



**REGULAR CITY COUNCIL MEETING
CITY COUNCIL CHAMBERS - CITY HALL
#1 CITY HALL PLACE
MONDAY, February 14, 2022 7:00 P.M.**

Individuals Requiring Special Accommodations Should Notify the City Clerk's Office (719) 553-2669 by Noon on the Friday Preceding the Meeting.

- A. CALL TO ORDER: President Heather Graham
- B. INVOCATION: Pastor Richie Perko, Pueblo Christian Center
- C. PLEDGE OF ALLEGIANCE
- D. ROLL CALL
- E. SPECIAL RECOGNITIONS
- F. PUBLIC FORUM
- G. COUNCIL MEMBER AND MAYOR COMMENTARY
- H. REVIEW OF THE AGENDA
Review Agenda page by page.
- I. APPROVAL OF THE AGENDA
Required Council Action: Motion to Amend the Agenda or Approve the Agenda as distributed.
- J. READING AND APPROVAL OF MINUTES
Required Council Action: Motion to dispense with the reading and approve the Minutes of the Regular Meeting dated **Monday, January 24, 2022** as distributed.

Documents:

[01-24Minutes.pdf](#)

- 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

- M.1. A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$135,174.28 TO AGUILARS CONSTRUCTION COMPANY, INC., A COLORADO CORPORATION, AND SETTING FORTH \$26,000 FOR CONTINGENCIES AND ADDITIONAL WORK FOR PROJECT NO. 21-060 WASTEWATER TREATMENT FACILITY ENGINEERING BUILDING SANITARY SEWER REPLACEMENT AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

Documents:

[Resolution_14802.pdf](#)

- M.2. A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$31,600 TO DOUG VAUGHN, LLC, A COLORADO LIMITED LIABILITY COMPANY, AND SETTING FORTH \$6,000 FOR CONTINGENCIES AND ADDITIONAL WORK FOR PROJECT NO. 21-086 19TH STREET AND GRAND AVENUE CURB AND GUTTER REPAIR TO BE PAID FROM PROJECT ACCOUNT HUAN03 AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

Documents:

[Resolution_14803.pdf](#)

- M.3. A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$180,105.80 TO DOUG VAUGHN, LLC, A COLORADO LIMITED LIABILITY COMPANY, AND SETTING FORTH \$18,071.20 FOR CONTINGENCIES AND ADDITIONAL WORK FOR PROJECT NO. 21-081 SIDEWALK/ADA CURB RAMPS – 3 LOCATIONS (CDBG) TO BE PAID FROM PROJECT ACCOUNT CD2016, CD2017, AND CD2019 AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

Documents:

[Resolution_14804.pdf](#)

- M.4. A RESOLUTION APPROVING AN AMENDMENT NO. 3 TO A CONSTRUCTION CONTRACT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION AND DOUG VAUGHN, LLC, A COLORADO LIMITED LIABILITY COMPANY, PROVIDING FOR ADDITIONAL REPAIR WORK RELATED TO PROJECT NO. 20-030 GREENWOOD STREET CURB RAMPS, TO BE PAID FROM PROJECT ACCOUNT SR2002 AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME AND TRANSFERRING FUNDS FROM PROJECT SR1801 TO PROJECT SR2002 IN THE AMOUNT OF \$50,000

Documents:

[Resolution_14805.pdf](#)
[Amendment No. 3.pdf](#)

- M.5. A RESOLUTION APPROVING AN AMENDMENT TO A CONSTRUCTION CONTRACT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION AND CALVIN TURNER ROOFING, LLC, A COLORADO LIMITED LIABILITY COMPANY PROVIDING FOR ADDITIONAL REPAIR WORK RELATED TO PROJECT NO. 21-005 REPLACE PUEBLO PARKS MAINTENANCE OFFICE ROOF, TO BE PAID FROM PROJECT ACCOUNT CIAN22 AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

Documents:

[Resolution_14813.pdf](#)

[Amendment.pdf](#)

- M.6. A RESOLUTION APPROVING AN AMENDMENT TO A CONSTRUCTION CONTRACT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION AND PASHCO ROOFING, INC., DBA COLORADO FRONT RANGE ROOFING, A COLORADO CORPORATION, PROVIDING FOR ADDITIONAL REPAIR WORK RELATED TO PROJECT NO. 21-030 MT. PARK BEULAH ROOF REPAIRS, TO BE PAID FROM PROJECT ACCOUNT CIAN22 AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

Documents:

[Resolution_14806.pdf](#)
[Amendment.pdf](#)

- M.7. A RESOLUTION APPROVING AN AMENDMENT TO A CONSTRUCTION CONTRACT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION AND JARCCO CONSTRUCTION, LLC, A COLORADO LIMITED LIABILITY COMPANY, PROVIDING FOR ADDITIONAL REPAIR WORK RELATED TO PROJECT NO. 21-025R MISCELLANEOUS CURB RAMPS - REBID, TO BE PAID FROM PROJECT ACCOUNT HUAN03 AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

Documents:

[Resolution_14807.pdf](#)
[Amendment.pdf](#)

- M.8. A RESOLUTION ADOPTING A FEE SCHEDULE FOR APPLICATIONS FOR MATTERS BROUGHT BEFORE THE LAND USE ADMINISTRATIVE OFFICIAL, HISTORIC PRESERVATION COMMISSION, PLANNING AND ZONING COMMISSION, SUBDIVISION REVIEW COMMITTEE, TECHNICAL ADVISORY COMMITTEE, AND ZONING BOARD OF APPEALS AND REPEALING RESOLUTION NUMBER 14462

Documents:

[Resolution_14808.pdf](#)
[Current Fee Schedule.pdf](#)

- M.9. A RESOLUTION RATIFYING THE APPOINTMENT OF JEFF CHOSTNER TO THE FOUNTAIN CREEK WATERSHED FLOOD CONTROL AND GREENWAY DISTRICT GOVERNING BOARD - JOINT CITY-COUNTY CITIZEN AT LARGE APPOINTMENT

Documents:

[Resolution_14809.pdf](#)
[Application.pdf](#)

- M.10. A RESOLUTION APPOINTING COUNCILOR LARRY ATENCIO TO THE PUEBLO DEVELOPMENT FOUNDATION BOARD OF DIRECTORS

Documents:

[Resolution_14810.pdf](#)

- M.11. A RESOLUTION CONFIRMING THE APPOINTMENT BY THE MAYOR OF ROBERT CHILDERS TO COMPLETE A THREE-YEAR TERM EXPIRING SEPTEMBER 30, 2023 ON THE PUEBLO MEMORIAL AIRPORT ADVISORY COMMITTEE

Documents:

[Resolution_14811.pdf](#)
[Application.pdf](#)

M.12. A RESOLUTION CONFIRMING THE APPOINTMENT OF BARBARA HUBER TO THE POSITION OF DEPUTY MAYOR

Documents:

[Resolution_14812.pdf](#)

N. ORDINANCES – FIRST PRESENTATION

- N.1. AN ORDINANCE APPROVING AND ACCEPTING A GRANT AGREEMENT BETWEEN THE CITY OF PUEBLO AND THE STATE OF COLORADO DEPARTMENT OF LAW, ON BEHALF OF THE OFFICE OF COMMUNITY ENGAGEMENT, FOR A GRANT AWARD IN THE AMOUNT OF \$250,000 TO THE PUEBLO FOOD PROJECT, CREATING PROJECT NO. CI2207, AND BUDGETING AND APPROPRIATING \$250,000 TO PROJECT NO. CI2207

Documents:

[Ordinance_N-1.pdf](#)
[Grant Award Agreement.pdf](#)

- N.2. AN ORDINANCE APPROVING AND ACCEPTING A GRANT FROM WALMART FOR FUNDS IN THE AMOUNT OF \$2,500 TO PROVIDE PROTECTIVE VESTS AND GLOVES FOR PARK RANGERS, AUTHORIZING THE MAYOR TO EXECUTE SAME, ESTABLISHING THE PARK RANGER VEST PURCHASE PROJECT NO. PS2201, AND BUDGETING AND APPROPRIATING \$2,500 TO PROJECT NO. PS2201

Documents:

[Ordinance_N-2.pdf](#)
[Grant Agreement.pdf](#)

- N.3. AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A GRANT AGREEMENT BETWEEN THE CITY OF PUEBLO AND FIREHOUSE SUBS PUBLIC SAFETY FOUNDATION INC. FOR THE PURCHASE OF TWO MOTORIZED POLICE BICYCLES WITH LIGHT/SIREN KITS, BAGS & ONE CARGO TRAILER, BUDGETING, APPROPRIATING GRANT FUNDS IN THE AMOUNT OF \$9,602.90 INTO PROJECT PS2202 AND RESCINDING RESOLUTION NO. 14789

Documents:

[Ordinance_N-3.pdf](#)
[Memo of Understanding Agreement.pdf](#)
[Grant Award Notice.pdf](#)
[Quotation.pdf](#)

- N.4. AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AGREEMENTS FOR PROFESSIONAL SURVEYING SERVICES FOR SANITARY SEWER PROJECTS AND CITY-WIDE SURVEYING PROJECTS BETWEEN PUEBLO, A MUNICIPAL CORPORATION, AND BOHANNON-HUSTON, INC., CLARK LAND SURVEYING, INC., ENCOMPASS SERVICES, LLC, AND NORTHSTAR ENGINEERING AND SURVEYING, INC.

Documents:

[Ordinance_N-4.pdf](#)
[Agreements for Surveying Services.pdf](#)

- N.5. AN ORDINANCE ESTABLISHING PROJECT CI2206 FOR ADAMS AVENUE AND JACKSON STREET ROUNDABOUT PROJECT, 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 M086-093 (24462), BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$900,000 AND AUTHORIZING THE MAYOR TO EXECUTE SAME

Documents:

[Ordinance_N-5.pdf](#)
[InterGovernmental Agreement.pdf](#)
[Department Certification.pdf](#)

- N.6. AN ORDINANCE APPROVING AMENDMENT #2 TO THE INTERGOVERNMENTAL AGREEMENT, TAP M086-082 (22971) BETWEEN PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE STATE OF COLORADO, THE COLORADO DEPARTMENT OF TRANSPORTATION AND AUTHORIZING THE MAYOR TO EXECUTE SAME

Documents:

[Ordinance_N-6.pdf](#)
[Amendment 2.pdf](#)

- N.7. AN ORDINANCE APPROVING A LICENSE AGREEMENT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION AND ZAYO GROUP, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND GRANTING SAID ENTITY A CITY TELECOMMUNICATIONS LICENSE

Documents:

[Ordinance_N-7.pdf](#)
[Zayo Telecom Agreement.pdf](#)

- N.8. AN ORDINANCE AWARDED A CONTRACT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND AECOM TECHNICAL SERVICES, INC. TO PROVIDE ENGINEERING SERVICES FOR FUTURE CITY OF PUEBLO STORMWATER UTILITY PROJECTS

Documents:

[Ordinance_N-8.pdf](#)
[Contract.pdf](#)

- N.9. AN ORDINANCE AMENDING ZONING RESTRICTIONS TO REZONE 3004 SOUTH PRAIRIE AVENUE FROM B-3, HIGHWAY AND ARTERIAL BUSINESS DISTRICT TO BP, BUSINESS PARK DISTRICT

Documents:

[Ordinance_N-9.pdf](#)
[P_Z Report.pdf](#)

- N.10. AN ORDINANCE CHANGING THE STREET NAME OF SPAULDING AVENUE LOCATED BETWEEN WEST 11TH STREET AND WEST 31ST STREET

Documents:

[Ordinance_N-10.pdf](#)
[P_Z Report.pdf](#)

- N.11. AN ORDINANCE APPROVING AND ADOPTING THE 2022 PUEBLO REGIONAL COMPREHENSIVE PLAN FOR THE PHYSICAL DEVELOPMENT OF PUEBLO, A COLORADO MUNICIPAL CORPORATION

Documents:

[Ordinance_N-11.pdf](#)
[PuebloRegionalComprehensivePlan.pdf](#)
[P_Z Report.pdf](#)

- N.12. AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN ENGAGEMENT LETTER WITH SETER & VANDER WALL, P.C. TO ADVISE THE CITY OF PUEBLO REGARDING PROPOSED METROPOLITAN DISTRICT SERVICE PLANS AND RELATED LAND USE MATTERS

Documents:

[Ordinance_N-12.pdf](#)
[Engagement Letter.pdf](#)

- N.13. AN ORDINANCE AMENDING THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF PUEBLO AND THE INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 537 RELATING TO TAKE-HOME VEHICLES

Documents:

[Ordinance_N-13.pdf](#)
[Amendment.pdf](#)

- N.14. AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE COUNTY OF PUEBLO, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO AND THE PUEBLO URBAN RENEWAL AUTHORITY, A COLORADO URBAN RENEWAL AUTHORITY AND THE BOARD OF WATER WORKS OF PUEBLO, COLORADO, A BODY CORPORATE AND POLITIC OF THE CITY OF PUEBLO AND THE PUEBLO WEST METROPOLITAN DISTRICT, A COLORADO SPECIAL DISTRICT RELATING TO THE CONSTRUCTION OF A NEW PUEBLO COUNTY DETENTION FACILITY AND THE CONSTRUCTION OF AN ADJACENT NEW ARTERIAL ROADWAY

Documents:

[Ordinance_N-14.pdf](#)
[InterGovernmental Agreement for County Jail.pdf](#)

O. APPROVAL OF CONSENT AGENDA

- O.1. I Move To Approve All Resolutions Set Forth In The Consent Agenda; Pass The Ordinances Of The Consent Agenda, Setting The Public Hearings For Monday, February 28, 2022, And Order The Ordinances To Be Published BY TITLE.

P. REGULAR AGENDA

Q. RESOLUTIONS

- Q.1. A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2022 GENERAL FUND BUDGET TO THE BOYS AND GIRLS CLUB

OF PUEBLO, A COLORADO NONPROFIT CORPORATION, IN THE AMOUNT OF \$1,350 TO SPONSOR A TABLE FOR THE ANNUAL CHAMPIONS OF YOUTH DINNER

Documents:

[Resolution_14814.pdf](#)
[Council Contingencies.pdf](#)
[Request.pdf](#)

- Q.2. A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2022 GENERAL FUND BUDGET TO THE LATINO CHAMBER OF COMMERCE IN THE AMOUNT OF \$950 TO SPONSOR A TABLE FOR THE ANNUAL DINNER DANCE CELEBRATION

Documents:

[Resolution_14815.pdf](#)
[Council Contingencies.pdf](#)
[Request.pdf](#)

R. ORDINANCES – FINAL PRESENTATION

- R.1. AN ORDINANCE ESTABLISHING PROJECT AP2201 – SNOW REMOVAL EQUIPMENT (SRE) ACQUISITION, BUDGETING AND APPROPRIATING \$21,355 TO PROJECT AP2201, APPROVING A CONTRACT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND DIBBLE AND ASSOCIATES CONSULTING ENGINEERS, INC., AN ARIZONA CORPORATION, TO CONDUCT THE ACQUISITION PER FAA REQUIREMENTS, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

Documents:

[Ordinance_10108.pdf](#)
[Dibble Agreement.pdf](#)
[Grant Application.pdf](#)
[Department Certificatiion.pdf](#)

- R.2. AN ORDINANCE APPROVING AND ACCEPTING THE AMERICAN RESCUE PLAN ACT (ARPA) CONCESSIONS RENT RELIEF AIRPORT RESCUE GRANT OFFER, GRANT NO. 3-08-0046-045-2022, FROM THE UNITED STATES OF AMERICA ACTING THROUGH THE FEDERAL AVIATION ADMINISTRATION, FOR FUNDS IN THE AMOUNT OF \$10,477 TO PROVIDE RELIEF FROM RENT TO ELIGIBLE AIRPORT CONCESSIONS AT PUEBLO MEMORIAL AIRPORT, AUTHORIZING THE MAYOR TO EXECUTE SAME, ESTABLISHING THE ARPA CONCESSIONS PROJECT NO. AP2202, AND BUDGETING AND APPROPRIATING \$10,477 TO PROJECT NO. AP2202

Documents:

[Ordinance_10109.pdf](#)
[Grant Agreement.pdf](#)
[Department Certification.pdf](#)

- R.3. AN ORDINANCE ESTABLISHING THE FIRE STATION 6, 8 AND 11 PROJECT NO. CI2205, TRANSFERRING \$600,000 FROM THE UNAPPROPRIATED FUND BALANCE OF THE GENERAL FUND AND BUDGETING AND APPROPRIATING \$600,000 FOR SAID PROJECT

Documents:

[Ordinance_10110.pdf](#)

- R.4. AN ORDINANCE AMENDING THE FISCAL YEAR 2022 STAFFING ORDINANCE BY ADDING FOUR FULL-TIME COMMUNITY SERVICE OFFICERS TO THE AUTHORIZED STAFFING OF THE POLICE DEPARTMENT

Documents:

[Ordinance_10111.pdf](#)

- R.5. AN ORDINANCE AMENDING SECTION 6-5-16 OF CHAPTER 5, OF TITLE VI OF THE PUEBLO MUNICIPAL CODE RELATING TO THE FY 2022 CLASSIFICATION AND PAY PLAN BY ESTABLISHING THE PAY SCALE FOR COMMUNITY SERVICE OFFICER

Documents:

[Ordinance_10112.pdf](#)

- R.6. AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN OPTION TO PURCHASE AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE PUEBLO ECONOMIC DEVELOPMENT CORPORATION, A COLORADO NONPROFIT CORPORATION, RELATING TO A FUTURE JOB CREATING CAPITAL IMPROVEMENT PROJECT

Documents:

[Ordinance_10113.pdf](#)

- R.7. AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE PUEBLO WEST METROPOLITAN DISTRICT, ACTING BY AND THROUGH THE PUEBLO WEST METROPOLITAN DISTRICT'S WATER AND WASTEWATER ENTERPRISE, RELATING TO A WATER LEASE AND STORAGE AGREEMENT ENTERED INTO BY SAID ENTERPRISE AND THE BOARD OF WATER WORKS OF PUEBLO, COLORADO

Documents:

[Ordinance_10114.pdf](#)
[BOWW - PWMD - City_IGA.pdf](#)

- R.8. AN ORDINANCE AMENDING CIVIL SERVICE RULE 18 OF CHAPTER 13 OF TITLE VI OF THE PUEBLO MUNICIPAL CODE RELATING TO THE REQUIRED PERIOD OF NOTICE WITH RESPECT TO PROMOTIONAL EXAMS

Documents:

[Ordinance_10115.pdf](#)
[Civil Service Report.pdf](#)

S. EXECUTIVE SESSION

- S.1. Motion To Convene Into Executive Session For The Purpose Of Determining Positions Relative To Matters That May Be Subject To Negotiations, Developing Strategy For Negotiations, And/Or Instructing Negotiators, Under C.R.S. Section 24-6-402(4)(E); And The Following Additional Details Are Provided For Identification Purposes: To Instruct Negotiators Regarding Economic Development Projects Proposed By The Pueblo Economic Development Corporation.

ADJOURN



**REGULAR CITY COUNCIL MEETING
CITY COUNCIL CHAMBERS – CITY HALL
MONDAY, JANUARY 24, 2022 – 7:00 P.M.**

MINUTES

- A. CALL TO ORDER** President Heather Graham
- B. INVOCATION** Pastor Steve Cornella, Pueblo Christian Center
- C. PLEDGE OF ALLEGIANCE**
- D. ROLL CALL**

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

Council Members Present via Zoom: None.

Council Members Absent: None.

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

- E. SPECIAL RECOGNITIONS**
- F. PUBLIC FORUM**
 - Frank Cirello – Statue
 - Steve Villegas – Pueblo
 - Elvis Martinez – City Council /Domestic Violence/more
 - Dave DeCenzo – Code Enforcement
- G. COUNCIL MEMBER AND MAYOR COMMENTARY**

Chief of Staff Laura Solano presented a recognition for Wastewater Director Nancy Keller's retirement.

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

H. REVIEW AND APPROVAL OF THE AGENDA

The agenda was reviewed page by page. Ms. Winner, seconded by Mr. Flores, moved to approve the agenda.

Roll Call - Ayes: Atencio, Flores, Graham, Maestri, Martinez, Martinez Ortega, and Winner. Motion carried unanimously.

I. READING AND APPROVAL OF MINUTES

**REGULAR CITY COUNCIL MEETING
JANUARY 24, 2022
PAGE TWO**

MINUTES

Mr. Flores, seconded by Ms. Maestri, moved to dispense with the reading and approve the Minutes of the Regular Meeting dated **Monday, January 10, 2022** as distributed.

Roll Call - Ayes: Atencio, Flores, Graham, Maestri, Martinez, Martinez Ortega, and Winner. Motion carried unanimously.

J. COMMUNICATIONS

J-1 A CITIZEN FILED ETHICS COMPLAINT AGAINST REGINA MAESTRI

Ms. Winner, seconded by Ms. Martinez, moved to accept the communication.

City Attorney Dan Kogovsek gave a report regarding the content of the complaint and recommended to dismiss complaint for failure to state a claim.

Roll Call - Ayes: Atencio, Flores, Graham, Maestri, Martinez, Martinez Ortega, and Winner. Motion carried unanimously.

Ms. Winner, seconded by Mr. Martinez Ortega, moved to dismiss the complaint.

Roll Call - Ayes: Atencio, Flores, Graham, Maestri, Martinez, Martinez Ortega, and Winner. Motion carried unanimously.

J-2 A CITIZEN FILED ETHICS COMPLAINT AGAINST VICENTE MARTINEZ ORTEGA

Ms. Winner, seconded by Mr. Martinez Ortega, moved to accept the communication.

City Attorney Dan Kogovsek gave a report regarding the content of the complaint and recommended to dismiss complaint for failure to state a claim.

Roll Call - Ayes: Atencio, Flores, Graham, Maestri, Martinez, Martinez Ortega, and Winner. Motion carried unanimously.

Ms. Graham, seconded by Mr. Atencio, moved to dismiss the complaint.

Roll Call - Ayes: Atencio, Flores, Graham, Maestri, Martinez, Martinez Ortega, and Winner. Motion carried unanimously.

K. PUBLIC HEARINGS

K-1 HEARING – PETITION FOR ANNEXATION - AREA COMMONLY KNOWN AS THE WILDHORSE ANNEXATION 1 DESCRIBED AS 80.40 ACRES NORTH OF THE U.S. HIGHWAY 50 WEST/PUEBLO BOULEVARD INTERCHANGE

K-2 HEARING – PETITION FOR ANNEXATION - AREA COMMONLY KNOWN AS THE WILDHORSE ANNEXATION 2 DESCRIBED AS 98.98 ACRES NORTH AND WEST OF THE WILDHORSE ANNEXATION 1 AND EAST AND WEST OF WILDHORSE ROAD

**REGULAR CITY COUNCIL MEETING
JANUARY 24, 2022
PAGE THREE**

MINUTES

Scott Hobson, Acting Director of Planning & Community Development, 211 E. D Street, was sworn in and stated he is familiar with the petition that was filed for annexation of the area commonly known as Wildhorse Annexation 1 and Wildhorse Annexation 2. Mr. Hobson answered several questions by City Attorney Daniel Kogovsek regarding the statutory requirements for both the annexation petitions and whether or not the area being proposed for annexation meets the applicable requirements of the Colorado Revised Statutes §31-12-107 and complies with Section 31-12-104 of the Colorado Municipal Annexation Act of 1965, as amended.

Mr. Hobson reviewed a copy of the annexation plat map and City Attorney Kogovsek asked him to mark the map as Exhibit 1 and requested that the plat map be entered into the record as part of the proceedings for this hearing. So ordered by President Graham.

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

L. CONSENT AGENDA

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

M. RESOLUTIONS

- M-1 RESOLUTION NO 14787 AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$117,336 TO INDUSTRIAL CONSTRUCTORS/MANAGERS, INC., FOR PROJECT NO. 21A-054 INSTALLATION OF SHADE STRUCTURE AT LAKE MINNEQUA PARK AND OPEN SPACE AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME**
- M-2 RESOLUTION NO 14788 APPROVING AMENDMENT #1 TO THE AGREEMENT FOR PROFESSIONAL DESIGN CONSULTING SERVICES IN THE AMOUNT OF \$29,940 BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND BOHANNAN HUSTON, INC. RELATING TO THE FINAL DESIGN FOR THE EASTSIDE PEDESTRIAN, PARKING AND STREETScape IMPROVEMENTS PROJECT AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME**
- M-3 RESOLUTION NO 14789 ACCEPTING A GRANT AWARD OF TWO MOTORIZED POLICE BICYCLES WITH LIGHT/SIREN KITS, BAGS & ONE CARGO TRAILER FROM FIREHOUSE SUBS PUBLIC SAFETY FOUNDATION**
- M-4 RESOLUTION NO 14790 APPROVING AND ADOPTING FINDINGS AND DETERMINATIONS CONCERNING THE PROPOSED ANNEXATION OF THE AREA COMMONLY KNOWN AS THE WILDHORSE ANNEXATION 1 DESCRIBED AS 80.40 ACRES NORTH OF THE U.S. HIGHWAY 50 WEST/PUEBLO BOULEVARD INTERCHANGE**
- M-5 RESOLUTION NO 14791 APPROVING AND ADOPTING FINDINGS AND DETERMINATIONS CONCERNING THE PROPOSED ANNEXATION OF THE AREA COMMONLY KNOWN AS THE WILDHORSE ANNEXATION 2 DESCRIBED AS 98.98 ACRES NORTH AND WEST OF THE WILDHORSE ANNEXATION 1 AND EAST AND WEST OF WILDHORSE ROAD**

**REGULAR CITY COUNCIL MEETING
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PAGE FOUR**

MINUTES

- M-6 RESOLUTION NO 14792 APPROVING A SPONSORSHIP AGREEMENT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND CACTUS COMMUNICATIONS, INC., A COLORADO CORPORATION, ON BEHALF OF ITS CLIENT, THE COLORADO LOTTERY**

- M-7 RESOLUTION NO 14793 FIXING AN ALTERNATE DAY FOR THE REGULAR CITY COUNCIL MEETING CURRENTLY SCHEDULED FOR THE SECOND MONDAY IN OCTOBER 2022 AND THE FOURTH MONDAY IN DECEMBER 2022**

- M-8 RESOLUTION NO 14794 DESIGNATING PUBLIC PLACES FOR THE POSTING OF NOTICE OF MEETINGS FOR THE PUEBLO CITY COUNCIL FOR THE YEAR 2022**

- M-9 RESOLUTION NO 14795 DESIGNATING A PUBLIC PLACE FOR THE POSTING OF NOTICE OF MEETINGS FOR ALL BOARDS, COMMISSIONS, AND COMMITTEES OF THE CITY OF PUEBLO FOR THE YEAR 2022**

- M-10 RESOLUTION NO 14796 AUTHORIZING THE PUEBLO URBAN RENEWAL AUTHORITY TO CONDUCT A STUDY TO DETERMINE WHETHER THE NEIGHBORHOODS REFERRED TO AS BESSEMER, EILERS HEIGHTS AND THE GROVE ARE A SLUM, BLIGHTED AREA, OR A COMBINATION THEREOF, AND TO NOTIFY OWNERS OF PROPERTY IN THE AREA SUBJECT OF SUCH STUDY**

- M-11 RESOLUTION NO 14797 CONFIRMING THE APPOINTMENTS OF COUNCIL MEMBERS TO VARIOUS BOARDS AND COMMISSIONS FOR THE YEAR 2022**

- M-12 RESOLUTION NO 14798 CONFIRMING THE APPOINTMENT BY THE MAYOR OF MELANIE RAPIER TO THE COMMUNITY COMMISSION ON HOUSING AND HOMELESSNESS (CCHH)**

N. ORDINANCES – FIRST PRESENTATION

- N-1 AN ORDINANCE ESTABLISHING PROJECT AP2201 – SNOW REMOVAL EQUIPMENT (SRE) ACQUISITION, BUDGETING AND APPROPRIATING \$21,355 TO PROJECT AP2201, APPROVING A CONTRACT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND DIBBLE AND ASSOCIATES CONSULTING ENGINEERS, INC., AN ARIZONA CORPORATION, TO CONDUCT THE ACQUISITION PER FAA REQUIREMENTS, AND AUTHORIZING THE MAYOR TO EXECUTE SAME – *submitted for First Presentation***

Public Hearing was Set for Monday, February 14, 2022, Notice of Hearing was Ordered Published by Title.

- N-2 AN ORDINANCE APPROVING AND ACCEPTING THE AMERICAN RESCUE PLAN ACT (ARPA) CONCESSIONS RENT RELIEF AIRPORT RESCUE GRANT OFFER, GRANT NO. 3-08-0046-045-2022, FROM THE UNITED STATES OF AMERICA ACTING THROUGH THE FEDERAL AVIATION ADMINISTRATION, FOR FUNDS IN THE AMOUNT OF \$10,477 TO PROVIDE RELIEF FROM RENT TO ELIGIBLE AIRPORT CONCESSIONS AT PUEBLO MEMORIAL AIRPORT, AUTHORIZING THE MAYOR TO EXECUTE SAME, ESTABLISHING THE ARPA CONCESSIONS PROJECT NO.**

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MINUTES

AP2202, AND BUDGETING AND APPROPRIATING \$10,477 TO PROJECT NO. AP2202 – submitted for First Presentation

Public Hearing was Set for Monday, February 14, 2022, Notice of Hearing was Ordered Published by Title.

N-3 AN ORDINANCE ESTABLISHING THE FIRE STATION 6, 8 AND 11 PROJECT NO. CI2205, TRANSFERRING \$600,000 FROM THE UNAPPROPRIATED FUND BALANCE OF THE GENERAL FUND AND BUDGETING AND APPROPRIATING \$600,000 FOR SAID PROJECT – submitted for First Presentation

Public Hearing was Set for Monday, February 14, 2022, Notice of Hearing was Ordered Published by Title.

N-4 AN ORDINANCE AMENDING THE FISCAL YEAR 2022 STAFFING ORDINANCE BY ADDING FOUR FULL-TIME COMMUNITY SERVICE OFFICERS TO THE AUTHORIZED STAFFING OF THE POLICE DEPARTMENT – submitted for First Presentation

Public Hearing was Set for Monday, February 14, 2022, Notice of Hearing was Ordered Published by Title.

N-5 AN ORDINANCE AMENDING SECTION 6-5-16 OF CHAPTER 5, OF TITLE VI OF THE PUEBLO MUNICIPAL CODE RELATING TO THE FY 2022 CLASSIFICATION AND PAY PLAN BY ESTABLISHING THE PAY SCALE FOR COMMUNITY SERVICE OFFICER – submitted for First Presentation

Public Hearing was Set for Monday, February 14, 2022, Notice of Hearing was Ordered Published by Title.

N-6 AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN OPTION TO PURCHASE AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE PUEBLO ECONOMIC DEVELOPMENT CORPORATION, A COLORADO NONPROFIT CORPORATION, RELATING TO A FUTURE JOB CREATING CAPITAL IMPROVEMENT PROJECT – submitted for First Presentation

Public Hearing was Set for Monday, February 14, 2022, Notice of Hearing was Ordered Published by Title.

N-7 AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE PUEBLO WEST METROPOLITAN DISTRICT, ACTING BY AND THROUGH THE PUEBLO WEST METROPOLITAN DISTRICT'S WATER AND WASTEWATER ENTERPRISE, RELATING TO A WATER LEASE AND STORAGE AGREEMENT ENTERED INTO BY SAID ENTERPRISE AND THE BOARD OF WATER WORKS OF PUEBLO, COLORADO – submitted for First Presentation

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Public Hearing was Set for Monday, February 14, 2022, Notice of Hearing was Ordered Published by Title.

N-8 AN ORDINANCE AMENDING CIVIL SERVICE RULE 18 OF CHAPTER 13 OF TITLE VI OF THE PUEBLO MUNICIPAL CODE RELATING TO THE REQUIRED PERIOD OF NOTICE WITH RESPECT TO PROMOTIONAL EXAMS – submitted for First Presentation

Public Hearing was Set for Monday, February 14, 2022, Notice of Hearing was Ordered Published by Title.

O. APPROVAL OF CONSENT AGENDA

Mr. Flores, seconded by Ms. Maestri, moved to approve all Resolutions Set Forth in the Consent Agenda, Pass the Ordinances of the Consent Agenda, Setting the Public Hearings for **Monday, February 14, 2022**, and Order the Ordinances to be published **BY TITLE**.

Roll Call - Ayes: Atencio, Flores, Graham, Maestri, Martinez, Martinez Ortega, and Winner. Motion carried unanimously.

P. REGULAR AGENDA

Q. RESOLUTIONS

Q-1 RESOLUTION NO 14799 AWARDDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$1,258,000 TO PATE CONSTRUCTION CO., INC. AND SETTING FORTH \$125,800 FOR CONTINGENCIES AND ADDITIONAL WORK FOR PROJECT NO. 21-001 ABRIENDO AVENUE AND BOULDER AVENUE OUTFALL STORM SEWER IMPROVEMENTS AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

A staff report and detailed review of the Ordinance was given by Jeff Hawkins, Director of Stormwater.

Ms. Winner, seconded by Mr. Martinez Ortega, moved to approve the Ordinance on Final Presentation.

Roll Call - Ayes: Atencio, Flores, Graham, Maestri, Martinez, Martinez Ortega, and Winner. Motion carried unanimously.

Q-2 RESOLUTION NO 14800 AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2022 GENERAL FUND BUDGET TO THE PUEBLO UNITED WAY IN THE AMOUNT OF \$500 TO SUPPORT THE PUEBLO MENTORING COLLABORATIVE COMMUNITY EVENT MENTORING EVENT

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

Ms. Winner, seconded by Mr. Flores, moved to approve the Ordinance on Final Presentation.

Roll Call - Ayes: Atencio, Flores, Graham, Maestri, Martinez, Martinez Ortega, and Winner. Motion carried unanimously.

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Q-3 RESOLUTION NO 14801 AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2022 GENERAL FUND BUDGET TO THE PUEBLO AFRICAN AMERICAN CONCERN ORGANIZATION (PAACO), A COLORADO NONPROFIT CORPORATION, IN THE AMOUNT OF \$750 TO SPONSOR A TABLE FOR THE ANNUAL STARS AND LIGHTS DINNER & DANCE

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

Mr. Flores, seconded by Ms. Martinez, moved to approve the Ordinance on Final Presentation.

Roll Call - Ayes: Atencio, Flores, Graham, Maestri, Martinez, Martinez Ortega, and Winner. Motion carried unanimously.

R. ORDINANCES – FINAL PRESENTATION

R-1 ORDINANCE NO 10100 APPROVING AN AMENDMENT TO THE GRANT AGREEMENT WITH THE COLORADO HEALTH FOUNDATION, ACCEPTING AN ADDITIONAL GRANT IN THE AMOUNT OF \$13,600, BUDGETING AND APPROPRIATING THE GRANT FUNDS INTO PROJECT NO. CI2014, AND AUTHORIZING THE MAYOR TO EXECUTE SAME – *submitted for Final Presentation*

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

PUBLIC HEARING:

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

Ms. Martinez, seconded by Mr. Martinez Ortega, moved to approve the Ordinance on Final Presentation.

Roll Call - Ayes: Atencio, Flores, Graham, Maestri, Martinez, Martinez Ortega, and Winner. Motion carried unanimously.

R-2 ORDINANCE NO 10101 APPROVING A COOPERATIVE PURCHASING AGREEMENT FOR TRANSIT BUSES BETWEEN PUEBLO, A MUNICIPAL CORPORATION, AND THE STATE OF WASHINGTON ACTING BY AND THROUGH THE DEPARTMENT OF ENTERPRISE SERVICES, A WASHINGTON STATE GOVERNMENTAL AGENCY, AND AUTHORIZING THE MAYOR TO EXECUTE SAME – *submitted for Final Presentation*

A staff report and detailed review of the Ordinance was given by Ben Valdez, Director of Transit.

PUBLIC HEARING:

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

Ms. Winner, seconded by Ms. Martinez, moved to approve the Ordinance on Final Presentation.

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Roll Call - Ayes: Atencio, Flores, Graham, Maestri, Martinez, Martinez Ortega, and Winner.
Motion carried unanimously.

**R-3 ORDINANCE NO 10102 APPROVING AN AGREEMENT BETWEEN THE CITY OF PUEBLO AND THE COUNTY OF PUEBLO EXTENDING PUBLIC TRANSIT SERVICES WITHIN THE UNINCORPORATED AREAS OF PUEBLO COUNTY, COLORADO –
*submitted for Final Presentation***

A staff report and detailed review of the Ordinance was given by Ben Valdez, Director of Transit.

PUBLIC HEARING:

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

Ms. Winner, seconded by Mr. Flores, moved to approve the Ordinance on Final Presentation.

Roll Call - Ayes: Atencio, Flores, Graham, Maestri, Martinez, Martinez Ortega, and Winner.
Motion carried unanimously.

**R-4 ORDINANCE NO 10103 ANNEXING UNINCORPORATED LAND COMMONLY KNOWN AS THE WILDHORSE ANNEXATION 1 TO THE CITY OF PUEBLO DESCRIBED AS 80.40 ACRES OF LAND LOCATED NORTH OF THE U.S. HIGHWAY 50 WEST AND THE PUEBLO BOULEVARD INTERCHANGE –
*submitted for Final Presentation***

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

Mr. Hobson requested that Exhibit C2 of the agreement be replaced, and Exhibit C5 be added.
So ordered by President Graham.

PUBLIC HEARING:

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

Mr. Martinez Ortega, seconded by Mr. Flores, moved to approve the Ordinance on Final Presentation.

Roll Call - Ayes: Atencio, Flores, Graham, Maestri, Martinez, Martinez Ortega, and Winner.
Motion carried unanimously.

**R-5 ORDINANCE NO 10104 ANNEXING UNINCORPORATED LAND COMMONLY KNOWN AS THE WILDHORSE ANNEXATION 2 TO THE CITY OF PUEBLO DESCRIBED AS 98.98 ACRES OF LAND LOCATED NORTH AND WEST OF THE WILDHORSE ANNEXATION 1 AND EAST AND WEST OF WILDHORSE ROAD –
*submitted for Final Presentation***

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

PUBLIC HEARING:

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

Mr. Flores, seconded by Ms. Martinez, moved to approve the Ordinance on Final Presentation.

Roll Call - Ayes: Atencio, Flores, Graham, Maestri, Martinez, Martinez Ortega, and Winner.
Motion carried unanimously.

R-6 ORDINANCE NO 10105 RESCINDING ORDINANCE NO. 10020 AND THE ASSOCIATED 2021 COOPERATIVE AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, THE PUEBLO ZOOLOGICAL SOCIETY, A COLORADO NONPROFIT CORPORATION AND THE COLORADO DEPARTMENT OF CORRECTIONS, AN AGENCY OF THE STATE OF COLORADO, FOR LANDSCAPING SERVICES AT THE PUEBLO ZOO – submitted for Final Presentation

A staff report and detailed review of the Ordinance was given by Trevor Gloss, Assistant City Attorney.

PUBLIC HEARING:

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

Ms. Winner, seconded by Mr. Martinez Ortega, moved to approve the Ordinance on Final Presentation.

Roll Call - Ayes: Atencio, Flores, Graham, Maestri, Martinez, Martinez Ortega, and Winner.
Motion carried unanimously.

R-7 ORDINANCE NO 10106 AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS IN CONNECTION WITH THE RELEASE OF CERTAIN REAL PROPERTY FROM THE EXISTING LEASED PROPERTY UNDER THE LEASE PURCHASE AGREEMENT DATED AS OF NOVEMBER 12, 2014, AS AMENDED, BETWEEN THE CITY AND THE CITY OF PUEBLO, COLORADO MUNICIPAL BUILDING CORPORATION AND AUTHORIZING THE MAYOR AND THE CITY CLERK TO TAKE ALL NECESSARY AND APPROPRIATE ACTIONS RELATING TO SAME – submitted for Final Presentation

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

PUBLIC HEARING:

- Jeff Shaw of PEDCO appeared via zoom to speak in favor of this ordinance.

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

Mr. Martinez Ortega, seconded by Mr. Flores, moved to approve the Ordinance on Final Presentation.

Roll Call - Ayes: Atencio, Flores, Graham, Maestri, Martinez, Martinez Ortega, and Winner.
Motion carried unanimously.

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R-8 ORDINANCE NO 10107 AMENDING SECTION 3 OF CHAPTER 11 OF TITLE XVI OF THE PUEBLO MUNICIPAL CODE RELATING TO SANITARY SEWER CONNECTION FEES AND PLANT INVESTMENT FEES – *submitted for Final Presentation*

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

PUBLIC HEARING:

- Ashleigh Winans of NeighborWorks appeared in person to speak against this ordinance.

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

Ms. Winner, seconded by Mr. Martinez Ortega, moved to approve the Ordinance on Final Presentation.

Roll Call - Ayes: Atencio, Flores, Graham, Martinez, and Winner. Nays: Maestri, Martinez Ortega. Motion carried 5-2.

ADJOURN: 9:22 p.m. President Graham Adjourned the Meeting.

Respectfully submitted,



Marisa Stoller
City Clerk



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council
CC: Nicholas A. Gradisar, Mayor
VIA: Marisa Stoller, City Clerk
FROM: Andrew E. Hayes, P.E., Director of Public Works
SUBJECT: A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$135,174.28 TO AGUILARS CONSTRUCTION COMPANY, INC., A COLORADO CORPORATION, AND SETTING FORTH \$26,000.00 FOR CONTINGENCIES AND ADDITIONAL WORK FOR PROJECT NO. 21-060 WASTEWATER TREATMENT FACILITY ENGINEERING BUILDING SANITARY SEWER REPLACEMENT AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

This Resolution awards a construction contract to Aguilars Construction Company, Inc., for Wastewater Treatment Facility Engineering Building sanitary sewer replacement. They were deemed to be the most responsible bidder and awarded the contract.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The City of Pueblo solicited requests for bids for the replacement of all sanitary sewer cast-iron piping throughout the facility with PVC piping and other incidental work related to the project.

FINANCIAL IMPLICATIONS:

Funding (including contingencies) in the amount of \$161,174.28 will be paid from account WWAN04.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this ordinance.

STAKEHOLDER PROCESS:

Not applicable to this ordinance

ALTERNATIVES:

Unless award of the contract is approved, this project will not be completed.

RECOMMENDATION:

Approval of the Resolution.

Attachments:

Proposed Resolution

RESOLUTION NO. 14802

A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$135,174.28 TO AGUILARS CONSTRUCTION COMPANY, INC., A COLORADO CORPORATION, AND SETTING FORTH \$26,000.00 FOR CONTINGENCIES AND ADDITIONAL WORK FOR PROJECT NO. 21-060 WASTEWATER TREATMENT FACILITY ENGINEERING BUILDING SANITARY SEWER REPLACEMENT AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, proposals for Project No. 21-060 Wastewater Treatment Facility Engineering Building Sanitary Sewer Replacement have been received and examined; and,

WHEREAS, the proposal of Aguilars Construction Company, Inc., a Colorado Corporation of Pueblo, Colorado was the lowest of those bids determined to be responsible; NOW, THEREFORE,

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

SECTION 1.

City Council authorizes Project No. 21-060 Wastewater Treatment Facility Engineering Building Sanitary Sewer Replacement to be performed, and the contract for said project is hereby awarded to Aguilars Construction Company, Inc., in the amount of \$135,174.28.

SECTION 2.

Funds for Project No. 21-060 Wastewater Treatment Facility Engineering Building Sanitary Sewer Replacement shall be provided from account WWAN04.

SECTION 3.

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 the same.

SECTION 4.

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

Contingencies and Additional Work - \$26,000.00

SECTION 5.

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

SECTION 6.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED February 14, 2022

BY: Larry Atencio
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council
CC: Nicholas A. Gradisar, Mayor
VIA: Marisa Stoller, City Clerk
FROM: Andrew E. Hayes, P.E., Director of Public Works
SUBJECT: A RESOLUTION AWARDDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$31,600 TO DOUG VAUGHN, LLC, A COLORADO LIMITED LIABILITY COMPANY, AND SETTING FORTH \$6,000 FOR CONTINGENCIES AND ADDITIONAL WORK FOR PROJECT NO. 21-086 19TH STREET AND GRAND AVENUE CURB AND GUTTER REPAIR TO BE PAID FROM PROJECT ACCOUNT HUAN03 AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

This resolution awards a construction contract to Doug Vaughn, LLC for Project No. 21-086 19th Street and Grand Avenue Curb and Gutter Repair.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The City of Pueblo solicited requests for bids for the repair of curb and gutter in the vicinity of W. 19th Street and Grand Avenue.

FINANCIAL IMPLICATIONS:

Funding (including contingencies) in the amount of \$37,600.00 will be paid from account HUAN03.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this ordinance.

STAKEHOLDER PROCESS:

Not applicable to this ordinance

ALTERNATIVES:

Unless award of the contract is approved, this project will not be completed.

RECOMMENDATION:

Approval of the Resolution.

Attachments:

Proposed Resolution

RESOLUTION NO. 14803

A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$31,600 TO DOUG VAUGHN, LLC, A COLORADO LIMITED LIABILITY COMPANY, AND SETTING FORTH \$6,000 FOR CONTINGENCIES AND ADDITIONAL WORK FOR PROJECT NO. 21-086 19TH STREET AND GRAND AVENUE CURB AND GUTTER REPAIR TO BE PAID FROM PROJECT ACCOUNT HUAN03 AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, proposals for Project No. 21-086 19th Street and Grand Avenue Curb and Gutter Repair, have been received and examined; and

WHEREAS, the proposal of Doug Vaughn, LLC, of Pueblo, Colorado was the lowest of those bids determined to be responsible; NOW, THEREFORE,

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

SECTION 1.

City Council authorizes Project No. 21-086 19th Street and Grand Avenue Curb and Gutter Repair to be performed, and the contract for said project is hereby awarded to Doug Vaughn, LLC in the amount of \$31,600.00.

SECTION 2.

Funds for Project No. 21-086 19th Street and Grand Avenue Curb and Gutter Repair shall be provided from account HUAN03.

SECTION 3.

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 the same.

SECTION 4.

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

Contingencies and Additional Work - \$6,000.00

SECTION 5.

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

SECTION 6.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED February 14, 2022

BY: Larry Atencio
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council
CC: Nicholas A. Gradisar, Mayor
VIA: Marisa Stoller, City Clerk
FROM: Andrew E. Hayes, P.E., Director of Public Works
SUBJECT: A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$180,105.80 TO DOUG VAUGHN, LLC, A COLORADO LIMITED LIABILITY COMPANY, AND SETTING FORTH \$18,071.20 FOR CONTINGENCIES AND ADDITIONAL WORK FOR PROJECT NO. 21-081 SIDEWALK/ADA CURB RAMPS – 3 LOCATIONS (CDBG) TO BE PAID FROM PROJECT ACCOUNT CD2016, CD2017, AND CD2019 AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

This resolution awards a construction contract to Doug Vaughn, LLC for Project No. 21-081 Sidewalk/ADA Curb Ramps – 3 Locations (CDBG).

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The City of Pueblo solicited requests for bids for the installation of sidewalks and associated ADA-accessible curb ramps at three locations within the City.

FINANCIAL IMPLICATIONS:

Funding (including contingencies) in the amount of \$198,117.00 will be paid from accounts CD2016, CD2017, and CD2019 broken out as follows:

CD2016	\$92,787.00
CD2017	\$80,300.00
CD2019	\$25,090.00
Total:	\$198,177.00

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this ordinance.

STAKEHOLDER PROCESS:

Not applicable to this ordinance

ALTERNATIVES:

Unless award of the contract is approved, this project will not be completed.

RECOMMENDATION:

Approval of the Resolution.

Attachments:

Proposed Resolution

RESOLUTION NO. 14804

A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$180,105.80 TO DOUG VAUGHN, LLC, A COLORADO LIMITED LIABILITY COMPANY, AND SETTING FORTH \$18,071.20 FOR CONTINGENCIES AND ADDITIONAL WORK FOR PROJECT NO. 21-081 SIDEWALK/ADA CURB RAMPS – 3 LOCATIONS (CDBG) TO BE PAID FROM PROJECT ACCOUNT CD2016, CD2017, AND CD2019 AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, proposals for Project No. 21-081 Sidewalk/ADA Curb Ramps – 3 Locations (CDBG), have been received and examined; and,

WHEREAS, the proposal of Doug Vaughn, LLC of Pueblo, Colorado was the lowest of those bids determined to be responsible; NOW, THEREFORE,

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

SECTION 1.

City Council authorizes Project No. 21-081 Sidewalk/ADA Curb Ramps – 3 Locations (CDBG) to be performed, and the contract for said project is hereby awarded to Doug Vaughn, LLC in the amount of \$180,105.80.

SECTION 2.

Funds for Project No. 21-081 Sidewalk/ADA Curb Ramps – 3 Locations (CDBG) shall be provided from the following accounts and in the amounts specified from each account:

CD2016	\$92,787.00
CD2017	\$80,300.00
CD2019	\$25,090.00

SECTION 3.

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 the same.

SECTION 4.

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

Contingencies and Additional Work - \$18,071.20

SECTION 5.

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

SECTION 6.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED February 14, 2022

BY: Larry Atencio
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council
CC: Nicholas A. Gradisar, Mayor
VIA: Marisa Stoller, City Clerk
FROM: Andrew E. Hayes, P.E., Director of Public Works
SUBJECT: A RESOLUTION APPROVING AN AMENDMENT NO. 3 TO A CONSTRUCTION CONTRACT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION AND DOUG VAUGHN, LLC, A COLORADO LIMITED LIABILITY COMPANY, PROVIDING FOR ADDITIONAL REPAIR WORK RELATED TO PROJECT NO. 20-030 GREENWOOD STREET CURB RAMPS, TO BE PAID FROM PROJECT ACCOUNT SR2002 AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME AND TRANSFERRING FUNDS FROM PROJECT SR1801 TO PROJECT SR2002 IN THE AMOUNT OF \$50,000

SUMMARY:

This resolution amends Contract No. 20-030 – Greenwood Street Curb Ramps and transfers funds in the amount of \$50,000 from Project SR1801 to Project SR2002.

PREVIOUS COUNCIL ACTION:

The original construction contract was approved for award under Resolution 14424 on June 22, 2020.

A contract amendment was approved under Ordinance 9807 on October 26, 2020, to add additional work to the project scope and provide associated funding.

BACKGROUND:

Additional work is required at Victoria Street and Grand Avenue to relocate water, sewer, and electrical utilities as well as to upgrade ADA curb ramps and complete associated concrete and asphalt repairs. The cost of the additional work exceeds the available contingency that was allocated and an additional \$50,000.00 is required to complete the project.

FINANCIAL IMPLICATIONS:

The additional funding will be transferred from Project No. SR1801 to SR2002. Project funds will be paid from account SR2002.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this ordinance.

STAKEHOLDER PROCESS:

Not applicable to this ordinance

ALTERNATIVES:

Unless award of the contract is approved, this project will not be completed.

RECOMMENDATION:

Approval of the Resolution.

Attachments:

Proposed Resolution

RESOLUTION NO. 14805

A RESOLUTION APPROVING AN AMENDMENT NO. 3 TO A CONSTRUCTION CONTRACT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION AND DOUG VAUGHN, LLC, A COLORADO LIMITED LIABILITY COMPANY, PROVIDING FOR ADDITIONAL REPAIR WORK RELATED TO PROJECT NO. 20-030 GREENWOOD STREET CURB RAMPS, TO BE PAID FROM PROJECT ACCOUNT SR2002 AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME AND TRANSFERRING FUNDS FROM PROJECT SR1801 TO PROJECT SR2002 IN THE AMOUNT OF \$50,000

WHEREAS, Project No. 20-030 Greenwood Street Curb Ramps was awarded to Doug Vaughn, LLC, on July 6, 2020; and

WHEREAS, additional ADA curb ramp upgrades and associated utility relocation work contemplated by the Amendment is needed; and

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

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

SECTION 1.

The Amendment No. 3 dated February 15, 2022, by and between the City of Pueblo, a Municipal Corporation, and Doug Vaughn, LLC, a Colorado Limited Liability Company, 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 the Amendment to be performed in the amount of \$50,000.00.

SECTION 2.

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

SECTION 3.

In addition to the amount of the bid set forth and the original contingency provided, as aforementioned, an additional amount of \$50,000.00 is hereby authorized for contingencies and additional work.

SECTION 4.

Funds in the amount of \$50,000.00 shall be transferred from account SR1801 into account SR2002. Funds for said project shall be paid from account SR2002.

SECTION 5.

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

SECTION 6.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED February 14, 2022

BY: Larry Atencio

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

**AMENDMENT NO. 3 TO
CONSTRUCTION CONTRACT**

This Amendment to a construction contract (“Amendment”) is executed to be effective as of February 15, 2022, by and between the City of Pueblo, a municipal corporation (“City”) and Doug Vaughn, LLC, a Colorado Limited Liability Company (“Contractor”).

WHEREAS, City and Contractor entered into that certain construction contract dated June 22, 2020 for Bid Number 20-030 (SR2002) which has subsequently been amended by Amendment Nos. 1 and 2 (the construction contract and prior Amendment Nos. 1 and 2 shall be collectively referred to herein as the “Construction Agreement”); and

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

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

1. The Amended Request for Quotation attached hereto, and labelled Exhibit 1, is hereby accepted and approved. The Construction Agreement and the Request for Quotation set forth at Article 1.B of the Construction Agreement are amended to incorporate all additional work to be performed as contemplated by and at the prices set forth in the Amended Request for Quotation. Contractor shall perform all such work subject to and consistent with all requirements and provisions of the Construction Agreement. Contractor shall perform all acts necessary or required as a result of this Amendment including but no limited to furnishing a payment and performance bond on or before February 21, 2022, in compliance with Section 3.124 of the Construction Agreement. The payment and performance bond shall be in the total amount of \$1,687,902.00 which amount includes the previously amended contract amount of \$1,637,902.00 and the additional contract amount of \$50,000.00 contemplated by the additional work to be performed under this Amendment. The time for completion of all work under the Construction Agreement including the additional work to be performed under this Amendment shall be March 15, 2022.

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

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

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

City of Pueblo, a municipal corporation,

Balance of Appropriations Exist for this Amendment and Funds are Available:

By: _____
Name: Naomi Hedden
Title: Director of Purchasing

Director of Finance

Attested by: _____

Approved as to Form:

City Clerk

City Attorney

Doug Vaughn, LLC, a Colorado Limited Liability Company

By: _____

Name: Doug Vaughn

Title: Owner

**EXHIBIT 1
AMENDED REQUEST FOR QUOTATIONS**

BID NO. 20-030 (SR2002)

The undersigned hereby proposes to furnish all labor, materials, tools, equipment, and all utility/transportation services necessary to perform and complete, in an industry acceptable and professional manner, construction in accordance with the plans and specifications as prepared by or for the City of Pueblo, Colorado, for the sums set forth in the following schedule (this schedule reflects the same Unit Price for every bid item as indicated in the original bid – This is a continuation of the original contract):

Additional Work Item	Quantity	Unit Price	Total
Curb ramp upgrades, utility relocation, and concrete and asphalt repair	1 LS	\$50,000.00	\$50,000.00
Grand Total			\$50,000.00

(_____ Dollars)

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

Doug Vaughn, LLC, a Colorado Limited Liability Company

By: _____
Name: Doug Vaughn
Title: Owner



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council
CC: Nicholas A. Gradisar, Mayor
VIA: Marisa Stoller, City Clerk
FROM: Andrew E. Hayes, P.E., Director of Public Works
SUBJECT: A RESOLUTION APPROVING AN AMENDMENT TO A CONSTRUCTION CONTRACT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION AND CALVIN TURNER ROOFING, LLC, A COLORADO LIMITED LIABILITY COMPANY PROVIDING FOR ADDITIONAL REPAIR WORK RELATED TO PROJECT NO. 21-005 REPLACE PUEBLO PARKS MAINTENANCE OFFICE ROOF, TO BE PAID FROM PROJECT ACCOUNT CIAN22 AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

This resolution increases the total award amount for the construction contract awarded to Calvin Turner Roofing, LLC, to cover the cost of additional work related to the testing, sampling, abatement, and disposal of asbestos containing materials in underlying layers of roofing on the Parks Maintenance Office facility.

PREVIOUS COUNCIL ACTION:

The original construction contract was approved for award under Resolution 14636 on June 14, 2021.

BACKGROUND:

Subsequent to the award of the contract, asbestos-containing materials were discovered in underlying layers of roofing material. The cost of the additional work required to abate and dispose of these materials exceeds the available contingency that was allocated and an additional \$2,532.43 is required to fund the contract.

FINANCIAL IMPLICATIONS:

Funding in the amount of \$2,532.43 will be paid from account CIAN22 – Roof Maintenance and Repair.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this ordinance.

STAKEHOLDER PROCESS:

Not applicable to this ordinance

ALTERNATIVES:

Work on the project will remain incomplete unless the resolution is approved.

RECOMMENDATION:

Approval of the Resolution.

Attachments:

Proposed Resolution

RESOLUTION NO. 14813

A RESOLUTION APPROVING AN AMENDMENT TO A CONSTRUCTION CONTRACT BETWEEN PUEBLO, A MUNICIPAL CORPORATION AND CALVIN TURNER ROOFING, LLC, A COLORADO LIMITED LIABILITY COMPANY, PROVIDING FOR ADDITIONAL REPAIR WORK RELATED TO PROJECT NO. 21-005 REPLACE PUEBLO PARKS MAINTENANCE OFFICE ROOF, TO BE PAID FROM PROJECT ACCOUNT CIAN22 AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, Project No. 21-005 Replace Pueblo Parks Maintenance Office Roof was awarded to Calvin Turner Roofing, LLC, on June 14, 2021; and

WHEREAS, additional roof repair work contemplated by the Amendment is needed; and

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

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

SECTION 1.

The Amendment dated February 15, 2022, by and between the City of Pueblo, A Municipal Corporation, and Calvin Turner Roofing, LLC, a Colorado Limited Liability Company, 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 the Amendment to be performed in the amount of \$2,532.43.

SECTION 2.

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

SECTION 3.

In addition to the amount of the bid set forth, as aforementioned, an additional amount of \$2,532.43 is hereby authorized for contingencies and additional work.

SECTION 4.

Funds for said Project shall be from account CIAN22 – Roof Maintenance and Repair.

SECTION 5.

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

SECTION 6.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED February 14, 2022

BY: Lori Winner
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

**AMENDMENT TO
CONSTRUCTION CONTRACT**

This Amendment to a construction contract (“Amendment”) is executed to be effective as of February 15, 2022, by and between the City of Pueblo, a municipal corporation (“City”) and Calvin Turner Roofing, LLC, a Colorado limited liability company (“Contractor”).

WHEREAS, City and Contractor entered into that certain construction contract dated May 17, 2021 for Bid Number 21-005 (CIAN22) (the “Construction Agreement”); and

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

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

1. The Amended Request for Quotation attached hereto, and labelled Exhibit 1, is hereby accepted and approved. The Construction Agreement and the Request for Quotation set forth at Article 1.B of the Construction Agreement are amended to incorporate all additional work to be performed as contemplated by and at the prices set forth in the Amended Request for Quotation. Contractor shall perform all such work subject to and consistent with all requirements and provisions of the Construction Agreement. Contractor shall perform all acts necessary or required as a result of this Amendment including but no limited to furnishing a payment and performance bond on or before February 21, 2022, in compliance with Section 3.124 of the Construction Agreement. The payment and performance bond shall be in the total amount of \$31,032.43 which amount includes the original contract amount of \$28,500 and the additional contract amount of \$2,532.43 contemplated by the additional work to be performed under this Amendment. The time for completion of all work under the Construction Agreement including the additional work to be performed under this Amendment shall be April 15, 2022.

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

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

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

City of Pueblo, a municipal corporation,

Balance of Appropriations Exist for this Amendment and Funds are Available:

By: _____

Name: Naomi Hedden
Title: Director of Purchasing

Director of Finance

Attested by:

Approved as to Form:

City Clerk

City Attorney

Calvin Turner Roofing, LLC, a Colorado limited liability company

By: _____

Name: Calvin Turner

Title: Owner

EXHIBIT 1
AMENDED REQUEST FOR QUOTATIONS

BID NO. 21-005 (CIAN22)

The undersigned hereby proposes to furnish all labor, materials, tools, equipment, and all utility/transportation services necessary to perform and complete, in an industry acceptable and professional manner, construction in accordance with the plans and specifications as prepared by or for the City of Pueblo, Colorado, for the sums set forth in the following schedule (this schedule reflects the same Unit Price for every bid item as indicated in the original bid – This is a continuation of the original contract):

Additional Work Item	Quantity	Unit Price	Total
Asbestos Abatement and Disposal	1 LS	\$2,532.43	\$2,532.43
Grand Total			\$2,532.43

(_____ Dollars)

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

Calvin Turner Roofing, LLC, a Colorado limited liability company

By: _____
Name: Calvin Turner
Title: Owner



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council
CC: Nicholas A. Gradisar, Mayor
VIA: Marisa Stoller, City Clerk
FROM: Andrew E. Hayes, P.E., Director of Public Works
SUBJECT: A RESOLUTION APPROVING AN AMENDMENT TO A CONSTRUCTION CONTRACT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION AND PASHCO ROOFING, INC., DBA COLORADO FRONT RANGE ROOFING, A COLORADO CORPORATION, PROVIDING FOR ADDITIONAL REPAIR WORK RELATED TO PROJECT NO. 21-030 MT. PARK BEULAH ROOF REPAIRS, TO BE PAID FROM PROJECT ACCOUNT CIAN22 AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

This resolution increases the total award amount for the construction contract awarded to Pascho Roofing, Inc. DBA Colorado Front Range Roofing to cover the cost of additional required repairs that were not apparent until work had started on the roof.

PREVIOUS COUNCIL ACTION:

The original construction contract was approved for award under Resolution 14594 on April 26, 2021.

BACKGROUND:

While repairs were being made in accordance with the awarded scope of work, it was discovered that additional layers of roofing materials were required to be replaced in order to meet code requirements. The cost of the additional work exceeded the available contingency that was allocated and an additional \$1,761.64 is required. The total contract amendment will be \$3,548.45 including the original contingency funding that was available.

FINANCIAL IMPLICATIONS:

Additional funding in the amount of \$1,761.64 above the original contingency amount provided will be paid from account CIAN22 – Roof Maintenance and Repair. As the project is repairing storm-related damage to the roof of the building, the additional cost associated with this project will be reimbursed to the City by CIRSA once the project is completed.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this ordinance.

STAKEHOLDER PROCESS:

Not applicable to this ordinance

ALTERNATIVES:

Work on this project cannot proceed unless the resolution is approved.

RECOMMENDATION:

Approval of the Resolution.

Attachments:

Proposed Resolution

RESOLUTION NO. 14806

A RESOLUTION APPROVING AN AMENDMENT TO A CONSTRUCTION CONTRACT BETWEEN PUEBLO, A MUNICIPAL CORPORATION AND PASHCO ROOFING DBA COLORADO FRONT RANGE ROOFING, PROVIDING FOR ADDITIONAL REPAIR WORK RELATED TO PROJECT NO. 21-030 MT. PARK BEULAH ROOF REPAIRS, TO BE PAID FROM PROJECT ACCOUNT CIAN22 AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, Project No. 21-030 Mt. Beulah Park Roof Repairs was awarded to Pashco Roofing DBA Colorado Front Range Roofing on April 27, 2021; and

WHEREAS, additional roof repair work contemplated by the Amendment were needed; and

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

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

SECTION 1.

The Amendment dated February 15, 2022, by and between the City of Pueblo, A Municipal Corporation, and Pashco Roofing, Inc., dba Colorado Front Range Roofing, a Colorado Corporation, 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 the Amendment to be performed in the amount of \$3,548.45.

SECTION 2.

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

SECTION 3.

In addition to the amount of the bid set forth and the original contingency provided, as aforementioned, an additional amount of \$3,548.45 is hereby authorized for contingencies and additional work.

SECTION 4.

Funds for said Project shall be from account CIAN22 – Roof Maintenance and Repair.

SECTION 5.

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

SECTION 6.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED February 14, 2022

BY: Larry Atencio
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

**AMENDMENT TO
CONSTRUCTION CONTRACT**

This Amendment to a construction contract (“Amendment”) is executed to be effective as of February 15, 2022, by and between the City of Pueblo, a municipal corporation (“City”) and Pashco Roofing, Inc. dba Colorado Front Range Roofing, a Colorado Corporation (“Contractor”).

WHEREAS, City and Contractor entered into that certain construction contract dated April 27, 2021 for Bid Number 21-030 (CI2015 and CIAN22) (the “Construction Agreement”); and

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

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

1. The Amended Request for Quotation attached hereto, and labelled Exhibit 1, is hereby accepted and approved. The Construction Agreement and the Request for Quotation set forth at Article 1.B of the Construction Agreement are amended to incorporate all additional work to be performed as contemplated by and at the prices set forth in the Amended Request for Quotation. Contractor shall perform all such work subject to and consistent with all requirements and provisions of the Construction Agreement. Contractor shall perform all acts necessary or required as a result of this Amendment including but no limited to furnishing a payment and performance bond on or before February 21, 2022, in compliance with Section 3.124 of the Construction Agreement. The payment and performance bond shall be in the total amount of \$21,416.54 which amount includes the original contract amount of \$17,868.09 and the additional contract amount of \$3,548.45 contemplated by the additional work to be performed under this Amendment. The time for completion of all work under the Construction Agreement including the additional work to be performed under this Amendment shall be March 1, 2022.

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

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

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

City of Pueblo, a municipal corporation,

Balance of Appropriations Exist for this Amendment and Funds are Available:

By: _____
Name: Naomi Hedden
Title: Director of Purchasing

Director of Finance

Attested by:

Approved as to Form:

City Clerk

City Attorney

Pashco Roofing, Inc. dba Colorado Front Range Roofing, a Colorado Corporation

By: _____

Name: James Griffith

Title: Estimator

|

EXHIBIT 1
AMENDED REQUEST FOR QUOTATIONS

BID NO. 21-030 (CI2015 and CIAN22)

The undersigned hereby proposes to furnish all labor, materials, tools, equipment, and all utility/transportation services necessary to perform and complete, in an industry acceptable and professional manner, construction in accordance with the plans and specifications as prepared by or for the City of Pueblo, Colorado, for the sums set forth in the following schedule (this schedule reflects the same Unit Price for every bid item as indicated in the original bid – This is a continuation of the original contract):

Additional Work Item	Quantity	Unit Price	Total
Replacement of deteriorated roof decking and roof material removal	1 LS	\$3,548.45	\$3,548.45
Grand Total			\$3,548.45

(_____ Dollars)

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

Pashco Roofing, Inc. dba Colorado Front Range Roofing, a Colorado Corporation

By: _____
Name: James Griffith
Title: Estimator



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council
CC: Nicholas A. Gradisar, Mayor
VIA: Marisa Stoller, City Clerk
FROM: Andrew E. Hayes, P.E., Director of Public Works
SUBJECT: A RESOLUTION APPROVING AN AMENDMENT TO A CONSTRUCTION CONTRACT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION AND JARCCO CONSTRUCTION, LLC, A COLORADO LIMITED LIABILITY COMPANY, PROVIDING FOR ADDITIONAL REPAIR WORK RELATED TO PROJECT NO. 21-025R MISCELLANEOUS CURB RAMPS - REBID, TO BE PAID FROM PROJECT ACCOUNT HUAN03 AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

This resolution increases the total award amount for the construction contract awarded to JARCCO Construction, LLC, to cover the cost of additional required repairs that were not apparent until excavation work had started on the project.

PREVIOUS COUNCIL ACTION:

The original construction contract was approved for award under Resolution 14626 on June 14, 2021.

BACKGROUND:

While repairs were being made in accordance with the awarded scope of work, it was discovered that unsuitable fill material was installed beneath the existing roadway and drain pans and the cost of the additional materials, hauling, disposal, equipment rental, and other associated costs exceeded the available contingency. In addition, an expanded area of asphalt patching is required to properly complete the project. An additional amount of \$7,355.61 is required to fund the additional work to be performed.

FINANCIAL IMPLICATIONS:

Funding in the amount of \$7,355.61 will be paid from account HUAN03.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this ordinance.

STAKEHOLDER PROCESS:

Not applicable to this ordinance

ALTERNATIVES:

Work on this project will not be able to proceed unless this resolution is approved.

RECOMMENDATION:

Approval of the Resolution.

Attachments:

Proposed Resolution

RESOLUTION NO. 14807

A RESOLUTION APPROVING AN AMENDMENT TO A CONSTRUCTION CONTRACT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION AND JARCCO CONSTRUCTION, LLC, A COLORADO LIMITED LIABILITY COMPANY, PROVIDING FOR ADDITIONAL REPAIR WORK RELATED TO PROJECT NO. 21-025R MISCELLANEOUS CURB RAMPS - REBID, TO BE PAID FROM PROJECT ACCOUNT HUAN03 AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, Project No. 21-025R Miscellaneous Curb Ramps - Rebid was awarded to JARCCO Construction, LLC on June 14, 2021; and

WHEREAS, additional roof repair work contemplated by the Amendment were needed; and

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

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

SECTION 1.

The Amendment dated February 15, 2022, by and between the City of Pueblo, A Municipal Corporation, and JARCCO Construction, LLC, a Colorado Limited Liability Company, 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 the Amendment to be performed in the amount of \$7,355.61.

SECTION 2.

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

SECTION 3.

In addition to the amount of the bid set forth, as aforementioned, an additional amount of \$7,355.61 is hereby authorized for contingencies and additional work.

SECTION 4.

Funds for said Project shall be paid from account HUAN03.

SECTION 5.

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

SECTION 6.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED February 14, 2022

BY: Larry Atencio
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

**AMENDMENT TO
CONSTRUCTION CONTRACT**

This Amendment to a construction contract (“Amendment”) is executed to be effective as of February 15, 2022, by and between the City of Pueblo, a municipal corporation (“City”) and JARCCO Construction, LLC, a Colorado Limited Liability Company (“Contractor”).

WHEREAS, City and Contractor entered into that certain construction contract dated June 15, 2021 for Bid Number 21-025R (HUAN03) (the “Construction Agreement”); and

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

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

1. The Amended Request for Quotation attached hereto, and labelled Exhibit 1, is hereby accepted and approved. The Construction Agreement and the Request for Quotation set forth at Article 1.B of the Construction Agreement are amended to incorporate all additional work to be performed as contemplated by and at the prices set forth in the Amended Request for Quotation. Contractor shall perform all such work subject to and consistent with all requirements and provisions of the Construction Agreement. Contractor shall perform all acts necessary or required as a result of this Amendment including but no limited to furnishing a payment and performance bond on or before February 21, 2022, in compliance with Section 3.124 of the Construction Agreement. The payment and performance bond shall be in the total amount of \$94,019.10 which amount includes the original contract amount of \$86,663.49 and the additional contract amount of \$7,355.61 contemplated by the additional work to be performed under this Amendment. The time for completion of all work under the Construction Agreement including the additional work to be performed under this Amendment shall be March 1, 2022.

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

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

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

City of Pueblo, a municipal corporation,

Balance of Appropriations Exist for this Amendment and
Funds are Available:

By: _____
Name: Naomi Hedden
Title: Director of Purchasing

Director of Finance

Attested by:

Approved as to Form:

City Clerk

City Attorney

JARCCO Construction, LLC, a Colorado Limited Liability Company

By: _____

Name: Jairo A. Renteria

Title: Manager

**EXHIBIT 1
AMENDED REQUEST FOR QUOTATIONS**

BID NO. 21-025R (HUAN03)

The undersigned hereby proposes to furnish all labor, materials, tools, equipment, and all utility/transportation services necessary to perform and complete, in an industry acceptable and professional manner, construction in accordance with the plans and specifications as prepared by or for the City of Pueblo, Colorado, for the sums set forth in the following schedule (this schedule reflects the same Unit Price for every bid item as indicated in the original bid – This is a continuation of the original contract):

Additional Work Item	Quantity	Unit Price	Total
Additional excavation, hauling, concrete, and asphalt repair for concrete crosspan	1 LS	\$7,355.61	\$7,355.61
Grand Total			\$7,355.61

(_____ Dollars)

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

JARCCO Construction, LLC, a Colorado Limited Liability Company

By: _____
Name: Jairo A. Renteria
Title: Manager



**BACKGROUND PAPER FOR PROPOSED
RESOLUTION**

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council

CC: Nicholas A. Gradisar, Mayor

VIA: Marisa Stoller, City Clerk

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

SUBJECT: A RESOLUTION ADOPTING A FEE SCHEDULE FOR APPLICATIONS FOR MATTERS BROUGHT BEFORE THE LAND USE ADMINISTRATIVE OFFICIAL, HISTORIC PRESERVATION COMMISSION, PLANNING AND ZONING COMMISSION, SUBDIVISION REVIEW COMMITTEE, TECHNICAL ADVISORY COMMITTEE, AND ZONING BOARD OF APPEALS AND REPEALING RESOLUTION NUMBER 14462

SUMMARY:

This Resolution adopts a Planning and Community Development Department fee schedule for applications for matters brought before the land use administrative official, and certain committees, boards and commissions, and repeals all previous Resolutions related to the fee schedule. The proposed Resolution and fee schedule changes the fee for childcare home/center conditional use and special use permits, and includes fees for rezoning applications, annexation agreement amendments, commercial historic building certificate of appropriateness, and the review of metropolitan district service plans that are not currently included in the fee schedule.

PREVIOUS COUNCIL ACTION:

City Council adopted the current fee schedule, Resolution No. 14462, on November 19, 2020.

BACKGROUND:

At the request of Council Person Sarah Martinez, the current application fee of \$150.00 for a Childcare Home conditional use permit and \$500.00 for a Childcare Center special use permit is being changed to not require a fee. In addition, the fee schedule is proposed to include application fees for R2U, BP (Business Park) and S5 rezoning applications, include a fee for non-residential certificates of appropriateness through the Historic Preservation Commission, establish a review fee for amendments to annexation

agreements, and a fee for the review of metropolitan district service plans. These fees are not currently included in the fee schedule.

FINANCIAL IMPLICATIONS:

The fees will address the need to accommodate more childcare homes and accurately reflect staff time and resources expended on land use applications that are not currently included in the fee schedule.

BOARD/COMMISSION RECOMMENDATION:

Not applicable.

STAKEHOLDER PROCESS:

Not applicable.

ALTERNATIVES:

The fee schedule will remain the same if the Resolution is not approved.

RECOMMENDATIONS:

Approve the Resolution.

Attachments:

Current Fee Schedule

RESOLUTION NO. 14808

A RESOLUTION ADOPTING A FEE SCHEDULE FOR APPLICATIONS FOR MATTERS BROUGHT BEFORE THE LAND USE ADMINISTRATIVE OFFICIAL, HISTORIC PRESERVATION COMMISSION, PLANNING AND ZONING COMMISSION, SUBDIVISION REVIEW COMMITTEE, TECHNICAL ADVISORY COMMITTEE, AND ZONING BOARD OF APPEALS AND REPEALING RESOLUTION NUMBER 14462

WHEREAS, Sections 12-4-8, 17-4-5, 17-4-10, 17-4-12, 17-4-29, 17-4-32, 17-4-65, 17-5-37, 17-5-38, 17-6-5, 17-8-13, and 17-12-6 of the Pueblo Municipal Code provide that City Council shall by Resolution establish a schedule of fees, charges and expenses for applications before the Historic Preservation Commission, Land Use Administrative Official, Planning and Zoning Commission, Subdivision Review Committee, Technical Advisory Committee, and Zoning Board of Appeals; and,

WHEREAS, the Pueblo City Council hereby finds and determines that the following fee schedule is fair and reasonable in relation to the cost and expense, both direct and indirect, in providing the identified services and processing the application; NOW, THEREFORE,

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

SECTION 1.

In addition to all related costs including postage, legal notices and court reporter fees, the following fee schedule is hereby adopted for applications and certificate requests made to the Land Use Administrative Official (LUA), the Historic Preservation Commission (HPC), the Planning and Zoning Commission (PZ), the Subdivision Review Committee (SRC), the Technical Advisory Committee (TAC), and the Zoning Board of Appeals (ZBA):

Applications	Fees	
Accessory Structure (one, two, or three-family residence)	\$25	LUA
Administrative Determination	\$150	LUA
Annexation	\$500 + \$5 for each acre over 10 acres	PZ
Annexation Agreement Amendment	\$500	LUA
Appeal of Administrative Determination	\$600	ZBA
Awning Over Right of Way	\$25	LUA
Certificate of Appropriateness:		HPC
• Residential (historic landmark)	\$75	
• Non-residential (historic landmark)	\$150	

Certificate of Economic Hardship (related to Certificate of Appropriateness)	\$75	HPC
Certificate of Zoning, or Legal Nonconforming Lot, Structure, or Use	\$50	LUA
Commercial Site Plan	<ul style="list-style-type: none"> • Landscape Verification: \$0 1st Visit, \$150 2nd Visit, \$300 3rd Visit or More • Large-Scale Development: \$1,000 ≤ 100,000 sf, \$1,500 >100,000 sf • Lighting Plan Review: \$50 • Site Plan Review: \$200 • Tenant Finish or Exterior Remodel (without addition that increases building footprint nor site improvements): \$50 	LUA
Continuation of Public Hearing	\$50	ALL
Demolition <ul style="list-style-type: none"> • Non-residential structure • Residential Structure 	<ul style="list-style-type: none"> • \$150 • \$25 	LUA
Demolition Permit Review (designated historic)	\$150	HPC
Extension of Recordation Deadline	\$40	PZ
Limited Use Permit	\$500	ZBA
Marijuana Certificate of Location (cannabis)	\$500	LUA
Marijuana (Retail or Medical) Conditional Use Permit or Renewal (cannabis)	<ul style="list-style-type: none"> • \$5,000 (medical center, retail store, retail or medical cultivation facility, retail or medical infused product manufacturing) • \$2,500 (retail or medical testing facility) 	LUA
Metropolitan District Service Plan Review	• \$500, plus hourly rate for legal review	
Nomination of Historic District or Landmark	\$150	HPC
Overall Development Plan	\$500 + \$5 For each acre over 10 acres <i>(Note: waived if required as part of an annexation)</i>	PZ
Planned Unit Development, Development Guide/Plan Amendment	\$500	PZ
Planned Unit Development, Site Plan Review or Major Revision	<ul style="list-style-type: none"> • \$500 1st 50,000 sf • \$500 Each additional 50,000 sf 	PZ

Planned Unit Development, Site Plan Review, Minor Revision	<ul style="list-style-type: none"> • \$250 Dimensional • \$100 Landscape • \$150 Location • \$200 Parking 	TAC
Public Notice Fees	<ul style="list-style-type: none"> • \$1 Postcard for each address • \$3 PZ poster • \$1 ZBA poster • Legal advertisement calculation based on number of cases per meeting. 	ALL
Rearrangement of Property Boundaries	\$125	SRC
Residential, New Construction or Addition (one, two, or three-family residence)	\$25	LUA
Rezonning <ul style="list-style-type: none"> • A-1 • A-2 • A-3 • A-4 • R-1, R-2, R-2U, R-3, R-4, R-5, R-6 & R-8 • R-7 • O-1, B-1, B-2, B-3, B-4, BP, I-1, I-2, I-3 • H-B, HARP1, HARP2, HARP3 • CCN, RCN • S-1, S-2, S-3, S-4, S-5 • MPCD, PUD 	<ul style="list-style-type: none"> • \$90 + \$0.65 per acre (0-100 acres) + 0.40 each additional acre • \$90 + \$4 per acre • \$90 + \$18 per acre • \$90 + \$35 per acre • \$90 + \$75 1st acre + \$20 each additional acre • \$90 + \$150 1st acre + \$40 each additional acre • \$90 + \$125 1st acre + \$30 each additional acre • \$90 + \$125 1st acre + \$30 each additional acre • \$90 + \$125 1st acre + \$30 each additional acre • \$90 + \$25 1st acre + \$10 each additional acre • \$500 base fee + \$50 per acre 	PZ
Sign Plan Review	\$95	LUA
Special Area Plan	\$75	PZ
Special Use Permit (Use by Review) <ul style="list-style-type: none"> • Special Use Permit-Childcare Home/Childcare Center 	\$500 No application fee, public notice fees are applicable	ZBA
Specially Requested Hearing (ZBA)	\$1,000	ZBA
Specially Requested Hearing (HPC)	\$150	HPC
Street Name Change	\$175	PZ
Student Housing, Site Plan or Major Revision	\$500 (1 st 50,000 sf) + \$500 (each additional 50,000 sf)	PZ
Student Housing, Minor Revision	\$100	TAC
Subdivision	<ul style="list-style-type: none"> • \$90 + \$160 per Lot (≤ 10), \$105 Plus per Lot ($\geq 11$) • \$90 Deferred Filing • \$50 Deferred Filing Plus per Lot • \$190 Final or Amendment to Recorded Plat 	PZ

Vacation (of street, alley, or other public way)	<ul style="list-style-type: none"> • \$250 Alley (if not included with Road Vacation) • \$175 Easement • \$325 Road <i>(Note: fees per plat)</i>	PZ
Variance	<ul style="list-style-type: none"> • \$750 Non-Residential • \$250 Residential 	ZBA
Wireless Communication Facilities, (Tower or Antenna,) New or Modification	\$500	LUA

SECTION 2.

Beginning January 1, 2023, the fees contained in this Resolution will be adjusted annually based on the rate of inflation and rounded to the nearest whole number.

SECTION 3.

The City of Pueblo is hereby exempt from the payment of fees established by this Resolution.

SECTION 4.

Resolution Number 14462 is hereby repealed as of February 14, 2022.

SECTION 5.

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

SECTION 6.

This Resolution shall become effective immediately upon final approval.

