAY SCALE FOR MARKETING AND SOCIAL MEDIA SPECIALIST.

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 Marketing and Social Media Specialist.

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 Mayor's Office is seeking to enhance marketing, social media, videography, and branding efforts City-wide to enhance community engagement.

This position will be a classified position within the City and subject to all Civil Service rules with respect to hiring. The position will be within the Pueblo Association of Government Employees bargaining unit.

FINANCIAL IMPLICATIONS:

No additional funding is required. The cost of the Marketing and Social Media Specialist position is approximately \$45,654 for the remainder of 2024. The department has \$38,000 budgeted in the temporary staffing line item to support the new position, with the remaining funding requirement of \$7,654 covered by salary savings generated through the converted Internal Auditor position.

ESTIMATED COST**Marketing and Social Media Specialist**

Cost Item	Approximate Annual Cost	Estimated Actual Cost 2024 (6 months)
Salary	\$ 58,509	\$ 29,255
Retirement (PERA)	\$ 8,308	\$ 4,154
Health Insurance	\$ 23,275	\$ 11,638
Dental Insurance	\$ 296	\$ 148
Life Insurance	\$ 72	\$ 36
Medicare	\$ 848	\$ 424
Estimated Position Cost per position	\$ 91,309	\$ 45,654
Available funding in temp-part time staffing	\$	(38,000)
Total Additional Funding Required for 2024	\$	7,654
Available funding from converted Internal Auditor position	\$	(11,591)
Salary savings	\$	(4,207)

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

The suggested change establishes the 2024 salary range for the classification of Marketing and Social Media Specialist. If this ordinance is not approved, and assuming the establishment of the 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 CLASSIFICATIONS AND PAY PLAN BY ESTABLISHING THE PAY SCALE FOR MARKETING AND SOCIAL MEDIA SPECIALIST.

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

SECTION 1.

Section 6-5-16 (A) of Chapter 5, of Title VI, of the Pueblo Municipal Code referencing the Fiscal Year 2024 pay scale for the classification of Marketing and Social Media Specialist

6-5-16. Schedule, classification, work week and monthly salary.

The following shall constitute:

- A. The monthly pay range for the classification of Marketing and Social Media Specialist for 2024

<i>CLASS TITLE</i>	<i>Entrance</i>	<i>Step 2</i>	<i>Step 3</i>	<i>Step 4</i>	<i>Step 5</i>	<i>Step 6</i>	<i>Step 7</i>	<i>Step 8</i>	<i>Step 9</i>	<i>Step 10</i>
(A) GENERAL SERVICE										
Marketing and Social Media Specialist	4875.75	5057.14	5238.49	5419.82	5601.18	5782.54	5963.91	6145.27	6326.62	6543.59

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
Resolution**

COUNCIL MEETING DATE: April 22, 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. 15615

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 22, 2024

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: Mark Cliff
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
Resolution**

COUNCIL MEETING DATE: April 22, 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 THE PUEBLO DOWNTOWN ASSOCIATION IN THE AMOUNT OF \$1,000 TO SPONSOR THE 2024 LEVEE WALK ON SATURDAY, JUNE 8, 2024

SUMMARY:

Attached for consideration is a request for support of the Pueblo Downtown Association in the amount of \$1,000 to sponsor the 2024 Levee Walk on Saturday, June 8, 2024.

PREVIOUS COUNCIL ACTION:

Council supported this event in 2023 and 2022 for \$700.

BACKGROUND:

The Pueblo Levee Walk is in its 4th year and is one of the major fundraisers for the Pueblo Downtown Association. This year's event will include a 5k fun run with contests for the fastest runner, the best costume, and a scavenger hunt. Also, back by popular demand, the Downtown Association will be hosting food trucks, vendors, and Zumba by the river. With the walk now incorporating a 5k fun-run, Downtown Association anticipates over 300 hundred attendees at the event. Funds from this event will aid in improvements to the lighting on Union Avenue, to create a safer environment and draw more tourism to the area, and to continue to support the mission of beautification and promotion of business in Pueblo.

