



NOTICE OF COUNCIL MEETING

STUDY SESSION

TELECONFERENCE (Open to the Public)

Monday, August 26, 2024

5:15 p.m.

TELECONFERENCE/ELECTRONIC PARTICIPATION PROCEDURES

Members of the Aurora City Council will participate in the August 26, 2024 Study Session. Members of the public and media may participate remotely through the options listed below:

View or listen live to the Study Session

Live streamed in the Paul Tauer Aurora City Council Chamber
and at www.AuroraTV.org and Youtube.com/TheAuroraChannel
Cable Channels 8 and 880 in Aurora
Call: 855.695.3475

Translation/Accessibility

The City will provide closed captioning services on Cable Channels 8 and 880. If you need any other accommodation, please contact the Office of the City Clerk at (303) 739-7094. If you are in need of an interpreter, please contact the Office of International and Immigrant Affairs at 303-739-7521 by Monday, August 26, 2024 at 9:00 a.m. (Si necesita un intérprete, comuníquese con la oficina de asuntos internacionales e inmigrantes en 303-739-7521 por el viernes anterior a la reunión del lunes.)

For other information regarding public meetings, please contact the Office of the City Clerk at (303) 739-7094 or by email at CityClerk@auroragov.org or visit www.auroragov.org



AGENDA

Study Session of the Aurora City Council

Monday, August 26, 2024

5:15 p.m.

Aurora Room

15151 E. Alameda Parkway

Aurora, CO 80012

Pages

1. ITEMS FROM THE MAYOR

1.a Mayor's Update

1.b Issue Update

2. CONSENT CALENDAR

2.a **Consideration to Reappoint Two (2) Members to the Art in Public Places
Commission** 5

Kadee Rodriguez, City Clerk / Tim Joyce, Assistant City Attorney

2.b **Tax Administration Updates and Clarification (Ordinance)** 30

Jeffrey Edwards, Manager of Tax, Finance / Hanosky Hernandez, Senior
Assistant City Attorney

2.c **Intergovernmental Agreement (IGA) with Colorado Department of
Transportation (CDOT) for the Aurora Traffic Signal Equipment Upgrade
Project (Resolution)** 38

Sponsor: Stephanie Hancock, Council Member

Carlie Campuzano, Traffic Manager, Public Works / Michelle Gardner, Senior
Assistant City Attorney

2.d	Intergovernmental Agreement (IGA) with Colorado Department of Transportation (CDOT) for Communications Infrastructure Improvement Project (Resolution)	166
	Sponsor: Stephanie Hancock, Council Member	
	Carlie Campuzano, Traffic Manager, Public Works / Michelle Gardner, Senior Assistant City Attorney	
2.e	Intergovernmental Agreement (IGA) with Colorado Department of Transportation (CDOT) for the Traffic Management Center Project (Resolution)	292
	Sponsor: Stephanie Hancock, Council Member	
	Carlie Campuzano, Traffic Manager, Public Works / Michelle Gardner, Senior Assistant City Attorney	
2.f	Intergovernmental Agreement (IGA) with Colorado Department of Transportation (CDOT) for the Main Task Order for Fiber and Equipment Exchange (Resolution)	418
	Sponsor: Stephanie Hancock, Council Member	
	Carlie Campuzano, Traffic Manager, Public Works / Michelle Gardner, Senior Assistant City Attorney	
2.g	Intergovernmental Agreement (IGA) between Aurora and Parker for Snow Removal and Street Sweeping on Kings Point Way (Resolution)	468
	Marc Tamburro, Manager of Streets Operations, Public Works / Michelle Gardner, Senior Assistant City Attorney	
2.h	Removing the Sunset Provision (Ordinance)	597
	Sponsor: Danielle Jurinsky, Council Member	
	Jason Batchelor, City Manager / Pete Schulte, Manager of Client Services, City Attorney	
2.i	Amendment of Chapter 114 of the City Code by Enacting Article V Titled “Shopping Cart Management” (Ordinance)	610
	Sponsor: Stephanie Hancock, Council Member	
	Jason Batchelor, City Manager / Pete Schulte, Manager of Client Services, City Attorney	

3. ITEMS FROM THE POLICY COMMITTEES

3.a Program for the Retrieval of Abandoned or Unlawfully Removed Shopping Carts from Retailers in the City (Resolution) 617

Sponsor: Stephanie Hancock, Council Member

Jason Batchelor, City Manager / Pete Schulte, Manager of Client Services, City Attorney

Estimated time: 10 mins

3.b Mandatory Impoundment of Vehicles (Ordinance) 623

Sponsor: Stephanie Hancock, Council Member

Jason Batchelor, City Manager / Pete Schulte, Manager of Client Services, City Attorney

Estimated time: 5 mins

3.c Preventing the Public from being Denied Access to the Aurora Reservoir Due to Private or Special Events Held at the Reservoir (Ordinance) 631

Sponsor: Danielle Jurinsky, Council Member

Jason Batchelor, City Manager / Pete Schulte, Manager of Client Services, City Attorney

Estimated time: 10 mins

3.d Plan for Transitioning Domestic Violence Cases and Other Related Matters (Resolution) 636

Sponsor: Dustin Zvonek, Mayor Pro Tem

Jason Batchelor, City Manager / Jack Bajorek, Interim City Attorney

Estimated time: 5 mins

4. ITEMS FROM THE COUNCIL APPOINTEES

4.a Cherry Creek Schools Bond Update 641

Jason Batchelor, City Manager / Jack Bajorek, Interim City Attorney

Estimated time: 10 mins

5. ITEMS FROM THE CITY COUNCIL

5.a Courtwide Workload Study

660

Sponsor: Alison Coombs, Council Member

Candace Atkinson, Court Administrator / Jack Bajorek, Interim City Attorney

Outside Speaker: Suzanne Tallarico, National Center for State Courts

Estimated time: 20 mins

6. CALL-UPS OF COUNCIL POLICY COMMITTEE ITEMS

7. MISCELLANEOUS ITEMS

8. ITEMS REMOVED FROM THE AGENDA, IF ANY



CITY OF AURORA

Council Agenda Commentary

Item Title: Consideration to Reappoint Two (2) Members to the Art in Public Places Commission
Item Initiator: Kadee Rodriquez, City Clerk
Staff Source/Legal Source: Kadee Rodriquez City Clerk / Tim Joyce, Assistant City Attorney
Outside Speaker: N/A
Council Goal: 2012: 4.1--Develop and maintain high quality parks, rec facilities/programs, libraries, natural areas, trails and open space

COUNCIL MEETING DATES:

Study Session: 8/26/2024

Regular Meeting: 9/9/2024

2nd Regular Meeting (if applicable): N/A

Item requires a Public Hearing: Yes No

ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Kadee Rodriquez, City Clerk / Tim Joyce, Assistant City Attorney

ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field above.

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: N/A

Policy Committee Date: N/A

Action Taken/Follow-up: *(Check all that apply)*

Recommends Approval

Does Not Recommend Approval

Forwarded Without Recommendation

Minutes Not Available

Minutes Attached

HISTORY *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

The mission of the Art in Public Places program is to create great places that contribute to neighborhood development, economic vitality, and enrich and engage the community of Aurora.