INTRODUCED February 14, 2022

BY: Larry Atencio
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

FEE SCHEDULE

Applications	Fees	Type
Accessory Structure (one, two, or three-family residence)	\$25	LUA
Administrative Determination	\$150	LUA
Annexation	\$500 + \$5 for each acre over 10 acres	PZ
Appeal of Administrative Determination	\$600	ZBA
Awning Over Right of Way	\$25	LUA
Certificate of Appropriateness, Residential (designated historic)	\$75	HPC
Certificate of Economic Hardship (related to Certificate of Appropriateness)	\$75	HPC
Certificate of Zoning, or Legal Nonconforming Lot, Structure, or Use	\$50	LUA
Child Care Home (conditional use permit)	\$150	LUA
Commercial Site Plan	<ul style="list-style-type: none"> • Landscape Verification: \$0 1st Visit, \$150 2nd Visit, \$300 3rd Visit or More • Large-Scale Development: \$1,000 ≤ 100,000 sf, \$1,500 >100,000 sf • Lighting Plan Review: \$50 • Site Plan Review: \$200 • Tenant Finish or Exterior Remodel (without addition that increases building footprint nor site improvements): \$50 	LUA
Continuation of Public Hearing	\$50	ALL
Demolition	<ul style="list-style-type: none"> • \$150 Non-Residential Structure • \$25 Residential Structure 	LUA
Demolition Permit Review (designated historic)	\$150	HPC
Extension of Recordation Deadline	\$40	PZ
Limited Use Permit	<ul style="list-style-type: none"> • \$150 Child Care Home • \$500 All Others 	ZBA
Marijuana Certificate of Location (cannabis)	\$500	LUA

Marijuana Limited Use Permit, Minor Revision (cannabis)	\$150	LUA
Marijuana (Retail or Medical) Conditional Use Permit or Renewal (cannabis)	<ul style="list-style-type: none"> • \$5,000 (medical center, retail store, retail or medical cultivation facility, retail, or medical infused product manufacturing) • \$2,500 (retail or medical testing facility) 	LUA
Nomination of Historic District or Landmark	\$150	HPC
Overall Development Plan	\$500 + \$5 For each acre over 10 acres <i>(Note: waived if part of annexation)</i>	PZ
Planned Unit Development, Development Guide Amendment	\$500	PZ
Planned Unit Development, Site Plan Review or Major Revision	<ul style="list-style-type: none"> • \$500 1st 50,000 sf • \$500 Each additional 50,000 sf 	PZ
Planned Unit Development, Site Plan Review, Minor Revision	<ul style="list-style-type: none"> • \$250 Dimensional • \$100 Landscape • \$150 Location • \$200 Parking 	TAC
Public Notice Fees	<ul style="list-style-type: none"> • \$1 Postcard for each address • \$3 PZ poster • \$1 ZBA poster • Legal advertisement calculation based on number of cases per meeting. 	ALL
Rearrangement of Property Boundaries	\$125	SRC
Residential, New Construction or Addition (one, two, or three-family residence)	\$25	LUA
Rezoning to: <ul style="list-style-type: none"> • A-1 • A-2 • A-3 • A-4 • R-1, R-2, R-3, R-4, R-5, R-6 & R-8 • R-7 • O-1, B-1, B-2, B-3, B-4, I-1, I-2, I-3 • H-B, HARP1, HARP2, HARP3 • CCN, RCN • S-1, S-2, S-3, S-4 • MPCD, PUD 	<ul style="list-style-type: none"> • \$90 + \$0.65 per acre (0-100 acres) + 0.40 each additional acre • \$90 + \$4 per acre • \$90 + \$18 per acre • \$90 + \$35 per acre • \$90 + \$75 1st acre + \$20 each additional acre • \$90 + \$150 1st acre + \$40 each additional acre • \$90 + \$125 1st acre + \$30 each additional acre • \$90 + \$125 1st acre + \$30 each additional acre • \$90 + \$125 1st acre + \$30 each additional acre • \$90 + \$25 1st acre + \$10 each additional acre • \$500 base fee + \$50 per acre 	PZ

Show Cause Hearing (related to Use by Review)	\$1,000	ZBA
Special Area Plan	\$75	PZ
Special Use Permit (Use by Review)	\$500	ZBA
Specially Requested Hearing (ZBA)	\$1,000	ZBA
Specially Requested Hearing (HPC)	\$150	HPC
Street Name Change	\$175	PZ
Student Housing, Site Plan or Major Revision	\$500 (1 st 50,000 sf) + \$500 (each additional 50,000 sf)	PZ
Student Housing, Minor Revision	\$100	TAC
Subdivision	<ul style="list-style-type: none"> • \$90 + \$160 per Lot (≤ 10), \$105 Plus per Lot ($\geq 11$) • \$90 Deferred Filing • \$50 Deferred Filing Plus per Lot • \$190 Final or Amendment to Recorded Plat 	PZ
Vacation (of street, alley, or other public way)	<ul style="list-style-type: none"> • \$250 Alley (if not included with Road Vacation) • \$175 Easement • \$325 Road <p><i>(Note: fees per plat)</i></p>	PZ
Variance	<ul style="list-style-type: none"> • \$750 Non-Residential • \$250 Residential 	ZBA
Wireless Communication Facilities, (Tower or Antenna,) New or Modification	\$500	LUA
<p>Note: Fees subject to periodic change with City Council approval and additional fees may be required to pay for postage, legal notices and court reporter, if applicable.</p> <p style="text-align: right;">Revised 11-19-20</p>		



**Background Paper for Proposed
RESOLUTION**

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council
CC: Nicholas A. Gradisar, Mayor
VIA: Marisa Stoller, City Clerk
FROM: Alyssa Parga, Secretary to the Mayor
SUBJECT: A RESOLUTION RATIFYING THE APPOINTMENT OF JEFF CHOSTNER TO THE FOUNTAIN CREEK WATERSHED FLOOD CONTROL AND GREENWAY DISTRICT GOVERNING BOARD - JOINT CITY-COUNTY CITIZEN AT LARGE APPOINTMENT

SUMMARY:

This Resolution ratifies the appointment made by PACOG to the Fountain Creek Watershed Flood Control and Greenway District Governing Board.

PREVIOUS COUNCIL ACTION:

Joint City-County appointments to the Fountain Creek Watershed Flood Control and Greenway District Governing Board are made on an annual basis selecting individuals to serve two-year terms expiring on January 31st of each year. Resolutions to ratify the joint appointments are passed by each entity.

BACKGROUND:

Due to the term expiration of Incumbent Jeff Chostner, there is one appointment available to serve a two-year term expiring January 31, 2024 on the Fountain Creek Watershed Flood Control and Greenway District Governing Board Joint City-County Citizen At Large.

Following advertisements in the Pueblo Chieftain and on the City Website, applications were received from Jeff Chostner and Charles Finley.

Applications were reviewed at the PACOG meeting held on January 27, 2022, and Jeff Chostner was selected for appointment.

FINANCIAL IMPLICATIONS:

This a volunteer committee and members serve without compensation.

STAKEHOLDER PROCESS:

None.

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:

Proposed Resolution

Applications

RESOLUTION NO. 14809

A RESOLUTION RATIFYING THE APPOINTMENT OF
JEFF CHOSTNER TO THE FOUNTAIN CREEK
WATERSHED FLOOD CONTROL AND GREENWAY
DISTRICT GOVERNING BOARD - JOINT CITY-COUNTY
CITIZEN AT LARGE APPOINTMENT

WHEREAS, PACOG duly convened and appointed Jeff Chostner to a two-year term expiring on December 31, 2024:

WHEREAS, 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 Jeff Chostner to Fountain Creek Watershed Flood Control and Greenway District Governing Board to serve a two-year term expiring December 31, 2024, shall be and hereby are ratified

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 February 14, 2022

BY: Larry Atencio
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

From: noreply@civicplus.com
To: [CityAdmin](#)
Subject: [External] Online Form Submittal: BOARDS & COMMISSIONS Application
Date: Tuesday, January 11, 2022 9:18:31 AM

External email. Please use caution.

BOARDS & COMMISSIONS Application

BOARDS & COMMISSIONS
Application for Appointment

(Section Break)

DATE 1/11/2022

BOARD OR COMMISSION Fountain Creek Flood Control & Greenway Dist.

Contact Information

FIRST NAME Jeff

LAST NAME Chostner

HOME ADDRESS 701 Court Street

CITY Pueblo

STATE Colorado

ZIP 81003

OFFICE ADDRESS 701 Court Street

CITY Pueblo

STATE Colorado

ZIP 81003

DAYTIME PHONE *Field not completed.*

E-MAIL ADDRESS chostner@pueblocounty.us

ARE YOU CURRENTLY EMPLOYED WITH NO

THE CITY OF
PUEBLO?

OCCUPATION (or if
RETIRED, your
previous occupation)

District Attorney, 10th Judicial District

Questionnaire

Please complete the following general information.

1. Please list your
areas of
accomplishments that
you feel could assist
the mission of this
Board or Commission.

I helped create the District through Colorado statute in 2009 and was its Chairman. I previously worked with the Fountain Creek Task Force from 2006 through 2008.

2. Why are you
interested in being
appointed to this Board
or Commission?

I am interested in all things "water" in Colorado but particularly Southern Colorado.

3. What Goals would
you like to see this
Board or Commission
accomplish?

As The District is a taxing entity, i would like to see a continuing revenue stream created for the District through a tax initiative in the near future.

4. List any other items
that might be useful in
consideration for your
appointment to this
Board or Commission.

N/A

(Section Break)

Upload résumé,
references and/or other
pertinent information

[Chostner Bio Long Form \(rev 2021\).docx](#)

Email not displaying correctly? [View it in your browser.](#)



**PERSONAL BIOGRAPHY
OF
COLONEL J.E. (Jeff) CHOSTNER
USAF, RETIRED**

Colonel Jeff Chostner is a native of Pueblo, Colorado, having graduated from East High School in 1969. While at East he was student body president. He was inducted into the East High School Hall of Fame in March 2001.

Colonel Chostner accomplished his undergraduate studies at the University of Colorado, graduating in 1973 with a double major in History and English and minor in Political Science. Colonel Chostner enrolled in Air Force ROTC and attended the University of Mississippi Law School. He graduated from Law School in May 1980 and entered active duty in August 1980 as a member of the Judge Advocate General's Department. His duty stations and positions held are as follows:

Altus AFB, Oklahoma	Aug 80 - Feb 83	Assistant SJA & Area Defense Counsel
Davis-Monthan AFB, AZ	Feb 83 - Oct 84	Chief, Adverse Actions
McChord AFB, WA	Oct 84 - Jan 86	Circuit Defense Counsel
RAF Lakenheath, England	Jan 86 - May 88	Deputy Staff Judge Advocate
RAF Mildenhall, England	May 88 - May 90	Chief Military Justice
Loring AFB, Maine	June 90 - July 92	Staff Judge Advocate
Canon AFB, New Mexico	July 92 - Jan 95	Staff Judge Advocate
MacDill AFB, Florida	Jan 95 - May 97	Deputy Staff Judge Advocate, US CENTCOM
Bolling AFB, DC	May 97 - Aug 98	Special Asst to Judge Advocate General
Bolling AFB, DC	Aug 98 - July 00	Staff Judge Advocate
Eskan Village, Saudi Arabia	July 00 - July 01	Staff Judge Advocate

Colonel Chostner prosecuted or defended nearly 200 courts-martial during his career. Additionally, he served as counsel on administrative demotion and discharge boards as well as Flying Evaluation Boards. In 1986, Colonel Chostner was Deputy Staff Judge Advocate at RAF Lakenheath during Operation ELDORADO CANYON, the bombing of Libya. He handled the estate work for the widows of the downed aircrew. His interest in Operations Law led to his assignment at United States Central Command (USCENTCOM) where he was intimately involved in Operations VIGILENT SENTINEL, VIGILENT WARRIOR, DESERT STRIKE, and DESERT FOCUS. After this experience, he was assigned as Special Assistant to the Judge Advocate General of the United States Air Force (TJAG), where he advised TJAG on methods of implementing Law of War and operations law training for all members of the Air Force JAG Department.

Colonel Chostner has managed four of the largest legal offices in the USAF. He led an award winning office, having one installation office named the Outstanding Air Force Judge Advocate office twice. Most recently, as the Staff Judge Advocate to the Commander Joint Task Force-South West Asia, he was the senior legal officer for all DOD forces in the Persian Gulf area. In this role he provided legal counsel on rules of engagement and international law issues with regard to Operation SOUTHERN WATCH, the UN mission enforcing the "no-fly zone" over southern Iraq.

Colonel Chostner retired on 1 November 2001, with nearly 22 years of active duty time. He is a graduate of Air War College. His awards include:

Legion of Merit

Defense Meritorious Service Medal

Air Force Meritorious Service Medal (with four oak leaf clusters)

Air Force Commendation Medal (with three oak leaf clusters)

Navy Joint Meritorious Unit Commendation

Presidential Unit Citation (with one oak leaf cluster)

Outstanding Unit Award (with two oak leaf clusters)

Colonel Chostner has served with El Pueblo Boys and Girls Ranch, the Rosemount Museum, the Bessemer Historical Society, and the Pueblo Medal of Honor Society. Additional, he is the former President of the Air Force Association, Counsel to the Colorado G.I. Forum, a member of the Retired Officers Association, and the American Legion. He is a member of the Colorado State University-Pueblo President's Advisory Council. He was instrumental in organizing the 2002 Veteran's Day Parade in Pueblo, Colorado - the first since 1968. Colonel Chostner is a member of the East High School Site Council and helped create the East High School Alumni Foundation.

As the Pueblo County representative, Commissioner Chostner served as Chairman for the Fountain Creek Watershed, Flood Control and Greenway District. He also served on: the Historic Arkansas Riverwalk of Pueblo Authority, Pueblo Advisory Council on Aging (PACA), Pueblo Area Council of Governments (PACOG), Pueblo Economic Development Corporation (PEDCO), Colorado Rural Workforce Consortium Board, National Association of Counties' [NACO] Health Steering Committee, NACO Transportation Steering Committee, Desert Hawk Golf Course Management Board, Pueblo Airport Advisory Committee, 2010 Commission, and the Community Services Block Grant.

Colonel Chostner was elected to the Pueblo City Council in November 2003 and served until December 2006. In November 2006 he was elected Pueblo County Commissioner; and was re-elected in November 2010. In November 2012 Colonel Chostner was elected District Attorney for the Tenth Judicial District. He was re-elected to that position in November 2016 and 2020.

Colonel Chostner is married to the former Paula Scoles of Mead, Nebraska, whom he met at the University of Mississippi. Mrs. Chostner has a Master's Degree in French Language, conferred by the University of Nebraska. They have two daughters, Kirsten Westbrook and Michelle McCarthy. Kirsten is married to Charles, has three children, and lives in Tampa, Florida. Michelle is married to Kyle. They reside in Pueblo and have three children. Mrs. Chostner is retired from School District 60 and was employed by United Way of Pueblo County as the Director of Fund Development & Campaign.

From: noreply@civicplus.com
To: [CityAdmin](#)
Subject: [External] Online Form Submittal: BOARDS & COMMISSIONS Application
Date: Tuesday, January 4, 2022 3:57:01 PM

External email. Please use caution.

BOARDS & COMMISSIONS Application

BOARDS & COMMISSIONS Application for Appointment

(Section Break)

DATE 1/4/2022

BOARD OR COMMISSION Fountain Creek Flood Control & Greenway Dist.

Contact Information

FIRST NAME Charles

LAST NAME Finley

HOME ADDRESS 4 Bellflower Court

CITY Pueblo

STATE Colorado

ZIP 81001

OFFICE ADDRESS 4 Bellflower Court (residence)

CITY Pueblo

STATE Colorado

ZIP 81001

DAYTIME PHONE 7195430003

E-MAIL ADDRESS finley5@mindspring.com

ARE YOU CURRENTLY EMPLOYED WITH *Field not completed.*

THE CITY OF
PUEBLO?

OCCUPATION (or if
RETIRED, your
previous occupation)

Retired - Planning and Economic Development

Questionnaire

Please complete the following general information.

1. Please list your
areas of
accomplishments that
you feel could assist
the mission of this
Board or Commission.

I served on the Fountain Creek District's Monetary Mitigation Fund (MMF) Advisory Committee for the past 4+ years representing Pueblo County's Department of Planning and Development, ending my appointment in December 2021. The MMF evaluates and recommends projects to be funded using the \$50 million paid by Colorado Springs Utilities to the Pueblo County pursuant to its 1041 Permit. I came to Pueblo in 1973 to work at the Pueblo Regional Planning Commission, and agency of the Pueblo Area Council of Governments (PACOG). At the time Regional Planning was the only planning agency and I provide direct services to the City, County, both School Districts, and the Board of Water Works. One of my earliest projects was assisting the City in its efforts to adopt flood plain management controls along the Fountain Creek so that Federal mortgage programs would be available for properties within the floodplain. Much of the City's effort was headed by now-Councilman Flores. In the mid-1970s I assisted in writing the regions first (EPA Clean Water Act) Section 208 Water Quality Management Plan of the Pueblo Region, and in 1977-78 shepherded the Plan through adoption by PACOG, Colorado Water Quality Control Commission, and EPA. The City and County created their own planning departments, and I chose to join the County's Department of Planning and Development, where I wrote the first amendment to the 208 Water Quality Plan. I was the County' Planning Director and Flood Plain Administrator for many years. I let in 1991 to become the first Executive Director of the Pueblo Depot Activity Development Authority (nka PuebloPlex). In that capacity I oversaw the reuse of the military installation and led many construction and renovation projects. With retirement in 2013, I have been able to continue my volunteer community work, first serving on Pueblo County's Liquor and Marijuana Licensing Board for 3 years. I also served on the committee drafting a Fountain Creek E. coli management plan that was adopted after 3 years of work as the Fountain Creek Watershed EPA Nine-Element Plan for the Management of E. Coli.

2. Why are you
interested in being
appointed to this Board
or Commission?

I want to continue my 50-year interest in the opportunities that the Fountain Creek watershed has to offer the citizens of Pueblo and El Paso Counties, including protecting and improving the environment, health and safety for all who access the watershed. My home has been in the City of Pueblo since I arrived in 1973,

and for the past 20 years it is about 300 feet east of the Fountain Creek - it is very much a part of my very fabric.

3. What Goals would you like to see this Board or Commission accomplish?

Fountain Creek faces 3 issues throughout the District: flooding, erosion, and water quality. These can not be addressed on a government-by-government basis, they do not begin and end at the county line or city limits. Only a unified district wide approach can undertake and solve the problems that are associated with these issues. Many of the solutions require programmatic funding, construction funding, and on-going monitoring, maintenance, and repair. Securing a dedicated revenue stream for the District is of utmost importance.

The "greenway" aspect of Fountain Creek is often the stepchild in discussions. As our region (and our lives) become more congested, the Fountain Creek will emerge as an important component of our mental and physical health. The City of Pueblo has done a great first phase with its trail systems on both the Fountain Creek and Arkansas River, as has Pueblo West, Lake Pueblo, and Colorado City. But the between the City of Pueblo and Colorado Springs has many missing links. I have attended many greenway-related meetings and reviewed colorful paper plans on where and how we proceed to implement the greenway. The time for action is soon to be upon us.

4. List any other items that might be useful in consideration for your appointment to this Board or Commission.

I sincerely desire this appointment to the Fountain Creek Flood Control and Greenway District.

(Section Break)

Upload résumé, references and/or other pertinent information

Field not completed.

Email not displaying correctly? [View it in your browser.](#)



**Background Paper for Proposed
RESOLUTION**

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council
CC: Nicholas A. Gradisar, Mayor
VIA: Marisa Stoller, City Clerk
FROM: Alyssa Parga, Secretary to the Mayor
SUBJECT: A RESOLUTION APPOINTING COUNCILOR LARRY ATENCIO TO THE PUEBLO DEVELOPMENT FOUNDATION BOARD OF DIRECTORS

SUMMARY:

This Resolution appoints City Council Member Larry Atencio to the Pueblo Development Foundation Board of Directors for a term expiring January 31, 2023.

PREVIOUS COUNCIL ACTION:

Resolution No. 14797, section 10, dated January 24, 2022 appointed Dennis Flores to the Pueblo Development Foundation Board of Directors. Mr. Flores has resigned from this position.

BACKGROUND:

Annual appointments are made assigning a City Council representative to serve on Boards and Commissions where it is either required by legislation that a Council Member be a member, or it has been the policy to have a Council Member serve on a particular Board or Commission. The existing appointee, Dennis Flores, has resigned from this position, requiring a new appointment.

FINANCIAL IMPLICATIONS:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

A no-action option would leave this position vacant. City Council also has the option of appointing a member of City Council, other than Mr. Atencio to the Board.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

Proposed Resolution

RESOLUTION NO. 14810

A RESOLUTION APPOINTING COUNCILOR LARRY ATENCIO
TO THE PUEBLO DEVELOPMENT FOUNDATION BOARD OF
DIRECTORS

WHEREAS, on January 24, 2022, City Council confirmed the appointment of Dennis Flores to the Pueblo Development Foundation Board of Directors for a one-year term expiring January 31, 2023; and

WHEREAS, Councilor Flores has since resigned from this position; NOW, THEREFORE,

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

SECTION 1.

The following individual is hereby appointed to the Pueblo Development Foundation Board of Directors for a term expiring January 31, 2023:

Larry Atencio

SECTION 2.

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

SECTION 3.

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

INTRODUCED February 14, 2022

BY: Larry Atencio
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



**Background Paper for Proposed
RESOLUTION**

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council
CC: Nicholas A. Gradisar, Mayor
VIA: Marisa Stoller, City Clerk
FROM: Alyssa Parga, Secretary to the Mayor
SUBJECT: A RESOLUTION CONFIRMING THE APPOINTMENT BY THE MAYOR OF ROBERT CHILDERS TO COMPLETE A THREE-YEAR TERM EXPIRING SEPTEMBER 30, 2023 ON THE PUEBLO MEMORIAL AIRPORT ADVISORY COMMITTEE

SUMMARY:

This Resolution confirms the appointment by the Mayor of a member to complete a three-year term expiring September 30, 2023 on the Pueblo Memorial Airport Advisory Committee.

PREVIOUS COUNCIL ACTION:

City Council has made appointments to the Pueblo Memorial Airport Advisory Committee selecting individuals to serve terms which expire during a calendar year. Amended City Charter Section 4-4 (i) now requires that such appointments be made by the Mayor, subject to confirmation by City Council.

BACKGROUND:

Due to the resignation of Jamie Burt, there is an appointment available to complete a three-year term on the Pueblo Memorial Airport Advisory Committee.

The application was reviewed by Mayor Gradisar who has appointed Robert Childers to complete a three-year term expiring September 30, 2023.

FINANCIAL IMPLICATIONS:

This a volunteer committee and members serve without compensation.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Remove from agenda and re-advertise for additional applications.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

Proposed Resolution
Application

RESOLUTION NO. 14811

A RESOLUTION CONFIRMING THE APPOINTMENT BY THE MAYOR OF ROBERT CHILDERS TO COMPLETE A THREE-YEAR TERM EXPIRING SEPTEMBER 30, 2023 ON THE PUEBLO MEMORIAL AIRPORT ADVISORY COMMITTEE

WHEREAS, Mayor Nicholas A. Gradisar has requested confirmation by the City Council of his appointment of Robert Childers to serve on the Pueblo Memorial Airport Advisory Committee; NOW, THEREFORE,

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

SECTION 1.

The appointment by the Mayor of the following individual to the Pueblo Memorial Airport Advisory Committee to complete a three-year term expiring September 30, 2023 shall be and is hereby confirmed by the City Council:

Robert Childers

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 February 14, 2022

BY: Larry Atencio
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

From: noreply@civicplus.com
To: [CityAdmin](#)
Subject: [External] Online Form Submittal: BOARDS & COMMISSIONS Application
Date: Friday, January 21, 2022 12:27:41 PM

External email. Please use caution.

BOARDS & COMMISSIONS Application

BOARDS & COMMISSIONS Application for Appointment

(Section Break)

DATE	1/21/2022
BOARD OR COMMISSION	Airport Advisory Committee
Contact Information	
FIRST NAME	Robert
LAST NAME	Childers
HOME ADDRESS	1705 E 12th Street
CITY	Pueblo
STATE	Colorado
ZIP	81001
OFFICE ADDRESS	1705 E 12th Street
CITY	Pueblo
STATE	CO
ZIP	81001
DAYTIME PHONE	402-740-7043
E-MAIL ADDRESS	cobrargc@gmail.com
ARE YOU CURRENTLY EMPLOYED WITH	NO

THE CITY OF
PUEBLO?

OCCUPATION (or if
RETIRED, your
previous occupation)

Small engine technician

Questionnaire

Please complete the following general information.

1. Please list your
areas of
accomplishments that
you feel could assist
the mission of this
Board or Commission.

I do not have any accomplishments as this is my first venture into public service.

2. Why are you
interested in being
appointed to this Board
or Commission?

I strongly believe in public service. I'd like to make our city better and more attractive to others outside our community.

3. What Goals would
you like to see this
Board or Commission
accomplish?

To bring more awareness to what our airport has to offer those in Pueblo and beyond our border.

4. List any other items
that might be useful in
consideration for your
appointment to this
Board or Commission.

Field not completed.

(Section Break)

Upload résumé,
references and/or other
pertinent information

Field not completed.

Email not displaying correctly? [View it in your browser.](#)



**BACKGROUND PAPER FOR PROPOSED
RESOLUTION**

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council
VIA: Marisa Stoller, City Clerk
FROM: Mayor Nicholas A. Gradisar
SUBJECT: A RESOLUTION CONFIRMING THE APPOINTMENT OF BARBARA HUBER TO THE POSITION OF DEPUTY MAYOR

SUMMARY:

The Mayor has appointed Barbara Huber to the position of Deputy Mayor and requests confirmation of said appointment by the City Council. Such appointment is based on Ms. Huber's education, training, experience and fitness for the position.

PREVIOUS COUNCIL ACTION:

City Council confirmed the appointment of Fire Chief Barbara Huber to the position of Deputy Mayor on April 26, 2021 following the retirement of Chief Troy Davenport.

BACKGROUND:

Mayor Gradisar has appointed Barbara Huber, who currently serves as the City's Fire Chief, to serve as Deputy Mayor for 2022. Ms. Huber has served as Fire Chief since August 2019. She has worked with the Pueblo Fire Department for just over 24 years. She has a Bachelor of Science from Colorado State University (2003) in Fire Management and retired from the U.S. Airforce reserves after 20 years of service in 2004 as an E-7.

FINANCIAL IMPLICATIONS:

Ms. Huber will continue to serve as Fire Chief and will not receive additional compensation as Deputy Mayor.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Resolution.

STAKEHOLDER PROCESS:

Not applicable to this Resolution.

ALTERNATIVES:

Failure to confirm the appointment of the Deputy Mayor will result in that position remaining vacant.

RECOMMENDATION:

Approval of the Resolution.

Attachments:

Proposed Resolution

RESOLUTION NO. 14812

A RESOLUTION CONFIRMING THE APPOINTMENT OF
BARBARA HUBER TO THE POSITION OF DEPUTY MAYOR

WHEREAS, Section 4-5 of the City Charter requires that the Mayor appoint a Deputy Mayor on an annual basis; and

WHEREAS, Mayor Nicholas A. Gradisar has requested confirmation by the City Council of his appointment of Barbara Huber to the position of Deputy Mayor; and

WHEREAS, Ms. Huber meets and surpasses the qualifications for appointment as the Deputy Mayor, for a second term, based upon her education, training and experience; NOW, THEREFORE,

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

SECTION 1:

The appointment by the Mayor of Barbara Huber as Deputy Mayor shall be and hereby is confirmed by the City Council.

SECTION 2:

This appointment shall begin on January 1, 2022 and terminate on December 31, 2022 unless the Mayor reappoints Ms. Huber to the position of Deputy Mayor.

SECTION 3:

The officers and staff of the City are authorized to perform any and all acts consistent with this Resolution and the attached agreements which are necessary or appropriate to implement the appointment described herein.

SECTION 4:

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED February 14, 2022

BY: Larry Atencio
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council

VIA: Marisa Stoller, City Clerk

FROM: Nicholas A. Gradisar, Mayor

SUBJECT: AN ORDINANCE APPROVING AND ACCEPTING A GRANT AGREEMENT BETWEEN THE CITY OF PUEBLO AND THE STATE OF COLORADO DEPARTMENT OF LAW, ON BEHALF OF THE OFFICE OF COMMUNITY ENGAGEMENT, FOR A GRANT AWARD IN THE AMOUNT OF \$250,000 TO THE PUEBLO FOOD PROJECT, CREATING PROJECT NO. CI2207, AND BUDGETING AND APPROPRIATING \$250,000 TO PROJECT NO. CI2207

SUMMARY:

Attached is an Ordinance approving and authorizing the City to accept a grant agreement in the amount of \$250,000.00 from the State of Colorado Department of Law, on behalf of the Office of Community Engagement, for the hiring of a program manager, development of a Healthy Community Meal Prep Program, support for the ongoing efforts of the Pueblo Fooducates, and to develop a community chicken coop. This Ordinance budgets and appropriates the grant funds into Project No. CI2207.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

The Pueblo Food Project had been awarded \$250,000.00 for the hiring of a program manager, development of a Healthy Community Meal Prep Program, support for the ongoing efforts of the Pueblo Fooducates, and to develop a community chicken coop. This Ordinance budgets and appropriates the grant funds into Project No. CI2207. This Ordinance approves the Grant Agreement therefore.

FINANCIAL IMPLICATIONS:

There are no matching funds required for this grant. The City of Pueblo will receive \$30,897.33 upon passage of the Ordinance for year 1 of the grant cycle. The total grant budget over 5 years for Project No. CI2116CI2207 will be \$250,000.00.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If the proposed Ordinance is not approved, the Pueblo Food Project will not receive the grant funds.

RECOMMENDATION:

Approval of the Ordinance.

Attachments:

Proposed Ordinance

Grant Award Letter and Terms and Conditions

ORDINANCE NO. _____

AN ORDINANCE APPROVING AND ACCEPTING A GRANT AGREEMENT BETWEEN THE CITY OF PUEBLO AND THE STATE OF COLORADO DEPARTMENT OF LAW, ON BEHALF OF THE OFFICE OF COMMUNITY ENGAGEMENT, FOR A GRANT AWARD IN THE AMOUNT OF \$250,000 TO THE PUEBLO FOOD PROJECT, CREATING PROJECT NO. CI2207, AND BUDGETING AND APPROPRIATING \$250,000 TO PROJECT NO. CI2207

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

SECTION 1.

The Grant Award Letter and its Terms and Conditions (“Agreement”) between the City of Pueblo, a Colorado Municipal Corporation, and the Colorado Department of Law, on behalf of the Office of Community Engagement, supporting efforts of the Pueblo Food Project and granting a total of \$250,000.00, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute the Agreement on behalf of the City of Pueblo, where the Mayor may execute the Agreement by electronic signature and such electronic signature shall be attributable to the Mayor and the City of Pueblo, and the City Clerk shall affix the Seal of the City thereto and attest same, as appropriate.

SECTION 3.

Project No. CI2207 for support of the Pueblo Food Project is hereby created.

SECTION 4.

Funds in the amount of \$250,000.00, and any other funds received pursuant to the Agreement or an amendment to the Agreement, shall be accepted pursuant to the Agreement and budgeted and appropriated to Project No. CI2207.

SECTION 5.

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 6.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

Approved on _____.

Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

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

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

President of City Council

ATTEST

City Clerk

GRANT AWARD LETTER

SUMMARY OF GRANT AWARD TERMS AND CONDITIONS

State Agency The Colorado Department of Law, on behalf of the Office of Community Engagement	Agreement Number
Grantee City of Pueblo	Grant Amount State Fiscal Year 2021-2022: \$30,897.33 State Fiscal Year 2022-2023: \$86,438.34 State Fiscal Year 2023-2024: \$43,542.00
Grant Issuance Date The later of February 1, 2022 or the date the State Controller or an authorized delegate signs this Grant Letter	Extension Term State Fiscal Year 2023-2024: \$43,541.99 State Fiscal Year 2024-2025: \$45,580.34
Grant Expiration Date December 31, 2023	Maximum Total for all State Fiscal Years: \$250,000.00
	Grant Authority §24-31-108(4)(a), C.R.S.
Grant Purpose Pueblo Food Project (“PFP”), a project of the City of Pueblo, is a community-led coalition which aims to develop a vibrant, nutritious, and equitable local food system in the City and County of Pueblo. This grant will support PFP programming by increasing capacity to implement existing and new programs for youth and families’ wellbeing and engagement in the local food economy.	
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Grant: <ol style="list-style-type: none"> 1. Exhibit A, Statement of Work. 2. Exhibit B, Budget. 3. Exhibit C, Sample Option Letter 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: <ol style="list-style-type: none"> 1. The provisions of the other sections of the main body of this Grant. 2. Exhibit A, Statement of Work. 3. Exhibit B, Budget. 4. Exhibit C, Sample Option Letter 	

SIGNATURE PAGE

THE SIGNATORIES LISTED BELOW AUTHORIZE THIS GRANT

<p style="text-align: center;">GRANTEE City of Pueblo</p> <hr/> <p style="text-align: center;">By: Nicholas A. Gradisar, Mayor</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor Department of Law Philip J. Weiser, Attorney General</p> <hr/> <p style="text-align: center;">By: Eric Meyer, Chief Operations Officer</p> <p>Date: _____</p>
<p style="text-align: center;">In accordance with §24-30-202 C.R.S., this Grant is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD Department of Law Philip J. Weiser, Attorney General</p> <hr/> <p style="text-align: center;">By: Melissa Moynham, Department of Law, State Controller Delegate</p> <p>Date: _____</p>	

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 Agency, Grantor Agency may, in its sole discretion, extend the term of this Grant or increase or decrease the Grant Amount under this Grant through an Option Letter, Exhibit C, providing the new Expiration Date and/or Grant Amount. Items in Exhibit A, Statement of Work and Exhibit B, Budget that exceed the initial two-year term shall be considered part of the optional extension period.

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. “**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.
- P. “**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.
- Q. “**State Fiscal Rules**” means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.

- R. “**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.
- S. “**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.
- T. “**Subcontractor**” means third-parties, if any, engaged by Grantee to aid in performance of the Work. “Subcontractor” also includes sub-grantees.
- U. “**Work**” means the delivery of the Goods and performance of the Services described in this Grant Award Letter.
- V. “**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. 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.

D. **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 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, all violations of State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Award. The State Awarding Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. GRANTEE RECORDS

A. Maintenance and Inspection

Grantee shall make, keep, and maintain, all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to this Grant for a period of 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. 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. If Grantee or any of its Subcontractors will or may receive the following types of data, Grantee or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Grant as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJ, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Grant, if applicable. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Grantee may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this 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 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 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 or as, 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

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/>.

EXHIBIT A, STATEMENT OF WORK

I. DEFINITIONS

In addition to the terms defined in the Agreement, the following terms shall be construed and interpreted as follows:

- A. “Full-time” means 1.0 FTE, or 40 (forty) hours per week.
- B. “Young Person/Youth” means individuals aged 22 and younger.

II. BACKGROUND

Pueblo Food Project (“PFP”), a project of the City of Pueblo, is a community-led coalition which aims to develop a vibrant, nutritious, and equitable local food system in the City and County of Pueblo. This grant will support PFP programming by increasing capacity to implement existing and new programs for youth and families’ wellbeing and engagement in the local food economy.

III. STATEMENT OF WORK

- A. Program Manager. The City of Pueblo shall hire a Full-time staff member to support day to day activities and administration for PFP during the entire Agreement Term. The Program Manager shall be responsible for all aspects of program management for PFP, which shall include but is not limited to: supporting the PFP community coalition, stakeholder input, program planning and delivery, community engagement, and improving organizational processes.

Deliverable: Hire and complete Program Manager onboarding.

Due: May 1, 2022.

Deliverable: Submit hired Program Manager resume to the State.

Due: May 1, 2022.

Deliverable: Communicate any changes to Program Manager staffing during the Agreement Term to the State, in writing.

Due: Within thirty (30) days of change.

- B. Healthy Community Meal Prep Program. PFP shall pilot a healthy community meal preparation (“meal prep”) program for Pueblo families, during which families will gather as a group to learn the recipe, taste the recipe, and then prepare portions they can take home and use during the work week or other times preparing fresh food is not an option. The goal of the pilot program is to build community, increase cooking skills, advance nutrition awareness, provide a support system for families aiming to improve their diet, and increase the amount of fresh produce consumed.

- 1. Program performance measures:

- a. # of total families participating in monthly session
- b. # of fresh produce prepared and consumed
- c. # of families who participate in more than 1 class
- d. # of families who participate in all classes
- e. # of families who complete monthly challenge for healthy habit
- f. # of social media posts with families enjoying their prepped meals
- g. # of community leaders (chefs, farmers, makers) who collaborate on classes

Deliverable: Once per year, develop a nine (9) month community meal prep curriculum.

Due: March 31, 2022; March 31, 2023; and March 31, 2024.

Deliverable: Host community meal prep sessions each in calendar years 2022, 2023, and 2024, totaling twenty-five (25) sessions throughout the Agreement Term. PFP shall aim to space these out to hold once per month.

Due: One (1) sessions completed for FY22 by June 30, 2022; Ten (10) sessions completed for FY23 by June 30, 2023; nine (9) sessions completed for FY24 by June 30, 2024; and five (5) sessions completed for FY25 by December 30, 2024.

Deliverable: Produce and distribute recipe book to community meal prep participants for the preceding calendar year.

Due: December 31, 2022; December 31, 2023; and December 31, 2024.

Deliverable: Hold community feedback sessions twice each calendar year during implementation of the meal prep program.

Due: December 31, 2022; December 31, 2023; and December 31, 2024.

Deliverable: Compile and submit program report to the State incorporating community feedback sessions and program performance measures.

Due: December 31, 2022; December 31, 2023; and December 31, 2024.

C. Pueblo Fooducates Program. PFP shall implement a youth engagement and leadership development program called Pueblo Fooducates. This youth led program will focus on creating collaborative solutions for improving food systems, with youth participants hosting community sessions and activities, and participating in regional, state, national, and international conversations about community food systems. The Fooducates will host a youth leadership retreat for student leaders to discuss health and nutrition and develop collaborative projects.

1. Program performance measures:

- a. # of young leaders participating in Fooducates
- b. # of families impacted by Fooducates events
- c. Amount of local food delivered into the community (by value and volume)
- d. # of communities represented at the Young Person Food System Leader Retreat
- e. # of collaborative projects started as result of the Young Person Leader Retreat
- f. Improvement of leadership skills resulting from participation in the Fooducates Program as reported in surveys
- g. # of events where Pueblo Fooducates are represented

Deliverable: Host four (4) community learning events each calendar year of 2022, 2023, and 2024.

Due: December 31, 2022; December 31, 2023; and December 31, 2024.

Deliverable: Host the Young Person Food System Leader Retreat in Pueblo October-December, once per calendar year.

Due: December 31, 2022; December 31, 2023; and December 31, 2024.

Deliverable: Fooducates present work to Pueblo City Council in a Work session in April through May each year during the Agreement Term.

Due: June 30, 2022; June 30, 2023; and June 30, 2024.

Deliverable: Submit Fooducates Year in Review annual report, to include reporting on program performance measures.

Due: December 31, 2022; December 31, 2023; and December 31, 2024.

D. Chicken Coop Project. PFP shall determine feasibility for a youth led chicken coop to engage the community in an education and learning opportunity and small community business and, if determined feasible as indicated by achievement of program milestones, implement the project during the Agreement Term with a goal of sustaining the project beyond the Agreement Term.

1. Program milestones:

- a. Written confirmation from community partners to support a youth led chicken coop
- b. Written confirmation from the City Zoning Department approving such an operation
- c. Approval of an implementation plan by the PFP Food and Farm Literacy and Education Working Group
- d. Egg production curriculum complete and signed off by CSU-P Extension

Deliverable: Submit a project feasibility report to the State, including confirmation that all program milestones have been met, and if not, the impact on feasibility and continuing needs.

Due: September 30, 2022.

Deliverable: Submit recommendations to PFP Food and Farm Literacy and Education Working Group.

Due: September 30, 2022.

Deliverable: Submit implementation plan to the State if chicken coop project is deemed feasible.

Due: March 31, 2023.

Deliverable: Submit alternative plan to the State if chicken coop project is not deemed feasible. This shall include meeting with the State to discuss possible alternatives prior to submission of the alternative plan.

Due: March 31, 2023.

Deliverable: Submit project operating and sales report for the preceding calendar year.

Due: December 31, 2023 and December 31, 2024.

Deliverable: Submit project sustainability plan to the State for continuation of the project beyond the Agreement Term.

Due: March 31, 2024.

- E. Program Evaluation. Grantee shall engage a Subcontractor as an evaluation specialist with expertise in program evaluation to review the grant funded programs and determine a plan for continuation and sustainability beyond the Agreement Term.

Deliverable: Submit program evaluation report and sustainability plan to the State.

Due: December 31, 2024.

IV. REPORTING REQUIREMENTS

A. Progress Reports.

Grantee shall submit written Progress Reports to the State with respect to calendar quarters ending September 30 (Q1), December 31 (Q2), March 31 (Q3), and June 30 (Q4) during the Agreement Term, which shall include, but is not limited to:

1. Progress made on grant objectives and deliverables set forth under §III of this Statement of Work and any resulting impact or outcome;
2. Any delays, changes, or relevant new information related to the Services;
3. Any required written reports or other deliverable products due within the reported period; and
4. Other information, as directed by the State.

Deliverable: Written Progress Reports.

Due: Within fifteen (15) days of the end of the reported quarter.

B. Availability.

Grantee shall be available for meetings with the State regarding this grant, upon request by the State.

VI. INVOICING, PAYMENT AND ACCOUNTING

A. Invoicing and Payment Procedures.

Grantee shall submit an invoice to the State for expenditures incurred and paid during the invoiced period in an amount not to exceed the maximum amount payable set forth in each budget line in Exhibit B – Budget.

Invoices shall be submitted within fifteen (15) calendar days of the end of the month covered by the invoice. Invoices submitted for Services performed in June shall be submitted within five (5) calendar days of the end of the month, with supporting documentation due within fifteen (15) calendar days of the end of the month.

Allowable expenditures are set forth in Exhibit B – Budget and must follow State Fiscal Rules.

Grantee shall submit invoices to:

Grants Manager
Office of Community Engagement
OCE.GrantMgmt@coag.gov

The invoice shall contain all of the following for each completed deliverable:

1. Invoice Number;
2. Invoice Date;
3. The total amount payable to Grantee per budget line set forth in Exhibit B - Budget;
4. Supporting documentation equal to 100% of the total net amount owed to Grantee;
5. Other pertinent information necessary to support the invoice, its attachments, summaries, or details;
and
5. Other information, as directed by the State.

B. Accounting.

At all times from the Agreement Effective Date until completion of the Work, Grantee shall maintain properly segregated books of State Funds and other funds associated with the Work. All invoices associated with the performance of Services shall be documented in a detailed and specific manner and shall accord with the Budget set forth in Exhibit B. Grantee shall make and maintain accounting and financial books and records documenting its performance under the Statement of Work in a form consistent with good accounting practices.

EXHIBIT B, BUDGET

GRANT BUDGET SUMMARY

	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>	<u>TOTAL</u>
Personal Services	\$18,333.33	\$44,000.00	\$44,000.00	\$22,000.00	\$128,333.33
Materials/Supplies & Operating Expenses	\$2,684.00	\$26,276.00	\$23,102.00	\$14,388.00	\$66,450.00
Travel	\$620.00	\$3,462.34	\$3,462.34	\$2,842.34	\$10,387.02
Contractual	\$9,260.00	\$12,700.00	\$16,519.65	\$6,350.00	\$44,829.65
FISCAL YEAR TOTAL	\$30,897.33	\$86,438.34	\$87,083.99	\$45,580.34	\$250,000.00

FY22 (Approximately 5 Months)					
Personal Services - Salaried Employees					
Position Title	Description of Work	Gross or Annual Salary	Fringe	Percent of Time on Project	Total
Program Manager	Manage the day to day activities of PFP. City of Pueblo will cover Fringe Benefits.	\$18,333.33	\$0.00	100%	\$18,333.33
Total Personal Services					\$18,333.33

Materials/Supplies & Operating Expenses				
Item	Description of Item	Rate	Quantity	Total
Cooking Lesson Supplies	Supplies for cooking lessons (containers, equipment rental, food, printing) - per event	\$1,174.00	1	\$1,174.00
Fooducate Community Outreach Supplies	Supplies for Fooducate Activities (printing, meeting materials, food and beverages for activities, etc.) - per event	\$1,510.00	1	\$1,510.00
Total Supplies & Operating Expenses				\$2,684.00

Travel				
Item	Description of Item	Rate	Quantity	Total
Gas Cards	Gift cards for gas for activity participants	\$10.00	62	\$620.00
Total Travel				\$620.00

Contractual				
Item	Description of Item	Rate	Quantity (Hours)	Total
Community Chef Instructor	Leader of cooking lessons	\$35.00	12	\$420.00
Community Chef Assistant	Assistant to chef	\$20.00	12	\$240.00
Chicken Coop Consultant	Creates feasibility and implementation plan for chicken coop	\$50.00	100	\$5,000.00
Fooducates paid intern	Youth coordinator for youth group	\$16.00	100	\$1,600.00
Community Meal Prep Curriculum	Consultant to develop curriculum for community meal prep	\$50.00	40	\$2,000.00
Total Contractual				\$9,260.00
SUB-TOTAL BEFORE INDIRECT				\$30,897.33

Total Indirect	\$0.00
TOTAL	\$30,897.33

FY23 (12 Months)					
Personal Services - Salaried Employees					
Position Title	Description of Work	Gross or Annual Salary	Fringe	Percent of Time on Project	Total
Program Manager	Manage the day to day activities of PFP. City of Pueblo will cover Fringe Benefits.	\$44,000.00	\$0.00	100%	\$44,000.00
Total Personal Services					\$44,000.00

Materials/Supplies & Operating Expenses				
Item	Description of Item	Rate	Quantity	Total
Cooking Lesson Supplies	Supplies for cooking lessons (containers, equipment rental, food, printing)	\$1,174.00	10	\$11,740.00
Fooducate Community Outreach Supplies	Supplies for Fooducate Activities (printing, meeting materials, food and beverages for activities, etc.) - per event	\$1,509.00	4	\$6,036.00
Chicken coop supplies	Supplies for chicken coop (building materials, fencing, feed, chicks)	\$4,000.00	1	\$4,000.00
Fooducates Young Person Food System Leader Retreat Supplies	Supplies for hosting Fooducates Leadership Retreat (printing, meeting materials, food and beverages, take homes, etc)	\$4,500.00	1	\$4,500.00
Total Supplies & Operating Expenses				\$26,276.00

Travel				
Item	Description of Item	Rate	Quantity	Total
Gas Cards	Gift cards for gas for activity participants	\$10.00	124	\$1,240.00
Travel support for youth leaders	Travel Support to Young Person Food System Leader Retreat. May include lodging, transportation costs, and meals.	\$138.90	16	\$2,222.34
Total Travel				\$3,462.34

Contractual				
Item	Description of Item	Rate	Quantity (Hours)	Total
Community Chef Instructor	Leader of cooking lessons	\$35.00	40	\$1,400.00
Community Chef Assistants	2 assistants to help chef	\$20.00	40	\$800.00
Chicken Coop Coordinator	Coordinator for youth led chicken coop	\$20.00	365	\$7,300.00
Fooducates paid intern	Youth coordinator for youth group	\$16.00	200	\$3,200.00
Total Contractual				\$12,700.00
SUB-TOTAL BEFORE INDIRECT				\$86,438.34

Total Indirect	\$0.00
TOTAL	\$86,438.34

FY24 (12 Months: July-December 2023, January-June 2024 Extension Term)					
Personal Services - Salaried Employees					
Position Title	Description of Work	Gross or Annual Salary	Fringe	Percent of Time on Project	Total
Program Manager	Manage the day to day activities of PFP. City of Pueblo will cover Fringe Benefits.	\$44,000.00	\$0.00	100%	\$44,000.00
Total Personal Services					\$44,000.00

Materials/Supplies & Operating Expenses				
Item	Description of Item	Rate	Quantity	Total
Cooking Lesson Supplies	Supplies for cooking lessons (containers, equipment rental, food, printing)	\$1,174.00	9	\$10,566.00
Fooducate Community Outreach Supplies	Supplies for Fooducate Activities (printing, meeting materials, food and beverages for activities, etc.) - per event	\$1,509.00	4	\$6,036.00
Chicken coop supplies	Supplies for chicken coop (building materials, fencing, feed, chicks)	\$2,000.00	1	\$2,000.00
Fooducates Young Person Food System Leader Retreat Supplies	Supplies for hosting Fooducates Leadership Retreat (printing, meeting materials, food and beverages, take homes, etc)	\$4,500.00	1	\$4,500.00
Total Supplies & Operating Expenses				\$23,102.00

Travel				
Item	Description of Item	Rate	Quantity	Total
Gas Cards	Gift cards for gas for activity participants	\$10.00	124	\$1,240.00
Travel support for youth leaders	Travel Support to Young Person Food System Leader Retreat. May include lodging, transportation costs, and meals.	\$138.90	16	\$2,222.34
Total Travel				\$3,462.34

Contractual				
Item	Description of Item	Rate	Quantity (Hours)	Total
Community Chef Instructor	Leader of cooking lessons	\$35.00	36	\$1,260.00
Community Chef Assistants	2 assistants to help chef	\$20.00	36	\$720.00
Chicken Coop Coordinator	Coordinator for youth led chicken coop	\$20.00	365	\$7,300.00
Fooducates paid intern	Youth coordinator for youth group	\$16.00	200	\$3,200.00
Evaluation Specialist	Consultant to help evaluate programs	\$42.30	95.5	\$4,039.65
Total Contractual				\$16,519.65
SUB-TOTAL BEFORE INDIRECT				\$87,083.99

Total Indirect	\$0.00
TOTAL	\$87,083.99

FY25 (6 Months Extension Term)					
Personal Services - Salaried Employees					
Position Title	Description of Work	Gross or Annual Salary	Fringe	Percent of Time on Project	Total
Program Manager	Manage the day to day activities of PFP. City of Pueblo will cover Fringe Benefits.	\$22,000.00	\$0.00	100%	\$22,000.00
Total Personal Services (including fringe benefits)					\$22,000.00

Materials/Supplies & Operating Expenses				
Item	Description of Item	Rate	Quantity	Total
Cooking Lesson Supplies	Supplies for cooking lessons (containers, equipment rental, food, printing)	\$1,174.00	5	\$5,870.00
Fooducate Community Outreach Supplies	Supplies for Fooducate Activities (printing, meeting materials, food and beverages for activities, etc.) - per event	\$1,509.00	2	\$3,018.00
Chicken coop supplies	Supplies for chicken coop (building materials, fencing, feed, chicks)	\$1,000.00	1	\$1,000.00
Fooducates Young Person Food System Leader Retreat Supplies	Supplies for hosting Fooducates Leadership Retreat (printing, meeting materials, food and beverages, take homes, etc)	\$4,500.00	1	\$4,500.00
Total Supplies & Operating Expenses				\$14,388.00

Travel				
Item	Description of Item	Rate	Quantity	Total
Gas Cards	Gift cards for gas for activity participants	\$10.00	62	\$620.00
Travel support for youth leaders	Travel Support to Young Person Food System Leader Retreat. May include lodging, transportation costs, and meals.	\$138.90	16	\$2,222.34
Total Travel				\$2,842.34

Contractual				
Item	Description of Item	Rate	Quantity (Hours)	Total
Community Chef Instructor	Leader of cooking lessons	\$35.00	20	\$700.00
Community Chef Assistants	2 assistants to help chef	\$20.00	20	\$400.00
Chicken Coop Coordinator	Coordinator for youth led chicken coop	\$20.00	182.5	\$3,650.00
Fooducates paid interns	Youth coordinator for youth group	\$16.00	100	\$1,600.00
Total Contractual				\$6,350.00
SUB-TOTAL BEFORE INDIRECT				\$45,580.34

Total Indirect	\$0.00
TOTAL	\$45,580.34

EXHIBIT C, 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)
Contractor Insert Contractor's Full Legal Name	Original Contract 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	Option 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

OPTIONS:

1. Option to extend for an Extension Term
2. Option to change the quantity of Goods under the Contract
3. Option to change the quantity of Services under the Contract
4. Option to modify Contract rates
5. Option to initiate next phase of the Contract

REQUIRED PROVISIONS:

- A. **For use with Option 1(A):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.
6. **For use with Options 1(B and C):** In accordance with Section(s) Number of the Original Contract 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 Contract, as amended.
7. **For use with Option 1(D):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to modify the Contract rates specified in Exhibit/Section Number/Letter. The Contract rates attached to this Option Letter replace the rates in the Original Contract as of the Option Effective Date of this Option Letter.
8. **For use with Option 1(E):** In accordance with Section(s) Number of the Original Contract 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.
9. **For use with all Options that modify the Contract Maximum Amount:** The Contract Maximum Amount table on the Contract's Signature and Cover Page is hereby deleted and replaced with the Current Contract Maximum Amount table shown above.

OPTION EFFECTIVE DATE:

- B. The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

<p>STATE OF COLORADO Jared S. Polis, Governor INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE</p> <hr style="width: 80%; margin-left: auto; margin-right: auto;"/> <p>By: Name & Title of Person Signing for Agency or IHE</p> Date: _____	<p>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.</p> <p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> By: _____ Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval Option Effective Date: _____
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Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council

CC: Nicholas A. Gradisar, Mayor

VIA: Marisa Stoller, City Clerk

FROM: Steven Meier, Director of Parks and Recreation

SUBJECT: AN ORDINANCE APPROVING AND ACCEPTING A GRANT FROM WALMART FOR FUNDS IN THE AMOUNT OF \$2,500 TO PROVIDE PROTECTIVE VESTS AND GLOVES FOR PARK RANGERS, AUTHORIZING THE MAYOR TO EXECUTE SAME, ESTABLISHING THE PARK RANGER VEST PURCHASE PROJECT NO. PS2201, AND BUDGETING AND APPROPRIATING \$2,500 TO PROJECT NO. PS2201

SUMMARY:

This Ordinance will approve and accept a grant from Walmart for funds in the amount of \$2,500.00 to provide protective vests and gloves for Park Rangers. It also establishes Project No. PS2201, budgets and appropriates funding for said project.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND

This ordinance is to approve and accept a Walmart Community Grant for protective equipment that will be utilized by the Park Rangers. The equipment consists of protection VP3 vests and hatch cut-resistant gloves.

FINANCIAL IMPLICATIONS:

The grant is for \$2,500.00 and requires no matching funds.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If this Ordinance is not approved, the grant will not be accepted from Walmart.

RECOMMENDATION

The Department of Parks and Recreation recommends approval of this Ordinance.

Attachments:

Ordinance

Walmart Grant Agreement

ORDINANCE NO. _____

AN ORDINANCE APPROVING AND ACCEPTING A GRANT FROM WALMART FOR FUNDS IN THE AMOUNT OF \$2,500 TO PROVIDE PROTECTIVE VESTS AND GLOVES FOR PARK RANGERS, AUTHORIZING THE MAYOR TO EXECUTE SAME, ESTABLISHING THE PARK RANGER VEST PURCHASE PROJECT NO. PS2201, AND BUDGETING AND APPROPRIATING \$2,500 TO PROJECT NO. PS2201

WHEREAS, the City of Pueblo has been awarded a grant from Walmart Inc. for protective vests and gloves for Park Rangers; and

WHEREAS, a project needs to be established and the funds budgeted and appropriated; NOW, THEREFORE,

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

SECTION 1.

The Walmart Grant Agreement (the "Agreement"), by and between the City of Pueblo, a Municipal Corporation, and Walmart Inc., making available \$2,500.00 in grant funds to help provide protective vests and gloves for Park Rangers, a copy of which is attached hereto and made a part hereof by reference, after having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute the Agreement in the name and on behalf of the City of Pueblo, ratifying the previous application and acceptance by City staff, where the Mayor may execute the Agreement by electronic signature and such electronic signature shall be attributable to the Mayor and the City of Pueblo.

SECTION 3.

The Park Ranger Vest Purchase Project No. PS2201 is hereby established.

SECTION 4.

Funds in the amount of \$2,500.00, and any other funds received pursuant to the Agreement or an addendum to the Agreement, shall be accepted pursuant to the Agreement and budgeted and appropriated to the Park Ranger Vest Purchase Project No. PS2201.

SECTION 5.

The officers and staff of the City are authorized to perform any and all acts consistent with this Ordinance and the Agreement to implement the policy and procedures described therein.

SECTION 6.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

Approved on _____.

Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

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

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

President of City Council

ATTEST

City Clerk

Walmart Inc. (“Walmart”) requires each Grantee to accept the following terms which shall apply to any grant funds awarded by Walmart in response to the Grantee’s application. Your acceptance of these terms is a prerequisite for the consideration of your grant application.

Please note that your review and agreement to the following terms does not create any agreement on behalf of Walmart to approve your grant application or to provide any donation to your organization. The following terms become binding only upon the issuance of a check by Walmart in response to your organization’s grant application.

Unless otherwise specified, all terms shall apply to all Grantees.

The Grantee agrees to the following:

1. AUTHORITY

Grantee’s signatory possesses all necessary capacity and authority to act for, sign and bind the Grantee to this Agreement.

2. REPRESENTATIONS OF GRANTEE

The Grantee represents to Walmart (the “Grantor”) that it qualifies as one of the following types of organizations:

- An organization holding a current tax-exempt status under Section 501(c)(3) or (19) of the Code;
- A recognized government entity: state, county, or city agency, including law enforcement or fire department;
- A K-12 public or private school, charter school, community/junior college, state/private college or university; or
- A recognized church or other faith-based organization.

3. PURPOSE AND ADMINISTRATION

The grant shall be used exclusively for the purposes selected by Grantee in the Grantee’s Community Grants application (the “Fund Use”). Additionally, Grantee agrees as follows:

- The Grantee will directly administer the project or program being supported by the grant and agrees that no grant funds shall be re-granted to any organization or entity, whether or not formed by the Grantee.

- The Grantee will use funds for exclusively charitable, scientific, and/or educational purposes.
- The Grantee shall expend the grant funds exclusively within the United States in accordance with this Agreement.

4. USE OF GRANT FUNDS

The Grantee shall use the full amount of the grant for the purposes set forth in the Fund Use. Unless otherwise agreed in writing by Grantor, the Grantee shall return any portion of the grant and the income earned thereon that is not expended for such purposes.

The Grantee agrees not to use any portion of the grant or any income derived from the grant for the following:

- To carry on propaganda or otherwise attempt to influence legislation within the meaning of Section 4945(d)(1) of the Internal Revenue Code of 1986, as amended (the “Code”);
- To influence the outcome of any specific public election;
- To conduct activities outside the United States;
- To provide a grant to an individual for travel, study, or similar purpose within the meaning of Section 4945(g) of the Code; or
- To promote or engage in criminal acts of violence, terrorism, hate crimes, the destruction of any state, or discrimination on the basis of race, national origin, religion, military and veteran status, disability, sex, gender identity, age, or sexual orientation, or support of any entity that engages in these activities.

Any interest or other income generated by the grant funds must be applied to the purposes described in the Fund Use.

To the extent that the Grantee is a governmental entity, and in addition to all other requirements contained in this Agreement, the Grantee agrees that grant funds are to be used exclusively for public purposes within the meaning of Section 170(c)(1) of the Code.

5. RECORD RETENTION

The Grantee agrees to maintain complete and accurate records of receipts and expenditures and make its books and records available to the Grantor at reasonable times upon its request. Grantee will maintain books, accounts, and records that, with a sufficient detail, accurately and clearly reflect its transactions and the disposition of funds. No “off the books” or unrecorded funds or accounts shall be created or maintained for any purpose. Furthermore, Grantee will maintain records of expenditures charged against the grant that are adequate to identify the use of the funds in compliance with the purposes and restrictions specified in this Agreement. Such records shall be retained for a period of at least five years after the completion of the use of the grant.

The Grantor may, at its expense, monitor and conduct an evaluation of operations under the grant, which may include visits by representatives of the Grantor to observe the Grantee’s program, procedures and operations, and discussions of the program with the Grantee’s personnel.

6. ADDITIONAL TERMS AND CONDITIONS

The Grantor reserves the right to terminate the grant for cause as a result of the Grantee’s breach of the terms of this Agreement or the Grantee’s failure to make adequate and sustained progress toward the completion of the activities and achievement of the objectives contained in the Funds Use. Notwithstanding the foregoing, in the event that Grantor determines, in its sole discretion, that Grantee has engaged in conduct that violates Section 12 of this Agreement, Grantor immediately shall have the right to suspend future donations and to suspend or terminate this Agreement.

If the Grantor determines, in its reasonable discretion, that the Grantee has breached or failed to carry out any provision of this Agreement, the Grantor may, in addition to any other legal remedies it may have, terminate the grant and demand the return of all or part of the grant funds not spent or obligated to third parties in accordance with the terms of this Agreement, including, without limitation, all grant funds expended by the Grantee for purposes other than for the Funds Use. The Grantee shall return all such grant funds to the Grantor within thirty (30) days of receiving a termination notice from the Grantor.

7. PUBLICITY

The Grantor may make information regarding this grant public at any time and in a manner which it deems appropriate. Grantee agrees to cooperate with any effort by Grantor to publicize the grant, including but not limited to designating a suitable representative to appear on behalf of Grantee at publicity events, providing relevant and pertinent information to include in press releases and distributions, and responding as appropriate to relevant and pertinent press inquiries.

Grantee agrees to provide Grantor an opportunity to review and comment on the contents of any statement, release, or report concerning this grant in advance of its release to the public or any third party.

Notwithstanding anything to the contrary contained herein, Grantee may list Grantor as a supporter of Grantee for up to one year following Grantor's transfer of funds to Grantee pursuant to this Agreement; *provided, however*, (i) any such listing will include the names of other supporters of Grantee and (ii) Grantor's position on such listing shall be reasonable in proportion to the amount given by Grantor. No license to use Grantor's (or Grantor's subsidiaries' or affiliates') trademarks, trade names or other intellectual property is granted hereunder.

8. NO ADDITIONAL SUPPORT

It is expressly understood that the Grantor has no obligation to provide additional support to the Grantee for this or any other project or purposes.

9. GENERAL INDEMNIFICATION

The Grantee shall indemnify, defend, save and hold harmless the Grantor, its governing board, and the individual members thereof, and all officers, agents, employees, representatives and volunteers from and against any and all liability, loss, cost, expense, injury, proceeding, claim or obligation arising out of, related to, connected with, or as a result of any acts or omissions of the Grantee, including, without limitation, any injury or property damage suffered by any third party due to the negligence or willful misconduct by the Grantee or any Grantee employee, officer, agent, employee, representative or volunteer in performance of this Agreement. Such provision shall not apply to any liability, loss, cost, expense, injury, proceeding, claim or obligation arising out of, connected with, or as a result of any negligent act or willful misconduct committed by the Grantor.

In no case shall the Grantor be liable to the Grantee or any third party for consequential damages. The Grantor shall have no liability for any debts, liabilities, deficits, cost overruns, or negligence or willful misconduct of the Grantee. It is expressly understood by the parties that no trustee, director, member, officer, employee or other representative of the Grantor shall incur any financial responsibility or liability of any kind or nature in connection with this Agreement. The parties agree that the liability of the Grantor hereunder shall be limited to the payment of the grant awarded by Grantor, if any, pursuant to the terms and conditions of this Agreement and that the Grantor shall have no other duty or obligation to the Grantee or any other person.

To the extent that the Grantee is a governmental entity described in Section 170(c)(1) of the Code and is prohibited by law from providing Grantor with the above indemnification, this Section 9 shall not be applicable.

10. COMPLIANCE WITH LAWS

Grantee will comply in full with all applicable federal, state, and local laws and regulations and rules of governmental agencies and bodies relating to Grantee's acceptance and use of the grant, including those that govern gifts, donations, contributions, expenditures, and

anything else of value that benefit, directly or indirectly, public officials. Grantee agrees to notify Grantor immediately: (a) of any conduct on Grantee's part that may be in violation of any applicable federal, state and local laws and (b) if Grantee receives notice of, or otherwise becomes aware of, any actual or threatened investigation, action, litigation, or disciplinary or other proceeding of which Grantee is or may be a subject in connection with the grant and to the extent permitted by applicable law, shall provide Grantor with all written notices and communications received by Grantee relating to any such investigation, action, litigation, or disciplinary proceeding.

11. ANTI-TERRORISM AND ECONOMIC SANCTIONS

Grantee affirms that neither Grantee nor any of Grantee's affiliates (i) is or will act in violation of any Anti-Terrorism Law (as defined below), (ii) is or will become a Prohibited Person (as defined below), (iii) conducts or will conduct any business or engages or will engage in any transaction or dealing with any Prohibited Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (iv) deals in or will deal in or otherwise engages or will engage in any transaction relating to property or interests in property blocked pursuant to Executive Order No. 13224 (as defined below); or (v) engages in or will engage in or conspires to engage in any transaction that evades or avoids, or has the purpose or intent of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law. As used herein: (A) "Anti-Terrorism Law" is defined as any Law relating to terrorism or money-laundering, including Executive Order No. 13224 and the USA Patriot Act (as defined below); (B) "Executive Order No. 13224" is defined as the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, relating to "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism", as amended; (C) "Prohibited Person" is defined as any person or entity (1) listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (2) owned or controlled by, or acting for or on behalf of, any party described in clause (C)(1) above; (3) with whom any lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (4) who commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224; (5) named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/t11sdn.pdf> or at any replacement website or other official publication of such list; or (6) affiliated with any party described in clauses (C)(1)-(5) above; and (D) "USA Patriot Act" is defined as the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" (Public Law 107-56), as amended.

12. ANTI-CORRUPTION COMPLIANCE

Grantee agrees that its use of all funds received under this Agreement will be in full compliance with all applicable anti-corruption laws and regulations, including but not limited to the United States Foreign Corrupt Practices Act ("FCPA") and the UK Bribery Act. Accordingly, Grantee agrees that in connection with its activities under this

Agreement, neither Grantee nor any agent, affiliate, employee, re-grantee, or other person acting on its behalf will offer, promise, give, or authorize the giving of anything of value, or offer, promise, make, or authorize the making of any bribe, rebate, payoff, influence payment, kickback, or other unlawful payment, to any government official, political party, or candidate for public office in order to gain any unfair advantage or to influence any act or decision of a government official. Grantee further agrees that the funds provided under this Agreement shall not be used for the personal benefit or enrichment of any government official.

Grantee agrees to provide timely information to Walmart regarding any changes to the representations made in this Agreement. Grantee further agrees to assist and cooperate in any investigations related to the use of the grant funds received under this Agreement.

13. APPLICABLE LAW

This Agreement, and the rights and obligations of the parties, will be construed, interpreted and enforced in accordance with, and governed by, the laws of the State of Arkansas.

14. REPRESENTATIVES AND SUCCESSORS BOUND

This Agreement shall be binding upon and inure to the benefit of the parties, their legal representatives, successors and assigns.

15. DEPOSIT OF FUNDS

Notwithstanding anything else to the contrary in this Agreement, the Grantee, by executing this grant Agreement, expressly agrees to deposit the grant funds check in its account in a timely fashion. Grantee acknowledges and agrees that if it does not cash the check within one hundred eighty (180) days of the effective date of this Agreement, the Grantor will issue a stop payment order on such check, and Grantee releases any and all interest in the grant funds and the check and hereby acknowledges that the Grantor is not holding the grant funds on Grantee's behalf. Further, such failure to timely cash the check shall be deemed to be a waiver by Grantee of any rights of action against Grantor. If a stop payment is issued pursuant to this provision, the Grantee may submit a new request to Grantor for grant funds, for similar or different purposes, but the determination as to whether to issue a new grant check to Grantee in such circumstance is in the sole discretion of the Grantor.

16. ENTIRE CONTRACT

This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the subject matter covered herein and contains all of the covenants and agreements between the parties with respect to the Fund Use in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or

binding. Any modification of this Agreement will be effective only if it is in writing signed by the parties hereto. Any changes, additions or deletions to this Agreement, including the Fund Use, must be approved in writing by both the Grantor and the Grantee. This Agreement and all amendments may be signed in counterparts, each of which will constitute one and the same document. Any signature delivered via facsimile or other electronic means shall be deemed an original signature to this Agreement. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

17. SEVERABILITY

If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each and every remaining term, covenant, or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Barb Huber, Fire Chief

SUBJECT: AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A GRANT AGREEMENT BETWEEN THE CITY OF PUEBLO AND FIREHOUSE SUBS PUBLIC SAFETY FOUNDATION INC. FOR THE PURCHASE OF TWO MOTORIZED POLICE BICYCLES WITH LIGHT/SIREN KITS, BAGS & ONE CARGO TRAILER, BUDGETING, APPROPRIATING GRANT FUNDS IN THE AMOUNT OF \$9,602.90 INTO PROJECT PS2202 AND RESCINDING RESOLUTION NO. 14789

SUMMARY:

Attached is an agreement between the City of Pueblo and the Firehouse Subs Public Safety Foundation concerning a grant award in the amount of \$9,602.90 to purchase the Pueblo Fire Department two motorized police bicycles and accessories.

PREVIOUS COUNCIL ACTION:

Approval of similar grants in the last several recent years.

BACKGROUND:

The department conducts and participates in several community events through the year where navigating crowds in regular fire apparatus is a challenge. These electric bikes will allow response at events more efficiently and safely. This grant was previously approved by council as a resolution to accept the bikes; this was an error. The bikes and accessories will be purchased by the Fire Department through the project.

FINANCIAL IMPLICATIONS:

There is no cost to the city. Staff time will be required for project management, as well as grant monitoring and reporting.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Resolution.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

None.

RECOMMENDATION:

Approval of the Ordinance.

Attachments:

MOU

Grant Award Notice

Quote

ORDINANCE NO. _____

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A GRANT AGREEMENT BETWEEN THE CITY OF PUEBLO AND FIREHOUSE SUBS PUBLIC SAFETY FOUNDATION INC. FOR THE PURCHASE OF TWO MOTORIZED POLICE BICYCLES WITH LIGHT/SIREN KITS, BAGS & ONE CARGO TRAILER, BUDGETING, APPROPRIATING GRANT FUNDS IN THE AMOUNT OF \$9,602.90 INTO PROJECT PS2202 AND RESCINDING RESOLUTION NO. 14789

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

SECTION 1.

The Funding Agreement (“Agreement”) between and Pueblo, a municipal corporation and Firehouse Subs Public Safety Foundation attached hereto, having been approved as to form by the City Attorney, is hereby approved. 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 2.

Approval of the Agreement authorizes purchase of Two Motorized Police Bicycles with Light/Siren Kits, Bags & One Cargo Trailer. Project Number PS2202 is hereby established and funds in the amount of \$9,602.90 shall be budgeted and appropriated into Project Number PS2202 for such purchase and grant proceeds.

SECTION 3.

The officers of the City are authorized to perform any and all acts consistent with the intent of this Ordinance and Agreement in order to implement the policies and procedures described therein.

SECTION 4.

Resolution No. 14789 is hereby rescinded.

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



Firehouse Subs Public Safety Foundation, Inc.

12735 Gran Bay Pkwy., Suite 150, Jacksonville, Florida 32258

MEMO OF UNDERSTANDING- FUNDING AGREEMENT

January 25, 2022

Failure to adhere to the requirements of this Funding Agreement will jeopardize your grant award.
All purchases must match the quantities and equipment approved in the original grant request and approved quote.

Firehouse Subs Public Safety Foundation Responsibilities

- Firehouse Subs Public Safety Foundation will award funding to **City of Pueblo, on behalf of Pueblo Fire Department, Pueblo, CO** for **\$9,602.90** to be used toward the direct purchase of **Two Motorized Police Bicycles with Light/Siren Kits, Bags & One Cargo Trailer.**

City of Pueblo, on behalf of Pueblo Fire Department Responsibilities

1. An ACH transfer will be remitted to the organization name as stated in this memo of understanding and **must** match the EIN number submitted on the grant request and bank account information listed on the ACH Authorization. If there is a change in either information, you must submit a W-9.
2. **Confirm Receipt of ACH Transfer** by emailing procurementfoundation@firehousesubs.com
3. **Purchase** the equipment on Approved Quote #3730 from Recon Power Bikes.
4. **Verify Purchase** by providing Firehouse Subs Public Safety Foundation with one of the following:
 - Copies of paid invoices, verifying your organization’s name as the customer and matching the vendor quote(s)**OR**
 - A copy of the cleared check(s), verifying the payee and payment amount matches the vendor quote(s)
5. **Confirm Receipt of Equipment** by providing Firehouse Subs Public Safety Foundation with ALL SIGNED and DATED packing slips
6. In the event that the purchased equipment costs less than the dollar amount awarded, all excess funds must be returned to Firehouse Subs Public Safety Foundation
 - Email procurementfoundation@firehousesubs.com with notification of excess funds within 30 days of purchase
 - Return Excess Funds within 90 days of purchase to Firehouse Subs Public Safety Foundation, Attention: Gina Brown, 12735 Gran Bay Parkway, Suite 150, Jacksonville, FL 32258
7. If purchases exceed funding, **City of Pueblo, on behalf of Pueblo Fire Department** is responsible for the additional amount

VERY IMPORTANT: Deadline for submitted documentation is June 30, 2022.

Firehouse Subs Public Safety Foundation

Date

City of Pueblo, on behalf of Pueblo Fire Department Representative (Signature)

Date

City of Pueblo, on behalf of Pueblo Fire Department Representative Name (Print)

Date

From: Firehouse Subs Public Safety Foundation <foundation@firehousesubs.com>
Sent: Thursday, January 6, 2022 8:00 AM
To: Kelsey Fedde <kfedde@pueblo.us>; Barb Huber <bhuber@pueblo.us>
Cc: Firehouse Subs Public Safety Foundation <foundation@firehousesubs.com>; Ty Lowry <ty.lowry@firehousesubs.com>; Rina Vieweg <rina.vieweg@firehousesubs.com>; Nick Estell <nick.estell@firehousesubs.com>
Subject: [External] APPROVED: Firehouse Subs Public Safety Foundation Grant

External email. Please use caution.

Dear Captain Fedde & Barbara,

We are pleased to announce that the Firehouse Subs Public Safety Foundation Board of Directors has awarded the **City of Pueblo, on behalf of Pueblo Fire Department in Pueblo, CO** the requested **Two Motorized Police Bicycles with Light/Siren Kits, Bags & One Cargo Trailer** valued at up to **\$9,602.90**. If your grant award must be approved by your city council, please add this item to the agenda immediately, and contact us with the meeting date.

PROCUREMENT:

The procurement process for your grant award will be determined by our Foundation, and we will contact you no later than Monday, March 7, 2022 to initiate the process. Do not make any advanced purchases, as failure to adhere to our chosen method will jeopardize your grant award.

If you have any fulfillment questions, please email Procurementfoundation@firehousesubs.com.

PUBLIC RELATIONS (PR) NOTES

- PR announcements from your organization regarding the grant award are optional. If you choose to share the good news, please use the attached press release template and/or social media post template and send it back to Foundation@firehousesubs.com and FHSPSF@coynepr.com for review and approval (allowing for 72 hours turnaround time). *Please do not pitch or post before receiving approval from the Foundation team.*

Use of the Firehouse Subs Public Safety Foundation logo:

- We ask that your organization acknowledges the grant by displaying our Foundation logo on granted items/equipment whenever possible. Our Foundation logo is attached for your convenience. Please note that the final artwork will need to be approved by our Foundation via Foundation@firehousesubs.com before being displayed.

Did you know?

More than 70% of the funds raised for the Firehouse Subs Public Safety Foundation come from the generosity of Firehouse Subs guests and the restaurant brand? Please consider supporting a Firehouse Subs restaurant near you.

We are very excited to assist your organization and ultimately improve the lifesaving capabilities of your community.

Firehouse Subs Public Safety Foundation
foundation@firehousesubs.com

FirehouseSubsFoundation.org

[Twitter](#) [Facebook](#)

CONFIDENTIALITY NOTICE: The information and attachments contained in this electronic communication are confidential and intended only for the use of the intended recipients. If you are not an intended recipient, you are hereby notified that any review, use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately of the error by return e-mail and please permanently remove any copies of this message from your system and do not retain any copies, whether in electronic or physical form or otherwise.

RECON

ALL TERRAIN POWER BIKES
MADE MILITARY TOUGH

QUOTATION

Quote Number: 3730
Quote Date: Oct 14, 2021
Page: 1

Remittance Address:

327 Ley Road
Fort Wayne, IN 46825

Contact: Tim Burns
Email: Tburns@reconpowerbikes.com

www.ReconPowerBikes.com 1.888.485.2589

Quoted To:

Pueblo Fire Department
1551 Bonforte Blvd
Pueblo, CO 81001

Ph: 719-553-2830
Contact: Chief Barb Huber (Bhuber@pueblo.us)



Customer ID	Good Thru	Payment Terms
PUEB001	11/13/21	Prepaid

Quantity	Item	Description	Unit Price	Amount
2.00	BR-INTBLK1	Item: Interceptor Power Bike-Black / 1,000W Mid-Driven Motor, Law Enforcement Model/ 17" (FIRE)	3,895.00	7,790.00
2.00	AR-LITSIRENKIT	Item: Light and Siren Kit (Front and Back)	449.00	898.00
2.00	AR-POLBAG	Item: Police Bag	69.00	138.00
2.00	AR-PANBAG	Item: Pannier Bag Black	59.95	119.90
1.00	AR-CARGOTRLR	Item: Recon Cargo Master (Dual Wheel) Trailer	299.00	299.00
2.00	S-ASSEMBLY-TESTING	Assembly, Testing and Shipping/Delivery of Bikes (Per Bike)	179.00	358.00

FOB: Fort Wayne, Indiana

Unless otherwise stated, freight charges are not included.

Subtotal	9,602.90
Sales Tax	
TOTAL	9,602.90

If you would like to place an order for the above listed item(s), please contact the office.



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council

CC: Nicholas A. Gradisar, Mayor

VIA: Marisa Stoller, City Clerk

FROM: Andra Ahrens, Acting Wastewater Director

SUBJECT: AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AGREEMENTS FOR PROFESSIONAL SURVEYING SERVICES FOR SANITARY SEWER PROJECTS AND CITY-WIDE SURVEYING PROJECTS BETWEEN PUEBLO, A MUNICIPAL CORPORATION, AND BOHANNON-HUSTON, INC., CLARK LAND SURVEYING, INC., ENCOMPASS SERVICES, LLC, AND NORTHSTAR ENGINEERING AND SURVEYING, INC.

SUMMARY:

This Ordinance establishes an approved list of qualified licensed surveying firms to perform surveying services for sanitary sewer projects and City-wide surveying projects during calendar years 2022, 2023, 2024, and during renewal of the agreement for two successive one-year periods after the initial term. The attached fee schedule includes hourly rates submitted by bidders for surveying services under the project number 21-074 Request for Proposals (RFP).

PREVIOUS COUNCIL ACTION:

None

BACKGROUND:

The City of Pueblo owns and operates a sanitary sewer system to convey raw sewage for treatment to the James R. Dilorio Water Reclamation Facility. Parts of this existing system are beyond its life expectancy and need to be rehabilitated to secure a continuous service. Also, due to new development projects, there are existing sewer mains that need to be upsized because of their insufficient capacity with the additional flow.

In November 2021, the City of Pueblo solicited Requests for Proposals from licensed land surveying firms to provide on-call topographic surveys to the Wastewater Department, and other City departments. Seven proposals were received, and four firms were selected based on their initial submittals and fee schedules to receive future Request for Proposals to perform surveying services as needed. This Ordinance authorizes contracts under 21-074 RFP Surveying Services for Sanitary Sewer Projects and City-Wide Surveying Projects and will provide both competitive bid cost controls and rapid response capability by creating a list of qualified surveying firms(consultants) who have provided the attached fee schedules.

Upon approval of the Ordinance, the City will develop a complete scope of work and require the consultants to provide a not-to-exceed amount (limit) based on their hourly fee rate, and a delivery time for surveying services of each specific project assigned under this Agreement. The most advantageous proposal to the City, and in the best interest of the City, shall be determined based on the evaluation criteria set forth in the Request for Proposals.

Request for services shall be initiated and documented by a written work order agreement ("Work Order" with sample attached as Schedule 3) signed by the Wastewater Director of Client and approved by the Director of Finance and the Director of Purchasing. The Work Order shall set forth the work to be performed, the time for completion and the compensation, including maximum compensation, for performance of such work.

FINANCIAL IMPLICATIONS:

Funding for this project will come from Professional Services budget.

BOARD/COMMISSION RECOMMENDATION:

Not applicable

STAKEHOLDER PROCESS:

None

ALTERNATIVES:

Denial of this Ordinance will result in the City being unable to proceed with the agreement.

RECOMMENDATION:

Approval of the Ordinance.

Attachment:

Agreements for Surveying Services for Sanitary Sewer Projects and City-Wide Surveying Projects (with Schedule 1 - Scope of Services, Schedule 2 - Fee Schedules and Schedule 3 - sample Work Order)

ORDINANCE NO. _____

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AGREEMENTS FOR PROFESSIONAL SURVEYING SERVICES FOR SANITARY SEWER PROJECTS AND CITY-WIDE SURVEYING PROJECTS BETWEEN PUEBLO, A MUNICIPAL CORPORATION, AND BOHANNON-HUSTON, INC., CLARK LAND SURVEYING, INC., ENCOMPASS SERVICES, LLC, AND NORTHSTAR ENGINEERING AND SURVEYING, INC.

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO that:

SECTION 1.

The Agreements for Professional Surveying Services (“Agreements”) between Pueblo, a municipal corporation and Bohannon-Huston, Inc., Clark Land Surveying, Inc., Encompass Services, LLC, and NorthStar Engineering and Surveying, Inc., copies of which are attached hereto, having been approved as to form by the City Attorney, are hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute said Agreements for and on behalf of the City and the City Clerk is authorized to affix the seal of the City thereto and attest same.

SECTION 3.

The officers and staff of the City are authorized to perform any and all acts consistent with this Ordinance and the attached Agreement to implement the policies and procedures described herein. Work Orders under the Agreements shall only be approved upon written approvals of the Director of Purchasing and the Director of Finance that a balance of appropriation exists for the Work Order and funds are available. The Director of Purchasing is authorized to approve a Work Order which is determined to be most advantageous to the City and in the best interest of the City based upon the submitted hourly fee rates and delivery time for surveying services of each specific project which may be assigned under the Agreements.