FINANCIAL IMPLICATIONS:

Payment of funds in the amount of \$1,000 would be paid from the Council Contingencies Account in the 2024 General Fund Budget to the Pueblo Downtown Association.

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 Levee Walk_5k Sponsorship Opportunity
2. 2024 Contingencies (Council) Levee Walk

RESOLUTION NO. 15616

A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2024 GENERAL FUND BUDGET TO THE PUEBLO DOWNTOWN ASSOCIATION IN THE AMOUNT OF \$1,000 TO SPONSOR THE 2024 LEVEE WALK ON SATURDAY, JUNE 8, 2024

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Payment in the amount of \$1,000 from the Council Contingencies Account in the 2024 General Fund Budget is authorized to be paid to the Pueblo Downtown Association to sponsor the 2024 Levee Walk on Saturday, June 8, 2024.

SECTION 2.

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

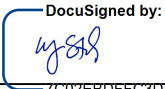
SECTION 3.

This Resolution shall become effective upon passage and approval.

INTRODUCED: April 22, 2024

BY: Sarah Martinez
MEMBER OF CITY COUNCIL

APPROVED: Mark Bliff
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

From: [Pueblo Downtown Association](#)
To: [Haley Robinson](#); [Alyssa Parga](#)
Cc: ncvaldz@gmail.com
Subject: [External] 2024 Levee Walk/5k Sponsorship Opportunity
Date: Thursday, April 4, 2024 12:11:12 PM

External email. Please use caution.

Hello Haley and Alyssa,

I would like to take the time to thank you for your continued support of the Pueblo Downtown Association, it is much appreciated. We are working on our 2024 Pueblo Levee Walk/5K Run *sponsorships which will take place on Saturday the June 8, 2024.*

As you know, the **Pueblo Levee Walk** is in its 4th year and is one of our major fundraisers for the *Pueblo Downtown Association*.

This year's event will include a 5k fun run! We will have contests for the fastest runner, the best costume, and a scavenger hunt. Also, back by popular demand we will be hosting food trucks, vendors, and Zumba by the river. With the walk now incorporating a 5k fun-run, we anticipate over 300 hundred attendees at the event, offering great potential for exposure and community support, for you or your business.

To get the best promotion and visibility for your sponsorship of this event, we need your commitment no later than Friday April 26th 2024.

Funds from this event will aid in the following: Improvements to the lighting on Union Avenue, to create a safer environment and draw more tourism to the area, and to continue support our mission of beautification and promotion of business in Pueblo.

This year we will have a scavenger hunt after the walk/run and we are looking for sponsors for this part of the event to help provide prizes for participants. This is a \$1200 investment in which you receive the following benefits:

Your logo on the Scavenger Hunt Map and Food truck vouchers which every participant who completes the hunt will receive.

Can we count on you at this level? We are giving you first opportunity since you have been a top tier sponsor from the start. Thank you so much for your consideration.

Best,

Nicole Contreras-Valdez
Marketing & Membership Coordinator
719-334-9068

[illegible]



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 22, 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	\$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

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. 10687

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 April 08, 2024.

Final adoption of Ordinance by City Council on April 22, 2024.

DocuSigned by:
Mark Aliff
B7A4F51623AB102...

President of City Council

Action by the Mayor:

☒ Approved on 4/23/2024 | 1:04 PM MDT.

☐ Disapproved on _____ based on the following objections:

DocuSigned by:
Heather Graham
3A85950B7BCA462...

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

DocuSigned by:
[Signature]
7C02EBDFFC3D43C...

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 \$9,000,000 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:

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

<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:

Candace Rivie

Clerk to the Board

COUNTY OF PUEBLO

By: Cyprie Jo

Chair, Board of County Commissioners

Date: 4-16-24

ATTEST:

Marisa Stoller, City Clerk

MAYOR CITY OF PUEBLO

By: Heather Graham

Date: _____

ATTEST:

By: Lynn M Clark

AUTHORITY

By: D. W. Aderson

Date: 4/10/24

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: Cynthia Mitchell
Cynthia Mitchell County Attorney

By: Carla L. Sikes
Carla L. Sikes, City Attorney

APPROVED AS TO FORM:

By: Wm. David Lytle
Wm. David Lytle, Authority Attorney

4.5. 4.6. 4.7. 4.8.