The Art in Public Places Commission is composed of nine (9) members who are residents of Aurora and registered voters. Members serve a three (3) year term and may serve up to three (3) terms. All eligible applications received within the last year are forwarded to the Board to be considered for interviews.

ITEM SUMMARY *(Brief description of item, discussion, key points, recommendations, etc.)*

The Art in Public Places Commission currently has three (3) upcoming vacancies. The commission received two (2) applications for reappointment.

Among the applicants were:

Vanessa Frazier

Evelyn Hatcher (Note: Her initial application was submitted as Miriram Chavez, and she has changed her name to Evelyn Hatcher)

The Art in Public Places Commission respectfully recommends the reappointment of the following candidates:

Vanessa Frazier – 2nd term beginning 09/01/2024 and ending on 08/31/2027

Evelyn Hatcher – 1st term beginning 09/01/2024 and ending on 08/31/2027. Ms. Hatcher is a current member who completed a partial term. This will be her first full term if appointed.

FISCAL IMPACT

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

Revenue Impact

Budgeted Expenditure Impact

Non-Budgeted Expenditure Impact

Workload Impact

No Fiscal Impact

REVENUE IMPACT

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

BUDGETED EXPENDITURE IMPACT

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

N/A

NON-BUDGETED EXPENDITURE IMPACT

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

WORKLOAD IMPACT

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

QUESTIONS FOR COUNCIL

Does City Council wish to reappoint Vanessa Frazier and Evelyn Hatcher to the Art in Public Places Commission?

LEGAL COMMENTS

All boards and commissions shall be appointed by City Council. (City Charter, art III, sec. 3-11 and art. IX, sec. 9-1). The art in public places commission shall consist of nine voting members, each of whom shall be registered electors. The commissioners shall be appointed so as to represent different interests in the community, and at least one member shall be from the visual arts field. (Aurora Colo. Code sec. 34-166). The art in public places commission shall be directly responsible to the City Council. It shall be the function and the duty of the commission to develop and administer a public art policy applicable to public areas in public buildings, outdoor areas, and parks within the city. (Aurora, Colo. Code sec. 34-169). (TJoyce)



MEMORANDUM

TO: Mayor Coffman and Members of City Council

FROM: Ana Valles, 2024 Chairperson, Art in Public Places Commission

THROUGH: Boards & Commissions

DATE: August 8, 2024

SUBJECT: Appointment of Two to the Art in Public Places Commission

Board or Commission: Art in Public Places Commission

Number of Vacancies: 3 (One Commissioner is term limited)

Interview Information

Names of Active Applicants who Have Reapplied: Evelyn Miriam Hatcher and Vanessa Frazier

Interviews: Both applicants are currently active on the commissioner and well-respected contributors. Decisions regarding their reappointments were unanimous.

Recommendations

Suggested Appointments: Vanessa Frazier and Evelyn Miriam Hatcher (Evelyn Hatcher)

Summary:

The Art in Public Places Commission unanimously recommends the reappointment of Vanessa Frazier as an Art in Public Places Commissioner. Vanessa is completing her first term on the Art in Public Places Commission and seeks reappointment. She has proven herself to be a strong and reliable member of the Art in Public Places Commission with excellent attendance and participation in events. Most recently she served on the Art Selection Panel for two modest projects inside of the Municipal Courthouse, represented the AIPPC at the Chalk Lines and Vines, and serves as the AIPPC liaison to the Cultural Affairs Commission.

Vanessa works as a paralegal and is pursuing a law degree. She has an ongoing interest in art and public policy which originally drew her to serve on the Art in Public Places Commission. As such, she brings a unique perspective to the work of the commission. Her thoughts and opinions are always informed and welcome.

The Art in Public Places Commission unanimously recommends the reappointment of Vanessa Frazier to the Art in Public Places Commission.

The Art in Public Places Commission unanimously recommends the reappointment of Evelyn Hatcher as an Art in Public Places Commissioner. (Note: Her initial application was submitted as Miriam Chavez, and she has changed her name to Evelyn Hatcher.)

Evelyn Hatcher joined the Art in Public Places Commission in April of 2024 to serve out the few remaining months of the term of a departing commissioner. She has been an active member, attending all meetings, volunteering for events, and will represent the commission on two newly forming art selection panels; the exterior plaza areas of the Central Recreation Center and the Regional Homeless Navigation Center.

Evelyn has strong community connections. It is her perception that art is intertwined with the culture of a community and that diversity in art connects individuals in a community as vast as Aurora. She is enthusiastic, professional and well spoken. Her skills in training, counseling and technology, bring new perspective to the work of the AIPPC, and will be particularly meaningful for the art selection process for the Regional Homeless Navigation Center where trauma-informed design practices are in place. During her few months on the Art in Public Places Commission Evelyn has quickly become a willing partner and a positive force.

The Art in Public Places Commission unanimously recommends the reappointment of Evelyn Miriam Hatcher to the Art in Public Places Commission.

Art In Public Places Commission
Applicant Package - Ward To Be Determined

Art In Public Places Commission - Ward To Be Determined

Term 01 Sep 2021 - 31 Aug 2024

Positions Available 3

Number of applicants in this package 1

- Hatcher, Miriam

Received: 08/04/2024

Ward V Resident & Registered Voter

Arapahoe County

Vetted: 08/0~~4~~2024

Marcus Bond

Name: Hatcher, Miriam

Address: [REDACTED]

Email: [REDACTED]

Board Name: Art in Public Places Commission

Date of Birth:

[REDACTED]

Home Phone Number:

[REDACTED]

Work Phone Number:

[REDACTED]

How long have you lived in Aurora?:

1 year and 7 months

Are you registered to vote?:

Yes

Years of Education Completed:

17

Degree(s) Received:

Bachelors of Science: Social Work Masters of Social Work

College(s) Attended:

Metropolitan State University of Denver: Bachelors University of Denver: Masters

Employer Name:

WellPower

Employer Address:

[REDACTED]

Current Position:

Clinical Training Specialist and Reaching Recovery Consultant

Years with Current Employer:

10 months

Work Experience:

WellPower: In my role at WellPower, I design and deliver comprehensive training programs for clinical staff on utilizing electronic health records (EHR), focusing on system navigation and enhancing the quality of service delivery. My responsibilities include evaluating the effectiveness of these trainings and developing methods for assessment, while providing both in-person and remote support to ensure compliance and effective clinical documentation. I collaborate closely with cross-functional teams, stakeholders, and subject matter experts to create and implement training solutions that meet organizational needs. Additionally, I contribute to the DEIB (Diversity, Equity, Inclusivity, and Belonging) team by facilitating listening sessions and participating in DEIB events, which are aimed at promoting an inclusive and equitable work environment. As a Reaching Recovery Consultant, I train and consult with organizations and counties across state lines on utilizing outcome tools to collect data, helping to track and support the recovery of the individuals we serve.