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

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

THIS AGREEMENT is made and entered this ____ day of February, 2021, by and between Pueblo, a Municipal Corporation (hereinafter referred to as "City" and/or "Client") and Bohannan-Huston, Inc., a New Mexico Corporation authorized to do business in the State of Colorado, (hereinafter referred to as "Consultant") for Consultant to render professional services for Client with respect to Bid 21-074 Surveying Services for Sanitary Sewer Projects and City-Wide Surveying Projects and related ancillary services, hereinafter referred to as the "Project." In consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

SECTION 1. GENERAL AND SCOPE OF SERVICES

(a) Consultant shall satisfactorily perform the professional surveying and related services which may be requested and approved by Client, including the following category of service:

(i) Topographic and improvement surveys as well as construction staking with respect to sanitary sewer projects including but not limited to projects for the removal and replacement of sanitary sewer mains. Survey work to include ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels (the assigned manhole number shown in plan set), sanitary sewer pipes with pipe type and diameter, control points for future staking, setting hubs for construction, providing cut sheets for the contractor, etc. In the field, the survey boundary shall cover a width of 30 feet along the sewer line, 15 feet on each side of the pipe axis. In the residential areas, the survey boundary shall be from property/fence lines to property/fence lines. In areas where a manhole is located at the start or end of the survey boundary, the survey shall cover the area extended 30 feet in the direction of sewer pipe axis before or after the manhole ("Sanitary Sewer Survey Project").

(b) Request for services shall be initiated and documented by a written work order agreement ("Work Order" with sample attached as Schedule 3) signed by the Wastewater Director of Client and approved by the Director of Finance and Director of Purchasing. The Work Order shall set forth the work to be performed, the time for completion and the compensation, including maximum compensation, for performance of such work. Said compensation shall be approved as provided in Section 3 of this Agreement. The work to be performed under any Work Order shall be included in the "Basic Services" and "Project" as such terms are used in this Agreement and shall be subject to all terms and conditions of this Agreement. All such services shall include all usual and customary professional costs for this type of service as indicated in the Scope of Service in Section 2 of the Request for Proposal (RFP). Consultant acknowledges that the selection of Consultant by Client was pursuant to an RFP. All of the requirements of that RFP are incorporated herein by reference. If the work to be performed is a fiber repair project, it shall include and comply with the Scope of Services set forth in Section 1(a) above unless specific exceptions are provided for in the Work Order.

(c) To the extent Consultant performs any of the Project work through subconsultants or subcontractors, if previously requested and approved by the Client in each individual Work Order, Consultant shall be and remain as fully responsible for the full performance and quality of services performed by such subconsultants or subcontractors as it is for services performed directly by Consultant or Consultant's employees.

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

(e) No minimum amount of work is guaranteed under this Agreement. Client reserves the right to engage and/or contract with other parties to perform services which otherwise might be requested under this Agreement. Consultant specifically acknowledges that any Change Order may be awarded to other parties under similar agreements as this Agreement.

SECTION 2. CONSULTANT'S RESPONSIBILITIES

- (a) Consultant shall be responsible for the professional quality, technical accuracy and timely completion of Consultant's work, including that performed by Consultant's subconsultants and subcontractors, and including drawings, reports and other services, irrespective of Client's approval of or acquiescence in same.
- (b) Consultant shall be responsible, in accordance with applicable law, to Client for all loss or damage to Client caused by Consultant's negligent act or omission; except that Consultant hereby irrevocably waives and excuses Client and Client's attorneys from compliance with any requirement to obtain a certificate of review as a condition precedent to commencement of an action, including any such requirements set forth in Section 13-20-602, C.R.S. or similar statute, whether now existing or hereafter enacted.
- (c) Consultant shall be completely responsible for the safety of Consultant's employees in the execution of work under this Agreement and shall provide all necessary safety and protective equipment for said employees.
- (d) Consultant acknowledges that time is of the essence with respect to the completion of its services under this Agreement. Consultant shall accomplish its work within the period of time set forth in the Work Order. Except to the extent the parties agree to time extensions for delays beyond the control of Consultant, Consultant shall adhere to the schedule set forth in the Work Order and perform its work in a timely manner so as not to delay Client's timetable for achievement of interim tasks and final completion of any related or dependent work.
- (e) Before undertaking any work which Consultant considers beyond or in addition to the scope of the Work Order, Consultant shall advise Client in writing that (i) Consultant considers the work beyond the scope of the Work Order, (ii) the reasons that Consultant believes the out of scope or additional work should be performed, and (iii) a reasonable estimate of the cost of such work. Consultant shall not proceed with any out of scope or additional work until authorized in writing by Client. Client shall negotiate with the Consultant prior to authorizing any additional work; negotiated compensation shall be based upon the fee schedule set forth in Schedule 2 attached hereto and incorporated herein.
- (f) Consultant shall designate a representative who shall have authority to approve and accept Work Orders on behalf of Consultant and prepare bid amounts under Section 3 of this Agreement.

SECTION 3. FEES FOR SERVICES/PAYMENT

- (a) When requested by Client, Consultant shall prepare without charge to Client a bid amount for any proposed Work Order ("Work Order Compensation") which shall be based upon the fee schedule set forth in Schedule 2 and shall itemize compensation amounts and include the maximum compensation amount necessary for completion and performance of all work set forth in the Work Order. Should Client have any dispute, question, required clarification or other issue with respect to the Work Order Compensation, Consultant shall meet and confer in good faith with Client to resolve such issue. No Work Order shall be signed and issued by the Wastewater Director of Client unless and until Client approves the Work Order Compensation.
- (b) Consultant shall submit periodic, but not more frequently than monthly, applications for payment for actual professional services rendered. Applications for payment shall be separately submitted for each Work Order and shall never aggregate to more than the maximum amount set forth in the Work Order. Applications for payment shall be submitted based upon the fee schedule set forth in Schedule 2 and the approved Work Order Compensation and shall contain appropriate documentation that such services have been performed and such expenses incurred. As applicable, subcontractor invoices shall be required in any payment application, and no markups for such invoiced subcontracting services shall be allowed. Thereafter, Client shall pay Consultant for the amount of the application within 45 days of the date such application is received.
- (c) No separate or additional payment shall be made for profit, overhead, local telephone expenses, lodging, routine photocopying, computer time, secretarial or clerical time.
- (d) No compensation shall be paid to Consultant for services required and expenditures incurred in correcting Consultant's mistakes or negligence.

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

(f) All proposed fees shall remain fixed for the term of the agreement. In the event the City exercises the provision to extend the agreement after the initial term, requests for annual increases in fees may not exceed 1) three percent (3%) or, 2) the prior year's United States Bureau of Labor Statistics Consumer Price Index (CPI), whichever of the two options is lower.

SECTION 4. CLIENT'S RESPONSIBILITIES

(a) Client agrees to advise Consultant regarding Client's Project requirements and to provide all relevant information, surveys, data and previous reports accessible to Client which Consultant may reasonably require.

(b) Client shall designate a Project Representative to whom all communications from Consultant shall be directed and who shall have limited administrative authority on behalf of Client to receive and transmit information and make decisions with respect to the Project. Said representative shall not, however, have authority to bind Client as to matters of governmental policy or fiscal policy, nor to contract for Work Orders or Compensation for authorized work beyond the scope of this Agreement or a Work Order.

(c) Client shall examine all documents presented by Consultant and render decisions pertaining thereto within a reasonable time. The Client's approval of any drawings, specifications, reports, documents or other materials or product furnished hereunder shall not in any way relieve Consultant of responsibility for the professional adequacy of its work.

(d) Client shall perform its obligations and render decisions within a reasonable time under the circumstances presented. Based upon the nature of Client and its requirements, a period of 14 days shall be presumed reasonable for any decision not involving policy decision or significant financial impact, when all information reasonably necessary for Client to responsibly render a decision has been furnished. A period of 45 days shall be presumed reasonable for Client to act with respect to any matter involving policy or significant financial impact. The above periods of presumed reasonableness shall be extended where information reasonably required is not within the custody or control of Client but must be procured from others.

SECTION 5. TERM AND TERMINATION

(a) Term. The term of this Agreement shall be for three (3) consecutive years. The Agreement may be renewed in two (2) successive one-year periods by a written addendum signed by both parties. Adjustments in fees or costs shall follow Section 3(f) of this agreement.

(b) This agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Pueblo, contrary to Article X, §20 of the Colorado Constitution or any other constitutional, statutory or charter debt limitation. Notwithstanding any other provision of this agreement, with respect to any financial obligation of City which may arise under this agreement in any fiscal year after the current year, in the event the budget or other means of appropriations for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default by or breach of this agreement. The termination of this Agreement due to lack of funding shall be without penalty to the City.

(c) Client reserves the right to terminate this Agreement and Consultant's performance hereunder, at any time upon written notice, either for cause or for convenience. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, drawings, specifications, reports, plans, calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing this Agreement, together with all finished work and work in progress. Client further reserves the right to terminate for convenience any Work Order and Consultant's performance thereunder, at any time upon written notice. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, drawings, specifications, reports, plans, calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing the Work Order, together with all finished work and work in progress. The termination of a Work Order shall not terminate or be deemed to terminate this Agreement or any other Work Order issued by Client.

(d) Upon termination of this Agreement, or as applicable a Work Order, for events or reasons not the fault of Consultant, Consultant shall be paid at the rates specified in Schedule 2 for all services rendered to date of such termination; together with any reasonable costs incurred within 10 days of termination provided such latter costs could not be avoided or were incurred in mitigating loss or expenses to Consultant or Client. In no event shall payment to Consultant upon termination exceed the maximum compensation provided for complete performance in Section 3(a).

(e) In the event termination of this Agreement or Consultant's services is for breach of this Agreement by Consultant, or for other fault of Consultant including but not limited to any failure to timely proceed with work, or to pay its employees and consultants, or to perform work according to the highest professional standards, or to perform work in a manner deemed satisfactory by Client's Project Representative, then in that event, Consultant's entire right to compensation shall be limited to the lesser of (a) the reasonable value of completed work to Client or (b) payment at the rates specified in Schedule 2 for services satisfactorily performed, prior to date of termination.

(f) Consultant's professional responsibility for its completed work and services shall survive any termination.

SECTION 6. SITE ACCESS

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

SECTION 7. DOCUMENTS AND USE OF DOCUMENTS

(a) Consultant shall provide an electronic copy on a USB Flash Drive in AutoCAD Civil 3D. The USB Flash Drive must include the linework drawing of existing features with a generated surface, filed book file for surface generation and field notes explaining all codes and linework for ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels (the assigned manhole number shown in plan set), sanitary sewer pipes with pipe type and diameter, control points for future staking, etc.

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

SECTION 8. INSURANCE AND INDEMNITY

(a) Consultant agrees that it shall procure and will maintain during the term of this Agreement, such insurance as will protect it from claims under workers' compensation acts, claims for damages because of personal injury including bodily injury, sickness or disease or death of any of its employees or of any person other than its employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom; and such insurance will provide for coverage in such amounts as set forth in subparagraph (b).

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

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

(ii) Commercial General Liability Insurance. The Consultant shall secure and maintain during the period of this Agreement and for such additional time as work on the project is being performed, Commercial General Liability Insurance issued to and covering the liability of the Consultant with respect to all work performed by him and all his subcontractors under the Agreement, to be written on a comprehensive policy

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

(iii) Professional Liability Insurance with coverage of not less than \$1,000,000, and with a deductible amount acceptable by the Client.

(iv) Comprehensive Automobile Liability Insurance. The Consultant shall procure and maintain during the period of the Agreement and for such additional time as work on the project is being performed, Comprehensive Automobile Liability Insurance. This insurance shall be written with limits of liability for and injury to one person in any single occurrence of not less than \$350,000 and for any injury to two or more persons in any single occurrence of not less than \$1,000,000. This insurance shall include uninsured/underinsured motorist coverage and shall protect the Consultant from any and all claims arising from the use both on and off the site of the project of automobiles, trucks, tractors, backhoes and similar equipment whether owned, leased, hired or used by Consultant.

(c) Consultant agrees to hold harmless, defend and indemnify Client from and against any liability to third parties, arising out of negligent acts or omissions of Consultant, its employees, subcontractors and consultants.

SECTION 9. SUBCONTRACTS

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

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

(c) Consultant acknowledges that, due to the nature of the services to be provided under this Agreement, the Client has a substantial interest in the personnel and consultants to whom Consultant assigns principal responsibility for services performed under this Agreement. Consequently, Consultant represents that it has selected and intends to employ or assign the key personnel and consultants identified in its proposal submitted to Client prior to execution of this Agreement to induce Client to enter this Agreement. Consultant shall not change such consultants or key personnel except after giving notice of a proposed change to Client and receiving Client's consent thereto. Consultant shall not assign or reassign Project work to any person to whom Client has reasonable objection.

SECTION 10. MISCELLANEOUS

(a) Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either Consultant or Client by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to the Client at City of Pueblo Waste Reclamation Facility, Attn: Wastewater Director, 1300 South Queens Ave., Pueblo, CO 81001, with a copy to the City of Pueblo Law Department, 1 City Hall Place, Pueblo, CO 81003; or to Consultant at Bohannon-Huston, Inc., Attn: Denise Aten, 9785 Maroon Circle, Suite 140, Englewood, CO 80112. Either party may change his address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

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

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

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

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

(f) Equal Employment Opportunity. In connection with the performance of this Agreement, neither Consultant nor its consultants shall discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability or age. Consultant shall endeavor to insure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, disability or age.

(g) Severability. If any provision of this Agreement, except for Section 2, is determined to be directly contrary to and prohibited by law or the requirements of any federal grant or other Project funding source, then such provision shall be deemed void and the remainder of the Agreement enforced. However, it is the intent of the parties that Section 2 of this Agreement not be severable, and that if any provision of said section be determined to be contrary to law or the terms of any federal grant, then this entire Agreement shall be void.

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

(a) At or prior to the time for execution of this Agreement, Consultant shall submit to the Purchasing Agent of the City its certification that it does not knowingly employ or contract with a "Worker Without Authorization", as that term is defined within §8-17.5-101 (9), C.R.S. (herein "Worker Without Authorization"), who will perform work under this Agreement and that the Consultant will participate in either the "E-Verify Program" created in Public Law 208, 104th Congress, as amended and expanded in Public law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security or the "Department Program" established pursuant to section 8-17.5-102(5)(c), C.R.S. that is administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(b) Consultant shall not:

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

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

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

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

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

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

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

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

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

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

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

SECTION 12. PERA LIABILITY

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

(Signature Section on following page)

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

CITY OF PUEBLO, A MUNICIPAL CORPORATION

BOHANNAN-HUSTON, INC.

By: _____
Naomi Hedden, Director of Purchasing

By: _____
Denise Aten, Senior Vice President

Attest: _____
City Clerk

[S E A L]

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

Director of Finance

APPROVED AS TO FORM:

City Attorney

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

SCHEDULE 1 – SCOPE OF SERVICES

Excerpt from Request for Proposal dated October 8, 2021, Section 2., Addendum No. 2 dated November 3, 2021, and Communication Regarding Agreement Dated January 27, 2022

2.3 Scope of Service:

2.3.1 The firm or team of consultants will be required to provide utility locations and topographic surveys for the removal and replacement of sanitary sewer mains and any surface improvements required to do so. The consultant should attend and facilitate meetings as necessary with City staff throughout the development of each individual project. Firm must be familiar with public processes and coordinate with City staff in presenting details to City Council if required.

2.3.2 Field Requirements:

a) To include but not limited to locating sanitary sewer manholes with all inverts in and out elevations, ground surface elevations, control points for future staking, setting hubs for construction, providing cut sheets for the contractor, all existing utilities, identification of existing surface improvements such as curb and gutter, sidewalks, alley pans, buildings, fences, control points, etc. within the proposed boundary. In the field, the survey boundary shall cover a width of 30 feet along the sewer line, 15 feet on each side of the pipe axis. In the residential areas, the survey boundary shall be from property/fence lines to property/fence lines. In areas where a manhole is located at the start or end of the survey boundary, the survey shall cover the area extended 30 feet in the direction of sewer pipe axis before or after the manhole.

b) Centerline profiles of all allies or streets.

c) Each project shall start within two weeks of request and finish no later than 90 days from start *or no later than the delivery time provided in the Work Order Fee and agreed upon with each proposal.*

2.3.3 Office Requirements:

Provide an electronic copy on a USB Flash Drive in AutoCAD Civil 3D. The USB Flash Drive must include the linework drawing of existing features with a generated surface, filed book file for surface generation and field notes explaining all codes and linework for ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels, sanitary sewer pipes with pipe type and diameter, control points for future staking, etc.

SCHEDULE 2 – FEE SCHEDULE

Excerpt from Consultant’s Proposal Submittal dated November 12, 2021, Section 1.8, Page 36



1.8 FEE SCHEDULE

We have provided our standard rate schedule, highlighting the classifications we anticipate to be used the most for this contract.

**BOHANNAN HUSTON, INC.
FEE SCHEDULE HOURLY RATES
OCTOBER 2, 2021
(modified expenses)**

	1	2	3	4	5	6	7
ENGINEER Civil, Structural, Mechanical, Electrical	\$105	\$123	\$143	\$163	\$183	\$220	\$245
SURVEYOR Field Surveyor: 3 & 4; Survey Technician: 5; Professional Land Surveyor: 6	\$105	\$123	\$143	\$163	\$183	\$220	\$245
TECHNICAL MANAGER IT, GIS, Spatial Data, Construction, Project Manager	\$105	\$123	\$143	\$163	\$183	\$220	\$245
PLANNER Community, Transportation	\$95	\$105	\$120	\$135	\$155	\$190	\$235
GIS PROFESSIONAL Geographic Information Systems	\$90	\$100	\$115	\$130	\$150	\$180	\$210
TECHNICAL SPECIALIST Engineering Tech, Survey Tech, Geospatial Analyst, Graphics Specialist	\$72	\$77	\$82	\$92	\$107	\$120	\$135
CONSTRUCTION OBSERVER	\$73	\$78	\$83	\$93	\$108	\$123	\$163
MATERIALS TECHNICIAN Field and Laboratory Materials Testing	\$55	\$65	\$75	\$80	\$95	\$115	\$135
PROJECT ADMINISTRATOR	\$85	\$100	\$120	\$140	\$160	\$180	\$210
ADMINISTRATIVE ASSISTANT Clerical Support	\$55	\$65	\$75	\$85	\$95	\$105	\$120

MATERIALS AND REIMBURSABLE EXPENSES

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

Courier / Delivery Service - As invoiced by provider.

Survey Equipment Charge - \$25.00/Hour.

Survey Material Charge - \$2.60/Hour (*construction staking only*).

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

Other Direct Project Expenses - At Cost.

Subconsultants - At Cost.

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

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

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

Mobile LiDAR - Lump sum on a per task order basis.

Terrestrial LiDAR - Lump sum on a per task order basis.

Aerial Mapping - Lump sum on a per task order basis.

SCHEDULE 3 – SAMPLE WORK ORDER

Excerpt from Request for Proposal dated October 8, 2021, Appendix D
(including approval of Director of Purchasing per Section 1b)

WORK ORDER

This Work Order is entered pursuant to and subject to the terms and conditions of the Professional Services Agreement dated _____, 20__ between Pueblo, a Municipal Corporation ("Client"), and _____ ("Consultant").

Scope of Work:

Time for Completion:

Work Order Compensation:

Approved by: _____ Dated: _____
Client: City of Pueblo, Wastewater Director

Approved by: _____ Dated: _____
Client: City of Pueblo, Director of Finance

Approved by: _____ Dated: _____
Client: City of Pueblo, Director of Purchasing

Consultant
Accepted by: _____ Dated: _____

Consultant's
Printed Name and Title: _____

Attachments: PDF Drawings/Sheets _____
Compensation Details

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
CITY OF PUEBLO
AND
CLARK LAND SURVEYING, INC.**

THIS AGREEMENT is made and entered this ____ day of February, 2021, by and between Pueblo, a Municipal Corporation (hereinafter referred to as "City" and/or "Client") and Clark Land Surveying, Inc., a Colorado Corporation (hereinafter referred to as "Consultant"), for Consultant to render professional services for Client with respect to Bid 21-074 Surveying Services for Sanitary Sewer Projects and City-Wide Surveying Projects and related ancillary services, hereinafter referred to as the "Project." In consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

SECTION 1. GENERAL AND SCOPE OF SERVICES

(a) Consultant shall satisfactorily perform the professional surveying and related services which may be requested and approved by Client, including the following category of service:

(i) Topographic and improvement surveys as well as construction staking with respect to sanitary sewer projects including but not limited to projects for the removal and replacement of sanitary sewer mains. Survey work to include ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels (the assigned manhole number shown in plan set), sanitary sewer pipes with pipe type and diameter, control points for future staking, setting hubs for construction, providing cut sheets for the contractor, etc. In the field, the survey boundary shall cover a width of 30 feet along the sewer line, 15 feet on each side of the pipe axis. In the residential areas, the survey boundary shall be from property/fence lines to property/fence lines. In areas where a manhole is located at the start or end of the survey boundary, the survey shall cover the area extended 30 feet in the direction of sewer pipe axis before or after the manhole ("Sanitary Sewer Survey Project").

(b) Request for services shall be initiated and documented by a written work order agreement ("Work Order" with sample attached as Schedule 3) signed by the Wastewater Director of Client and approved by the Director of Finance and Director of Purchasing. The Work Order shall set forth the work to be performed, the time for completion and the compensation, including maximum compensation, for performance of such work. Said compensation shall be approved as provided in Section 3 of this Agreement. The work to be performed under any Work Order shall be included in the "Basic Services" and "Project" as such terms are used in this Agreement and shall be subject to all terms and conditions of this Agreement. All such services shall include all usual and customary professional costs for this type of service as indicated in the Scope of Service in Section 2 of the Request for Proposal (RFP). Consultant acknowledges that the selection of Consultant by Client was pursuant to an RFP. All of the requirements of that RFP are incorporated herein by reference. If the work to be performed is a fiber repair project, it shall include and comply with the Scope of Services set forth in Section 1(a) above unless specific exceptions are provided for in the Work Order.

(c) To the extent Consultant performs any of the Project work through subconsultants or subcontractors, if previously requested and approved by the Client in each individual Work Order, Consultant shall be and remain as fully responsible for the full performance and quality of services performed by such subconsultants or subcontractors as it is for services performed directly by Consultant or Consultant's employees.

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

(e) No minimum amount of work is guaranteed under this Agreement. Client reserves the right to engage and/or contract with other parties to perform services which otherwise might be requested under this Agreement. Consultant specifically acknowledges that any Change Order may be awarded to other parties under similar agreements as this Agreement.

SECTION 2. CONSULTANT'S RESPONSIBILITIES

- (a) Consultant shall be responsible for the professional quality, technical accuracy and timely completion of Consultant's work, including that performed by Consultant's subconsultants and subcontractors, and including drawings, reports and other services, irrespective of Client's approval of or acquiescence in same.
- (b) Consultant shall be responsible, in accordance with applicable law, to Client for all loss or damage to Client caused by Consultant's negligent act or omission; except that Consultant hereby irrevocably waives and excuses Client and Client's attorneys from compliance with any requirement to obtain a certificate of review as a condition precedent to commencement of an action, including any such requirements set forth in Section 13-20-602, C.R.S. or similar statute, whether now existing or hereafter enacted.
- (c) Consultant shall be completely responsible for the safety of Consultant's employees in the execution of work under this Agreement and shall provide all necessary safety and protective equipment for said employees.
- (d) Consultant acknowledges that time is of the essence with respect to the completion of its services under this Agreement. Consultant shall accomplish its work within the period of time set forth in the Work Order. Except to the extent the parties agree to time extensions for delays beyond the control of Consultant, Consultant shall adhere to the schedule set forth in the Work Order and perform its work in a timely manner so as not to delay Client's timetable for achievement of interim tasks and final completion of any related or dependent work.
- (e) Before undertaking any work which Consultant considers beyond or in addition to the scope of the Work Order, Consultant shall advise Client in writing that (i) Consultant considers the work beyond the scope of the Work Order, (ii) the reasons that Consultant believes the out of scope or additional work should be performed, and (iii) a reasonable estimate of the cost of such work. Consultant shall not proceed with any out of scope or additional work until authorized in writing by Client. Client shall negotiate with the Consultant prior to authorizing any additional work; negotiated compensation shall be based upon the fee schedule set forth in Schedule 2 attached hereto and incorporated herein.
- (f) Consultant shall designate a representative who shall have authority to approve and accept Work Orders on behalf of Consultant and prepare bid amounts under Section 3 of this Agreement.

SECTION 3. FEES FOR SERVICES/PAYMENT

- (a) When requested by Client, Consultant shall prepare without charge to Client a bid amount for any proposed Work Order ("Work Order Compensation") which shall be based upon the fee schedule set forth in Schedule 2 and shall itemize compensation amounts and include the maximum compensation amount necessary for completion and performance of all work set forth in the Work Order. Should Client have any dispute, question, required clarification or other issue with respect to the Work Order Compensation, Consultant shall meet and confer in good faith with Client to resolve such issue. No Work Order shall be signed and issued by the Wastewater Director of Client unless and until Client approves the Work Order Compensation.
- (b) Consultant shall submit periodic, but not more frequently than monthly, applications for payment for actual professional services rendered. Applications for payment shall be separately submitted for each Work Order and shall never aggregate to more than the maximum amount set forth in the Work Order. Applications for payment shall be submitted based upon the fee schedule set forth in Schedule 2 and the approved Work Order Compensation and shall contain appropriate documentation that such services have been performed and such expenses incurred. As applicable, subcontractor invoices shall be required in any payment application, and no markups for such invoiced subcontracting services shall be allowed. Thereafter, Client shall pay Consultant for the amount of the application within 45 days of the date such application is received.
- (c) No separate or additional payment shall be made for profit, overhead, local telephone expenses, lodging, routine photocopying, computer time, secretarial or clerical time.
- (d) No compensation shall be paid to Consultant for services required and expenditures incurred in correcting Consultant's mistakes or negligence.

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

(f) All proposed fees shall remain fixed for the term of the agreement. In the event the City exercises the provision to extend the agreement after the initial term, requests for annual increases in fees may not exceed 1) three percent (3%) or, 2) the prior year's United States Bureau of Labor Statistics Consumer Price Index (CPI), whichever of the two options is lower.

SECTION 4. CLIENT'S RESPONSIBILITIES

(a) Client agrees to advise Consultant regarding Client's Project requirements and to provide all relevant information, surveys, data and previous reports accessible to Client which Consultant may reasonably require.

(b) Client shall designate a Project Representative to whom all communications from Consultant shall be directed and who shall have limited administrative authority on behalf of Client to receive and transmit information and make decisions with respect to the Project. Said representative shall not, however, have authority to bind Client as to matters of governmental policy or fiscal policy, nor to contract for Work Orders or Compensation for authorized work beyond the scope of this Agreement or a Work Order.

(c) Client shall examine all documents presented by Consultant and render decisions pertaining thereto within a reasonable time. The Client's approval of any drawings, specifications, reports, documents or other materials or product furnished hereunder shall not in any way relieve Consultant of responsibility for the professional adequacy of its work.

(d) Client shall perform its obligations and render decisions within a reasonable time under the circumstances presented. Based upon the nature of Client and its requirements, a period of 14 days shall be presumed reasonable for any decision not involving policy decision or significant financial impact, when all information reasonably necessary for Client to responsibly render a decision has been furnished. A period of 45 days shall be presumed reasonable for Client to act with respect to any matter involving policy or significant financial impact. The above periods of presumed reasonableness shall be extended where information reasonably required is not within the custody or control of Client but must be procured from others.

SECTION 5. TERM AND TERMINATION

(a) Term. The term of this Agreement shall be for three (3) consecutive years. The Agreement may be renewed in two (2) successive one-year periods by a written addendum signed by both parties. Adjustments in fees or costs shall follow Section 3(f) of this agreement.

(b) This agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Pueblo, contrary to Article X, §20 of the Colorado Constitution or any other constitutional, statutory or charter debt limitation. Notwithstanding any other provision of this agreement, with respect to any financial obligation of City which may arise under this agreement in any fiscal year after the current year, in the event the budget or other means of appropriations for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default by or breach of this agreement. The termination of this Agreement due to lack of funding shall be without penalty to the City.

(c) Client reserves the right to terminate this Agreement and Consultant's performance hereunder, at any time upon written notice, either for cause or for convenience. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, drawings, specifications, reports, plans, calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing this Agreement, together with all finished work and work in progress. Client further reserves the right to terminate for convenience any Work Order and Consultant's performance thereunder, at any time upon written notice. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, drawings, specifications, reports, plans, calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing the Work Order, together with all finished work and work in progress. The termination of a Work Order shall not terminate or be deemed to terminate this Agreement or any other Work Order issued by Client.

(d) Upon termination of this Agreement, or as applicable a Work Order, for events or reasons not the fault of Consultant, Consultant shall be paid at the rates specified in Schedule 2 for all services rendered to date of such termination; together with any reasonable costs incurred within 10 days of termination provided such latter costs could not be avoided or were incurred in mitigating loss or expenses to Consultant or Client. In no event shall payment to Consultant upon termination exceed the maximum compensation provided for complete performance in Section 3(a).

(e) In the event termination of this Agreement or Consultant's services is for breach of this Agreement by Consultant, or for other fault of Consultant including but not limited to any failure to timely proceed with work, or to pay its employees and consultants, or to perform work according to the highest professional standards, or to perform work in a manner deemed satisfactory by Client's Project Representative, then in that event, Consultant's entire right to compensation shall be limited to the lesser of (a) the reasonable value of completed work to Client or (b) payment at the rates specified in Schedule 2 for services satisfactorily performed, prior to date of termination.

(f) Consultant's professional responsibility for its completed work and services shall survive any termination.

SECTION 6. SITE ACCESS

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

SECTION 7. DOCUMENTS AND USE OF DOCUMENTS

(a) Consultant shall provide an electronic copy on a USB Flash Drive in AutoCAD Civil 3D. The USB Flash Drive must include the linework drawing of existing features with a generated surface, filed book file for surface generation and field notes explaining all codes and linework for ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels (the assigned manhole number shown in plan set), sanitary sewer pipes with pipe type and diameter, control points for future staking, etc.

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

SECTION 8. INSURANCE AND INDEMNITY

(a) Consultant agrees that it shall procure and will maintain during the term of this Agreement, such insurance as will protect it from claims under workers' compensation acts, claims for damages because of personal injury including bodily injury, sickness or disease or death of any of its employees or of any person other than its employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom; and such insurance will provide for coverage in such amounts as set forth in subparagraph (b).

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

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

(ii) Commercial General Liability Insurance. The Consultant shall secure and maintain during the period of this Agreement and for such additional time as work on the project is being performed, Commercial General Liability Insurance issued to and covering the liability of the Consultant with respect to all work performed by him and all his subcontractors under the Agreement, to be written on a comprehensive policy

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

(iii) Professional Liability Insurance with coverage of not less than \$1,000,000, and with a deductible amount acceptable by the Client.

(iv) Comprehensive Automobile Liability Insurance. The Consultant shall procure and maintain during the period of the Agreement and for such additional time as work on the project is being performed, Comprehensive Automobile Liability Insurance. This insurance shall be written with limits of liability for and injury to one person in any single occurrence of not less than \$350,000 and for any injury to two or more persons in any single occurrence of not less than \$1,000,000. This insurance shall include uninsured/underinsured motorist coverage and shall protect the Consultant from any and all claims arising from the use both on and off the site of the project of automobiles, trucks, tractors, backhoes and similar equipment whether owned, leased, hired or used by Consultant.

(c) Consultant agrees to hold harmless, defend and indemnify Client from and against any liability to third parties, arising out of negligent acts or omissions of Consultant, its employees, subcontractors and consultants.

SECTION 9. SUBCONTRACTS

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

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

(c) Consultant acknowledges that, due to the nature of the services to be provided under this Agreement, the Client has a substantial interest in the personnel and consultants to whom Consultant assigns principal responsibility for services performed under this Agreement. Consequently, Consultant represents that it has selected and intends to employ or assign the key personnel and consultants identified in its proposal submitted to Client prior to execution of this Agreement to induce Client to enter this Agreement. Consultant shall not change such consultants or key personnel except after giving notice of a proposed change to Client and receiving Client's consent thereto. Consultant shall not assign or reassign Project work to any person to whom Client has reasonable objection.

SECTION 10. MISCELLANEOUS

(a) Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either Consultant or Client by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to the Client at City of Pueblo Waste Reclamation Facility, Attn: Wastewater Director, 1300 South Queens Ave., Pueblo, CO 81001, with a copy to the City of Pueblo Law Department, 1 City Hall Place, Pueblo, CO 81003; or to Consultant at Clark Land Surveying, Inc., Attn: Justin Crosson, 177 S. Tiffany Dr., Pueblo West, CO 81007. Either party may change his address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

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

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

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

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

(f) Equal Employment Opportunity. In connection with the performance of this Agreement, neither Consultant nor its consultants shall discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability or age. Consultant shall endeavor to insure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, disability or age.

(g) Severability. If any provision of this Agreement, except for Section 2, is determined to be directly contrary to and prohibited by law or the requirements of any federal grant or other Project funding source, then such provision shall be deemed void and the remainder of the Agreement enforced. However, it is the intent of the parties that Section 2 of this Agreement not be severable, and that if any provision of said section be determined to be contrary to law or the terms of any federal grant, then this entire Agreement shall be void.

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

(a) At or prior to the time for execution of this Agreement, Consultant shall submit to the Purchasing Agent of the City its certification that it does not knowingly employ or contract with a "Worker Without Authorization", as that term is defined within §8-17.5-101 (9), C.R.S. (herein "Worker Without Authorization"), who will perform work under this Agreement and that the Consultant will participate in either the "E-Verify Program" created in Public Law 208, 104th Congress, as amended and expanded in Public law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security or the "Department Program" established pursuant to section 8-17.5-102(5)(c), C.R.S. that is administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(b) Consultant shall not:

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

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

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

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

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

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

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

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

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

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

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

SECTION 12. PERA LIABILITY

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

(Signature Section on following page)

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

CITY OF PUEBLO, A MUNICIPAL CORPORATION

CLARK LAND SURVEYING, INC.

By: _____
Naomi Hedden, Director of Purchasing

By: _____
Justin Crosson, President & Secretary

Attest: _____
City Clerk

[S E A L]

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

Director of Finance

APPROVED AS TO FORM:

City Attorney

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

SCHEDULE 1 – SCOPE OF SERVICES

Excerpt from Request for Proposal dated October 8, 2021, Section 2., Addendum No. 2 dated November 3, 2021, and Communication Regarding Agreement Dated January 27, 2022

2.3 Scope of Service:

2.3.1 The firm or team of consultants will be required to provide utility locations and topographic surveys for the removal and replacement of sanitary sewer mains and any surface improvements required to do so. The consultant should attend and facilitate meetings as necessary with City staff throughout the development of each individual project. Firm must be familiar with public processes and coordinate with City staff in presenting details to City Council if required.

2.3.2 Field Requirements:

a) To include but not limited to locating sanitary sewer manholes with all inverts in and out elevations, ground surface elevations, control points for future staking, setting hubs for construction, providing cut sheets for the contractor, all existing utilities, identification of existing surface improvements such as curb and gutter, sidewalks, alley pans, buildings, fences, control points, etc. within the proposed boundary. In the field, the survey boundary shall cover a width of 30 feet along the sewer line, 15 feet on each side of the pipe axis. In the residential areas, the survey boundary shall be from property/fence lines to property/fence lines. In areas where a manhole is located at the start or end of the survey boundary, the survey shall cover the area extended 30 feet in the direction of sewer pipe axis before or after the manhole.

b) Centerline profiles of all allies or streets.

c) Each project shall start within two weeks of request and finish no later than 90 days from start *or no later than the delivery time provided in the Work Order Fee and agreed upon with each proposal.*

2.3.3 Office Requirements:

Provide an electronic copy on a USB Flash Drive in AutoCAD Civil 3D. The USB Flash Drive must include the linework drawing of existing features with a generated surface, filed book file for surface generation and field notes explaining all codes and linework for ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels, sanitary sewer pipes with pipe type and diameter, control points for future staking, etc.

SCHEDULE 2 – FEE SCHEDULE

Excerpt from Consultant’s Proposal Submittal dated November 12, 2021, Item 3, Pages 13-14



ITEM 3 FIRM RATES

Fee Schedule

> Survey Field Services

1-Man Survey Crew <i>1 surveyor, truck, 1 GPS System and/or 1 Robotic Total Station</i>	\$150 / hour
2-Man Survey Crew <i>2 surveyors, truck, 1 GPS System and/or 1 Robotic Total Station</i>	\$190 / hour
Construction Staking <i>1-2 surveyors, truck, 1 GPS System and/or 1 Robotic Total Station</i>	\$190 / hour

> Survey Office Services

CAD Technician	\$80 / hour
Project Surveyor	\$130 / hour
Operations Manager	\$130 / hour
Professional Land Surveyor	\$140 / hour
Professional Engineer	\$140 / hour
Principal	\$150 / hour

> Subsurface Utility Services

Subsurface Utility Designating <i>1 designator, truck and industry standard geophysical designating equipment</i>	\$150 / hour
Subsurface Utility Test Holes	See Test Hole Fee Schedule
Ground Penetrating Radar	Call for pricing

> Travel

Vehicle Mileage	Current IRS Rate
Per Diem <i>For sites more than 100 miles from office</i>	Current GSA Rates

Fee Schedule - Test Holes

> Utility Test Holes

Per Hole Rates

- > **Level 1 (Basic)** \$350 / hole
Includes coordination with 811, utility targeting, backfill, depth and surveyed position.
- > **Level 2 (Paved Areas)** \$650 / hole
Includes Level 1 services, and core drilling and hole / pavement remediation.
- > **Level 3 (Paved+Traffic Control)** \$1,550 / hole
Includes Level 1 and Level 2 services, and ROW permits, flow-fill, traffic control.

Per Day Rate \$3,500 / day

- *Service includes utility designation, excavation, surveyed position, hole remediation and digital deliverables.*
- *Traffic Control is additional \$2,200 / day, as needed, to support Utility Test Holes.*
- *Traffic Control fee includes up to \$250 for right-of-way permitting.*

SCHEDULE 3 – SAMPLE WORK ORDER

Excerpt from Request for Proposal dated October 8, 2021, Appendix D
(including approval of Director of Purchasing per Section 1b)

WORK ORDER

This Work Order is entered pursuant to and subject to the terms and conditions of the Professional Services Agreement dated _____, 20__ between Pueblo, a Municipal Corporation ("Client"), and _____ ("Consultant").

Scope of Work:

Time for Completion:

Work Order Compensation:

Approved by: _____ Dated: _____
Client: City of Pueblo, Wastewater Director

Approved by: _____ Dated: _____
Client: City of Pueblo, Director of Finance

Approved by: _____ Dated: _____
Client: City of Pueblo, Director of Purchasing

Consultant
Accepted by: _____ Dated: _____

Consultant's
Printed Name and Title: _____

Attachments: PDF Drawings/Sheets _____
Compensation Details

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
CITY OF PUEBLO
AND
ENCOMPASS SERVICES, LLC**

THIS AGREEMENT is made and entered this ____ day of February, 2021, by and between Pueblo, a Municipal Corporation (hereinafter referred to as "City" and/or "Client") and Encompass Services, LLC, a Texas Limited Liability Company authorized to do business in the State of Colorado (hereinafter referred to as "Consultant"), for Consultant to render professional services for Client with respect to Bid 21-074 Surveying Services for Sanitary Sewer Projects and City-Wide Surveying Projects and related ancillary services, hereinafter referred to as the "Project." In consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

SECTION 1. GENERAL AND SCOPE OF SERVICES

(a) Consultant shall satisfactorily perform the professional surveying and related services which may be requested and approved by Client, including the following category of service:

(i) Topographic and improvement surveys as well as construction staking with respect to sanitary sewer projects including but not limited to projects for the removal and replacement of sanitary sewer mains. Survey work to include ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels (the assigned manhole number shown in plan set), sanitary sewer pipes with pipe type and diameter, control points for future staking, setting hubs for construction, providing cut sheets for the contractor, etc. In the field, the survey boundary shall cover a width of 30 feet along the sewer line, 15 feet on each side of the pipe axis. In the residential areas, the survey boundary shall be from property/fence lines to property/fence lines. In areas where a manhole is located at the start or end of the survey boundary, the survey shall cover the area extended 30 feet in the direction of sewer pipe axis before or after the manhole ("Sanitary Sewer Survey Project").

(b) Request for services shall be initiated and documented by a written work order agreement ("Work Order" with sample attached as Schedule 3) signed by the Wastewater Director of Client and approved by the Director of Finance and Director of Purchasing. The Work Order shall set forth the work to be performed, the time for completion and the compensation, including maximum compensation, for performance of such work. Said compensation shall be approved as provided in Section 3 of this Agreement. The work to be performed under any Work Order shall be included in the "Basic Services" and "Project" as such terms are used in this Agreement and shall be subject to all terms and conditions of this Agreement. All such services shall include all usual and customary professional costs for this type of service as indicated in the Scope of Service in Section 2 of the Request for Proposal (RFP). Consultant acknowledges that the selection of Consultant by Client was pursuant to an RFP. All of the requirements of that RFP are incorporated herein by reference. If the work to be performed is a fiber repair project, it shall include and comply with the Scope of Services set forth in Section 1(a) above unless specific exceptions are provided for in the Work Order.

(c) To the extent Consultant performs any of the Project work through subconsultants or subcontractors, if previously requested and approved by the Client in each individual Work Order, Consultant shall be and remain as fully responsible for the full performance and quality of services performed by such subconsultants or subcontractors as it is for services performed directly by Consultant or Consultant's employees.

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

(e) No minimum amount of work is guaranteed under this Agreement. Client reserves the right to engage and/or contract with other parties to perform services which otherwise might be requested under this Agreement. Consultant specifically acknowledges that any Change Order may be awarded to other parties under similar agreements as this Agreement.

SECTION 2. CONSULTANT'S RESPONSIBILITIES

- (a) Consultant shall be responsible for the professional quality, technical accuracy and timely completion of Consultant's work, including that performed by Consultant's subconsultants and subcontractors, and including drawings, reports and other services, irrespective of Client's approval of or acquiescence in same.
- (b) Consultant shall be responsible, in accordance with applicable law, to Client for all loss or damage to Client caused by Consultant's negligent act or omission; except that Consultant hereby irrevocably waives and excuses Client and Client's attorneys from compliance with any requirement to obtain a certificate of review as a condition precedent to commencement of an action, including any such requirements set forth in Section 13-20-602, C.R.S. or similar statute, whether now existing or hereafter enacted.
- (c) Consultant shall be completely responsible for the safety of Consultant's employees in the execution of work under this Agreement and shall provide all necessary safety and protective equipment for said employees.
- (d) Consultant acknowledges that time is of the essence with respect to the completion of its services under this Agreement. Consultant shall accomplish its work within the period of time set forth in the Work Order. Except to the extent the parties agree to time extensions for delays beyond the control of Consultant, Consultant shall adhere to the schedule set forth in the Work Order and perform its work in a timely manner so as not to delay Client's timetable for achievement of interim tasks and final completion of any related or dependent work.
- (e) Before undertaking any work which Consultant considers beyond or in addition to the scope of the Work Order, Consultant shall advise Client in writing that (i) Consultant considers the work beyond the scope of the Work Order, (ii) the reasons that Consultant believes the out of scope or additional work should be performed, and (iii) a reasonable estimate of the cost of such work. Consultant shall not proceed with any out of scope or additional work until authorized in writing by Client. Client shall negotiate with the Consultant prior to authorizing any additional work; negotiated compensation shall be based upon the fee schedule set forth in Schedule 2 attached hereto and incorporated herein.
- (f) Consultant shall designate a representative who shall have authority to approve and accept Work Orders on behalf of Consultant and prepare bid amounts under Section 3 of this Agreement.

SECTION 3. FEES FOR SERVICES/PAYMENT

- (a) When requested by Client, Consultant shall prepare without charge to Client a bid amount for any proposed Work Order ("Work Order Compensation") which shall be based upon the fee schedule set forth in Schedule 2 and shall itemize compensation amounts and include the maximum compensation amount necessary for completion and performance of all work set forth in the Work Order. Should Client have any dispute, question, required clarification or other issue with respect to the Work Order Compensation, Consultant shall meet and confer in good faith with Client to resolve such issue. No Work Order shall be signed and issued by the Wastewater Director of Client unless and until Client approves the Work Order Compensation.
- (b) Consultant shall submit periodic, but not more frequently than monthly, applications for payment for actual professional services rendered. Applications for payment shall be separately submitted for each Work Order and shall never aggregate to more than the maximum amount set forth in the Work Order. Applications for payment shall be submitted based upon the fee schedule set forth in Schedule 2 and the approved Work Order Compensation and shall contain appropriate documentation that such services have been performed and such expenses incurred. As applicable, subcontractor invoices shall be required in any payment application, and no markups for such invoiced subcontracting services shall be allowed. Thereafter, Client shall pay Consultant for the amount of the application within 45 days of the date such application is received.
- (c) No separate or additional payment shall be made for profit, overhead, local telephone expenses, lodging, routine photocopying, computer time, secretarial or clerical time.
- (d) No compensation shall be paid to Consultant for services required and expenditures incurred in correcting Consultant's mistakes or negligence.

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

(f) All proposed fees shall remain fixed for the term of the agreement. In the event the City exercises the provision to extend the agreement after the initial term, requests for annual increases in fees may not exceed 1) three percent (3%) or, 2) the prior year's United States Bureau of Labor Statistics Consumer Price Index (CPI), whichever of the two options is lower.

SECTION 4. CLIENT'S RESPONSIBILITIES

(a) Client agrees to advise Consultant regarding Client's Project requirements and to provide all relevant information, surveys, data and previous reports accessible to Client which Consultant may reasonably require.

(b) Client shall designate a Project Representative to whom all communications from Consultant shall be directed and who shall have limited administrative authority on behalf of Client to receive and transmit information and make decisions with respect to the Project. Said representative shall not, however, have authority to bind Client as to matters of governmental policy or fiscal policy, nor to contract for Work Orders or Compensation for authorized work beyond the scope of this Agreement or a Work Order.

(c) Client shall examine all documents presented by Consultant and render decisions pertaining thereto within a reasonable time. The Client's approval of any drawings, specifications, reports, documents or other materials or product furnished hereunder shall not in any way relieve Consultant of responsibility for the professional adequacy of its work.

(d) Client shall perform its obligations and render decisions within a reasonable time under the circumstances presented. Based upon the nature of Client and its requirements, a period of 14 days shall be presumed reasonable for any decision not involving policy decision or significant financial impact, when all information reasonably necessary for Client to responsibly render a decision has been furnished. A period of 45 days shall be presumed reasonable for Client to act with respect to any matter involving policy or significant financial impact. The above periods of presumed reasonableness shall be extended where information reasonably required is not within the custody or control of Client but must be procured from others.

SECTION 5. TERM AND TERMINATION

(a) Term. The term of this Agreement shall be for three (3) consecutive years. The Agreement may be renewed in two (2) successive one-year periods by a written addendum signed by both parties. Adjustments in fees or costs shall follow Section 3(f) of this agreement.

(b) This agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Pueblo, contrary to Article X, §20 of the Colorado Constitution or any other constitutional, statutory or charter debt limitation. Notwithstanding any other provision of this agreement, with respect to any financial obligation of City which may arise under this agreement in any fiscal year after the current year, in the event the budget or other means of appropriations for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default by or breach of this agreement. The termination of this Agreement due to lack of funding shall be without penalty to the City.

(c) Client reserves the right to terminate this Agreement and Consultant's performance hereunder, at any time upon written notice, either for cause or for convenience. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, drawings, specifications, reports, plans, calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing this Agreement, together with all finished work and work in progress. Client further reserves the right to terminate for convenience any Work Order and Consultant's performance thereunder, at any time upon written notice. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, drawings, specifications, reports, plans, calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing the Work Order, together with all finished work and work in progress. The termination of a Work Order shall not terminate or be deemed to terminate this Agreement or any other Work Order issued by Client.

(d) Upon termination of this Agreement, or as applicable a Work Order, for events or reasons not the fault of Consultant, Consultant shall be paid at the rates specified in Schedule 2 for all services rendered to date of such termination; together with any reasonable costs incurred within 10 days of termination provided such latter costs could not be avoided or were incurred in mitigating loss or expenses to Consultant or Client. In no event shall payment to Consultant upon termination exceed the maximum compensation provided for complete performance in Section 3(a).

(e) In the event termination of this Agreement or Consultant's services is for breach of this Agreement by Consultant, or for other fault of Consultant including but not limited to any failure to timely proceed with work, or to pay its employees and consultants, or to perform work according to the highest professional standards, or to perform work in a manner deemed satisfactory by Client's Project Representative, then in that event, Consultant's entire right to compensation shall be limited to the lesser of (a) the reasonable value of completed work to Client or (b) payment at the rates specified in Schedule 2 for services satisfactorily performed, prior to date of termination.

(f) Consultant's professional responsibility for its completed work and services shall survive any termination.

SECTION 6. SITE ACCESS

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

SECTION 7. DOCUMENTS AND USE OF DOCUMENTS

(a) Consultant shall provide an electronic copy on a USB Flash Drive in AutoCAD Civil 3D. The USB Flash Drive must include the linework drawing of existing features with a generated surface, filed book file for surface generation and field notes explaining all codes and linework for ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels (the assigned manhole number shown in plan set), sanitary sewer pipes with pipe type and diameter, control points for future staking, etc.

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

SECTION 8. INSURANCE AND INDEMNITY

(a) Consultant agrees that it shall procure and will maintain during the term of this Agreement, such insurance as will protect it from claims under workers' compensation acts, claims for damages because of personal injury including bodily injury, sickness or disease or death of any of its employees or of any person other than its employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom; and such insurance will provide for coverage in such amounts as set forth in subparagraph (b).

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

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

(ii) Commercial General Liability Insurance. The Consultant shall secure and maintain during the period of this Agreement and for such additional time as work on the project is being performed, Commercial General Liability Insurance issued to and covering the liability of the Consultant with respect to all work performed by him and all his subcontractors under the Agreement, to be written on a comprehensive policy

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

(iii) Professional Liability Insurance with coverage of not less than \$1,000,000, and with a deductible amount acceptable by the Client.

(iv) Comprehensive Automobile Liability Insurance. The Consultant shall procure and maintain during the period of the Agreement and for such additional time as work on the project is being performed, Comprehensive Automobile Liability Insurance. This insurance shall be written with limits of liability for and injury to one person in any single occurrence of not less than \$350,000 and for any injury to two or more persons in any single occurrence of not less than \$1,000,000. This insurance shall include uninsured/underinsured motorist coverage and shall protect the Consultant from any and all claims arising from the use both on and off the site of the project of automobiles, trucks, tractors, backhoes and similar equipment whether owned, leased, hired or used by Consultant.

(c) Consultant agrees to hold harmless, defend and indemnify Client from and against any liability to third parties, arising out of negligent acts or omissions of Consultant, its employees, subcontractors and consultants.

SECTION 9. SUBCONTRACTS

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

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

(c) Consultant acknowledges that, due to the nature of the services to be provided under this Agreement, the Client has a substantial interest in the personnel and consultants to whom Consultant assigns principal responsibility for services performed under this Agreement. Consequently, Consultant represents that it has selected and intends to employ or assign the key personnel and consultants identified in its proposal submitted to Client prior to execution of this Agreement to induce Client to enter this Agreement. Consultant shall not change such consultants or key personnel except after giving notice of a proposed change to Client and receiving Client's consent thereto. Consultant shall not assign or reassign Project work to any person to whom Client has reasonable objection.

SECTION 10. MISCELLANEOUS

(a) Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either Consultant or Client by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to the Client at City of Pueblo Waste Reclamation Facility, Attn: Wastewater Director, 1300 South Queens Ave., Pueblo, CO 81001, with a copy to the City of Pueblo Law Department, 1 City Hall Place, Pueblo, CO 81003; or to Consultant at Encompass Services, LLC, Attn: Tyler Hastings, 10901 W. 120th Avenue, Suite 400, Broomfield, CO 80021. Either party may change his address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

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

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

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

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

(f) Equal Employment Opportunity. In connection with the performance of this Agreement, neither Consultant nor its consultants shall discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability or age. Consultant shall endeavor to insure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, disability or age.

(g) Severability. If any provision of this Agreement, except for Section 2, is determined to be directly contrary to and prohibited by law or the requirements of any federal grant or other Project funding source, then such provision shall be deemed void and the remainder of the Agreement enforced. However, it is the intent of the parties that Section 2 of this Agreement not be severable, and that if any provision of said section be determined to be contrary to law or the terms of any federal grant, then this entire Agreement shall be void.

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

(a) At or prior to the time for execution of this Agreement, Consultant shall submit to the Purchasing Agent of the City its certification that it does not knowingly employ or contract with a "Worker Without Authorization", as that term is defined within §8-17.5-101 (9), C.R.S. (herein "Worker Without Authorization"), who will perform work under this Agreement and that the Consultant will participate in either the "E-Verify Program" created in Public Law 208, 104th Congress, as amended and expanded in Public law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security or the "Department Program" established pursuant to section 8-17.5-102(5)(c), C.R.S. that is administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(b) Consultant shall not:

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

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

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

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

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

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

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

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

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

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

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

SECTION 12. PERA LIABILITY

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

(Signature Section on following page)

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

CITY OF PUEBLO, A MUNICIPAL CORPORATION

ENCOMPASS SERVICES, LLC

By: _____
Naomi Hedden, Director of Purchasing

By: _____
Tyler Hastings, Vice President Civil Services

Attest: _____
City Clerk

[S E A L]

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

Director of Finance

APPROVED AS TO FORM:

City Attorney

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

SCHEDULE 1 – SCOPE OF SERVICES

Excerpt from Request for Proposal dated October 8, 2021, Section 2., Addendum No. 2 dated November 3, 2021, and Communication Regarding Agreement Dated January 27, 2022

2.3 Scope of Service:

2.3.1 The firm or team of consultants will be required to provide utility locations and topographic surveys for the removal and replacement of sanitary sewer mains and any surface improvements required to do so. The consultant should attend and facilitate meetings as necessary with City staff throughout the development of each individual project. Firm must be familiar with public processes and coordinate with City staff in presenting details to City Council if required.

2.3.2 Field Requirements:

a) To include but not limited to locating sanitary sewer manholes with all inverts in and out elevations, ground surface elevations, control points for future staking, setting hubs for construction, providing cut sheets for the contractor, all existing utilities, identification of existing surface improvements such as curb and gutter, sidewalks, alley pans, buildings, fences, control points, etc. within the proposed boundary. In the field, the survey boundary shall cover a width of 30 feet along the sewer line, 15 feet on each side of the pipe axis. In the residential areas, the survey boundary shall be from property/fence lines to property/fence lines. In areas where a manhole is located at the start or end of the survey boundary, the survey shall cover the area extended 30 feet in the direction of sewer pipe axis before or after the manhole.

b) Centerline profiles of all allies or streets.

c) Each project shall start within two weeks of request and finish no later than 90 days from start *or no later than the delivery time provided in the Work Order Fee and agreed upon with each proposal.*

2.3.3 Office Requirements:

Provide an electronic copy on a USB Flash Drive in AutoCAD Civil 3D. The USB Flash Drive must include the linework drawing of existing features with a generated surface, filed book file for surface generation and field notes explaining all codes and linework for ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels, sanitary sewer pipes with pipe type and diameter, control points for future staking, etc.

SCHEDULE 2 – FEE SCHEDULE

Excerpt from Consultant’s Proposal Submittal dated November 12, 2021, Section 1.8, Page 22



1.8 – FEE SCHEDULE

<u>Office Personnel</u>	<u>Hourly Rate</u>
Project Director -----	\$160.00
Project Manager/ PLS -----	\$155.00
Data Technician -----	\$95.00

NOTE: Overtime rate (1.5) applied for hours worked over 40 hours per week (Office Personnel)

Field Personnel

One-Man Survey Crew -----	\$135.00
Two-Man Survey Crew -----	\$165.00

NOTE: Overtime rate (1.5) applied for hours worked over 60 hours per week (Field Personnel)

Terms and Conditions

- Direct costs such as sub-consultant fees for traffic control, utility potholing, and permitting are not included and will be invoiced at cost w/ no markup.
- Project Director, Project Manager and Data Technician rates include administration costs and all software/ hardware necessary to perform the work. Rates are based on (8) hours per day/ (5) days per week/ (40) hours per week work schedule. Hours worked over (40) hours per week as requested by the City of Pueblo will be billed at a multiplier rate of 1.5x and will be considered out of the original scope of required man-hours.
- One-Man and Two-Man Survey Crew rates include administration costs, standard PPE, 3D scanner, robotic total station, GPS/ RTK base & receiver, digital level, utility locator, vehicle, mileage, cell phone, laptop, and all survey accessories and consumables necessary to perform the work. Rates are based on (12) hours per day/ (5) days per week/ (60) hours per week work schedule. Hours worked over (60) hours per week as requested by the client will be billed at a multiplier rate of 1.5x and will be considered out of the original scope of required man-hours.

SCHEDULE 3 – SAMPLE WORK ORDER

Excerpt from Request for Proposal dated October 8, 2021, Appendix D
(including approval of Director of Purchasing per Section 1b)

WORK ORDER

This Work Order is entered pursuant to and subject to the terms and conditions of the Professional Services Agreement dated _____, 20__ between Pueblo, a Municipal Corporation ("Client"), and _____ ("Consultant").

Scope of Work:

Time for Completion:

Work Order Compensation:

Approved by: _____ Dated: _____
Client: City of Pueblo, Wastewater Director

Approved by: _____ Dated: _____
Client: City of Pueblo, Director of Finance

Approved by: _____ Dated: _____
Client: City of Pueblo, Director of Purchasing

Consultant
Accepted by: _____ Dated: _____

Consultant's
Printed Name and Title: _____

Attachments: PDF Drawings/Sheets _____
Compensation Details

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
CITY OF PUEBLO
AND
NORTHSTAR ENGINEERING AND SURVEYING, INC.**

THIS AGREEMENT is made and entered this ____ day of February, 2021, by and between Pueblo, a Municipal Corporation (hereinafter referred to as "City" and/or "Client") and NorthStar Engineering and Surveying, Inc., a Colorado Corporation, (hereinafter referred to as "Consultant") for Consultant to render professional services for Client with respect to Bid 21-074 Surveying Services for Sanitary Sewer Projects and City-Wide Surveying Projects and related ancillary services, hereinafter referred to as the "Project." In consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

SECTION 1. GENERAL AND SCOPE OF SERVICES

(a) Consultant shall satisfactorily perform the professional surveying and related services which may be requested and approved by Client, including the following category of service:

(i) Topographic and improvement surveys as well as construction staking with respect to sanitary sewer projects including but not limited to projects for the removal and replacement of sanitary sewer mains. Survey work to include ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels (the assigned manhole number shown in plan set), sanitary sewer pipes with pipe type and diameter, control points for future staking, setting hubs for construction, providing cut sheets for the contractor, etc. In the field, the survey boundary shall cover a width of 30 feet along the sewer line, 15 feet on each side of the pipe axis. In the residential areas, the survey boundary shall be from property/fence lines to property/fence lines. In areas where a manhole is located at the start or end of the survey boundary, the survey shall cover the area extended 30 feet in the direction of sewer pipe axis before or after the manhole ("Sanitary Sewer Survey Project").

(b) Request for services shall be initiated and documented by a written work order agreement ("Work Order" with sample attached as Schedule 3) signed by the Wastewater Director of Client and approved by the Director of Finance and Director of Purchasing. The Work Order shall set forth the work to be performed, the time for completion and the compensation, including maximum compensation, for performance of such work. Said compensation shall be approved as provided in Section 3 of this Agreement. The work to be performed under any Work Order shall be included in the "Basic Services" and "Project" as such terms are used in this Agreement and shall be subject to all terms and conditions of this Agreement. All such services shall include all usual and customary professional costs for this type of service as indicated in the Scope of Service in Section 2 of the Request for Proposal (RFP). Consultant acknowledges that the selection of Consultant by Client was pursuant to an RFP. All of the requirements of that RFP are incorporated herein by reference. If the work to be performed is a fiber repair project, it shall include and comply with the Scope of Services set forth in Section 1(a) above unless specific exceptions are provided for in the Work Order.

(c) To the extent Consultant performs any of the Project work through subconsultants or subcontractors, if previously requested and approved by the Client in each individual Work Order, Consultant shall be and remain as fully responsible for the full performance and quality of services performed by such subconsultants or subcontractors as it is for services performed directly by Consultant or Consultant's employees.

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

(e) No minimum amount of work is guaranteed under this Agreement. Client reserves the right to engage and/or contract with other parties to perform services which otherwise might be requested under this Agreement. Consultant specifically acknowledges that any Change Order may be awarded to other parties under similar agreements as this Agreement.

SECTION 2. CONSULTANT'S RESPONSIBILITIES

- (a) Consultant shall be responsible for the professional quality, technical accuracy and timely completion of Consultant's work, including that performed by Consultant's subconsultants and subcontractors, and including drawings, reports and other services, irrespective of Client's approval of or acquiescence in same.
- (b) Consultant shall be responsible, in accordance with applicable law, to Client for all loss or damage to Client caused by Consultant's negligent act or omission; except that Consultant hereby irrevocably waives and excuses Client and Client's attorneys from compliance with any requirement to obtain a certificate of review as a condition precedent to commencement of an action, including any such requirements set forth in Section 13-20-602, C.R.S. or similar statute, whether now existing or hereafter enacted.
- (c) Consultant shall be completely responsible for the safety of Consultant's employees in the execution of work under this Agreement and shall provide all necessary safety and protective equipment for said employees.
- (d) Consultant acknowledges that time is of the essence with respect to the completion of its services under this Agreement. Consultant shall accomplish its work within the period of time set forth in the Work Order. Except to the extent the parties agree to time extensions for delays beyond the control of Consultant, Consultant shall adhere to the schedule set forth in the Work Order and perform its work in a timely manner so as not to delay Client's timetable for achievement of interim tasks and final completion of any related or dependent work.
- (e) Before undertaking any work which Consultant considers beyond or in addition to the scope of the Work Order, Consultant shall advise Client in writing that (i) Consultant considers the work beyond the scope of the Work Order, (ii) the reasons that Consultant believes the out of scope or additional work should be performed, and (iii) a reasonable estimate of the cost of such work. Consultant shall not proceed with any out of scope or additional work until authorized in writing by Client. Client shall negotiate with the Consultant prior to authorizing any additional work; negotiated compensation shall be based upon the fee schedule set forth in Schedule 2 attached hereto and incorporated herein.
- (f) Consultant shall designate a representative who shall have authority to approve and accept Work Orders on behalf of Consultant and prepare bid amounts under Section 3 of this Agreement.

SECTION 3. FEES FOR SERVICES/PAYMENT

- (a) When requested by Client, Consultant shall prepare without charge to Client a bid amount for any proposed Work Order ("Work Order Compensation") which shall be based upon the fee schedule set forth in Schedule 2 and shall itemize compensation amounts and include the maximum compensation amount necessary for completion and performance of all work set forth in the Work Order. Should Client have any dispute, question, required clarification or other issue with respect to the Work Order Compensation, Consultant shall meet and confer in good faith with Client to resolve such issue. No Work Order shall be signed and issued by the Wastewater Director of Client unless and until Client approves the Work Order Compensation.
- (b) Consultant shall submit periodic, but not more frequently than monthly, applications for payment for actual professional services rendered. Applications for payment shall be separately submitted for each Work Order and shall never aggregate to more than the maximum amount set forth in the Work Order. Applications for payment shall be submitted based upon the fee schedule set forth in Schedule 2 and the approved Work Order Compensation and shall contain appropriate documentation that such services have been performed and such expenses incurred. As applicable, subcontractor invoices shall be required in any payment application, and no markups for such invoiced subcontracting services shall be allowed. Thereafter, Client shall pay Consultant for the amount of the application within 45 days of the date such application is received.
- (c) No separate or additional payment shall be made for profit, overhead, local telephone expenses, lodging, routine photocopying, computer time, secretarial or clerical time.
- (d) No compensation shall be paid to Consultant for services required and expenditures incurred in correcting Consultant's mistakes or negligence.

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

(f) All proposed fees shall remain fixed for the term of the agreement. In the event the City exercises the provision to extend the agreement after the initial term, requests for annual increases in fees may not exceed 1) three percent (3%) or, 2) the prior year's United States Bureau of Labor Statistics Consumer Price Index (CPI), whichever of the two options is lower.

SECTION 4. CLIENT'S RESPONSIBILITIES

(a) Client agrees to advise Consultant regarding Client's Project requirements and to provide all relevant information, surveys, data and previous reports accessible to Client which Consultant may reasonably require.

(b) Client shall designate a Project Representative to whom all communications from Consultant shall be directed and who shall have limited administrative authority on behalf of Client to receive and transmit information and make decisions with respect to the Project. Said representative shall not, however, have authority to bind Client as to matters of governmental policy or fiscal policy, nor to contract for Work Orders or Compensation for authorized work beyond the scope of this Agreement or a Work Order.

(c) Client shall examine all documents presented by Consultant and render decisions pertaining thereto within a reasonable time. The Client's approval of any drawings, specifications, reports, documents or other materials or product furnished hereunder shall not in any way relieve Consultant of responsibility for the professional adequacy of its work.

(d) Client shall perform its obligations and render decisions within a reasonable time under the circumstances presented. Based upon the nature of Client and its requirements, a period of 14 days shall be presumed reasonable for any decision not involving policy decision or significant financial impact, when all information reasonably necessary for Client to responsibly render a decision has been furnished. A period of 45 days shall be presumed reasonable for Client to act with respect to any matter involving policy or significant financial impact. The above periods of presumed reasonableness shall be extended where information reasonably required is not within the custody or control of Client but must be procured from others.

SECTION 5. TERM AND TERMINATION

(a) Term. The term of this Agreement shall be for three (3) consecutive years. The Agreement may be renewed in two (2) successive one-year periods by a written addendum signed by both parties. Adjustments in fees or costs shall follow Section 3(f) of this agreement.

(b) This agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Pueblo, contrary to Article X, §20 of the Colorado Constitution or any other constitutional, statutory or charter debt limitation. Notwithstanding any other provision of this agreement, with respect to any financial obligation of City which may arise under this agreement in any fiscal year after the current year, in the event the budget or other means of appropriations for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default by or breach of this agreement. The termination of this Agreement due to lack of funding shall be without penalty to the City.

(c) Client reserves the right to terminate this Agreement and Consultant's performance hereunder, at any time upon written notice, either for cause or for convenience. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, drawings, specifications, reports, plans, calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing this Agreement, together with all finished work and work in progress. Client further reserves the right to terminate for convenience any Work Order and Consultant's performance thereunder, at any time upon written notice. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, drawings, specifications, reports, plans,

calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing the Work Order, together with all finished work and work in progress. The termination of a Work Order shall not terminate or be deemed to terminate this Agreement or any other Work Order issued by Client.

(d) Upon termination of this Agreement, or as applicable a Work Order, for events or reasons not the fault of Consultant, Consultant shall be paid at the rates specified in Schedule 2 for all services rendered to date of such termination; together with any reasonable costs incurred within 10 days of termination provided such latter costs could not be avoided or were incurred in mitigating loss or expenses to Consultant or Client. In no event shall payment to Consultant upon termination exceed the maximum compensation provided for complete performance in Section 3(a).

(e) In the event termination of this Agreement or Consultant's services is for breach of this Agreement by Consultant, or for other fault of Consultant including but not limited to any failure to timely proceed with work, or to pay its employees and consultants, or to perform work according to the highest professional standards, or to perform work in a manner deemed satisfactory by Client's Project Representative, then in that event, Consultant's entire right to compensation shall be limited to the lesser of (a) the reasonable value of completed work to Client or (b) payment at the rates specified in Schedule 2 for services satisfactorily performed, prior to date of termination.

(f) Consultant's professional responsibility for its completed work and services shall survive any termination.

SECTION 6. SITE ACCESS

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

SECTION 7. DOCUMENTS AND USE OF DOCUMENTS

(a) Consultant shall provide an electronic copy on a USB Flash Drive in AutoCAD Civil 3D. The USB Flash Drive must include the linework drawing of existing features with a generated surface, filed book file for surface generation and field notes explaining all codes and linework for ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels (the assigned manhole number shown in plan set), sanitary sewer pipes with pipe type and diameter, control points for future staking, etc.

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

SECTION 8. INSURANCE AND INDEMNITY

(a) Consultant agrees that it shall procure and will maintain during the term of this Agreement, such insurance as will protect it from claims under workers' compensation acts, claims for damages because of personal injury including bodily injury, sickness or disease or death of any of its employees or of any person other than its employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom; and such insurance will provide for coverage in such amounts as set forth in subparagraph (b).

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

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

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

(iii) Professional Liability Insurance with coverage of not less than \$1,000,000, and with a deductible amount acceptable by the Client.

(iv) Comprehensive Automobile Liability Insurance. The Consultant shall procure and maintain during the period of the Agreement and for such additional time as work on the project is being performed, Comprehensive Automobile Liability Insurance. This insurance shall be written with limits of liability for and injury to one person in any single occurrence of not less than \$350,000 and for any injury to two or more persons in any single occurrence of not less than \$1,000,000. This insurance shall include uninsured/underinsured motorist coverage and shall protect the Consultant from any and all claims arising from the use both on and off the site of the project of automobiles, trucks, tractors, backhoes and similar equipment whether owned, leased, hired or used by Consultant.

(c) Consultant agrees to hold harmless, defend and indemnify Client from and against any liability to third parties, arising out of negligent acts or omissions of Consultant, its employees, subcontractors and consultants.

SECTION 9. SUBCONTRACTS

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

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

(c) Consultant acknowledges that, due to the nature of the services to be provided under this Agreement, the Client has a substantial interest in the personnel and consultants to whom Consultant assigns principal responsibility for services performed under this Agreement. Consequently, Consultant represents that it has selected and intends to employ or assign the key personnel and consultants identified in its proposal submitted to Client prior to execution of this Agreement to induce Client to enter this Agreement. Consultant shall not change such consultants or key personnel except after giving notice of a proposed change to Client and receiving Client's consent thereto. Consultant shall not assign or reassign Project work to any person to whom Client has reasonable objection.

SECTION 10. MISCELLANEOUS

(a) Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either Consultant or Client by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to the Client at City of Pueblo Waste Reclamation Facility, Attn: Wastewater Director, 1300 South Queens Ave., Pueblo, CO 81001, with a copy to the City of Pueblo Law Department, 1 City Hall Place, Pueblo, CO 81003; or to Consultant at NorthStar Engineering and Surveying, Inc., Attn: Michael Cuppy, 111 E. 5th Street, Pueblo, CO 81003. Either party may change his address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

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

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

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

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

(f) Equal Employment Opportunity. In connection with the performance of this Agreement, neither Consultant nor its consultants shall discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability or age. Consultant shall endeavor to insure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, disability or age.

(g) Severability. If any provision of this Agreement, except for Section 2, is determined to be directly contrary to and prohibited by law or the requirements of any federal grant or other Project funding source, then such provision shall be deemed void and the remainder of the Agreement enforced. However, it is the intent of the parties that Section 2 of this Agreement not be severable, and that if any provision of said section be determined to be contrary to law or the terms of any federal grant, then this entire Agreement shall be void.

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

(a) At or prior to the time for execution of this Agreement, Consultant shall submit to the Purchasing Agent of the City its certification that it does not knowingly employ or contract with a "Worker Without Authorization", as that term is defined within §8-17.5-101 (9), C.R.S. (herein "Worker Without Authorization"), who will perform work under this Agreement and that the Consultant will participate in either the "E-Verify Program" created in Public Law 208, 104th Congress, as amended and expanded in Public law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security or the "Department Program" established pursuant to section 8-17.5-102(5)(c), C.R.S. that is administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(b) Consultant shall not:

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

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

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

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

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

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

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

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

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

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

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

SECTION 12. PERA LIABILITY

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

(Signature Section on following page)

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

CITY OF PUEBLO, A MUNICIPAL CORPORATION

NORTHSTAR ENGINEERING AND SURVEYING,
INC.

By: _____
Naomi Hedden, Director of Purchasing

By: _____
Michael Cuppy, Vice President

Attest: _____
City Clerk

[S E A L]

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

Director of Finance

APPROVED AS TO FORM:

City Attorney

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

SCHEDULE 1 – SCOPE OF SERVICES

Excerpt from Request for Proposal dated October 8, 2021, Section 2., Addendum No. 2 dated November 3, 2021, and Communication Regarding Agreement Dated January 27, 2022

2.3 Scope of Service:

2.3.1 The firm or team of consultants will be required to provide utility locations and topographic surveys for the removal and replacement of sanitary sewer mains and any surface improvements required to do so. The consultant should attend and facilitate meetings as necessary with City staff throughout the development of each individual project. Firm must be familiar with public processes and coordinate with City staff in presenting details to City Council if required.

2.3.2 Field Requirements:

a) To include but not limited to locating sanitary sewer manholes with all inverts in and out elevations, ground surface elevations, control points for future staking, setting hubs for construction, providing cut sheets for the contractor, all existing utilities, identification of existing surface improvements such as curb and gutter, sidewalks, alley pans, buildings, fences, control points, etc. within the proposed boundary. In the field, the survey boundary shall cover a width of 30 feet along the sewer line, 15 feet on each side of the pipe axis. In the residential areas, the survey boundary shall be from property/fence lines to property/fence lines. In areas where a manhole is located at the start or end of the survey boundary, the survey shall cover the area extended 30 feet in the direction of sewer pipe axis before or after the manhole.

b) Centerline profiles of all allies or streets.

c) Each project shall start within two weeks of request and finish no later than 90 days from start *or no later than the delivery time provided in the Work Order Fee and agreed upon with each proposal.*

2.3.3 Office Requirements:

Provide an electronic copy on a USB Flash Drive in AutoCAD Civil 3D. The USB Flash Drive must include the linework drawing of existing features with a generated surface, filed book file for surface generation and field notes explaining all codes and linework for ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels, sanitary sewer pipes with pipe type and diameter, control points for future staking, etc.

SCHEDULE 2 – FEE SCHEDULE

Excerpt from Consultant’s Proposal Submittal dated November 12, 2021, Section 5.0, Page 7

NorthStar Engineering and Surveying, Inc.

5.0 FEE SCHEDULE

SCHEDULE OF STANDARD TIME AND MATERIAL RATES

OFFICE ENGINEERING AND PLANNING:

Principal	\$170.00/hr.
Registered Professional Engineer (Project Manager)	\$140.00/hr.
Licensed Land Surveyor (Project Manager).....	\$130.00/hr.
Project Engineer (EI)/Surveyor (SI).....	\$120.00/hr.
Engineer/Planner	\$100.00/hr.
Designer / GIS.....	\$ 90.00/hr.
AutoCAD Technician.....	\$ 80.00/hr.
Accounting	\$ 60.00/hr.
Clerical	\$ 50.00/hr.
Messenger	\$ 35.00/hr.

FIELD ENGINEERING AND SURVEYING:

3-Man Survey Crew	\$170.00/hr.
Overtime Rate	\$200.00/hr.
2-Man Survey Crew	\$150.00/hr.
Overtime Rate	\$175.00/hr.
1-Man Survey Crew	\$120.00/hr.
Overtime Rate	\$140.00/hr.
Construction Manager.....	\$125.00/hr.
Construction Inspector	\$100.00/hr.
Survey Crew – Out of Town Drive Time.....	\$110.00/hr.
GPS Equipment: Standard Survey Crew Rate Plus.....	\$ 50.00/hr.

REIMBURSABLE RATES:

Blueline Prints	\$ 0.70/sq.ft.
Mylar Prints	\$ 2.85/sq.ft.
Color Bond	\$ 2.20/sq.ft.
Xerox Copies.....	\$ 0.15/ea.
Color Copies (8.5x11)	\$ 2.25/ea.
Large Xerox Copies	\$ 2.20/ea.

SUBCONTRACTED EXPENSES AND SPECIAL EQUIPMENT:

Mileage – Trucks and Autos.....	\$ 0.50/mile
Direct Costs plus 15%	

NOTE: In the event Principals are involved for an extended period on a project, rates charged will be commensurate with work performed.

SCHEDULE 3 – SAMPLE WORK ORDER

Excerpt from Request for Proposal dated October 8, 2021, Appendix D
(including approval of Director of Purchasing per Section 1b)

WORK ORDER

This Work Order is entered pursuant to and subject to the terms and conditions of the Professional Services Agreement dated _____, 20__ between Pueblo, a Municipal Corporation ("Client"), and _____ ("Consultant").

Scope of Work:

Time for Completion:

Work Order Compensation:

Approved by: _____ Dated: _____
Client: City of Pueblo, Wastewater Director

Approved by: _____ Dated: _____
Client: City of Pueblo, Director of Finance

Approved by: _____ Dated: _____
Client: City of Pueblo, Director of Purchasing

Consultant
Accepted by: _____ Dated: _____

Consultant's
Printed Name and Title: _____

Attachments: PDF Drawings/Sheets _____
Compensation Details



**BACKGROUND PAPER FOR PROPOSED
ORDINANCE**

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council

CC: Nicholas A. Gradisar, Mayor

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Director of Public Works

SUBJECT: AN ORDINANCE ESTABLISHING PROJECT CI2206 FOR ADAMS AVENUE AND JACKSON STREET ROUNDABOUT PROJECT, 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 M086-093 (24462), BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$900,000 AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance creates Project No. CI2206 for Adams Avenue and Jackson Street Roundabout Project, approves an Intergovernmental Agreement (“IGA”) between Pueblo, a Colorado Municipal Corporation (“City”) and the State of Colorado, Colorado Department of Transportation (“CDOT”) relating to the Adams Avenue and Jackson Street Roundabout Project, and budgets and appropriates funds from CDOT totaling \$900,000 for the Project.

PREVIOUS COUNCIL ACTION:

None

BACKGROUND:

This Ordinance establishes the Adams Avenue and Jackson Street Roundabout Project, CI2206. The project will provide for design and construction of a roundabout as associated improvements at the intersection of Adams Avenue and Jackson Street.

The City of Pueblo was awarded a Highway Safety Improvement Program (HSIP) grant with an overall project cost of \$1,000,000. The match requirement for the federally funded grant is 10% of the entire project cost. The funds for the required match (\$100,000) will be transferred to the account at a later date, prior to execution of a

design contract.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$900,000 will be provided by CDOT and shall be budgeted and appropriated for the project, CI2206.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Currently, there are no alternatives for completing the improvements without the funding from the CDOT HSIP Grant funds.

RECOMMENDATION:

Approve the Ordinance.

Attachments:

City-State of Colorado IGA for the Adams Ave and Jackson Street Roundabout
Grant Certification

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING PROJECT CI2206 FOR ADAMS AVENUE AND JACKSON STREET ROUNDABOUT PROJECT, 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 M086-093 (24462), BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$900,000 AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

SECTION 1.

The Adams Avenue and Jackson Street Roundabout Project, CI2206, is hereby established.

SECTION 2.

The Intergovernmental Agreement (“IGA”) between Pueblo, a Colorado municipal corporation, and State of Colorado, acting by and through the Colorado Department of Transportation, Project: SHO M086-093 (24462), Adams Ave and Jackson Street Roundabout, a copy of which is attached, having been approved as to form by the City Attorney, is hereby approved.

SECTION 3.

Subject to encumbrances by the Colorado State Department of Transportation, funds from the Adams Avenue and Jackson Street Roundabout Project (SHO M086-093 (24462)) in the amount of \$900,000 are hereby budgeted and appropriated for the Adams Ave and Jackson St Roundabout Project, No. CI2206.

SECTION 4.

The Mayor is authorized to execute and deliver the IGA in the name of the City and the City Clerk is directed to affix the seal of the City thereto and attest same.

SECTION 5.

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

SECTION 6.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

Approved on _____.

Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

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

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

President of City Council

ATTEST

City Clerk

STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT
Signature and Cover Page

State Agency Department of Transportation		Agreement Routing Number 22-HA2-XC-00014	
Local Agency CITY OF PUEBLO		Agreement Effective Date The later of the effective date or January 10, 2022	
Agreement Description Adams Ave. and Jackson St. Roundabout		Agreement Expiration Date January 09, 2032	
Project # SHO M086- 093 (24462)	Region # 2	Contract Writer GMD	Agreement Maximum Amount \$1,000,000.00

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 _____ Signature _____ By: Nick Gradisar, Mayor of City of Pueblo Date: _____	STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director _____ Stephen Harelson, P.E., Chief Engineer Date: _____
Attested By: _____ Signature _____ By: (Marisa Stoller, City Clerk Date: _____	LEGAL REVIEW Philip J. Weiser, Attorney General _____ Assistant Attorney General _____ By: (Print Name and Title) Date: _____
<p align="center">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.</p> <p align="center">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p align="center">By: _____ Department of Transportation</p> <p align="center">Effective Date: _____</p>	

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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 January 09, 2032 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 ARPA Award Letter by providing Local Agency with an updated ARPA Award Letter showing the new ARPA Expiration Date. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in Exhibit 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”).

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.

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 Treasury Department. 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**, Checklist of Required Exhibits Dependent on Funding Source
- O. “**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.
- P. “**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.
- Q. “**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.
- R. “**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.
- S. “**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.
- T. “**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.
- U. “**Initial Term**” means the time period defined in **§2.B**
- V. “**Matching Funds**” means the funds provided by the Local Agency as a match required to receive the federal funding.
- W. “**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.

- X. **“OMB”** means the Executive Office of the President, Office of Management and Budget.
- Y. **“Oversight”** means the term as it is defined in the Stewardship Agreement between CDOT and the FHWA.
- Z. **“Party”** means the State or Local Agency, and **“Parties”** means both the State and Local Agency.
- AA. **“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.
- BB. **“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.
- CC. **“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.
- DD. **“Recipient”** means the Colorado Department of Transportation (CDOT) for this Federal Award.
- EE. **“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.
- FF. **“SLFRF”** means State and Local Fiscal Recovery Funds, provided by ARPA, funded by the US Treasury Department.
- GG. **“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.
- HH. **“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.
- II. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).
- JJ. **“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.
- KK. **“State Purchasing Director”** means the position described in the Colorado Procurement Code and its implementing regulations.
- LL. **“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.
- MM. **“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.
- NN. **“Subcontractor”** means third-parties, if any, engaged by Local Agency to aid in performance of the Work.
- OO. **“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.

PP. **“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.

QQ. **“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.