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:

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

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

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:

Candace Ruvie

Clerk to the Board

COUNTY OF PUEBLO

By: Cyril J.

Chair, Board of County Commissioners

Date: 4-16-24

ATTEST:

DocuSigned by:

Marisa Stoller

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Marisa Stoller, City Clerk

MAYOR CITY OF PUEBLO

DocuSigned by:

Heather Graham

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By: Heather Graham

Date: 4/23/2024 | 1:04 PM MDT

ATTEST:

By: Lynn M. Clark

AUTHORITY

By: D. W. Aderson

Date: 4/10/24

APPROVED AS TO FORM:

By: Cynthia Mitchell
Cynthia Mitchell County Attorney

APPROVED AS TO FORM:

DocuSigned by:

Carla Sikes

339611A1696A4DD...

By: Carla L. Sikes
Carla L. Sikes, City Attorney

APPROVED AS TO FORM:

By: Wm. David Lytle
Wm. David Lytle, Authority Attorney



**Background Paper for Proposed
Ordinance**

COUNCIL MEETING DATE: April 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Steven Meier, Director of Parks and Recreation

SUBJECT: AN ORDINANCE APPROVING 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. 10688

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 April 08, 2024.

Final adoption of Ordinance by City Council on April 22, 2024.

DocuSigned by:
Mark Cliff
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President of City Council

Action by the Mayor:

☒ Approved on 4/23/2024 | 1:04 PM MDT.

☐ Disapproved on _____ based on the following objections:

DocuSigned by:
Heather Graham
3A85950B7BCA462...

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

DocuSigned by:
uzs
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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 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Steven Meier, Director of Parks and Recreation

SUBJECT: AN ORDINANCE APPROVING 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. 10689

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 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 April 08, 2024.

Final adoption of Ordinance by City Council on April 22, 2024.

DocuSigned by:

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President of City Council

Action by the Mayor:

☒ Approved on 4/23/2024 | 1:05 PM MDT.

☐ Disapproved on _____ based on the following objections:

DocuSigned by:

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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

DocuSigned by:

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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 the last day executed by the Parties (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 22, 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	lvnn@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: Lynn M. Clark

By: D. S. Aderson

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Carla L. Sikes, City Attorney

By: W. David Lytle
Wm. David Lytle Authority Attorney



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 22, 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. 10690

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 April 08, 2024.

Final adoption of Ordinance by City Council on April 22, 2024.

DocuSigned by:
Mark Cliff
B7A4F51823AB462...
President of City Council

Action by the Mayor:

- ☒ Approved on 4/23/2024 | 1:05 PM MDT.
- ☐ Disapproved on based on the following objections:

DocuSigned by:
Heather Graham
3A85950B7BCA462...
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

DocuSigned by:
City Clerk
7C02EBDFFC3D43C...

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)	X	
		Provide the name and phone number of the person authorized for this task.		
		Charles Roy 719-553-2271 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		X
		Provide the name and phone number of the person responsible for this task.		
		Lachelle Davis 719-595-9741 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		
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 22, 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. 10691

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 April 08, 2024.

Final adoption of Ordinance by City Council on April 22, 2024.

DocuSigned by:
Mark Kliff
B7A4F51823AB462...

President of City Council

Action by the Mayor:

☒ Approved on 4/23/2024 | 1:06 PM MDT.

☐ Disapproved on _____ based on the following objections:

DocuSigned by:
Heather Graham
3A65950B7BCA462...

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

DocuSigned by:

7C02EBDFFC3D43C...