AllHealth Network: As a Psychosocial Rehabilitation Therapist at AllHealth Network, I delivered billable services that significantly contributed to the organization's financial health. I consistently met documentation standards and contractual requirements, achieving a 100% compliance rate with same-day documentation. I provided care coordination and participated in interdisciplinary team meetings to review treatment plans, address concerns, and develop recommendations to overcome barriers to effective treatment outcomes. Additionally, I promoted a positive organizational culture and maintained ethical and professional relationships with community partners, government agencies, and other external providers.

Smith Agency Inc.: At Smith Agency, Inc., I independently managed the Wraparound Program, collaborating with multidisciplinary teams and establishing partnerships with local organizations, including the Community Centered Board (CCB) and the Colorado Department of Health Care Policy and Financing (HCPF). I audited case files monthly to ensure quality of care in foster homes and met documentation requirements for CHRP, CHCBS, and various government counties across Colorado. I was responsible for training, supervising, and interviewing new hires, and provided trauma-informed care training to foster parents. My role also involved managing the complexities of cases, working with individuals who had severe persistent mental illnesses, chronic health issues, substance use, and developmental disabilities.

Arapahoe County: As an Intake Caseworker with Arapahoe County, I evaluated and assessed the needs of families from diverse ethnic and socioeconomic backgrounds, addressing safety concerns and developing appropriate treatment plans and crisis interventions for children, youth, and caregivers, particularly those dealing with mental health and substance use issues. I monitored the progress of each assigned case, maintained detailed client records, and completed all required forms and court reports. Additionally, I collaborated with outside providers to address basic needs and overcome barriers to effective service delivery.

Denver Children's Home: At Denver Children's Home, I ensured the program met its grant funding requirements and successfully managed volunteer efforts and donations. I created and nurtured partnerships with community organizations by attending meetings, networking events, and development team sessions. Additionally, I facilitated training to support these partnerships and enhance program effectiveness. I possessed specialized skills in training and mentoring staff, particularly in managing complex cases involving individuals with severe persistent mental illnesses, chronic health issues, substance use, and developmental disabilities.

In my leadership roles, I served as the leader of the DEI Human Resources Group at AllHealth Network, where I tracked data on DEI initiatives and led meetings to present findings to staff and the Vice President of HR, facilitating discussions to implement actionable steps aimed at improving health equity. Additionally, as a member of the DEI Advisory Council at AllHealth Network, I facilitated presentations on DEI initiatives, led new hire orientations, planned events, developed training plans for staff, and collaborated with various teams. I was also an active member of the Spanish Workflow Committee at AllHealth Network.

Aurora Community Connections: During my time at Aurora Community Connection, I initially served as a Social Work Intern, where I

evaluated students' progress and consulted with caregivers to develop educational plans. I provided resource assistance and implemented youth service-learning projects and community service initiatives. I was subsequently promoted to Bilingual Tutoring Program Coordinator, where I continued to evaluate student progress, while also analyzing data entries to write grant proposals for the program. Additionally, I collaborated with Connect for Health Colorado to assist individuals with Medicaid and health insurance applications. Fostering Healthy Futures for Teens: During my internship with Fostering Healthy Futures for Teens, I contributed to the enhancement of the mentoring program by gathering and analyzing data to inform future best practices. I designed and implemented programs and workshops aimed at building strong relationships with students in foster care, their families, schools, and community members. Additionally, I developed key partnerships with Arapahoe, Adams, and Denver Counties, which were instrumental in improving the overall quality of care and effectiveness of the mentoring program. Projects: In 2022, I independently led the AllHealth Network DEI HR Group in creating a new process for obtaining bilingual designation and differential. This new procedure, developed through data analysis, was successfully implemented and has been in effect since November 21, 2022. Additionally, I conducted an annual report for the Denver Housing Authority in 2016, which focused on program development and needs assessment to enhance the quality of care and services for residents. Volunteer: Actively involved as a Natural Disaster and Emergency Responder, providing critical assistance and managing the impact of natural disasters. Offer mental health support through volunteering, including training others on mental health awareness and participating in tabling events organized by WellPower. Assist with organizing events and managing duties for your husband's baseball program, including coordinating logistics and facilitating team activities. Contribute to the Art in Public Places Commission, playing a key role in shaping and enhancing the cultural landscape of Aurora.

Certification(s):

Natural Disaster and Emergency Responder Yoga Teacher 200 HR Certification

How are you involved in your community?:

In my volunteer work, I have engaged in a range of activities that reflect my commitment to supporting communities in diverse capacities. As a Natural Disaster and Emergency Responder, I have been actively involved in providing critical assistance during emergencies, helping to manage and mitigate the impact of natural disasters. This role requires a high level of preparedness and adaptability, allowing me to contribute effectively in high-pressure situations. In addition to emergency response, I offer mental health support as part of my volunteer efforts. This includes providing training to others on mental health awareness and support techniques, and participating in tabling events organized by WellPower. These events are designed to promote mental health resources and engage the community in meaningful conversations about mental wellness. Furthermore, I assist my husband in organizing events and managing duties for his baseball program. This involves coordinating logistics, facilitating team activities, and ensuring smooth operations during events. My involvement in these activities reflects my ability to balance multiple responsibilities while contributing positively to both community and personal endeavors. I enjoy being a part of the Art in Public Places Commission, where I play a key role in shaping and enhancing the cultural landscape of Aurora. Overall, my volunteer experiences highlight my dedication to making a difference through emergency response, mental health advocacy, and community involvement.

List your interests and activities.:

I enjoy practicing yoga. I like going for walks. Drawing is a favorite hobby of mine. I find painting very relaxing. I love building with Legos. Attending concerts is something I look forward to. I spend a lot of time listening to music. I cherish spending time with my family and making more memories with my father, who is currently in the end-of-life stages. I attend my husband's baseball games regularly. I help him with organizing events and managing tasks for his baseball program. I love hiking in nature. Kayaking is one of my favorite outdoor activities. Paddle boarding is another activity I enjoy. Walking my dogs is a daily pleasure for me. Interests: Advocating for Mental Health Awareness: I am passionate about raising awareness about mental health issues and promoting understanding and empathy within the community. Volunteering to Support Mental Health: I dedicate time to volunteer efforts aimed at providing support and resources to individuals facing mental health challenges. Organizing Mental Health Training: I actively participate in and organize training sessions that educate others about mental health, coping strategies, and available resources. Supporting Mental Health Initiatives: I contribute to mental health initiatives by participating in community events and programs that focus on mental well-being. Participating in Advocacy Campaigns: I engage in campaigns and activities that advocate for better mental health policies and access to mental health services. Raising Awareness Through Events: I take part in events and workshops aimed at reducing stigma and increasing awareness about mental health issues.