RR. **“Work”** means the delivery of the Goods and performance of the Services in compliance with CDOT’s Local Agency Manual described in this Agreement.

SS. **“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 period of performance for a phase of Work authorized under this Agreement. To exercise this 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 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 3 working days after they are publicly opened.
 - (c) If Local Agency accepts bids and makes awards that exceed the amount of available Agreement Funds, Local Agency shall provide the additional funds necessary to complete the Work or not award such bids.
 - (d) The requirements of §6.A.iii.b.2 also apply to any advertising and bid awards made by the State.
 - (e) The State (and in some cases FHWA) must approve in advance all Force Account Construction, and Local Agency shall not initiate any such Services until the State issues a written Notice to Proceed.
- iv. Right of Way (ROW) and Acquisition/Relocation
 - a. If Local Agency purchases a ROW for a State highway, including areas of influence, Local Agency shall convey the ROW to CDOT promptly upon the completion of the project/construction.
 - b. Any acquisition/relocation activities shall comply with all applicable federal and State statutes and regulations, including but not limited to, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.
 - c. The Parties' respective responsibilities for ensuring compliance with acquisition, relocation and incidentals depend on the level of federal participation as detailed in CDOT's Right of Way Manual

(located at <http://www.codot.gov/business/manuals/right-of-way>); however, the State always retains oversight responsibilities.

- d. The Parties' respective responsibilities at each level of federal participation in CDOT's Right of Way Manual, and the State's reimbursement of Local Agency costs will be determined pursuant to the following categories:
 - 1) Right of way acquisition (3111) for federal participation and non-participation;
 - 2) Relocation activities, if applicable (3109);
 - 3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

v. Utilities

If necessary, Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company that may become involved in the Work. Prior to the Work being advertised for bids, Local Agency shall certify in writing to the State that all such clearances have been obtained.

vi. Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, Local Agency shall make timely application to the Public Utilities Commission ("PUC") requesting its order providing for the installation of the proposed improvements. Local Agency shall not proceed with that part of the Work before obtaining the PUC's order. Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities, and:

- a. Execute an agreement with the railroad company setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- b. Obtain the railroad's detailed estimate of the cost of the Work.
- c. Establish future maintenance responsibilities for the proposed installation.
- d. Proscribe in the agreement the future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- e. Establish future repair and/or replacement responsibilities, as between the railroad company and the Local Agency, in the event of accidental destruction or damage to the installation.

vii. Environmental Obligations

Local Agency shall perform all Work in accordance with the requirements of current federal and State environmental regulations, including the National Environmental Policy Act of 1969 (NEPA) as applicable.

viii. Maintenance Obligations

Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. Local Agency shall conduct such maintenance and operations in accordance with all applicable statutes, ordinances, and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

ix. Monitoring Obligations

Local Agency shall respond in a timely manner to and participate fully with the monitoring activities described in §7.F.vi.

B. State's Commitments

- i. The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.

- ii. Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any Work constituting major structures designed by, or that are the responsibility of, Local Agency, as identified in **Exhibit E**.

7. PAYMENTS

A. Maximum Amount

Payments to Local Agency are limited to the unpaid, obligated balance of the Agreement Funds set forth in **Exhibit C**. The State shall not pay Local Agency any amount under this Agreement that exceeds the Agreement Maximum set forth in **Exhibit C**.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Local Agency in the amounts and in accordance with conditions set forth in **Exhibit C**.
- b. Local Agency shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Local Agency and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Local Agency shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.
- e. If a project is funded in part with Federal or State special funding there may be an expiration date for the funds. The expiration date applies to grants and local funds used to match grants. To receive payment or credit for the match, Work must be completed or substantially completed, as outlined in the terms of the grant, prior to the expiration date of the special funding and invoiced in compliance with the rules outlined in the award of the funding. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.

ii. Interest

Amounts not paid by the State within 45 days after the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 46th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Local Agency shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Payment Disputes

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

iv. Available Funds-Contingency-Termination

- a. The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Local Agency beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Agreement Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds

constitute all or some of the Agreement Funds, the State's obligation to pay Local Agency shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Agreement Funds, and the State's liability for such payments shall be limited to the amount remaining of such Agreement Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in **§2.C**.

- b. If the agreement funds are terminated, the State can terminate the contract early. Payment due for work done to the date of termination will be processed in a manner consistent with **§2.C**.

v. Erroneous Payments

The State may recover, at the State's discretion, payments made to Local Agency in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Local Agency. The State may recover such payments by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Local Agency, or by any other appropriate method for collecting debts owed to the State. The close out of a Federal Award does not affect the right of FHWA or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period (as defined below in **§9.A**).

vi. Federal Recovery

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

C. Matching Funds

Local Agency shall provide matching funds as provided in **§7.A** and **Exhibit C**. Local Agency shall have raised the full amount of matching funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. 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 Matching 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**. 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. 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 issue a unilateral Option Letter to simultaneously increase and 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. The State, at its discretion, shall have the option to extend the performance of this Agreement and/or update a Work phase Performance Period. 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**.
- v. Option to Extend Agreement/Phase Term of ARPA Award. The Terms of ARPA Award can be extended for a maximum of one (1) year. 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**. This one (1) year limit only applies to the ARPA portion of the Award. Other types of funding can be extended with an Option Letter as stated above.
 - vi. Option to Extend the End of Term of ARPA Award. The End Term of ARPA Award can be extended for a maximum of two (2) months. 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**. This two (2) month limit only applies to the ARPA portion of the Award. Other types of funding can be extended with an Option Letter as stated above.

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 the SLFRF portion of this 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 five (5) 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") of three years following the date of submission to the State of the final expenditure report, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify 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 years following final disposition of such property.

B. Inspection

Local Agency shall permit the State to audit, inspect, examine, excerpt, copy, and transcribe Local Agency 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 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.

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Local Agency shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Local Agency under this Agreement. Such a conflict of interest would arise when a Local Agency or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement. Officers, employees and agents of Local Agency may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

12. INSURANCE

Local Agency shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Local Agency Insurance

Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA") and shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Subcontractor Requirements

Local Agency shall ensure that each Subcontractor that is a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA. Local Agency shall ensure that each Subcontractor that is not a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement all of the following insurance policies:

i. Workers' Compensation

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

ii. General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate; and
- d. \$50,000 any 1 fire.

iii. Automobile Liability

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

iv. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$2,000,000 general aggregate.

v. Professional Liability Insurance

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

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

vi. Crime Insurance

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

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

vii. Cyber/Network Security and Privacy Liability

Liability insurance covering all civil, regulatory and statutory damages, contractual damages, data breach management exposure, and any loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of breach, violation or infringement of right to privacy rights through improper use or disclosure of protect consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$2,000,000 general aggregate.

C. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Local Agency and Subcontractors. In the event of cancellation of any commercial general liability policy, the carrier shall provide at least 10 days prior written notice to CDOT.

D. Primacy of Coverage

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

E. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Local Agency

and Local Agency shall forward such notice to the State in accordance with **§16** within 7 days of Local Agency's receipt of such notice.

F. Subrogation Waiver

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

G. Certificates

For each commercial insurance plan provided by Local Agency under this Agreement, Local Agency shall provide to the State certificates evidencing Local Agency's insurance coverage required in this Agreement within 7 Business Days following the Effective Date. Local Agency shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within 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 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 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 cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, 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 noninfringing Work or modify the Work so that it becomes noninfringing; 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.

16. NOTICES AND REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered (i) by hand with receipt required, (ii) by certified or registered mail to such Party's principal representative at the address set forth below or (iii) as an email with read receipt requested to the principal representative at the email address, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §16 without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

For the State

Colorado Department of Transportation (CDOT)
Don Scanga, Local Agency Coordinator
5615 Wills Blvd.
Pueblo, CO 81008
719-621-8340
donald.scanga@state.co.us

For the Local Agency

CITY OF PUEBLO
Kelly Grisham, Project Engineer
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 anytime 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. Colorado Special Provisions in the main body of this Agreement.
- ii. The provisions of the other sections of the main body of this Agreement.
- iii. **Exhibit A**, Statement of Work.
- iv. **Exhibit C**, Funding Provisions.
- v. **Exhibit N**, Federal Treasury Provisions.
- vi. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds.
- vii. **Exhibit P**, SLFRF Subrecipient Quarterly Report.
- viii. **Exhibit Q**, SLFRF Reporting Modification Form.
- ix. **Exhibit B**, Sample Option Letter.
- x. **Exhibit D**, Local Agency Resolution.
- xi. **Exhibit E**, Local Agency Contract Administration Checklist.
- xii. Other exhibits in descending order of their attachment.
- xiii. **Exhibit S**, Checklist of Required Exhibits Dependent on Funding Source.

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

Local Agency 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. Local Agency 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/>.

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 except where noted in italics.

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

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

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

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

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

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

Revised 11-1-18

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 and Exhibit M are hereby incorporated by this reference.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Local Agency will comply with all requirements of Exhibit G and 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.

24. DISPUTES

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 shall 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.

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EXHIBIT A
SCOPE OF WORK

Name of Project: Adams Ave. and Jackson St. Roundabout

Project Number: SHO M086-093

SubAccount #: 24462

1. General Description

The local agency shall be responsible for design and construction of a roundabout at the intersection of Adams Ave and Jackson St, Project M086-93 (24462). The additional construction will consist of sidewalk, curb and gutter, handicap ramps, and medians were required.

2. Definitions

3. Personnel

3.1. Responsible Administrator.

The Local Agency's performance hereunder shall be under the direct supervision of the project manager identified in §16 of the Agreement.

3.2. Replacement

The Local Agency shall immediately notify the State if any key personnel cease to serve and seek its approval. Such notice shall specify why the change is necessary, who the proposed replacement is, what their qualifications are, and when the change would take effect. Anytime key personnel cease to serve, the State, in its sole discretion, may direct the Local Agency to suspend performance on the Work until such time as their replacements are approved. All notices sent under this subsection shall be sent in accordance with §16 of the Agreement.

4. Administrative Requirements

At all times from the effective date of this Agreement until completion of the Work, the Local Agency shall maintain properly segregated books of State Agreement funds, matching funds, and other funds associated with the Work. All receipts and expenditures associated with said Work shall be documented in a detailed and specific manner, and shall accord with the Work Budget set forth herein.

5. Monitoring

The State shall monitor this Work on an as-needed basis. The State may choose to audit the business activities performed under this Agreement. The Local Agency shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in

any manner to the operation of activities undertaken pursuant to an executed Agreement. Such books and records shall contain documentation of the participant's pertinent activity under this Agreement in a form consistent with good accounting practice.

If ARPA funds are used all ARPA funds must be encumbered by December 31, 2024. All work funded by ARPA must be completed by December 31, 2026 and all bills must be submitted to CDOT for payment by January 31, 2027. These bills must be paid by CDOT by March 31, 2027.

If this project is funded with Multimodal Transportation & Mitigation Options Funding (MMOF) these funding expenditures must be invoiced by June 1st of the year they expire.

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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 performance of this Agreement and/or update a Work Phase Performance Period.

Option to unilaterally extend the Agreement/Phase Term of ARPA Award.

Option to unilaterally extend the End of Term of ARPA Award.

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 performance of this Agreement and/or update a Work Phase Performance Period.

The total encumbrance as a result of this option and all previous options and/or amendments is now \$0.00, as referenced in **Exhibit C-1**. The total budgeted funds to satisfy services/goods ordered under the Agreement remains the same: as referenced in **Exhibit C-1**.

Option E

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 extend Agreement/Phase Term of SLFRF funds. The Terms of SLFRF funds can be extended for a maximum of one (1) year. This one (1) year limit only applies to the SLFRF portion of the funds. Any extensions must be pursuant to the requirements of ARPA. Other types of funding can be extended with an Option Letter as stated above. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option F

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 extend the End of Term of SLFRF funds. The End Term of SLFRF funds can be extended for a maximum of two (2) months. This two (2) month limit only applies to the SLFRF portion of the funds. Any extensions must be pursuant to the requirements of ARPA. Other types of funding can be extended with an Option Letter as stated above. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

The effective date of this option letter is upon approval of the State Controller or delegate.

STATE OF COLORADO
Jared S. Polis
Department of Transportation

By: _____
Stephen Harelson, P.E., Chief Engineer
(For) Shoshana M. Lew, Executive Director

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

STATE OF COLORADO
STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Colorado Department of Transportation

Date: _____

EXHIBIT C FUNDING PROVISIONS

EXHIBIT C – FUNDING PROVISIONS

Project #: SHO M086-093 (24462)

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be \$1,000,000.00, which is to be funded as follows:

1. BUDGETED FUNDS				
a.	Federal Funds (90.00% of Award Costs)			\$900,000.00
b.	Local Agency Matching Funds (10.00% of Award Costs)			\$100,000.00
TOTAL BUDGETED FUNDS				\$1,000,000.00
2. OMB UNIFORM GUIDANCE				
a.	Federal Award Identification Number (FAIN):			TBD
b.	Federal Award Date (also Phase Performance Start Date):			See Below
c.	Amount of Federal Funds Obligated:			\$0.00
d.	Total Amount of Federal Award:			\$900,000.00
e.	Name of Federal Awarding Agency:			FHWA
f.	CFDA # Highway Planning and Construction			CFDA 20.205
g.	Is the Award for R&D?			No
h.	Indirect Cost Rate (if applicable)			N/A
3. ESTIMATED PAYMENT TO LOCAL AGENCY				
a.	Federal Funds Budgeted			\$900,000.00
b.	Less Estimated Federal Share of CDOT-Incurred Costs			\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY				\$900,000.00
4. FOR CDOT ENCUMBRANCE PURPOSES				
a.	Total Encumbrance Amount			\$1,000,000.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109			\$0.00
Net to be encumbered as follows:				\$1,000,000.00
<i>Note: No funds are currently available. Design and Construction funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.</i>				
WBS Element 24462.10.30	Performance Period Start*/End Date TBD / TBD	Design	3020	\$0.00
WBS Element 24462.20.10	Performance Period Start*/End Date TBD / TBD	Const.	3301	\$0.00

***The Local Agency should not begin work until all three 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 milestones are achieved will not be reimbursable.**

B. Matching Funds

The matching ratio for the federal funds for this Work is 90.00% federal-aid funds to 10.00% Local Agency funds, it being understood that such ratio applies only to the \$1,000,000.00 that is eligible for federal funds, it being further understood that all additional costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$1,000,000.00, and additional federal funds are made available for the Work, the Local Agency shall pay 10.00% of all such costs eligible for federal funds and 100% of all additional costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than \$1,000,000.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State. **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 \$900,000.00 (for CDOT accounting purposes, the federal funds of \$900,000.00 and the Local Agency matching funds of \$100,000.00 will be encumbered for a total encumbrance of \$1,000,000.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award. The maximum amount payable shall be reduced without amendment when the actual amount of the Local Agency's awarded contract is less than the budgeted total of the federal Award funds and the Local Agency matching funds. The maximum amount payable shall 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 C.F.R. 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 AGREEMENT ADMINISTRATION CHECKLIST

COLORADO DEPARTMENT OF TRANSPORTATION LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. M086 093	STIP No.	Project Code 24462	Region 2
Project Location Intersection of Adams Ave. and Jackson St.			Date 6/3/2021
Project Description Adams Ave. and Jackson St. Roundabout			
Local Agency City of Pueblo		Local Agency Project Manager Kelly Grisham	
CDOT Resident Engineer Lachelle Davis		CDOT Project Manager Don Scanga	
<p>INSTRUCTIONS: This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i>.</p> <p>The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.</p> <p>Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.</p> <p>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.</p> <p>Note: Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.</p>			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2.1	Review Project to ensure it is consist with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463	X	X
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement	X	
5.4	Conduct Design Scoping Review Meeting	X	
5.5	Conduct Public Involvement	X	
5.6	Conduct Field Inspection Review (FIR)	X	
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	
5.9	Obtain Utility and Railroad Agreements	X	
5.10	Conduct Final Office Review (FOR)	X	
5.11	Justify Force Account Work by the Local Agency	X	
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
5.13	Document Design Exceptions - CDOT Form 464	X	
5.14	Prepare Plans, Specifications and Construction Cost Estimates	X	
5.15	Ensure Authorization of Funds for Construction		X
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6.2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is X is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Lachelle Davis CDOT Resident Engineer (Signature on File) 6/3/2021 Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances	X	
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	
7.2	Advertise for Bids	X	
7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor	X	
8.2	Project Safety	X	X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)	X	
	Pre-survey		
	• Construction staking	X	
	• Monumentation	X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	X	
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8.5	Supervise Construction		

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Charles Roy _____ 719-553-2271 _____ Local Agency Professional Engineer or Phone number CDOT Resident Engineer	X	
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8.6	Approve Shop Drawings	X	
8.7	Perform Traffic Control Inspections	X	
8.8	Perform Construction Surveying	X	
8.9	Monument Right-of-Way	X	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates Provide the name and phone number of the person authorized for this task. Charles Roy _____ 719-553-2271 _____ Local Agency Representative Phone number	X	
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	
8.12	Prepare and Authorize Change Orders	X	
8.13	Submit Change Order Package to CDOT	X	
8.14	Prepare Local Agency Reimbursement Requests	X	
8.15	Monitor Project Financial Status	X	
8.16	Prepare and Submit Monthly Progress Reports	X	
8.17	Resolve Contractor Claims and Disputes	X	
8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. Don Scanga _____ 719-546-5434 _____ CDOT Resident Engineer Phone number		X
MATERIALS			
9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	X	
9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	X X	X
9.3	Perform Project Acceptance Samples and Tests	X	
9.4	Perform Laboratory Verification Tests	X	
9.5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X	
9.6	Approve Sources of Materials	X	
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input type="checkbox"/> CDOT Procedures X • Generate IAT schedule • Schedule and provide notification • Conduct IAT	X X X	
9.8	Approve mix designs • Concrete • Hot mix asphalt	X X	
9.9	Check Final Materials Documentation	X	
9.10	Complete and Distribute Final Materials Documentation	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	X	
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter	X	
11.3	Advertise for Final Settlement	X	
11.4	Prepare and Distribute Final As-Constructed Plans	X	
11.5	Prepare EEO Certification	X	
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11.8	Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer	X	
11.9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor	X	
11.10	Complete and Submit CDOT Form 1212 - Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment		X
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure		X
11.14	Retain Final Version of Local Agency Contract Administration Checklist	X	

cc: CDOT Resident Engineer/Project Manager
CDOT Region Program Engineer
CDOT Region EEO/Civil Rights Specialist
CDOT Region Materials Engineer
CDOT Contracts and Market Analysis Branch
Local Agency Project Manager

EXHIBIT F
CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

EXHIBIT G
DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

The recipient or its the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency upon request: Business Programs Office

Colorado Department of Transportation 2829 West Howard Place

Denver, Colorado 80204

Phone: (303) 757-9007

REQUIRED BY 49 CFR PART 26

EXHIBIT H

LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded Local Agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states “The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost” and according to 23 CFR 172.5 “Price shall not be used as a factor in the analysis and selection phase.” Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a Local Agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting Local Agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting Local Agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The Local Agency shall not advertise any federal aid contract without prior review by the CDOT Regional Civil Rights Office (RCRO) to determine whether the contract shall be subject to a DBE contract goal. If the RCRO determines a goal is necessary, then the Local Agency shall include the goal and the applicable provisions within the advertisement. The Local Agency shall not award a contract to any Contractor or Consultant without the confirmation by the CDOT Civil Rights and Business Resource Center that the Contractor or Consultant has demonstrated good faith efforts. The Local Agency shall work with the CDOT RCRO to ensure compliance with the established terms during the performance of the contract.
5. The Local Agency shall require that all contractors pay subcontractors for satisfactory performance of work no later than 30 days after the receipt of payment for that work from the contractor. For construction projects, this time period shall be reduced to seven days in accordance with Colorado Revised Statute 24-91-103(2). If the Local Agency withholds retainage from contractors and/or allows contractors to withhold retainage from subcontractors, such retainage provisions must comply with 49 CFR 26.29.
6. Payments to all Subconsultants shall be made within thirty days of receipt of payment from [the Local Agency] or no later than ninety days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify [the Local Agency] no later than the required date for payment. Such notification shall include the amount disputed and justification for the withholding. The Consultant shall maintain records of payment that show amounts paid to all Subconsultants. Good cause does not include the Consultant's failure to submit an invoice to the Local Agency or to deposit payments made.
7. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,

- b. Approach to the Work,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services. Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
- b. Past performance,
- c. Willingness to meet the time and budget requirement,
- d. Location,
- e. Current and projected work load,
- f. Volume of previously awarded contracts, and
- g. Involvement of minority consultants.

8. Once a consultant is selected, the Local Agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.

9. A qualified Local Agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the Local Agency prepares a performance evaluation (a CDOT form is available) on the consultant.

CRS §§24-30-1401 THROUGH 24-30-1408, 23 CFR PART 172, AND P.D. 400.1, PROVIDE ADDITIONAL DETAILS FOR COMPLYING WITH THE PRECEEDING EIGHT (8) STEPS.

EXHIBIT I

FEDERAL-AID CONTRACT PROVISIONS FOR CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Government wide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design- build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension/debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60- 1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. **Training and Promotion:**

The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

a. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

b. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

c. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. **Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract.

The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt.

Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA- 1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account, assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally- assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis- Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements.

It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (i) That the payroll for the payroll period contains the information required to be provided under §5.5(a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5(a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices.

Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity.

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S.DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and

7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

- a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below.

The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph(a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT J

ADDITIONAL FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

Clear Air Act

Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts in excess of \$100,000).

Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

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 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, subpart C;

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)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	Does your staff assigned to the program have at least three full years of experience with this federal program?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	a) Were there non-compliance issues in this prior review?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b) What were the number and extent of issues in prior review?	<input type="checkbox"/> <small>1 to 2</small>	<input type="checkbox"/> <small>>3</small>	<input type="checkbox"/>
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>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FINANCIAL ASSESSMENT		Yes	No	N/A
7	a) Does your entity have an indirect cost rate that is approved and current?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	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?	<input type="checkbox"/> <small>>10%</small>	<input type="checkbox"/> <small><10%</small>	<input type="checkbox"/>
9	Has your entity returned lapsed* funds? <i>*Funds "lapse" when they are no longer available for obligation.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10	Has your entity had difficulty meeting local match requirements in the last three years?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13	Does your entity have financial procedures and controls in place to accommodate a federal-aid project?	<input type="checkbox"/>	<input type="checkbox"/>	
14	Does your accounting system identify the receipts and expenditures of program funds separately for each award?	<input type="checkbox"/>	<input type="checkbox"/>	
15	Will your accounting system provide for the recording of expenditures for each award by the budget cost categories shown in the approved budget?	<input type="checkbox"/>	<input type="checkbox"/>	
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.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17	How many total FTE perform accounting functions within your organization?	<input type="checkbox"/> ≥ 6	<input type="checkbox"/> 2 to 5	<input type="checkbox"/> < 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.)	<input type="checkbox"/>	<input type="checkbox"/>	
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.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22	a) Is your staff familiar with the relevant CDOT manuals and federal program requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	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.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	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.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments - As needed, include the question number and provide comments related to the above questions. Insert additional rows as needed.</p>			
<p><input type="checkbox"/> 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.</p>			



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." 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.

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 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 Interim Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.
- 1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
 - 2.1.1. "Award" means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
 - 2.1.2. "Data Universal Numbering System (DUNS) Number" means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet's website may be found at: <http://fedgov.dnb.com/webform>.
 - 2.1.3. "Entity" means:
 - 2.1.3.1. a Non-Federal Entity;
 - 2.1.3.2. a foreign public entity;
 - 2.1.3.3. a foreign organization;
 - 2.1.3.4. a non-profit organization;
 - 2.1.3.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
 - 2.1.3.6. a foreign non-profit organization (only for 2 CFR part 170) only);

- 2.1.3.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
- 2.1.3.8. a foreign for-profit organization (for 2 CFR part 170 only).
- 2.1.4. “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.5. “Expenditure Category (EC)” means the category of eligible uses as defined by the US Department of Treasury in “Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds” report available at www.treasury.gov.
- 2.1.6. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
- 2.1.7. “Grant” means the Grant to which these Federal Provisions are attached.
- 2.1.8. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.9. “Non-Federal Entity means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 2.1.10. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
 - 2.1.10.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.10.2. Is not organized primarily for profit; and
 - 2.1.10.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.11. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.12. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.13. “Prime Recipient” means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.14. “Subaward” means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.

- 2.1.15. “Subrecipient” or “Subgrantee” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.16. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
- 2.1.16.1. Salary and bonus;
 - 2.1.16.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 2.1.16.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.16.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.16.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 2.1.16.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.17. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 2.1.18. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

3. COMPLIANCE.

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

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

4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.

4.2. DUNS. Grantee shall provide its DUNS number to its Prime Recipient, and shall update Grantee's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Grantee's information.

5. TOTAL COMPENSATION.

5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and

5.1.2. In the preceding fiscal year, Grantee received:

5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

5.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

5.1.2.3. 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

- 6.1. If Grantee is a Subrecipient of the Award pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below \$30,000 no reporting required; if more than \$30,000 and less than \$50,000 then FFATA reporting is required; and, \$50,000 and above SLFRF reporting is required.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. Grantee shall report as set forth below.
 - 8.1.1. Grantee shall use the SLFRF Subrecipient Quarterly Report Workbook as referenced in Exhibit P to report to the State Agency within ten (10) days following each quarter ended September, December, March and June. Additional information on specific requirements are detailed in the SLFRF Subrecipient Quarterly Report Workbooks and "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

EC1: Public Health

COVID-19 Vaccination (EC 1.1) and COVID-19 Testing (EC 1.2)

- a. Description of metrics for disadvantaged communities served.

Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, etc.) (EC 1.4), Mental Health Services (EC 1.10) and Substance Use Substances (1.11)

- a. Measurement of the metric.

Payroll for Public Health and Safety Employees (EC 1.9)

- a. Number of governmental FTEs responding to COVID-19 supported under this authority

Public Health Project-Specific Reporting Requirements (EC1)

- a. Unique requirement(s), if applicable

EC2: Negative Economic Impacts

Household Assistance (EC 2.1-2.5)

- a. Description of metrics for disadvantaged communities served.
- b. Measurement of the metric.
- c. Number of households served (by program if recipient establishes multiple separate household assistance programs).

Household Assistance (EC 2.2 & 2.5)

- a. Number of people or households receiving eviction prevention services (including legal representation)
- b. Number of affordable housing units preserved or developed.

Unemployment Benefits or Cash Assistance to Unemployed Workers (EC 2.6)

- a. Measurement of the metric.

Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives) (EC 2.7)

- a. Description of the metrics for disadvantaged communities served.
- b. Measurement of the metric.

Small Business Economic Assistance (EC 2.9)

- a. Description of the metrics for disadvantaged communities served.
- b. Measurement of the metric.
- c. Number of small businesses served (by program if recipient establishes multiple separate small businesses assistance programs)

Aid to Nonprofit Organizations (EC 2.10)

- a. Measurement of the metric.

Other Economic Support (EC 2.13)

- a. Description of the metrics for disadvantaged communities served.
- b. Measurement of the metric.

Rehiring Public Sector Staff (EC 2.14)

- a. Number of FTEs rehired by governments under this authority

Negative Economic Impacts Project-Specific Reporting Requirements (EC2)

- a. Number of workers enrolled in sectoral job training programs
- b. Number of workers completing sectoral job training programs
- c. Number of people participating in summer youth employment programs
- d. Unique requirement(s), if applicable

EC3: Services to Disproportionately Impacted Communities

Education Assistance: Early Learning (EC 3.1), Education Assistance: Aid to High-Poverty Districts (EC 3.2) Education Assistance: Academic Services (EC 3.3), Education Assistance: Social, Emotional, and Mental Health Services (EC 3.4), and Education Assistance: Other (EC 3.5)

- a. Description of metrics for disadvantaged communities served.
- b. Measurement of the metric.
- c. National Center for Education Statistics (“NCES”) School ID or NCES District ID
- d. Number of students participating in evidence-based tutoring programs

Housing Childhood Environments (EC 3.6-3.9)

- a. Number of children served by childcare and early learning (preschool/pre-K/ages 3-5)
- b. Number of families served by home visiting.

Healthy Childhood Environments: Child Care (EC 3.6), Healthy Childhood Environments: Home Visiting (EC 3.7), Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System (EC 3.8), Healthy Childhood Environments: Other (EC 3.9), Housing Support: Affordable Housing (EC 3.10), Housing Support: Services for Unhoused Persons (EC 3.11), Housing Support: Other Housing Assistance (EC 3.12), Social Determinants of Health: Other (EC 3.13), Social Determinants of Health: Community Health Workers or Benefits Navigators (EC 3.14), Social Determinants of Health: Community Violence Interventions (EC 3.16)

- a. Description of the metrics for disadvantaged communities served.
- b. Measurement of the metric.

Housing Support (EC 3-10-3.12)

- c. Number of people or households receiving eviction prevention services (including legal representation)
- d. Number of affordable housing units preserved or developed.

Social Determinants of Health: Lead Remediation (EC 3.15)

- a. Description of metrics for disadvantaged communities served.
- b. Measurement of the metric.

Services to Disproportionately Impacted Communities Project-Specific Reporting Requirements (EC3)

- a. Unique requirement(s), if applicable

EC4: Premium Pay

Premium Pay (both Public Sector EC 4.1 and Private Sector EC 4.2)

- a. Number of workers served

Premium Pay Project-Specific Reporting Requirements (EC3)

- a. Unique requirement(s), if applicable

EC5: Infrastructure

All infrastructure projects (EC 5)

- a. Projected/Actual construction start date (month/year)
- b. Projected/Actual initiation of operations date (month/year)
- c. Location (for broadband, geospatial location data)
- d. Description of how the project contributes to addressing climate change

Water and sewer projects (EC 5.1-5.15)

- 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)

Broadband projects (EC 5.16-5.17)

- a. Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100Mbps download and upload speeds
 - a. If the project is not designed to reliability meet or exceed symmetrical 100Mbps speeds, explain why not and:
 - b. Confirm project design to meet or exceed 100 Mbps download and between 20 and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps upload and download speed.
- b. Additional programmatic data requirements will be issued by US Treasury in July 2022 for broadband projects, and agencies may be required to report on additional metrics, including, but not limited to:
 - a. 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
 - b. 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

- c. 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.

Infrastructure Project-Specific Reporting Requirements (EC5)

- a. Unique requirement(s), if applicable
- 8.1.2. A Subrecipient shall report the following data elements to Prime Recipient no later than five days after the end of the month following the month in which the Subaward was made.
- 8.1.2.1. Subrecipient DUNS Number;
 - 8.1.2.2. Subrecipient DUNS Number if more than one electronic funds transfer (EFT) account;
 - 8.1.2.3. Subrecipient parent's organization DUNS Number;
 - 8.1.2.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

- 8.1.2.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 8.1.2.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.
- 8.1.3. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, the following data elements:
 - 8.1.3.1. Subrecipient's DUNS Number as registered in SAM.
 - 8.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
 - 8.1.3.3. Narrative identifying methodology for serving disadvantaged communities. See the "Project Demographic Distribution" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. This requirement is only applicable to EC 1.1, 1.2, 2.1, 2.2, 2.3, 2.4, 2.5, 2.7, 2.9, 2.13, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.13, 3.14, 3.15, and 3.16.
 - 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. This requirement is only applicable to EC 1.4, 1.10, 1.11, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.9, 2.10, 2.13, 3.1, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.13, 3.14, and 3.16.
 - 8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the negative economic impacts of COVID-19. This requirement is only applicable to EC 2.1, 2.2, 2.3, 2.4, 2.5, 2.9, 2.11, and 2.12. 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, for whom premium pay would increase total pay above 150 percent of their residing State's average annual wage, or their residing county's average annual wage, whichever is higher, on an annual basis 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), narrative identifying the projected construction start date (month/year), projected initiation of operations date

(month/year), and location (for broadband, geospatial location data). For projects over \$10 million:

- 8.1.3.8. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.
 - 8.1.3.8.1. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.
 - 8.1.3.8.2. Whether the project prioritizes local hires.
 - 8.1.3.8.3. Whether the project has a Community Benefit Agreement, with a description of any such agreement.
- 8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor's Office and Office of the State Controller. The State of Colorado may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Exhibit Q – SLFRF Reporting Modification Form.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.
- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS.

- 10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

11. SINGLE AUDIT REQUIREMENTS.

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

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

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.
 - 12.1.1. [Applicable to federally assisted construction Agreements.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.
 - 12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).

- 12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements,” and any implementing regulations issued by the Federal Awarding Agency.
- 12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 12.1.7. Never Agreement with the enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never Agreement with the enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

12.1.9. Title VI of the Civil Rights Act. The Subgrantee, Contractor, Subcontractor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S. C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CRF Part 22, and herein incorporated by reference and made part of this Agreement or agreement.

13. CERTIFICATIONS.

13.1. Subrecipient Certification. Subrecipient shall sign a "State of Colorado Agreement with Recipient of Federal Recovery Funds" Certification Form in Exhibit O and submit to State Agency with signed grant agreement.

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

14. EXEMPTIONS.

14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

14.2. A Grantee with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

15. EVENT OF DEFAULT AND TERMINATION.

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

- 15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
- 15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
 - 15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
 - 15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
 - 15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or
 - 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.
- v. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
- vi. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
- viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

- ix. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
 - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. Remedial Actions. In the event of Subrecipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.
11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number SLFRF0126 awarded to the State of Colorado by the U.S. Department of the Treasury.”

14. Debts Owed the Federal Government.
 - a. Any funds paid to the Subrecipient (1) in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.

 - b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury’s initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.
 - a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or Subcontractor under this award.

 - b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.

16. Protections for Whistleblowers.
 - a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.

 - b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;

- iii. The Government Accountability Office;
- iv. A Treasury employee responsible for Agreement or grant oversight or management;
- v. An authorized official of the Department of Justice or other law enforcement agency;
- vi. A court or grand jury; or
- vii. A management official or other employee of Subrecipient, Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.

c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

1. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees, Subrecipients, and Contractors to adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance, regulated programs, licenses, procurement Agreements by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subsection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.
3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Contractors, Subcontractors, successors, transferees, and assignees:

The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.
7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.
9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of

discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document. State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of sub-Subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurance 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/grants/american-rescue-plan-act>

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

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, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE	✓	✓	✓

GRANT CERTIFICATION

To: Heather Graham, President of the City Council
Nicholas Gradisar, Mayor

Re: CDOT Highway Safety Improvement Program (HSIP) Grant

I hereby certify that I have reviewed and am familiar with the attached documents, and to the best of my knowledge and belief, the City has the present ability to comply with all special conditions, certifications and assurances therein contained.

Name (print) Kelly Grisham

1/18/222

Date

Title: Senior Planner



**BACKGROUND PAPER FOR PROPOSED
ORDINANCE**

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council

CC: Nicholas A. Gradisar, Mayor

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Director of Public Works

SUBJECT: AN ORDINANCE APPROVING AMENDMENT #2 TO THE INTERGOVERNMENTAL AGREEMENT, TAP M086-082 (22971) BETWEEN PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE STATE OF COLORADO, THE COLORADO DEPARTMENT OF TRANSPORTATION AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance approves Amendment #2 to the Intergovernmental Agreement (“IGA”), TAP M086-082 between Pueblo, a Colorado Municipal Corporation (“City”) and the State of Colorado, Colorado Department of Transportation (“CDOT”) relating to the Northern Avenue Streetscape / Trail Phase III Project.

PREVIOUS COUNCIL ACTION:

Ordinance 9600 dated November 25, 2019, transferred funds in the amount of \$125,000 from the 2019 Highway User Tax Fund (“HUTF”) balance to Project HU1601 and budgeted and appropriated \$125,000 for the Traffic Signal Northern and Prairie Project.

Ordinance 9666 dated February 24, 2020, established project PL2003, which approved an IGA between City of Pueblo and CDOT, transferred \$125,000 from project HU1601 to project PL2003, and budgeted and appropriated funds in the amount of \$625,000 for the Northern Avenue Streetscape / Trail Phase III Project.

Resolution 14465 dated August 24, 2020, approved an agreement for professional engineering services between the City of Pueblo and Short Elliott Hendrickson, Inc., in the amount of \$63,037.19, related to the Northern Avenue Streetscape / Trail Phase III Project.

Ordinance 9977 dated August 9, 2021, approved an amendment to the Intergovernmental Agreement (“IGA”), TAP M086-082 between Pueblo, a Colorado Municipal Corporation (“City”) and the State of Colorado, Colorado Department of Transportation (“CDOT”) relating to the Northern Avenue Streetscape / Trail Phase III

Project.

BACKGROUND:

The Northern Avenue Streetscape / Trail, Phase III Project will continue the trail/shared use path along the north side of Northern Avenue between Cambridge Avenue and Prairie Avenue and upgrade the signal at Northern and Prairie Avenue. Over the last eight years the City has redeveloped the trail system and constructed the landscaped center medians along Northern Avenue between Pueblo Boulevard (State Highway 45) and Cambridge Avenue.

The purpose of Amendment #2 to the Intergovernmental Agreement (IGA) is to allocate \$34,000 for Right-of-Way acquisition. During the initial design of the traffic signal replacement at the southwest corner of South Prairie Avenue and West Northern Avenue, it was determined that a permanent easement and/or property acquisition is necessary for the appropriate placement of the traffic signal pole.

FINANCIAL IMPLICATIONS:

This amendment does not propose any changes in funding.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Currently, there are no alternatives for completing the improvements without the funding from the State of Colorado CDOT TAP grant.

RECOMMENDATION:

Approve the Ordinance.

Attachments:

City-State of Colorado IGA Amendment #2 for the Northern Avenue Streetscape / Trail, Phase III Project

ORDINANCE NO.

AN ORDINANCE APPROVING AMENDMENT #2 TO THE INTERGOVERNMENTAL AGREEMENT, TAP M086-082 (22971) BETWEEN PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE STATE OF COLORADO, THE COLORADO DEPARTMENT OF TRANSPORTATION AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

SECTION 1.

The Amendment #2 to the Intergovernmental Agreement, TAP M086-082 (22971) between Pueblo, a Colorado Municipal Corporation, and State of Colorado for the use and benefit of Department of Transportation, a copy of which is attached hereto ("Amendment"), having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is authorized to execute and deliver the Amendment in the name of the City and the City Clerk is directed to affix the seal of the City thereto and attest same.

SECTION 3.

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

SECTION 4.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

- Approved on _____.
- Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

President of City Council

ATTEST

City Clerk

1) PARTIES

This Amendment (the “Amendment”) to the Original Agreement shown on the Signature and Cover Page for this Amendment (the “Agreement”) is entered into by and between the Local Agency and the State.

2) TERMINOLOGY

Except as specifically modified by this Amendment, all terms used in this Amendment that are defined in the Agreement shall be construed and interpreted in accordance with the Agreement.

3) EFFECTIVE DATE AND ENFORCEABILITY

A. Amendment Effective Date

This Amendment shall not be valid or enforceable until the Amendment Effective Date shown on the Signature and Cover Page for this Amendment. The State shall not be bound by any provision of this Amendment before that Amendment Effective Date, and shall have no obligation to pay the Local Agency for any Work performed or expense incurred under this Amendment either before or after the Amendment term shown in **§3.B** of this Amendment

B. Amendment Term

The Parties’ respective performances under this Amendment and the changes to the Agreement contained herein shall commence on the Amendment Effective Date shown on the Signature and Cover Page for this Amendment and shall terminate on the termination of the Agreement.

4) PURPOSE

The Parties entered into the Agreement for the design and construction of a trail, traffic signal improvements and landscaping in the City of Pueblo, CO. The Parties now desire to allocate \$34,000.00 for ROW Acquisition 3111 and/or ROW Relocation 3109. The total budgeted funds will be unchanged.

5) MODIFICATIONS

The Agreement and all prior amendments thereto, if any, are modified as follows:

- a) **Exhibit C-2** shall be replaced by **Exhibit C-4**. This is a correction as executed Amendment #1 and Option Letter #2 both contain an **Exhibit C-2**. Any reference in the Agreement, as previously modified, to **Exhibit C**, **Exhibit C-1**, **Exhibit C-2** and also any **Exhibit C-3** shall be a reference to **Exhibit C-4**.

6) LIMITS OF EFFECT

This Amendment is incorporated by reference into the Agreement, and the Agreement and all prior amendments or other modifications to the Agreement, if any, remain in full force and effect except as specifically modified in this Amendment. Except for the Special Provisions contained in the Agreement, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Agreement or any prior modification to the Agreement, the provisions of this Amendment shall in all respects supersede, govern, and control. The provisions of this Amendment shall only supersede, govern, and control over the Special Provisions contained in the Agreement to the extent that this Amendment specifically modifies those Special Provisions.

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EXHIBIT C-4
FUNDING PROVISIONS

EXHIBIT C-4 – FUNDING PROVISIONS

TAP M086-082 (22971)

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be \$625,000.00, which is to be funded as follows:

1. BUDGETED FUNDS				
a. Federal Funds (80.00% of Award Costs)				\$500,000.00
b. Local Agency Matching Funds (20.00% of Award Costs)				\$125,000.00
TOTAL BUDGETED FUNDS				\$625,000.00
2. OMB UNIFORM GUIDANCE				
a. Federal Award Identification Number (FAIN):				TBD
b. Federal Award Date (also Phase Performance Start Date):				See Below
c. Amount of Federal Funds Obligated:				\$70,436.00
d. Total Amount of Federal Award:				\$500,000.00
e. Name of Federal Awarding Agency:				FHWA
f. CFDA # Highway Planning and Construction				CFDA 20.205
g. Is the Award for R&D?				No
h. Indirect Cost Rate (if applicable)				N/A
3. ESTIMATED PAYMENT TO LOCAL AGENCY				
a. Federal Funds Budgeted				\$500,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs				\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY				\$500,000.00
4. FOR CDOT ENCUMBRANCE PURPOSES				
a. Total Encumbrance Amount				\$625,000.00
b. Less ROW Acquisition 3111 and/or ROW Relocation 3109				\$34,000.00
Net to be encumbered as follows:				\$591,000.00
<i>Note: Only \$88,045.00 in Design funds are currently available. Additional funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.</i>				
WBS Element 22971.10.30	Performance Period Start*/End Date 11/16/2020 / 06/30/2022	Design	3020	\$88,045.00
WBS Element 22971.20.10	Performance Period Start*/End Date TBD / TBD	Const.	3301	\$0.00

***The Local Agency should not begin work until all three 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 milestones are achieved will not be reimbursable.**

B. Matching Funds

The matching ratio for the federal funds for this Work is 80.00% federal-aid funds to 20.00% Local Agency funds, it being understood that such ratio applies only to the \$625,000.00 that is eligible for federal funds, it being further understood that all additional costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$625,000.00, and additional federal funds are made available for the Work, the Local Agency shall pay 20.00% of all such costs eligible for federal funds and 100% of all additional costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than \$625,000.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State. **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 \$472,800.00 (the Federal funds of \$500,000.00 minus ROW Acquisition 3111 and/or ROW Relocation 3109 of \$27,200.00; for CDOT accounting purposes, the federal funds of \$472,800.00 and the Local Agency matching funds of \$118,200.00 [Local Agency funds of \$125,000.00 minus Local Agency share of ROW Acquisition 3111 and/or ROW Relocation 3109 of \$6,800.00] will be encumbered for a total encumbrance of \$591,000.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award. The maximum amount payable shall be reduced without amendment when the actual amount of the Local Agency's awarded contract is less than the budgeted total of the federal Award funds and the Local Agency matching funds. The maximum amount payable shall 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 C.F.R. 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.



**BACKGROUND PAPER FOR PROPOSED
ORDINANCE**

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council

CC: Nicholas A. Gradisar, Mayor

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Director of Public Works

SUBJECT: AN ORDINANCE APPROVING A LICENSE AGREEMENT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION AND ZAYO GROUP, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND GRANTING SAID ENTITY A CITY TELECOMMUNICATIONS LICENSE

SUMMARY:

The Ordinance will approve a license agreement with Zayo Group, LLC, a Delaware limited liability company which grants it a nonexclusive license to place telecommunications cable and ancillary facilities within the streets and right of ways of the City of Pueblo in order that the company may operate within the City of Pueblo as a telecommunications provider. The license agreement preserves, to the extent permitted under existing laws, the City of Pueblo authority to manage its streets and rights of way for the benefit of the public without discrimination among telecommunications providers.

PREVIOUS COUNCIL ACTION:

The City of Pueblo has previously approved identical or substantially similar license agreements with other qualifying telecommunication providers in the past.

BACKGROUND:

Zayo is a provider of fiber telecommunications infrastructure in markets across North America and several in Western Europe. Through partnerships with various network providers Zayo provides lit and dark fiber networks that provide connections to thousands of data centers, cloud providers, commercial and entertainment centers in more than 400 markets. As a qualified telecommunications service provider, Zayo has requested a telecommunications license from the City of Pueblo.

FINANCIAL IMPLICATIONS:

Zayo Group and its customers will pay the City applicable sales and use taxes, E911 fees and occupation taxes.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

Pursuant to federal and state law, the City of Pueblo is prohibited from discriminating among or granting preferences to competing telecommunication providers in the issuance of licenses and from creating or erecting any unreasonable requirements for entry to the City of Pueblo right of way. As such, the City of Pueblo alternatives are limited to proposing amendments to the proposed license agreement that are consistent with the foregoing limitations.

RECOMMENDATION:

Approval of the Ordinance.

Attachments:

Proposed Ordinance
License Agreement

ORDINANCE NO. _____

AN ORDINANCE APPROVING A LICENSE AGREEMENT BETWEEN PUEBLO, A MUNICIPAL CORPORATION AND ZAYO GROUP, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND GRANTING SAID ENTITY A CITY TELECOMMUNICATIONS LICENSE

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

SECTION 1.

The License Agreement between the City of Pueblo, a municipal corporation and Zayo Group, LLC, a Delaware Limited Liability Company, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is authorized to execute and deliver the License Agreement in the name of the City, and the City Clerk is directed to affix the seal of the City thereto and attest same.

SECTION 3.

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

SECTION 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

LICENSE AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, 2022, by and between the City of Pueblo, a Municipal Corporation (hereinafter referred to as "City") and Zayo Group, LLC, a Delaware limited liability company (hereinafter referred to as "Licensee").

WITNESSETH:

WHEREAS, City is a Colorado home rule city organized and existing under and by virtue of Article XX of the Colorado Constitution and possesses plenary power and authority over the use and occupation of the public rights of way within its corporate boundaries; and

WHEREAS, Licensee represents and warrants: (a) that it is a "telecommunications provider" as that term is defined under Colorado and federal law, including but not limited to §38-5.5-102(3), C.R.S. and 47 U.S.C. § 153(51); and (b) that it operates within the geographical boundaries of the City of Pueblo; and

WHEREAS, Licensee provides its telecommunications services to customers over a network owned, controlled, or leased by Licensee which lines are authorized pursuant to franchise, license agreement or revocable permit; and

WHEREAS, Licensee may wish to install telecommunications facilities upon or within certain public rights of way within the corporate boundaries of the City in order to provide telecommunications services; and

WHEREAS, City is authorized under the constitution and laws of the State of Colorado to grant consent to telecommunications providers to occupy the public rights of way for such purposes; provided, however, the same shall not be nor constitute the granting of a local franchise under Article 16 of the City's Charter nor shall same ever become or ripen into any franchise; and

WHEREAS, the City and Licensee have agreed to be bound by the terms and conditions set forth herein which shall govern Licensee's use of the public rights of way;

NOW, THEREFORE, in consideration of the foregoing recitals and the terms, conditions and mutual promises set forth herein, the parties agree as follows:

ARTICLE I - DEFINITIONS

As used in this License Agreement, the following terms, phrases, and words shall be ascribed the following meanings, unless the context indicates otherwise. As used in this License Agreement, the word "shall" is mandatory, and the word "may" is permissive. Words not defined herein shall be given their common and ordinary meanings, consistent with the context in which such words are used and the purposes of this License Agreement.

1. "Telecommunications Act" shall mean the Telecommunications Act of 1996 (47 U.S.C. §151, et seq.), as amended.

2. (a) "Facilities" means all physical components of the Licensee used to provide

telecommunications services which are located, or to become located pursuant to this License Agreement, within the City and are reasonably necessary, useful or convenient to provide telecommunications services within the territorial boundaries of the City, including without limitation, poles, wires, cables, pipes, underground conduits, ducts, manholes, vaults, fiber optic cables and devices, switches, equipment boxes and sheds and other structures and appurtenances. This term shall also include any Facilities which were installed under the any prior License Agreement between the City and Licensee.

(b) "Leased Facilities" means all physical components used by Licensee to provide telecommunications services which are leased to Licensee by third parties who are authorized by separate instruments to maintain same within Rights of Way within the City.

3. "Account" shall mean each telephone or telecommunications access line or twisted pair equivalent provided by or on behalf of Licensee, if Licensee provides any type of local exchange service, at a customer's premises over which the customer may send or receive any telephone, telegraph, fax, data, video or other similar telecommunications signals; except that "Account" shall not include any customer line used solely for receipt of cable television programming. Provision of a T1 or DS1 line furnished by Licensee to a customer which is connected to switched access service or local exchange service shall be counted as twenty-four (24) accounts; provision of a T3/DS3 shall be counted as six hundred seventy-two (672) accounts.

4. "Jurisdiction" shall mean (a) within the corporate boundaries of the City of Pueblo as now or hereafter constituted, (b) at, upon, under or across the Pueblo Municipal Airport ("Airport") and Pueblo Municipal Airport Industrial Park ("Industrial Park"), and (c) all highways, streets, roads and other rights of way between and connecting the City of Pueblo and the Airport and/or Industrial Park where Facilities are located.

5. "Rights of Way" shall mean City streets, roads, alleys, sidewalk areas and other dedicated rights of way within the Jurisdiction, together with dedicated utility easements within the Jurisdiction and easements deeded to the City for utility purposes, and including state highways and highways which are part of the federal interstate highway system. The term shall not include any other property owned or leased by the City for other public use including, without limitation, City parks and open space.

6. "PMC" shall mean the Pueblo Municipal Code, as amended, and as same may be amended in the future.

7. "Wireless Communications Facility" or "WCF" means a facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services.

ARTICLE II - CONDITIONAL CONSENT GRANTED

1. Subject to Licensee's compliance at all times with all of the terms and conditions of this License Agreement, all of the ordinances referenced herein, all applicable local, state and federal laws, and further subject to the City's lawful exercise of its police power (including, but not limited to, zoning, subdivision, permit and building code requirements) and the City's prior and superior right to usage for municipal purposes, City hereby grants to Licensee, insofar as it has or may have the requisite power and authority to do so, a non-exclusive license to make reasonable use of the Rights of Way to construct, install, operate and maintain Licensee's Facilities within the City to and for the benefit of the City and the inhabitants of the City; provided, however, that with respect to state highways, Licensee must separately obtain consent from the Colorado Department of Transportation. This license shall extend to all areas of the City as it is now constituted, and to additional areas as the City may increase in size by annexation or otherwise.

2. The license granted herein to make reasonable use of the Rights of Way shall not be deemed to be a franchise, nor an exclusive license or right, and the City reserves the right to make or grant a similar use of the Rights of Way to any other person or persons, including one or more other telecommunications providers.

3. The City retains the following rights in regard to this license:

(a) To revoke the license and consent hereby granted for misuse, non-use or failure of Licensee to comply with the provisions hereof;

(b) To use, control and regulate the use of the City streets, roads, easements, other public places and the Rights of Way, and the space above and beneath the same; and

(c) To require the removal or relocation of any of the Facilities from the Rights of Way if necessary or desirable, in the sole but reasonable judgment of the City, for any public or municipal purpose or project.

4. The license granted herein to make reasonable use of the Rights of Way shall not be deemed to grant authorization to construct or operate Wireless Communications Facilities. Authorization to utilize the Rights of Way for Wireless Communications Facilities must be obtained through separate authorization specifically permitting the use of the Rights of Way for Wireless Communications Facilities.

ARTICLE III - SCOPE

The license and consent granted by this License Agreement confers only the right to make reasonable use of the Rights of Way for Licensee's provision of telecommunications services, and it is expressly understood and agreed to by Licensee that Licensee shall not operate a private telecommunications network, Wireless Communications Facilities, nor operate as a "cable operator" as that term is defined under federal law (47 U.S.C. §522(5)), nor shall it provide or offer

to provide "cable services" as that term as defined under federal law (47 U.S.C. §522(6)), without proper local, state and federal authorization, as required by law.

ARTICLE IV - OCCUPATION TAX & E911 SURCHARGES

1. To the extent Licensee operates as a local exchange provider, as defined by §40-15-102(18), C.R.S. and/or as an interexchange provider, as defined by §40-15-102(11), C.R.S the following provisions shall apply:

(a) Licensee understands and acknowledges that City had heretofore adopted Ordinance No. 4267 in December 1976 imposing upon all telecommunications utilities operating within the City, and effective January 1, 1977, an occupation tax as stated in said Ordinance. In its provision of local exchange services, whether directly or through resale, Licensee agrees to be bound by and comply with said Ordinance, including payment of the tax in an amount equal to \$6.00 per annum for each Account, payable quarterly in equal installments. In providing local exchange services, Licensee hereby expressly agrees that it is and constitutes a telephone utility within the meaning of Ordinance No. 4267 and Licensee irrevocably waives and relinquishes any right it has or may have to claim or assert that said Ordinance is invalid under law or should not be applied to Licensee, including, without limitation, any claim that said Ordinance violates any provision of state law or the Telecommunications Act.

(b) The City has by Ordinance No. 9864 imposed an emergency telephone charge ("E911 Charge") of one dollar seventy-two cents (\$1.72) per month per exchange access facility, wireless communications access and interconnected voice-over-internet-protocol service provided within the Jurisdiction, as authorized by §29-11-100.5, et seq., C.R.S. Licensee agrees to collect the E911 Charge from its customers and promptly remit same monthly to City as provided by §29-11-103(1), C.R.S.

ARTICLE V - SALES AND USE TAXES

1. Licensee agrees to obtain a sales and use tax license from the City and to comply with all provisions of Title XIV of the Pueblo Municipal Code relating to sales and use taxes.

2. Licensee acknowledges and agrees that to the extent Licensee sells telecommunications services to customers within the City, including the provision of interstate telephone access service and interlata access service, such service is taxable by City pursuant to §14-4-61(3), PMC, and Licensee shall collect such taxes from its customers and promptly remit same to the City in accordance with Title XIV, PMC.

ARTICLE VI - USE OF RIGHTS OF WAY

1. Facilities shall be located, installed and maintained so that none of the Facilities endanger the lives, health or safety of persons, or interfere with any public improvements the City

or other governmental entities (including any storm water, sanitary sewer or water utilities or enterprises) have in place or may deem proper to make, nor shall the location, installation or maintenance of the Facilities hinder or obstruct the use of the streets or other public ways for their public purposes, including but not limited to vehicular and pedestrian traffic. All Facilities shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners of property which adjoins any Right of Way.

2. Prior to commencement of construction of any portion of its telecommunications system within the City (other than Leased Facilities), Licensee shall furnish to the City the general schematic plans for its Facilities, including system route maps, renderings of equipment boxes and structures, engineering, traffic control, and landscaping plans. In addition, the Licensee shall assess and report on the impact of its proposed construction on the City environment. Such plans and reports may be reviewed by the City to ensure, (a) that all applicable laws including building and zoning codes and air and water pollution regulations are complied with, (b) that aesthetic and good planning principles have been given due consideration, and (c) that adverse impact on the environment has been minimized. The Licensee shall comply with all regulatory requirements of the City lawfully binding on the Licensee and shall incorporate all other reasonable changes to its plans requested by the City.

3. Not less than thirty (30) days prior to construction of any Facilities within the Rights of Way at any specific location, Licensee shall furnish the City's Director of Public Works with detailed plans for such Facilities including detailed location drawings and final architectural, engineering, traffic control and landscaping plans. Prior to commencing construction, Licensee shall: (a) obtain written approval of the Director of Public Works of the construction plans, (b) procure appropriate excavation permits pursuant to Chapter 6 of Title XII, PMC, and permits required by Chapter 3 of Title XII, PMC, or permits required pursuant to any similar ordinance adopted by City in the future, (c) pay all fees associated with such permits, and (d) comply with all requirements of said Chapters 3 and 6 of Title XII, the terms of said permits, and the City's Standard Construction Specifications and Standard Details adopted March 28, 2005 or as subsequently revised.

4. All construction, excavation, maintenance and repair work done by Licensee shall be done in a workmanlike and expeditious manner which minimizes the inconvenience to the City, the general public and individuals. Licensee shall be liable for any damage to the City or City owned property caused by Licensee's failure to act in a timely manner. All such construction, excavation, maintenance and repair work done by Licensee shall comply with all applicable codes of the City and the State of Colorado, and Licensee shall be responsible for obtaining all applicable permits and licenses. The City shall have the right to inspect all construction or excavation work to ensure compliance with applicable codes and permits, and may order Licensee to perform corrective work. All public and private property disturbed by Licensee's activities shall be promptly restored by Licensee at its expense to substantially its former condition, subject to inspection by the City's Director of Public Works or their designee and compliance by Licensee with reasonable remedial action required by said official pursuant to the inspection. Licensee shall

be liable to City for the full cost of restoring any public property not promptly remedied by Licensee as required by said official.

5. The installation, maintenance, renovation and replacement of Facilities by Licensee shall be subject to regulation by City including as to (a) the location of Facilities in or upon the streets, alleys and dedicated easements, (b) the disturbance and reconstruction of pavement, sidewalks, and surface of streets, alleys, dedicated easements and driveways, (c) the timing and scheduling of work, and (d) the temporary closure of portions of streets and alleys. All Facilities shall be designed and installed so as to cause a minimal amount of interference with public property, water mains, sewer mains, electric and natural gas facilities, street lights, traffic signals, and all other municipal or authorized public use of the Rights of Way. The City's Director of Public Works may direct and require Licensee to locate its Facilities within a defined telecommunications corridor within any street or other Right of Way or otherwise at a specific location to minimize interference with other facilities or utilities. Licensee shall install and maintain its Facilities in such manner as to minimize interference with trees, natural features and vegetation. Whenever feasible, Licensee shall enter into pole-sharing and conduit-sharing agreements with third parties in order to co-locate its wires and cables upon poles or within conduit of other telecommunications providers or utilities.

6. Licensee shall, upon reasonable notice and at its sole cost and expense, remove, locate and relocate its Facilities in, on, over or under any Rights of Way in such manner as City may at any time require for the purpose of facilitating the construction, reconstruction, maintenance, repair, or change in grade of any street, sidewalk, public improvement or City project, or for the purpose of promoting the efficient operation of any such public improvement or project, or for the purpose of facilitating the vacation and/or redevelopment of Right of Way by the City. In the event Licensee fails to act within a reasonably allocated time, the City may cause Licensee's Facilities to be relocated, and Licensee shall be liable to City for the costs thereof. In the event City causes Licensee's facilities to be relocated, City shall be held harmless for any damages incurred to Licensee's Facilities during such relocation.

7. Except where specifically authorized by the Director of Public Works of the City, all of Licensee's Facilities located within Rights of Way shall be located underground. In locations where wires or cables of franchisees of City or of authorized local exchange carriers are presently located above-ground, the Director of Public Works will allow Licensee's Facilities to also be located above-ground unless he has specific reasons for not allowing above-ground installation at such location. Thereafter, and notwithstanding that any such authorization had been given, should the City subsequently determine for any area of the City that telephone or telecommunications wires, cable television cables or electric utility wires located above ground shall be relocated underground, Licensee shall, upon reasonable notice, at its sole cost and expense, relocate its Facilities below ground in cooperation with other affected interests. In the event Licensee fails to act within a reasonable allocated time the City may cause Licensee's Facilities to be relocated, and Licensee shall be liable to City for the costs thereof. In the event City causes Licensee's Facilities to be relocated, City shall be held harmless for any damages incurred to Licensee's Facilities

during such relocation.

8. After execution of this Agreement, Licensee shall join and associate with the notification association of owners and operators of underground facilities in accordance with the requirements of Article 1.5 of Title 9, Colorado Revised Statutes. Prior to undertaking any excavation within the Rights of Way, Licensee shall comply with the notice requirements of said Article.

ARTICLE VII - ADDITIONAL CITY REGULATION

1. The City expressly reserves its right and duty to adopt, from time to time, in addition to the provisions herein contained, such charter provisions, ordinances and rules and regulations as may be deemed necessary by the City to promote the health, safety and welfare of its inhabitants and their property.

2. Notwithstanding anything in this License Agreement to the contrary, Licensee acknowledges that City is planning to develop a new telecommunications policy which will be implemented through one or more ordinances or resolutions to be adopted by City Council of City, and/or through regulations to be adopted by Departments of the City. Licensee agrees that upon adoption of any such policy or regulations after the date of this License Agreement, this License Agreement or any provision thereof may be unilaterally revoked or canceled by City without cause and replaced with new terms and conditions which shall be made equally applicable within each class of telecommunications provider operating within the City.

3. If, during the term of this License Agreement, the City is authorized pursuant to Colorado Law to collect compensation for use of the Rights of Way by telecommunications providers and the City enacts an ordinance concerning the use of Rights of Way which requires compensation for the use of the Rights of Way from any class of telecommunications providers on a competitively neutral and nondiscriminatory basis within such class, then Licensee shall, in accordance with the terms of such ordinance, pay such compensation.

ARTICLE VIII - COORDINATION AND CONDUIT/POLE SHARING

1. In order to minimize disruption to vehicular traffic and inconvenience to the public, and to enable the limited width of Rights of Way to be apportioned among all utilities, telecommunications providers and other interests needing to locate or maintain facilities in the Rights of Way for the benefit of the public, it is imperative that pole sharing and conduit sharing be encouraged to the greatest extent possible. In furtherance of such purposes, Licensee agrees that it shall reasonably cooperate with City, authorized utilities and other local exchange carriers in placing conduit within the Rights of Way and in sharing unused space within underground conduits owned by Licensee, and upon poles or other above ground facilities owned by Licensee.

2. Whenever the Licensee intends to install new underground conduit or replace existing underground conduit in a build greater than 500 feet in length, Licensee shall, whenever feasible, provide City and all utilities, cable television franchisees, and local exchange carriers authorized to use the Rights of Way, with sixty (60) days advance written notice in order to permit the additional contemporaneous

installation of conduit by City, and such utilities, cable television franchisees, authorized telecommunications providers, and local exchange carriers. If City desires additional conduit installed, it will so notify the Licensee and the City shall be responsible for the additional incremental expense for installing such additional conduit for the City's own use and not for resale purposes. If a utility, cable television franchisee, authorized telecommunications provider, or local exchange carrier desires additional conduit installed and the method of construction is trench it will so notify the Licensee in writing at least fifteen (15) days prior to the proposed construction date, and such party requesting the additional conduit shall be responsible for negotiating terms per paragraph "3. Joint Trench.". This section is intended to maximize the coordination of facilities located within rights of way, and is not intended to govern routine connections of customers to installed network not involving significant line extension nor other excavations of limited scope.

3. Joint Trenching Upon Licensee's application for a right-of-way permit, the City, a utility, cable television franchisee, authorized telecommunications provider, or local exchange carrier shall have fifteen (15) calendar days to notify the Licensee of their interest to share the Licensee's trench. If the City provides notice of interest to share the Licensee's trench, an agreement between the two parties shall be executed within 30 days of the notice of interest, outlining the responsibilities and financial obligations of each, with respect to the installation within the right-of-way. The financial obligations of each party shall be based on the proportionate sharing of costs between each party for joint trenching or trench sharing based on engineering and construction costs, as well as the amount of conduit innerduct space or excess conduit that each party will be requiring or utilizing. The provisions of this section do not apply to projects to install new underground conduit or replace existing underground conduit and where the City contemporaneously wishes to install its own conduit, as provided in the paragraph 2 above. The provisions of this section also do not apply to projects being installed via directional boring. Additionally, the provisions of this section shall not apply if the joint build would cause substantial or detrimental delays to Licensee's deployment of critical telecommunications infrastructure.

4. Notwithstanding anything to the contrary in paragraph 2 of this Article, in order to minimize disruption to the public and enable use of the public rights of way for public purposes, in connection with any installation of underground conduit by Licensee, City may request Licensee to install one additional conduit for exclusive use by City for public and municipal purposes. In any such case, Licensee shall install the conduit as requested and the City shall reimburse Licensee only for the cost of the conduit and associated handholes and pull boxes for the conduit, and for the additional incremental expense for installing such additional conduit, handholes and pullboxes.

ARTICLE IX - INDEMNIFICATION

1. Licensee shall install, construct, maintain and operate its telecommunications system in a safe manner providing reasonable protection against injury or damage to any and all persons or property. Licensee specifically agrees to indemnify, defend and hold City harmless from all claims, costs, demands, suits, reasonable expert witness and attorneys' fees, court costs, and other reasonable costs of defense and judgments to the extent the same arise from, in whole or in part, Licensee's negligent acts or omissions of failure to comply with the provisions of this License Agreement, and from all damages or penalties to the extent arising out of the installation, construction, operation, or maintenance of Licensee's telecommunications system, whether or not any act or omission complained of is authorized, allowed, or prohibited by this License Agreement,

except to the extent such damages or penalties result from the negligent acts or omissions or intentional or willful and wanton misconduct of the City. City shall not be liable for, and Licensee shall indemnify, defend and hold the City harmless from all costs, damages and claims to the extent arising from or relating to delay by Licensee in performing its obligations hereunder, for any cause whatsoever, except for the negligent acts or omissions or intentional or willful and wanton misconduct of the City, other users of the Rights of Way, or a force majeure event. Licensee shall have sole control over the defense, investigation and settlement of any such claims, however, Licensee shall not enter into any compromise or settlement which imposes any obligation or liability on the City without the prior written consent of the City. In the event Licensee fails to timely assume the defense of any such claim which has been properly and promptly tendered to Licensee. Licensee also hereby agrees to pay all reasonable expenses of the City incurred by the City in defending itself with regard to any such damages, claims or penalties, including all out-of-pocket expenses, reasonable attorney' fees, and the reasonable value of any services rendered by the City Attorney, his assistants, or any employees of the City (collectively "Expenses"), but shall not be required to pay for any Expenses that are in excess of any settlement or compromise which was rejected by the City.

2. The City will provide notice to the Licensee of the pendency of any claim or action against the City arising out of the operations of the Licensee, the exercise by the Licensee of its rights under this License Agreement or the performance thereof by the Licensee. The Licensee shall thereafter be required to appear and defend any such claim or action. Nothing herein stated shall limit the Licensee's obligation of full indemnification of the City hereunder.

ARTICLE X - INSURANCE

Prior to commencement of any installation of Facilities under this License Agreement, Licensee shall procure and thereafter continuously maintain, for as long as this License Agreement remains in effect, at Licensee's expense, Commercial General Liability ("CGL") insurance written on ISO form CG 00 01 01 96, or a substitute form providing equivalent coverage, with a limit of not less than \$2 Million per occurrence, covering liability arising from premises, operations, independent contractors, personal injury, products completed operations, and liability assumed under an insured contract, on an occurrence basis. Under the terms of the required CGL policy, this License Agreement shall be defined as an insured contract. The policy shall identify the City as an additional insured, shall contain a waiver of right of subrogation against City and shall have all necessary endorsements to provide coverage without exclusion for explosion, collapse and underground property damage hazards. A certificate of insurance shall be filed with the City's Director of Finance prior to commencement of installation of Facilities, which evidences compliance with the policy requirements stated above and provides for thirty (30) days prior written notice to City prior to cancellation or material change of any insurance referred to therein. In the event the certificate states that it confers no rights upon the certificate holder, the City may require Licensee to furnish a complete copy of the policy including all declarations and endorsements.

ARTICLE XI - TERM

Unless sooner terminated as provided herein, the term of this License Agreement shall be for a period of five (5) years from and after the date of the Agreement. The Parties may mutually agree in writing to renew this Agreement at expiration of the initial term.

ARTICLE XII - REMEDIES, TERMINATION, REMOVAL

1. In the event of any breach of the terms of this License Agreement by Licensee, City shall have the right to obtain one or more of the following remedies, which are expressly agreed to be cumulative, and the exercise of any one (1) or more of them shall not be dependent upon the exercise of any other remedy, nor does the exercise of any one or more of them constitute any bar or limitation to the exercise of any other: (a) specific performance or injunctive relief, (b) monetary damages, and (c) termination. In the event City is required to commence an action to enforce its rights under this License Agreement or to obtain remedies provided above and the party which substantially prevails therein, shall be entitled to recover its costs, including reasonable attorneys' fees and expert witness fees.

2. Before terminating the License Agreement for cause on account of any default by Licensee, City shall provide Licensee with written notice of the default and afford Licensee a reasonable period in which to cure the default.

3. In the event Licensee abandons the telecommunications system installed under the terms of this License Agreement or a certain part thereof or fails to use it for a period of one (1) year, or in the event the term of this License Agreement expires, or the Agreement is terminated or is canceled for any reason, then Licensee shall remove its telecommunications system, or the abandoned portions thereof in the case of a partial abandonment, at its expense. As an alternative to removal, if mutually agreed to by Licensee and the City, the ownership of the telecommunications system (or abandoned portions) may be transferred to the City, in which event, all obligations and liabilities of Licensee under this Agreement in connection with the portion of the telecommunications system so transferred to the City shall terminate.

4. Licensee may cancel this Agreement at any time, as described below, upon ninety (90) days' written notice to the City, subject to the indemnification requirements of this Agreement, the removal provisions set forth in Section 3 above, and any other provisions that survive the termination of this Agreement.

ARTICLE XIII - NOTICES

Except as otherwise provided herein, notice under this License Agreement shall be deemed sufficient if provided in writing and mailed by US certified mail, return receipt requested or delivered by a nationally recognized courier, and shall be deemed effective upon actual receipt or refusal of delivery, and shall be addressed to the respective party as follows:

If to the City: Mayor
1 City Hall Pl.
Pueblo, CO 81003

with a copy to: Director of Public Works
211 E. "D" Street
Pueblo, CO 81003

If to Licensee: Zayo Group, LLC
Attn: Director, Underlying Rights – East Region
1821 30th Street, Unit A
Boulder, CO 80301

If notice is to Licensee:
Zayo Group, LLC
Attn: General Counsel, Legal
1821 30th Street, Unit A
Boulder, Colorado 80301
legal@zayo.com

Billing Disputes:
Zayo Group, LLC
Attn: Accounts Payable
1821 30th Street, Unit A
Boulder, Colorado 80301
ap@zayo.com

Emergencies:
Network Operations Center & Repair
Phone: (888) 404 9296
E-mail: zayoncc@zayo.com

ARTICLE XIV - EFFECT OF MORE FAVORABLE LICENSE AGREEMENTS

In the event that any wireline telecommunications provider offering telecommunications services , other than cable services, for a fee to the public, or to such classes of users as to be effectively available to the public is granted consent to use the City's Rights of Way pursuant to terms and conditions which, if applied to Licensee, would be more favorable than those included herein, Licensee shall notify City of such terms and conditions and Licensee shall have the option to renegotiate with City with respect to such terms and conditions.

ARTICLE XV - SUCCESSORS AND ASSIGNS

This License Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. No provision of this License Agreement shall confer rights or benefits upon any person not a party hereto.

ARTICLE XVI - SIGNATURES

The persons signing this License Agreement on behalf of Licensee represent and warrant that such persons and Licensee have the requisite power and authority to enter into, execute and deliver this License Agreement and that this License Agreement is a valid and legally binding obligation of Licensee enforceable against Licensee in accordance with its terms. This License Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of such components together shall constitute one and the same instrument.

ARTICLE XVII - FORCE MAJEURE

Neither party shall be liable for its failure to perform any of its obligations hereunder if such failure is caused by an Act of God, labor strike, fire, earthquake, power blackouts, pandemics, epidemics, or any other cause beyond its reasonable control and without its fault or negligence.

ARTICLE XVIII - LAWS GOVERNING/VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and applicable federal law. Venue for any proceeding brought pursuant to this Agreement shall be in the District Court located in Pueblo County, Colorado.

ARTICLE XIX - COUNTERPARTS; ELECTRONIC DISPOSITION

This Agreement may be executed in multiple counterparts, each of which constitutes an original hereof. Regardless of the number of counterparts, all shall constitute only one agreement. In making proof of this Agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties. Furthermore, the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original of this Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.

ARTICLE XX - PUBLIC DISCLOSURE

The Licensee acknowledges that this Agreement is public record within the meaning of the Colorado Open Records Act, C.R.S. § 24-72-200.1 *et seq.* as same may be amended, and accordingly may be disclosed to the public.

ARTICLE XXI - AMENDMENT

This Agreement may not be amended except pursuant to a written instrument signed by both parties.

ARTICLE XXII - OTHER RIGHTS OF WAY USERS

The parties understand and agree that the Licensor permits other persons and entities to install utility facilities in the PROW. In permitting such work to be done by others, the Licensor shall not be liable to Company for any damage caused by those persons or entities.

ARTICLE XXIII - ENTIRE AGREEMENT

This Agreement represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersedes all prior oral negotiations between the parties, and can be amended, supplemented, modified or changed only by an agreement in writing which makes specific reference to this Agreement and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought.

[Remainder of Page Intentionally Left Blank – Signature Page Follows]

IN WITNESS WHEREOF, Licensee and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

ATTEST:

CITY OF PUEBLO,
A Municipal Corporation

By _____

City Clerk

Name _____

Mayor

[SEAL]

ATTEST:

LICENSEE:

Zayo Group, LLC

DocuSigned by:
Gillian Lytham

DocuSigned by:
David Urbach

Title: VP, Underlying Rights

By _____

Name David Urbach

Title: Director, Underlying Rights

Certificate Of Completion

Envelope Id: A072ABD08578436F8EF148D3047C9BB5

Status: Completed

Subject: Please DocuSign: Pueblo Standard Form Telecom License updated 2022 - Zayo Group Jan 2022 FINAL ...

Source Envelope:

Document Pages: 14

Signatures: 2

Envelope Originator:

Certificate Pages: 5

Initials: 0

David Urbach

AutoNav: Enabled

1805 29th Street, Suite 2050

Enveloped Stamping: Enabled

Boulder, CO 80301

Time Zone: (UTC-07:00) Mountain Time (US & Canada)

david.urbach@zayo.com

IP Address: 98.43.65.15

Record Tracking

Status: Original

Holder: David Urbach

Location: DocuSign

1/28/2022 11:31:30 AM

david.urbach@zayo.com

Signer Events

David Urbach

david.urbach@zayo.com

Director, Underlying Rights

Zayo

Security Level: Email, Account Authentication
(None)**Signature**

DocuSigned by:



F32B2F19EF4E4BE...

Signature Adoption: Pre-selected Style

Using IP Address: 98.43.65.15

Timestamp

Sent: 1/28/2022 11:33:21 AM

Viewed: 1/28/2022 11:33:33 AM

Signed: 1/28/2022 11:34:57 AM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Gillian Leytham

gillian.leytham@zayo.com

Vice President, Underlying Rights

Security Level: Email, Account Authentication
(None)

DocuSigned by:



20F4A14AB9A54B2...

Signature Adoption: Pre-selected Style

Using IP Address: 47.197.205.237

Sent: 1/28/2022 11:33:22 AM

Viewed: 1/28/2022 1:56:36 PM

Signed: 1/28/2022 1:56:41 PM

Electronic Record and Signature Disclosure:

Accepted: 1/28/2022 1:56:36 PM

ID: 28ae9f3f-2582-4fd1-ae05-beae144a9066

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****Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent

Hashed/Encrypted

1/28/2022 11:33:22 AM

Certified Delivered

Security Checked

1/28/2022 1:56:36 PM

Signing Complete

Security Checked

1/28/2022 1:56:41 PM

Envelope Summary Events	Status	Timestamps
Completed	Security Checked	1/28/2022 1:56:41 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Zayo Group, Inc - Human Resources (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Zayo Group, Inc - Human Resources:

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: HR@zayo.com

To advise Zayo Group, Inc - Human Resources of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at HR@zayo.com and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Zayo Group, Inc - Human Resources

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 HR@zayo.com and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Zayo Group, Inc - Human Resources

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to HR@zayo.com and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Zayo Group, Inc - Human Resources as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Zayo Group, Inc - Human Resources during the course of your relationship with Zayo Group, Inc - Human Resources.



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council

CC: Nicholas A. Gradisar, Mayor

VIA: Marisa Stoller, City Clerk

FROM: Jeff Hawkins, Director of Stormwater

SUBJECT: AN ORDINANCE AWARDED A CONTRACT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND AECOM TECHNICAL SERVICES, INC. TO PROVIDE ENGINEERING SERVICES FOR FUTURE CITY OF PUEBLO STORMWATER UTILITY PROJECTS

SUMMARY:

This Ordinance awards a Contract for Engineering Services to AECOM Technical Services, Inc. to provide hydrologic and hydraulic modeling analysis, long range project planning, engineering design, construction project management assistance and related services as the Engineer of Record for future City of Pueblo Stormwater Utility Projects.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

The City of Pueblo Stormwater Utility recognizes the increasing need for innovative engineering to help reduce flooding impacts for problematic drainage areas within the City and incorporate sustainable water quality solutions. In October 2021, The City of Pueblo Stormwater Utility Department solicited requests for proposals from qualified engineering firms to assist the City with engineering services. Statement of Qualifications for engineering services were requested and received with Bid 21-071 RFP Stormwater Department Engineer of Record. A committee was formed to evaluate the qualifications of the engineering firms that submitted proposals. The firm selected as the most qualified to perform the engineering services was AECOM Technical Services, Inc.

FINANCIAL IMPLICATIONS:

This Contract describes the engineering services to be provided. As engineering services are required, fees will be negotiated and amendments to the basic Contract will be brought forward to City Council as part of the project costs. The cost for services will be paid from future City of Pueblo projects that are budgeted and appropriated.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

Alternatives No. 1 – No action

Under this alternative, projects could not be completed in a timely manner because the Stormwater Utility Department is deficient of the staff required to design and manage these projects while handling the workload of the day-to-day business operations. Flooding would continue to happen and continue to pose possible safety hazards to the public.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

Contract for Engineering Services

ORDINANCE NO. _____

AN ORDINANCE AWARDED A CONTRACT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION , AND AECOM TECHNICAL SERVICES, INC. TO PROVIDE ENGINEERING SERVICES FOR FUTURE CITY OF PUEBLO STORMWATER UTILITY PROJECTS

WHEREAS, Statements of Qualifications for Engineering services were requested and received;

WHEREAS, a committee was formed to evaluate these qualifications; and

WHEREAS, the committee selected AECOM Technical Services, Inc., as the most qualified to serve the Pueblo Stormwater Enterprise; NOW, THEREFORE,

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

SECTION 1.

An Agreement, a copy of which is attached hereto and made a part hereof by reference, after having been approved as to form by the City Attorney, by and between the City of Pueblo, a Municipal Corporation, and AECOM Technical Services, Inc., to provide engineering services for public improvements to the Pueblo Stormwater Enterprise is hereby approved, subject to the conditions as set forth in said agreement.

SECTION 2.

Funds for said Contract, Project No. 21-071, RFP Stormwater Department Engineer of Record, shall be from future budgeted and appropriated project accounts as needed.

SECTION 3.

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

SECTION 4.

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

SECTION 5.

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

**PROPOSED CONTRACT FOR ENGINEERING SERVICES
BY AND BETWEEN
CITY OF PUEBLO
AND
AECOM TECHNICAL SERVICES, INC.**

THIS CONTRACT is made and entered this ___ day of February, 2022, by and between Pueblo, a Municipal Corporation, PO Box 1427, Pueblo, CO 81001 (hereinafter referred to as the "City") and AECOM Technical Services, Inc., a registered California Corporation authorized to do business in the State of Colorado, located at 2315 Briargate Pkwy, Suite 150, Colorado Springs, CO 80920 (hereinafter referred to as the "Engineer"), WITNESSETH:

RECITALS

A. The City solicited competitive proposals for Bid 21-071 Stormwater Department Engineer of Record to provide engineering services to include modeling analysis, long range project planning, engineering design, and construction project management assistance and related services for future City of Pueblo Stormwater Utility projects(hereinafter referred to as "RFP").

B. In response to the RFP, Engineer submitted its statement of qualification and experience (hereinafter referred to as "Response").

C. City has evaluated all Responses submitted and selected Engineer to perform engineering services for various anticipated projects.

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

1. ENGAGEMENT.

(a) City engages Engineer and Engineer accepts such engagement to perform the services set forth in this Contract and the Standard Form Agreement for Professional Engineering Services (hereinafter referred to as "Agreement"), execution of which will be required for each project as may be directed by the City. A copy of the Agreement is attached hereto. Anticipated projects (hereinafter referred to as the "Projects") may include and the Scope of Services for each Agreement for any Project shall be consistent with and meet following requirements:

- Perform design services for all types of stormwater infrastructure including stream and habitat rehabilitation, open channels, storm sewers, detention basins, levees, energy dissipation, erosion protection, existing or conflicting utility, and/or Right of Way infrastructure modifications.
- Perform hydrologic/hydraulic modeling and master planning for stormwater projects utilizing EPA SWMM and 1D & 2D modeling software such as MIKE+, FLO 2-D, and HEC-RAS.
- Provide Civil and Structural Engineering required for the design of projects.
- Provide Environmental Engineering and Ecological Consulting as required to complete tasks such as environmental studies, wetlands delineation, geotechnical assessments, Threatened and Endangered species surveys, habitat and wildlife assessments, etc.
- Provide Landscape Architecture and Urban Planning services including landscape design, renderings, and drawings as required.