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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EXHIBIT Q, SLFRF REPORTING MODIFICATION FORM
EXHIBIT R, APPLICABLE FEDERAL AWARDS
EXHIBIT S, PII CERTIFICATION
EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Effective Date

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

B. Initial Term and Extension

The Parties’ respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on 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.**

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

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?	☐	☐
5 b)	What were the number and extent of issues in prior review?	☐ 1 to 2	☐ >3
OPERATION ASSESSMENT		Yes	No
		N/A	
6	Does your entity have a time and effort reporting system in place to account for 100% of all employees' time, that can provide a breakdown of the actual time spent on each funded project? <i>If No, in the comment section please explain how you intend to document 100% of hours worked by employees and breakdown of time spent on each funding project.</i>	☐	☐
FINANCIAL ASSESSMENT		Yes	No
		N/A	
7 a)	Does your entity have an indirect cost rate that is approved and current?	☐	☐
7 b)	If Yes, who approved the rate, and what date was it approved?		
8	Is this grant/award 10% or more of your entity's overall funding?	☐ >10%	☐ <10%
9	Has your entity returned lapsed* funds? *Funds "lapse" when they are no longer available for obligation.	☐	☐
10	Has your entity had difficulty meeting local match requirements in the last three years?	☐	☐
11	What is the total federal funding your entity has been awarded for the last federal fiscal year, and what is your entity's fiscal year end?		

INTERNAL CONTROLS ASSESSMENT		Yes	No	N/A
12	Has your entity had any significant changes in key personnel or accounting system(s) in the last year? (e.g., Controller, Exec Director, Program Mgr, Accounting Mgr, etc.) If Yes, in the comment section, please identify the accounting system(s), and / or list personnel positions and identify any that are vacant.	☐	☐	☐
13	Does your entity have financial procedures and controls in place to accommodate a federal-aid project?	☐	☐	
14	Does your accounting system identify the receipts and expenditures of program funds separately for each award?	☐	☐	
15	Will your accounting system provide for the recording of expenditures for each award by the budget cost categories shown in the approved budget?	☐	☐	
16	Does your agency have a review process for all expenditures that will ensure that all costs are reasonable, allowable and allocated correctly to each funding source? If Yes, in the comment section, please explain your current process for reviewing costs.	☐	☐	☐
17	How many total FTE perform accounting functions within your organization?	☐ ≥ 6	☐ 2 to 5	☐ < 2
IMPACT ASSESSMENT		Yes	No	N/A
18	For this upcoming federal award or in the immediate future, does your entity have any potential conflicts of interest* in accordance with applicable Federal awarding agency policy? If Yes, please disclose these conflicts in writing, along with supporting information, and submit with this form. (*Any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Subrecipient's obligations to the State.)	☐	☐	
19	For this award, has your entity disclosed to CDOT, in writing, violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award? Response options: YES = Check if have one or more violation(s) and have either disclosed previously to CDOT or as part of this form. In the comment section, list all violations with names of supporting documentation and submit with this form. NO = Check if have one or more violation(s) and have not disclosed previously or will not disclose as part of this form. Explain in the comment section. N/A = Check if have no violations.	☐	☐	☐
PROGRAM MANAGEMENT ASSESSMENT		Yes	No	N/A
20	Does your entity have a written process/procedure or certification statement approved by your governing board ensuring critical project personnel are capable of effectively managing Federal-aid projects? If Yes, please submit with this form.	☐	☐	☐
21	Does your entity have written procurement policies or certification statement for consultant selection approved by your governing board in compliance with 23 CFR 172*? If Yes, please submit with this form. (*The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications, at a fair and reasonable price.)	☐	☐	☐
22	a) Is your staff familiar with the relevant CDOT manuals and federal program requirements?	☐	☐	☐
	b) Does your entity have a written policy or a certification statement approved by your governing board assuring federal-aid projects will receive adequate inspections? If Yes, please submit with this form.	☐	☐	☐
	c) Does your entity have a written process or a certification statement approved by your governing board assuring a contractor's work will be completed in conformance with approved plans and specifications? If Yes, please submit with this form.	☐	☐	☐

d) Does your entity have a written policy or certification statement approved by your governing board assuring that materials installed on the projects are sampled and tested per approved processes. <i>If Yes, please submit with this form.</i>	☐	☐	☐
e) Does your entity have a written policy or certification statement approved by your governing board assuring that only US manufactured steel will be incorporated into the project (<i>Buy America requirements</i>)? <i>If Yes, please submit with this form.</i>	☐	☐	☐
Comments - As needed, include the question number and provide comments related to the above questions. Insert additional rows as needed.			
☐ By checking this box, the Executive Director, VP or Chief Financial Officer of this entity certifies that all information provided on this form is true and correct.			