Do you presently serve in any other appointed position on a board, commission or committee?:

No

If yes, enter the board name and position:

N/A

Are you currently a member and seeking reappointment on the board you are applying for?:

Yes

Why do you desire this appointment?:

My time with the Art in Public Places Commission has been a profoundly rejuvenating experience, deeply reigniting my passion for art and creativity. Serving on the AIPP Commission has allowed me to engage with the community in a meaningful way, and I have thoroughly enjoyed being involved in tabling events and discussing the commission's impactful work. These interactions have not only strengthened my connection to the artistic community but have also enhanced my appreciation for public art's role in enriching our city's cultural landscape. My dedication to the AIPP role stems from a genuine interest in shaping Aurora's artistic and cultural environment. I have found immense satisfaction in contributing to projects that celebrate creativity and foster a vibrant community spirit. The opportunity to work closely with artists, community members, and cultural initiatives has been both fulfilling and inspiring. This role has become even more significant to me as I navigate my father's health challenges. His encouragement to follow my dreams and pursue my passions has reinforced my commitment to the AIPP Commission. His support has been a powerful motivator, reminding me of the importance of embracing my creative aspirations and making a meaningful impact in the community. While my professional roles in mental health and community support are deeply important to me, my involvement with the AIPP Commission offers a unique outlet for my creative passions. This role has been a source of personal rejuvenation, allowing me to blend my love for art with my commitment to community service. I am eager to reapply for my appointment to continue making a positive impact through the AIPP Commission. I am excited about the prospect of further contributing to the commission's goals and initiatives, and I am dedicated to helping Aurora continue to thrive as a city that values and celebrates the arts.

How much time do you anticipate being able to spend on this appointment each month?:

I anticipate being able to dedicate approximately 15 hours per month to this role. My availability is quite flexible due to my work schedule, so I can accommodate meetings or commitments throughout the day and evening. I'm also available on weekends for community events and festivals.

Do you have any conflicts of interest that should be disclosed?:

No

If yes, please explain:

N/A

Reference 1: Full Name, Phone Number and Address:

Emily DeFrancia, [REDACTED]

Reference 2: Full Name, Phone Number and Address:

Pam Zackeru, [REDACTED]

Reference 3: Full Name, Phone Number and Address:

Ali Salvetti, [REDACTED]

How did you hear about us?:

Word of Mouth

By clicking APPLY and submitting this application, I certify that the forgoing information is true and correct:

Miriam Evelyn Hatcher

Time of Submission: 08/04/24 11:59:45 AM

Attachments

M. Evelyn Chavez, MSW, SWC

Highly skilled and **results-driven** with over 9 years of experience in social work, case management, implementing programs, public speaking including **interpersonal skills**, and community outreach. Strong experience in clinical documentation, program development, monitoring outcomes, and data analysis.

EXPERIENCE

WellPower, Denver — Clinical Training Specialist, Reaching Recovery Consultant, and part of the DEIB Team

September 2023 - PRESENT

- Conduct and design training for clinical staff to become experts in using the electronic health record, including navigation and quality of service delivery.
- Evaluating training, including the development of evaluation methods.
- Provide in-person support and remote consultation to clinical staff regarding the electronic health record, clinical documentation, and any related compliance requirements.
- Collaborate with cross-functional teams, stakeholders, subject matter experts, and management to design the most effective trainings.
- Hold listening sessions for staff under the DEIB team and part of DEIB events.
- *Reaching Recovery Consultant*: Training and consulting with other organizations and counties across state lines in using the outcome tools to gather data on the people we serve working towards their recovery.

AllHealth Network, Centennial — Psychosocial Rehabilitation Program, PSR Therapist

February 2021 - PRESENT

- Delivered billable services to contribute to the financial health of the organization.
- Standards of documentation and contractual requirements were successfully met, such as performing at 100% with same day documentation.
- Providing *care coordination* and participating in interdisciplinary team meetings to review treatment, concerns, and recommendations to address barriers to effective treatment outcomes and the client's ability to thrive.
- Promoting a positive culture, maintaining ethical and professional partnerships with the community partners, government agencies, and other outside providers.

Smith Agency, Inc., Aurora — Wraparound Facilitator and Foster Care Case Manager

March 2019 - January 2021

- *Managed the Wraparound Program independently*, collaborated with multidisciplinary teams, and established partnerships with local organizations, such as Community Centered Board (CCB) and

LANGUAGES

Spanish and English

SPECIALIZED SKILLS

Successfully train and mentor staff. Experience working with complex members and individuals who have severe persistent mental illnesses, chronic health issues, substance use, and developmental disabilities.

LEADERSHIP

Leader of the DEI Human Resources Group at AllHealth Network

Tracked data around DEI initiatives and led meetings to present data to staff and the Vice President of HR to create further discussions to implement actionable steps to improve health equity.

DEI Advisory Council Member at AllHealth Network

Facilitated presentations for DEI initiatives, led new hire orientations, event planning, developed training plans for all staff, and partnered with various teams

Member of the Spanish Workflow Committee at AllHealth Network

- Colorado Department of Health Care Policy and Financing (HCPF).
- Audited case files monthly to ensure quality of care in the foster homes and met documentation requirements for CHRP, CHCBS, and government counties across Colorado
- Trained, supervised, and interviewed new hires.
- Provided trauma-informed care trainings to foster parents

Arapahoe County, Aurora — Intake Caseworker

February 2017 - March 2019

- Evaluated and assessed the needs of families from diverse ethnic and socioeconomic backgrounds while addressing safety concerns.
- Developed appropriate treatment plans and *crisis interventions* for children, youth, and caregivers, particularly those with mental health and substance use issues.
- Monitored the progress of each case assigned and maintained client records along with completing required forms and court reports.
- Connected with outside providers to address basic needs or barriers.

Denver Children’s Home, Denver — Bilingual Outreach Coordinator and Case Manager (Part-Time)

March 2016 - December 2016

- Ensured that the program succeeded in meeting *grant funding requirements*.
- *Supervised* volunteers and donations made to the program
- *Created partnerships with community partners* by attending meetings, networking events, development team meetings, and facilitated training.

Aurora Community Connection, Aurora — Social Work Intern and promoted to Bilingual Tutoring Program Coordinator (Part-Time)

June 2014 - December 2016

- Evaluated student’s progress and consulted with caregivers to create an educational plan, provided resource assistance, and implemented youth service-learning projects and community service.
- Analyzed *data entries* to write grant proposals for the program and collaborated with Connect for Health Colorado to help individuals with *Medicaid* and *Health Insurance* applications.

Fostering Healthy Futures for Teens, Denver — Mentor and Researcher (Internship)

June 2015 - June 2016

- Improved the mentoring program by gathering data to inform best practices in the future.
- *Designed programs* and workshops to foster relationships with students in foster care, family members, schools, and communities.
- Developed partnerships with Arapahoe, Adams, and Denver County to improve the quality of care of the mentoring program.

PROJECTS

AllHealth Network DEI HR Group— Changes to Bilingual Assessment Process 2022

Independently led the committee and created a new process for obtaining bilingual designation and differential by using data analysis. Successfully implemented the new procedure and has been in effect as of November, 21st, 2022.

Denver Housing Authority — Annual Report 2016

Conducted an annual report addressing program development and needs assessment to improve quality of care and services for residents.