- Provide Geotechnical Engineering services required for the design process and testing during construction projects.
- Provide surveying required for the design of the projects and baseline control for contractor use during construction. This service shall be performed by a Professional Land Surveyor.
- Identify easements and properties required for any on/off-site construction, prepare legal descriptions, and provide exhibits needed by City staff for acquiring easements and/or properties. These services may include surveying by a Professional Land Surveyor.
- Prepare and integrate BMP water quality solutions (Low Impact Development/Green Infrastructure, etc.) into stormwater design solutions and develop guidelines for long-term maintenance of water quality facilities.
- Prepare or review floodplain permit applications (as required) including No-Rise certifications and CLOMR/LOMR (as required) for both FEMA and City regulated floodplains.
- Prepare permits and documentation necessary for certification of a levee with all applicable regulatory agencies (as required).
- Prepare project reports, technical memorandums, and basis of design documents.
- Prepare construction contract documents (in conjunction with City) including construction drawings (including Plan & Profile, Details, etc.) and Technical Specifications for capital improvement projects.
 - Drawings will be AutoCAD Civil 3D (Version 2018 or newer) generated.
 - “As-Built or Record Drawings” will be provided to the City in electronic format (PDF and AutoCAD files) on flash-drives/thumb-drives at the completion of each project.
 - Each “As-Built” drawing will be stamped original at the completion of each project, which will become the property of the City of Pueblo.
- Prepare erosion control plans in accordance with all applicable regulatory agencies (as required).
- Prepare Engineer’s Opinion of Probable Construction Costs for project at 30-60-90% design stages throughout project or as requested.
- Provide resident engineering, construction administration and oversight, submittal review and field inspection services. Resident Engineering duties must be performed with experienced and qualified personnel approved by City of Pueblo Stormwater Utility. .
- Provide detailed written monthly progress reports throughout the duration of the design and construction of projects.
- Additional support services that may be needed:
 - Provide support reviewing technical drainage reports and plans that address storm water runoff quantity and quality including water quality structures and floodplain issues.
 - Provide trenchless design for the rehabilitation of underground utility infrastructure.
 - Coordinate, manage, and participate in Public Outreach efforts including presentations, individual meetings, publications, graphics, etc.

- Other projects requiring support from Consultant/Engineer as need arises. Consultant will be contacted to create/review Scope of Service prior to inclusion of service in agreement or subsequent amendments.

(b) City may, or may not, in its sole discretion undertake any of the Projects. Upon written direction from City, the Engineer shall execute with the City one of the Agreements for each of the Projects as directed by City.

i. If City directs performance of Engineer for one of the Projects, , Engineer shall prepare a specific Scope of Service, Fee Schedule, Timeline, and Identification of Personnel, Subcontractors, and Task Responsibility to be attached to the Agreement as Schedules 1, 2, 3, and 4.

(c) Within a reasonable time after receipt of the Agreement, Engineer shall review same and advise City if the Agreement is acceptable to Engineer, or which modifications/changes Engineer requests with respect thereto.

(d) After mutual approval of the terms and provisions of the Agreement, City will submit same to City Council of City for approval.

2. TERM. This Contract is for a term of three (3) years commencing February 21, 2022 and ending February 20, 2025. The term of this Contract may be extended for an additional period of two (2) years by way of two (2) one (1) year options, upon mutual agreement of City and Engineer. This Contract may be terminated by either party at any time, without cause or liability, upon ninety (90) days prior written notice given to the other party specifying the date of termination, provided, however, that the termination of this Contract shall not terminate or be deemed to terminate any existing Agreements executed by and between the parties with respect to any specified Project.

3. GENERAL COVENANTS. Engineer covenants that it is:

(a) Competent and qualified to perform the services and work contemplated by this Contract and the Agreement(s) in **compliance with applicable Standards of Professional Care in a professional manner and in accordance with the terms of this Contract.**

(b) Familiar with the regulations and requirements of the Minimum Qualifications as stated in the RFP, Section 2 with respect to the services and work contemplated by this Contract and the Agreement(s) and will perform such services and work in compliance therewith.

4. RECORDS AND DATABASE. Engineer shall maintain a cost accounting system acceptable to City. The City shall have access to any books, documents, papers, and records of the Engineer that are directly pertinent or relate to this Contract or any Agreements for a specified Project, for the audit purposes, examination, inspection, excerpts, and transcription. The Engineer shall maintain such records for three (3) years after City makes final payments to Engineer and all pending matters are closed. Engineer shall prepare and maintain an electronic database (compatible with AutoCAD) that accurately represents all existing and future civil infrastructure for all Projects completed under this Contract and any Agreements for a specified Project.

5. SPECIFIC COVENANTS. Engineer covenants that, during the performance of this Contract and any Agreement for a specified Project, Engineer will:

(a) comply with all federal statutes and regulations relating to nondiscrimination in federally assisted programs.

(b) comply with the State of Colorado's requirements for State Revolving Fund Loan Projects.

(c) comply with all other laws, regulations, and requirements for applicable Federal, State,

local , and grant funded Projects.

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

7. INSURANCE AND INDEMNITY.

(a) Engineer agrees that it has procured and will maintain during the term of this Contract, such insurance as will protect it and City from claims under workers' compensation acts, claims for damages because of personal injury including bodily injury, sickness or disease or death of any of its employees or of any person other than its employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom; and such insurance will provide for coverage in such amounts as set forth in subparagraph (b).

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

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

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

(3) Professional Liability Insurance with coverage of not less than \$1,000,000 and in a form and with a deductible acceptable to City.

(4) Comprehensive Automobile Liability Insurance. The Engineer shall procure and maintain during the period of the Agreement/Contract and for such additional time as work on the project is being performed, Comprehensive Automobile Liability Insurance. This insurance shall be written with limits of liability for and injury to one person in any single occurrence of not less than \$350,000 and for any injury to two or more persons in any single occurrence of not less than \$1,000,000. This insurance shall include uninsured/underinsured motorist coverage and shall protect the Engineer from any and all claims arising from the use both on and off the site of the project of automobiles, trucks, tractors, backhoes, and similar equipment whether owned, leased, hired, or used by Engineer.

(c) Engineer shall furnish to City a certificate or certificates of insurance showing compliance with this section 7. Engineer shall obtain a special endorsement from its insurance carrier that provides that the insurance shall not be changed or cancelled until ten (10) days after written notice has been given to City and provide a copy of such endorsement to City. Engineer shall immediately notify City of any substantial

change in, or cancellation, or non-renewal of any such insurance.

(d) Engineer agrees to hold harmless, defend and indemnify City from and against liability to third parties, to the proportionate extent caused by or arising out of negligent acts, errors or omissions of Engineer, its employees, subcontractors, and consultants.

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

(a) At or prior to the time for execution of this Contract, Engineer shall submit to the Purchasing Agent of the City its certification that it does not knowingly employ or contract with a "Worker Without Authorization", as that term is defined within §8-17.5-101 (9), C.R.S. (herein "Worker Without Authorization"), who will perform work under this Contract and that the Engineer will participate in either the "E-Verify Program" created in Public Law 208, 104th Congress, as amended and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security or the "Department Program" established pursuant to section 8-17.5-102(5)(c), C.R.S. that is administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract.

(b) Engineer shall not:

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

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

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

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

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

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

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

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

(iv) The Engineer is required to comply with any reasonable request by the Colorado Department of Labor and Employment (hereinafter referred to as "CDLE") made in the course of

an investigation that CDLE is undertaking pursuant to its authority under §8-17.5-102(5), C.R.S.

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

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

10. CERTIFICATIONS. Engineer certifies that:

(a) Neither Engineer nor any of its principals are presently, or at the time of execution of any Agreement for a specified Project, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract or in any such subsequent Agreement for a specified Project by any entity or agency. Engineer will include this clause in all lower tier transactions, solicitations, proposals, contracts, subcontracts, and agreements.

(b) Engineer is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representatives and that it will comply with the Department of Transportation trade restriction regulations 49 CFR Part 30. Engineer will include this clause and other clauses required by said trade restriction regulations in all lower tier transactions, solicitations, proposals, contracts, subcontracts, and agreements.

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

12. FINANCIAL OBLIGATIONS OF CITY. All financial obligations of the City under this Contract and any Agreement for a specified Project in any subsequent fiscal year of the City are subject to, and contingent upon, funds being specifically budgeted and appropriated for such purposes (Projects). This Contract is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City of Pueblo, contrary to Article X, § 20 Colorado Constitution or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Contract and any Agreement for a specified Project, with respect to any financial obligation of the City which may arise under this Contract in any fiscal year after 2021, in the event the budget or other means of appropriations for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default or breach of this Contract or any Agreement for a specified Project by the City, and the City may terminate this Contract or any Agreement for a specified Project without liability.

13. MISCELLANEOUS.

(a) This Contract shall be governed and interpreted in accordance with the laws of the State of Colorado.

(b) In the event of any litigation arising out of this Contract, the court shall award to the prevailing party its costs and reasonable attorney fees. Venue for any such litigation shall be Pueblo County, Colorado.

(c) This Contract contains the entire agreement between the City and Engineer and incorporates all prior written and oral understandings and agreements between the parties.

(d) This Contract may only be modified or amended by written instrument signed by both City

and Engineer.

(e) This Contract shall be binding upon and inure to the benefit of City and Engineer and their respective successors and assigns, provided, however, Engineer shall not assign this Contract, Agreement for a specific Project, or any interest herein without the prior written consent of City.

14. PERA LIABILITY

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

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

CITY OF PUEBLO, A MUNICIPAL CORPORATION

AECOM TECHNICAL SERVICES, INC.

By _____
Naomi Hedden, Director of Purchasing

By _____
Ryan Weaver, Vice President

Attest _____
City Clerk

[S E A L]

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

Director of Finance

APPROVED AS TO FORM:

City Attorney

**PROPOSED AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
BY AND BETWEEN
CITY OF PUEBLO
AND
AECOM TECHNICAL SERVICES, INC.**

THIS AGREEMENT made and entered this ____ day of _____, 20____ by and between the City of Pueblo, a Municipal Corporation (hereinafter "Owner" or "City") and AECOM Technical Services, Inc., a California Corporation authorized to do business in the State of Colorado, a professional engineering firm (hereinafter "Engineer") for Engineer to render certain professional planning, design, engineering and related services for Owner in connection with Bid 21-071 Stormwater Department Engineer of Record hereinafter referred to as the "Project." In consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

SECTION 1. GENERAL

1.1 Engineer shall satisfactorily perform professional engineering services for all phases of Project indicated below by mark placed in the appropriate box or boxes:

- Study and Report Phase
- Preliminary Design (Schematic) Phase
- Final Design Phase
- Construction Documents & Bidding Phase
- Construction Phase

Upon completion of any phase, Engineer shall not proceed with work on the next phase, if any, until authorized in writing by Owner to proceed therewith.

Such services shall include all usual and customary professional engineering services and the furnishing (directly or through its professional consultants) of customary and usual civil, structural, mechanical, electrical engineering, environmental, and planning services. Engineer shall also provide any landscape engineering, surveying, and geotechnical services incident to its work on the Project.

1.2 In performing the professional services, Engineer shall complete the work items described generally in Schedule 1 – "Scope of Services" and the items identified in Section 2 of this Agreement which are applicable to each phase for which Engineer is to render professional services.

1.3 Professional engineering services (whether furnished directly or through a professional consultant subcontract) shall be performed under the direction and supervision of a registered engineer in good standing and duly licensed to practice in the State of Colorado. Reproductions of final drawings for construction produced under this Agreement shall be the same as at least one record set which shall be furnished to Owner and which shall be signed by and bear the seal of such registered engineer.

1.4 Surveying work included within or reasonably contemplated by this Agreement shall be performed under the direction and supervision of a registered Professional Land Surveyor in good standing and duly licensed to practice in the State of Colorado. All plats and surveys produced under this Agreement shall be signed by and bear the seal of said Professional Land Surveyor.

1.5 Any architect services provided under this Agreement shall be performed under the direction and supervision of an architect licensed to practice architecture in the state of Colorado.

SECTION 2. ENGINEERING SERVICES

2.1 **Study and Report Phase.** If Engineer is to provide professional services with respect to the Project

during the Study and Report Phase, Engineer shall:

- (a) Consult with Owner to determine his requirements for the Project and review available data.
- (b) Advise Owner as to the necessity of his providing or obtaining from others data or services of the types described in paragraph 2.2(c) and assist Owner in obtaining any such services.
- (c) Provide special analyses of Owner's needs, planning surveys, site evaluations and comparative studies of prospective sites and solutions.
- (d) Identify and analyze requirements of governmental authorities and regulatory agencies involved in approval or permitting any aspect of Project.
- (e) Provide general economic analysis of Owner's requirements applicable to various alternatives.
- (f) Prepare a Report with appropriate exhibits indicating clearly the considerations involved and the alternative solutions available to Owner and setting forth Engineer's findings and recommendations with opinions of probable costs.
- (g) Furnish one (1) hard copy and one (1) electronic copy of the Report and present and review it in person with Owner. Owner may request additional copies as needed for no additional charge.

2.2 Preliminary Design (Schematic) Phase. If Engineer is to provide professional services with respect to the Project during the Preliminary Design Phase, Engineer shall:

- (a) Consult with Owner and determine the general design concept and Project requirements based upon information furnished by Owner as well as any study Report on the Project.
- (b) Prepare and submit to Owner preliminary design documents consisting of final design criteria, preliminary drawings, an outline of specifications, and written descriptions of all significant features of Project.
- (c) Prepare and submit to Owner a requirements checklist of any subsurface investigation, additional data, permits, or other information and requirements which is anticipated will be necessary for the design or construction of Project.
- (d) Provide written disclosure to Owner of significant design assumptions and design risks and advantages/disadvantages inherent in or presented by design alternatives and make recommendations to Owner based thereon.
- (e) Prepare and submit to Owner a preliminary cost estimate for the Project including construction cost, contingencies, professional compensation, consultant fees, costs of land and rights of way, compensation for damages and finance costs, if any.
- (f) Engineer shall furnish one (1) hard copy and one (1) electronic copy of each above referenced submittal document to Owner for Owner's use and shall review same in person with Owner. Owner may request additional copies as needed for no additional charge.

2.3 Final Design Phase. If Engineer is to provide professional services with respect to the Project during the Final Design Phase, Engineer shall:

- (a) After consultation with the Owner, receipt of Owner's selection of any design options and review of the Preliminary Design Documents, if any, prepare and submit to Owner final Drawings showing the scope,

extent, and character of the work to be performed by contractors, and Specifications describing such work and the requirement therefor. Such plans and Specifications shall comply with all applicable building codes and requirements of regulatory agencies having any approval authority. Final design, including Drawings and Specifications, shall also comply with ADA Accessibility Guidelines (ADAAG) Manual developed by the U. S. Architectural and Transportation Barriers Board (1998) or ADA Standards for Accessible Design published at 28 C.F.R. Part 36, Appendix A, whichever is applicable. **Engineer shall include an attest statement on each record drawing sheet of final plan drawings that certifies compliance with either the ADAAG Manual or 28 CFR ' 36 Standards.**

(b) Make reasonable revisions to the Drawings and Specifications requested by Owner, informing the Owner of any change in probable construction costs as a result of such revisions.

(c) Provide technical criteria, written descriptions, and design data for Owner's use, and disclose any significant risks and advantages/disadvantages inherent in or presented by design choices.

(d) Based upon Engineer's professional judgment, prepare and submit to Owner a current detailed cost estimate for the Project including construction cost, contingencies, professional compensation, consultant fees, land and right of way costs, damages, and finance costs, if any.

(e) Engineer shall furnish one (1) hard copy and one (1) electronic copy of each above referenced submittal document to Owner for Owner's use and shall review same in person with Owner. Owner may request additional copies as needed for no additional charge.

2.4 Construction Documents & Bidding Phase. If Engineer is to provide professional services with respect to the Project during the Construction Documents & Bidding Phase, Engineer shall:

(a) Prepare and submit to Owner draft forms of contract agreement, general and special conditions, bid forms invitations to bid, information for bidders, forms of warranty and including any special requirements imposed upon such contracts by any federal or other funding source and by any regulatory agency. In preparing such draft forms, Engineer shall consider and incorporate, to the extent both advisable and feasible, Owner's standard forms of agreement, warranty, payment and performance bonds, general conditions, and selected specifications.

(b) After review and comment by Owner, prepare and submit all deliverables identified in Schedule 1 to this Agreement, final forms of contract agreement, general and special conditions, Drawings, specifications, bid forms, invitations to bid, information for bidders, and forms of warranty, together with any Addenda which may be required or appropriate to correct errors, clarify Drawings or Specifications or advise of changes. One (1) hard copy and one (1) electronic copy of these final bid documents shall be furnished to Owner. Unless otherwise specified in Schedule 1, a copy of all contract documents and drawings shall also be submitted to Owner in Microsoft Word and AutoCAD (2006 or later version) format on electronic media.

(c) Make recommendations to Owner concerning the need for prequalification of equipment, vendors or bidders, and, if requested by Owner, incorporate prequalification requirements in final bid and construction contract documents.

(d) Attend a pre-bid conference with bidders to discuss Project requirements and receive requests for clarification, if any, to be answered by Engineer in writing to all plan holders.

(e) Consult with and make recommendations to Owner concerning acceptability of bidders, subcontractors, suppliers, materials, equipment, suitability of proposed "or equals", amount of bids, and any other matter involved in consideration and review of bids and bidders upon which Owner may reasonably request Engineer's advice.

2.5 Construction Phase. If Engineer is to provide professional services with respect to the Project during the Construction Phase, after award by the Owner of a general contract or contracts for construction of the Project, Engineer shall:

(a) Perform all duties and functions to be performed by Engineer under the terms of the construction contract.

(b) Visit the Project site, perform observations as to the progress and quality of the work and advise the Owner as to same. The frequency and level of observation shall be commensurate with the nature of the work and size of the Project, except that any specific provisions set forth in Schedule 1 - Scope of Services concerning the level of observation shall determine Engineer's obligation concerning level of observation.

(c) Make determinations as to whether the work is proceeding in accordance and compliance with the construction contract documents.

(d) Promptly advise the Owner in writing of any omissions, substitutions, defects, or deficiencies noted in the work of any contractor, subcontractor, supplier, or vendor on the Project.

(e) Reject any work on the Project that does not conform to the contract documents.

(f) On request of the Owner, the construction contractor or any subcontractor on the Project, issue written interpretations as to the Drawings and Specifications and requirements of the construction work.

(g) Review shop drawings, samples, product data, and other submittals of the Contractor for conformance with the design concept of Project and compliance with the Drawings, Specifications, and all other contract documents, and indicate to Contractor and Owner with respect thereto, any exceptions noted, or modification or resubmittals required.

(h) Review all applications of Contractor for payment and in connection with same, issue certificates for payment to the Owner for such amounts as are properly payable under the terms of the construction contract. Each such certificate shall constitute Engineer's representation to Owner that he has inspected the Project and that to the best of his knowledge, the work for which payment has been sought has been completed by Contractor in accordance with the Drawings, Specifications, and other contract documents.

(i) Subject to written concurrence by Owner, promptly render a written recommendation to Owner concerning all proposed substitutions of material and equipment.

(j) Draft, for Owner's consideration, and offer recommendations upon, all proposed change orders and contract modifications.

(k) On application for final payment by the Contractor, make a final inspection of the Project, assembling and delivering to the Owner any written guaranties, instructions manuals, as-built drawings, diagrams, and charts required by the contract documents, and issuing a certificate of final completion of the Project.

(l) The Engineer shall, if provided in the construction contract, be the interpreter of the construction documents and arbiter of claims and disputes thereunder. Upon written request of the Owner or Contractor, the Engineer shall promptly make written interpretations of the contract documents and render written decisions on all claims, disputes and other matters relating to the execution or progress of the work on the Project. The interpretations and decisions of the Engineer shall be final and binding on the Contractor and Owner, unless the Director of Public Works of the Owner shall, within seven calendar days after receipt of the Engineer's interpretation or decision, file his written objections thereto with the Architect and Contractor.

2.6 Additional Responsibilities. This paragraph applies to all phases of Engineer's work.

(a) Engineer shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all of Engineer's work, including that performed by Engineer's consultants, and including designs, Drawings, Specifications, reports, and other services, irrespective of Owner's approval or acquiescence in same. Engineer shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his work.

(b) Engineer shall be responsible, in accordance with applicable law, to Owner for all loss or damage to Owner caused by Engineer's negligent act or omission; except that Engineer hereby irrevocably waives and excuses Owner and its attorneys from compliance with any requirement to obtain a certificate of review as a condition precedent to commencement of an action, including any such requirements set forth in Section 13-20-602, C.R.S. or similar statute.

(c) Engineer's professional responsibility shall comply with the standard of care applicable to the type of engineering and architectural services provided, commensurate with the size, scope, and nature of the Project.

(d) Engineer shall be completely responsible for the safety of Engineer's employees in the execution of work under this Agreement, shall provide all necessary safety equipment for said employees, and shall hold harmless and indemnify and defend Owner from any and all claims, suits, loss, or injury to Engineer's employees.

(e) Engineer acknowledges that, due to the nature of engineering and related professional services and the impact of same on the Project, the Owner has a substantial interest in the personnel and consultants to whom Engineer assigns principal responsibility for services performed under this Agreement. Consequently, Engineer represents that Engineer has selected and intends to employ or assign the key personnel and consultants identified in Schedule 3 - "Identification of Personnel, Subcontractors, and Task Responsibility", attached hereto for the Project assignments and areas of responsibility stated therein. Within 10 days of execution of this Agreement, Owner shall have the right to object in writing to employment on the Project of any such key person, consultant, or assignment of principal responsibility, in which case Engineer will employ alternate personnel for such function or reassign such responsibility to another to whom Owner has no reasonable objection. Thereafter, Engineer shall not assign or reassign Project work to any person to whom Owner has reasonable objection.

Within five (5) days of execution of this Agreement, Engineer shall designate in writing a Project representative who shall have complete authority to bind Engineer, and to whom Owner should address communications.

(f) Promptly after execution of this Agreement and upon receipt of authorization from Owner to proceed, Engineer shall submit to Owner for approval a schedule showing the order in which Engineer proposes to accomplish his work, with dates on which he will commence and complete each major work item. The schedule shall provide for performance of the work in a timely manner so as to not delay Owner's timetable for achievement of interim tasks and final completion of Project work, provided however, the Engineer will not be responsible for delays beyond his control.

(g) Before undertaking any work which Engineer considers beyond or in addition to the scope of work and services which Engineer has contractually agreed to perform under the terms of this Agreement, Engineer shall advise Owner in writing (i) that Engineer considers the work beyond the scope of this Agreement, (ii) the reasons the Engineer believes the out of scope or additional work should be performed, and (iii) a reasonable estimate of the cost of such work. Engineer shall not proceed with such out of scope or additional work until authorized in writing by Owner. The compensation for such authorized work shall be negotiated, but in the event the parties fail to negotiate or are unable to agree as to compensation, then Engineer shall be compensated for his direct costs and professional time at the rates set forth in Schedule 2 - "Fee Schedule".

2.7 Requirements Where Federal Assistance Provided. [Select one]

[THIS SECTION RESERVED - NOT APPLICABLE TO THIS CONTRACT]

or

(a) Engineer understands that Owner will be funding the Project in part or in whole by a grant or loan from _____ (the "Federal Agency"). Engineer agrees it is subject to and shall comply with all applicable grant or loan conditions and the regulations of the Federal Agency which apply to the work under this Agreement, whether referenced in Schedule 1 or not. All applicable loan or grant conditions and regulations of the Federal Agency and regulations are incorporated into this Agreement by reference.

or

[insert specific language required by the federal agency or state entity as required]

SECTION 3. OWNER'S RESPONSIBILITIES

3.1 Owner shall:

(a) Designate a representative to whom all communications from Engineer shall be directed and who shall have limited administrative authority on behalf of Owner to receive and transmit information and make decisions with respect to Project. Said representative shall not, however, have authority to bind Owner as to matters of legislative or fiscal policy.

(b) Advise Engineer of Owner's Project requirements including objective, project criteria, use and performance requirements, special considerations, physical limitations, financial constraints, and required construction contract provisions and standards.

(c) Provide Engineer with available information pertinent to the Project including any previous reports, studies or data possessed by Owner which relates to design or construction of the Project.

(d) Assist in arranging for Engineer to have access to enter private and public property as required for Engineer to perform his services.

(e) Examine all studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer, and render written decisions pertaining thereto within a reasonable time. The Owner's approval of Drawings, design, Specifications, reports and incidental engineering work or materials furnished hereunder shall not in any way relieve the Engineer of responsibility for the professional adequacy of his work. The Owner's review, approval, or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

(f) Upon advice of the necessity to do so from Engineer, obtain required approvals and permits for the Project. The Engineer shall provide all supportive documents and exhibits necessary for obtaining said approvals and permits.

(g) Notify Engineer whenever Owner becomes aware of any substantial development or occurrence which materially affects the scope or timing of Engineer's services.

(h) Owner shall perform its obligations and render decisions within a reasonable time under the presented circumstances. However, given the nature of Owner's internal organization and requirements, a period of 14 days shall be presumed reasonable for any decision not involving policy decision or significant financial impact. A period of 45 days shall be presumed reasonable for Owner to act with respect to any matter involving policy or significant financial impact.

SECTION 4. TIME FOR PERFORMANCE

Engineer's obligation to render services shall continue for such period of time as may reasonably be required for completion of the work contemplated in Schedule 1 – "Scope of Services" and Section 1 of this Agreement.

SECTION 5. PAYMENT

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

5.2 Engineer shall submit monthly, applications for payment, aggregating to not more than the maximum amount, for actual professional services rendered and reimbursable expenses incurred. Such applications shall be submitted with appropriate documentation that such services have been performed and expenses incurred. Thereafter, Owner shall pay Engineer for the amount of the application within 30 days of the date of receipt by Owner's representative of the billing, provided that sufficient documentation has been furnished, and further provided that Owner will not be required to pay more than 90% of the maximum amount unless the Engineer's services on the Project phases for which this Agreement is applicable have been completed to Owner's reasonable satisfaction and all required Engineer submittals have been provided.

5.3 The rates of compensation for service and for reimbursable expenses to be used with periodic and final payment applications shall be those set forth in Schedule 2 - "Fee Schedule."

5.4 No separate or additional payment shall be made for profit, overhead, local telephone expenses, lodging, routine photocopying, computer time, secretarial or clerical time or similar expenses unless otherwise provided and listed in Schedule 2 - "Fee Schedule."

5.5 No compensation shall be paid to Engineer for services required and expenditures incurred in correcting Engineer's errors, omissions, or negligence.

5.6 Compensation for authorized work beyond the scope of this Agreement shall be governed by Paragraph 2.6(g).

Section 6. TERMINATION

6.1 Owner reserves the right to terminate this Agreement and Engineer's performance hereunder, at any time upon written notice, either for cause or for convenience. Upon such termination, Engineer and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, drawings, specifications, reports, plans, calculations, summaries and all other information, documents, work product and materials as Engineer may have accumulated in performing this Agreement, together with all finished work and work in progress.

6.2 Upon termination of this Agreement for events or reasons not the fault of Engineer, Engineer shall be paid at the rates specified in Schedule 2 for all services rendered and reasonable costs incurred to date of termination; together with any reasonable costs incurred within 10 days of termination provided such latter costs could not be avoided or were incurred in mitigating loss or expenses to Engineer or Client. In no event shall payment to Engineer upon termination exceed the maximum compensation provided for complete performance in Section 3(a).

6.3 In the event termination of this Agreement or Engineer's services is for breach of this Agreement by Engineer, or for other fault of Engineer including but not limited to any failure to timely proceed with work, or to pay its employees and Engineers, or to perform work according to the applicable professional standards of care, or to perform work in a manner deemed satisfactory by Client's Project Representative, then in that event, Engineer's entire right to compensation shall be limited to the lesser of (a) the reasonable value of completed work to Client or (b) payment at the rates specified in Schedule 2 for services satisfactorily performed and reimbursable expenses reasonably incurred, prior to date of termination.

6.4 Engineer's professional responsibility for its completed work and services shall survive any termination.

SECTION 7. GENERAL PROVISIONS

7.1 (a) Ownership of Documents. All designs, Drawings, Specifications, technical data, and other documents or instruments procured or produced by the Engineer in the performance of this Agreement shall be the sole property of the Owner and the Owner is vested with all rights therein of whatever kind and however created, whether created by common law, statutory law, or by equity. The Engineer agrees that the Owner shall have access at all reasonable times to inspect and make copies of all notes, designs, drawings, specifications, and all other technical data pertaining to the work to be performed under this Agreement. In the event Owner uses the designs, Drawings or Specifications provided hereunder for another project independent from Project, without adaptation by Engineer,

Owner shall hold harmless and indemnify Engineer from all loss, claims, injury, and judgments arising from the use of such designs, Drawings or Specifications for such other project.

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

7.2 Insurance and Indemnity.

(a) Engineer agrees that he has procured and will maintain during the term of this Agreement, such insurance as will protect him from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any of his employees or of any person other than his employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom; and such insurance will provide for coverage in such amounts as set forth in subparagraph (b).

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

(i) Workers' Compensation Insurance complying with statutory requirements in Colorado and in any other state or states where the work is performed.

(ii) Comprehensive General and Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) per person and occurrence for personal injury, including but not limited to death and bodily injury, One Million Dollars (\$1,000,000.00) per occurrence for property damage, and One Million and No/100 Dollars (\$1,000,000.00) for excess umbrella liability.

(iii) Professional Liability Insurance with coverage of not less than \$1,000,000 and in a form and with a deductible acceptable to owner.

(c) **Engineer agrees to hold harmless, defend and indemnify Owner from and against liability to third parties, to the proportionate extent caused by or arising out of negligent acts, errors or omissions of Engineer, his employees, subcontractors, and consultants.**

7.3 Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either the Owner or the Engineer by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service when deposited in the United States mail, first-class postage prepaid, addressed to the City of Pueblo (Owner), Attn: Jeff Hawkins, Director of Stormwater, 211 E. "D" Street, Pueblo, CO 81003, or to AECOM Technical Services, Inc. (Engineer), Attn: Ryan Weaver, 2315 Briargate Pkwy, Suite 150, Colorado Springs, CO 80920. Either party may change his address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

7.4 Entire Agreement. This instrument contains the entire agreement between the Owner and the Engineer respecting the Project, and any other written or oral agreement or representation respecting the Project or the duties of either the Owner or the Engineer in relation thereto not expressly set forth in this instrument is null and void. In the event of any conflict between any provision of this Agreement and a provision of any Schedule or attachment to this Agreement, the provision in this Agreement shall control and supersede the conflicting provision in the Schedule or attachment. Any inconsistent resolution provision in any attachment to this Agreement shall be void.

7.5 Successors and Assigns. This Agreement shall be binding on the parties hereto and on their partners, heirs, executors, administrators, successors, and assigns; provided, however, that neither this Agreement, nor any part thereof, nor any moneys due or to become due hereunder to the Engineer may be assigned by him without the written

consent of the Owner. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or entity on such Agreement. It is the express intention of the parties hereto that any person or entity, other than the parties to this Agreement, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.

7.6 Amendments. No amendment to this Agreement shall be made nor be enforceable unless made by written Amendment signed by an authorized representative of Engineer and by Owner's Director of Public Works.

7.7 Choice of Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Colorado.

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

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

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

7.11 Additional Requirements on Federally Funded Contracts. If any of the work to be performed by Engineer under this Agreement is funded in whole or in part with federal funds, then this Agreement shall be construed to include all applicable terms required by the federal assistance agreement and integrated federal regulations. By executing this Agreement, Engineer agrees to be bound by all such mandatory federal requirements, irrespective of Engineer's actual knowledge or lack of knowledge of such requirements prior to execution of this Agreement.

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

SECTION 8. DISPUTES

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

8.2 Pending resolution of any dispute or disagreement, or judicial review, Engineer shall proceed diligently with performance of his work under this Agreement.

SECTION 9. SCHEDULES

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

Schedule 1 - "Scope of Services" consisting of _____ pages.

Schedule 2- "Fee Schedule" consisting of ___ pages.

Schedule 3 - "Identification of Personnel, Subcontractors, and Task Responsibility."

SECTION 10. ACCESSIBILITY.

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

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

(a) At or prior to the time for execution of this Contract, Engineer shall submit to the Purchasing Agent of the City its certification that it does not knowingly employ or contract with a "Worker Without Authorization", as that term is defined within §8-17.5-101 (9), C.R.S. (herein "Worker Without Authorization"), who will perform work under this Contract and that the Engineer will participate in either the "E-Verify Program" created in Public Law 208, 104th Congress, as amended and expanded in Public law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security or the "Department Program" established pursuant to section 8-17.5-102(5)(c), C.R.S. that is administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(b) Engineer shall not:

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

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

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

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

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

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

A. Notify the subcontractor and the Purchasing Agent of the City within three (3) days that the Engineer has actual knowledge that the subcontractor is employing or contracting with

a Worker without Authorization; and

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

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

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

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

SECTION 12. PERA LIABILITY

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

(Signature page follows)

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

CITY OF PUEBLO, A MUNICIPAL CORPORATION

AECOM TECHNICAL SERVICES, INC.

By _____
Naomi Hedden, Director of Purchasing

By _____
Ryan Weaver, Vice President

Attest _____
City Clerk

[S E A L]

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

Director of Finance

APPROVED AS TO FORM:

City Attorney



**BACKGROUND PAPER FOR PROPOSED
ORDINANCE**

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council

CC: Nicholas A. Gradisar, Mayor

VIA: Marisa Stoller, City Clerk

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

SUBJECT: AN ORDINANCE AMENDING ZONING RESTRICTIONS TO REZONE
3004 SOUTH PRAIRIE AVENUE FROM B-3, HIGHWAY AND ARTERIAL
BUSINESS DISTRICT TO BP, BUSINESS PARK DISTRICT

SUMMARY:

The applicant is requesting to rezone Lot 1, Block 1, South Prairie Subdivision 2nd, from B-3, Highway and Arterial Business District to B-P, Business Park District.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The applicant is requesting to rezone the property to a BP, Business Park Zone District to allow assembly and light manufacturing uses within the existing metal warehouse structure on the site. The proposed BP, Business Park Zone District, is designed to provide for a limited number of retail, office, warehouse, light industrial and manufacturing uses. The subject property was subdivided in 1976 to facilitate development of warehousing, light industrial and commercial uses, creating a light industrial and business park. In 1976 a Special Use Permit was granted to allow a warehousing use for the Coca-Cola Bottling Company at the site. A 16,000 square foot, metal warehouse was constructed on Lot 1 in 1977 and was used as the Coca-Cola Bottling Company warehouse until the mid-2000's. Adjacent properties to the south and east are zoned B-3, Highway Commercial Arterial, and contain light industrial uses. The property to the west is zoned I-2, Industrial District, and is developed with a wireless communications tower (cell tower). The subject property meets the BP Zone District minimum lot size, front and rear setbacks (the lot has multiple front setbacks and no rear setback because it sits adjacent to three public rights-of-way). However, the BP Zone District requires all structures within the district to be located a minimum of 100-feet away from an existing residential zone district and the metal warehouse on site sits approximately 10-feet from a R-2 Zone District located directly north of the site. The R-2

Zone District property is approximately 43,205 square feet and is developed with a single-family home, multiple accessory structures, and has numerous FedEx commercial vehicles on site. The R-2 zoning appears to be a remnant of the historic residential zoning that existed prior to the late 1960's. Because the rezoning site does not meet the structure separation distance from residential districts, the property owner has requested and has been granted a variance from the 100-foot building separation requirement by the Zoning Board of Appeals at the January 25, 2022 Regular Meeting. The proposed rezoning conforms to the comp plan designation of Employment Center Light Industry Mixed Use and the surrounding light industrial park development.

FINANCIAL IMPLICATIONS:

There are no financial implications for the City.

BOARD/COMMISSION RECOMMENDATION:

The Planning and Zoning Commission, at their January 12, 2022 Regular Meeting, voted 6-0 to recommend approval. (City Council appointment not filled at the time of the meeting)

STAKEHOLDER PROCESS:

The Planning Department sent out Notice of the Planning and Zoning Commission Public Hearing to all property owners located within 300 feet of the subject property.

A Public Notice poster was placed on the subject property 15 days prior to the Public Hearing.

ALTERNATIVES:

If City Council does not approve this Ordinance the property would not be zoned in accordance with the Pueblo Municipal Code.

Upon request of City Council, the Ordinance could be returned to the Planning and Zoning Commission for consideration of proposed modifications.

RECOMMENDATION:

Approval of the Ordinance.

Attachments:

Proposed Ordinance

Minutes of the Planning and Zoning Commission January 12, 2022 Public Hearing

Planning and Zoning Commission Staff Report with Attachments and Exhibits

ORDINANCE NO. _____

AN ORDINANCE AMENDING ZONING RESTRICTIONS TO REZONE 3004 SOUTH PRAIRIE AVENUE FROM B-3, HIGHWAY AND ARTERIAL BUSINESS DISTRICT TO BP, BUSINESS PARK DISTRICT

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

SECTION 1.

The zoning restrictions covering the following described property, and in addition half of all adjacent dedicated roadway and alley rights-of-way, together generally identified in the attached Rezone Exhibit, is hereby changed from B-3, Highway and Arterial Business Zone District to BP, Business Park District:

3004 S. Prairie Rezone from B-3 to BP Legal Description
Lot 1, Block 1, South Prairie Subdivision Filing No. 2.

SECTION 2.

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

SECTION 3.

This Ordinance shall become effective immediately upon final action by the Mayor and City Council.

Action by City Council:

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

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

TITLE COMMITMENT INFORMATION

THE PROPERTY HEREON DESCRIBED IS THE SAME AS THE PERTINENT PROPERTY AS DESCRIBED IN FIDELITY NATIONAL TITLE COMPANY, COMMITMENT FILE NO.: 597-F0697721-320-BWZ, WITH AN EFFECTIVE DATE OF DECEMBER 11, 2020.

LEGAL DESCRIPTION

LOT 1, EXCEPT THE WEST 7 FEET THEREOF, BLOCK 1, SOUTH PRAIRIE SUBDIVISION FILING NO. 2, COUNTY OF PUEBLO, STATE OF COLORADO.



VICINITY MAP



SHEET 1 OF 1

LAND AREA

73676± SQUARE FEET
1.691± ACRES

PARKING

REGULAR = 14
TRUCK = 11
HANDICAP = 0
TOTAL = 25

FLOOD INFORMATION

FLOOD NOTE: BASED ON MAPS PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) AVAILABLE ONLINE AT WWW.MSC.FEMA.GOV. AND BY GRAPHIC PLOTTING ONLY, THIS PROPERTY IS LOCATED IN ZONE "X" ON FLOOD INSURANCE RATE MAP NUMBER 0810107010, WHICH BEARS AN EFFECTIVE DATE OF 08/15/2019 AND IS NOT IN A SPECIAL FLOOD HAZARD AREA. BY REVIEWING FLOOD MAPS PROVIDED BY THE NATIONAL FLOOD INSURANCE PROGRAM WE HAVE LEARNED THIS COMMUNITY DOES PARTICIPATE IN THE PROGRAM.

BEARING BASIS

THE BASIS OF BEARING FOR THIS SURVEY IS GRID NORTH PER COLORADO STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD83-2011, AS MEASURED ALONG THE CENTER LINE OF THORNBERRY LANE WHICH BEARS N 89°57'91" W PER GPS COORDINATE OBSERVATIONS. LATITUDE: 38°12'57.9054" LONGITUDE: -104°38'31.8237" CONVERGENCE ANGLE: 00°31'34.2196"

LEGEND

SO.FT.	SQUARE FEET	R/W	RIGHT OF WAY
PS	PARKING SPACE(S)	C/L	CENTER LINE
TPS	TRUCK PARKING SPACE(S)	U.P.	UTILITY POLE
TP	TELEPHONE PEDESTAL	GA	GUY ANCHOR
●	PROPERTY CORNER (NOT FOUND OR SET)	●	FIRE HYDRANT
○	FOUND CORNER AS NOTED	—	OVERHEAD UTILITY LINE
○	MEASURED/CALCULATED DIMENSION	—	FENCE
(R)	RECORD DIMENSION	—	CENTER LINE OF ROAD
B.H.L.	BUILDING HEIGHT LOCATION	—	NOT TO SCALE
N/F	NOW OR FORMERLY	---	RIGHT-OF-WAY LINE
		---	EASEMENT LINE

ALTA/NSPS LAND TITLE SURVEY

JOB #: 432724
SOUTH PRAIRIE AVENUE
3004 SOUTH PRAIRIE AVENUE
PUEBLO COUNTY PUEBLO, COLORADO

SITE PICTURE



COORDINATED BY:
AEI CONSULTANTS
2500 CAMINO DIABLO
WALNUT CREEK, CA, 94597
TELEPHONE: 925.746.6000
EMAIL: SURVEYS@AEICONSULTANTS.COM

SURVEYOR'S CERTIFICATE

TO: ARC INVESTMENTS LLC AND FIDELITY NATIONAL TITLE COMPANY:

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 2, 3, 4, 7(a), 7(b)(1), 7(c), 8, 9, 10A, 13, 14, 16, AND 17 OF TABLE A THEREOF. THE FIELDWORK WAS COMPLETED ON 01/08/2021. DATE OF PLAT OR MAP: 01/27/2021.

JASON M. PAGE
PROFESSIONAL LAND SURVEYOR NO.: 38723
STATE OF COLORADO

DATE	REVISION HISTORY	BY	SURVEYOR JOB NUMBER:
			21-0026
			SCALE:
			1" = 30'
			DRAWN BY:
			RM
			APPROVED BY:
			JMP

SURVEYED BY:

BLEW & ASSOCIATES, P.A.
3825 N SHILOH DRIVE
FAVETEVILLE, AR 72703.
SURVEY@BLEW.NC.COM

NOTES CORRESPONDING TO SCHEDULE B

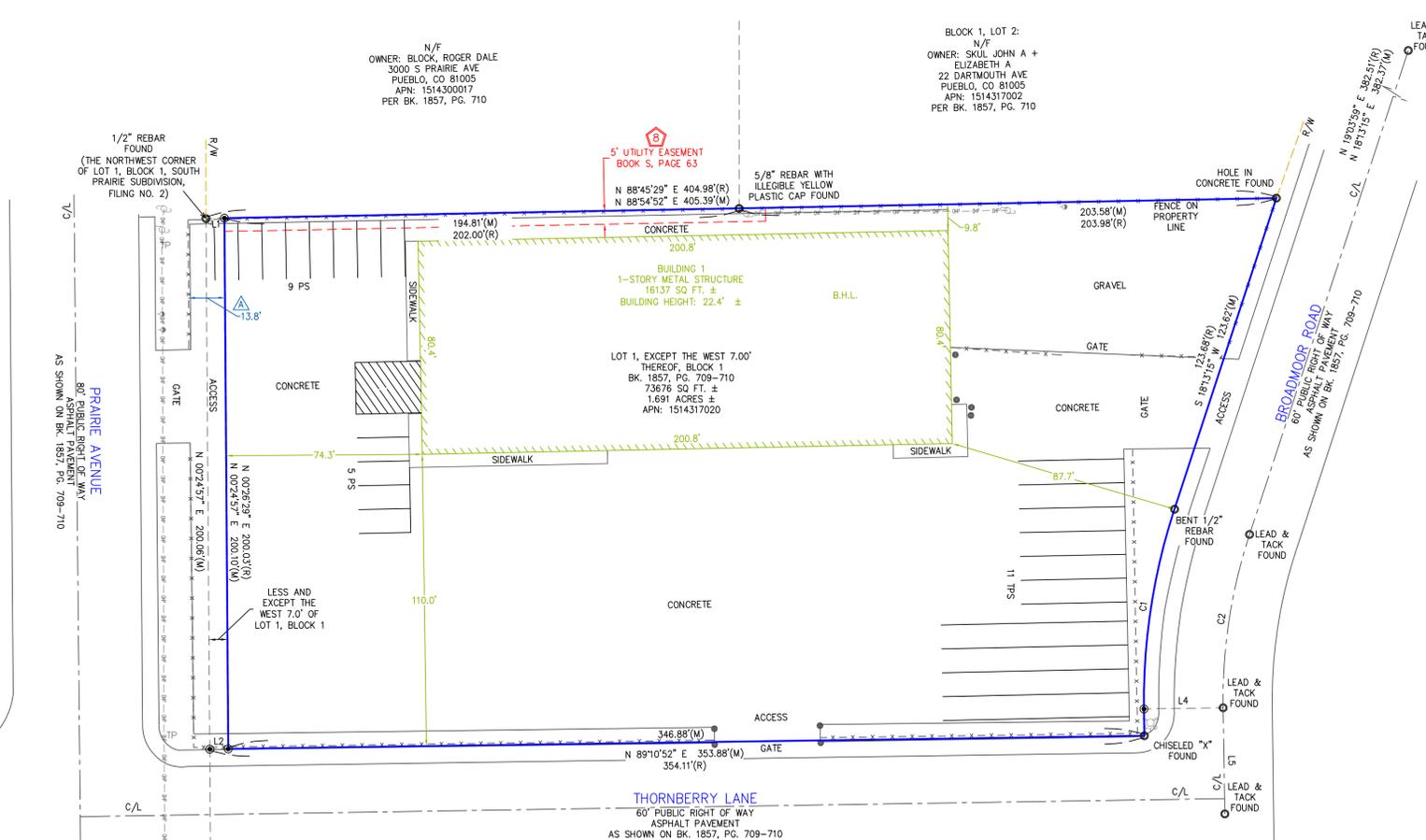
- 1. COVENANTS, CONDITIONS, RESTRICTIONS, NOTES AND EASEMENTS AS SHOWN ON SAID SUBDIVISION RECORDED AUGUST 19, 1976 IN MAP BOOK S AT PAGE 63. (AFFECTS, PLOTTED AS SHOWN)
- 2. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS CONTAINED IN THE AGREEMENT AS SET FORTH BELOW.
RECORDING DATE: AUGUST 19, 1976
RECORDING NO.: BOOK 1857 AT PAGE 688 AT RECEPTION NO. 524019 (DOES NOT AFFECT, DOCUMENT APPEARS TO AFFECT LOT 8, BLOCK 2, SOUTH PRAIRIE SUBDIVISION FILING NO. 2 WITH REGARDS TO DRAINAGE AND SURFACE WATER DETENTION BASIN AND APPURTENANT FACILITIES TO BE CONSTRUCTED AND INSTALLED.)
- 3. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS CONTAINED IN THE AGREEMENT AS SET FORTH BELOW.
RECORDING DATE: AUGUST 19, 1976
RECORDING NO.: BOOK 1857 AT PAGE 704 AT RECEPTION NO. 524027 (AFFECTS, BLANKET IN NATURE)

GENERAL NOTES

- NO UNDERGROUND UTILITIES ARE SHOWN ON THIS SURVEY, ONLY ABOVE GROUND VISIBLE EVIDENCE OF UTILITIES ARE SHOWN.
- ALL STATEMENTS WITHIN THE CERTIFICATION, AND OTHER REFERENCES LOCATED ELSEWHERE HEREON, RELATED TO UTILITIES, IMPROVEMENTS, STRUCTURES, BUILDINGS, PARTY WALLS, PARKING, EASEMENTS, SERVITUDES, AND ENCROACHMENTS ARE BASED SOLELY ON ABOVE GROUND, VISIBLE EVIDENCE, UNLESS ANOTHER SOURCE OF INFORMATION IS SPECIFICALLY REFERENCED HEREON.
- THIS SURVEY MEETS OR EXCEEDS THE SURVEY STANDARDS/STANDARDS OF CARE AS SET FORTH IN SECTION 3 OF THE 2016 ALTA/NSPS SURVEY REQUIREMENTS.
- THE SUBJECT PROPERTY HAS DIRECT PHYSICAL ACCESS TO PRAIRIE AVENUE, THORNBERRY LANE, AND BROADMOOR ROAD, BEING DEDICATED PUBLIC STREET OR HIGHWAY.
- THERE IS NO VISIBLE EVIDENCE OF CEMETERIES ON SUBJECT PROPERTY.
- THERE IS NO OBSERVABLE EVIDENCE OF EARTH MOVING WORK, BUILDING CONSTRUCTION OR BUILDING ADDITIONS WITHIN RECENT MONTHS.
- THE PARCELS CONTAINED IN THE LEGAL DESCRIPTION ARE CONTIGUOUS WITHOUT ANY GAPS, GORES OR OVERLAPS.
- BUILDING AREAS SHOWN HEREON ARE FOR THE FOOTPRINT OF THE BUILDING ONLY.
- NO APPARENT CHANGES IN STREET RIGHT OF WAY LINES EITHER COMPLETED OR PROPOSED, AND AVAILABLE FROM THE CONTROLLING JURISDICTION, NO OBSERVABLE EVIDENCE OF RECENT STREET OR SIDEWALK CONSTRUCTION OR REPAIRS.
- NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL SEAL OF A COLORADO LICENSED SURVEYOR AND MAPPER. ADDITIONS AND DELETIONS TO SURVEY MAPS, SKETCHES, OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.
- THERE IS NO EVIDENCE OF ANY DELINEATED WETLAND AREAS, PER THE U.S. FISH & WILDLIFE SERVICE NATIONAL WETLANDS INVENTORY WEBSITE. NO MARKERS FROM A FIELD DELINEATION OF WETLANDS CONDUCTED BY A QUALIFIED SPECIALIST WERE OBSERVED DURING THE COURSE OF THE ALTA SURVEY.
- THE NEAREST INTERSECTING STREET IS THE INTERSECTION OF THORNBERRY LANE AND BROADMOOR ROAD, WHICH ABUTS THE SE CORNER OF THE SUBJECT PROPERTY.
- THE DISTANCES SHOWN HEREON ARE GRID. COMBINED SCALE FACTOR (GRID TO GROUND) = 1.00026409317078.
- IN REGARDS TO ALTA TABLE A ITEM 10(A), NO VISIBLE CERTAIN DIVISION OR PARTY WALLS WITH RESPECT TO ADJOINING PROPERTIES WERE OBSERVED AT THE TIME THE FIELDWORK WAS PERFORMED, NOR WERE ANY DESIGNATED BY THE CLIENT, NECESSARY PERMISSIONS WERE NOT PROVIDED.

STATEMENT OF ENCROACHMENTS

▲ FENCE APPEARS TO CROSS PROPERTY LINE BY AS MUCH AS 13.8'



LINE TABLE

LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE
L1(M)	N 88°45'52" E	7.00'	L1(R)	N/A	N/A
L2(M)	S 89°10'52" W	7.00'	L2(R)	N/A	N/A
L3(M)	S 89°35'03" W	40.00'	L3(R)	N/A	40.00'
L4(M)	N 89°11'45" E	30.00'	L4(R)	N/A	N/A
L5(M)	N 00°56'38" W	39.98'	L5(R)	N/A	40.07'

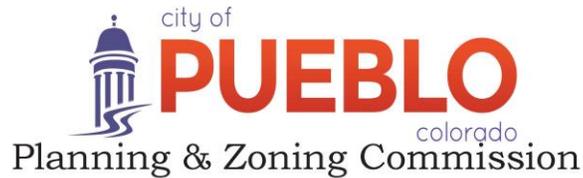
CURVE TABLE

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE	CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1(M)	230.00'	76.37'	76.02'	N 08°42'30" E	19°01'30"	C1(R)	230.00'	76.37'	N/A	N/A	N/A
C2(M)	197.14'	66.42'	66.11'	N 08°42'30" E	19°18'15"	C2(R)	200.00'	66.41'	66.11'	N/A	19°01'30"

Mike Castellucci
Chair

Patrick Avalos
Vice Chair

Vacant
City Council Representative



Christopher Pasternak

Alexandra Aznar

Elizabeth Bailey

Cheryl Spinuzzi

MINUTES OF REGULAR MEETING

City of Pueblo, Colorado

Wednesday, January 12, 2022 – 3:30 p.m.

City Council Chambers, 1 City Hall Place

Join Zoom Meeting online:

<https://pueblo.zoom.us/j/92717867722?pwd=WUdnaHVGBnlCdHRrUHNFZnpPWG1Ydz09>

Join Zoom Meeting by phone:

+1 669 900 6833 US (San Jose)

+1 346 248 7799 US (Houston)

Online and phone Meeting ID and Password:

Meeting ID: 927 1786 7722

Passcode: 195462

MEETING CALLED TO ORDER

The meeting was called to order at 3:33 p.m. with Commissioner Castellucci presiding.

The meeting was held at City Council Chambers, 1 City Hall Place, commissioners, applicants, and the public participated in person and via Zoom.

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

Commissioners Absent: City Council Representative Chair is currently vacant.

Staff Members Present: Dan Kogovsek, City Attorney; Scott Hobson, Acting Director for Department of Planning and Community Development; Beritt Odom, Principal Planner; Wade Broadhead, Planner; Danielle Baxter, Planner; Bart Mikitowicz, Planner; and Joe Martellaro, Associate Engineer II.

APPROVAL OF AGENDA

A Motion was made by Bailey to approve the agenda, Seconded by Spinuzzi.

Motion passed 6-0.

PUBLIC MEETING AND ACTION

Regular Agenda

1. **Z-21-21: Rezoning 3004 S Prairie Avenue:** 1.69 acres located east of S. Prairie Ave. and north of Thornberry Ln., from B-3, Highway and Arterial Business District to B-P, Business Park Zone District

Staff Report by Beritt Odom

BACKGROUND AND ANALYSIS:

Mr. Rubin, owner of 3004 S. Prairie Avenue is requesting to rezone the property to a BP, Business Park Zone District to allow assembly and light manufacturing uses within the existing metal warehouse structure on the site. The proposed BP, Business Park Zone District, is designed to provide for a limited number of retail, office, warehouse, light industrial and manufacturing uses.

The subject property was subdivided in 1976 to facilitate development of warehousing, light industrial and commercial uses, creating a light industrial and business park. In 1976 a Special Use Permit was granted to allow a warehousing use for the Coca-Cola Bottling Company at the site. A 16,000 square foot, metal warehouse was constructed on Lot 1 in 1977 and was used as the Coca-Cola Bottling Company warehouse until the mid-2000's. Adjacent properties to the south and east are zoned B-3, Highway Commercial Arterial, and house light industrial uses. The property to the west is zoned I-2, Industrial District, and is developed with a wireless communications tower (cell tower).

The subject property meets the BP Zone District minimum lot size, front and rear setbacks (the lot has multiple front setbacks and no rear setback because it sits adjacent to three public rights-of-way). However, the BP Zone District requires all structures within the district to be located a minimum of 100-feet away from an existing residential zone district and the metal warehouse on site sits approximately 10-feet from a R-2 Zone District located directly north of the site. The R-2 Zone District property is approximately 43,205 square feet and is developed with a single-family home, multiple accessory structures, and has numerous FedEx commercial vehicles on site. The R-2 zoning appears to be a remnant of the historic residential zoning that existed prior to the late 1960's. Because the rezoning site does not meet the structure separation distance from residential districts, the property owner is requesting a concurrent variance from the 100-foot building separation requirement. The proposed rezoning conforms to the comp plan designation of Employment Center Light Industry Mixed Use and the surrounding light industrial park development.

PLANNING AND COMMUNITY DEVELOPMENT COMMENTS

CHARACTER AND COMPATIBILITY:

❑ **Site Character:**

The subject property is approximately 73,285 square feet with the majority of the site paved in concrete and developed with a 16,000 square foot metal warehouse structure.

❑ **Neighborhood Compatibility:**

North	R-2, Single-family Residential District, developed with a residential structure, accessory structures and houses multiple commercial vehicles.
-------	--

East	B-3, Highway and Arterial Business District, self-storage units.
South	B-3, Highway and Arterial Business District,
West	I-2, Industrial District, wireless communications tower.

□ **Comprehensive Plan Compliance:**

The proposed rezoning request conforms with the Pueblo Comprehensive Plan designation of Employment Center – Light Industrial Mixed Use. According to the Comprehensive Plan, light industrial uses, such as manufacturing, assembly, research, and development, provide tax revenues and jobs for the Region. These uses will be continued and expanded upon in a planned manner so as to minimize the impact on the public infrastructure. The proposed light manufacturing facility use must comply with the BP performance standards which prohibits industrial processes that emit significant smoke, noise, or odors, and hazardous materials. Therefore, the BP Zone rezoning request meets the spirit of the light industrial mixed use land use designation.

RECOMMENDED ACTION:

Staff recommends the Planning and Zoning Commission make a recommendation to City Council that the zoning map amendment be **APPROVED with the following additional staff condition:**

1. The applicant must secure a variance allowing the existing on-site structure to sit 10-feet from the adjacent R-2 zone district. The variance must be secured prior to City Council review.

HEARING: Nico Cordova (211 W 2nd St #306, Pueblo, CO 81003) spoke on behalf of the applicant and stated they signed a lease for Reyes Campers, manufacturing, and sales of campers. Property to north zoned R-2 wishes to rezone as well at a later time to BP zone district.

No one spoke in support or opposition for the application.

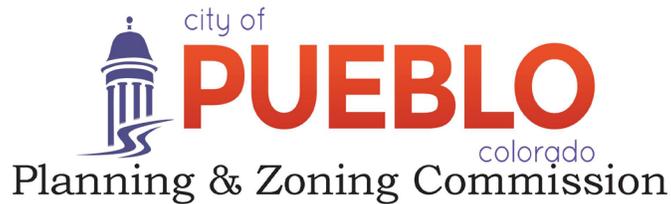
MOTION: Motion to recommend approval of Z-21-21 with the condition that the applicant must secure a variance allowing the existing on-site structure to sit 10-feet from the adjacent R-2 zone district prior to City Council review was made by Bailey, second by Avalos.

MOTION PASSED 6-0

Mike Castellucci
Chair

Patrick Avalos
Vice Chair

Bob Schilling
City Council Representative



Christopher Pasternak

Alexandra Aznar

Elizabeth Bailey

Cheryl Spinuzzi

Z-21-21

TO: City of Pueblo, Planning and Zoning Commission

FROM: Beritt Odom, Principal Planner

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

DATE: January 12, 2022

SUBJECT: Rezone from B-3, Highway and Arterial Business District to B-P, Business Park District

APPLICANT: Aviv Rubin, AMP1, LLC

PROPERTY OWNER: Aviv Rubin, AMP1, LLC

LOCATION: 3004 S. Prairie, generally located north of Thornberry Lane and east of S. Prairie Ave, Lot 1, Block 1, South Prairie Subdivision 2nd.

CONCURRENT REQUESTS: ZBA-21-36, Variance from Section 17-4-5, (4), b., 3., which requires a structure in a BP Zone District to be 100-feet from an existing residential zone district.

REQUEST:

The applicant is requesting to rezone Lot 1, Block 1, South Prairie Subdivision 2nd, from B-3 to BP, to allow manufacturing and production uses on site.

BACKGROUND AND ANALYSIS:

Mr. Rubin, owner of 3004 S. Prairie Avenue is requesting to rezone the property to a BP, Business Park Zone District to allow assembly and light manufacturing uses within the existing metal warehouse structure on the site. The proposed BP, Business Park Zone District, is designed to provide for a limited number of retail, office, warehouse, light industrial and manufacturing uses.

The subject property was subdivided in 1976 to facilitate development of warehousing, light industrial and commercial uses, creating a light industrial and business park. In 1976 a Special Use Permit was granted to allow a warehousing use for the Coca-Cola Bottling Company at the site. A 16,000 square foot, metal warehouse was constructed on Lot 1 in 1977 and was used as the Coca-Cola Bottling Company warehouse until the mid-2000's. Adjacent properties to the south and east are zoned B-3, Highway Commercial Arterial, and house light industrial uses. The property to the west is zoned I-2, Industrial District, and is developed with a wireless communications tower (cell tower).

The subject property meets the BP Zone District minimum lot size, front and rear setbacks (the lot has multiple front setbacks and no rear setback because it sits adjacent to three public rights-of-way). However, the BP Zone District requires all structures within the district to be located a minimum of 100-feet away from an existing

residential zone district and the metal warehouse on site sits approximately 10-feet from a R-2 Zone District located directly north of the site. The R-2 Zone District property is approximately 43,205 square feet and is developed with a single-family home, multiple accessory structures, and has numerous FedEx commercial vehicles on site. The R-2 zoning appears to be a remnant of the historic residential zoning that existed prior to the late 1960's. Because the rezoning site does not meet the structure separation distance from residential districts, the property owner is requesting a concurrent variance from the 100-foot building separation requirement. The proposed rezoning conforms to the comp plan designation of Employment Center Light Industry Mixed Use and the surrounding light industrial park development.

PLANNING AND COMMUNITY DEVELOPMENT COMMENTS

CHARACTER AND COMPATIBILITY:

❑ **Site Character:**

The subject property is approximately 73,285 square feet with the majority of the site paved in concrete and developed with a 16,000 square foot metal warehouse structure.

❑ **Neighborhood Compatibility:**

- | | |
|-------|--|
| North | R-2, Single-family Residential District, developed with a residential structure, accessory structures and houses multiple commercial vehicles. |
| East | B-3, Highway and Arterial Business District, self-storage units. |
| South | B-3, Highway and Arterial Business District, |
| West | I-2, Industrial District, wireless communications tower. |

❑ **Comprehensive Plan Compliance:**

The proposed rezoning request conforms with the Pueblo Comprehensive Plan designation of Employment Center – Light Industrial Mixed Use. According to the Comprehensive Plan, light industrial uses, such as manufacturing, assembly, research and development, provide tax revenues and jobs for the Region. These uses will be continued and expanded upon in a planned manner so as to minimize the impact on the public infrastructure. The proposed light manufacturing facility use must comply with the BP performance standards which prohibits industrial processes that emit significant smoke, noise, or odors, and hazardous materials. Therefore, the BP Zone rezoning request meets the spirit of the light industrial mixed use land use designation.

ABILITY TO COMPLY WITH THE PROPOSED ZONE DISTRICT:

❑ **Minimum lot size and area:**

Minimum lot size in the BP is 20,000 square feet. The rezoning site is 73,616 square feet.

❑ **Lot coverage:**

The B-P Zone District allows a maximum lot coverage of 50-percent. Existing lot coverage is 22-percent.

❑ **Zone District Performance Standards:**

The B-P Zone District Performance Standards (Sec. 17-4-5) provide the requirements relating to

minimizing the impact of the development on the surrounding neighborhood and are described in detail below:

1. Noise from industrial, commercial, or business activity shall comply with Section 11-1-607 of this Code applicable to light industrial zone districts, provided that if located within three hundred (300) feet of a residential zone district the industrial or business activity shall comply with Section 11-1-607 this Code applicable to commercial zones.
 - ❑ Sec. 11-1-607 states, among other items, that the maximum permissible noise levels as measured 25-feet from the property line of the subject property shall not exceed 55 decibels (db(A)) between 7:00am and 7:00pm and shall not exceed 50 decibels between 7:00pm and 7:00am.
 - ❑ The proposed manufacturing facility must comply with all noise regulations.
2. No vibrations resulting from any industrial, commercial, or business activity shall be measurable at the outer boundaries of the lot.
 - ❑ The proposed manufacturing facility must not produce vibrations.
3. No odors resulting from any industrial, commercial, or business activity shall be discernible at the outer boundaries of the lot.
 - ❑ The proposed manufacturing facility must not emit discernible odors.
4. No observable smoke shall be emitted from the parcel.
 - ❑ The proposed manufacturing facility must not produce observable smoke.
5. No dust or dirt resulting from any industrial, commercial, or business activity shall be discernible beyond the outer boundaries of the lot.
 - ❑ The proposed site almost completely paved or developed except for a small area in the northeast corner of the property. It is not anticipated that dust or dirt shall be discernible from the property boundary.
6. No noxious gases resulting from any industrial, commercial, or business activity shall be discernible beyond the outer boundaries of the lot.
 - ❑ The manufacturing facility must not release noxious gases discernible from the property boundary.
7. No glare or heat generated from any industrial, commercial, or business activity shall be discernible beyond the outer boundaries of the lot.
 - ❑ The manufacturing facility shall not generate heat or glare.
8. No use that would cause interference with or disrupt utility service including, without limitation, electrical, cable, television, or telecommunications services to surrounding properties shall be allowed.
 - ❑ The manufacturing facility shall not disrupt utility service.
9. Outside storage of debris, rubbish, materials, supplies and equipment shall be enclosed on all sides by a screening wall or solid fence at least six (6) feet, but no more than ten (10) feet, in height. Neither debris, rubbish, materials, supplies nor equipment shall be stacked or stored to a height exceeding the height of the screening wall or fence.
 - ❑ The manufacturing facility shall comply with outdoor storage standards.

APPLICATION REQUIREMENT PER §17-6-1 OF THE PUEBLO MUNICIPAL CODE

The applicant's name and address and the name and address of any person, firm or corporation represented by such applicant in the application.

- ❑ Comments **The application contains applicant's information.**

The interest of the applicant and the interest of the person, firm or corporation represented

by the applicant, be it legal, sales development, operation, or other interest.

- Comments **The application contains property owner’s information.**

The nature of the amendment and a legal description of the property that would be affected by the amendment.

- Comments **A full legal description of the property was provided with the application and is attached to the staff report.**

A general description of the proposed development to the distance which will be affected; such description including subjects of environmental effect, economic effect, and traffic effect, if any; and such description carried out in scope and detail to the extent needed to support the requested amendment and as may be required by the Planning and Zoning Commission.

- Comments **The applicant proposes to introduce a “light manufacturing” enterprise.**

A tentative site plan showing proposed structures, uses, open spaces, facilities for parking and loading and arrangements for pedestrian and vehicular circulation.

- Comments **A survey of the property was provided.**

A statement of the proposed time schedule for beginning and completion of development.

- Comments **The applicant indicated that redevelopment will begin in 2022.**

A statement reasonably indicating the applicant's economic responsibility and capability of accomplishing the development for which a zoning amendment is requested.

- Comments **The applicant states the “property owner has funds to complete zone change.”**

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 the Planning and Zoning Commission make a recommendation to City Council that the zoning map amendment be **APPROVED with the following additional staff condition:**

1. The applicant must secure a variance allowing the existing on-site structure to sit 10-feet from the adjacent R-2 zone district. The variance must be secured prior to City Council review.

ATTACHMENTS:

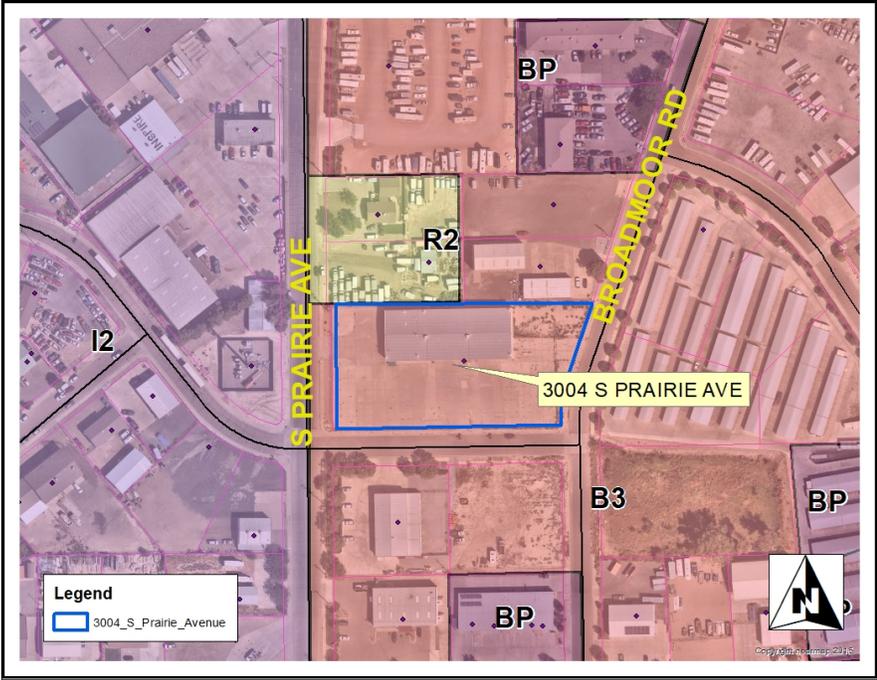
- A. **Arial Photograph**
- B. **Zoning Map**
- C. **Comprehensive Plan Map**

- D. Public Notice Photographs
- E. Site Photographs
- F. B-P Zone District Information Sheet
- G. Application
- H. Site Survey

ATTACHMENTS:



A. Aerial Photograph



B. Zoning Map



C. Comprehensive Plan Map



D. Public Notice Poster



E. 3004 S. Prairie looking east from S. Prairie Ave.



E. 3004 S. Prairie looking south from S. Prairie Ave.

**E. Crane Ridge Dr. Rezoning site looking south from Crane Ridge Dr.
F. B-P Zone District Information Sheet**



Planning & Community Development

211 East D Street | Pueblo, Colorado 81003 | Tel 719-553-2259 | Fax 719-553-2359 | TTY 719-553-2611 | www.pueblo.us

Zone District: BP (Business Park District)

Purpose. The standards of this district (BP) are designed to provide for a limited number of retail, office, warehouse, light industrial and manufacturing uses within a business park. Since some BP property may be located near residential zone districts, it is necessary that high development and performance standards be established and that all manufacturing, processing or assembling of materials and products be conducted in a manner not injurious or offensive to the residents of surrounding properties.

Setbacks: Front: 25' Side: 10'* Rear: 25'*

* There shall be no setback limitations for that portion of any lot that abuts property located in business or industrial zone districts.

- Separation Distance: 100' from an existing residential zone
Coverage: 50%
Max. Height: 35' for buildings that are within 150' of a residential zone district.
Minimum Lot Width: 100'
Minimum Lot Size: 20,000 Square Feet

PERFORMANCE STANDARDS:

Sec. 17-4-5(4)a.

- Outdoor Lighting: § 17-4-52 Outdoor Lighting Performance Standards,
Off Street Parking: § 17-4-43 Off-street parking non-residential.
Landscape: Required. § 17-4-7
Public Sidewalks: § 17-4-44

Permitted Uses § 17-4-51(c)

Table with 3 columns listing permitted uses by right, including items like Accessory commissary, Banquet hall, Farmers market, etc.

<u>Uses by right.</u>		
43. Manufacturing and production	57. Public utilities	70. Retail sales, tires
44. Massage establishment	58. Recreation facilities, indoor	71. Storage facility, outdoor
45. Mineral springs	59. Rental shop, equipment	72. Storage facility, self-storage
46. Mortuary	60. Rental shop, general	73. Temporary farmers market
47. Nursery	61. Repair shop, consumer items	74. Temporary mobile food vendor
48. Office, general	62. Repair shop, durable goods	75. Theater, general
49. Office, medical	63. Restaurant	76. Theater, multiplex
50. Office, professional	64. Restaurant, carry-out	77. Tow service
51. Parking lot	65. Retail sales, auto parts	78. Truck stop
52. Parking structure	66. Retail sales, big box	79. Urgent care facility
53. Pawnshop	67. Retail sales, garden center	80. Veterinary clinic
54. Pet shop	68. Retail sales, general	81. Woodworking
55. Pharmacy	69. Retail sales, liquor store	
56. Print shop		
<u>Uses by review.</u>		
1. Auction house	12. Laboratory	23. School, college or university
2. Automobile auction	13. Medical marijuana center (dispensary) (limited use permit)	24. School, general
3. Child care center	14. Microbrewery	25. School, preschool
4. Commercial, established	15. Parks, trails and open space	26. Shooting range
5. Community center	16. Pawnshop, automobile	27. Tow yard
6. Contractor's yard	17. Payday loan agency	28. Truck parking
7. Crematory	18. Precious metal purchaser	29. Truck sales and service
8. Flea market	19. Recreation facilities, general	30. Warehousing uses
9. Food and drink processing facility, major	20. Recycling collection center	31. Wedding facility
10. Funeral home	21. Religious institution	32. Wholesaling uses
11. Heliport, emergency medical	22. Residence, watchman or caretaker	33. Wind Turbine
<u>Conditional uses:</u>		
1. Accessory antenna	7. Adult entertainment	14. Retail marijuana testing facility
2. Accessory commercial patio	8. Brewpub	15. Retail sales, building materials
3. Accessory drive-thru	9. Community garden	16. School, trade
4. Accessory medical marijuana home cultivation	10. Development in floodplain	17. Smoking lounge
5. Accessory medical marijuana optional cultivation	11. Food warehousing	18. Temporary construction yard
6. Accessory solar array	12. Recreational vehicle, sales and service	19. Temporary mobile auto repair
	13. Retail marijuana product manufacturing facility	20. Temporary outdoor sales, seasonal



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Planning & Zoning Map Amendment Application (Rezoning)

Please type or print clearly. Illegible applications will not be accepted. Case #: _____

Property Owner	
Name: Aviv Rubin	
Company: AMP1, LLC	
Address: 5555 DTC Parkway, Suite 272, Greenwood Village	Zip: 80111
Phone: () 818-601-2848	Email: arubin3373@gmail.com
Applicant	
Name: Aviv Rubin	
Company: AMP1, LLC	
Address: 5555 DTC Parkway, Suite 272, Greenwood Village	Zip: 80111
Phone: () 818-601-2848	Email:
Person or Firm Representing (If Different From) Owner or Applicant	
Name:	
Company:	
Address:	Zip:
Phone: ()	Email:
<i>The applicant will be the primary contact unless otherwise noted.</i>	
Project Location: 3304 S Prairie Ave, Pueblo, CO 3004 S. Prairie Ave, Pueblo, CO <small>(address or general description)</small>	
Parcel# 1514317020	
Legal Description: LOT 1 BLK 1 SOUTH PRAIRIE SUB 2ND EXC W 7.00 FT FORMERLY #15-143-17-001	
Subdivision: 7040 = CP, =Gramerps IP	Acreage: 1.69
Existing Zone District: B3	Proposed Zone District: BP

Purpose of this Application:

- To permit development of the property not allowed under the existing zone district.
- To provide proper zone district in conjunction with the subdivision plan for the area.
- In conjunction with the Annexation petition to annex the property in a use different than the existing Pueblo County Zoning.
- Other (specify): _____

(Continued from previous page)

Statement of Facts:

Justifying the zone change request. Be specific; use additional sheets if necessary.

Property is zoned B3 with surrounding properties zoned BP. Occupant needs BP zoning for his assembly and light manufacturing processes.

Description of area surrounding proposed development:

Largely BP industrial properties.

A general description of the proposed development to the distance which will be affected; such description including subjects of environmental effect, economic effect and traffic effect, if any; and such description carried out in scope and detail to the extent needed to support the requested amendment and as may be required by the Planning and Zoning Commission.

Existing building. Is this required?

- A tentative site plan showing proposed structures, uses, open spaces, facilities for parking and loading and arrangements for pedestrian and vehicular circulation.

Estimated date for beginning project: ASAP

Estimated date for completion of project: February for zone change.

A statement reasonably indicating the applicant's economic responsibility and capability of accomplishing the development for which a zoning amendment is requested.

Property owner has funds to complete zone change.

- CD with DWF and DWG (Autocad) file of all plans and drawings & a PDF of all documents submitted. (if applicable)

By signing below, the Property Owner and Applicant are representing that each understands and agrees to the following terms:

1. Authorized personnel from the City of Pueblo, are hereby granted the right to enter the subject property for the purposes of reviewing and processing the application, including Certificate of Occupancy Inspections.

Zoning Compliance (Completed by City Staff)

Office Use Only	Application received by:	Date:
	Application checked for completeness by:	Date:
	Case Manager:	Fee Paid:
	Hearing date:	<input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> Approved w/conditions



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2. There are no known hazards or vicious animals present on the subject property.
3. All information contained in this application, is true and accurate to the best of my knowledge.
4. The City of Pueblo is under no obligation to approve the request contained in this application. No promises of approval are conveyed with the acceptance of this application.

Property Owner		
Print Name:	Aviv Rubin	
Signature:	<i>Aviv Rubin</i>	Date: 11/9/21
Applicant, if different from Property Owner		
Print Name:		
Signature:		Date:

TITLE COMMITMENT INFORMATION

THE PROPERTY HEREON DESCRIBED IS THE SAME AS THE PERTINENT PROPERTY AS DESCRIBED IN FIDELITY NATIONAL TITLE COMPANY, COMMITMENT FILE NO.: 597-F0697721-320-BWZ, WITH AN EFFECTIVE DATE OF DECEMBER 11, 2020.

LEGAL DESCRIPTION

LOT 1, EXCEPT THE WEST 7 FEET THEREOF, BLOCK 1, SOUTH PRAIRIE SUBDIVISION FILING NO. 2, COUNTY OF PUEBLO, STATE OF COLORADO.



VICINITY MAP



SHEET 1 OF 1

LAND AREA

73676± SQUARE FEET
1.691± ACRES

PARKING

REGULAR = 14
TRUCK = 11
HANDICAP = 0
TOTAL = 25

FLOOD INFORMATION

FLOOD NOTE: BASED ON MAPS PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) AVAILABLE ONLINE AT WWW.MSC.FEMA.GOV. AND BY GRAPHIC PLOTTING ONLY, THIS PROPERTY IS LOCATED IN ZONE "X" ON FLOOD INSURANCE RATE MAP NUMBER 0810107010, WHICH BEARS AN EFFECTIVE DATE OF 08/15/2019 AND IS NOT IN A SPECIAL FLOOD HAZARD AREA. BY REVIEWING FLOOD MAPS PROVIDED BY THE NATIONAL FLOOD INSURANCE PROGRAM WE HAVE LEARNED THIS COMMUNITY DOES PARTICIPATE IN THE PROGRAM.

BEARING BASIS

THE BASIS OF BEARING FOR THIS SURVEY IS GRID NORTH PER COLORADO STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD83-2011, AS MEASURED ALONG THE CENTER LINE OF THORNBERRY LANE WHICH BEARS N 89°57'91" W PER GPS COORDINATE OBSERVATIONS
LATITUDE: 38°12'57.9054"
LONGITUDE: -104°38'31.8237"
CONVERGENCE ANGLE: 00°31'34.2196"

LEGEND

SO.FT.	SQUARE FEET	R/W	RIGHT OF WAY
PS	PARKING SPACE(S)	C/L	CENTER LINE
TPS	TRUCK PARKING SPACE(S)	U.P.	UTILITY POLE
TP	TELEPHONE PEDESTAL	GA	GUY ANCHOR
●	PROPERTY CORNER (NOT FOUND OR SET)	●	FIRE HYDRANT
○	FOUND CORNER AS NOTED	—	OVERHEAD UTILITY LINE
(M)	MEASURED/CALCULATED DIMENSION	—	FENCE
(R)	RECORD DIMENSION	—	CENTER LINE OF ROAD
B.H.L.	BUILDING HEIGHT LOCATION	—	NOT TO SCALE
N/F	NOW OR FORMERLY	---	RIGHT-OF-WAY LINE
		---	EASEMENT LINE

ALTA/NSPS LAND TITLE SURVEY

JOB #: 432724
SOUTH PRAIRIE AVENUE
3004 SOUTH PRAIRIE AVENUE
PUEBLO COUNTY PUEBLO, COLORADO

SITE PICTURE



AEI Consultants COORDINATED BY:
AEI CONSULTANTS
2500 CAMINO DIABLO
WALNUT CREEK, CA, 94597
TELEPHONE: 925.746.6000
EMAIL: SURVEYS@AEICONSULTANTS.COM

SURVEYOR'S CERTIFICATE

TO: ARC INVESTMENTS LLC AND FIDELITY NATIONAL TITLE COMPANY:
THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 2, 3, 4, 7(a), 7(b)(1), 7(c), 8, 9, 10A, 13, 14, 16, AND 17 OF TABLE A THEREOF. THE FIELDWORK WAS COMPLETED ON 01/08/2021. DATE OF PLAT OR MAP: 01/27/2021.