Tool Version:
v2.0 (081816)

EXHIBIT M

OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS

**Subject to
The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and
Audit Requirements for Federal Awards (“Uniform Guidance”),
Federal Register, Vol. 78, No. 248, 78590**

The agreement to which these Uniform Guidance Supplemental Provisions are attached has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Uniform Guidance Supplemental Provisions shall control. In the event of a conflict between the provisions of these Supplemental Provisions and the FFATA Supplemental Provisions, the FFATA Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

- 1.1. “Award”** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise. 2 CFR §200.38
- 1.2. “Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 1.3. “Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. 2 CFR §200.37
- 1.4. “FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 1.5. “Grant” or “Grant Agreement”** means an agreement setting forth the terms and conditions of an Award. The term does not include an agreement that provides only direct Federal cash assistance to an individual, a subsidy, a loan, a loan guarantee, insurance, or acquires property or services for the direct benefit of use of the Federal Awarding Agency or Recipient. 2 CFR §200.51.
- 1.6. “OMB”** means the Executive Office of the President, Office of Management and Budget.
- 1.7. “Recipient”** means a Colorado State department, agency or institution of higher education that receives a Federal Award from a Federal Awarding Agency to carry out an activity under a Federal program. The term does not include Subrecipients. 2 CFR §200.86
- 1.8. “State”** means the State of Colorado, acting by and through its departments, agencies and institutions of higher education.
- 1.9. “Subrecipient”** means a non-Federal entity receiving an Award from a Recipient to carry out part of a Federal program. The term does not include an individual who is a beneficiary of such program.
- 1.10. “Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

- 1.11. “Uniform Guidance Supplemental Provisions”** means these Supplemental Provisions for Federal Awards subject to the OMB Uniform Guidance, as may be revised pursuant to ongoing guidance from relevant Federal agencies or the Colorado State Controller.
- 2. Compliance.** Subrecipient shall comply with all applicable provisions of the Uniform Guidance, including but not limited to these Uniform Guidance Supplemental Provisions. Any revisions to such provisions automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3. Procurement Standards.**
- 3.1 Procurement Procedures.** Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation,
§§200.318 through 200.326 thereof.
- 3.2 Procurement of Recovered Materials.** If Subrecipient is a State Agency or an agency of a political subdivision of a state, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 4. Access to Records.** Subrecipient shall permit Recipient and auditors to have access to Subrecipient’s records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).
- 5. Single Audit Requirements.** If Subrecipient expends \$750,000 or more in Federal Awards during Subrecipient’s fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
- 5.1 Election.** Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program’s statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 5.2 Exemption.** If Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government

Accountability Office.

- 5.3 Subrecipient Compliance Responsibility.** Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

- 6. Contract Provisions for Subrecipient Contracts.** Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Grant Agreement.

- 6.1 Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments

under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled,

terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

6.2 Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40

U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

6.3 Rights to Inventions Made Under a Contract or Agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6.4 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251- 1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection

Agency (EPA).

6.5 Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAMExclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

6.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

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

7.1 Event of Default. Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute an event of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

8. Effective Date. The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.

9. Performance Measurement. The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes.

The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

Exhibit N

Federal Treasury Provisions

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.
- 1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
 - 2.1.1. "Award" means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
 - 2.1.2. "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 22, 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 April 08, 2024.

Final adoption of Ordinance by City Council on April 22, 2024.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

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

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

President of City Council

ATTEST

City Clerk



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Scott Hobson, Acting Director Planning and Community Development

SUBJECT: AN ORDINANCE 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. 10692

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 April 08, 2024.

Final adoption of Ordinance by City Council on April 22, 2024.

DocuSigned by:
Mark Cliff
B7A4F51823AB462...