EDUCATION

University of Denver,
Masters of Social Work
Graduated in 2016

Metropolitan State University of Denver,
Bachelor of Science in Social Work
Graduated in 2015

Art In Public Places Commission
Applicant Package - Ward To Be Determined

Art In Public Places Commission - Ward To Be Determined

Term 01 Sep 2021 - 31 Aug 2024

Positions Available 3

Number of applicants in this package 1

- Frazier, Vanessa

Received: 6/22/2024

Ward III Resident & Registered Voter

Arapahoe County

Vetted: 7/24/2024

Marcus Bond

Name: Frazier, Vanessa

Address: [REDACTED]

Email: [REDACTED]

Board Name: Art in Public Places Commission

Date of Birth:

[REDACTED]

Home Phone Number:

[REDACTED]

Work Phone Number:

[REDACTED]

How long have you lived in Aurora?:

47 years

Are you registered to vote?:

Yes

Years of Education Completed:

23 years

Degree(s) Received:

BA - Criminology w/Minor in Social Welfare MPA - Public Administration PhD - Public Administration and Policy

College(s) Attended:

University of New Mexico - Albuquerque Community College of Aurora - Paralegal Program, Received certificate University of Phoenix Walden University

Employer Name:

Colorado Department of Law

Employer Address:

[REDACTED]

Current Position:

Senior Paralegal

Years with Current Employer:

3yrs

Work Experience:

I started my career as a youth advocate before transitioning to an adolescent Pre-Trial Release Case Manager position. I did spend some time in the private sector working as a legal secretary for the Liberty Mutual legal office as well as a law firm as a civil litigation paralegal. I returned to the public sector as serving the community is my passion. I have worked for the City and County of Denver, where I had the opportunity and privilege to serve as a member of the Denver Department of Human Services Strategic Planning Team and the Child Support Enforcement Department's Strategic Planning Implementation Team. I currently get to do fulfilling work as a senior paralegal at the Colorado Department of Law. Outside of my day job, I also get to fulfill my creative side through my photography business and freelance writing for 303 Magazine's Food and Booze section.

Certification(s):

CBCA Leadership Arts Paralegal Certificate from ABA Approved Program

How are you involved in your community?:

I have been serving on the AIPP Commission since April 2020, and I recently became the Cultural Affairs Commission AIPP Liaison in October 2023. I have served as a volunteer martial arts instructor for the Denver Red Shield After-School Program; I was also a volunteer mediator for the JeffCo Mediation Services Program until COVID-19.

List your interests and activities.:

My interests include photography, painting, and making necklace pendants out of terra cotta clay (when I have the time). Martial arts is another interest and activity of mine. I am a 2nd degree black belt in Tang Soo Do. My initial and majority training was under Karen Eden Herdman ("I Am a Martial Artist"), but I finished as a member of the Atlantic Pacific Tang Soo Federation under Master Mark Farquharson, owner of Colorado Tang Soo Do. I also started expanding my martial arts interests by pursuing learning Jiu-Jitsu through Gracie Jiu-Jitsu Aurora. While I am no longer able to train due to health-related reasons, practicing as I can at home is still something I do.

Do you presently serve in any other appointed position on a board, commission or committee?:

Yes

If yes, enter the board name and position:

AIPP, Commissioner, and AIPP Liaison to the Cultural Affairs Commission.

Are you currently a member and seeking reappointment on the board you are applying for?:

Yes

Why do you desire this appointment?:

I am seeking reappointment as I truly believe in the work that AIPP is doing and what the collaborative work between AIPP and the Cultural Affairs Commission can do not only to bring awareness of public art to the community but also have a positive impact on creating spaces that are equitable, safe, and add to the quality of life for the residents of Aurora. Additionally, I believe there is an opportunity to support economic development through the arts. My first term as a Commission has set a foundation of understanding and insight into what the public art program is all about, how civic engagement through AIPP works, and understanding of how to assist in a way that not only supports the goals and needs of the city of Aurora but most importantly, the residents of Aurora.

How much time do you anticipate being able to spend on this appointment each month?:

I will be able to spend the same amount of time that I am currently spending each month. I do plan to apply for law school for the Fall 2025 semester; however, I do not foresee that it would keep me from being a member of AIPP.

Do you have any conflicts of interest that should be disclosed?:

No

If yes, please explain:

N/A

Reference 1: Full Name, Phone Number and Address:

Satya Wimbish, [REDACTED]

Reference 2: Full Name, Phone Number and Address:

Brittany Pirtle, [REDACTED]

Reference 3: Full Name, Phone Number and Address:

Amy Cheslin, [REDACTED]

How did you hear about us?:

Other

By clicking APPLY and submitting this application, I certify that the forgoing information is true and correct:

/s/ Vanessa R. Frazier

Time of Submission: 06/22/24 8:54:34 PM

Attachments

- Updated Resume August 2022 copy.pdf

VANESSA R. FRAZIER, Ph.D.

ADDRESS: [REDACTED]
PHONE: [REDACTED] **EMAIL:** [REDACTED]

QUALIFICATIONS PROFILE

Public Policy and Administration Ph.D. graduate with research interests in examining the intersection of different public policies and their direct and indirect impact on public interest issues. The dissertation examined the perspectives of stakeholders regarding the impact of the implementation of creative placemaking on homelessness in neighborhoods experiencing gentrification. Additional qualifications include:

- Experienced with developing, implementing, and evaluating a strategic plan as a member of the agency and division at the county-level department of human services.
- Experience and understanding of Home and Community Based programs and participant care through work as a caregiver for a Home and Community Based service provider.
- A skilled researcher and writer.
- An experienced written and oral communicator of law, regulation, and policy through analysis, inference, internal and external communication, and problem-solving with senior-level staff and stakeholders.
- Experienced with researching to identify concerns to provide a verbal and written analysis of findings with recommendations to assist with creating or modifying existing policy and procedures to mitigate or eliminate future issues.
- Experienced with developing studies and implementing training programs for youth and adults residing in the community.

RELEVANT EXPERIENCE

Colorado Department of Law, State Services Section - [REDACTED]
[REDACTED]

Senior Paralegal (Legal Assistant II)

March 2021-Present

Supervisor: Jessica Perrill

Hours per Week: 40

- Responsible for administrative oversight of legal pleadings to ensure formal claims and defenses are appropriately cited.
- Responsible for requesting, reviewing, managing, and redacting case-related documents.
- Skilled in providing initial drafts of pleadings (i.e., Notice of Issues/Charges, Complaints, Answers, Motions, Subpoenas, and Pre-hearing Statements) for attorney review, finalization, and approval.
- Demonstrated skilled litigation assistance including, but not limited to, drafting discovery requests and responses, preparing trial and exhibit notebooks, arranging depositions, taking notes during client and witness meetings, and coding briefs when needed.

- Organized workflow and calendaring of deadlines to ensure timely filings and responses to discovery requests.
- Proficient in initiating and filing existing cases via the Colorado Court E-Filing System, the U.S. District Court, and the Office of Administrative Courts.
- Ensured timely submission of invoices for timely payment to vendors for deposition services and service process.