DATE	REVISION HISTORY	BY	SURVEYOR JOB NUMBER: 21-0026
			SCALE: 1" = 30'
			DRAWN BY: RM
			APPROVED BY: JMP

NOTES CORRESPONDING TO SCHEDULE B

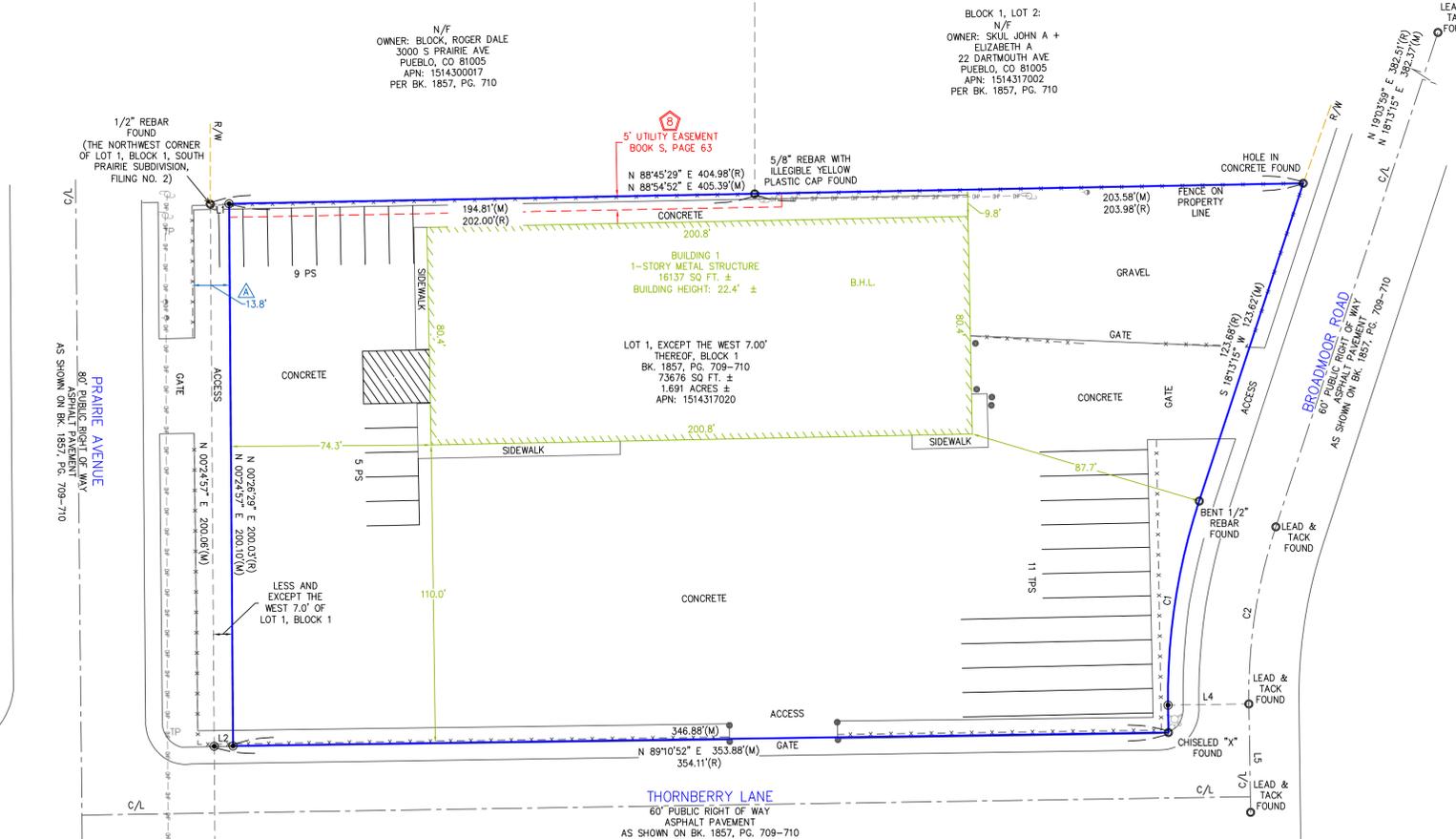
- 1. COVENANTS, CONDITIONS, RESTRICTIONS, NOTES AND EASEMENTS AS SHOWN ON SAID SUBDIVISION RECORDED AUGUST 19, 1976 IN MAP BOOK S AT PAGE 63. (AFFECTS, PLOTTED AS SHOWN)
- 2. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS CONTAINED IN THE AGREEMENT AS SET FORTH BELOW.
RECORDING DATE: AUGUST 19, 1976
RECORDING NO.: BOOK 1857 AT PAGE 688 AT RECEPTION NO. 524019 (DOES NOT AFFECT, DOCUMENT APPEARS TO AFFECT LOT 8, BLOCK 2, SOUTH PRAIRIE SUBDIVISION FILING NO. 2 WITH REGARDS TO DRAINAGE AND SURFACE WATER DETENTION BASIN AND APPURTENANT FACILITIES TO BE CONSTRUCTED AND INSTALLED.)
- 3. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AND OBLIGATIONS CONTAINED IN THE AGREEMENT AS SET FORTH BELOW.
RECORDING DATE: AUGUST 19, 1976
RECORDING NO.: BOOK 1857 AT PAGE 704 AT RECEPTION NO. 524027 (AFFECTS, BLANKET IN NATURE)

GENERAL NOTES

- NO UNDERGROUND UTILITIES ARE SHOWN ON THIS SURVEY, ONLY ABOVE GROUND VISIBLE EVIDENCE OF UTILITIES ARE SHOWN.
- ALL STATEMENTS WITHIN THE CERTIFICATION, AND OTHER REFERENCES LOCATED ELSEWHERE HEREON, RELATED TO UTILITIES, IMPROVEMENTS, STRUCTURES, BUILDINGS, PARTY WALLS, PARKING, EASEMENTS, SERVITUDES, AND ENCROACHMENTS ARE BASED SOLELY ON ABOVE GROUND, VISIBLE EVIDENCE, UNLESS ANOTHER SOURCE OF INFORMATION IS SPECIFICALLY REFERENCED HEREON.
- THIS SURVEY MEETS OR EXCEEDS THE SURVEY STANDARDS/STANDARDS OF CARE AS SET FORTH IN SECTION 3 OF THE 2016 ALTA/NSPS SURVEY REQUIREMENTS.
- THE SUBJECT PROPERTY HAS DIRECT PHYSICAL ACCESS TO PRAIRIE AVENUE, THORNBERRY LANE, AND BROADMOOR ROAD, BEING DEDICATED PUBLIC STREET OR HIGHWAY.
- THERE IS NO VISIBLE EVIDENCE OF CEMETERIES ON SUBJECT PROPERTY.
- THERE IS NO OBSERVABLE EVIDENCE OF EARTH MOVING WORK, BUILDING CONSTRUCTION OR BUILDING ADDITIONS WITHIN RECENT MONTHS.
- THE PARCELS CONTAINED IN THE LEGAL DESCRIPTION ARE CONTIGUOUS WITHOUT ANY GAPS, GORES OR OVERLAPS.
- BUILDING AREAS SHOWN HEREON ARE FOR THE FOOTPRINT OF THE BUILDING ONLY.
- NO APPARENT CHANGES IN STREET RIGHT OF WAY LINES EITHER COMPLETED OR PROPOSED, AND AVAILABLE FROM THE CONTROLLING JURISDICTION, NO OBSERVABLE EVIDENCE OF RECENT STREET OR SIDEWALK CONSTRUCTION OR REPAIRS.
- NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL SEAL OF A COLORADO LICENSED SURVEYOR AND MAPPER. ADDITIONS AND DELETIONS TO SURVEY MAPS, SKETCHES, OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.
- THERE IS NO EVIDENCE OF ANY DELINEATED WETLAND AREAS, PER THE U.S. FISH & WILDLIFE SERVICE NATIONAL WETLANDS INVENTORY WEBSITE. NO MARKERS FROM A FIELD DELINEATION OF WETLANDS CONDUCTED BY A QUALIFIED SPECIALIST WERE OBSERVED DURING THE COURSE OF THE ALTA SURVEY.
- THE NEAREST INTERSECTING STREET IS THE INTERSECTION OF THORNBERRY LANE AND BROADMOOR ROAD, WHICH ABUTS THE SE CORNER OF THE SUBJECT PROPERTY.
- THE DISTANCES SHOWN HEREON ARE GRID. COMBINED SCALE FACTOR (GRID TO GROUND) = 1.00026409317078.
- IN REGARDS TO ALTA TABLE A ITEM 10(A), NO VISIBLE CERTAIN DIVISION OR PARTY WALLS WITH RESPECT TO ADJOINING PROPERTIES WERE OBSERVED AT THE TIME THE FIELDWORK WAS PERFORMED, NOR WERE ANY DESIGNATED BY THE CLIENT, NECESSARY PERMISSIONS WERE NOT PROVIDED.

STATEMENT OF ENCROACHMENTS

▲ FENCE APPEARS TO CROSS PROPERTY LINE BY AS MUCH AS 13.8'



LINE TABLE

LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE
L1(M)	N 88°45'52" E	7.00	L1(R)	N/A	N/A
L2(M)	S 89°10'52" W	7.00	L2(R)	N/A	N/A
L3(M)	S 89°35'03" W	40.00	L3(R)	N/A	40.00
L4(M)	N 89°11'45" E	30.00	L4(R)	N/A	N/A
L5(M)	N 00°56'38" W	39.98	L5(R)	N/A	40.07

CURVE TABLE

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE	CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1(M)	230.00'	76.37"	76.02"	N 08°42'30" E	19°01'30"	C1(R)	230.00'	76.37"	N/A	N/A	N/A
C2(M)	197.14'	66.42"	66.11"	N 08°42'30" E	19°18'15"	C2(R)	200.00'	66.41"	66.11"	N/A	19°01'30"

December 27, 2021

This is to inform you that the City of Pueblo Planning and Zoning Commission will hold a public hearing on a request by **Aviv Rubin, AMP1, LLC** for the approval of the following application:

Z-21-21 – Rezoning of 3004 S. Prairie, 1.69 acres located east of S. Prairie Ave. and north of Thornberry Ln., from B-3, Highway and Arterial Business District to B-P, Business Park Zone District.

The Planning and Zoning Commission meeting will be held on January 12, 2022, at 3:30 p.m., in City Council Chambers, 1 City Hall Place, Pueblo, CO or by Zoom: <https://pueblo.zoom.us/j/92717867722?pwd=WUdnaHVGbnlCdHRrUHNFZnpPWG1Ydz09>, Meeting ID: 927 1786 7722, Passcode: 195462, Telephone: 1 346 248 7799 US (Houston). You are welcome to attend this public hearing and express your viewpoint concerning this proposal. To review the plans and staff report for the proposed application, please visit www.pueblo.us/PandZ and click on “Most Recent Agenda” no sooner than the Friday prior to the hearing. **Please contact the planner listed below if you have questions.**

Scott Hobson, Acting Director
Planning & Community Development
By **Beritt Odom**, Principal Planner
(719) 553-2339

December 27, 2021

This is to inform you that the City of Pueblo Planning and Zoning Commission will hold a public hearing on a request by **Aviv Rubin, AMP1, LLC** for the approval of the following application:

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Scott Hobson, Acting Director
Planning & Community Development
By **Beritt Odom**, Principal Planner
(719) 553-2339

December 27, 2021

This is to inform you that the City of Pueblo Planning and Zoning Commission will hold a public hearing on a request by **Aviv Rubin, AMP1, LLC** for the approval of the following application:

Z-21-21 – Rezoning of 3004 S. Prairie, 1.69 acres located east of S. Prairie Ave. and north of Thornberry Ln., from B-3, Highway and Arterial Business District to B-P, Business Park Zone District.

The Planning and Zoning Commission meeting will be held on January 12, 2022, at 3:30 p.m., in City Council Chambers, 1 City Hall Place, Pueblo, CO or by Zoom: <https://pueblo.zoom.us/j/92717867722?pwd=WUdnaHVGbnlCdHRrUHNFZnpPWG1Ydz09>, Meeting ID: 927 1786 7722, Passcode: 195462, Telephone: 1 346 248 7799 US (Houston). You are welcome to attend this public hearing and express your viewpoint concerning this proposal. To review the plans and staff report for the proposed application, please visit www.pueblo.us/PandZ and click on “Most Recent Agenda” no sooner than the Friday prior to the hearing. **Please contact the planner listed below if you have questions.**

Scott Hobson, Acting Director
Planning & Community Development
By **Beritt Odom**, Principal Planner
(719) 553-2339

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Scott Hobson, Acting Director
Planning & Community Development
By **Beritt Odom**, Principal Planner
(719) 553-2339

CASE NUMBER Z-21-21

CERTIFICATION

I hereby certify that I did this day cause written notice of the public hearing on the proposed Zoning Map Amendment of the property located at 3004 S Prairie Avenue to be sent to the attached list of owners of the real property lying within three hundred (300) feet of the said property on which the Zoning Map Amendment is proposed by depositing the same properly addressed and postage paid in the post office, as set forth in the Code of Ordinances, Section 17-6-2.

12-28-21

(Date)

PUEBLO PLANNING & ZONING COMMISSION

By KAREN ELGIN

I hereby certify that I did this day verify and photograph the posted notice of the public hearing on the Zoning Map Amendment of the property located at 3004 S Prairie Avenue, upon which action is pending as set forth in the Code of Ordinances, Section 17-6-2.

12-28-21

(Date)

PUEBLO PLANNING & ZONING COMMISSION

By KAREN ELGIN

Owner	OwnerStreet	OwnerCity	OwnerState	OwnerZip
M 3 REAL ESTATE LLC	121 W CUCHARRAS ST	COLORADO SPRING	CO	80903-3303
LAMAAK ROGER	1454 DANA LN	PUEBLO	CO	81006-9732
4G FAMILY LIVING TRUST DATED JAN 15	REDONDO LN	PUEBLO	CO	81005-2953
SKUL JOHN A + ELIZABETH A	22 DARTMOUTH AVE	PUEBLO	CO	81005-1756
LONGO TRUST + LOUIS LYNN TR, LOUIS	251 E SHELBOURNE AVE	LAS VEGAS	NV	89123-2105
O NEAL SUSAN C + JAMES E JR + JAMES	25101 RIDGE WAY	GOLDEN	CO	80401-9633
CORNELLA BROS LLC	2730 N 9TH ST	CANON CITY	CO	81212-8516
PUEBLO DIVERSIFIED INDUSTRIES	2828 GRANADA BLVD	PUEBLO	CO	81005-3104
B TEC LLC	2904 GRANEROS LN	PUEBLO	CO	81005-3184
BLOCK ROGER DALE + BLOCK KIM	3000 S PRAIRIE AVE	PUEBLO	CO	81005-5106
D B R ENTERPRISES LLC	3130 BROADMOOR RD	PUEBLO	CO	81004-5842
BROADMOOR LLC	35 PASADENA DR	PUEBLO	CO	81005-2985
WYATT AARON	46 STANFORD AVE	PUEBLO	CO	81005-1605
RIEKENA ROGER A AND MARY REVOCABLE	544 STARLITE DR	PUEBLO	CO	81005-2691
AMPI LLC	5555 DTC PKY STE 272	GREENWOOD VILLAGE	CO	80111-3005
ACORN PETROLEUM INC	76 S SIERRA MADRE ST	COLORADO SPRING	CO	80903-3309
M 3 REAL ESTATE LLC	855 BROADVIEW PL	COLORADO SPRING	CO	80904-1801
FIRST FARABAUGH RENTAL LLC	89 PURDUE ST	PUEBLO	CO	81005-1633
KM GARCIA PROPERTIES LLC	97 FORDHAM CIR	PUEBLO	CO	81005-1647
COCA COLA BOTTLING CO OF NEW YORK	PO BOX 1734	ATLANTA	GA	30301-1734



**BACKGROUND PAPER FOR PROPOSED
ORDINANCE**

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council

CC: Nicholas A. Gradisar, Mayor

VIA: Marisa Stoller, City Clerk

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

SUBJECT: AN ORDINANCE CHANGING THE STREET NAME OF SPAULDING AVENUE LOCATED BETWEEN WEST 11TH STREET AND WEST 31ST STREET

SUMMARY:

The City is requesting to change the street name of Spaulding Avenue, located between West 11th Street and West 31st Street to meet the Pueblo City-County Addressing Standards adopted in May 2010. The Planning and Zoning Commission held a public hearing on December 12, 2021 to receive comments and provide a recommendation on the following proposed names: Tava, Crain, Sun Mountain or Ranger Avenue or Boulevard.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The City staff is proposing to rename the future undeveloped section of Spaulding Avenue that will be south of the intersection of West 31st Street and Spaulding Avenue. This future street is east of Pueblo Boulevard, in the city limits between West 11th Street and 31st Street, terminating at the Southern Colorado Medical Center Subdivision. The Long-Range Transportation Plan has previously identified this roadway as a connection between the Parkwest area (Southern Colorado Clinic Subdivision) linking in the future with 24th Street and 18th Street adjacent to Delores Huerta and Cesar Chavez schools. 24th Street is identified to be part of the future roadway corridor providing better access from the west side of the city into Downtown Pueblo. Originally the road was platted to be an extension of Tuxedo Avenue, however modifications to the Long-Range Transportation Plan resulted in Tuxedo Avenue remaining as a north to south roadway that did not connect to 31st Street. In April 2001, the future platted sections of this roadway corridor were renamed to Spaulding Avenue to reflect the change in planning direction. In 2021, City of Pueblo IT Department

identified several issues with the continuation of the Spaulding including possible confusion with Pueblo West addresses, driver disorientation from north-south travel lanes changing to east-west travel lanes, and most importantly to avoid future conflicts in the addressing system in which there were not enough numbers remaining to match the future address points. Most of this road remains to be constructed including areas that are yet to be subdivided. In November of 2021, the City of Pueblo Planning Department reached out directly to the property owners whose land was adjacent to future section of road. Upon receiving feedback, a public meeting was held on December 12th via Zoom. At the meeting, the following names were suggested: Tava, Sun Mountain, Crain and Ranger Avenue or Boulevard.

FINANCIAL IMPLICATIONS:

There are no financial implications for the City.

BOARD/COMMISSION RECOMMENDATION:

At the January 12, 2022 Regular Meeting of the Planning and Zoning Commission, Commissioners Spinuzzi, Avalos, and Bailey recommended renaming the street to Crain Avenue/Boulevard and Commissioners Aznar, Pasternack, and Castellucci recommended renaming the street to Sun Mountain Avenue/Boulevard. The City Council appointment to the Commission had not been filled at the date of the hearing.

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. Additionally, all property owners whose land was adjacent to future section of road were notified. Upon receiving feedback, a public meeting was held on December 12th via Zoom.

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 other proposed street names.

RECOMMENDATION:

Approval of the Ordinance.

Attachments:

Proposed Ordinance

Minutes of the Planning and Zoning Commission January 12, 2021 Public Hearing

Planning and Zoning Commission Staff Report with Exhibits

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE STREET NAME OF
SPAULDING AVENUE LOCATED BETWEEN WEST 11TH
STREET AND WEST 31ST STREET

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

SECTION 1.

The street known as Spaulding Avenue is hereby changed to _____
located between West 11th Street and West 31st Street.

SECTION 2.

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

SECTION 3.

This Ordinance shall become effective immediately upon final action by
the Mayor and City Council.

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

- Approved on _____.
- Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

President of City Council

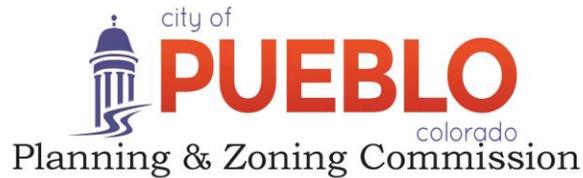
ATTEST

City Clerk

Mike Castellucci
Chair

Patrick Avalos
Vice Chair

Vacant
City Council Representative



Christopher Pasternak

Alexandra Aznar

Elizabeth Bailey

Cheryl Spinuzzi

MINUTES OF REGULAR MEETING

City of Pueblo, Colorado

Wednesday, January 12, 2022 – 3:30 p.m.

City Council Chambers, 1 City Hall Place

Join Zoom Meeting online:

<https://pueblo.zoom.us/j/92717867722?pwd=WUdnaHVGbnlCdHRrUHNFZnpPWG1Ydz09>

Join Zoom Meeting by phone:

+1 669 900 6833 US (San Jose)

+1 346 248 7799 US (Houston)

Online and phone Meeting ID and Password:

Meeting ID: 927 1786 7722

Passcode: 195462

MEETING CALLED TO ORDER

The meeting was called to order at 3:33 p.m. with Commissioner Castellucci presiding.

The meeting was held at City Council Chambers, 1 City Hall Place, commissioners, applicants, and the public participated in person and via Zoom.

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

Commissioners Absent: City Council Representative Chair is currently vacant.

Staff Members Present: Dan Kogovsek, City Attorney; Scott Hobson, Acting Director for Department of Planning and Community Development; Beritt Odom, Principal Planner; Wade Broadhead, Planner; Danielle Baxter, Planner; Bart Mikitowicz, Planner; and Joe Martellaro, Associate Engineer II.

APPROVAL OF AGENDA

A Motion was made by Bailey to approve the agenda, Seconded by Spinuzzi.

Motion passed 6-0.

PUBLIC MEETING AND ACTION

Regular Agenda

1. SNC-21-03: Street Name Change for a future portion of Spaulding Ave. located between W 11th St. and W 31st St. The City staff is requesting a Street Name Change for a future portion of Spaulding Avenue located between W 11th Street. and W 31st Street to meet the Pueblo City-County Addressing Standards adopted in May 2010. The P&Z Commission will hold a public hearing to receive comments and provide a recommendation on the following proposed names: Tava Ave/Blvd, Crane Ave/Blvd, Sun Mountain Ave/Blvd, or Ranger Ave/Blvd.

Staff Report by Bart Mikitowicz

Staff Review and Findings:

City staff is proposing to rename the future undeveloped section of Spaulding Avenue that is located south of the intersection of West 31st Street and Spaulding Avenue. This future street is east of Pueblo Blvd, in the city limits between W. 11th Street and 31st Street, terminating at the Southern Colorado Medical Center Subdivision. The Long-Range Transportation Plan has previously identified this roadway as a connection between Parkwest area (Southern Colorado Clinic Subdivision) linking in the future with 24th Street and 18th Street adjacent to Delores Huerta and Cesar Chavez schools. 24th Street is identified to be part of the future roadway corridor providing better access from the west side of the city into Downtown Pueblo. This future roadway corridor will help support development of western areas of the city. Originally, the road was platted to be an extension of Tuxedo Avenue, however modifications to the Long-Range Transportation Plan resulted in Tuxedo Avenue remaining as a north to south roadway that did not connect to 31st Street. In April 2001 the future platted sections of this roadway corridor were renamed to Spaulding Ave to reflect the change in planning direction.

In 2021, City of Pueblo IT Department identified several issues with the continuation of the Spaulding including possible confusion with Pueblo West addresses, driver disorientation from a north-south travel lanes changing to an east-west travel lanes, and most importantly to avoid future conflicts in the addressing system in which there weren't enough numbers remaining to match the future address points.

A majority of this road remains to be constructed including areas that yet to be subdivided. In November of 2021, the City of Pueblo Planning Department reached out directly to the property owners whose land was adjacent to future section of road. Upon receiving feedback, a public meeting was scheduled and held on December 12th at 6:00 p.m. via Zoom. At the meeting, several names were suggested.

The suggestions were compiled and analyzed against Pueblo City-County Addressing Standards by the Pueblo Regional Building Department and the City of Pueblo IT Department.

<u>Name</u>	<u>Significance</u>	<u>Usable</u>
Tava Ave/Blvd	Tava" being the Colorado Mountain Ute name for Pikes Peak, meaning "sun mountain"; due to its height, the peak was the first to be touched by the dawn.	Yes
Sun Mountain Ave/Blvd	English translation of "Tava"; see meaning above	Yes

Dolores Huerta Ave/Blvd	Honoring the late American labor leader and civil rights activist.	No; too long, 13-character limit
Foothills Ave/Blvd	Bearing in mind the original name of the area that is involved.	No; the name Foothills is already in use
Crain Ave/Blvd	Honoring the Crain Family, long time residence and contributors to this area.	Yes
Donley Ave/Blvd	Honoring the Donley Family, long time residence and contributors to this area.	No; the name Donley is already in use
Ranger Ave/Blvd	To help branding, marketing and way finding for Pueblo Rangers Soccer Club which are developing soccer fields in this area.	Yes

Recommended Action:

Staff recommends the Planning and Zoning Commission APPROVE the Street Name Change and the motion include a recommended NEW street name.

HEARING:

Testifying in Support of the street name change:

1. Tamara Pleshick (1725 Garwood Dr, 81005) part of NeighborWorks Pikes Peak Park project, recommends name “Tava” or “Sun Mountain.”
2. William (Bill) Crain, resident of the area, recommends name “Crain.”
3. Ashleigh Winans, part of NeighborWorks project, recommends “Tava” or “Sun Mountain.”

No one spoke in opposition of the street name change.

COMMISSION ACTION:

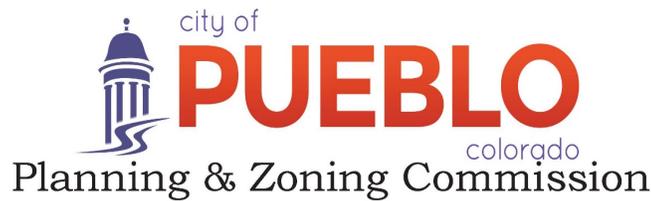
Spinuzzi moved to recommend two street names, “Crain” and “Sun Mountain.” Chairman Castellucci asked for a roll call vote with each commission member indicating their preferred street name:

- Spinuzzi-Crain
- Avalos-Crain
- Bailey-Crain
- Pasternack-Sun Mountain
- Aznar-Sun Mountain
- Castellucci-Sun Mountain

Mike Castellucci
Chair

Patrick Avalos
Vice Chair

Bob Schilling
City Council Representative



Christopher Pasternak

Alexandra Aznar

Elizabeth Bailey

Cheryl Spinuzzi

SNC-21-03

TO: City of Pueblo, Planning and Zoning Commission
FROM: Bart Mikitowicz, Planner and Beritt Odom, Principal Planner
THROUGH: Scott Hobson, Acting Director of Planning and Community Development
DATE: December 8, 2021
SUBJECT: Street Name Change Spaulding Avenue to Tava Ave/Blvd, Crane Ave/Blvd, Sun Mountain Ave/Blvd, or Ranger Ave/Blvd
APPLICANT: City of Pueblo
PROPERTY OWNER: City of Pueblo, Public Right of Way
LOCATION:

Request:

The City staff is requesting a Street Name Change for a future portion of Spaulding Avenue located between W 11th Street and W 31st Street to meet the Pueblo City-County Addressing Standards adopted in May 2010. The P&Z Commission will hold a public hearing to receive comments and provide a recommendation on the following proposed names: Tava Ave/Blvd, Crane Ave/Blvd, Sun Mountain Ave/Blvd, or Ranger Ave/Blvd.

Applicable Regulations:

Pueblo City-County Addressing Standards

Staff Review and Findings:

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Recommended Action:

Staff recommends the Planning and Zoning Commission APPROVE the Street Name Change and the motion include a recommended NEW street name.

ATTACHMENTS:

- A. Application
- B. Map of Proposed Street Name Change



Planning & Community Development

211 East D Street | Pueblo, Colorado 81003 | Tel 719-553-2259 | Fax 719-553-2359 | TTY 719-553-2611 | www.pueblo.us

Planning & Zoning Application

Please type or print clearly. Illegible applications will not be accepted. Case #: _____

Contact Info	Property Owner		Applicant	
	Name: City of Pueblo - Planning Dept.		Name: City of Pueblo - Planning Dept.	
	Company:		Company:	
	Address: 211 E. 'D' Street	Zip: 81003	Address: 211 E. 'D' Street	Zip: 81003
	Phone: (719) 553-2259		Phone: (719) 553-2259	
	Email:		Email:	
	Engineer		Surveyor	
	Name:		Name:	
	Company:		Company:	
	Address:	Zip:	Address:	Zip:
Phone: ()		Phone: ()		
Email:		Email:		
<i>The applicant will be the primary contact unless otherwise noted.</i>				
Property Info	Project Location:			
	<small>(address or general description)</small> Spaulding Avenue from W. 31st St. south to W. 11th Street			
	Parcel No(s): n/a			
	Existing Zone:		Proposed Zone (if applicable):	
PUD Name (if applicable):				
Project Scope	Project Name:			
	<input type="checkbox"/> Rearrangement of Property Boundaries: # of existing lots: _____ Total acres: _____			
	<input type="checkbox"/> Overall Development Plan			
	<input type="checkbox"/> Site Plan Review: Building area: _____ sf <input type="radio"/> HARP <input type="radio"/> Development Plan <input type="radio"/> PUD <input type="radio"/> Student Housing			
	<input type="checkbox"/> Special Area Plan			
	<input checked="" type="checkbox"/> Street Name Change: Existing Name: <u>Spaulding Avenue</u> Proposed Name: <u>Hyde Park Avenue</u>			
	<input type="checkbox"/> Subdivision: # of lots: _____ Total acres: _____			
	<input type="checkbox"/> Text Amendment			
	<input type="checkbox"/> Vacation: <input type="radio"/> Street <input type="radio"/> Alley <input type="radio"/> Easement <input type="radio"/> Other: _____			
	<input type="checkbox"/> Other: _____			

(Continue Next Page)

10/11/19

(Continued from previous page)

Project Information	Provide a brief description of the proposed request: (separate narrative as Attachment A also required)		
	To change the name of a portion of Spaulding Avenue to Hyde Park Avenue. The portion of Spaulding Ave. to be renamed		
	is from W. 31st Street south to W. 11th Street.		
	What is the total acreage included in the project?	n/a	
	What is the proposed use of the property?	<input type="checkbox"/> Commercial <input type="checkbox"/> Multi-family <input type="checkbox"/> Residential <input type="checkbox"/> Industrial <input type="checkbox"/> Other	
Attachments	Are there any other pending or recently approved Land Use applications regarding this property? <input type="checkbox"/> Yes <input type="checkbox"/> No		
	If yes, please list:		
	Attachment Checklist The following list of attachments are required to accompany all applications: <input type="checkbox"/> A. Detailed explanation of the request as listed above. Be specific <input type="checkbox"/> B. CD with DWF and DWG (Autocad) file of all plans and drawings & a PDF of all documents submitted. <input type="checkbox"/> C. Pueblo County Assessor's Property Information print out (www.co.pueblo.co.us) <input type="checkbox"/> D. Additional information as required by the P&Z Submittal Requirements Sheet.		
Terms	By signing below, the Property Owner and Applicant are representing that each understands and agrees to the following terms:		
	1. Authorized personnel from the City of Pueblo, are hereby granted the right to enter the subject property for the purposes of reviewing and processing the application, including Certificate of Occupancy Inspections. 2. There are no known hazards or vicious animals present on the subject property. 3. All information contained in this application, is true and accurate to the best of my knowledge. 4. The City of Pueblo is under no obligation to approve the request contained in this application. No promises of approval are conveyed with the acceptance of this application. 5. It is highly recommended that a licensed surveyor complete a property survey before any construction takes place. The property owner is responsible for any construction that takes place within the boundaries of their property. The city may require any construction built outside of the property legal boundaries or within any setbacks (by intent or error), to be removed at the owners' expense.		
Signatures	Property Owner		
	Print Name:	City of Pueblo	
	Signature:		Date:
	Applicant, if different from Property Owner		
Office Use Only	Print Name:		
	Signature:		Date:
Zoning Compliance (Completed by City Staff)			
Application checked for completeness by:	Date:	Fee Paid:	

12/23/2021

This is to inform you that the City Planning and Zoning Commission will hold a public hearing on a request by the **City of Pueblo** for the approval of the following application:

SNC-21-03; Street Name Change for a future portion of Spaulding Ave. located between W 11th St. and W 31st St. The P&Z Commission will hold a public hearing to receive comments on the following proposed names: **Tava Ave/Blvd, Crane Ave/Blvd, Sun Mountain Ave/Blvd, or Ranger Ave/Blvd**

The Planning and Zoning Commission Public Hearing is the Wednesday, January 12th 2022 at 3:30 p.m., by Zoom: Meeting ID: 927 1786 7722, Passcode: 195462, Telephone: 1 346 248 7799. 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.**

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Planning & Community Development
By **Bart Mikitowicz**, Planner
(719) 553-2321

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(719) 553-2321



ATTACHMENT B

CASE NUMBER SNC-21-03

CERTIFICATION

I hereby certify that I did this day cause written notice of the public hearing on the proposed final plat of the property commonly known as Spaulding Avenue to Hyde Park Avenue to be sent to the attached list of owners of the real property lying within three hundred (300) feet of the said property on which the final plat 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.

_____12-28-21_____

(Date)

PUEBLO PLANNING & ZONING COMMISSION

By _____ *KAREN ELGIN* _____

Owner	OwnerStree	OwnerCity	Owr	OwnerZip
WEST GATE ON THE BOULEVARD I	1005 COURT ST	PUEBLO	CO	81003-2871
PUEBLO DEVELOPMENT COMPAN'	10100 SANTA MONICA B	LOS ANGELES	CA	90067-4136
C H H LLC, C/O THOMAS C CONE	102 N CASCADE AVE STE	COLORADO SPRINGS	CO	80903-1409
CENTEL CORPORATION	115 W 2ND ST	PUEBLO	CO	81003-3223
NEIGHBORHOOD HOUSING SERVIC	1241 E ROUTT AVE	PUEBLO	CO	81004-2908
PRATT KATHERINE	1305 LAMBERT AVE	PUEBLO	CO	81003-1158
VILLAS AT PARK WEST II LLC	1603 LBJ FWY STE 800	DALLAS	TX	75234-6061
ROMINES EDWARD SR	1604 E RIVER ST	PUEBLO	CO	81001-4446
MAI QUANG NGOC + DO THOM T	1707 AQUILA DR	PUEBLO	CO	81008-1798
GUTIERREZ ESTHER + DIAZ GINO	2100 E ELLIOT RD BLDG 5	TEMPE	AZ	85284
CENTRAL ORGANIZATION FOR RES	214 E JEFFERSON ST	COLORADO SPRINGS	CO	80907-6910
LUCERO FLORA + ROMERO DELFI	2201 LEWIS AVE	PUEBLO	CO	81003-3807
FARNSWORTH DARRY	2202 LEWIS AVE	PUEBLO	CO	81003-3808
ROMERO DELFIDO S + ROMERO E	2203 LEWIS AVE	PUEBLO	CO	81003-3807
CASIAS DENISE R + LAWRENCE R	2204 LEWIS AVE	PUEBLO	CO	81003-3808
WEIGEL RUTH JEAN + WEIGEL AL	2204 MOLINE AVE	PUEBLO	CO	81003-3810
PINELLE JAMES P + SHIRLEY A + PI	2205 CLIFF LOMBARD ST	PUEBLO	CO	81003-3877
ROMERO FORTINO + SHERRIE L	2205 LEWIS AVE	PUEBLO	CO	81003-3807
HAIGHT DAVID E	2206 MOLINE AVE	PUEBLO	CO	81003-3810
BENAVIDEZ JOE L + CARLOS H + L	2207 LEWIS AVE	PUEBLO	CO	81003-3807
BUENO ROBERT D + BUENO ROBI	2208 LEWIS AVE	PUEBLO	CO	81003-3808
VASCO DONALD E	2208 MOLINE AVE	PUEBLO	CO	81003-3810
BUENO STEVEN D + CHRISTINE R	2210 LEWIS AVE	PUEBLO	CO	81003-3808
GIFFORD GILBERT E + MADELYN M	2211 MOLINE AVE	PUEBLO	CO	81003-3809
PACHECO CYNTHIA MARIE + LERO	2212 MOLINE AVE	PUEBLO	CO	81003-3810
CHAPPEL TAMMY LEE	2215 LEWIS AVE	PUEBLO	CO	81003-3807
DIAZ ANASTACIO	2220 LEWIS AVE	PUEBLO	CO	81003-3808
PUEBLO RANGERS INC	2280 FALLVIEW DR	PUEBLO	CO	81006-1724
ANDERSON JASON MICHAEL + AN	2307 SUNBURST CT	PUEBLO	CO	81003-3848
BARNES JAMES ALLEN	2308 CANYON RIVER CT	PUEBLO	CO	81003-3847
LAWSON MARY E	2310 CANYON RIVER CT	PUEBLO	CO	81003
TREFETHEN ROBERT + TREFETHEN	2311 SUNBURST CT	PUEBLO	CO	81003-3848
EVANS JAMES W + JACQUELINE M	2312 SUNBURST CT	PUEBLO	CO	81003-3848
MORGAN CANDACE JUNE	2327 CHEYENNE AVE	PUEBLO	CO	81003-1430
C C A BUILDING CORP + DOLORES	2500 W 18TH ST	PUEBLO	CO	81003-1152
CRAIN WILLIAM J + AKA WILLIAM	2704 W 11TH ST	PUEBLO	CO	81003-1178
EDWARDS EUGENE T SR + EDWAF	2900 W 11TH ST	PUEBLO	CO	81003-3909
WYNN HEIDI / HICKS SAMUEL	3002 22ND ST W	PUEBLO	CO	81003-3860
WILLIAMS MARK A + ALEXIS P	3008 W 22ND ST	PUEBLO	CO	81003-3860
HUBBARD TAYLOR	3009 RIDGEVIEW PL	PUEBLO	CO	81003-3846
STEED CHITRA KEMALE	3010 W 22ND ST	PUEBLO	CO	81003-3860
BARRERA ARTUTO	3012 RIDGEVIEW PL	PUEBLO	CO	81003-3837
HOLMAN VERA P + CORDOVA VIC	3014 RIDGEVIEW PL	PUEBLO	CO	81003-3837
BUENO FRANCISCO A CAZARES	3016 RIDGEVIEW PL	PUEBLO	CO	81003-3837
MAES GARCIA ANGELINA	3021 SHERRELWOOD DR	CANON CITY	CO	81212-9383
MEAD ANDREW JOE CANAN	3102 MC CORMICK AVE	PUEBLO	CO	81001-4247
SCHOOL DIST NO 60	315 W 11TH ST	PUEBLO	CO	81003-2804

KITTINGER GLENN H + BETTY J TR	3200 W 29TH ST	PUEBLO	CO	81003-1041
MILLIGAN MICHAEL + YANCEY	371 W SAND TRAP LN	PUEBLO WEST	CO	81007-2894
COLORADO RADIO MARKETING LL	3824 CEDAR SPRINGS RD	DALLAS	TX	75219-4136
K R S LIVING TRUST DTD 4/24/20	3849 CARLILE AVE	PUEBLO	CO	81005-1113
DOWN BY THE BAY, LLC	4 MIRADA CT	PUEBLO	CO	81005-2981
ACQUE PROFONDE, LLC	4005 VALLEY DR	PUEBLO	CO	81008-1706
HAYES ELAINE R TR + RUBERSON	4016 RIDGE DR	PUEBLO	CO	81008-1720
BATEMAN TERRIE L	4150 COUNTY LN 17	ORDWAY	CO	81063-9720
TORREZ MACARIO	4319 S DILLON ST	AURORA	CO	80015-1347
ROCKY MOUNTAIN BUILDING + LO	4423 VALLI VISTA RD	COLORADO SPRINGS	CO	80915-1037
SANDERS FLOYD C	4426 PINE HILL DR	LOVELAND	CO	80537-2635
SMART FRANKIE SUE + GEORGE G	505 COUNTY RD 441	LA VETA	CO	81055-9651
VENTURA ROBYN / VENTURA AN	6729 SEDGEROCK LN	COLORADO SPRINGS	CO	80927-9616
ESPINOZA DANIEL L + LAURA J	7 TAMAR CT	PUEBLO	CO	81005-3510
BLACK + WHITE MOUTON CORPOF	85 S KEWANNA DR	PUEBLO WEST	CO	81007-4060
MCKINNEY ROSE MARY	909 W PITKIN AVE	PUEBLO	CO	81004-1142
UNITED STATES OF AMERICA C/O	BLDG 20 DENVER FED CE	DENVER	CO	80225
W L ENTERPRISES LTD	PO BOX 11677	PUEBLO	CO	81001-0677
W L ENTERPRISES LTD	PO BOX 11677	PUEBLO	CO	81001-0677
CITY OF PUEBLO A MUNICIPAL CO	PO BOX 1427	PUEBLO	CO	81002-1427
HANNA SHARON ANN + HANNA F	PO BOX 1790	BERTHOUD	CO	80513-1790
CLAYTON STREET PROPERTIES LLC	PO BOX 2868	CORRALES	NM	87048-2868
BOARD OF WATER WORKS OF PUE	PO BOX 400	PUEBLO	CO	81002-0400
SMALL GILBERT	PO BOX 65	WESTMINSTER	CO	80036-0065



**BACKGROUND PAPER FOR PROPOSED
ORDINANCE**

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council

CC: Nicholas A. Gradisar, Mayor

VIA: Marissa Stoller, City Clerk

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

SUBJECT: AN ORDINANCE APPROVING AND ADOPTING THE 2022 PUEBLO REGIONAL COMPREHENSIVE PLAN FOR THE PHYSICAL DEVELOPMENT OF PUEBLO, A COLORADO MUNICIPAL CORPORATION

SUMMARY:

This Ordinance approves the 2022 Pueblo Regional Comprehensive Plan. Colorado Revised Statutes authorize municipalities and counties to prepare comprehensive plans as long-range planning guides. The comprehensive plan provides a framework for zoning, subdivision, annexation and other planning and land-use policies. The Plan promotes the community's vision, goals, objectives, and policies, establishes a process for orderly growth and development, and addresses both current and long-term needs.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

Counties and municipalities generally update their Comprehensive Plans every 10 to 20 years to reflect the changing dynamics of a community and trends in development. Comprehensive Plan elements include recreation and tourism (required by Colorado Statutes), transportation, land use, economic development, housing, water supply and conservation, sustainability, and urban design.

The current Pueblo's Comprehensive Plan (regional comprehensive plan including all of Pueblo County) was adopted by City Council in June of 2002. The plan has been amended several times over the 20-year period. The City of Pueblo has historically partnered with the Pueblo Area Council of Governments (PACOG) to act as the lead agency in developing the Comprehensive Plan that encompasses unincorporated Pueblo County, Pueblo's agricultural communities, municipalities, and Metropolitan Districts. The Pueblo County Planning Commission and the City of Pueblo Planning

and Zoning Commission jointly serve as the Land Use Planning Committee (Committee) to PACOG. The Pueblo Regional Comprehensive Plan is adopted separately by the Pueblo City Council and the Pueblo County Planning Commission. The goal is to maintain a common regional plan that can be utilized by Pueblo County and the City of Pueblo in reviewing future land use activities and proposals under a mutually agreed upon regional comprehensive plan.

Since 2002, the dynamics of Pueblo County have evolved. Pueblo's economic growth rate was the fourth highest among Colorado's metro areas and is the result of a diversified economy and a growing number of individuals moving to Pueblo due to relative affordability and the temperate climate. Because of this, PACOG has embarked on an update to the Comprehensive Plan. Pueblo County received a \$200,000 Department of Local Affairs EIAF Tier 1 grant to contract with a consulting team to create an updated Comprehensive Plan. The grant was matched with \$250,000 provided by PACOG members. Clarion Associates were hired through a competitive bid process and began working with the Pueblo Committee to draft the new Comprehensive Plan in November 2020.

The Pueblo Regional Comprehensive Plan elements include the following:

- Regional Goals and Policies-establishes goals and policies to:
 - Build a broader understanding of the region's shared vision and values,
 - Foster regional collaboration on a range of initiatives to help achieve that vision over the next 10-20 years; and,
 - Inform day to day decision making in all areas of Pueblo County
- Regional Development Plan-establishes a framework for accommodating forecast residents and jobs. The plan provides guidance to help the region consider other opportunities as they arise and address the many factors that influence where and how the region will grow in the future.
 - Regional Growth Priorities, Infrastructure and Services
 - Evaluation Criteria for Major Projects
 - Future Land Use Plan-guides future zoning actions within the City and County, and,
 - Area-Specific Goals and Policies
- Implementation and Monitoring-highlights the major initiatives that will support the implementation of the Regional Comprehensive Plan over the next three years and is intended to be used as a tool to help inform the creation of:
 - Detailed work programs, capital improvement plans, and budgets
- Appendices
 - A. State of the County-analysis of infrastructure, economic base, neighborhoods and communities, key policy choices.
 - B. Fiscal Impact Findings-fiscal monitoring, City of Pueblo, Pueblo County, and Pueblo West Metro District models.
 - C. Scenario Outreach Materials
 - D. Tools and Best Practices to Support Agriculture-agriculture incentive programs, transfer, and purchase of development rights programs.
 - E. Community Engagement Summary-growth scenarios and key policy choices.
 - F. Inventory of Cultural Resources-inventory of designated historic districts and properties within Pueblo.

FINANCIAL IMPLICATIONS:

There are no financial implications for the City at this time related to the adoption of the Regional Comprehensive Plan. It is anticipated that the Plan will serve as a guiding document that will be utilized to impact the future fiscal decisions of the City.

BOARD/COMMISSION RECOMMENDATION:

The Planning & Zoning Commission, at their January 26, 2022 special meeting, voted 7-0 to recommend adoption by City Council of the 2022 Pueblo Regional Comprehensive Plan including the proposed change by Pueblo Plex to incorporate the Pueblo Plex master plan into the final Regional Comprehensive Plan.

STAKEHOLDER PROCESS:

The process to complete the new regional comprehensive plan was initiated in November of 2020 and included an extensive public participation process that included Focus Groups and Stakeholder interviews; an online survey; departmental and service provider working group meetings, joint elected and appointed officials' updates; virtual community meetings; regional thinktank meetings; In-person open houses; online input opportunities and youth workshops.

ALTERNATIVES:

There are three alternatives City Council may consider related to the proposed adoption of the 2022 Pueblo Regional Comprehensive Plan:

Option 1 - Leave the current 20-year-old plan as is without adopting a new regional comprehensive plan. This option would result in continuing to utilize the 2002 Pueblo Regional Comprehensive Plan for direction on future land use decisions.

Option 2 - Amend the Ordinance to modify the proposed contents included within the proposed Pueblo Regional Comprehensive Plan.

Option 3 - Upon request of City Council, the Ordinance could be returned to the Planning and Zoning Commission for consideration of proposed modifications.

RECOMMENDATIONS:

Approval of the Ordinance.

Attachments:

Proposed Ordinance

Minutes of the Planning and Zoning Commission January 26, 2022 Special Meeting

Planning and Zoning Commission – Notice of Public Hearing

ORDINANCE NO. _____

AN ORDINANCE APPROVING AND ADOPTING THE 2022 PUEBLO REGIONAL COMPREHENSIVE PLAN FOR THE PHYSICAL DEVELOPMENT OF PUEBLO, A COLORADO MUNICIPAL CORPORATION

WHEREAS, the City Planning and Zoning Commission is authorized to prepare and submit to the City Council for its approval a 2022 Pueblo Regional Comprehensive Plan for the physical development of the City; and,

WHEREAS, the City Planning and Zoning Commission, after a public hearing thereon conducted on February 26, 2022 after due publication, has approved said plan and submitted same to City Council for its approval; NOW, THEREFORE;

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

SECTION 1.

The 2022 Pueblo Regional Comprehensive Plan, heretofore approved by the City Planning and Zoning Commission and submitted to the City Council for approval, a copy of which is attached hereto, is hereby approved and adopted as the Master Plan for the Physical Development of the City.

SECTION 2.

The 2022 Pueblo Regional Comprehensive Plan for the physical development of Pueblo, a Colorado Municipal Corporation is hereby adopted.

SECTION 3

The officers of the City are hereby authorized to take all other actions necessary or appropriate, on behalf of the City, to implement the provisions of this Ordinance.

SECTION 4

This Ordinance shall become effective upon final approval and passage.

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

- Approved on _____.
- Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

President of City Council

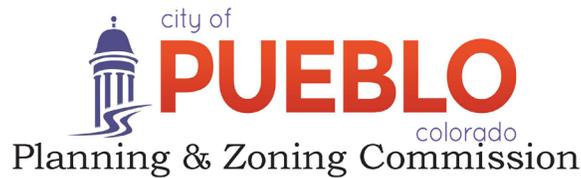
ATTEST

City Clerk

Mike Castellucci
Chair

Patrick Avalos
Vice Chair

Sarah Martinez
City Council Representative



Christopher Pasternak

Alexandra Aznar

Elizabeth Bailey

Cheryl Spinuzzi

MINUTES OF REGULAR MEETING

City of Pueblo, Colorado

Wednesday, January 26, 2022 – 3:30 p.m.

City Council Chambers, 1 City Hall Place

Join Zoom Meeting online:

<https://pueblo.zoom.us/j/7907749677?pwd=ZDF2d3p4NmRSZlVCZ0J4akFCSjNFUT09>

Join Zoom Meeting by phone:

+1 669 900 6833 US (San Jose)

+1 346 248 7799 US (Houston)

Online and phone Meeting ID and Password:

Meeting ID: 790 774 9677

Passcode: 25436

MEETING CALLED TO ORDER

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

The meeting was held at City Council Chambers, 1 City Hall Place, commissioners, applicants, and the public participated in person and via Zoom.

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

Commissioners Absent: None.

Staff Members Present: Dan Kogovsek, City Attorney; Scott Hobson, Acting Director for Department of Planning and Community Development; Beritt Odom, Principal Planner; Wade Broadhead, Planner; Danielle Baxter, Planner; Melanie Turner, Interim Transportation Engineer and Joe Martellaro, Associate Engineer II.

APPROVAL OF AGENDA

A Motion was made by Bailey to approve the agenda, Seconded by Spinuzzi.

Motion passed 7-0.

PUBLIC MEETING AND ACTION

1. **CP-22-01: Pueblo Regional Comprehensive Plan, January 2022, review, and recommendation.** Staff Report by Beritt Odom

Background:

Colorado Revised Statutes authorize municipalities and counties to prepare comprehensive plans as long-range planning guides. The comprehensive plan provides a framework for zoning, subdivision, annexation and other planning and land-use policies. The plan promotes the community's vision, goals, objectives, and policies, establishes a process for orderly growth and development, addresses both current and long-term needs. Comprehensive Plan elements include recreation and tourism (required by Colorado Statutes), transportation, land use, economic development, housing, water supply and conservation, sustainability, and urban design. Counties and municipalities generally update their Comprehensive Plans every 10 to 20 years to reflect the changing dynamics of a community and trends in development.

The current *Pueblo's Comprehensive Plan* (regional comprehensive plan including all of Pueblo County) was adopted by City Council in June of 2002 and has served as a guide for land use planning within the County for 20 years. The City of Pueblo has historically partnered with the Pueblo Area Council of Governments (PACOG) to act as the lead agency in developing the Comprehensive Plan that encompasses unincorporated Pueblo County, Pueblo's agricultural communities, municipalities, and Metropolitan Districts. The Pueblo County Planning Commission and the City of Pueblo Planning and Zoning Commission jointly serve as the Land Use Planning Committee ("Committee") to PACOG. The Committee studies and reviews, as required by law or as directed and assigned by PACOG, the City or County. The Pueblo Regional Comprehensive Plan is adopted separately by the Pueblo City Council and the Pueblo County Planning Commission. The goal is to maintain a common regional plan that can be utilized by Pueblo County and the City of Pueblo in reviewing future land use activities and proposals under a mutually agreed upon regional comprehensive plan.

Since 2002, the dynamics of Pueblo County have evolved. Pueblo's economic growth rate was the fourth highest among Colorado's metro areas. This is the result of a diversified economy and a growing number of individuals moving to Pueblo due to relative affordability and the temperate climate. Because of this, PACOG has embarked on an update to the Comprehensive Plan. Pueblo County received a \$200,000 Department of Local Affairs EIAF Tier 1 grant to contract with a consulting team to create an updated Comprehensive Plan. The grant was matched with \$250,000 provided by PACOG members. Clarion Associates were hired through a competitive bid process and began working with the Pueblo planning teams to draft the new Comprehensive Plan in November 2020.

Pueblo Regional Comprehensive Plan, January 2022 Plan Elements:

- Regional Goals and Policies-establishes goals and policies to:
 - Build a broader understanding of the region's shared vision and values.
 - Foster regional collaboration on a range of initiatives to help achieve that vision over the next 10-20 years; and
 - Inform day to day decision making in all areas of Pueblo County
- Regional Development Plan-establishes a framework for accommodating forecast residents and job and provides guidance to help the region consider other opportunities as they arise. It addresses the many factors that influence where and how the region will grow in the future.
 - Regional Growth Priorities,
 - Infrastructure and Services,
 - Evaluation Criteria for Major Projects,

- Future Land Use Plan-guides future zoning actions within the City and County, and
- Area-Specific Goals and Policies
- Implementation and Monitoring-highlights the major initiatives that will support the implementation of the Regional Comprehensive Plan over the next three years. Intended to be used as a tool to help inform the creation of:
 - Detailed work programs,
 - Capital improvement plans, and
 - Budgets
- Appendices
 - A. State of the County-analysis of infrastructure, economic base, neighborhoods and communities, key policy choices.
 - B. Fiscal Impact Findings-fiscal monitoring, City of Pueblo, Pueblo County, and Pueblo West Metro District models.
 - C. Scenario Outreach Materials
 - D. Tools and Best Practices to Support Agriculture-agriculture incentive programs, transfer, and purchase of development rights programs.
 - E. Community Engagement Summary-growth scenarios and key policy choices
 - F. Inventory of Cultural Resources-inventory of designated historic districts and properties within Pueblo.

RECOMMENDED ACTION:

Staff recommends the Planning and Zoning Commission forward a recommendation to City Council for approval of the Pueblo Regional Comprehensive Plan, January 2022.

Clarion Associates:

Darcie White, Director Clarion Associates, provided an overview of the draft Comprehensive Plan. White stated that the Comprehensive Plan is a long-term plan, 10-20 years, that guides development and collaboration within Pueblo County. Developing the plan took 14 months to complete and was based on input from the community, elected officials, departmental and service provider work groups, in-person open houses, online input, and youth workshops. White stated that over 900 people participated in the online surveys.

White provided an overview of the plan’s guiding principles, which include:

- Diverse lifestyles, attainable housing options
- Deepen our agricultural roots
- Help every community thrive
- Celebrate Pueblo
- A future ready economy and workforce
- Grow smarter
- Strengthen local and regional connections

All are important to strengthen the region and establish the goals and policies of the region. The plan also includes measures of success based on the guiding principles.

The land use portion is called the Regional Development Plan and will guide future land use decisions. The Regional Development Plan includes growth scenarios, that were presented to the community and various working groups. All groups preferred Growth Scenario C, Regional Centers, which focuses on prioritizing growth where infrastructure already exists; revitalization of

the downtown core area and neighborhoods; plans for redevelopment of vacant or declining commercial sites; support for established/emerging employment areas; protection of prime agricultural lands; more flexible land use categories; and slower growth/diversification in Pueblo West.

White provided an overview of the infrastructure and services by area, and the fiscal impact findings included in the plan. The plan includes evaluation criteria for major projects including criteria for each region to promote consistency with the regional plan and minimize potentially negative fiscal impacts on the City and County. The intent is for an Intergovernmental Agreement to be established to help solidify the partnership between the City and County on the evaluation criteria. Building on lessons learned from the 2002 plan and setting up the right tools to respond to future requests for development.

The Future Land Use Plan has three primary categories, neighborhoods, commercial and mixed-use areas, employment areas. The land use categories reflect the working groups interest in more flexible land use planning, providing primary and supporting land uses, density ranges to reflect built patterns/desired outcomes, and distinctions in the scale, character, and mixture of uses. The Future Land Use Plan also provides area-specific goals and policies for the City of Pueblo, Pueblo West, Colorado City, St. Charles Mesa, Avondale, Rye, Boone, and Beulah Valley.

Plan goals and policies for the City include:

- Re-establish Downtown as a regional hub for living, working, and recreating.
- Promote reinvestment in the City's historic neighborhoods.
- Adapt the City's commercial centers and corridors to meet the changing needs of the community.
- Prioritize the development of vacant land within the city limits over the expansion of the community.
- Provide opportunities for the continued expansion and diversification of the region's employment base.

The final section of the plan is the Implementation Plan. The purpose of this section is to guide in the implementation of the plan over the next one to three years. Capital Improvement projects and work programs are intended to rely on the plan for guidance. This section will guide future development code regulations, including subdivision and zoning codes.

Commissioner Castellucci asked about the formation of the Title 32 Metropolitan Districts and if they would be a special type of metropolitan district? Scott Hobson, Acting Director of Planning and Community Development stated that a Title 32 District is a metropolitan district and is authorized under Title 32. If new areas are proposed to be developed outside of the city, the plan criteria would be used to evaluate the development proposal and the urban services proposed by the Title 32 District. Castellucci confirmed that the plan would be used to analyze whether the proposed development is appropriate based on criteria.

Commissioner Spinuzzi asked if Pueblo County would be adopting the same plan. Hobson stated that the City and County would be adopting the plan concurrently. The City and County would then coordinate on future amendments to the plan to keep the plan consistent between the two entities.

Commissioner Martinez asked about the major differences between the 2002 and 2022 Comprehensive Plan? Darcie White stated the primary differences are the regional goals and policies are much more extensive, focusing on land use and other considerations including health. Hobson concurred.

Scott Hobson stated that Pueblo County received a request from the Pueblo Chemical Depot to incorporate their master plan into the Regional Comprehensive Plan. The final Comprehensive Plan, adopted by the City and County, will include the Pueblo Plex Master Plan information.

HEARING:

No one spoke in support or opposition for the application.

MOTION: Motion to recommend approval of CP-22-02 to approve the Pueblo Regional Comprehensive Plan including the Pueblo Plex master planning changes was made by Bailey, second by Spinuzzi.

MOTION PASSED 7-0

**DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT
CITY OF PUEBLO**

**Submitted January 6, 2022
Published January 11, 2022**

NOTICE OF PUBLIC HEARING

TO WHOM IT MAY CONCERN:

Take notice that at 3:30 P.M., on the 26th day of January, 2022 in the **City Council Chambers**, 1 City Hall Place or remotely via ZOOM: <https://pueblo.zoom.us/j/7907749677?pwd=ZDF2d3p4NmRSZlVCZ0J4akFCSjN> FUT09 (Meeting ID, 790 774-9677, Passcode: 25436, Telephone: 346-248-7799), the Planning and Zoning Commission of Pueblo will hold a public hearing for the following:

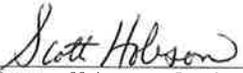
CP-22-01: An Ordinance Approving and Adopting the Pueblo Regional Comprehensive Plan.

The proposed Pueblo Regional Comprehensive Plan provides a shared vision and goals for development within the Pueblo Region. The Comprehensive Plan serves as an advisory document to guide land use decisions within the City of Pueblo and all jurisdictions within Pueblo County.

A draft of the proposed Pueblo Regional Comprehensive Plan is available online, www.puebloregionalplan.com.

Any person may appear before the Planning and Zoning Commission at the time and place stated above to be heard on the proposed Pueblo Regional Comprehensive Plan. Individuals who require special arrangements to participate are encouraged to contact the Planning Department at least 72 hours in advance.

After the public hearing and recommendation by the Planning and Zoning Commission, the ordinance adopting the Pueblo Regional Comprehensive Plan will be considered by the City Council at a public hearing. Notice of the public hearing before the City Council will be published in the Pueblo Chieftain at least ten (10) days prior to the hearing. Any interested person may appear and be heard at such public hearing. Contact the Department of Planning and Community Development for the time and date of such public hearing.


Scott Hobson, Land Use
Administrative Official
(719) 553-2259



**BACKGROUND PAPER FOR PROPOSED
ORDINANCE**

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council
CC: Nicholas A. Gradisar, Mayor
VIA: Marisa Stoller, City Clerk
FROM: Scott Hobson, Acting Director of Planning and Community Development
SUBJECT: AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN ENGAGEMENT LETTER WITH SETER & VANDER WALL, P.C. TO ADVISE THE CITY OF PUEBLO REGARDING PROPOSED METROPOLITAN DISTRICT SERVICE PLANS AND RELATED LAND USE MATTERS

SUMMARY:

On January 13, 2022, the City received an application to approve a service plan for the proposed Andiamo Metropolitan District. The proposed Andiamo Metropolitan District, containing approximately 95 acres, is located south of Dillon Drive, east of Mesa View Drive, and north of Wills Boulevard. This Resolution approves an engagement letter with Seter & Vander Wall, P.C. to assist the City in the review of proposed Metropolitan District Service Plans.

PREVIOUS COUNCIL ACTION:

With City Council's approval, Spencer Fane LLP was previously hired by the City in 2018 to assist in reviewing service plans for the North Vista Highlands, Pastora Ranch, Pikes Peak Park, and Villa Bella Metropolitan Districts. However, Matt Dalton, the partner from Spencer Fane LLP who previously advised the City on metropolitan districts and related land use matters has recently retired from the practice of law and so a different outside legal counsel is being engaged to represent the City.

BACKGROUND:

The City Law Department has authorized the assistance of Seter & Vander Wall, P.C. to assist the City in the review of the proposed metropolitan districts. The hourly rate for Seter & Vander Wall, P.C. is \$410.00 per hour. The costs incurred by the City for the review of the service plans will be required to be paid by the applicant prior to any final action of City Council being provided to the Pueblo District Court.

FINANCIAL IMPLICATIONS:

There are no financial implications for the City. All fees charged by Seter & Vander Wall will be paid by the developers requesting City approval.

BOARD/COMMISSION RECOMMENDATION:

Not applicable.

STAKEHOLDER PROCESS:

Not applicable.

ALTERNATIVES:

If City Council does not approve this Ordinance, Seter & Vander Wall, P.C. will not be retained.

RECOMMENDATION:

Approval of the Ordinance.

Attachments:

Proposed Ordinance.

Engagement Letter from Seter & Vander Wall, P.C. February 4, 2022

ORDINANCE NO. _____

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN ENGAGEMENT LETTER WITH SETER & VANDER WALL, P.C. TO ADVISE THE CITY OF PUEBLO REGARDING PROPOSED METROPOLITAN DISTRICT SERVICE PLANS AND RELATED LAND USE MATTERS

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

SECTION 1.

The Engagement Letter pertaining to the review of Metropolitan District Service Plans and related land use matters between the City of Pueblo, a Colorado municipal corporation and Seter & Vander Wall, P.C., dated February 4, 2022, a copy of which is attached hereto including all associated documents, having been approved as to form by the City Attorney, is hereby approved. The Mayor is authorized to execute and deliver said Engagement Letter in the name of the City and the City Clerk is authorized to affix the seal of the City thereto and attest same.

SECTION 2.

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

SECTION 3.

This Ordinance shall become effective immediately upon final action by the Mayor and City Council.

Action by City Council:

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

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

February 4, 2022

Sent via e-mail:

City of Pueblo
1 City Hall Place, 3d Floor
Pueblo, CO 81003

c/o Dan Kogovsek, City Attorney dkogovsek@pueblo.us

Re: City of Pueblo, Colorado
Engagement for Legal Services

Dear Mr. Kogovsek:

Thank you for retaining Seter & Vander Wall, P.C. (the “**Firm**”) to provide legal services to the City of Pueblo (the “**City**”) acting by and through its Law Department and Planning Department. This letter is to summarize and confirm the terms and conditions of the Firm’s representation of the City.

1. Scope of Representation and Personnel

Seter & Vander Wall, PC’s engagement is limited to matter on which you or the planning department request assistance or representation. Representation and projects will generally involve the review, comment and negotiation of special district or other government entity formations and operation, including the review and preparation of service plans and intergovernmental agreements. Assistance may also be required regarding development approvals and related matters.

Kim Seter will be the attorney primarily responsible for your matters. In addition, some services may be provided by attorney Conor Kruger and paralegals Michele “Mitch” Barrasso and Natalie Fleming. Other attorneys and paralegals may be assigned to work on your matters as appropriate for the service being provided and expertise required.

2. Fees and Billing

The Firm provides legal services on an hourly basis, billed in six-minute increments. The current hourly rate for Mr. Seter is \$410 per hour. The current hourly rates for Mr. Kruger, Ms. Barrasso and Ms. Fleming are \$275, \$160 and \$140 respectively. The rates of other personnel in our office vary from \$140.00 to \$490.00 per hour. All rates are subject to change January 1 of each year.

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In addition to our time, we may incur costs on your behalf. Costs include photocopying expenses, delivery charges, filing and recording fees, Westlaw research charges and other expenses incurred when we advance materials or funds on your behalf. Costs are billed separately from legal fees and appear on your monthly invoice. Costs are to be paid on the same terms as legal fees. We do not charge for secretarial or other staff support except for paralegals and we do not add a surcharge or mark-up to any costs for any reason.

We will provide you with a detailed invoice for services and costs incurred. Invoices are mailed monthly and payment is due 45 days from the date of the invoice. Past due invoices may be subject to a monthly late charge of 1.5% of the unpaid balance.

3. Communication

The Firm primarily communicates with its clients using e-mail; the sending of documents and correspondence via the United States Post Office, UPS, FedEx, courier or other similar delivery service; and telephone. When sending e-mail, we endeavor to ensure that only the intended recipient(s) receives the e-mail. However, our e-mail communication is not encrypted. Communication via e-mail is not completely secure and e-mails may pass through servers controlled by third-parties and could be accessed by unauthorized third-parties.

Although a common form of social communication, the Firm does not generally communicate with clients about client matters via text message, iMessage, or other form of instant messaging. Communications made via text, iMessage or instant messaging may not be received and risk not being attended to in a timely manner. Accordingly, communications with the Firm should be made via one of the other identified communication methods.

Generally, communication between the client and the Firm are confidential and subject to the attorney-client privilege. This privilege is for the benefit of the client and if confidential communications are shared with third-parties by the client, that privilege may be lost.

4. Document Retention

In the course of our representation, we will maintain a file of documents produced and received in the ordinary course of practice. Not all papers and electronic data are maintained in the ordinary course of practice. For example, multiple copies or drafts of the same document, or communications containing duplicative correspondence or concerning non-substantive communications may not be retained. We generally maintain our files in electronic format, and except for certain documents required to be maintained in hard copy, will convert paper copies to electronic format and dispose of the paper copy.

It is the general policy of the Firm to retain your files in paper or electronic format for at least ten (10) years from the date our representation is complete, either by completion or resolution of the matter for which we were engaged or termination of the attorney-client relationship. In certain circumstances, such as where there is pending or threatened litigation related to the matter which is known to the Firm, we may be required to maintain your files for a longer period. Following expiration of the ten-year retention period, your file may be destroyed without notice unless you have requested the original file to be delivered to you.

City of Pueblo, CO
C/o Dan Kogovsek, City Attorney
Engagement for Legal Services
February 4, 2022

Notwithstanding the foregoing policy, if the Firm is designated as a public records custodian for the City pursuant to the Colorado Open Records Act, Part 2 of Title 24, C.R.S., or is otherwise in possession of "public records" of the City, the Firm will retain and destroy those files in accordance with any approved document retention and destruction policy of the City, the Colorado State Archives or similar regulatory body.

5. Conflicts of Interest

We have performed an internal review for potential conflicts of interest based on information provided to us. At this time, we do not have any conflicts of interest with any current or former clients that would preclude our representation of the City. Should a conflict of interest arise, we will advise you as soon as practicable, and if the conflict cannot be resolved or waived, the Firm may be required to withdraw from representation of the City.

6. Workers Without Authorization

As a public entity you are required to obtain certifications from us concerning the employment of workers without authorization pursuant to Article 17.5 of Title 8 of the Colorado Revised Statutes. This certification is attached as **Exhibit A** and incorporated herein.

7. Termination

Either of us is free to terminate this agreement at any time for any reason. However, it is important to both of us that any termination is in writing to allow for a clear allocation of responsibilities. Termination of legal services will not affect the City's responsibility for payment of legal services rendered and costs incurred before termination and incurred in connection with an orderly transition of legal services. Our efforts on your behalf may cease and we may withdraw from further representation at any time if an invoice is not timely paid.

Please countersign this letter in the space provided if you agree to these terms and return a copy to our office.

We look forward to working with you.

Sincerely,

SETER & VANDER WALL, P.C.



Kim J. Seter

KJS:kmg
Enclosure

City of Pueblo, CO
C/o Dan Kogovsek, City Attorney
Engagement for Legal Services
February 4, 2022

I have reviewed this proposal and agree to the engagement of Seter & Vander Wall, P.C. pursuant to the terms of representation described in this letter.

City of Pueblo, Colorado

Print Name: _____

Title: _____

Date: _____

EXHIBIT A

WORKER WITHOUT AUTHORIZATION PUBLIC CONTRACT FOR SERVICES

Pursuant to §§ 8-17.5-101 to -103, C.R.S.

1. Seter & Vander Wall, P.C. (the “**Contractor**”) acknowledges that, prior to executing the Contract, Contractor has certified that it does not knowingly employ or contract with a worker without authorization to perform work under the Contract and that the Contractor has participated in the E-Verify Program (formerly known as the Basic Pilot Program¹) (the “E-Verify Program”) or the Colorado Department of Labor and Employment (the “Department”) program established by § 8-17.5-102(5)(c), C.R.S. (the “Department Program”) in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Contract.

2. Contractor shall not:

(a) Knowingly employ or contract with a worker without authorization to perform work under the Contract; or

(b) Enter into a contract with a subcontractor who fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with a worker without authorization to perform work under the Contract.

3. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Contract through participation in the E-Verify Program or the Department Program.

(a) In the event the Contractor uses the Department Program for the employment verification described herein, the Contractor shall comply with the requirements mandated by § 8-17.5-102(5)(c), C.R.S. including:

- i. The Contractor shall comply with the provisions of § 8-17.5-102(5)(c), C.R.S.; and
- ii. Contractor shall notify the Client of its determination to participate in the Department Program, and
- iii. The Contractor must, within twenty days after hiring an employee who is newly hired to perform work under the Contract, affirm that

¹ “Basic Pilot Program” is described in § 8-17.5-101(1), C.R.S., as amended, and further defined as the Basic Pilot Employment Verification Program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security.

the Contractor has examined the legal work status of the employee, retained file copies of the documents required by 8 U.S.C. § 1324a and not altered or falsified the identification documents for the employee, and the Contractor must provide a written, notarized copy of the affirmation of compliance with § 8-17.5-102(5)(c), C.R.S. to the Client.

- iv. The Contractor shall indemnify and hold harmless the Client, its directors, officials, agents and employees, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, expenses (including attorney's fees) and liabilities of, by or with respect to third parties, arising from the Contractor's failure to comply with the provisions of the Department Program and §§ 8-17.5-102(5)(c), C.R.S., arising under this Addendum or in any way related to performance hereof. The obligations of this indemnification shall survive the termination or expiration of this Addendum and the Contract.

4. Contractor is prohibited from using E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the Contract is in effect.

5. If the Contractor obtains actual knowledge that a subcontractor performing work under the Contract knowingly employs or contracts with a worker without authorization, the Contractor shall:

(a) Notify the subcontractor and the Client within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with a worker without authorization; and

(b) Terminate the subcontract with the subcontractor if within three days of receiving the notice the subcontractor does not stop employing or contracting with the worker without authorization; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization.

6. Contractor shall comply with any reasonable request by the Department made in the course of an investigation that the Department is undertaking, pursuant to the law.

7. If the Contractor violates any of the provisions under this Addendum, the Client may terminate the Contract for breach of contract. The Contractor shall be liable for actual and consequential damages to the Client.



**Background Paper for Proposed
ORDINANCE**

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council
CC: Mayor Nicholas A. Gradisar
VIA: Marisa Stoller, City Clerk
FROM: Chris Noeller, Chief of Police
SUBJECT: AN ORDINANCE AMENDING THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF PUEBLO AND THE INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 537 RELATING TO TAKE-HOME VEHICLES

SUMMARY:

This ordinance approves an Amendment to the Collective Bargaining Agreement between the City of Pueblo and the International Brotherhood of Police Officers Local 537 relating to take-home vehicles.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

Studies conducted by the International Association of Chiefs of Police, the Fraternal Order of Police, and the International City/County Management Association indicate lower maintenance and operating costs when take-home vehicle programs are implemented in law enforcement agencies. Officers take better care of vehicles assigned personally to them because they have a sense of "ownership" of the vehicle and tend to have fewer accidents. Other benefits include more police vehicles being present in neighborhoods, which makes residents feel safer and reduces crime and enables quicker response and better preparedness to emergency or critical situations.

FINANCIAL IMPLICATIONS:

Patrol vehicles will be assigned on a 2-1 basis, with 4 unassigned extra vehicles. Officers who live within a 15-mile radius may be assigned a take-home vehicle. Additional costs incurred may be attributed to a maximum of 30 miles a day additional use and fuel consumption of the vehicle. The potential benefits and potential savings in cost can be attributed to the upkeep and care officers take in their assigned vehicles.

BOARD/COMMISSION RECOMMENDATION:

Not Applicable.

STAKEHOLDER PROCESS:

The Pueblo Police Department supports the amendment and the assignment of take-home vehicles to its officers.

ALTERNATIVES:

Decline this amendment.

RECOMMENDATION:

Approval of the Ordinance.

Attachments:

Amendment to Collective Bargaining Agreement

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF PUEBLO AND THE INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 537 RELATING TO TAKE-HOME VEHICLES

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The Amendment to the Collective Bargaining Agreement between the City of Pueblo and the International Brotherhood of Police Officers Local 537, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved and pursuant to the requirements of Section 8-14(l) of the Charter of the City of Pueblo, Colorado, is enacted as an Ordinance.

SECTION 2.

The Mayor is authorized to execute the Amendment to the Collective Bargaining Agreement in the name of the City and the City Clerk is directed to affix the seal of the City thereto and attest same.

SECTION 2.

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

SECTION 3.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

- Approved on _____.
- Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

President of City Council

ATTEST

City Clerk

AMENDMENT TO COLLECTIVE BARGAINING AGREEMENT

THIS AMENDMENT TO COLLECTIVE BARGAINING AGREEMENT (“Amendment”) is entered into this ___ day of _____, 2022 by and between the International Brotherhood of Police Officers Local 537 (“Union”) and Pueblo, a municipal corporation (“City”).

WHEREAS, City and Union are parties to a collective bargaining agreement effective January 1, 2022 through December 31, 2022 (herein “Labor Agreement”);

WHEREAS, Section 35.6 of the Labor Agreement relating to take-home vehicles is too restrictive to allow for practical implementation by the City; and

WHEREAS, in the interest of removing such restrictions, the parties are in support of the amendment to said Section 35.6 as herein set forth.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements to be performed as herein set forth, the parties agree as follows:

1. Section 35.6 of the Labor Agreement is amended to read as follows:

35.6 TAKE-HOME VEHICLES

City owned vehicles may be assigned to officers as take-home vehicles at the discretion of the Chief of Police and subject to reasonable rules and regulations of the Police Department.

2. Except as expressly modified by this Amendment, the Labor Agreement shall remain in full force and effect.

3. Each person signing this Amendment on behalf of a party represents and warrants that he or she has the requisite power and authority to enter into, execute and deliver this Amendment on behalf of such party and that this Amendment is a valid and legally binding obligation of such party enforceable against it.

Executed in Pueblo, Colorado, as of the date first above written.

ATTEST:

City Clerk

CITY OF PUEBLO

By: _____
Mayor

LOCAL 537, INTERNATIONAL
BROTHERHOOD OF POLICE OFFICERS

ATTEST:

Secretary

By: _____
President



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: February 14, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Daniel C. Kogovsek, City Attorney

SUBJECT: AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE COUNTY OF PUEBLO, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO AND THE PUEBLO URBAN RENEWAL AUTHORITY, A COLORADO URBAN RENEWAL AUTHORITY AND THE BOARD OF WATER WORKS OF PUEBLO, COLORADO, A BODY CORPORATE AND POLITIC OF THE CITY OF PUEBLO AND THE PUEBLO WEST METROPOLITAN DISTRICT, A COLORADO SPECIAL DISTRICT RELATING TO THE CONSTRUCTION OF A NEW PUEBLO COUNTY DETENTION FACILITY AND THE CONSTRUCTION OF AN ADJACENT NEW ARTERIAL ROADWAY

SUMMARY:

This Ordinance approves and authorizes the Mayor to sign an Intergovernmental Agreement relating to the construction of a new Pueblo County Detention Facility and the construction of an adjacent new arterial roadway.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

The new Detention Facility will contain approximately 182,000 square feet of space on one floor which will include secure housing, kitchen and laundry, support spaces such as administration, recreation, storage, and attendant spaces for Facility related programs. It is planned to be a modular unit design which can be expanded as needed in the future.

The current road improvement plan provides for the extension of Joe Martinez Boulevard from Purcell Boulevard in Pueblo West to Pueblo Boulevard. As currently conceived, the improvements will consist of a four lane, 3.1-mile roadway with a planned design speed of 45 MPH. It will have limited vehicular access between Purcell Boulevard and Pueblo Boulevard to facilitate the movement of traffic and to encourage its use as an alternative to Highway 50 West for access to and from the City of Pueblo.

FINANCIAL IMPLICATIONS:

Pueblo County will pay for the bulk of the costs of the project and plans to issue tax exempt bonds and/or certificates of participation to finance the costs of construction. The County has conferred with PURA concerning the creation of an Urban Renewal District with associated Tax Increment Financing (“TIF”) revenue. The District proposed by the County would encompass the entire roadway corridor and expand on the west end in Pueblo West and on the east end in the City to include existing and new commercial development. PURA has expressed support for the concept but has indicated that the taxing jurisdictions including the parties to the Intergovernmental Agreement must agree to contribute their respective incremental tax revenues to pay the County’s debt repayment obligations.

Pueblo County is requesting the preliminary consent of the parties to the IGA to the inclusion of their respective lands into the new PURA District and the contribution of their respective increased sales and property tax increment revenue to be generated from development in the District. In the attached IGA, the City gives its initial consent to the payment of its property tax TIF revenue into the TIF financing fund. However, the size of the City TIF urban renewal area (annexation will be required) and the amount of TIF incremental tax revenues, if any, pledged for the project remains to be negotiated and will be the subject of ordinances to be approved by City Council in the future. The City makes no commitment regarding the payment of the City’s sales tax TIF revenue into the TIF financing fund, but agrees to consider doing so in the future, after further study.

Section 6 (b) of the attached IGA requires Pueblo County to give full consideration to and to use best efforts, in good faith, to negotiate and execute a new Intergovernmental Agreement with the City which would apply to the housing of inmates arrested or sentenced exclusively for violations of the Pueblo Municipal Code and not involving State charges.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

A no-action alternative would severely jeopardize the construction of a new Pueblo County Detention Facility and the adjacent new arterial roadway.

RECOMMENDATION:

Approval of the Ordinance.

Attachments:

- Proposed Ordinance
- Proposed Intergovernmental Agreement

ORDINANCE NO. _____

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE COUNTY OF PUEBLO, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO AND THE PUEBLO URBAN RENEWAL AUTHORITY, A COLORADO URBAN RENEWAL AUTHORITY AND THE BOARD OF WATER WORKS OF PUEBLO, COLORADO, A BODY CORPORATE AND POLITIC OF THE CITY OF PUEBLO AND THE PUEBLO WEST METROPOLITAN DISTRICT, A COLORADO SPECIAL DISTRICT RELATING TO THE CONSTRUCTION OF A NEW PUEBLO COUNTY DETENTION FACILITY AND THE CONSTRUCTION OF AN ADJACENT NEW ARTERIAL ROADWAY

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

SECTION 1.

The Intergovernmental Agreement, dated February 28, 2022, relating to the construction of a new Pueblo County Detention Facility and the construction of an adjacent new arterial roadway, between the City of Pueblo, a Colorado municipal corporation and the County of Pueblo, a political subdivision of the State of Colorado, and the Pueblo Urban Renewal Authority, a Colorado urban renewal authority and the Board of Water Works of Pueblo, Colorado, a body corporate and politic of the City of Pueblo and the Pueblo West Metropolitan District, a Colorado special district, 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 Intergovernmental Agreement for and on behalf of the City and the City Clerk is authorized to affix the seal of the City thereto and attest same.

SECTION 3.

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

SECTION 4.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

Approved on _____.

Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

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

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

President of City Council

ATTEST

City Clerk

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT is entered into and is effective this 28th day of February, 2022 (“Effective Date”) by, between, and among Pueblo County, Colorado (“County”), the City of Pueblo, Colorado (“City”), the Pueblo Urban Renewal Authority (“PURA”), The Board of Water Works of Pueblo, Colorado (“Pueblo Water”), and the Pueblo West Metropolitan District (“PWMD”), hereinafter collectively referred to as the “Parties.” Each of the Parties hereto are political subdivision of the State of Colorado as that term is defined in C.R.S. §29-1-202 and are authorized to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each pursuant to the provisions of C.R.S. §29-1-203.

RECITALS

Pueblo County has for the past year been engaged in the planning process for what it considers to be a significant community-wide development project. The Project has two key features; 1) the location, design, and construction of a new Pueblo County Detention Facility to be operated by the Pueblo County Sheriff’s Department and to serve the entire community of the City and the County of Pueblo, and 2) the layout, design, and construction of a major new arterial roadway consisting of the extension of Joe Martinez Boulevard from its current terminus at Purcell Boulevard in Pueblo West east for approximately three miles to Pueblo Boulevard at its intersection with 24th Street.

The planning process has included numerous meetings and conferences with various departments and staff members of each of the Parties, with staff members of the providers of all public utility services and with staff of the regional offices of the Colorado Department of Transportation.

The County has also engaged in negotiations with and received preliminary commitments from Comanche Corp; a privately owned company which owns seventy (70) acres of vacant land abutting Pueblo Boulevard and on both sides of the planned new roadway at its eastern end. The plan is for the County to acquire approximately thirty-five (35) acres from Comanche Corp., which will retain the remaining acreage for new commercial development. Both the County and Comanche Corp. will separately petition for annexation of the parcels into the City. The City has requested that the annexation process be completed prior to the beginning of construction on either the County parcel or the Comanche parcel.

The County also plans to acquire two additional parcels on the east side of Purcell Boulevard to facilitate the construction of the expanded intersection of Joe Martinez and Purcell.

The County has also issued and received responses to several requests for proposals for architectural and engineering services for the new Detention Facility and the new

roadway and for construction of the Detention Facility and expects to make the awards and be under contract for these services in November/December of 2021. The current project timeline calls for construction to commence in 2022 and to be completed in 2024.

The County will pay for the bulk of the costs of the project. It has retained financial consultants and bond counsel and plans to issue tax exempt bonds and/or certificates of participation early in 2022. It has also applied for a grant from the federal government but no award has been made to date.

The County has conferred with PURA concerning the creation of an Urban Renewal District with associated Tax Increment Financing ("TIF"); the district would encompass the entire roadway corridor and expand on the west end in Pueblo West and on the east end in the City to include existing and new commercial development. PURA has expressed support for the concept and has indicated that the taxing jurisdictions including the Parties to this Agreement will be asked to contribute their respective tax revenues in support of the County's debt repayment obligations.

The County recognizes that the successful completion of the project is entirely dependent upon the support and cooperation of the Parties and has requested this Agreement as an expression of that support and a pledge of cooperation by and from the Parties as is more particularly set forth herein.

NOW THEREFORE, for and in consideration of the mutual covenants and promises contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. PROJECT DESCRIPTION.

The Project is as is described in the Recitals to this Agreement and as is more particularly described in this Section. It will hereinafter be referred to as the "Project".

A. Detention Facility. The new Facility will be located on a 35-acre parcel in the North ½ of the Southeast ¼ of Section 21, Township 20 South, Range 65 West of the 6th P.M. The balance of the land in this portion of the Section will be retained by the current owner for commercial development. The new Facility will contain approximately 182,000 square feet of space on one floor which will include secure housing, kitchen and laundry, support spaces such as administration, recreation, storage, and attendant spaces for Facility related programs. It is planned to be a modular unit design that can be expanded as needed in the future. The Board of County Commissioners has directed that planning endeavor to include energy modeling that produces a Zero Net Carbon result. The goal is to include a variety of energy self-generation features such that the facility may produce as much or more energy as it expends. The features may include solar, geo-thermal, co-generation, and other similar features. A conceptual depiction of the location of the Facility in relation to the new Joe Martinez Boulevard alignment, the surrounding lands, and Pueblo Boulevard is set forth on **Exhibit A** attached hereto and incorporated herein by reference. The proposed facility will undergo an S-1 review with the City prior to issuance of building permits.

B. Joe Martinez Boulevard Extension. The extension of Joe Martinez Boulevard from Purcell Boulevard in Pueblo West to Pueblo Boulevard is a large-scale, voter-approved capital improvement project of utmost importance to all residents in the City and County of Pueblo. As currently conceived, the Project consists of a four lane, 3.1-mile roadway with a conceived design speed of 45 MPH. It will have limited vehicular access between Purcell Boulevard and Pueblo Boulevard to facilitate the movement of traffic and to encourage its use as an alternative to Highway 50 West for access to and from the City of Pueblo. The Project will also include a multi-modal lane to carry bicyclists, e-bikes, and e-scooters. It will also include a charging station for electric vehicles. The roadway will include two (2) concrete box culverts in order to cross over the creek that runs through the area. It will include illumination throughout its length and signalization at its intersections with Pueblo and Purcell Boulevards. It will also incorporate a trail system which will be designed to connect the City of Pueblo Trail System to the Pueblo West Recreational Trail System. The proposed alignment is depicted on **Exhibit B** attached hereto and incorporated herein by reference. All roadways and associated infrastructure installed within the City of Pueblo or on City- owned property shall be designed and constructed to meet City standards.