President of City Council

Action by the Mayor:

☒ Approved on 4/23/2024 | 1:06 PM MDT.

☐ Disapproved on _____ based on the following objections:

DocuSigned by:
Heather Graham
3A85950B7BCA462...

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

DocuSigned by:

7C02EBDFFC3D43C...

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 22, 2024

TO: President Mark Aliff and Members of City Council

CC: Mayor Heather Graham

VIA: Marisa Stoller, City Clerk

FROM: Scott Hobson, Acting Director Planning and Community Development

SUBJECT: AN ORDINANCE 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. 10693

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 April 08, 2024.

Final adoption of Ordinance by City Council on April 22, 2024.

DocuSigned by:
Mark Duff
B7A4F51823AB462

President of City Council

Action by the Mayor:

☒ Approved on 4/23/2024 | 1:40 PM MDT.

☐ Disapproved on _____ based on the following objections:

DocuSigned by:
Heather Graham
3A85950B7BCA462...

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

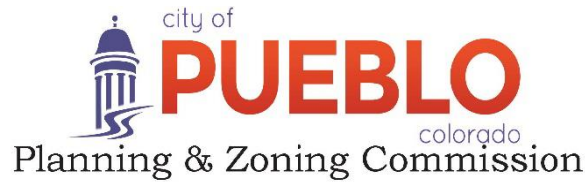
DocuSigned by:

7C02EBDFFC3D43C...
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 22, 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. 10694

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] <u>292</u>

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 April 08, 2024.

Final adoption of Ordinance by City Council on April 22, 2024.

DocuSigned by:
Mark Bliff
B7A4F51823AB462...
President of City Council

Action by the Mayor:

☒ Approved on 4/23/2024 | 1:41 PM MDT.

☐ Disapproved on _____ based on the following objections:

DocuSigned by:
Heather Graham
3A85950B7BCA462...
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

DocuSigned by:
[Signature]
7C02EBDFFC3D43C...
City Clerk



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 22, 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. 10695

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.

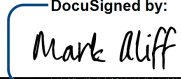
SECTION 3.

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 April 08, 2024.

Final adoption of Ordinance by City Council on April 22, 2024.

DocuSigned by:

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President of City Council

Action by the Mayor:

- ☒ Approved on 4/23/2024 | 1:41 PM MDT.
- ☐ Disapproved on _____ based on the following objections:

DocuSigned by:
Heather Graham
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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

DocuSigned by:
[Signature]
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City Clerk



**Background Paper for Proposed
Ordinance**

COUNCIL MEETING DATE: April 22, 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 (currentl 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 Conversion Cost Difference

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. 10696

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:

<u>Law Department</u>	
City Attorney	1
Deputy City Attorney	[1] <u>2</u>
Assistant City Attorney I/II/III	[3] <u>4</u>
[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 April 08, 2024.

Final adoption of Ordinance by City Council on April 22, 2024.

DocuSigned by:

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President of City Council

Action by the Mayor:

☒ Approved on 4/23/2024 | 1:42 PM MDT.

☐ Disapproved on _____ based on the following objections:

DocuSigned by:

3A85950B7BCA462...

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


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City Clerk



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: April 22, 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 EMERGENCY ORDINANCE AMENDING ORDINANCE NO. 10582 AUTHORIZING THE MAYOR TO DECLARE TEMPORARY HOUSING AND SHELTER EMERGENCIES AS NECESSARY THROUGHOUT THE YEAR FOR HOMELESS RESIDENTS OF THE CITY OF PUEBLO

SUMMARY:

Attached is a proposed Emergency Ordinance which expands the time frame and circumstances for which the Mayor may declare temporary housing and shelter emergencies for the City's unhoused residents for the purposes of threatened or actual instances of fire, flooding, heat, cold, natural disaster, man-made circumstances, influx of unhoused, and any other exigent circumstance or existential threat to the unhoused community as determined by the Mayor.