Arapahoe County Attorney's Office | [REDACTED]

Dependency and Neglect Paralegal

April 2012-March 2021

Supervisor: Jeremy Richardson

Hours per Week: 40

- Drafted petitions, motions, summonses, subpoenas, bench/search warrants, and notices.
- Demonstrated proficiency in filing documents within the juvenile court.
- Created new case files and performed manual and electronic file/case management.
- Performed calendaring and scheduling responsibilities.
- Displayed professional and skilled hearing preparation and in-court assistance.
- Arranged service, submitted writ requests, and coordinated telephone testimony of incarcerated respondents.
- **Highlight:** After receiving another job offer and providing adequate notice, I was informed that the workflow and electronic file system I created allowed access to documents while working remotely due to Covid-19 for multiple attorney/paralegal teams within the county.

Home Instead Senior Care | [REDACTED]

Professional CAREGiver

November 2016-January 2017

Hours per Week: 20

- Skilled caregiver aiding with basic daily care, transportation, and errands for clients.
- Meticulously maintained daily log during my shift to assist other caregivers and help the office monitor the client's care.
- **Highlight:** I received recognition as a caregiver of the month.

Denver Department of Human Services | [REDACTED]

CSE Establishment Technician

September 2007-April 2012

Supervisor: Shirley Woodrum

Hours per Week: 40

- Demonstrated proficiency and attention to detail regarding establishing orders for child support, paternity, and medical support according to the Administrative Procedure Act (APA).
- Conducted client interviews to collect collateral information for review and analysis to determine monthly support obligations.
- Advanced file and case management.
- Demonstrated proficiency in maintaining notes and case information using the Automated Child Support Enforcement System (ACSES).
- Demonstrated time management in calendaring and scheduling meetings with clients on caseload and consistent timeliness in attending those meetings.
- Meticulously prepared cases for hearing to ensure that attorneys had all information needed to proceed with the hearing successfully.

- **Highlight:** Collaboration with other DDHS staff as a Strategic Planning Team (SPT) member and the CSE Division Strategic Planning Implementation Team (SPT). Additionally, a member of the *Trends* sub-committee is responsible for recognizing patterns and trends outside DDHS that would impact operations. While part of this committee, we set up a panel presentation for the SPT focused on renewable energy and how this trend could be incorporated into workforce services provided to the public.

Riggs, Abney, Neal, Turpen, Orbison & Lewis | [REDACTED]

Litigation Paralegal **September 2005-September 2007**

Supervisor: Aimee Fitzsimmons **Hours per Week: 40**

- Demonstrated advanced proficiency in initiating cases and performing case management of civil litigation caseloads for six attorneys.
- Requested medical, employment, and criminal records and demonstrated critical thinking and analysis in preparing memos to the attorneys regarding the content of those records.
- Demonstrated advanced proficiency when preparing the initial drafts of complaints, responses and counter-claims, motions, disclosures, discovery requests and answers, and other general pleadings.
- Displayed high-level proficiency and an ability to work within a team and independently without direct supervision when assisting attorneys with hearing preparation, including trial notebooks.
- Displayed professionalism and respect when assisting with witness interviews and preparation and interacting with court personnel and opposing counsel when scheduling depositions, hearings, and settlement conferences.

Liberty Mutual Insurance Legal Office | Law Office of Jonathan S. Robbins [REDACTED]

Legal Secretary **March 2004-September 2005**

Supervisor: Edith Philemon-Scott **Hours per Week: 36**

- Demonstrated proficiency in initiating new cases and performing case management.
- Performed calendaring and document management.
- Coordinated travel and hotel arrangements for out-of-town depositions and hearings.
- Demonstrated professional and respectful interactions with various parties when scheduling depositions, settlement conferences, and IME (Independent Medical Examination) appointments.
- Demonstrated proficient and professional writing skills when drafting hearing notifications and general correspondence.
- Successfully reviewed and processed vendor invoices for timely payment.

SB94 Pretrial Release Program [REDACTED]

Female Specific Case Manager **July 1999-March 2004**

Supervisor: Shelly Sack **Hours per Week: 40**

- Demonstrated professional and collaborative interaction with youth and their families during home, school, and community visits.
- Demonstrated advanced proficiency when conducting interviews and performing assessments for services.
- Demonstrated professional and proficient writing skills when drafting reports with sentencing recommendations for the Court and District Attorney’s Office.
- Displayed a professional, prepared, and articulate presentation of a youth’s progress with the Program when appearing on assigned days as the Pretrial Release Program representative.
- Recognized as a Female Specific Subject Matter Expert.
- Successfully co-facilitated educational classes.
- Demonstrated collaborative ability and understanding of identified stakeholders as a member of the Juvenile Female Offender Program (JFOP) Team to discuss and develop approaches to working with juvenile female delinquents.
- **Highlight:** Co-developed the MADRE (Mothers and Daughters Relationship Enhancement) Program in collaboration with the Female Specific Probation Officer.

Dignity | Denver, CO (Program Doors Closed)

Youth Advocate & Substance Abuse Counselor
Supervisor: Dawn White

August 1998-July 1999
Hours per Week: 40

- Displayed professionalism when appearing in Court to advocate and provide the Court with updates regarding a youth’s progress.
- Demonstrated proficient skills in community monitoring of youth ordered to participate with the SB94 Pretrial Release Program and Denver Juvenile TASC.
- Served as a knowledgeable, encouraging, and appropriate mentor.
- Provided professional substance abuse counseling under the supervision of the Drug/Alcohol Program Coordinator.
- Successfully co-facilitated Positive Life Choices groups and Drug/Alcohol Treatment Groups

RELEVANT VOLUNTEER EXPERIENCE

The City of Aurora Art in Public Places | Aurora, CO

Commissioner
City Staff: Roberta Bloom, Public Art Supervisor

April 2020-Present

- Displays collaboration and professionalism.
- Contributes to discussions regarding the evaluation of the strategic plan.
- Attends events within the community as an AIPP representative speaking with citizens regarding the mission and purpose of AIPP.
- Provides monthly updates to the city councilman for Ward III to communicate the work that AIPP is doing within the community and advocate the importance of art within the city's development.

Metro Volunteer Lawyers | Denver, CO

Volunteer Paralegal

2015 to Present

- Performed skilled assistance to participants of the Family Law Program in Arapahoe.
- As a volunteer with the Department of Law's Post Decree Clinic paralegal team, demonstrated teamwork and professional assistance in preparing client files, helping volunteer attorneys get additional documents needed, and attending in-person sessions in rotation with the other volunteer paralegals.

Jefferson County Mediation Services | Golden, CO

Mediator

May 2018-October 2020

- Displayed professionalism and high-level listening skills.
- Successfully co-facilitated mediation sessions between parties that were either ordered by the Court to participate in mediation or voluntarily requested services to resolve issues regarding child support, parenting time, and civil disputes.