2. PURPOSE.

The purposes of this Agreement are:

- 1) To set forth a clear expression of the support of each party for the Project;
- 2) To express recognition of the Parties that the Project is a community-wide development with broad public benefits that transcend jurisdictional boundaries; and
- 3) To pledge the full cooperation of each party to expedite and streamline and/or combine the various permitting approval processes in an effort to avoid delay and unnecessary duplication of regulation.

The Parties acknowledge the purposes set forth and agree jointly and severally to pursue their fulfillment in good faith, including acting in good faith in all matters that require joint or coordinated action.

3. PERMITS AND APPROVALS.

The Parties, and in particular the City and the County, agree to meet and confer in an effort to develop a comprehensive outline of the various land use and other approvals and permits which will be required to proceed with the construction of the Project including the extension of water and sewer and other utility lines from existing locations into the Facility site. City agrees to consider to what extent the anticipated Annexation Agreement and/or additional Intergovernmental Agreements can be utilized to expedite other land use processes such as subdivision, zoning, 1041 permitting, and the like. It is not the intent of County to ignore the regulatory processes of the City, but to examine with the City the possible combination or streamlining of those processes. It is expected that PWMD, PURA, and Pueblo Water will be invited and encouraged, where each thinks it may be helpful, to participate in the process outlined in this Section.

4. NEW URBAN RENEWAL DISTRICT AND ASSOCIATED TIF FINANCING.

During the planning process to date, County representatives have met with PURA staff. PURA has examined the Project as conceptualized to date and has proposed for consideration by the Parties the creation of a new Urban Renewal District that would encompass the entire Joe Martinez extension corridor, all of the land of County and Comanche Corp. at the East end of the roadway corridor and extending further East across Pueblo Boulevard to include private and public lands along 24th Street with its intersection of Pueblo Boulevard. PURA has also proposed to extend the new district West of Purcell Boulevard along the current Joe Martinez corridor and to include private and public lands in the corridor. The Parties would consent to put their respective lands into the new district and would further consent to contribute their respective property taxes into the TIF fund to be used to retire debt incurred to build the new roadway.

The Parties hereto agree to seriously consider putting their respective lands into the new district and the contribution of their respective property and sales taxes into the TIF funding. Pueblo County acknowledges that the new Urban Renewal District and the TIF financing component will be reliant on submission of details, designs, drawings, and specifications for the project, especially of the Joe Martinez Roadway and the intersections at Purcell Boulevard and Pueblo Boulevard. It is requesting the preliminary consent of the Parties to the inclusions of their respective lands into the new district and the contribution of their respective increased sales and property tax increments to be generated from development in the district. The City consents to the payment of its property tax TIF revenue into the TIF financing fund. The payment of the City's sales tax TIF revenue into the TIF financing fund requires additional study.

Subject to the contingencies acknowledged herein, each of the Parties agrees to the participation of their lands in the new district and the contribution of their respective property tax increments into the TIF financing fund.

5. RELIANCE OF THE PARTIES.

The Parties understand and acknowledge that County will rely upon the commitments made by each of the Parties in this Agreement as it proceeds to complete the land acquisitions, to enter into contracts with architects, engineers, contractors, and related professional consultants, and to secure the financing necessary to further and complete the Project. Each party also acknowledges and understands that all of the other Parties are relying upon the commitments made herein by County and the other Parties in entering into this Agreement.

6. FURTHER AGREEMENTS.

(a) New Pueblo County Detention Facility and the Extension of Joe Martinez Boulevard: Each party agrees to give full consideration to the potential use of further intergovernmental and/or development agreements among all or some of the Parties hereto and possibly including other governmental agencies or authorities and utility providers to specify further and more detailed agreements and obligations needed to facilitate, continue, and complete the Project.

(b) Intergovernmental Agreement for Inmate Housing Services: Pueblo County and the City of Pueblo agree to give full consideration to and to use best efforts, in good faith, to negotiate and execute a new Intergovernmental Agreement which would apply to the housing of inmates arrested or sentenced exclusively for violations of the Pueblo Municipal Code and not involving State charges.

7. DESIGNATION OF PARTY REPRESENTATIVES.

Within ten (10) days after the execution of this Agreement, County shall circulate a letter to all of the Parties indicating its representatives for purposes of furthering the terms of this Agreement and each of the other Parties agree to designate their respective representatives. Pueblo County shall then circulate a list of the respective representatives to all Parties. The designations so made are subject to change in the sole discretion of each of the Parties and it is expected that the representatives will change as the Project proceeds.

8. TERM/TERMINATION.

This Agreement shall commence upon the effective date and shall terminate one year later. This Agreement shall renew automatically for subsequent one-year terms, unless one or more of the Parties notifies the other Parties of its intent not to renew. This Agreement shall continue amongst those Parties who have not expressed an intent not to renew.

9. BINDING AGREEMENT.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors, and assigns.

10. LEGAL AUTHORITY.

The Parties assure that each 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/they have been fully authorized to execute this Agreement and to validly and legally bind their respective principals to all the terms, conditions, and provisions set forth herein.

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

{SIGNATURE PAGES TO FOLLOW}

ATTEST:

COUNTY OF PUEBLO

By: _____
Clerk to the Board of
County Commissioners

By: _____
Chair, Board of County Commissioners

Date: _____

Date: _____

ATTEST:

PUEBLO WEST METROPOLITAN
DISTRICT

By: _____
District Clerk

By: _____
District Manager

Date: _____

Date: _____

[S E A L]

ATTEST:

CITY OF PUEBLO

By: _____
Marisa Stoller, City Clerk

By: _____
Mayor Nicholas A. Gradisar

Date: _____

Date: _____

[S E A L]

PUEBLO URBAN RENEWAL AUTHORITY

By: _____
Jerry Pacheco

Title: _____

Date: _____

THE BOARD OF WATER WORKS OF
PUEBLO, COLORADO

By: _____

Name: _____

Title: _____

Date: _____



**Background Paper for Proposed
RESOLUTION**

COUNCIL MEETING DATE: February 14, 2022

TO: Council President Heather Graham and Members of City Council

CC: Nicholas A. Gradisar, Mayor

VIA: Marisa Stoller, City Clerk

FROM: City Council Member Dennis Flores

SUBJECT: A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2022 GENERAL FUND BUDGET TO THE BOYS AND GIRLS CLUB OF PUEBLO, A COLORADO NONPROFIT CORPORATION, IN THE AMOUNT OF \$1,350 TO SPONSOR A TABLE FOR THE ANNUAL CHAMPIONS OF YOUTH DINNER

SUMMARY:

Attached for consideration is a request for sponsorship for the Champions of Youth Dinner.

PREVIOUS COUNCIL ACTION:

City Council purchased a table last year for \$1,200.

BACKGROUND:

City Council Member Dennis Flores is requesting \$1,350 from the City Council Contingencies account to sponsor a table at the Champions of Youth Dinner on March 10, 2022.

Since 1972, Boys & Girls Clubs of Pueblo County's proven youth development strategy has been the solution for children and teens in need. The Club's afterschool and summer programs fulfill an unquestionable need: keeping local youth productively occupied, out of trouble, and in a positive learning environment.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$1,350 would be paid from the Council Contingencies Account in the 2022 General Fund Budget to the Boys and Girls Club of Pueblo.

BOARD/COMMISSION RECOMMENDATION:

Not Applicable.

STAKEHOLDER PROCESS:

Not Applicable.

ALTERNATIVES:

City Council could choose not to authorize funding for this request.

RECOMMENDATION:

This Resolution is at the request of City Council Member Dennis Flores.

Attachments:

Resolution

Contingencies spreadsheet

Sponsorship Request

RESOLUTION NO. 14814

A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2022 GENERAL FUND BUDGET TO THE BOYS AND GIRLS CLUB OF PUEBLO, A COLORADO NONPROFIT CORPORATION, IN THE AMOUNT OF \$1,350 TO SPONSOR A TABLE FOR THE ANNUAL CHAMPIONS OF YOUTH DINNER

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

SECTION 1.

Payment in the amount of \$1,350 from the Council Contingencies Account in the 2022 General Fund Budget is authorized to be paid to the Boys and Girls Club of Pueblo for sponsorship of a table for the Champions of Youth Dinner.

SECTION 2.

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

SECTION 3.

This Resolution shall become effective upon passage and approval.

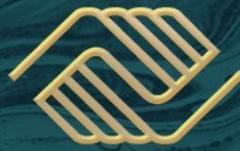
INTRODUCED February 14, 2022

BY: Vicente Martinez Ortega
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

50TH
ANNIVERSARY



BOYS & GIRLS CLUBS
OF PUEBLO COUNTY

1972-2022

AND CHAMPIONS OF
YOUTH DINNER 2022

Champions of Youth Dinner—March 10, 2022 Occhiato Ballroom CSU Pueblo, 5:30pm

Presenting Sponsor

- 20 Tickets to event and reception
- VIP seating
- Corporate banner at event
- Corporate name and logo on invitation*
- Opportunity to speak to attendees at event
- Logo in press release
- Social media thank you
- Linked logo on www.BGCPCkids.org for 12 months
- Logo on Youth of the Year banners— displayed in each clubhouse
- Full page AD in event program slide show

SOLD

Invitation Underwriter

- “Underwritten By” on invitation **SOLD** • Half page ad in event program slideshow

Club Kid Underwriter - \$2,500

- 2 Tickets to event and reception
- Corporate banner at event
- Mention in press release & social media
- Sponsors ticket for Club kid being honored and one parent/guardian
- Logo & website on club kid/family tickets
- Ad in event program slideshow

Table for 10- \$1,350

- 10 tickets to event and reception
- Preferred seating

DONORS WHO MAKE A MONETARY DONATION TO BOYS & GIRLS CLUBS OF PUEBLO COUNTY MAY CLAIM A COLORADO TAX CREDIT OF 50% OF YOUR TOTAL QUALIFYING CONTRIBUTIONS. CONTACT YOUR FINANCIAL CONSULTANT ABOUT THIS TAX CREDIT FOR DETAILS.



SCAN HERE FOR
MORE INFORMATION

50TH ANNIVERSARY

AND CHAMPIONS OF YOUTH DINNER 2022



Champions of Youth Dinner – March 10, 2022 Occhiato Ballroom CSUP, 5:30pm

Platinum Sponsor - \$5,000

- 10 tickets to event and reception
- VIP seating
- Corporate banner at event
- Corporate name & logo on invitation*
- Logo on press release & social media
- Linked logo on www.BGCPkids.org for 12 months
- Full page AD in event program slide show
- Social Media thank you

Gold Sponsor - \$2,500

- 10 Tickets to event and reception
- VIP seating
- Corporate banner at event
- Corporate name and logo on invitation*
- Half Page AD in event program slide show
- Mention in press release & social media
- Linked Logo on www.BGCPkids.org

Silver Sponsor - \$1,250

- 6 Tickets to event and reception
- Mention in press release & social media
- Linked logo on www.BGCPkids.org for 12 months
- Quarter page AD in event program slide show

Bronze Sponsor - \$750

- 2 tickets to event and reception
- Preferred seating



bgcpkids.org/cyd (719)564-0055



**SCAN HERE
RSVP AND
COMPLETE
ONLINE**

*Subject to printing deadlines



**Background Paper for Proposed
RESOLUTION**

COUNCIL MEETING DATE: February 14, 2022

TO: Council President Heather Graham and Members of City Council

CC: Nicholas A. Gradisar, Mayor

VIA: Marisa Stoller, City Clerk

FROM: City Council Member Dennis Flores

SUBJECT: A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2022 GENERAL FUND BUDGET TO THE LATINO CHAMBER OF COMMERCE IN THE AMOUNT OF \$950 TO SPONSOR A TABLE FOR THE ANNUAL DINNER DANCE CELEBRATION

SUMMARY:

Attached for consideration is a request for sponsorship for the Latino Chamber's 43rd Annual Dinner Celebration.

PREVIOUS COUNCIL ACTION:

City Council contributed to this event in 2005, 2008, 2015, 2018, 2019 and 2020.

BACKGROUND:

City Council Member Dennis Flores is requesting \$950 from the City Council Contingencies account to sponsor a table at the 43rd Annual Dinner Celebration on March 10, 2022.

The evening celebration recognizes outstanding community leaders, business organizations, and individuals, while providing a unique and elegant experience highlighting the Latino culture. The theme of this year's dinner is "Move Forward As One." We want to encourage the community to bounce back, stronger than ever before, from months of uncertainty and economic hardship through unity and determination. The 43rd Annual Dinner Celebration will include a night of networking, celebration, games, giveaways, and a silent auction.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$950 would be paid from the Council Contingencies Account in the 2022 General Fund Budget to the Latino Chamber of Commerce.

BOARD/COMMISSION RECOMMENDATION:

Not Applicable.

STAKEHOLDER PROCESS:

Not Applicable.

ALTERNATIVES:

City Council could choose not to authorize funding for this request.

RECOMMENDATION:

This Resolution is at the request of City Council Member Dennis Flores.

Attachments:

Resolution

Contingencies spreadsheet

Sponsorship Request

RESOLUTION NO. 14815

A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2022 GENERAL FUND BUDGET TO THE LATINO CHAMBER OF COMMERCE IN THE AMOUNT OF \$950 TO SPONSOR A TABLE FOR THE ANNUAL DINNER DANCE CELEBRATION

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

SECTION 1.

Payment in the amount of \$950 from the Council Contingencies Account in the 2022 General Fund Budget is authorized to be paid to the Latino Chamber of Commerce of Pueblo for sponsorship of a table for the Annual Dinner Dance Celebration.

SECTION 2.

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

SECTION 3.

This Resolution shall become effective upon passage and approval.

INTRODUCED February 14, 2022

BY: Lori Winner
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



43rd Annual Dinner Celebration

"Move Forward As One"

"Avanzar Como Uno Solo"

The **Latino Chamber of Commerce** hosts the **Annual Dinner Dance Celebration** on Friday, March 25th in beautiful Pueblo, Colorado. The evening celebration recognizes outstanding community leaders, business organizations, and individuals, while providing a unique and elegant experience highlighting the Latino culture. The theme of this year's dinner is "Move Forward As One." We want to encourage the community to bounce back, stronger than ever before, from months of uncertainty and economic hardship through unity and determination. The 43rd Annual Dinner Celebration will include a night of networking, celebration, games, giveaways, and a silent auction.

PLATINUM | \$5,000

- (1) Reserved corporate table – 10 seats
- Up to a two-minute video played at dinner (provided by sponsor*)
- Company representative will have the option to provide welcome remarks before dinner
- Full-page advertisement in the dinner program with prime placement
- Electronic signage/banner rotating during annual dinner celebration presentation
- Media recognition on all annual dinner celebration advertising as a Platinum Sponsor
- Up to five-minute remarks in the agenda
- Logo featured on PowerPoint presentation & on table signs
- One month banner advertisement on Latino Chamber website (can be redeemed anytime in 2022)

GOLD | \$4,000

- (1) Reserved corporate table – 8 seats
- Up to a one-minute commercial played at dinner (provided by sponsor*)
- Full-page advertisement in the dinner program
- Electronic signage/banner rotating during annual dinner celebration presentation
- Media recognition on all annual dinner celebration advertising as a Gold Sponsor
- Logo featured on PowerPoint presentation

SILVER | \$3,000

- Reserved corporate table with 6 seats
- 30 Second commercial provided by sponsor played at dinner*
- Half-page advertisement tailored to event in the dinner program
- Additional logo placement on name cards at the annual dinner celebration event
- Electronic signage/banner rotating during annual dinner celebration presentation
- Media recognition (see Media Plan)
- Logo featured on PowerPoint presentation

BRONZE | \$2,000

- (4) Reserved seats at the annual dinner celebration
- Electronic signage/banner rotating during annual dinner celebration presentation
- Media recognition (see media plan)
- Logo featured on PowerPoint presentation

COPPER | \$1,000

- (2) Reserved seats at the annual dinner celebration with name card & logo
- Electronic signage/banner rotating during annual dinner celebration presentation
- Media recognition (see media plan)
- Logo featured on PowerPoint presentation

CONTRIBUTING | \$500

- Electronic signage/banner rotating during annual dinner celebration presentation
- Media recognition (see media plan)

TABLES | \$950

- Table of 10 with customized table signage for your company and listed in evening program and slideshow

SILENT AUCTION

- To donate contact our office at 719-542-5513 or office@pueblolatinochamber.com

MEDIA PLAN - ANNOUNCEMENTS & PUBLICITY

- Customized printed invitation with company logo
- Latino Chamber of Commerce electronic newsletter – El Gritón
- Customized email invite and website
- Social media posting on Facebook, Twitter, LinkedIn, and Instagram
- Listing in the Latino Chamber of Commerce calendar of events & the Pueblo Chieftain's community events calendar
- General press release – local/ state media distribution

*If your company does not have a video or commercial the Latino Chamber may be able to help. Contact our office at (719) 542-5513





Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 24, 2022

TO: President Heather Graham and Members of City Council
CC: Nicholas A. Gradisar, Mayor
VIA: Marisa Stoller, City Clerk
FROM: Greg Pedroza, Director of Aviation
SUBJECT: AN ORDINANCE ESTABLISHING PROJECT AP2201 – SNOW REMOVAL EQUIPMENT (SRE) ACQUISITION, BUDGETING AND APPROPRIATING \$21,355 TO PROJECT AP2201, APPROVING A CONTRACT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND DIBBLE AND ASSOCIATES CONSULTING ENGINEERS, INC., AN ARIZONA CORPORATION, TO CONDUCT THE ACQUISITION PER FAA REQUIREMENTS, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance establishes Project AP2201, appropriates \$21,355 to said project, and to accommodate Federal Aviation Administration (“FAA”) requirements approves a contract for professional engineering and acquisition services regarding snow removal equipment for taxiways and runways.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

Through processes outlined by the FAA and in accordance with the Capital Improvement Project (CIP) schedule, the Pueblo Memorial Airport is in need of a new piece of Snow Removal Equipment (SRE) to continue to provide safe and efficient airport operations for all users. The FAA has designated Entitlement Funds from passenger enplanements for this purchase.

FINANCIAL IMPLICATIONS:

The City must fund the contract for acquisition services upfront with an expected grant to come. The funds are available in the Passenger Facility Charge Fund to be transferred to Project AP2201.

It is anticipated that 95% of these funds will be reimbursed by the Federal Aviation Administration through an AIP grant.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If this funding and agreement are not approved, the acquisition of new snow removal equipment will not take place.

RECOMMENDATION:

Approve the Ordinance.

Attachments:

Acquisition Contract with Appendices and Proposal
FAA Engineering Fee Approval

ORDINANCE NO. 10108

AN ORDINANCE ESTABLISHING PROJECT AP2201 – SNOW REMOVAL EQUIPMENT (SRE) ACQUISITION, BUDGETING AND APPROPRIATING \$21,355 TO PROJECT AP2201, APPROVING A CONTRACT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND DIBBLE AND ASSOCIATES CONSULTING ENGINEERS, INC., AN ARIZONA CORPORATION, TO CONDUCT THE ACQUISITION PER FAA REQUIREMENTS, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

WHEREAS, a need exists for new snow removal equipment at the Pueblo Memorial Airport; and,

WHEREAS, professional engineering services are required for the acquisition and for FAA approved equipment; and,

WHEREAS, Capital Project AP2201 – Snow Removal Equipment (SRE) Acquisition needs to be established and funds budgeted and appropriated; NOW, THEREFORE,

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

SECTION 1.

Project AP2201- Snow Removal Equipment (SRE) Acquisition is hereby established.

SECTION 2.

Funds in the amount of \$21,355 are hereby transferred from the Passenger Facility Charges Fund and budgeted and appropriated to Project AP2201.

SECTION 3.

The Agreement for Professional Engineering Services (“Agreement”) between the City of Pueblo, a Municipal Corporation, and Dibble and Associates Consulting Engineers, Inc., an Arizona Corporation, dba Dibble Engineering, a copy of which is attached hereto and incorporated herein by this reference, and having been approved as to form by the City Attorney, is hereby approved.

SECTION 4.

The Mayor is authorized to execute and deliver the Agreement in the name of the City, and the City Clerk is directed to affix the seal of the City thereto and attest same.

SECTION 5.

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

SECTION 6.

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

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on January 24, 2021.

Final adoption of Ordinance by City Council on February 14, 2022.



President of City Council

Action by the Mayor:

Approved on February 16, 2022.

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

STANDARD FORM OF
AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

THIS AGREEMENT made and entered this 14 day of February, 2022 ("Effective Date") by and between the City of Pueblo, a Municipal Corporation (hereinafter "Owner"), and Dibble and Associates Consulting Engineers, Inc., an Arizona Corporation, doing business as Dibble Engineering, a professional engineering firm (hereinafter "Engineer"), for Engineer to render certain professional planning, design, engineering, construction administration, and related services for Owner in connection with Project No. AP2201, Project Name: Acquisition of Snow Removal Equipment, hereinafter referred to as the "Project." In consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

SECTION 1. GENERAL.

1.1 Engineer shall satisfactorily perform professional engineering services for all phases of Project indicated below by mark placed in the appropriate box or boxes:

- Study and Report Phase
- Preliminary Design (Schematic) Phase
- Final Design Phase
- Construction Documents & Bidding Phase
- Construction Phase

Upon completion of any phase, Engineer shall not proceed with work on the next phase, if any, until authorized in writing by Owner to proceed therewith.

Such services shall include all usual and customary professional engineering services and the furnishing (directly or through its professional consultants) of customary and usual civil, structural, mechanical, electrical engineering, environmental, planning, and acquisition services. Engineer shall also provide any landscape engineering, surveying and geotechnical services incident to its work on the Project.

1.2 In performing the professional services, Engineer shall complete the work items described generally in Appendix A – Scope of Services and the items identified in Section 2 of this Agreement which are applicable to each phase for which Engineer is to render professional services.

1.3 Professional engineering services (whether furnished directly or through a professional consultant subcontract) shall be performed under the direction and supervision of a registered engineer in good standing and duly licensed to practice in the State of Colorado. Reproductions of final drawings for construction produced under this Agreement shall be the same as at least one record set which shall be furnished to Owner and which shall be signed by and bear the seal of such registered engineer.

1.4 Surveying work included within or reasonably contemplated by this Agreement shall be performed under the direction and supervision of a registered Professional Land Surveyor in good standing and duly licensed to practice in the State of Colorado. All plats and surveys produced under this Agreement shall be signed by and bear the seal of said Professional Land Surveyor.

1.5 Any architect services provided under this Agreement shall be performed under the direction and supervision of an architect licensed to practice architecture in the state of Colorado.

SECTION 2. ENGINEERING SERVICES.

2.1 Study and Report Phase. If Engineer is to provide professional services with respect to the Project during the Study and Report Phase, Engineer shall:

- (a) Consult with Owner to determine his requirements for the Project and review available data.
- (b) Advise Owner as to the necessity of his providing or obtaining from others data or services of the types described in paragraph 2.2(c), and assist Owner in obtaining any such services.
- (c) Provide special analyses of Owner's needs, planning surveys, site evaluations, and comparative studies of prospective sites and solutions.
- (d) Identify and analyze requirements of governmental authorities and regulatory agencies involved in approval or permitting any aspect of Project.
- (e) Provide general economic analysis of Owner's requirements applicable to various alternatives.
- (f) Prepare a Report with appropriate exhibits indicating clearly the considerations involved and the alternative solutions available to Owner, and setting forth Engineer's findings and recommendations with opinions of probable costs.
- (g) Furnish two (2) copies of the Report and present and review it in person with Owner.

2.2 Preliminary Design (Schematic) Phase. If Engineer is to provide professional services with respect to the Project during the Preliminary Design Phase, Engineer shall:

- (a) Consult with Owner and determine the general design concept and Project requirements based upon information furnished by Owner as well as any study or Report on the Project.
- (b) Prepare and submit to Owner preliminary design documents consisting of final design criteria, preliminary drawings, an outline of specifications, and written descriptions of all significant features of Project.
- (c) Prepare and submit to Owner a requirements checklist of any subsurface investigation, additional data, permits, or other information and requirements which is anticipated will be necessary for the design or construction of Project.
- (d) Provide written disclosure to Owner of significant design assumptions and design risks and advantages/disadvantages inherent in or presented by design alternatives, and make recommendations to Owner based thereon.
- (e) Prepare and submit to Owner a preliminary cost estimate for the Project including construction cost, contingencies, professional compensation, consultant fees, costs of land and rights of way, compensation for damages and finance costs, if any.
- (f) Engineer shall furnish two (2) copies of each above referenced submittal document to Owner for Owner's use, and shall review same in person with Owner.

2.3 Final Design Phase. If Engineer is to provide professional services with respect to the
(Agreement for Professional Engineering Services – CA Revised and Apprd 01/7/2022 – Snow Removal Equipment Acquisition)

Project during the Final Design Phase, Engineer shall:

(a) After consultation with the Owner, receipt of Owner's selection of any design options and review of the Preliminary Design Documents, if any, prepare and submit to Owner final Drawings showing the scope, extent, and character of the work to be performed by contractors, and Specifications describing such work and the requirements therefor. Such plans and Specifications shall comply with all applicable codes and requirements of regulatory agencies having any approval authority, including but not limited to any requirements of the Federal Aviation Administration.

(b) Make reasonable revisions to the Drawings and Specifications requested by Owner, informing the Owner of any change in probable construction costs as a result of such revisions.

(c) Provide technical criteria, written descriptions and design data for Owner's use, and disclose any significant risks and advantages/disadvantages inherent in or presented by design choices.

(d) Based upon Engineer's best professional judgment, prepare and submit to Owner a current detailed cost estimate for the Project including acquisition cost, contingencies, professional compensation, consultant fees, damages, and finance costs, if any.

(e) Engineer shall furnish two (2) copies of each above referenced submittal document to Owner for Owner's use and shall review same in person with Owner.

2.4 Construction Documents & Bidding Phase. If Engineer is to provide professional services with respect to the Project during the Construction Documents & Bidding Phase, Engineer shall:

(a) Prepare and submit to Owner draft forms of contract agreement, general and special conditions, bid forms invitations to bid, information for bidders, forms of warranty and including any special requirements imposed upon such contracts by any federal or other funding source and by any regulatory agency. In preparing such draft forms, Engineer shall consider and incorporate, to the extent both advisable and feasible, owner's standard forms of agreement, warranty, payment and performance bonds, general conditions and selected specifications.

(b) After review and comment by Owner, prepare and submit all deliverables identified in Appendix A to this Agreement, final forms of contract agreement, general and special conditions, Drawings, specifications, bid forms, invitations to bid, information for bidders, and forms of warranty, together with any Addenda which may be required or appropriate to correct errors, clarify Drawings or Specifications or advise of changes. Two (2) copies of these final bid documents shall be furnished to Owner. Unless otherwise specified in Appendix A, a copy of all contract documents and drawings shall also be submitted to Owner in Microsoft Word and AutoCAD (2018 or later version) format on electronic media.

(c) Make recommendations to Owner concerning the need for prequalification of equipment, vendors or bidders, and, if requested by Owner, incorporate prequalification requirements in final bid and construction contract documents.

(d) Attend a pre-bid conference with bidders to discuss Project requirements and receive requests for clarification, if any, to be answered by Engineer in writing to all plan holders.

(e) Consult with and make recommendations to Owner concerning: acceptability of bidders, subcontractors, suppliers, materials, equipment, suitability of proposed "or equals", number of bids and any other matter involved in consideration and review of bids and bidders upon which Owner may reasonably request Engineer's advice.

(f) Perform all project closeout and miscellaneous scope of work items, to include, but

not limited to, preparing pay requests for consultant design and bidding fees and inspecting any acquisitions prior to acceptance by Owner.

2.5 Construction Phase. If Engineer is to provide professional services with respect to the Project during the Construction Phase, after award by the Owner of a general contract or contracts for construction of the Project, Engineer shall:

(a) Perform all duties and functions to be performed by Engineer under the terms of the construction contract.

(b) Visit the Project site, perform observations as to the progress and quality of the work and advise the Owner as to same. The frequency and level of observation shall be commensurate with the nature of the work and size of the Project, except that any specific provisions set forth in Appendix A - Scope of Services concerning the level of observation shall determine Engineer's obligation concerning level of observation.

(c) Make determinations as to whether the work is proceeding in accordance and compliance with the construction contract documents.

(d) Promptly advise the Owner in writing of any omissions, substitutions, defects or deficiencies noted in the work of any contractor, subcontractor, supplier or vendor on the Project.

(e) Reject any work on the Project that does not conform to the contract documents.

(f) On request of the Owner, the construction contractor or any subcontractor on the Project, issue written interpretations as to the Drawings and Specifications and requirements of the construction work.

(g) Review shop drawings, samples, product data and other submittals of the contractor for conformance with the design concept of Project and compliance with the Drawings, Specifications and all other contract documents, and indicate to Contractor and Owner with respect thereto, any exceptions noted, or modification or resubmittals required.

(h) Review all applications of Contractor for payment and in connection with same, issue certificates for payment to the Owner for such amounts as are properly payable under the terms of the construction contract. Each such certificate shall constitute Engineer's representation to Owner that he has inspected the Project and that to the best of his knowledge, the work for which payment has been sought has been completed by Contractor in accordance with the Drawings, Specifications and other contract documents.

(i) Subject to written concurrence by Owner, promptly render a written recommendation to Owner concerning all proposed substitutions of material and equipment.

(j) Draft, for Owner's consideration, and offer recommendations upon, all proposed change orders and contract modifications.

(k) On application for final payment by the Contractor, make a final inspection of the Project, assembling and delivering to the Owner any written guaranties, instructions manuals, as-built drawings, diagrams, and charts required by the contract documents, and issuing a certificate of final completion of the Project.

(l) The Engineer shall, if so provided in the construction contract, be the interpreter of the construction documents and arbiter of claims and disputes thereunder. Upon written request of the

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Owner or Contractor, the Engineer shall promptly make written interpretations of the contract documents and render written decisions on all claims, disputes, and other matters relating to the execution or progress of the work on the Project. The interpretations and decisions of the Engineer shall be final and binding on the Contractor and Owner, unless the Director of Public Works of the Owner shall, within seven calendar days after receipt of the Engineer's interpretation or decision, file his written objections thereto with the Architect and Contractor.

2.6 Additional Responsibilities. This paragraph applies to all phases of Engineer's work.

(a) Engineer shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all of Engineer's work, including that performed by Engineer's consultants, and including designs, Drawings, Specifications, reports, acquisitions, and other services, irrespective of Owner's approval or acquiescence in same. Engineer shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in the work.

(b) Engineer shall be responsible, in accordance with applicable law, to Owner for all loss or damage to Owner caused by Engineer's negligent act or omission; and Engineer hereby irrevocably waives and excuses Owner and its attorneys from compliance with any requirement to obtain a certificate of review as a condition precedent to commencement of an action, including any such requirements set forth in Section 13-20-602, C.R.S., or similar statute.

(c) Engineer's professional responsibility shall comply with the standard of care applicable to the type of engineering, architectural, and acquisition services provided, commensurate with the size, scope, and nature of the Project.

(d) Engineer shall be completely responsible for the safety of Engineer's employees, subcontractors, and consultants in the execution of work under this Agreement, shall provide all necessary safety equipment for said employees, subcontractors, and consultants and shall hold harmless and indemnify and defend Owner from any and all claims, suits, loss or injury to Engineer's employees, subcontractors, and consultants.

(e) Engineer acknowledges that, due to the nature of acquisition, engineering, and related professional services and the impact of same on the Project, the Owner has a substantial interest in the personnel and consultants to whom Engineer assigns principal responsibility for services performed under this Agreement. Consequently, Engineer represents that Engineer has selected and intends to employ or assign the key personnel and consultants identified in Appendix C - "Identification of Personnel, Subcontractors and Task Responsibility," attached hereto for the Project assignments and areas of responsibility stated therein. Within 10 days of execution of this Agreement, Owner shall have the right to object in writing to employment on the Project of any such key person, consultant or assignment of principal responsibility, in which case Engineer will employ alternate personnel for such function or reassign such responsibility to another to whom Owner has no reasonable objection. Thereafter, Engineer shall not assign or reassign Project work to any person to whom Owner has reasonable objection.

Within five (5) days of execution of this Agreement, Engineer shall designate in writing a Project representative who shall have complete authority to bind Engineer, and to whom Owner should address communications.

(f) Promptly after execution of this Agreement and upon receipt of authorization from Owner to proceed, Engineer shall submit to Owner for approval a schedule showing the order in which Engineer proposes to accomplish his work, with dates on which he will commence and complete each major work item. The schedule shall provide for performance of the work in a timely manner so as to not delay Owner's time table for achievement of interim tasks and final completion of Project work, provided however, the Engineer will not be responsible for delays beyond his control.

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(g) Before undertaking any work which Engineer considers beyond or in addition to the scope of work and services which Engineer has contractually agreed to perform under the terms of this Agreement, Engineer shall advise Owner in writing (i) that Engineer considers the work beyond the scope of this Agreement, (ii) the reasons the Engineer believes the out of scope or additional work should be performed, and (iii) a reasonable estimate of the cost of such work. Engineer shall not proceed with such out of scope or additional work until authorized in writing by Owner. The compensation for such authorized work shall be negotiated, but in the event the parties fail to negotiate or are unable to agree as to compensation, then Engineer shall be compensated for his direct costs and professional time at the rates set forth in Appendix B - "Fee Schedule," if any are set forth.

2.7 Requirements Where Federal Assistance Provided.

(a) Engineer understands that Owner will be funding the Project in part or in whole by grants or loans from the Department of Transportation, Federal Aviation Administration (the "Federal Agency") and the Colorado Department of Transportation (the "State Agency"). Engineer agrees it is subject to and shall comply with all applicable grant or loan conditions and the regulations of the Federal Agency and State Agency which apply to the work under this Agreement, whether referenced in Appendix A or not. All applicable loan or grant conditions and regulations of the Federal Agency and State Agency are incorporated into this Agreement by reference.

(b) Owner shall pay Engineer for work completed in accordance with the terms of this Agreement. Engineer understands and accepts that Owner is seeking reimbursement for the Project through applicable Federal and State loans or grants. Should the applicable Federal and State Agencies indicate that loans or grants shall not be granted or approved by the Agency, performance under this Agreement shall be placed on hold until such time as the funds are granted and approved, except that no such extension shall continue past the expiration of the initial term of the master agreement approved through City of Pueblo Resolution No. 13785. Should Owner determine in its sole discretion that grant or approval of the required funds is impossible or unlikely, this Agreement shall terminate immediately upon notice from Owner and Owner shall not be liable for any cost or fee under this Agreement.

SECTION 3. OWNER'S RESPONSIBILITIES

3.1 Owner shall:

(a) Designate a representative to whom all communications from Engineer shall be directed and who shall have limited administrative authority on behalf of Owner to receive and transmit information and make decisions with respect to Project. Said representative shall not, however, have authority to bind Owner as to matters of legislative or fiscal policy.

(b) Advise Engineer of Owner's Project requirements including: objective, project criteria, use and performance requirements, special considerations, physical limitations, financial constraints, and required construction contract provisions and standards.

(c) Provide Engineer with available information pertinent to the Project including any previous reports, studies, or data possessed by Owner which relates to design or construction of the Project.

(d) Assist in arranging for Engineer to have access to enter private and public property as required for Engineer to perform his services.

(e) Examine all studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer, and render written decisions pertaining thereto within a reasonable time. The Owner's approval of Drawings, design, Specifications, reports, and incidental engineering work

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or materials furnished hereunder shall not in any way relieve the Engineer of responsibility for the professional adequacy of his work. The Owner's review, approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

(f) Upon advice of the necessity to do so from Engineer, obtain required approvals and permits for the Project. The Engineer shall provide all supportive documents and exhibits necessary for obtaining said approvals and permits.

(g) Notify Engineer whenever Owner becomes aware of any substantial development or occurrence which materially affects the scope or timing of Engineer's services.

(h) Owner shall perform its obligations and render decisions within a reasonable time under the presented circumstances. However, given the nature of Owner's internal organization and requirements, a period of fourteen (14) days shall be presumed reasonable for any decision not involving policy decision or significant financial impact. A period of forty-five (45) days shall be presumed reasonable for Owner to act with respect to any matter involving policy or significant financial impact.

SECTION 4. TIME FOR PERFORMANCE.

Engineer's obligation to render services shall continue for such period of time as may reasonably be required for completion of the work contemplated in Appendix A - Scope of Services and Sections 1 and 2 of this Agreement.

SECTION 5. PAYMENT.

5.1 Owner will pay to Engineer as full compensation for all services required to be performed by Engineer under this Agreement, except for services for additional work or work beyond the scope of this Agreement, an amount not to exceed \$21,355.00 in the aggregate. In the event compensation for services is set forth in Appendix B as to each phase of work indicated in Section 1.1 of this Agreement, the maximum amount of compensation for any phase shall not exceed the amount specified in Appendix B for such phase, and together shall not exceed the maximum aggregate set forth herein.

5.2 Engineer shall submit periodic, but not more frequently than monthly, applications for payment, aggregating to not more than the maximum amount, for actual professional services rendered and reimbursable expenses incurred. Such applications shall be submitted with appropriate documentation that such services have been performed and expenses incurred. Thereafter, Owner shall pay Engineer for the amount of the application within forty (40) days of the date of billing, provided that sufficient documentation has been furnished, and further provided that Owner will not be required to pay more than 90% of the maximum amount unless the Engineer's services on the Project phases for which this Agreement is applicable have been completed to Owner's reasonable satisfaction and all required Engineer submittals have been provided.

5.3 The rates of compensation for service and for reimbursable expenses to be used with periodic and final payment applications, if any, shall be those set forth in Appendix B – "Fee Schedule."

5.4 No separate or additional payment shall be made for profit, overhead, local telephone expenses, lodging, routine photocopying, computer time, secretarial or clerical time, or similar expenses unless otherwise provided and listed in Appendix B - "Fee Schedule."

5.5 No compensation shall be paid to Engineer for services required and expenditures incurred in correcting Engineer's mistakes or negligence.

5.6 Compensation for authorized work beyond the scope of this Agreement shall be governed by Paragraph 2.6(g).

Section 6. Term and Termination

6.1 Term. The term of this Agreement begins on the Effective Date and ends on December 31, 2022, unless sooner terminated in accordance with this Agreement. City reserves the right to extend the term of this Agreement in one-year increments by written acceptance of both parties.

6.2 Fund Appropriation. This agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Pueblo, contrary to Article X, §20 of the Colorado Constitution or any other constitutional, statutory or charter debt limitation. Notwithstanding any other provision of this agreement, with respect to any financial obligation of City which may arise under this agreement in any fiscal year after the current year, in the event the budget or other means of appropriations for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default by or breach of this agreement. The termination of this Agreement due to lack of funding shall be without penalty to the City.

6.3 Owner reserves the right to terminate this Agreement and Engineer's performance hereunder, at any time upon written notice, either for cause or for convenience. Upon such termination, Engineer and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Owner all data, drawings, specifications, reports, plans, calculations, summaries, and all other information, documents, work product, and materials as Engineer may have accumulated in performing this Agreement, together with all finished work and work in progress.

6.4 Upon termination of this Agreement for events or reasons not the fault of Engineer, Engineer shall be paid at the rates specified in Appendix B for all services rendered and reasonable costs incurred to date of termination; together with any reasonable costs incurred within ten (10) days of termination provided such latter costs could not be avoided or were incurred in mitigating loss or expenses to Engineer or Owner. In no event shall payment to Engineer upon termination exceed the maximum compensation provided for complete performance in Section 5.1.

6.5 In the event termination of this Agreement or Engineer's services is for breach of this Agreement by Engineer, or for other fault of Engineer including but not limited to any failure to timely proceed with work, or to pay its employees, engineers, and subcontractors, or to perform work according to the highest professional standards, or to perform work in a manner deemed satisfactory by Owner's Project Representative, then in that event, Engineer's entire right to compensation shall be chosen by Owner and limited to the lesser of (a) the reasonable value of completed work to Owner or (b) payment at the rates specified in Appendix B for services satisfactorily performed and reimbursable expenses reasonably incurred, prior to date of termination.

6.6 Engineer's professional responsibility for its completed work and services shall survive any termination.

SECTION 7. GENERAL PROVISIONS.

7.1 (a) Ownership of Documents and Acquisitions. All designs, Drawings, Specifications, technical data, and other documents or instruments and all acquisitions made pursuant to this Agreement, including, but not limited to, snow removal equipment, procured or produced by the Engineer in the performance of this Agreement shall be the sole property of the Owner and the Owner is vested with all rights therein of whatever kind and however created, whether created by common law, statutory law, or by equity. The Engineer agrees that the Owner shall have access at all reasonable times to inspect and make

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copies of all notes, designs, drawings, specifications, and all other technical data and all acquisitions pertaining to the work to be performed under this Agreement.

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

7.2 Insurance and Indemnity.

(a) Engineer agrees that it has procured and will maintain during the term of this Agreement, such insurance as will protect it from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of its employees or of any person other than his employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom; and such insurance will provide for coverage in such amounts as set forth in subparagraph (b).

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

(i) Workers' Compensation Insurance complying with statutory requirements in Colorado and in any other state or states where the work is performed.

(ii) Comprehensive General and Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) per person and occurrence for personal injury, including but not limited to death and bodily injury, One Million Dollars (\$1,000,000.00) per occurrence for property damage, and One Million and No/100 Dollars (\$1,000,000.00) for excess umbrella liability.

(iii) Professional Liability Insurance in amounts and form acceptable to Owner, and with a deductible not exceeding \$75,000.00.

(c) Engineer agrees to hold harmless, defend, and indemnify Owner from and against any liability to third parties, arising out of negligent acts, errors, or omissions of Engineer, its employees, subcontractors and consultants. Engineer agrees to hold harmless, defend, and indemnify Owner from and against any liability to subcontractors and consultants, arising out of negligent acts, errors or omissions of Engineer and its employees, including claims of nonpayment. Nothing in this Agreement is intended, nor should it be construed, to create any rights, claims, or benefits or assume any liability for or on behalf of any third party, or to waive any immunities or limitations conferred under federal or state law, including but not limited to the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S.

7.3 Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either the Owner or the Engineer by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service when deposited in the United States mail, first-class postage prepaid, addressed to the Owner, Attention: Greg Pedroza, Interim Director of Aviation, Pueblo Memorial Airport, 31201 Bryan Circle, Pueblo, Colorado, or to the Engineer at 7878 N. 16th Street, Suite 300, Phoenix, Arizona, 85020. Either party may change its address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

7.4 Entire Agreement. This instrument contains the entire agreement between the Owner and

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the Engineer respecting the Project, and any other written or oral agreement or representation respecting the Project or the duties of either the Owner or the Engineer in relation thereto not expressly set forth in this instrument is null and void. In the event of any conflict between any provision of this Agreement and a provision of any Appendix or attachment to this Agreement, the provision in this Agreement shall control and supersede the conflicting provision in the Appendix or attachment. Any inconsistent resolution provision in any attachment to this Agreement shall be void.

7.5 Successors and Assigns. This Agreement shall be binding on the parties hereto and on their partners, heirs, executors, administrators, successors, and assigns; provided, however, that neither this Agreement, nor any part thereof, nor any moneys due or to become due hereunder to the Engineer may be assigned by him without the written consent of the Owner.

7.6 Amendments. No amendment to this Agreement shall be made nor be enforceable unless made by written Amendment signed by an authorized representative of Engineer and Owner.

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

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

7.9 Severability. If any provision of this Agreement, except for Section 2.7, is determined to be directly contrary to and prohibited by law or the requirements of any federal grant or other Project funding source, then such provision shall be deemed void and the remainder of the Agreement enforced. However, it is the intent of the parties that Section 2.7 of this Agreement not be severable, and that if any provision of said section be determined to be contrary to law or the terms of any federal grant, then this entire Agreement shall be void.

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

7.11 Additional Requirements on Federally Funded Contracts. If any of the work to be performed by Engineer under this Agreement is funded in whole or in part with federal funds, then this Agreement shall be construed to include all applicable terms required by the federal assistance agreement and integrated federal regulations. By executing this Agreement, Engineer agrees to be bound by all such mandatory federal requirements, irrespective of Engineer's actual knowledge or lack of knowledge of such requirements prior to execution of this Agreement.

7.12 Access to Property Not Under Owner's Control. Engineer acknowledges that the Project may require access to property not under the control of Owner at the time of execution of this Agreement. Engineer and Engineer's employees and consultants shall, at Engineer's expense, obtain all additional necessary approvals and clearances required for access to such property. Owner shall assist Engineer in obtaining access to such property at reasonable times but make no warranty or representation whatsoever regarding access to such property. Engineer understands and agrees that entry to properties not under

Owner's control may require Engineer to comply with the terms of separate access agreements to be negotiated hereafter with owners of such property.

SECTION 8. DISPUTES.

8.1 Any dispute or disagreement between Engineer and Owner arising from or relating to this Agreement or Engineer's services or right to payment hereunder shall be determined and decided by the Owner's Director of Aviation whose written decision shall be final and binding unless judicial review is sought in a Colorado Court of competent jurisdiction pursuant to Rule 106, C.R.C.P.

8.2 Pending resolution of any dispute or disagreement, or judicial review, Engineer shall proceed diligently with performance of his work under this Agreement.

SECTION 9. APPENDICES.

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

Appendix A - "Scope of Services" consisting of 4 pages.

Appendix B - "Fee Schedule" consisting of 1 page.

Appendix C - "Identification of Personnel, Subcontractors and Task Responsibility" Consisting of 1 page.

SECTION 10. ACCESSIBILITY.

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

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

(a) At or prior to the time for execution of this Contract, Consultant shall submit to the Purchasing Agent of the City its certification that it does not knowingly employ or contract with a "worker without authorization", as that term is defined within §8-17.5-101 (9), C.R.S. (herein "Worker without Authorization"), who will perform work under this Contract and that the Consultant will participate in either the "E-Verify Program" created in Public Law 208, 104th Congress, as amended and expanded in Public law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security or the "Department Program" established pursuant to section 8-17.5-102(5)(c), C.R.S. that is administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract.

(b) Consultant shall not:

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

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

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

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

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

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

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

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

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

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

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

SECTION 12. PERA LIABILITY

The Engineer shall reimburse the Owner 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 Owner under this Agreement. Engineer has submitted to Owner a completed form listing any PERA retirees employed by Engineer and shall update said form with Owner at any time a PERA retiree is hired by Engineer.

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

CITY OF PUEBLO, A MUNICIPAL CORPORATION

DIBBLE AND ASSOCIATES CONSULTING ENGINEERS, INC.

By: _____
Nicholas A. Gradisar, Mayor

Name: Michael James Bays
By: [Signature]
Title: VICE PRESIDENT

Attest: _____
City Clerk

[S E A L]

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

Director of Finance

APPROVED AS TO FORM:

City Attorney

Application for Federal Assistance SF-424

* 1. Type of Submission:

- Preapplication
 Application
 Changed/Corrected Application

* 2. Type of Application:

- New
 Continuation
 Revision

* If Revision, select appropriate letter(s):

* Other (Specify):

* 3. Date Received:

4. Applicant Identifier:

PUB

5a. Federal Entity Identifier:

5b. Federal Award Identifier:

AIP: 3-08-0046-046-2022

State Use Only:

6. Date Received by State:

7. State Application Identifier:

8. APPLICANT INFORMATION:

* a. Legal Name:

City of Pueblo, Colorado

* b. Employer/Taxpayer Identification Number (EIN/TIN):

84-6000615

* c. Organizational DUNS:

0106202840000

d. Address:

* Street1:

1 City Hall Place

Street2:

* City:

Pueblo

County/Parish:

Pueblo

* State:

CO: Colorado

Province:

* Country:

USA: UNITED STATES

* Zip / Postal Code:

81003-4803

e. Organizational Unit:

Department Name:

Department of Aviation

Division Name:

Aviation

f. Name and contact information of person to be contacted on matters involving this application:

Prefix:

Mr.

* First Name:

Greg

Middle Name:

* Last Name:

Pedroza

Suffix:

Title:

Director of Aviation

Organizational Affiliation:

* Telephone Number:

719-553-2744

Fax Number:

719-553-2761

* Email:

gpedroza@pueblo.us

Application for Federal Assistance SF-424

*** 9. Type of Applicant 1: Select Applicant Type:**

C: City or Township Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

* Other (specify):

*** 10. Name of Federal Agency:**

Federal Aviation Administration

11. Catalog of Federal Domestic Assistance Number:

20.106

CFDA Title:

Airport Improvement Program

*** 12. Funding Opportunity Number:**

-

* Title:

-

13. Competition Identification Number:

-

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

City of Pueblo, Pueblo County, State of Colorado

Add Attachment

Delete Attachment

View Attachment

*** 15. Descriptive Title of Applicant's Project:**

Acquisition of Snow Removal Equipment

Attach supporting documents as specified in agency instructions.

Add Attachments

Delete Attachments

View Attachments

Application for Federal Assistance SF-424

16. Congressional Districts Of:

* a. Applicant

* b. Program/Project

Attach an additional list of Program/Project Congressional Districts if needed.

17. Proposed Project:

* a. Start Date:

* b. End Date:

18. Estimated Funding (\$):

* a. Federal	<input type="text" value="406,125.00"/>
* b. Applicant	<input type="text" value="0.00"/>
* c. State	<input type="text" value="10,688.00"/>
* d. Local	<input type="text" value="10,688.00"/>
* e. Other	<input type="text" value="0.00"/>
* f. Program Income	<input type="text" value="0.00"/>
* g. TOTAL	<input type="text" value="427,501.00"/>

*** 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

- a. This application was made available to the State under the Executive Order 12372 Process for review on
- b. Program is subject to E.O. 12372 but has not been selected by the State for review.
- c. Program is not covered by E.O. 12372.

*** 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes," provide explanation in attachment.)**

Yes No

If "Yes", provide explanation and attach

21. *By signing this application, I certify (1) to the statements contained in the list of certifications and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)**

** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: * First Name:
Middle Name:
* Last Name:
Suffix:

* Title:

* Telephone Number: Fax Number:

* Email:

* Signature of Authorized Representative: 

* Date Signed:

Application for Federal Assistance (Development and Equipment Projects)

PART II – PROJECT APPROVAL INFORMATION

Part II - SECTION A	
The term "Sponsor" refers to the applicant name provided in box 8 of the associated SF-424 form.	
Item 1. Does Sponsor maintain an active registration in the System for Award Management (www.SAM.gov)?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Item 2. Can Sponsor commence the work identified in the application in the fiscal year the grant is made or within six months after the grant is made, whichever is later?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Item 3. Are there any foreseeable events that would delay completion of the project? If yes, provide attachment to this form that lists the events.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A
Item 4. Will the project(s) covered by this request have impacts or effects on the environment that require mitigating measures? If yes, attach a summary listing of mitigating measures to this application and identify the name and date of the environmental document(s).	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A
Item 5. Is the project covered by this request included in an approved Passenger Facility Charge (PFC) application or other Federal assistance program? If yes, please identify other funding sources by checking all applicable boxes.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A
<input type="checkbox"/> The project is included in an <i>approved</i> PFC application. If included in an approved PFC application, does the application <i>only</i> address AIP matching share? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/> The project is included in another Federal Assistance program. Its CFDA number is below.	
Item 6. Will the requested Federal assistance include Sponsor indirect costs as described in 2 CFR Appendix VII to Part 200, States and Local Government and Indian Tribe Indirect Cost Proposals?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A
If the request for Federal assistance includes a claim for allowable indirect costs, select the applicable indirect cost rate the Sponsor proposes to apply:	
<input type="checkbox"/> De Minimis rate of 10% as permitted by 2 CFR § 200.414.	
<input type="checkbox"/> Negotiated Rate equal to	% as approved by _____ (the Cognizant Agency) on _____ (Date) (2 CFR part 200, appendix VII).
<i>Note: Refer to the instructions for limitations of application associated with claiming Sponsor indirect costs.</i>	

PART II - SECTION B

Certification Regarding Lobbying

The declarations made on this page are under the signature of the authorized representative as identified in box 21 of form SF-424, to which this form is attached. The term "Sponsor" refers to the applicant name provided in box 8 of the associated SF-424 form.

The Authorized Representative certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Sponsor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Authorized Representative shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

PART II – SECTION C

The Sponsor hereby represents and certifies as follows:

1. Compatible Land Use – The Sponsor has taken the following actions to assure compatible usage of land adjacent to or in the vicinity of the airport:

The City of Pueblo and Pueblo County has passed an Airport Protection Overlay District Zoning Resolution, effective in 1990 that allows the City to control future development in the vicinity of the Airport

2. Defaults – The Sponsor is not in default on any obligation to the United States or any agency of the United States Government relative to the development, operation, or maintenance of any airport, except as stated herewith:

The Sponsor is not in default on any obligation to the United States government.

3. Possible Disabilities – There are no facts or circumstances (including the existence of effective or proposed leases, use agreements or other legal instruments affecting use of the Airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project or carry out the provisions of the Grant Assurances, either by limiting its legal or financial ability or otherwise, except as follows:

There are no facts or circumstances which will inhibit the completion of the project.

4. Consistency with Local Plans – The project is reasonably consistent with plans existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

This project is consistent with the CIP.

5. Consideration of Local Interest – It has given fair consideration to the interest of communities in or near where the project may be located.

This project has given fair consideration.

6. Consultation with Users – In making a decision to undertake an airport development project under Title 49, United States Code, it has consulted with airport users that will potentially be affected by the project (§ 47105(a)(2)).

Project consultation will occur with airport users.

7. Public Hearings – In projects involving the location of an airport, an airport runway or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

Not applicable.

8. Air and Water Quality Standards – In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable and air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.

Not applicable.

PART II – SECTION C (Continued)

9. Exclusive Rights – There is no grant of an exclusive right for the conduct of any aeronautical activity at any airport owned or controlled by the Sponsor except as follows:

There is no grant of an exclusive right related to aeronautical activity at any airport owned or controlled by the Sponsor.

10. Land – (a) The sponsor holds the following property interest in the following areas of land, which are to be developed or used as part of or in connection with the Airport subject to the following exceptions, encumbrances, and adverse interests, all of which areas are identified on the aforementioned property map designated as Exhibit "A". [1]

The Pueblo Memorial Airport is entirely owned, in fee simple title, by the City of Pueblo, Colorado with no exceptions as noted above. No land acquisitions are required for this project.

The Sponsor further certifies that the above is based on a title examination by a qualified attorney or title company and that such attorney or title company has determined that the Sponsor holds the above property interests.

(b) The Sponsor will acquire within a reasonable time, but in any event prior to the start of any construction work under the Project, the following property interest in the following areas of land on which such construction work is to be performed, all of which areas are identified on the aforementioned property map designated as Exhibit "A". [1]

None

(c) The Sponsor will acquire within a reasonable time, and if feasible prior to the completion of all construction work under the Project, the following property interest in the following areas of land which are to be developed or used as part of or in connection with the Airport as it will be upon completion of the Project, all of which areas are identified on the aforementioned property map designated as Exhibit "A". [1]

None

¹ State the character of property interest in each area and list and identify for each all exceptions, encumbrances, and adverse interests of every kind and nature, including liens, easements, leases, etc. The separate areas of land need only be identified here by the area numbers shown on the property map.

PART III – BUDGET INFORMATION – CONSTRUCTION

SECTION A – GENERAL

1. Federal Domestic Assistance Catalog Number: 20-106
2. Functional or Other Breakout:

SECTION B – CALCULATION OF FEDERAL GRANT

Cost Classification	Latest Approved Amount (Use only for revisions)	Adjustment + or (-) Amount (Use only for revisions)	Total Amount Required
1. Administration expense			\$ 2,000
2. Preliminary expense			
3. Land, structures, right-of-way			
4. Architectural engineering basic fees			21,355
5. Other Architectural engineering fees			
6. Project inspection fees			
7. Land development			
8. Relocation Expenses			
9. Relocation payments to Individuals and Businesses			
10. Demolition and removal			
11. Construction and project improvement			
12. Equipment			404,146
13. Miscellaneous			
14. Subtotal (Lines 1 through 13)			\$ 427,501
15. Estimated Income (if applicable)			
16. Net Project Amount (Line 14 minus 15)			
17. Less: Ineligible Exclusions (Section C, line 23 g.)			
18. Subtotal (Lines 16 through 17)			
19. Federal Share requested of Line 18			
20. Grantee share			
21. Other shares			
22. TOTAL PROJECT (Lines 19, 20 & 21)			\$ 427,501

SECTION C – EXCLUSIONS	
23. Classification (Description of non-participating work)	Amount Ineligible for Participation
a.	
b.	
c.	
d.	
e.	
f.	
g. Total	

SECTION D – PROPOSED METHOD OF FINANCING NON-FEDERAL SHARE	
24. Grantee Share – Fund Categories	Amount
a. Securities	
b. Mortgages	
c. Appropriations (by Applicant)	
d. Bonds	
e. Tax Levies	
f. Non-Cash	
g. Other (Explain): General Fund/Airport Improvement Fund	10,688
h. TOTAL - Grantee share	
25. Other Shares	Amount 10,688
a. State	10,688
b. Other	
c. TOTAL - Other Shares	\$ 10,688
26. TOTAL NON-FEDERAL FINANCING	\$ 21,376

SECTION E – REMARKS (Attach sheets if additional space is required)

PART IV – PROGRAM NARRATIVE
(Suggested Format)

PROJECT: Aquisition of Snow Removal Equipment (Truck & Plow)
AIRPORT: PUB, Pueblo Memorial Airport, Pueblo, Colorado
1. Objective: The project is to acquire snow removal equipment (Truck and Plow) for use at the Pueblo Memorial Airport.
2. Benefits Anticipated: PUB is currently lacking the SRE which is to be acquired. Similar equipment in the Airport's fleet is aging. In addition, the airport has no suitable equipment to properly operate a pull-behind broom which is currently in their equipment fleet. This acquisition will allow the airport to meet snow clearing times established the their Cert Manual.
3. Approach: (See approved Scope of Work in Final Application) The SRE will be acquired utilizing current FAA procurement standards where applicable. A competitive bidding process will be implemented in 2022.
4. Geographic Location: Pueblo Memorial Airport 31201 Bryan Cr. Pueblo CO 81003
5. If Applicable, Provide Additional Information: NA
6. Sponsor's Representative: (include address & telephone number) Mr. Nicholas A. Gradisar, Mayor Phone: 719 553 2655 Address: 1 City Hall Pl., Pueblo CO 81003

CIP/PREAPPLICATION DATA SHEET

AIRPORT: Pueblo Memorial Airport LOCAL PRIORITY: _____ UPDATED: 01/12/22

WORK ITEM: Acquisition of Snow Removal Equipment (Truck & Plow)

SKETCH: N/A

JUSTIFICATION: The project will include development of specifications and bidding documents for the acquisition of snow removal equipment, and bid phase services to acquire snow removal equipment for Pueblo Memorial Airport. A tandem dump truck and plow will be acquired.

SPONSOR SIGNATURE: *Nehal Shadhin* DATE: 1-13-2022

COST ESTIMATE: \$427,501 Item (Fencing, Signage, and Drainage)

ENGINEERING:	\$ 21,355	2:	\$	5	\$
PROCUREMENT:	\$ 406,146	3:	\$	TOTAL:	\$ 427,501

ADO USE:

PREAPP NO: _____ GRANT NO: _____ PIAS CODE: _____ WORK CODE: _____ FAA PRIOR: _____ FED \$ _____



**FAA
Airports**

Current FAA Advisory Circulars Required for Use in AIP Funded and PFC Approved Projects

Updated: 4/18/2019

View the most current versions of these ACs and any associated changes at:
http://www.faa.gov/airports/resources/advisory_circulars and
http://www.faa.gov/regulations_policies/advisory_circulars/

NUMBER	TITLE
70/7460-1L Change 2	Obstruction Marking and Lighting
150/5000-9A	Announcement of Availability Report No. DOT/FAA/PP/92-5, Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations
150/5000-17	Critical Aircraft and Regular Use Determination
150/5020-1	Noise Control and Compatibility Planning for Airports
150/5070-6B Changes 1 - 2	Airport Master Plans
150/5070-7 Change 1	The Airport System Planning Process
150/5100-13B	Development of State Standards for Nonprimary Airports
150/5200-28F	Notices to Airmen (NOTAMs) for Airport Operators
150/5200-30D Change 1	Airport Field Condition Assessments and Winter Operations Safety
150/5200-31C Changes 1 - 2	Airport Emergency Plan
150/5210-5D	Painting, Marking, and Lighting of Vehicles Used on an Airport
150/5210-7D	Aircraft Rescue and Fire Fighting Communications
150/5210-13C	Airport Water Rescue Plans and Equipment

NUMBER	TITLE
150/5210-14B	Aircraft Rescue Fire Fighting Equipment, Tools and Clothing
150/5210-15A	Aircraft Rescue and Firefighting Station Building Design
150/5210-18A	Systems for Interactive Training of Airport Personnel
150/5210-19A	Driver's Enhanced Vision System (DEVs)
150/5220-10E	Guide Specification for Aircraft Rescue and Fire Fighting (ARFF) Vehicles
150/5220-16E, Change 1	Automated Weather Observing Systems (AWOS) for Non-Federal Applications
150/5220-17B	Aircraft Rescue and Fire Fighting (ARFF) Training Facilities
150/5220-18A	Buildings for Storage and Maintenance of Airport Snow and Ice Control Equipment and Materials
150/5220-20A	Airport Snow and Ice Control Equipment
150/5220-21C	Aircraft Boarding Equipment
150/5220-22B	Engineered Materials Arresting Systems (EMAS) for Aircraft Overruns
150/5220-23	Frangible Connections
150/5220-24	Foreign Object Debris Detection Equipment
150/5220-25	Airport Avian Radar Systems
150/5220-26, Changes 1 - 2	Airport Ground Vehicle Automatic Dependent Surveillance - Broadcast (ADS-B) Out Squitter Equipment
150/5300-13A, Change 1	Airport Design
150/5300-14C	Design of Aircraft Deicing Facilities
150/5300-16A	General Guidance and Specifications for Aeronautical Surveys: Establishment of Geodetic Control and Submission to the National Geodetic Survey
150/5300-17C Change 1	Standards for Using Remote Sensing Technologies in Airport Surveys
150/5300-18B Change 1	General Guidance and Specifications for Submission of Aeronautical Surveys to NGS: Field Data Collection and Geographic Information System (GIS) Standards
150/5320-5D	Airport Drainage Design

NUMBER	TITLE
150/5320-6F	Airport Pavement Design and Evaluation
150/5320-12C, Changes 1 - 8	Measurement, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces
150/5320-15A	Management of Airport Industrial Waste
150/5325-4B	Runway Length Requirements for Airport Design
150/5335-5C	Standardized Method of Reporting Airport Pavement Strength - PCN
150/5340-1L	Standards for Airport Markings
150/5340-5D	Segmented Circle Airport Marker System
150/5340-18F	Standards for Airport Sign Systems
150/5340-26C	Maintenance of Airport Visual Aid Facilities
150/5340-30J	Design and Installation Details for Airport Visual Aids
150/5345-3G	Specification for L-821, Panels for the Control of Airport Lighting
150/5345-5B	Circuit Selector Switch
150/5345-7F	Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits
150/5345-10H	Specification for Constant Current Regulators and Regulator Monitors
150/5345-12F	Specification for Airport and Heliport Beacons
150/5345-13B	Specification for L-841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits
150/5345-26D	FAA Specification For L-823 Plug and Receptacle, Cable Connectors
150/5345-27E	Specification for Wind Cone Assemblies
150/5345-28G	Precision Approach Path Indicator (PAPI) Systems
150/5345-39D	Specification for L-853, Runway and Taxiway Retroreflective Markers
150/5345-42H	Specification for Airport Light Bases, Transformer Housings, Junction Boxes, and Accessories
150/5345-43J	Specification for Obstruction Lighting Equipment

NUMBER	TITLE
150/5345-44K	Specification for Runway and Taxiway Signs
150/5345-45C	Low-Impact Resistant (LIR) Structures
150/5345-46E	Specification for Runway and Taxiway Light Fixtures
150/5345-47C	Specification for Series to Series Isolation Transformers for Airport Lighting Systems
150/5345-49D	Specification L-854, Radio Control Equipment
150/5345-50B	Specification for Portable Runway and Taxiway Lights
150/5345-51B	Specification for Discharge-Type Flashing Light Equipment
150/5345-52A	Generic Visual Glideslope Indicators (GVGI)
150/5345-53D	Airport Lighting Equipment Certification Program
150/5345-54B	Specification for L-884, Power and Control Unit for Land and Hold Short Lighting Systems
150/5345-55A	Specification for L-893, Lighted Visual Aid to Indicate Temporary Runway Closure
150/5345-56B	Specification for L-890 Airport Lighting Control and Monitoring System (ALCMS)
150/5360-12F	Airport Signing and Graphics
150/5360-13A	Airport Terminal Planning
150/5360-14A	Access to Airports By Individuals With Disabilities
150/5370-2G	Operational Safety on Airports During Construction
150/5370-10H	Standard Specifications for Construction of Airports
150/5370-11B	Use of Nondestructive Testing in the Evaluation of Airport Pavements
150/5370-13A	Off-Peak Construction of Airport Pavements Using Hot-Mix Asphalt
150/5370-15B	Airside Applications for Artificial Turf
150/5370-16	Rapid Construction of Rigid (Portland Cement Concrete) Airfield Pavements
150/5370-17	Airside Use of Heated Pavement Systems
150/5390-2C	Heliport Design
150/5395-1B	Seaplane Bases

THE FOLLOWING ADDITIONAL APPLY TO AIP PROJECTS ONLY

Updated: 3/22/2019

NUMBER	TITLE
150/5100-14E, Change 1	Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects
150/5100-17, Changes 1 - 7	Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects
150/5300-15A	Use of Value Engineering for Engineering and Design of Airport Grant Projects
150/5320-17A	Airfield Pavement Surface Evaluation and Rating Manuals
150/5370-12B	Quality Management for Federally Funded Airport Construction Projects
150/5380-6C	Guidelines and Procedures for Maintenance of Airport Pavements
150/5380-7B	Airport Pavement Management Program
150/5380-9	Guidelines and Procedures for Measuring Airfield Pavement Roughness



ASSURANCES

Airport Sponsors

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. Airport Planning Undertaken by a Sponsor.

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements.

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act - 5 U.S.C. 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.^{1,2}
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. 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);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 - 42 U.S.C. 4151, et seq.¹
- s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.¹
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.1
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.¹
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

Executive Orders

- a. Executive Order 11246 - Equal Employment Opportunity¹
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction¹
- f. Executive Order 12898 - Environmental Justice

Federal Regulations

- a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].^{4, 5, 6}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- e. 14 CFR Part 150 - Airport noise compatibility planning.
- f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
- g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- h. 29 CFR Part 1 - Procedures for predetermination of wage rates.¹
- i. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹
- j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹
- l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- m. 49 CFR Part 20 - New restrictions on lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.

- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.^{1 2}
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.¹
- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- t. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

Specific Assurances

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

Footnotes to Assurance C.1.

- ¹ These laws do not apply to airport planning sponsors.
- ² These laws do not apply to private sponsors.
- ³ 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- ⁴ On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

⁵ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

⁶ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

4. Good Title.

a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where the project may be located.

8. Consultation with Users.

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. Public Hearings.

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. Metropolitan Planning Organization.

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. Pavement Preventive Maintenance.

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. Terminal Development Prerequisites.

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and

has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates.

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference.

It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications.

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans,

specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

17. Construction Inspection and Approval.

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal,

state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

- 1) Operating the airport's aeronautical facilities whenever required;
 - 2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 - 3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or

to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

- 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
 - d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
 - e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
 - f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
 - g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
 - h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
 - i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights.

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure.

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
 - 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or

operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

- 2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
 - 3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
 - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

- a. It will keep up to date at all times an airport layout plan of the airport showing
 - 1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
 - 2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and

roads), including all proposed extensions and reductions of existing airport facilities;

- 3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and
 - 4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.
- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability
 - 1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 - 2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.

- 3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, 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.

c. Duration.

The sponsor agrees that it is obligated to this assurance 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 sponsor, or any transferee for the longer of the following periods:

- 1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 2) So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

“The **(Name of Sponsor)**, 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 and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

e. Required Contract Provisions.

- 1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
- 2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
- 3) It will insert non-discrimination contract clauses 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 sponsor.
- 4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a

covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor 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.
- f. It will provide for such methods of administration for the program as are found by the Secretary 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.
- g. It 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.

31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another

eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services.

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. Foreign Market Restrictions.

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. Policies, Standards, and Specifications.

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated _____ (the latest approved version as of this grant offer) and included in this grant, and in accordance

with applicable state policies, standards, and specifications approved by the Secretary.

35. Relocation and Real Property Acquisition.

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its DBE and ACDBE programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

38. Hangar Construction.

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
 - 1) Describes the requests;
 - 2) Provides an explanation as to why the requests could not be accommodated; and
 - 3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

STANDARD DOT TITLE VI ASSURANCES

City of Pueblo (hereinafter referred to as the Sponsor) hereby agrees that as a condition to receiving Federal financial assistance from the Department of Transportation (DOT), it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and all requirements imposed by 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the "Regulations") to the end that no person in the United States shall, on the ground 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 applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement. Without limiting the above general assurance, the Sponsor agrees concerning this grant that:

1. Each "program" and "facility" (as defined in Section 21.23(a) and 21.23(b)) will be conducted or operated in compliance with all requirements of the Regulations.
2. It will insert the clauses of Attachment 1 of this assurance in every contract subject to the Act and the Regulations.
3. Where Federal financial assistance is received to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.
4. Where Federal financial assistance is in the form or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over, or under such property.
5. It will include the appropriate clauses set forth in Attachment 2 of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Sponsor with other parties:
 - (a) for the subsequent transfer of real property acquired or improved with Federal financial assistance under this project; and
 - (b) for the construction or use of or access to space on, over, or under real property acquired or improved with Federal financial assistance under this Project.
6. This assurance obligates the Sponsor 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 Sponsor or any transferee for the longer of the following periods:
 - (a) the period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - (b) the period during which the Sponsor retains ownership or possession of the property.
7. It will provide for such methods of administration for the program as are found by the Secretary of transportation of the official to whom he delegates specific authority to give reasonable guarantees that it, other sponsors, sub grantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the act, the Regulations, and this assurance.

STANDARD DOT TITLE VI ASSURANCES (Continued)

8. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining Federal financial assistance for this Project and is binding on its contractors, the Sponsor, subcontractors, transferees, successors in interest and other participants in the Project. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Sponsor.

DATED January 04, 2022

City of Pueblo
(Sponsor)


(Signature of Authorized Official)
Nicholas A. Gradisar
Mayor

CONTRACTOR CONTRACTUAL REQUIREMENTS

ATTACHMENT 1

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 shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination. The contractor, with regard to the work performed by it during the contract, shall 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 shall 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 B of the Regulations.
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 lease of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. Information and Reports. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contract is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA 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.
6. Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a 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 Sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

CLAUSES FOR DEEDS, LICENSES, LEASES, PERMITS OR SIMILAR INSTRUMENTS

ATTACHMENT 2

The following clauses shall be included in deeds, licenses, leases, permits, or similar instruments entered into by the Sponsor pursuant to the provisions of Assurances 5(a) and 5(b).

1. The (grantee, licensee, permittee, etc., as appropriate) for himself, his 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 in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

2. The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his 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 grounds of race, color, or national origin shall 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 grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, permittee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

**REQUIRED STATEMENTS
AIRPORT IMPROVEMENT PROGRAM PROJECTS**

AIRPORT: PUB, Pueblo Memorial Airport

LOCATION: Pueblo, Colorado

AIP PROJECT NO.: 3-08-0046-046-2022

STATEMENTS APPLICABLE TO THIS PROJECT Acquisition of Snow Removal Equipment (Truck & Plow)

- a. **INTEREST OF NEIGHBORING COMMUNITIES:** In formulating this project, consideration has been given to the interest of communities that are near (Exact name of airport) Pueblo Memorial Airport.
- b. **THE DEVELOPMENT PROPOSED IN THIS PROJECT** will not require the use of publicly owned land from a public park, recreation area, wildlife and fowl refuge, or a historical site under Federal, State, or Local jurisdiction.
- c. **FBO COORDINATION:** The airport development proposed in this project has been coordinated with the Fixed Base Operator(s) utilizing (Exact name of airport) Pueblo Memorial Airport, and they have been informed regarding the scope and nature of this project.
- d. **THE PROPOSED PROJECT IS CONSISTENT** with existing approved plans for the area surrounding the airport.

The above statements have been duly considered and are applicable to this project. (Provide comment for any statement not checked).

BY: Nicholas A. Gradisar **DATE:** January 04, 2022

TITLE: Mayor

SPONSORING AGENCY: City of Pueblo

NOTE: Where opposition is stated to an airport development project, whether expressly or by proposed revision, the following specific information concerning the opposition to the project must be furnished.

- a. Identification of the Federal, state, or local governmental agency, or the person or persons opposing the project;
- b. The nature and basis of opposition;
- c. Sponsor's plan to accommodate or otherwise satisfy the opposition;
- d. Whether an opportunity for a hearing was afforded, and if a hearing was held, an analysis of the facts developed at the hearing as they relate to the social, economic, and environmental aspects of the proposed project and its consistency with the goals and objectives of such urban planning as has been carried out by the community.
- e. If the opponents proposed any alternatives, what these alternatives were and the reason for nonacceptance;
- f. Sponsor's plans, if any, to minimize any adverse effects of the project;
- g. Benefits to be gained by the proposed development; and
- h. Any other pertinent information which would be of assistance in determining whether to proceed with the project.

**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS,
AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. 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 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.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL "Disclosure of Lobby Activities", in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Signed _____ Date January 04, 2022
Sponsor's Authorized Representative

Title Nicholas A. Gradisar, Mayor 

TITLE VI PRE-AWARD SPONSOR CHECKLIST

Airport/Sponsor: PUB, Pueblo Memorial Airport, City of Pueblo

AIP #: 3-08-0046-046-2022

Project Description(s): Acquisition of Snow Removal Equipment (Truck & Plow)

- 1) Please describe any of the following IF they apply to your project: Title VI issues raised at public hearing(s) and the conclusions made; EIS data concerning the race, color, or national origin of the affected community; steps taken or proposed to guard against unnecessary impact on persons on the basis of race, color or national origin.
 None

- 2) Please list any airport related Title VI lawsuits or complaints filed in the preceding year against the sponsor. Include a summary of the findings.
 None (If "None", continue with questions 3 and 4).

- 3) Please list any current applications for federal funding (other than FAA) of airport related projects which exceed the amount for this grant.
 None

- 4) Please list any airport related Title VI compliance review(s) received by the sponsor in the preceding two years. Include who conducted the review and any findings of noncompliance.
 None

To be completed by the Civil Rights Staff

Review completed and approved: _____
Signature

Date: _____

This checklist is only required for projects that involve one of the following: Environmental Assessment or Impact Statement (EIS); airport or runway relocation; major runway extension; relocation of any structure of person; or impact to access or preservation of any burial ceremonial or other sacred or historical structures or lands of any indigenous or ethnic population.

Return to: FAA, Civil Rights, Northwest Mountain Region; 1601 Lind Ave. SW; Renton, WA 98057-3356. FAX: (425) 227-1009 Phone (425) 227-2009

Drug-Free Workplace Airport Improvement Program Sponsor Certification

Sponsor: City of Pueblo

Airport: PUB, Pueblo Memorial Airport, City of Pueblo

Project Number: AIP: 3-08-0046-046-2022

Description of Work: Aquisition of Snow Removal Equipment (Truck & Plow)

Application

49 USC § 47105(d) authorizes the Secretary to require certification from the sponsor that it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program (AIP). General requirements on the drug-free workplace within federal grant programs are described in 2 CFR part 182. Sponsors are required to certify they will be, or will continue to provide, a drug-free workplace in accordance with the regulation. The AIP project grant agreement contains specific assurances on the Drug-Free Workplace Act of 1988.

Certification Statements

Except for certification statements below marked as not applicable (N/A), this list includes major requirements of the construction project. Selecting "Yes" represents sponsor acknowledgement and confirmation of the certification statement. The term "will" means Sponsor action taken at appropriate time based on the certification statement focus area, but no later than the end of the project period of performance. This list is not comprehensive and does not relieve the sponsor from fully complying with all applicable statutory and administrative standards. The source of the requirement is referenced within parenthesis.

1. A statement has been or will be published prior to commencement of project notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the sponsor's workplace, and specifying the actions to be taken against employees for violation of such prohibition (2 CFR § 182.205).

Yes No N/A

2. An ongoing drug-free awareness program (2 CFR § 182.215) has been or will be established prior to commencement of project to inform employees about:

- a. The dangers of drug abuse in the workplace;
- b. The sponsor's policy of maintaining a drug-free workplace;
- c. Any available drug counseling, rehabilitation, and employee assistance programs; and
- d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

Yes No N/A

3. Each employee to be engaged in the performance of the work has been or will be given a copy of the statement required within item 1 above prior to commencement of project (2 CFR § 182.210).

Yes No N/A

4. Employees have been or will be notified in the statement required by item 1 above that, as a condition employment under the grant (2 CFR § 182.205(c)), the employee will:

- a. Abide by the terms of the statement; and
- b. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

Yes No N/A

5. The Federal Aviation Administration (FAA) will be notified in writing within 10 calendar days after receiving notice under item 4b above from an employee or otherwise receiving actual notice of such conviction (2 CFR § 182.225). Employers of convicted employees must provide notice, including position title of the employee, to the FAA (2 CFR § 182.300).

Yes No N/A

6. One of the following actions (2 CFR § 182.225(b)) will be taken within 30 calendar days of receiving a notice under item 4b above with respect to any employee who is so convicted:

- a. Take appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; and
- b. Require such employee to participate satisfactorily in drug abuse assistance or rehabilitation programs approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

Yes No N/A

7. A good faith effort will be made, on a continuous basis, to maintain a drug-free workplace through implementation of items 1 through 6 above (2 CFR § 182.200).

Yes No N/A

Site(s) of performance of work (2 CFR § 182.230):

Location 1

Name of Location: Pueblo Memorial Airport
Address: 31201 Bryan Cr., Pueblo CO 81001

Location 2 (if applicable)

Name of Location:
Address:

Location 3 (if applicable)

Name of Location:
Address:

Attach documentation clarifying any above item marked with a "No" response.

Sponsor's Certification

I certify, for the project identified herein, responses to the forgoing items are accurate as marked and additional documentation for any item marked "no" is correct and complete.

Executed on this 4th day of January, 2022.

Name of Sponsor: City of Pueblo

Name of Sponsor's Authorized Official: Nicholas A. Gradisar

Title of Sponsor's Authorized Official: Mayor

Signature of Sponsor's Authorized Official:  _____

I declare under penalty of perjury that the foregoing is true and correct. I understand that knowingly and willfully providing false information to the federal government is a violation of 18 USC § 1001 (False Statements) and could subject me to fines, imprisonment, or both.

Equipment and Construction Contracts Airport Improvement Sponsor Certification

Sponsor: City of Pueblo

Airport: Pueblo Memorial

Project Number: AIP: 3-08-0046-046-2022

Description of Work: Aquisition of Snow Removal Equipment (Truck & Plow)

Application

49 USC § 47105(d) authorizes the Secretary to require certification from the sponsor that it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program (AIP). General procurement standards for equipment and construction contracts within Federal grant programs are described in 2 CFR §§ 200.317-200.326. Labor and Civil Rights Standards applicable to the AIP are established by the Department of Labor (www.dol.gov) AIP Grant Assurance C.1—General Federal Requirements identifies all applicable Federal Laws, regulations, executive orders, policies, guidelines and requirements for assistance under the AIP. Sponsors may use state and local procedures provided the procurement conforms to these federal standards.

This certification applies to all equipment and construction projects. Equipment projects may or may not employ laborers and mechanics that qualify the project as a “covered contract” under requirements established by the Department of Labor requirements. Sponsor shall provide appropriate responses to the certification statements that reflect the character of the project regardless of whether the contract is for a construction project or an equipment project.

Certification Statements

Except for certification statements below marked as not applicable (N/A), this list includes major requirements of the construction project. Selecting “Yes” represents sponsor acknowledgement and confirmation of the certification statement. The term “will” means Sponsor action taken at appropriate time based on the certification statement focus area, but no later than the end of the project period of performance. This list is not comprehensive and does not relieve the sponsor from fully complying with all applicable statutory and administrative standards. The source of the requirement is referenced within parenthesis.

1. A written code or standard of conduct is or will be in effect prior to commencement of the project that governs the performance of the sponsor’s officers, employees, or agents in soliciting, awarding and administering procurement contracts (2 CFR § 200.318).

Yes No N/A

2. For all contracts, qualified and competent personnel are or will be engaged to perform contract administration, engineering supervision, construction inspection, and testing (Grant Assurance C.17).
- Yes No N/A
3. Sponsors that are required to have a Disadvantage Business Enterprise (DBE) program on file with the FAA have included or will include clauses required by Title VI of the Civil Rights Act and 49 CFR Part 26 for Disadvantaged Business Enterprises in all contracts and subcontracts.
- Yes No N/A
4. Sponsors required to have a DBE program on file with the FAA have implemented or will implement monitoring and enforcement measures that:
- a. Ensure work committed to Disadvantaged Business Enterprises at contract award is actually performed by the named DBEs (49 CFR § 26.37(b));
 - b. Include written certification that the sponsor has reviewed contract records and has monitored work sites for performance by DBE firms (49 CFR § 26.37(b)); and
 - c. Provides for a running tally of payments made to DBE firms and a means for comparing actual attainments (i.e. payments) to original commitments (49 CFR § 26.37(c)).
- Yes No N/A
5. Sponsor procurement actions using the competitive sealed bid method (2 CFR § 200.320(c)). was or will be:
- a. Publicly advertised, allowing a sufficient response time to solicit an adequate number of interested contractors or vendors;
 - b. Prepared to include a complete, adequate and realistic specification that defines the items or services in sufficient detail to allow prospective bidders to respond;
 - c. Publicly opened at a time and place prescribed in the invitation for bids; and
 - d. Prepared in a manner that result in a firm fixed price contract award to the lowest responsive and responsible bidder.
- Yes No N/A
6. For projects the Sponsor proposes to use the competitive proposal procurement method (2 CFR § 200.320(d)), Sponsor has requested or will request FAA approval prior to proceeding with a competitive proposal procurement by submitting to the FAA the following:
- a. Written justification that supports use of competitive proposal method in lieu of the preferred sealed bid procurement method;
 - b. Plan for publicizing and soliciting an adequate number of qualified sources; and
 - c. Listing of evaluation factors along with relative importance of the factors.
- Yes No N/A
7. For construction and equipment installation projects, the bid solicitation includes or will include the current federal wage rate schedule(s) for the appropriate type of work classifications (2 CFR Part 200, Appendix II).
- Yes No N/A

8. Concurrence was or will be obtained from the Federal Aviation Administration (FAA) prior to contract award under any of the following circumstances (Order 5100.38D):

- a. Only one qualified person/firm submits a responsive bid;
- b. Award is to be made to other than the lowest responsible bidder; and
- c. Life cycle costing is a factor in selecting the lowest responsive bidder.