PREVIOUS COUNCIL ACTION:

On November 22, 2021, by Ordinance No. 10058, City Council authorized the Mayor, when temperatures reach dangerous levels between December 1st and March 31st of each year, to declare temporary housing and shelter emergencies for the City's homeless residents and allowed buildings utilized by the City's churches, synagogues, mosques, temples, and other religious institutions to be used as temporary warming shelters for the City's homeless population during such temporary emergencies. The City's Zoning, Fire and Building Code ordinances and regulations in conflict with such use were temporarily suspended during such temporary emergencies.

On November 14, 2022, by Ordinance 10326, City Council enlarged this authority from December 1st to November 1st.

On October 23, 2023, by Ordinance No. 10582, City Council expanded the Mayor's authority to declare a housing and shelter emergency before November 1st of each year.

BACKGROUND:

The City is experiencing an increase in the frequency of extreme weather events to include fire, flooding, heat, and cold in addition to certain man-made circumstances and other existential threats which pose significant dangers to the health of the City's unhoused persons. There is a need for temporary overnight shelters for the City's unhoused residents outside of the current emergency housing and shelter authorization.

FINANCIAL IMPLICATIONS:

On October 24, 2022, by Ordinance 10305, City Council approved and authorized the Mayor to sign a Subrecipient Agreement the Crazy Faith Street Ministry, a Colorado nonprofit corporation ("CFSM") for the purpose of CFSM's operation of a temporary homeless shelter when temporary housing and shelter emergencies are declared by the Mayor. The attached ordinance could lead CFSM to request an increase in the number of approved overnights beyond the currently approved 20 overnights.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

A "no action" alternative would prevent the Mayor from declaring a temporary housing and shelter emergency before October 1st or after March 1st of each year for reasons in addition to extreme cold.

RECOMMENDATION:

Approve the Ordinance.

ATTACHMENTS:

None

ORDINANCE NO. 10697

AN EMERGENCY ORDINANCE AMENDING ORDINANCE NO. 10582 AUTHORIZING THE MAYOR TO DECLARE TEMPORARY HOUSING AND SHELTER EMERGENCIES AS NECESSARY THROUGHOUT THE YEAR FOR HOMELESS RESIDENTS OF THE CITY OF PUEBLO

WHEREAS, the City is experiencing an increase in the number and intensity of instances of fire, flooding, heat, cold, and other natural disaster; and

WHEREAS, the City is also experiencing an increase in man-made circumstances resulting an increase in the number of unhoused, as well as other exigent circumstance which pose significant dangers to the health and safety of the City's unhoused residents; and

WHEREAS, there is a need for temporary overnight shelters outside the current authorization for the City's unhoused residents; NOW, THEREFORE,

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

SECTION 1.

The City of Pueblo hereby declares that a housing and shelter emergency currently exists for the City's unhoused residents and that the City's unhoused residents do not have current access to appropriate overnight shelters to protect their health and safety against dangerous weather events or man-made circumstances when they are outdoors.

SECTION 2.

Ordinance No. 10058, dated November 22, 2021, shall be hereby expanded, enlarged, and amended to allow the Mayor to declare temporary housing and shelter emergencies for the City's unhoused residents in response to threatened or actual instances of fire, flooding, heat, cold, natural disaster, man-made circumstances, influx of unhoused, and any other exigent circumstance or existential threat to the unhoused community, at any time, as determined by the Mayor.

SECTION 3.

Except as amended hereby, Ordinance No. 10058, as previously amended, is hereby ratified, and shall remain in full force and effect.

SECTION 4.

The immediate enactment of this Ordinance is necessary to preserve and protect the health, safety, and welfare of the residents of the City. Pursuant to Section 3-20 of the City Charter, this Ordinance shall become effective on the date of final action by the Mayor and City Council.

SECTION 5.

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

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on April 22, 2024.

Final adoption of Ordinance by City Council on April 22, 2024.

DocuSigned by:
Mark Kliff
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President of City Council

Action by the Mayor:

☒ Approved on 4/23/2024 | 1:42 PM MDT.

☐ Disapproved on _____ based on the following objections:

DocuSigned by:
Heather Graham
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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

DocuSigned by:
lyssa
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City Clerk