Program Instructor | Denver Red Shield Community Center

After-School Martial Arts Instructor

September 2017-June 2021

Program Director: Jessie Romito (Employed with the City of Thornton Colorado Parks and Recreation)

- Demonstrated proficiency in project management when creating, planning, and implementing a community outreach workshop meant to share the various recreational programs available at the community center.
- Demonstrated ability to plan and implement a curriculum for in-person instruction and evaluate and modify the curriculum to fit a virtual instruction format due to Covid-19.
- **Highlight:** Demonstrated advanced writing capability when completing the application and first-year report concerning the Atlantic Pacific Tang Soo Do Federation Barrier to Entry grant. Received a \$1000 grant for the Program to assist with scholarships for students who could not afford the costs associated with martial arts training.

Quail Run Home Owner's Association | Aurora, CO

Board Secretary

March 2016-July 2018

- Demonstrated ability to identify stakeholders and contribute to discussions that encouraged consideration of the best interest of all stakeholders to the best of our ability.
- Demonstrated advanced writing skills and attention to detail when scribing minutes.
- Highlights: Created a format for recording minutes that the current HOA Board still uses. Demonstrated critical thinking, ability to evaluate and analyze complex information, and professionalism and collaboration when working as a member of the subcommittee that revised the bylaws and declarations for the meter of the two homeowner associations.

EDUCATION

**Doctor of Philosophy in Public Policy and Administration: Program Completed
Graduated August 14, 2022**

Walden University, Minneapolis, MN
Pi Alpha Alpha
GPA: 4.0

**Master of Public Administration: Program Completed
Graduated December 12, 2011**

The University of Phoenix, Phoenix, AZ
Sigma Alpha Pi
GPA: 3.25

**Paralegal Certificate, ABA Approved Program: Program Completed
Graduated May 7, 2004**

Community College of Aurora, Aurora, CO
Phi Theta Kappa
GPA: 3.7

**Bachelor of Arts in Criminology: Program Completed
Graduated May 17, 1997**

The University of New Mexico, Albuquerque, NM
GPA: 2.4

CERTIFICATIONS

CAC I Certification: Issued in 2001, Expired in 2003

Tang Soo Do Kyosa Certification: Issued in July 2018, Renewed in January 2019, Expired
December 2021

Notary Public: Commission Expires July 12, 2024

PROFESSIONAL MEMBERSHIPS

Rocky Mountain Paralegal Association: 2007-Present
American Society for Public Administrators: 2019-2021
Toastmasters: 2015-Present
The American Alliance of Paralegals, Inc.: 2011-2012

AWARDS/CERTIFICATES OF ACHIEVEMENT

CBCA Leadership Arts: Class of 2020-2021, Awarded May 19, 2021

REFERENCES

***Contact information for employers, as well as references, will be provided upon request.**



CITY OF AURORA

Council Agenda Commentary

Item Title: Tax Administration Updates and Clarification (Ordinance)
Item Initiator: Jeffrey Edwards, Manager of Tax, Finance
Staff Source/Legal Source: Jeffrey Edwards, Manager of Tax, Finance / Hanosky Hernandez, Senior Assistant City Attorney
Outside Speaker: N/A
Council Goal: 2012: 6.0--Provide a well-managed and financially strong City

COUNCIL MEETING DATES:

Study Session: 8/26/2024

Regular Meeting: 9/9/2024

2nd Regular Meeting (if applicable): 9/23/2024

Item requires a Public Hearing: Yes No

ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Jeffrey Edwards, Manager of Tax, Finance / Hanosky Hernandez, Senior Assistant City Attorney
Estimated time: 15 mins

ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field above.

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Management & Finance

Policy Committee Date: 7/23/2024

Action Taken/Follow-up: *(Check all that apply)*

Recommends Approval

Does Not Recommend Approval

Forwarded Without Recommendation

Minutes Not Available

Minutes Attached

HISTORY *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

7/23/2024 – This item was approved by the Management and Finance Committee.

ITEM SUMMARY *(Brief description of item, discussion, key points, recommendations, etc.)*

This item will update the City’s tax code to align with the requirements of Colorado Senate Bill 24-023 and update the City’s current hold harmless provision in 130-89 to mirror the requirements in the bill. This item will also align Chapter 130’s reference to the Colorado Revised Statutes updated by the passing of Colorado Senate Bill 24-025. Additional minor corrections and changes to improve the clarity of administration of the ordinance language for 130-75 Sale of business, 130-80 Notice of tax lien, and 130-90 Statute of limitations.

FISCAL IMPACT

Select all that apply. (If no fiscal impact, click that box and skip to “Questions for Council”)

Revenue Impact

Budgeted Expenditure Impact

Non-Budgeted Expenditure Impact

Workload Impact

No Fiscal Impact

REVENUE IMPACT

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

BUDGETED EXPENDITURE IMPACT

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

N/A

NON-BUDGETED EXPENDITURE IMPACT

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

WORKLOAD IMPACT

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

N/A

QUESTIONS FOR COUNCIL

Does the City Council approve moving the item forward for formal consideration?

LEGAL COMMENTS

Pursuant to the City of Aurora home rule authority granted under Article XX Section 6 (g) of the Colorado Constitution, the City of Aurora has the power of taxation for local municipal purposes. This ordinance adjusts the code to state requirements, clarifies some sections of the tax code, and it is not imposing a new tax, therefore it is compliant with Article X Section 20 of the Colorado Constitution. City Council shall act only by ordinance, resolution, or motion. All legislative enactments must be in the form of an ordinance; all actions, except as herein provided, may be in the form of Resolutions or motions. This action amends the tax code and it must be taken in the form of an ordinance. See, Article 5-1 Aurora City Charter. (Hernandez)

ORDINANCE NO. 2024-____

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, UPDATING SECTION 130 OF THE CITY CODE, RELATED TO THE SALES AND USE TAX SIMPLIFICATION SYSTEM GIS DATABASE, AND OTHER Tax RELATED MATTERS

WHEREAS, the City of Aurora, Colorado, (the “City”), is a home rule municipality, organized and existing under and by virtue of Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, under Article XX, Section 6 the Colorado Constitution, the City has authority over local taxation matters; and

WHEREAS, the City intends to encourage the use of the Electronic Sales and Use Tax Simplification System GIS database to accurately determine sales and use tax rates and the jurisdiction to which vendors should report the taxes; and

WHEREAS, the City also intends to improve administration of the tax code and increase clarity within the ordinance language; and

WHEREAS, the City Council (the “Council”) has the power to make and publish from time-to-time ordinances as it shall deem necessary and proper to provide for the safety; preserve the health; promote the prosperity; and improve the morals, order, comfort and convenience of the city, and the Council has found and determined that the changes contained herein in this ordinance fulfills this purpose.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO.

Section 1. Section 130-63 subsection (b)(5) of the City Code of the City of Aurora, Colorado, is hereby amended and shall read as follows:

Sec. 130-63. Collection and refund of disputed tax.

(b)

(5) *Hearing.* The hearing before the finance director shall be informal. No transcript, rules ~~or~~ of evidence, or filing of briefs shall be required. In lieu of the request for a hearing, the taxpayer and the city may mutually agree to file written briefs and such other written materials or documents as he or she deems appropriate and request the finance director to consider the appeal without a hearing. The submission of written material shall be considered for all purposes the same as a request for and submission of testimony and documents at a hearing.