Yes No N/A

9. All construction and equipment installation contracts contain or will contain provisions for:

- a. Access to Records (§ 200.336)
- b. Buy American Preferences (Title 49 U.S.C. § 50101)
- c. Civil Rights - General Provisions and Title VI Assurances(41 CFR part 60)
- d. Federal Fair Labor Standards (29 U.S.C. § 201, et seq)
- e. Occupational Safety and Health Act requirements (20 CFR part 1920)
- f. Seismic Safety – building construction (49 CFR part 41)
- g. State Energy Conservation Requirements - as applicable(2 CFR part 200, Appendix II)
- h. U.S. Trade Restriction (49 CFR part 30)
- i. Veterans Preference (49 USC § 47112(c))

Yes No N/A

10. All construction and equipment installation contracts exceeding \$2,000 contain or will contain the provisions established by:

- a. Davis-Bacon and Related Acts (29 CFR part 5)
- b. Copeland "Anti-Kickback" Act (29 CFR parts 3 and 5)

Yes No N/A

11. All construction and equipment installation contracts exceeding \$3,000 contain or will contain a contract provision that discourages distracted driving (E.O. 13513).

Yes No N/A

12. All contracts exceeding \$10,000 contain or will contain the following provisions as applicable:

- a. Construction and equipment installation projects - Applicable clauses from 41 CFR Part 60 for compliance with Executive Orders 11246 and 11375 on Equal Employment Opportunity;
- b. Construction and equipment installation - Contract Clause prohibiting segregated facilities in accordance with 41 CFR part 60-1.8;
- c. Requirement to maximize use of products containing recovered materials in accordance with 2 CFR § 200.322 and 40 CFR part 247; and
- d. Provisions that address termination for cause and termination for convenience (2 CFR Part 200, Appendix II).

Yes No N/A

13. All contracts and subcontracts exceeding \$25,000: Measures are in place or will be in place (e.g. checking the System for Award Management) that ensure contracts and subcontracts are not awarded to individuals or firms suspended, debarred, or excluded from participating in federally assisted projects (2 CFR parts 180 and 1200).

Yes No N/A

14. Contracts exceeding the simplified acquisition threshold (currently \$150,000) include or will include provisions, as applicable, that address the following:

- a. Construction and equipment installation contracts - a bid guarantee of 5%, a performance bond of 100%, and a payment bond of 100% (2 CFR § 200.325);
- b. Construction and equipment installation contracts - requirements of the Contract Work Hours and Safety Standards Act (40 USC 3701-3708, Sections 103 and 107);
- c. Restrictions on Lobbying and Influencing (2 CFR part 200, Appendix II);
- d. Conditions specifying administrative, contractual and legal remedies for instances where contractor or vendor violate or breach the terms and conditions of the contract (2 CFR §200, Appendix II); and
- e. All Contracts - Applicable standards and requirements issued under Section 306 of the Clean Air Act (42 USC 7401-7671q), Section 508 of the Clean Water Act (33 USC 1251-1387, and Executive Order 11738.

Yes No N/A

Attach documentation clarifying any above item marked with "No" response.

Sponsor's Certification

I certify, for the project identified herein, responses to the forgoing items are accurate as marked and additional documentation for any item marked "no" is correct and complete.

Executed on this 4th day of January, 2022.

Name of Sponsor: City of Pueblo

Name of Sponsor's Authorized Official: Nicholas A. Gradisar

Title of Sponsor's Authorized Official: Mayor

Signature of Sponsor's Authorized Official:



I declare under penalty of perjury that the foregoing is true and correct. I understand that knowingly and willfully providing false information to the federal government is a violation of 18 USC § 1001 (False Statements) and could subject me to fines, imprisonment, or both.

Project Plans and Specifications

Airport Improvement Program Sponsor Certification

Sponsor: City of Pueblo

Airport: Pueblo Memorial

Project Number: AIP: 3-08-0046-046-2022

Description of Work: Aquisition of Snow Removal Equipment (Truck & Plow)

Application

49 USC § 47105(d) authorizes the Secretary to require certification from the sponsor that it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program (AIP). Labor and civil rights standards applicable to AIP are established by the Department of Labor (www.dol.gov/). AIP Grant Assurance C.1—General Federal Requirements identifies applicable federal laws, regulations, executive orders, policies, guidelines and requirements for assistance under AIP. A list of current advisory circulars with specific standards for procurement, design or construction of airports, and installation of equipment and facilities is referenced in standard airport sponsor Grant Assurance 34 contained in the grant agreement.

Certification Statements

Except for certification statements below marked as not applicable (N/A), this list includes major requirements of the construction project. Selecting “Yes” represents sponsor acknowledgement and confirmation of the certification statement. The term “will” means Sponsor action taken at appropriate time based on the certification statement focus area, but no later than the end of the project period of performance. This list is not comprehensive and does not relieve the sponsor from fully complying with all applicable statutory and administrative standards. The source of the requirement is referenced within parenthesis.

1. The plans and specifications were or will be prepared in accordance with applicable federal standards and requirements, so that no deviation or modification to standards set forth in the advisory circulars, or FAA-accepted state standard, is necessary other than those explicitly approved by the Federal Aviation Administration (FAA) (14 USC § 47105).

Yes No N/A

2. Specifications incorporate or will incorporate a clear and accurate description of the technical requirement for the material or product that does not contain limiting or proprietary features that unduly restrict competition (2 CFR §200.319).

Yes No N/A

3. The development that is included or will be included in the plans is depicted on the current airport layout plan as approved by the FAA (14 USC § 47107).
- Yes No N/A
4. Development and features that are ineligible or unallowable for AIP funding have been or will be omitted from the plans and specifications (FAA Order 5100.38, par. 3-43).
- Yes No N/A
5. The specification does not use or will not use "brand name" or equal to convey requirements unless sponsor requests and receives approval from the FAA to use brand name (FAA Order 5100.38, Table U-5).
- Yes No N/A
6. The specification does not impose or will not impose geographical preference in their procurement requirements (2 CFR §200.319(b) and FAA Order 5100.38, Table U-5).
- Yes No N/A
7. The use of prequalified lists of individuals, firms or products include or will include sufficient qualified sources that ensure open and free competition and that does not preclude potential entities from qualifying during the solicitation period (2 CFR §319(d)).
- Yes No N/A
8. Solicitations with bid alternates include or will include explicit information that establish a basis for award of contract that is free of arbitrary decisions by the sponsor (2 CFR § 200.319(a)(7)).
- Yes No N/A
9. Concurrence was or will be obtained from the FAA if Sponsor incorporates a value engineering clause into the contract (FAA Order 5100.38, par. 3-57).
- Yes No N/A
10. The plans and specifications incorporate or will incorporate applicable requirements and recommendations set forth in the federally approved environmental finding (49 USC §47106(c)).
- Yes No N/A
11. The design of all buildings comply or will comply with the seismic design requirements of 49 CFR § 41.120. (FAA Order 5100.38d, par. 3-92)
- Yes No N/A
12. The project specification include or will include process control and acceptance tests required for the project by as per the applicable standard:
- a. Construction and installation as contained in Advisory Circular (AC) 150/5370-10.
- Yes No N/A

b. Snow Removal Equipment as contained in AC 150/5220-20.

Yes No N/A

c. Aircraft Rescue and Fire Fighting (ARFF) vehicles as contained in AC 150/5220-10.

Yes No N/A

13. For construction activities within or near aircraft operational areas(AOA):

a. The Sponsor has or will prepare a construction safety and phasing plan (CSPP) conforming to Advisory Circular 150/5370-2.

b. Compliance with CSPP safety provisions has been or will be incorporated into the plans and specifications as a contractor requirement.

c. Sponsor will not initiate work until receiving FAA's concurrence with the CSPP (FAA Order 5100.38, Par. 5-29).

Yes No N/A

14. The project was or will be physically completed without federal participation in costs due to errors and omissions in the plans and specifications that were foreseeable at the time of project design (49 USC §47110(b)(1) and FAA Order 5100.38d, par. 3-100).

Yes No N/A

Attach documentation clarifying any above item marked with "No" response.

Sponsor's Certification

I certify, for the project identified herein, responses to the forgoing items are accurate as marked and additional documentation for any item marked "no" is correct and complete.

Executed on this 4th day of January, 2022.

Name of Sponsor: City of Pueblo

Name of Sponsor's Authorized Official: Nicholas A. Gradisar

Title of Sponsor's Authorized Official: Mayor

Signature of Sponsor's Authorized Official:



I declare under penalty of perjury that the foregoing is true and correct. I understand that knowingly and willfully providing false information to the federal government is a violation of 18 USC § 1001 (False Statements) and could subject me to fines, imprisonment, or both.

Selection of Consultants

Airport Improvement Program Sponsor Certification

Sponsor: City of Pueblo

Airport: Pueblo Memorial

Project Number: AIP: 3-08-0046-046-2022

Description of Work: Aquisition of Snow Removal Equipment (Truck & Plow)

Application

49 USC § 47105(d) authorizes the Secretary to require certification from the sponsor that it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program (AIP). General requirements for selection of consultant services within federal grant programs are described in 2 CFR §§ 200.317-200.326. Sponsors may use other qualifications-based procedures provided they are equivalent to standards of Title 40 chapter 11 and FAA Advisory Circular 150/5100-14, Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects.

Certification Statements

Except for certification statements below marked as not applicable (N/A), this list includes major requirements of the construction project. Selecting "Yes" represents sponsor acknowledgement and confirmation of the certification statement. The term "will" means Sponsor action taken at appropriate time based on the certification statement focus area, but no later than the end of the project period of performance. This list is not comprehensive and does not relieve the sponsor from fully complying with all applicable statutory and administrative standards. The source of the requirement is referenced within parenthesis.

1. Sponsor acknowledges their responsibility for the settlement of all contractual and administrative issues arising out of their procurement actions (2 CFR § 200.318(k)).
 Yes No N/A

2. Sponsor procurement actions ensure or will ensure full and open competition that does not unduly limit competition (2 CFR § 200.319).
 Yes No N/A

3. Sponsor has excluded or will exclude any entity that develops or drafts specifications, requirements, or statements of work associated with the development of a request-for-qualifications (RFQ) from competing for the advertised services (2 CFR § 200.319).
 Yes No N/A

4. The advertisement describes or will describe specific project statements-of-work that provide clear detail of required services without unduly restricting competition (2 CFR § 200.319).
 Yes No N/A
5. Sponsor has publicized or will publicize a RFQ that:
a. Solicits an adequate number of qualified sources (2 CFR § 200.320(d)); and
b. Identifies all evaluation criteria and relative importance (2 CFR § 200.320(d)).
 Yes No N/A
6. Sponsor has based or will base selection on qualifications, experience, and disadvantaged business enterprise participation with price not being a selection factor (2 CFR § 200.320(d)).
 Yes No N/A
7. Sponsor has verified or will verify that agreements exceeding \$25,000 are not awarded to individuals or firms suspended, debarred or otherwise excluded from participating in federally assisted projects (2 CFR §180.300).
 Yes No N/A
8. A/E services covering multiple projects: Sponsor has agreed to or will agree to:
a. Refrain from initiating work covered by this procurement beyond five years from the date of selection (AC 150/5100-14); and
b. Retain the right to conduct new procurement actions for projects identified or not identified in the RFQ (AC 150/5100-14).
 Yes No N/A
9. Sponsor has negotiated or will negotiate a fair and reasonable fee with the firm they select as most qualified for the services identified in the RFQ (2 CFR § 200.323).
 Yes No N/A
10. The Sponsor's contract identifies or will identify costs associated with ineligible work separately from costs associated with eligible work (2 CFR § 200.302).
 Yes No N/A
11. Sponsor has prepared or will prepare a record of negotiations detailing the history of the procurement action, rationale for contract type and basis for contract fees (2 CFR §200.318(i)).
 Yes No N/A
12. Sponsor has incorporated or will incorporate mandatory contract provisions in the consultant contract for AIP-assisted work (49 U.S.C. Chapter 471 and 2 CFR part 200 Appendix II)
 Yes No N/A

13. For contracts that apply a time-and-material payment provision (also known as hourly rates, specific rates of compensation, and labor rates), the Sponsor has established or will establish:

- a. Justification that there is no other suitable contract method for the services (2 CFR §200.318(j));
- b. A ceiling price that the consultant exceeds at their risk (2 CFR §200.318(j)); and
- c. A high degree of oversight that assures consultant is performing work in an efficient manner with effective cost controls in place 2 CFR §200.318(j)).

Yes No N/A

14. Sponsor is not using or will not use the prohibited cost-plus-percentage-of-cost (CPPC) contract method. (2 CFR § 200.323(d)).

Yes No N/A

Attach documentation clarifying any above item marked with "no" response.

Sponsor's Certification

I certify, for the project identified herein, responses to the forgoing items are accurate as marked and additional documentation for any item marked "no" is correct and complete.

I declare under penalty of perjury that the foregoing is true and correct. I understand that knowingly and willfully providing false information to the federal government is a violation of 18 USC § 1001 (False Statements) and could subject me to fines, imprisonment, or both.

Executed on this 4th day of January, 2022.

Name of Sponsor: City of Pueblo

Name of Sponsor's Authorized Official: Nicholas A. Gradisar

Title of Sponsor's Authorized Official: Mayor

Signature of Sponsor's Authorized Official:



I declare under penalty of perjury that the foregoing is true and correct. I understand that knowingly and willfully providing false information to the federal government is a violation of 18 USC § 1001 (False Statements) and could subject me to fines, imprisonment, or both.

Certification and Disclosure Regarding Potential Conflicts of Interest Airport Improvement Program Sponsor Certification

Sponsor: City of Pueblo

Airport: Pueblo Memorial Airport

Project Number: AIP: 3-08-0046-046-2022

Description of Work: Aquisition of Snow Removal Equipment

Application

Title 2 CFR § 200.112 and § 1201.112 address Federal Aviation Administration (FAA) requirements for conflict of interest. As a condition of eligibility under the Airport Improvement Program (AIP), sponsors must comply with FAA policy on conflict of interest. Such a conflict would arise when any of the following have a financial or other interest in the firm selected for award:

- a) The employee, officer or agent,
- b) Any member of his immediate family,
- c) His or her partner, or
- d) An organization which employs, or is about to employ, any of the above.

Selecting "Yes" represents sponsor or sub-recipient acknowledgement and confirmation of the certification statement. Selecting "No" represents sponsor or sub-recipient disclosure that it cannot fully comply with the certification statement. If "No" is selected, provide support information explaining the negative response as an attachment to this form. This includes whether the sponsor has established standards for financial interest that are not substantial or unsolicited gifts are of nominal value (2 CFR § 200.318(c)). The term "will" means Sponsor action taken at appropriate time based on the certification statement focus area, but no later than the end of the project period of performance.

Certification Statements

1. The sponsor or sub-recipient maintains a written standards of conduct governing conflict of interest and the performance of their employees engaged in the award and administration of contracts (2 CFR § 200.318(c)). To the extent permitted by state or local law or regulations, such standards of conduct provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the sponsor's and sub-recipient's officers, employees, or agents, or by contractors or their agents.

Yes No

2. The sponsor's or sub-recipient's officers, employees or agents have not and will not solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements (2 CFR § 200.318(c)).

Yes No

3. The sponsor or sub-recipient certifies that is has disclosed and will disclose to the FAA any known potential conflict of interest (2 CFR § 1200.112).

Yes No

Attach documentation clarifying any above item marked with "no" response.

Sponsor's Certification

I certify, for the project identified herein, responses to the forgoing items are accurate as marked and have the explanation for any item marked "no" is correct and complete.

Executed on this 4th day of January, 2022.

Name of Sponsor: City of Pueblo

Name of Sponsor's Authorized Official: Nicholas A. Gradisar

Title of Sponsor's Authorized Official: Mayor

Signature of Sponsor's Authorized Official:



I declare under penalty of perjury that the foregoing is true and correct. I understand that knowingly and willfully providing false information to the federal government is a violation of 18 USC § 1001 (False Statements) and could subject me to fines, imprisonment, or both.

SNOW REMOVAL EQUIPMENT COST ESTIMATE					
LINE No.	DESCRIPTION	APPROX. QTY.	UNIT	UNIT PRICE	AMOUNT
CIVIL					
1	Snow Removal Truck & 22' Plow	1	LS	\$404,146.00	\$404,146.00
ACQUISITION SUBTOTAL					\$404,146.00
Unknown Project Items					\$0.00
ACQUISITION TOTAL					\$404,146.00
Airport Admin Fee					\$2,000.00
Engineering (Bid Documents and Grant Closeout)					\$21,355.00
PROJECT TOTAL					\$427,501.00

FAA (95%)	\$406,125.95
CDOT (2.5% up to \$250K)	\$10,687.53
City	\$10,687.53
Total	\$427,501.00



Nicholas A. Gradisar
Mayor

Greg Pedroza
Director of Aviation



Pueblo Memorial Airport
31201 Bryan Circle, Ste. 200
Pueblo, CO 81001
Phone (719) 553-2760
Fax (719) 553-2761

To: Ms. Heather Graham, President of the City Council
Mr. Nicholas A. Gradisar, Mayor

I hereby certify that I have reviewed and am familiar with the following documents and, to the best of my knowledge and belief, said documents are true and correct and do not contain any false or untrue fact, statement, condition, certification, or assurance.

Contract for Dibble and Associates Consulting Engineers, Inc., to acquire Snow Removal Equipment, through the FAA Capital Improvement Project program for Pueblo Memorial Airport, City of Pueblo, Department of Aviation.



Greg Pedroza
Director of Aviation

January 13, 2022

Date



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 24, 2022

TO: President Heather Graham and Members of City Council

CC: Nicholas A. Gradisar, Mayor

VIA: Marisa Stoller, City Clerk

FROM: Greg Pedroza, Director of Aviation

SUBJECT: AN ORDINANCE APPROVING AND ACCEPTING THE AMERICAN RESCUE PLAN ACT (ARPA) CONCESSIONS RENT RELIEF AIRPORT RESCUE GRANT OFFER, GRANT NO. 3-08-0046-045-2022, FROM THE UNITED STATES OF AMERICA ACTING THROUGH THE FEDERAL AVIATION ADMINISTRATION, FOR FUNDS IN THE AMOUNT OF \$10,477 TO PROVIDE RELIEF FROM RENT TO ELIGIBLE AIRPORT CONCESSIONS AT PUEBLO MEMORIAL AIRPORT, AUTHORIZING THE MAYOR TO EXECUTE SAME, ESTABLISHING THE ARPA CONCESSIONS PROJECT NO. AP2202, AND BUDGETING AND APPROPRIATING \$10,477 TO PROJECT NO. AP2202

SUMMARY:

This Ordinance will approve and accept an American Rescue Plan Act (ARPA) Concessions Rent Relief Airport Rescue Grant Offer from the United States of America acting through the Federal Aviation Administration (FAA) to provide relief from rent to eligible airport concessions at the Pueblo Memorial Airport. It also establishes Project No. AP2202 and appropriates funding for this project.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND

This grant is in accordance with the American Rescue Plan Act (ARPA) Division M of Public Law 117-2 and will provide relief from rent and minimum annual guarantee obligations to each eligible airport concession at Pueblo Memorial Airport. At this time, the only eligible concession at the Airport is the restaurant. The restaurant operator entered into an agreement with the City on January 1, 2020. In consideration of the Pandemic, rent forgiveness has been negotiated. These funds will help offset the loss of revenue to the City.

FINANCIAL IMPLICATIONS:

The grant is for \$10,477.00 and requires no matching funds.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If this Ordinance is not approved, the grant will not be accepted from the federal government.

RECOMMENDATION

The Department of Aviation recommends approval of this Ordinance.

Attachments:

Ordinance

ARPA Concessions Rent Relief Airport Rescue Grant Agreement

Grant Certification Memo

ORDINANCE NO. 10109

AN ORDINANCE APPROVING AND ACCEPTING THE AMERICAN RESCUE PLAN ACT (ARPA) CONCESSIONS RENT RELIEF AIRPORT RESCUE GRANT OFFER, GRANT NO. 3-08-0046-045-2022, FROM THE UNITED STATES OF AMERICA ACTING THROUGH THE FEDERAL AVIATION ADMINISTRATION, FOR FUNDS IN THE AMOUNT OF \$10,477 TO PROVIDE RELIEF FROM RENT TO ELIGIBLE AIRPORT CONCESSIONS AT PUEBLO MEMORIAL AIRPORT, AUTHORIZING THE MAYOR TO EXECUTE SAME, ESTABLISHING THE ARPA CONCESSIONS PROJECT NO. AP2202, AND BUDGETING AND APPROPRIATING \$10,477 TO PROJECT NO. AP2202

WHEREAS, the City of Pueblo has been awarded a grant under the American Rescue Plan Act (ARPA) and received a Concessions Rent Relief Airport Rescue Grant Offer from the United States of America acting through the Federal Aviation Administration; and

WHEREAS, a project needs to be established and the funds budgeted and appropriated; NOW, THEREFORE,

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

SECTION 1.

The American Rescue Plan Act Concessions Rent Relief Airport Rescue Grant Agreement No. 3-08-0046-045-2022 (the "Agreement"), by and between the City of Pueblo, a Municipal Corporation, and the United States of America acting through the Federal Aviation Administration, making available \$10,477.00 in federal funds to provide relief from rent to eligible airport concessions at the Pueblo Memorial Airport, a copy of which is attached hereto and made a part hereof by reference, after having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute the Agreement in the name and on behalf of the City of Pueblo, where the Mayor may execute the Agreement by electronic signature and such electronic signature shall be attributable to the Mayor and the City of Pueblo.

SECTION 3.

The ARPA Concessions Project No. AP2202 is hereby established.

SECTION 4.

Funds in the amount of \$10,477.00, and any other funds received pursuant to the Agreement or an addendum to the Agreement, shall be accepted pursuant to the Agreement and budgeted and appropriated to the ARPA Concessions Project No. AP2202.

SECTION 5.

The officers and staff of the City are authorized to perform any and all acts consistent with this Ordinance and the Agreement to implement the policy and procedures described therein.

SECTION 6.

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

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on January 24, 2021.

Final adoption of Ordinance by City Council on February 14, 2022.

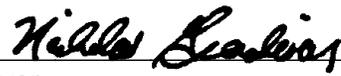


President of City Council

Action by the Mayor:

Approved on February 16, 2022.

Disapproved on _____ based on the following objections:



Mayor

Action by City Council After Disapproval by the Mayor:

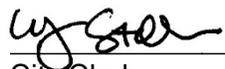
Council did not act to override the Mayor's veto.

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



U.S. Department
of Transportation
Federal Aviation
Administration

Airports Division
Northwest Mountain Region
Colorado, Utah, Wyoming

FAA DEN ADO
26805 E 68th Ave, Suite 224
Denver, CO 80249

Concessions Rent Relief Airport Rescue Grant Agreement Transmittal Letter

The Honorable Nicholas A. Gradisar
Mayor
1 City Hall Place
Pueblo, Colorado 81003

Dear Mayor Gradisar:

Please find the following electronic Concessions Rent Relief Airport Rescue Grant Offer, Grant No. 3-08-0046-045-2022 for Pueblo Memorial Airport. This letter outlines expectations for success. Please read and follow the instructions carefully.

To properly enter into this agreement, you must do the following:

- a. The governing body must provide authority to execute the grant to the individual signing the grant; i.e. the sponsor's authorized representative.
- b. The sponsor's authorized representative must execute the grant, followed by the attorney's certification, no later than **February 28, 2022** in order for the grant to be valid.
- c. You may not make any modification to the text, terms, or conditions of the grant offer.
- d. The grant offer must be digitally signed by the sponsor's legal signatory authority and then routed via email to the sponsor's attorney. Once the attorney has digitally attested to the grant, an email with the executed grant will be sent to all parties.

Subject to the requirements in 2 CFR §200.305, each Concessions Rent Relief Airport Rescue Plan Reimbursement under this grant must be made electronically via the Delphi invoicing System. The terms and conditions of this agreement require you draw down and expend these funds within four years.

An airport sponsor may use these funds to provide rent relief to its in-terminal concessions. Please refer to the [Airport Rescue Grants Frequently Asked Questions](#) for further information.

To receive reimbursement of your Concessions Rent Relief Airport Rescue Grant funds, upload a Concessions Rent Relief Airport Rescue Plan into Delphi. The Concessions Rent Relief Airport Rescue Plan should include enough detail to permit FAA to verify compliance with the American Rescue Plan Act (Public Law 117-2).

As part of your final reimbursement request, you are required to include in Delphi:

- A signed SF-425, *Federal Financial Report*

- A signed close-out report (a sample report is available [here](#)).

Until the grant is completed and closed, you are responsible for submitting a signed and dated SF-425 annually, due 90 days after the end of each Federal fiscal year in which this grant is open (due December 31 of each year this grant is open).

Ron Niehoff is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein. If you should have any questions, please contact Ron Niehoff at Ron.Niehoff@faa.gov. The FAA sincerely values your cooperation in these efforts.

Sincerely,

A large black rectangular redaction box covering the signature area.

Marc Miller
Acting Manager, Denver Airports District Office



U.S. Department
of Transportation
Federal Aviation
Administration

CONCESSIONS RENT RELIEF AIRPORT RESCUE

GRANT AGREEMENT

PART I – OFFER

Federal Award Offer Date	[REDACTED]	
Airport/Planning Area	Pueblo Memorial Airport	
Concessions Rent Relief Airport Rescue Grant Number	3-08-0046-045-2022	[Contract No. DOT-FA22NM-K1051]
Unique Entity Identifier	01-062-0284	

TO: City of Pueblo, Colorado
(herein called the “Sponsor”) (For Co-Sponsors, list all Co-Sponsor names. The word “Sponsor” in this Concessions Rent Relief Airport Rescue Grant Agreement also applies to a Co-Sponsor.)

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the “FAA”)

WHEREAS, the Sponsor has submitted to the FAA a Concessions Rent Relief Airport Rescue Grant Application dated June 28, 2021 for a grant of Federal funds to reimburse the Sponsor for providing relief from rent and minimum annual guarantees (MAG) to each eligible in-terminal airport concession at Pueblo Memorial Airport, in accordance with the American Rescue Plan Act (“ARP Act”), Public Law 117-2, Section 7102;

WHEREAS, the Sponsor has accepted the terms of this Concessions Rent Relief Airport Rescue Grant Offer (the “Offer”);

WHEREAS, in consideration of the promises, representations, and assurances provided by the Sponsor, the FAA has approved the Grant Application for the Pueblo Memorial Airport, consisting of the following;

WHEREAS, this Concessions Rent Relief Airport Rescue Grant Agreement (the “Grant” or “Agreement”) is provided in accordance with the ARP Act to provide certain amounts of grant assistance, as described below, to eligible sponsors in amounts to specific airports derived by legislative formula (See Section 7102 of the Act);

WHEREAS, this Grant hereby obligates \$8,382 to in-terminal Small Airport Concessions per the ARP Act, and \$2,095 to in-terminal Large Airport Concessions per the ARP Act. The obligations are to provide relief from rent and MAG obligations, as applicable, to each eligible in-terminal airport concession in an

amount that reflects each eligible in-terminal airport concession's proportional share of the total amount of the rent and MAG at Pueblo Memorial Airport by legislatively prescribed category (Small or Large Airport Concession), as further defined herein, for relief provided no earlier than March 11, 2021, in accordance with an FAA-approved Concessions Rent Relief Airport Rescue Plan (herein called "the Plan"), until the funds have been fully expended;

NOW THEREFORE, in accordance with the applicable provisions of the ARP Act, Public Law 117-2, Section 7102, the representations contained in the Concessions Rent Relief Airport Rescue Grant Application, and in consideration of, (a) the Sponsor's acceptance of this Offer for a Grant, the terms, conditions, and assurances of this Grant Agreement ("Grant Agreement" or "Agreement"); and, (b) the benefits to accrue to the United States and the public from the accomplishment of the Grant, and in compliance with the conditions and requirements as herein provided.

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 100% of the allowable concessions rent and MAG relief as a result of and in accordance with this Grant Agreement.

Assistance Listings Number (Formerly CFDA Number): 20.106

This offer is made on and SUBJECT TO THE FOLLOWING ADDITIONAL TERMS AND CONDITIONS:

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$10,477, allocated as follows:

\$8,382	ARPA Small Concessions	KZ2022
\$2,095	ARPA Large Concessions	KY2022
2. **Grant Performance. This Grant Agreement is subject to the following Federal award requirements:**
 - a. The Period of Performance:
 1. Shall start on the date the Sponsor formally accepts this Grant and is the date signed by the last Sponsor signatory to the Grant Agreement. The end date of the Period of Performance is 4 years (1,460 calendar days) from the date of acceptance. The Period of Performance end date shall not affect, relieve, or reduce Sponsor obligations and assurances that extend beyond the closeout of this Grant.
 2. Means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. (2 Code of Federal Regulations (CFR) § 200.1)
 - b. The Budget Period:
 1. The Budget Period for this Grant is 4 years (1,460 calendar days). Pursuant to 2 CFR § 200.403(h), the Sponsor may charge to the Grant only allowable costs incurred during the Budget Period.
 2. Means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which the Sponsor is authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.
 - c. Closeout and Termination.

1. Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (payoff) all obligations incurred under this award no later than 120 calendar days after the end date of the Period of Performance. If the Sponsor does not submit all required closeout documentation within this time period, the FAA will proceed to close out the Grant within one year of the Period of Performance end date with the information available at the end of 120 days. (2 CFR § 200.344)
2. The FAA may terminate this Grant, in whole or in part, in accordance with the conditions set forth in 2 CFR § 200.340 or other Federal regulatory or statutory authorities as applicable.
3. **Unallowable Reimbursable Rent Relief.** The Sponsor shall not seek reimbursement for any concessions rent and MAG relief that the FAA has determined to be unallowable under the ARP Act.
4. **Final Federal Share of Reimbursable Rent Relief.** The United States' share of allowable Grant concessions rent relief is 100%.
5. **Completing the Grant without Delay and in Conformance with Requirements.** The Sponsor must carry out and provide the concessions rent and MAG relief without undue delays and in accordance with this Grant Agreement, the ARP Act, and the regulations, policies, standards, and procedures of the Secretary of Transportation ("Secretary"). Pursuant to 2 CFR § 200.308, the Sponsor agrees to report to the FAA any disengagement from the project eligible under the Grant that exceeds three months or a 25% reduction in time devoted to the Grant, and request prior approval from FAA. The report must include a reason for the stoppage. The Sponsor agrees to comply with the attached assurances, which are part of this Agreement and any addendum that may be attached hereto at a later date by mutual consent.
6. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this Offer at any time prior to its acceptance by the Sponsor.
7. **Offer Expiration Date.** This Offer will expire and the United States will not be obligated to pay any part of the costs unless this Offer has been accepted by the Sponsor on or before **February 28, 2022**, or such subsequent date as may be prescribed in writing by the FAA.
8. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner, including uses that violate this Grant Agreement, the ARP Act, or other provision of applicable law. For the purposes of this Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement(s). The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.
9. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons that may arise from, or relate to, this Grant Agreement, including, but not limited to, any action taken by a Sponsor related to or arising from, directly or indirectly, this Grant Agreement.
10. **System for Award Management (SAM) Registration and Unique Entity Identifier (UEI).**

- a. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
 - b. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit, or governmental entity. A UEI may be obtained from SAM.gov at <https://sam.gov/SAM/pages/public/index.jsf>.
- 11. Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi invoicing System for Department of Transportation (DOT) Financial Assistance Awardees.
- 12. Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all concessions rent and MAG relief provided under this Grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this Grant Agreement.
- 13. Financial Reporting and Payment Requirements.** The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
- 14. Buy American.** Unless otherwise approved in advance by the FAA, in accordance with 49 United States Code (U.S.C.) § 50101, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured goods produced outside the United States to be used for any project for which funds are provided under this Grant. The Sponsor will include a provision implementing Buy American in every contract.
- 15. Audits for Sponsors.**
- PUBLIC SPONSORS. The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA. Sponsors that expend less than \$750,000 in Federal awards and are exempt from Federal audit requirements must make records available for review or audit by the appropriate Federal agency officials, State, and Government Accountability Office. The FAA and other appropriate Federal agencies may request additional information to meet all Federal audit requirements.
- 16. Suspension or Debarment.** When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:
- a. Verify the non-Federal entity is eligible to participate in this Federal program by:
 1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or
 2. Collecting a certification statement from the non-Federal entity attesting the entity is not excluded or disqualified from participating; or

3. Adding a clause or condition to covered transactions attesting the individual or firm is not excluded or disqualified from participating.
- b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g., subcontracts).
- c. Immediately disclose to the FAA whenever the Sponsor (1) learns the Sponsor has entered into a covered transaction with an ineligible entity, or (2) suspends or debars a contractor, person, or entity.

17. Ban on Texting While Driving.

- a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to this Grant or subgrant funded by this Grant.
 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - A. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - B. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded by this Grant.

18. Trafficking in Persons.

- a. You as the recipient, your employees, subrecipients under this Grant, and subrecipients' employees may not –
 1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 2. Procure a commercial sex act during the period of time that the award is in effect; or
 3. Use forced labor in the performance of the award or subawards under this Grant.
- b. The FAA as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –
 1. Is determined to have violated a prohibition in paragraph a. of this condition; or
 2. Has an employee who is determined by the agency official authorized to terminate the Grant Agreement to have violated a prohibition in paragraph a. of this condition through conduct that is either –
 - A. Associated with performance under this Grant Agreement; or
 - B. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB

Guidelines to Agencies on Government-wide Debarment and Suspension
(Nonprocurement),”as implemented by the FAA at 2 CFR Part 1200.

- c. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a. of this condition during this Grant Agreement.
- d. Our right to terminate unilaterally that is described in paragraph a. of this condition:
 - 1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104(g)), and
 - 2. Is in addition to all other remedies for noncompliance that are available to the FAA under this Grant Agreement.

19. Employee Protection from Reprisal.

- a. Prohibition of Reprisals —
 - 1. In accordance with 41 U.S.C. § 4712, an employee of a grantee or subgrantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph a2. of this condition, information that the employee reasonably believes is evidence of:
 - A. Gross mismanagement of a Federal grant;
 - B. Gross waste of Federal funds;
 - C. An abuse of authority relating to implementation or use of Federal funds;
 - D. A substantial and specific danger to public health or safety; or
 - E. A violation of law, rule, or regulation related to a Federal grant.
 - 2. Persons and bodies covered: The persons and bodies to which a disclosure by an employee is covered are as follows:
 - A. A member of Congress or a representative of a committee of Congress;
 - B. An Inspector General;
 - C. The Government Accountability Office;
 - D. A Federal employee responsible for oversight or management of a grant program at the relevant agency;
 - E. A court or grand jury;
 - F. A management official or other employee of the Sponsor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct; or
 - G. An authorized official of the Department of Justice or other law enforcement agency.
 - 3. Submission of Complaint — A person who believes that they have been subjected to a reprisal prohibited by paragraph a. of this section may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
 - 4. Time Limitation for Submittal of a Complaint — A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.
 - 5. Required Actions of the Inspector General — Actions, limitations, and exceptions of the Inspector General’s office are established under 41 U.S.C. § 4712(b).
 - 6. Assumption of Rights to Civil Remedy — Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).

- 20. Limitations.** Nothing provided herein shall be construed to limit, cancel, annul, or modify the terms of any Federal grant agreement(s), including all terms and assurances related thereto, that have been entered into by the Sponsor and the FAA prior to the date of this Grant Agreement.
- 21. Face Coverings Policy.** The Sponsor agrees to implement a face-covering (mask) policy to combat the spread of pathogens. This policy must include a requirement that all persons wear a mask, in accordance with Centers for Disease Control (CDC) and Transportation Security Administration (TSA) requirements, as applicable, at all times while in all public areas of the airport property, except to the extent exempted under those requirements. This special condition requires the Sponsor continue to require masks until [Executive Order 13998, Promoting COVID-19 Safety in Domestic and International Travel](#) is no longer effective.
- 22. Small and Large Concessions Rent Relief Set-Asides.** The Sponsor agrees that funds under this Grant are available for the Sponsor to provide relief from rent and MAG to eligible in-terminal Small Airport Concessions, per the Act, in the amount listed in condition 1 above, and for the Sponsor to provide relief from rent and MAG to eligible in-terminal Large Airport Concessions, per the Act, in the amount listed in condition 1 above. The Sponsor shall provide relief from rent and MAG from March 11, 2021, until the Sponsor has provided relief equaling the total grant amount, to the extent practicable and to the extent permissible under State laws, local laws, and applicable trust indentures.
- 23. Concessions Rent Relief Airport Rescue Plan.** The Sponsor agrees to submit to the FAA a Concessions Rent Relief Airport Rescue Plan (“the Plan”) identifying the in-terminal Small and Large Airport Concessions, as defined in 49 CFR § 23.3, eligible to receive proportional funding under this Grant, in accordance with the ARP Act. The Sponsor agrees that the FAA will reimburse the Sponsor after the FAA accepts the Plan submitted by the Sponsor. The Sponsor agrees the Plan will include all elements as prescribed by the FAA to facilitate review of reimbursement payments that comply with the ARP Act.
- 24. Small Airport Concessions Rent Relief Set-Aside.** The Sponsor’s Plan must specify relief from rent and MAG obligations to eligible in-terminal Small Airport Concession, meaning a small concession business with gross receipts, averaged over the previous three fiscal years, of less than \$56,420,000; or joint ventures as defined in 49 CFR § 23.3. The Sponsor agrees that relief provided to eligible in-terminal Small Airport Concessions will be a proportional share based on rent and MAG collected during a baseline time-period.
- 25. Large Airport Concessions Rent Relief Set-Aside.** The Sponsor’s Plan must specify relief from rent and MAG obligations to eligible in-terminal Large Airport Concessions, meaning a concession as defined in 49 CFR § 23.3, that has gross receipts, averaged over the previous three fiscal years, of more than \$56,420,000. The Sponsor agrees that relief provided to eligible in-terminal Large Airport Concessions will be a proportional share based on rent and MAG collected during a baseline time-period.
- 26. Adjustments to Proportionality among Airport Concessions.**
- a. **Adjustments to Proportionality among Airport Concessions Set-Aside.** The Sponsor agrees that the FAA may approve reimbursement under the Act for rent and MAG relief provided to eligible in-terminal Airport Concessions on a proportional share based on rent and MAG collected during a baseline time-period. Adjustments from this proportionality amongst Airport Concessions within a respective Small or Large Concession Set-Aside are limited; must be supported by evidence and specific circumstances; and must be approved by the FAA prior to

reimbursement. The Sponsor agrees the Plan will include all elements as prescribed by the FAA to facilitate review of reimbursement payments that comply with the ARP Act.

- b. **Adjustments between Small and Large Concession Set-Asides.** The Sponsor agrees that the FAA may approve reimbursement under the Act for concessions rent and MAG relief provided to eligible in-terminal Airport Concessions on a proportional share based on rent and MAG collected during a baseline time-period. Adjustments from this proportionality between Small and Large Concession Set-Asides are limited, must be supported by evidence and specific circumstances, and must be approved by the FAA prior to reimbursement. The Sponsor agrees the Plan will include all elements as prescribed by the FAA to facilitate review of reimbursement payments that comply with ARP Act.

27. Sponsor Certification of Reimbursement Request. To be reimbursed, the Sponsor shall provide the FAA with the Plan, and reporting data as requested, in lieu of invoices, and shall certify all information submitted is true and correct. The Sponsor may not use funds allocated herein for other airport purposes.

28. Concession's Certification of Relief Funds. Each airport concession to be provided relief with Grant funds shall certify to the Sponsor, prior to the Sponsor submitting a Plan, it has not and will not apply for other Federal assistance for the purpose of receiving rent and MAG relief on or after March 11, 2021.

The Sponsor's acceptance of this Offer and ratification and adoption of the Grant Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and acceptance shall comprise a Grant, as provided by the ARP Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the purpose of the ARP Act and compliance with the conditions as provided herein. Further, this Grant, inclusive of all terms, conditions, and assurances provided there, and become effective upon the Sponsor's acceptance of this Offer.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

Dated [REDACTED]

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**

[REDACTED]

(Signature)

Marc Miller

(Typed Name)

Acting Manager, Denver Airports District Office

(Title of FAA Official)

PART II - ACCEPTANCE

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Grant Application and incorporated materials referred to in the foregoing Offer under Part I of this Grant Agreement, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Grant Application and all applicable terms and conditions provided for in the ARP Act and other applicable provisions of Federal law.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.¹

Dated [REDACTED]

CITY OF PUEBLO, COLORADO

(Name of Sponsor)

[REDACTED]

(Signature of Sponsor's Designative Official/Representative)

By: [REDACTED]

(Type Name of Sponsor's Designative Official/Representative)

Title: [REDACTED]

(Title of Sponsor's Designative Official/Representative)

¹ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

CERTIFICATE OF SPONSOR'S ATTORNEY

I, [REDACTED] acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Colorado. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the ARP Act. The Sponsor understands funding made available under this Grant Agreement may only be used for concessions and MAG Relief. Further, it is my opinion the foregoing Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

Dated at [REDACTED]

By: [REDACTED]

(Signature of Sponsor's Attorney)

DRAFT

CONCESSIONS RENT RELIEF AIRPORT RESCUE GRANT ASSURANCES

AIRPORT SPONSORS

A. General.

1. These Concession Rent Relief Airport Rescue Grant Assurances are required to be submitted as part of the application by sponsors requesting funds under the provisions of the American Rescue Plan Act of 2021 (“ARP Act,” or “the Act”), Public Law 117-2. As used herein, the term “public agency sponsor” means a public agency with control of a public-use airport; the term “private sponsor” means a private owner of a public-use airport; and the term “sponsor” includes both public agency sponsors and private sponsors.
2. Upon acceptance of this Grant Offer by the sponsor, these assurances are incorporated into and become part of this Concessions Rent Relief Airport Rescue Grant Agreement.

B. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this Grant, that:

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Grant including, but not limited to, the following:

FEDERAL LEGISLATION

- a. 49 U.S.C. Chapter 471, as applicable
- b. Davis-Bacon Act — 40 U.S.C. 276(a), et. seq.
- c. Federal Fair Labor Standards Act — 29 U.S.C. 201, et. seq.
- d. Hatch Act — 5 U.S.C. 1501, et. seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et. seq.
- f. National Historic Preservation Act of 1966 — Section 106 — 16 U.S.C. 470(f).
- g. Archeological and Historic Preservation Act of 1974 — 16 U.S.C. 469 through 469c.
- h. Native Americans Grave Repatriation Act — 25 U.S.C. Section 3001, et. seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 — Section 102(a) — 42 U.S.C. 4012a.
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f)).
- m. Rehabilitation Act of 1973 — 29 U.S.C. 794.
- n. 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).
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 — 42 U.S.C. 6101, et. seq.

- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 — 42 U.S.C. 4151, et. seq.
- s. Power plant and Industrial Fuel Use Act of 1978 — Section 403- 2 U.S.C. 8373.
- t. Contract Work Hours and Safety Standards Act — 40 U.S.C. 327, et. seq.
- u. Copeland Anti-kickback Act — 18 U.S.C. 874.1.
- v. National Environmental Policy Act of 1969 — 42 U.S.C. 4321, et. seq.
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 — 31 U.S.C. 7501, et. seq.²
- y. Drug-Free Workplace Act of 1988 — 41 U.S.C. 702 through 706.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

EXECUTIVE ORDERS

- a. Executive Order 11246 – Equal Employment Opportunity
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction
- f. Executive Order 12898 – Environmental Justice
- g. Executive Order 14005 – Ensuring the Future Is Made in All of America by All of America's Workers.

FEDERAL REGULATIONS

- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.^{3,4}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment.
- d. 28 CFR Part 35 – Discrimination on the Basis of Disability in State and Local Government Services.
- e. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- f. 29 CFR Part 1 – Procedures for predetermination of wage rates.¹
- g. 29 CFR Part 3 – Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹
- h. 29 CFR Part 5 – Labor standards provisions applicable to contracts covering Federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹

- i. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally assisted contracting requirements).¹
- j. 49 CFR Part 20 – New restrictions on lobbying.
- k. 49 CFR Part 21 – Nondiscrimination in Federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- l. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.
- m. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Program.
- n. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.¹
- o. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- p. 49 CFR Part 30 – Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- q. 49 CFR Part 32 – Government-wide Requirements for Drug-Free Workplace (Financial Assistance).
- r. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- s. 49 CFR Part 41 – Seismic safety of Federal and Federally assisted or regulated new building construction.

FOOTNOTES TO CONCESSIONS RENT RELIEF AIRPORT RESCUE GRANT ASSURANCE B

- ¹ These laws do not apply to airport planning sponsors.
- ² These laws do not apply to private sponsors.
- ³ Cost principles established in 2 CFR Part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- ⁴ Audit requirements established in 2 CFR Part 200 subpart F are the guidelines for audits.

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations, or circulars are incorporated by reference in this Grant Agreement.

1. Purpose Directly Related to the Airport.

It certifies that the reimbursement sought is for a purpose directly related to the airport.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this Grant, and to finance and carry out the proposed grant; that an official decision has been made by the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this Grant and to finance and carry out the proposed Grant and comply with all terms, conditions, and assurances of this Grant Agreement. It shall designate an

official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Good Title.

It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

4. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with this Grant Agreement.
- c. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations, and the terms and conditions of this Grant Agreement.

5. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all Grant accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this Grant, the total cost of the Grant in connection with which this Grant is given or used, and the amount or nature of that portion of the cost of the Grant supplied by other sources, and such other financial records pertinent to the Grant. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this Grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a Grant or relating to the Grant in connection with which this Grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

6. Exclusive Rights.

The sponsor shall not grant an exclusive right to use an air navigation facility on which this Grant has been expended. However, providing services at an airport by only one fixed-based operator is not an exclusive right if—

- a. it is unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide the services; and
- b. allowing more than one fixed-based operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

7. Airport Revenues.

- a. The Sponsor agrees that funds under this Grant are available for the Sponsor to provide relief from rent and MAG to eligible in-terminal Airport Concessions, per the ARP Act. Apart from this relief, in no event shall airport revenue or grant reimbursement proceeds be used for any purpose beyond the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport(s).

8. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - 1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - 2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

9. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this Grant.

- a. Using the definitions of activity, facility, and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR Part 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by or pursuant to these assurances.
- b. Applicability
 - 1. Programs and Activities. If the sponsor has received a grant (or other Federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 - 2. Facilities. Where it receives a grant or other Federal financial assistance to construct, expand, renovate, remodel, alter, or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
 - 3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, 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.

c. Duration

The sponsor agrees that it is obligated to this assurance 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 sponsor, or any transferee for the longer of the following periods:

1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
2. So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language

It will include the following notification in all solicitations for bids, Requests for Proposals for work, or material under this Grant and in all proposals for agreements, including airport concessions, regardless of funding source:

“The City of Pueblo, Colorado, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

e. Required Contract Provisions.

1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally assisted programs of the DOT Acts and regulations.
2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
3. It will insert non-discrimination contract clauses 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 sponsor.
4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
 - A. For the subsequent transfer of real property acquired or improved under the applicable activity, grant, 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, grant, or program.
 - C. It will provide for such methods of administration for the program as are found by the Secretary 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.

- D. It 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.

10. Foreign Market Restrictions.

It will not allow funds provided under this Grant to be used to fund any activity that uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

11. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

Nicholas A. Gradisar
Mayor

Greg Pedroza
Director of Aviation



Pueblo Memorial Airport
31201 Bryan Circle, Ste. 200
Pueblo, CO 81001
Phone (719) 553-2760
Fax (719) 553-2761

To: Ms. Heather Graham, President of the City Council
Mr. Nicholas A. Gradisar, Mayor

I hereby certify that I have reviewed and am familiar with the following documents and, to the best of my knowledge and belief, said documents are true and correct and do not contain any false or untrue fact, statement, condition, certification, or assurance.

United States of America (acting through the Federal Aviation Administration)
Concession Rent Relief Airport Rescue Grant Addendum No. 3-08-0046-45-2022
for funding under the American Rescue Plan Act (ARP Act), Division M of Public
Law 117-2.



Greg Pedroza
Director of Aviation

January 11, 2022

Date



**BACKGROUND PAPER FOR PROPOSED
ORDINANCE**

COUNCIL MEETING DATE: January 24, 2022

TO: President Heather Graham and Members of City Council

CC: Nicholas A. Gradisar, Mayor

VIA: Marisa Stoller, City Clerk

FROM: Andrew E. Hayes, P.E., Director of Public Works

SUBJECT: AN ORDINANCE ESTABLISHING THE FIRE STATION 6, 8 AND 11 PROJECT NO. CI2205, TRANSFERRING \$600,000 FROM THE UNAPPROPRIATED FUND BALANCE OF THE GENERAL FUND AND BUDGETING AND APPROPRIATING \$600,000 FOR SAID PROJECT

SUMMARY:

This Ordinance establishes the Project No. CI2205, transfers \$600,000 from the unappropriated fund balance of the General Fund for professional services, and budgets and appropriates \$600,000 for the Fire Station 6, 8 and 11 Project.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The project is part of infrastructure and response improvements for the City of Pueblo and its Fire Department. The project is specifically to develop a design that will work for the relocation of fire stations 6 and 8 and for a new fire station 11. These stations will be constructed according to modern fire service needs for a healthier/safer environment as well provide better response service in needed areas. The location of the fire stations is as follows:

Fire Station 6 – 2600 Block of East 4th Street (East 4th and Victory Lane)

Fire Station 8 – Jerry Murphy and Candytuft Boulevard

Fire Station 11 – West 24th Street and Perry Avenue

This Ordinance establishes project CI2205 for the design and construction of three (3) new fire stations, 6, 8 and 11, transfer funds in the amount of \$600,000 from the unappropriated fund balance of the General Fund, establishes the Fire Station 6, 8 and 11 Project CI2205, and budgets and appropriates the funds.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$600,000 will be transferred from the unappropriated fund balance of the General Fund.

BOARD/COMMISSION RECOMMENDATION:

Not Applicable.

STAKEHOLDER PROCESS:

None

ALTERNATIVES:

Denial of the Ordinance will cancel the Fire Station 6, 8 and 11 Project.

RECOMMENDATION:

Approve the Ordinance.

Attachments:

Proposed Ordinance

ORDINANCE NO. 10110

AN ORDINANCE ESTABLISHING THE FIRE STATION 6, 8 AND 11 PROJECT NO. CI2205, TRANSFERRING \$600,000 FROM THE UNAPPROPRIATED FUND BALANCE OF THE GENERAL FUND AND BUDGETING AND APPROPRIATING \$600,000 FOR SAID PROJECT

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

SECTION 1.

The Fire Station 6, 8 and 11 Project, CI2205, is hereby established.

SECTION 2.

Funds in the amount of \$600,000 are hereby transferred from the unappropriated fund balance of the General Fund into Project No. CI2205, and budgeted and appropriated for said Project.

SECTION 3.

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

SECTION 4.

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

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on January 24, 2021.

Final adoption of Ordinance by City Council on February 14, 2022.



President of City Council

Action by the Mayor:

Approved on February 16, 2022.

Disapproved on _____ based on the following objections:

Nilda Leal
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

W. S. ...
City Clerk



**BACKGROUND PAPER FOR PROPOSED
ORDINANCE**

COUNCIL MEETING DATE: January 24, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Chris Noeller, Police Chief

Marisa Pacheco, Human Resources Director

SUBJECT: AN ORDINANCE AMENDING THE FISCAL YEAR 2022 STAFFING ORDINANCE BY ADDING FOUR FULL-TIME COMMUNITY SERVICE OFFICERS TO THE AUTHORIZED STAFFING OF THE POLICE DEPARTMENT

SUMMARY:

The Police Department requests the addition of four new full-time civilian positions with the classification title of Community Services Officer to department staffing.

PREVIOUS COUNCIL ACTION:

On December 28, 2021, Ordinance No. 10085 was approved by City Council. This Ordinance provided authorized staffing for Fiscal Year 2022.

BACKGROUND:

The Police Department requests to add four new civilian positions to department staffing with the classification title of Community Service Officer (CSO). The primary purpose of these positions will be to provide supplemental support to sworn police personnel by performing duties that do not require the authority, special training or POST certification that sworn police officers are required to have. Examples of primarily field administrative and reporting duties include:

- Burglary (vending machine, storage units, garages, homes, business, etc.)
- Criminal Mischief (damage, graffiti, etc.)
- Found Property (including drug paraphernalia)
- Frauds & forgeries
- Littering
- Missing people & Runaways
- Non-injury traffic accidents (no alcohol or drugs suspected) & Hit-&-Run accidents
- Property safety inspections (CPTED, etc.)

- Supplements to cases that require evidence (tapes, documents, etc.) to be picked up
- Thefts (thefts, thefts of rental property, thefts from vehicle, motor vehicle thefts, bill & gas skips, etc.)
- Traffic Hazards (stalled vehicles, motorist assists, objects in roadway, malfunctioning traffic lights, etc.)

It is important to note that the support activities outlined above that would be assigned to the CSO's would be more "cold call" in nature. Active call in-progress or calls where suspect information is known would continue to be handled by sworn police department personnel.

The Community Service Officer staffing model is one widely employed by other police agencies in Colorado and around the country. A regional survey of these programs was conducted by the Colorado Springs Police Department and shared with the Pueblo Police Department. The survey found that CSO programs exist in Arvada, Aurora, Boulder, Denver, Fort Collins, Grand Junction, Greeley, Lakewood and Westminster Colorado as well as Albuquerque NM, Arlington and Austin TX, Glendale, Tucson and Mesa AZ, Las Vegas, NV, Sacramento, Fresno, Santa Ana and Anaheim CA, Tacoma WA, and Wichita KS. While specifics of the surveyed programs vary by department, on average these cities employ 8 CSOs, representing 3.0% of the number of sworn personnel and 7.1% of civilian personnel. Most of the surveyed departments have had a CSO program in place for 20 years or more and indicate a high satisfaction level with the program and workload burden it relieves from sworn officers when minor crime reports and other administrative patrol work can be performed by these positions.

With sworn police personnel recruitment challenges increasing, coupled with a far more significant training and equipment resource intensive runway associated with bringing sworn officers on board, developing a CSO program appears to be a cost-effective and efficient way to bring civilian staff resources to bear more quickly and make a positive impact on sworn workload. The hiring and training process would be similar to the City's police officer recruitment due to the confidential access the CSO's have and would include background checks, polygraphs, and psychological exams. However, selected candidates would experience an abbreviated "academy" of sorts of approximately 5 weeks in length which would include courses appropriate to CSO duties as well as an intensive field training officer program following completion of the academy. The positions would be non-exempt, general services positions and would be included in the Pueblo Association of Government Employees bargaining unit.

In conclusion, primary benefits of adding the CSO's to the Pueblo Police Department include enhanced patrol response without the additional burden on sworn officers, freeing up sworn officers to spend more time on each call, focus on higher-priority calls and to engage in more proactive policing, all of which are mission critical activities in delivering strong public safety services to the community of Pueblo. It is possible that reducing the number of calls to which patrol officers must respond could improve response time to other calls for service as well. Finally, this program may also prove to have a positive impact on the recruitment of future sworn Police Officers and will allow individuals to experience the law enforcement environment which hopefully will increase interest in pursuing a career in sworn policing with the Pueblo Police Department and provide a "feeder source" of qualified applicants.

FINANCIAL IMPLICATIONS:

All costs associated with this proposal will be paid out of the General Fund.

Cost Item	Annual Cost	
Salary	\$ 45,260	
Retirement (PERA)	\$ 6,436	
Health Insurance	\$ 21,637	
Dental Insurance	\$ 296	
Life Insurance	\$ 76	
Medicare	\$ 656	
Ancillary Costs - Recruitment, Uniform and Equipment	\$ 3,709	
Total Per Position	\$ 78,070	→ x 4 positions \$ 312,278
Vehicle Retrofitting (1 time cost)	\$ 3,000	
Total Estimated Annual Program Cost	\$ 315,278	

Assuming the CSO positions are approved, the timeline to fill through the Civil Service, selection and post-offer background processes would likely result in a hire date no sooner than June 1, 2022. Therefore, the more realistic cost of standing up the program would be **approximately \$185,164 in FY 2022.**

BOARD/COMMISSION RECOMMENDATION:

Not Applicable.

STAKEHOLDER PROCESS:

The City and leadership from the Pueblo Association of Government Employees (PAGE) will meet and confer on January 20, 2022 and confer with respect to the new classification as it will be included in the bargaining unit. Furthermore, Police Department leadership has briefed the International Brotherhood of Police Officers #537 executive board and there is support for this proposal.

ALTERNATIVES:

The no action alternative would be to retain staffing levels as they are and continue to staff lower-level duties with sworn Police Officers. As has been outlined, this is not operationally ideal for the department and the suggested changes represent a more efficient way to accomplish this work for the community.

RECOMMENDATION:

Approval of the Ordinance.

ORDINANCE NO. 10111

AN ORDINANCE AMENDING THE FISCAL YEAR 2022 STAFFING ORDINANCE BY ADDING FOUR FULL-TIME COMMUNITY SERVICE OFFICERS TO THE AUTHORIZED STAFFING OF THE POLICE DEPARTMENT

WHEREAS, it is necessary to revise the positions for the ultimate efficiency and functionality for the Pueblo Police Department; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that: (brackets indicate matter being deleted, underscore indicates matter being added)

SECTION 1.

The following section captioned "Police" of Ordinance No. 10085, being the 2022 Staffing Ordinance, is amended as follows:

<u>Police</u>	
Police Chief	1
Police Deputy Chief	3
Police Captain	8
Dispatch Manager	1
Dispatch Training Coordinator	1
Police Records Manager	1
Police Sergeant	25
Police Corporal	55
Police Patrol Officer	115
Code Enforcement Officer	8
<u>Community Service Officer</u>	<u>4</u>
Emergency Services Dispatcher Supervisor	3
Emergency Services Dispatcher	24
Crime Analyst	1
Administrative Technician	2
Police Payroll Technician	1
Senior Office Assistant	8
Social Media Specialist	1
Office Assistant/Investigations Technician	1
Office Assistant/ Police Records Technician	11
Office Assistant/Police Services Technician	1
Office Assistant/Property & Evidence Technician	3
Building Custodian	1
Code Enforcement Manager	1
Total	[276] <u>280</u>

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 transactions described therein.

SECTION 3.

This Ordinance shall be deemed to amend the Fiscal Year 2022 Budget and staffing with respect to the number and allocation of positions within the Pueblo 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 January 24, 2021.

Final adoption of Ordinance by City Council on February 14, 2022.



President of City Council

Action by the Mayor:

Approved on February 16, 2022.

Disapproved on _____ based on the following objections:



Mayor

Action by City Council After Disapproval by the Mayor:

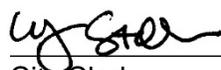
Council did not act to override the Mayor's veto.

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

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

President of City Council

ATTEST



City Clerk



**BACKGROUND PAPER FOR PROPOSED
ORDINANCE**

COUNCIL MEETING DATE: January 24, 2022

TO: President Heather M. Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Chris Noeller, Police Chief

Marisa Pacheco, Human Resources Director

SUBJECT: AN ORDINANCE AMENDING SECTION 6-5-16 OF CHAPTER 5, OF TITLE VI OF THE PUEBLO MUNICIPAL CODE RELATING TO THE FY 2022 CLASSIFICATION AND PAY PLAN BY ESTABLISHING THE PAY SCALE FOR COMMUNITY SERVICE OFFICER

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 Community Service Officer.

PREVIOUS COUNCIL ACTION:

On December 28, 2021, Ordinance No.10092 was approved by City Council. This Ordinance provided the classification and pay plan for fiscal year 2022.

BACKGROUND:

The Police Department requests to add four new civilian positions to department staffing with the classification title of Community Service Officer (CSO). The primary purpose of these positions will be to provide supplemental support to sworn police personnel by performing duties that do not require the authority, special training or POST certification that sworn police officers are required to have. Examples of primarily field administrative and "cold call", non-emergent reporting duties include:

- Burglary (vending machine, storage units, garages, homes, business, etc.)
- Criminal Mischief (damage, graffiti, etc.)
- Found Property (including drug paraphernalia)
- Frauds & forgeries
- Littering
- Missing people & Runaways
- Non-injury traffic accidents (no alcohol or drugs suspected) & Hit-&-Run accidents

- Property safety inspections (CPTED, etc.)
- Supplements to cases that require evidence (tapes, documents, etc.) to be picked up
- Thefts (thefts, thefts of rental property, thefts from vehicle, motor vehicle thefts, bill & gas skips, etc.)
- Traffic Hazards (stalled vehicles, motorist assists, objects in roadway, malfunctioning traffic lights, etc.)

Primary benefits of adding the CSO's to the Pueblo Police Department include enhanced patrol response without the additional burden on sworn officers, freeing up sworn officers to spend more time on each call, focus on higher-priority calls and to engage in more proactive policing, all of which are mission critical activities in delivering strong public safety services to the community of Pueblo. It is possible that reducing the number of calls to which patrol officers must respond could improve response time to other calls for service as well. Finally, this program may also prove to have a positive impact on the recruitment of future sworn Police Officers and will allow individuals to experience the law enforcement environment which hopefully will increase interest in pursuing a career in sworn policing with the Pueblo Police Department and provide a "feeder source" of qualified applicants

Section 8-8 of the City Charter requires the Human Resources Director to provide a Uniform Schedule of Pay for the Classified Service, which shall be approved by the Mayor and submitted to City Council.

FINANCIAL IMPLICATIONS:

Salary and benefit and equipment costs for the four positions will be paid out of the General Fund.

Cost Item	Annual Cost	
Salary	\$ 45,260	
Retirement (PERA)	\$ 6,436	
Health Insurance	\$ 21,637	
Dental Insurance	\$ 296	
Life Insurance	\$ 76	
Medicare	\$ 656	
Ancillary Costs - Recruitment, Uniform and Equipment	\$ 3,709	
Total Per Position	\$ 78,070	→ x 4 positions \$ 312,278
Vehicle Retrofitting (1 time cost)	\$ 3,000	
Total Estimated Annual Program Cost	\$ 315,278	

Assuming the CSO positions are approved, the timeline to fill through the Civil Service, selection and post-offer background processes would likely result in a hire date no sooner than June 1, 2022. Therefore, the more realistic cost of standing up the program would be **approximately \$185,164 in FY 2022.**

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

The no action alternative would be to retain the current classification assignment to perform the duties. Such an alternative is operationally untenable

RECOMMENDATION:

Approval of the Ordinance.

ORDINANCE NO. 10112

AN ORDINANCE AMENDING SECTION 6-5-16 OF CHAPTER 5, OF TITLE VI OF THE PUEBLO MUNICIPAL CODE RELATING TO THE FY 2022 CLASSIFICATION AND PAY PLAN BY ESTABLISHING THE PAY SCALE FOR COMMUNITY SERVICE OFFICER

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that: (brackets indicate matter being deleted, underscore indicates matter being added)

SECTION 1.

Section 6-5-16 (A) of Chapter 5, of Title VI, of the Pueblo Municipal Code referencing the Fiscal Year 2022 pay scale for the classification of Community Service Officer is established and enacted as follows:

6-5-16. Schedule, classification, work week and monthly salary.

The following shall constitute:

A. The pay range for the appointed classification of Community Service Officer for 2022

CLASS TITLE	2022									
	Entrance	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
(A) GENERAL SERVICE										
Community Service Officer	<u>3771.63</u>	<u>3868.74</u>	<u>4060.30</u>	<u>4254.88</u>	<u>4350.38</u>	<u>4397.28</u>	<u>4459.91</u>	<u>4517.64</u>	<u>4580.07</u>	<u>4730.76</u>

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 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 January 24, 2021.

Final adoption of Ordinance by City Council on February 14, 2022.



President of City Council

Action by the Mayor:

Approved on February 16, 2022.

Disapproved on _____ based on the following objections:

Hilda Leavins
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

W. S. ...
City Clerk



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 24, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Daniel C. Kogovsek, City Attorney

SUBJECT: AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN OPTION TO PURCHASE AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE PUEBLO ECONOMIC DEVELOPMENT CORPORATION, A COLORADO NONPROFIT CORPORATION, RELATING TO A FUTURE JOB CREATING CAPITAL IMPROVEMENT PROJECT

SUMMARY:

Attached is an Ordinance approving and authorizing the Mayor to sign an Option to Purchase Agreement with the Pueblo Economic Development Corporation ("PEDCO") relating to a future job creating capital improvement project.

PREVIOUS COUNCIL ACTION:

Not applicable to this ordinance.

BACKGROUND:

PEDCO is currently in confidential negotiations with an out-of-state corporation which is considering the construction of a large manufacturing facility to be located in the St. Charles Industrial Park. The prospective employer has asked for assurances from PEDCO and the City that if the Pueblo site is selected, 300 acres of land will be available in the St. Charles Industrial Park for construction of the manufacturing facility.

FINANCIAL IMPLICATIONS:

The attached agreement gives PEDCO a 180 day option to purchase 300 acres of land located in the St. Charles Industrial Park for \$10.00, provided that the land is subsequently transferred to an employer who will provide primary jobs to local residents to be set forth in an Employment Agreement acceptable to the Mayor and City Council.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this ordinance.

STAKEHOLDER PROCESS:

Not applicable to this ordinance.

ALTERNATIVES:

A no-action alternative may cause the prospective employer to select another site for its manufacturing facility.

RECOMMENDATION:

The PEDCO board recommends approval of this Ordinance.

Attachments:

Proposed Ordinance

Proposed Option to Purchase Agreement

ORDINANCE NO. 10113

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN OPTION TO PURCHASE AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE PUEBLO ECONOMIC DEVELOPMENT CORPORATION, A COLORADO NONPROFIT CORPORATION, RELATING TO A FUTURE JOB CREATING CAPITAL IMPROVEMENT PROJECT

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

SECTION 1.

The Option to Purchase Agreement (“Agreement”) dated February 14, 2022 between the City of Pueblo and the Pueblo Economic Development Corporation, a copy of which is attached hereto and incorporated herein by this reference, having been approved as to form by the City Attorney, is hereby approved. The Mayor is authorized to execute and deliver said Agreement in the name of the City and the City Clerk is authorized to affix the seal of the City thereto and attest same.

SECTION 2.

The officers and staff of the City are authorized to perform any and all acts consistent with this Ordinance and the attached Agreement which are necessary or appropriate to implement the transactions described therein.

SECTION 3.

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

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on January 24, 2021 .

Final adoption of Ordinance by City Council on February 14, 2022 .



President of City Council

Action by the Mayor:

- Approved on February 16, 2022.
- Disapproved on _____ based on the following objections:

Hilda Lewis

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

[Signature]

City Clerk



**Background Paper for Proposed
ORDINANCE**

COUNCIL MEETING DATE: January 24, 2022

TO: President Heather Graham and Members of City Council

CC: Nicholas A. Gradisar, Mayor

VIA: Marisa Stoller, City Clerk

FROM: Daniel C. Kogovsek, City Attorney

SUBJECT: AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE PUEBLO WEST METROPOLITAN DISTRICT, ACTING BY AND THROUGH THE PUEBLO WEST METROPOLITAN DISTRICT'S WATER AND WASTEWATER ENTERPRISE, RELATING TO A WATER LEASE AND STORAGE AGREEMENT ENTERED INTO BY SAID ENTERPRISE AND THE BOARD OF WATER WORKS OF PUEBLO, COLORADO

SUMMARY:

This Ordinance approves and authorizes the Mayor to sign an Intergovernmental Agreement ("IGA") with the Pueblo West Metro District's Water and Wastewater Enterprise ("Enterprise") relating to a Water Lease and Storage Agreement ("Water Lease") entered into by the Enterprise and the Board of Water Works of Pueblo, Colorado ("Pueblo Water").

PREVIOUS COUNCIL ACTION:

Not applicable to this ordinance.

BACKGROUND

Pueblo Water and the Enterprise have entered into a Water Lease pursuant to which Pueblo Water will make available for delivery to Enterprise 1,500 acre-feet of water on an annual basis for a period commencing November 1, 2022 and terminating October 31, 2027. The Water Lease may be renewed for an additional 5-year term upon the written mutual consent of Pueblo Water and the Enterprise.

FINANCIAL IMPLICATIONS

Under the attached IGA, the Enterprise shall collect and pay to the City the amount of \$1,500.00 for every water tap issued by Enterprise during the term of the Water Lease. The Enterprise agrees to make such payments to the City on a quarterly basis, no later than 30 days after the close of each quarter. The City intends to use said funds to promote infill development and the construction of affordable housing within the city limits.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this ordinance.

STAKEHOLDER PROCESS:

Not applicable to this ordinance.

ALTERNATIVES:

A “no action” alternative would prevent the City from receiving the proposed fees from the Enterprise.

RECOMMENDATION

Approval of the Ordinance

Attachments:

Copy of proposed Ordinance

Proposed Intergovernmental Agreement

ORDINANCE NO. 10114

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE PUEBLO WEST METROPOLITAN DISTRICT, ACTING BY AND THROUGH THE PUEBLO WEST METROPOLITAN DISTRICT'S WATER AND WASTEWATER ENTERPRISE, RELATING TO A WATER LEASE AND STORAGE AGREEMENT ENTERED INTO BY SAID ENTERPRISE AND THE BOARD OF WATER WORKS OF PUEBLO, COLORADO

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO that:

SECTION 1.

The Intergovernmental Agreement between the City of Pueblo, a Colorado municipal corporation and the Pueblo West Metropolitan District's Water and Wastewater Enterprise, dated February 14, 2022, 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 Intergovernmental Agreement for and on behalf of the City and the City Clerk is authorized to affix the seal of the City thereto and attest same.

SECTION 3.

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

SECTION 4.

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

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on January 24, 2021.

Final adoption of Ordinance by City Council on February 14, 2022.



President of City Council

Action by the Mayor:

- Approved on February 16, 2022.
- Disapproved on _____ based on the following objections:



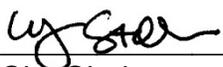
Mayor

Action by City Council After Disapproval by the Mayor:

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

President of City Council

ATTEST



City Clerk

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (hereinafter "Agreement") is made and entered into this 14th day of February, 2022, between the City of Pueblo, a municipal corporation (hereinafter referred to as "City") and the Pueblo West Metropolitan District, acting by and through the Pueblo West Metropolitan District's Water and Wastewater Enterprise (hereinafter "Enterprise"). City and Enterprise are sometimes each referred to as a "Party" and collectively "Parties."

Recitals

WHEREAS, the Board of Water Works of Pueblo, Colorado (hereinafter "Pueblo Water") and Enterprise have entered into a Water Lease and Storage Agreement (hereinafter "Water Lease") pursuant to which Pueblo Water will make available for delivery to Enterprise 1,500 acre-feet of water on an annual basis for a period commencing November 1, 2022 and terminating October 31, 2027. The Water Lease may be renewed for an additional 5-year term upon the written mutual consent of Pueblo Water and Enterprise; and

WHEREAS, the City desires to promote infill development and the construction of affordable housing within the city limits; and

WHEREAS, Enterprise recognizes that the water and storage rights being temporarily transferred under the Water Lease belong to residents of the City and desires to cooperate with the City to further regional development.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and promises contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Term of this Agreement. This Agreement will be in full force and effect beginning on the effective date of Water Lease and Storage Agreement and continuing during the term of said agreement and any renewals or extensions of the Water Lease and Storage Agreement.

2. Payments to City. Enterprise shall collect and pay to the City the amount of \$1,500.00 for every water tap issued by Enterprise, commencing on the effective date of the Water Lease and Storage Agreement and thereafter continuing during the term of this Agreement. Enterprise shall make such payments to the City on a quarterly basis, no later than 30 days after the close of each quarter. The City intends to use said funds to promote infill development and the construction of affordable housing within the city limits.

3. Sole Obligations of Enterprise. Notwithstanding anything herein to the contrary, all financial obligations under this Agreement shall be the sole obligations of the Enterprise and not the financial obligations or other indebtedness of the Pueblo West Metropolitan District (hereinafter "District"). Nothing herein constitutes, nor will be deemed to constitute, the creation of a debt or multi-year fiscal obligation of the District, or an obligation of future appropriations by the Board of Directors of the District, contrary to

Article X, § 20 of the Colorado Constitution or any other constitutional or statutory debt limitation.

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

ATTEST:

CITY OF PUEBLO,
A MUNICIPAL CORPORATION

By: _____
City Clerk

By: _____
Nicholas A Gradisar, Mayor

PUEBLO WEST METROPOLITAN DISTRICT,
ACTING BY AND THROUGH THE PUEBLO WEST
METROPOLITAN DISTRICT'S WATER AND
WASTEWATER ENTERPRISE

By: _____
Doug Proal, Enterprise President



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 24, 2022

TO: President Heather Graham and Members of City Council
CC: Mayor Nicholas A. Gradisar
VIA: Marisa Stoller, City Clerk
FROM: Manuel Alcala, Civil Service Administrator
SUBJECT: AN ORDINANCE AMENDING CIVIL SERVICE RULE 18 OF CHAPTER 13 OF TITLE VI OF THE PUEBLO MUNICIPAL CODE RELATING TO THE REQUIRED PERIOD OF NOTICE WITH RESPECT TO PROMOTIONAL EXAMS

SUMMARY:

Attached is an Ordinance making desired changes to Civil Service Rule 18 relating to the required period of notice with respect to promotional exams.

PREVIOUS COUNCIL ACTION:

Civil Service Rules are periodically amended and updated as necessary. The procedure for such amendment is set forth in Civil Service Rule 40 with public hearing before the Civil Service Commission culminating in a Civil Service Commission Report submitted to Council with the proposed amendments.

BACKGROUND:

See attached Civil Service Commission Report.

FINANCIAL IMPLICATIONS:

There are no financial implications because of this Ordinance.

BOARD/COMMISSION RECOMMENDATION:

See attached Civil Service Commission Report.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

City Council could elect not to pass the Ordinance and the Civil Service Rules would continue to be applied without the desired changes.

RECOMMENDATION:

The Civil Service Commission and staff recommend passage and approval of the proposed Ordinance.

Attachments:

Proposed Ordinance

Civil Service Commission Report.

ORDINANCE NO. 10115

AN ORDINANCE AMENDING CIVIL SERVICE RULE 18 OF
CHAPTER 13 OF TITLE VI OF THE PUEBLO MUNICIPAL
CODE RELATING TO THE REQUIRED PERIOD OF NOTICE
WITH RESPECT TO PROMOTIONAL EXAMS

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that: (brackets indicate matter being deleted, underscoring indicates new matter being added)

SECTION 1.

Civil Service Rule 18 of Chapter 13 of Title VI of the Pueblo Municipal Code is hereby amended to read as follows:

Rule 18. - Examinations; general.

- (a) All appointments and promotions in the classified service shall be made according to merit and fitness to be ascertained, so far as practicable by competitive examination.
- (b) Examinations shall be practical and shall relate to those matters which will test fairly the capacity and fitness of the candidates to discharge efficiently the duties of the class or classes for which examinations are held. Each applicant shall be treated equally and tested solely on ability. Under all circumstances the Commission or the examiner shall exercise due diligence to prevent collusion, fraud or discrimination throughout the examination process.
- (c) All examinations shall be given pursuant to procedures to be adopted by the Commission. Examinations may consist of any of the following or any combination of the following which validly serves the need to discover the relative fitness of applicants:
 - (1) Written job-related aptitude or job knowledge tests;
 - (2) Appropriate professional licenses or certificates issued by proper authorized licensing authorities;
 - (3) Scored oral examinations or interviews designed to determine general fitness for the class;
 - (4) Nonwritten performance tests of skills or abilities, required by the class;
 - (5) Scored evaluations of education and experience. Such evaluations shall be objectively and uniformly applied and may be based on such factors as quantity, remoteness in time, quality and relevancy of the education and experience;
 - (6) Physical tests of strength, agility, stamina or dexterity appropriate to the class requirements; or
 - (7) Other forms deemed appropriate depending upon the duties of the class involved.
- (d) Time of Examinations. Regular promotional examinations for which there are applicants shall be given at least once a year for all ranks in the uniformed police and fire services, except for Deputy Police Chief, Police Captain, Deputy Fire Chief, Assistant Fire Chief and Fire Inspector. Regular promotional examinations for which there are applicants shall be given at least once every two (2) years for Assistant Fire Chief. Such examinations shall be given at times to be determined by the Commission. All other entrance, promotional and special examinations shall be given when necessary as determined by the Commission or at the request of the Mayor, and shall be scheduled at times determined by the

Commission, but in no event more than sixty (60) days after a request for such examination has been given by the Mayor.

- (e) notice. Notice of the time and date of an examination shall be given to each applicant by first class mail or **[by]** electronic mail when an electronic mail address has been provided by the applicant. Notice shall be mailed **[at least thirty (30) days prior to any regular promotional examination and]** at least fifteen (15) days prior to **[all other] any** examination[s]. The foregoing notice requirement shall not, however, be applicable with respect to any examination based on scored evaluations of education and experience.
- (f) Time Limits. The time allowed applicants to complete any one (1) subject and the time allowed to complete the entire examination shall be fixed by the Commission, or its designated representative conducting the examination, and shall be stated on the examination and announced prior to the commencement of the examination. Examination time will in no case be extended except upon special direction of the Commission.
- (g) Separate Examinations. Computer based examinations may be administered at separate times and places. For all other examinations, the Commission may provide for separate examinations at another time and place when the number of applicants is in excess of the number that can conveniently be examined at one (1) time and where placement of the applicants into separate groups is made randomly. All separate examinations shall be conducted and concluded within a forty-eight-hour period. The Commission may adopt additional safeguards deemed appropriate to assure the integrity of the examination process.
- (h) Applicant Identity and Exam Administration. Applicants shall be admitted to an examination only on presentation of a valid government-issued photo identification card.
 - (1) Computer based examinations which are administered and scored electronically shall be administered fairly and impartially with sufficient safeguards to ensure the integrity of examination answers and scores.
 - (2) All other written examinations shall identify applicants by number as herein provided. Upon entrance, each applicant shall receive an examination number which shall be unknown to the Commission. This number shall be placed by the applicant in a sealed envelope and shall remain unknown to the Commission until all test grades have been completed, at which time the envelopes shall be opened and examination papers identified by name. No applicant shall in any manner attempt to identify his or her paper other than by his or her examination number.
- (i) Form and Method. The form, manner and method of examining all applicants shall be determined by the Commission in accordance with the provisions hereof.
- (j) Substance and Preparation. Under the direction and supervision of the Commission, examinations shall be prepared in such manner as to secure the highest possible level of competence among the City's personnel. Toward this end, the Commission staff shall continually make studies to correlate testing procedures and position requirements and advise the Commission of improvements needed in the examination procedure.
- (k) Discrimination prohibited. No aspect of any examination shall in any manner relate to the political or religious beliefs or other affiliations of the applicants. Nor shall any appointment, retention, removal or promotion in any manner be influenced by such beliefs or affiliations.
- (l) Examiner. The Commission staff, and such other persons or agencies as the Commission shall authorize, may act as examiners to conduct all examinations, and shall act under the direction and supervision of the Commission.

SECTION 2.

The officers 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:

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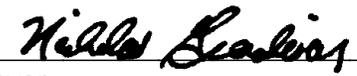


President of City Council

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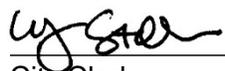
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Ordinance re-adopted on a vote of _____, on _____

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President of City Council

ATTEST



City Clerk

CIVIL SERVICE COMMISSION OF THE CITY OF PUEBLO

In re: Proposed Amendment to Civil Service Rule 18 of Chapter 13 of Title VI of the Pueblo Municipal Code relating to the required period of notice with respect to promotional exams.

Report to the Pueblo City Council

Pursuant to the requirements of Civil Service Rule 40, the Civil Service Commission held a public hearing on Tuesday, December 14, 2021 at 11:00 a.m. in the City Council Chambers, City Hall, 1 City Hall Place, Pueblo CO, for consideration of an amendments to Civil Service Rule 21, and hereby forwards the proposed amendments to the City Council for its consideration together with this report on the proposal and hearing.

Summary of Hearing

Manuel Alcala, Civil Service Administrator, spoke in favor of the amendments and provided recommendations summarized as follows:

Under the direction of the Civil Service Commission, a Rule Revision Taskforce was created. The mission and primary objective of the Rule Revision taskforce is to review the rules and propose changes that will address the time it takes to hire classified employees. The proposed amendments to Rule 18(e) ("Proposal") are intended to clean up the language in this rule and decrease the time it takes to fill promotional vacancies by lowering the required notice of promotional exam date from 30 to 15 days. The change is recommended upon following reasons and basis:

1. The timeframe between the start of the application window and exam is shortened, expediting the time-to-hire.
2. Notice of exam date for all positions is set at 15 days, standardizing and simplifying the testing process.
3. The Proposal will not change or limit City's obligation under either (a) Section 35.2 of the Police labor agreement to provide at least sixty days prior of any promotional examination with respect to the Sergeant or Captain classification; or (b) Article 49 of the Fire labor agreement to make a good faith effort at providing six (6) months prior notice of any promotional examination dates with respect to classifications in the bargaining unit.
4. The General Services bargaining unit has reviewed and does not object to the Proposal.



Mr. Alcala further testified that the rule changes had been reviewed by the Mayor who is in support of the rule changes.

No one appeared to speak in opposition to the proposed amendment.

Recommendation

The Commission recommends passage of the proposed amendments.

Signed this 14th day of December, 2021.


Dan Archibeque, Commissioner

Sharon Bonner, Commissioner

Erick Javaneau, Commissioner