Section 2. Section 130-64 subsections (b) and (e) of the City Code of the City of Aurora, Colorado, are hereby amended and shall read as follows:

Sec. 130-64. Review procedure for aggrieved taxpayers.

(b) *Appeal and hearing.* An appeal of a notice of assessment issued to a taxpayer as the result of a failure to file a return, an underpayment of tax owed or an audit shall be submitted in writing to the finance director within 30 calendar days after the date of notice of assessment. Any such appeal shall identify the amount of tax disputed and the basis for the appeal. Only matters specifically contained in such appeal shall be considered by the finance director. The finance director shall notify the taxpayer in writing of the time and place fixed for the hearing on such appeal. The hearing before the finance director shall be informal. No transcript, rules ~~or~~ of evidence, or filing of briefs shall be required. In lieu of the request for hearing, the taxpayer and the city may agree to file written briefs and such other written materials or documents as he or she deems appropriate and request the finance director to consider the appeal without a hearing. The submission of written material shall be considered for all purposes the same as a request for and submission of testimony and material at a hearing.

(e) *De novo review.* The taxpayer may elect either a hearing before the executive director of the state department of revenue or a hearing before the district court to review the final decision of the finance director. The hearing, whether a state hearing or a hearing before the district court, shall follow the procedures set forth in C.R.S. § 29-2-~~302106.1(3)~~ ~~(8)~~ with the exception that at the conclusion of the appeal if funds were deposited with the finance director the funds shall be either retained by the finance director and applied against the deficiency or returned in whole or in part to the taxpayer with the interest computed at an annual rate equal to the average earnings rate on the investment portfolio of the city for the preceding month.

Section 3. Section 130-75 of the City Code of the City of Aurora, Colorado, is hereby amended and shall read as follows:

Sec. 130-75. Sale of business.

(a) Any retailer who sells out his or her business or stock of goods or who quits business shall be required to notify the tax and licensing division in writing of his or her intent to quit business and to make out a return and pay all taxes due and owing to the City, including those incurred on the sale of the business, within ten days after the date upon which he or she sells the business or stock of goods or quits business. The purchaser of any such business or stock of goods shall be required to withhold sufficient purchase money to cover the amount of all taxes due and unpaid, until such time as the previous owner produces a receipt from the finance director showing that all taxes have been paid,

or a certificate showing that no taxes are due. If no such receipt or certificate is produced within the ten-day period, the purchaser shall remit directly to the City, from the purchase money withheld to cover such taxes, all taxes due and owing, including those incurred on the sale of the business, at the time provided in section 130-76.

(b) Sales tax shall be remitted by the purchaser on the price paid for tangible personal property, other than inventory, acquired with the purchase of the business and for use or consumption in the operation of the business. The tax shall be based on the purchase price for personal property as recorded in the bill of sale or purchase agreement, provided the valuation is as great or greater than the fair market value of the tangible personal property.

(c) Where the transfer of ownership is a package deal made by a lump sum transaction, the tax shall be paid on the book value of tangible personal property set up by the consumer for income tax depreciation purposes, or if no such value is established, the fair market value.

Section 4. Section 130-80 subsection (a) of the City Code of the City of Aurora, Colorado, is hereby amended and shall read as follows:

Sec. 130-80. Notice of tax lien.

(a) If any taxes, penalties, or interest imposed by this article and shown due by building permits, returns filed by the taxpayer, or assessments duly made as provided in this article are not paid within five days after the same are due, the finance director ~~may shall~~ issue a notice setting forth the name of the taxpayer; the amount of the tax, penalties and interest; the date of the accrual thereof; and the City's claim of a first and prior lien therefor on the real and tangible personal property of or used by the taxpayer under lease, title-retaining contract, or other contract arrangement.

Section 5. Section 130-89 subsection (b)(1) and (b)(2) of the City Code of the City of Aurora, Colorado, are hereby amended and shall read as follows:

Sec. 130-89. Maps and location guides;~~electronic~~ **GIS** database.

~~(b) Electronic database.~~ **Electronic Sales and Use Tax Simplification System GIS database.**

(1) Any retailer that collects and remits tax to the finance director as provided in this article may use ~~an electronic database of state addresses that is certified by the state department of revenue pursuant to C.R.S. § 39-26-105.3~~ **the Electronic Sales and Use Tax Simplification System GIS database described in C.R.S. § 39.26.802.7** to determine the jurisdictions to which tax is owed.

(2) Any retailer that uses the data contained in ~~an electronic~~ **the Electronic Sales and Use Tax Simplification System GIS** database ~~certified by the state department of revenue pursuant to~~ **described in** C.R.S. § 39-26-~~802.7~~ **105.3** to determine the jurisdictions to which tax is owed shall be held harmless for any tax, penalty, or interest owed the city that otherwise would be due solely as a result of an error in the electronic database, ~~provided that the retailer demonstrates that it used the most current information available in such electronic database on the date that the sale occurred.~~ **To be held harmless a vendor must collect, retain, and produce upon request documentation reasonably sufficient to demonstrate the vendor's proper use of and reliance on the GIS database data to determine the tax rate and local taxing jurisdiction to which tax was owed.** Each retailer shall keep and preserve such records as prescribed by the finance director to demonstrate that it used the most current information available in the electronic database on the date that the sale occurred. **A vendor that queries the GIS database using an incomplete or erroneous address shall not be held harmless pursuant to this subsection (b)(2) for the failure to pay any tax, penalty, or interest.** Notwithstanding the above, if the error in collecting and remitting is a result of a deceptive representation, a false representation, or fraud, the provisions of this subsection (b)(2) shall not apply.

Section 6. Section 130-90 subsection (c) of the City Code of the City of Aurora, Colorado, is hereby amended and shall read as follows:

Sec. 130-90. Statute of limitations.

(c) The issuance of a notice of audit by the finance director to the taxpayer prior to the expiration of the three-year limitation period prescribed in subsection (a) of this section shall extend such period with respect to the designated audit period until such time as the audit is completed and a notice of final determination or assessment is issued. For purposes of this subsection (c), "designated audit period" includes all **returns filed or unfiled returns** ~~reporting periods~~ with due dates that fall within the three-year period preceding the date of the notice of audit or, if the audit is conducted pursuant to section 130-61(g), the period between the issuance of a building permit and the issuance of a final certificate of occupancy or final inspection. If a notice of assessment **is** issued as a result of such audit, the limitation period shall be further extended as provided in subsection (d) of this section.

Section 7. Notwithstanding any provision of the Charter or the City Code of the City of Aurora, Colorado, to the contrary, this ordinance shall become effective on the first day of the month which is at least thirty days after the date of adoption.

Section 8. Severability. The provisions of this Ordinance are hereby declared to be severable. If any section, paragraph, clause, or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 9. Repealer. All orders, resolutions, or ordinances in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

Section 10. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

INTRODUCED, READ AND ORDERED PUBLISHED this _____ day of _____, 2024.

PASSED AND ORDERED PUBLISHED BY REFERENCE this _____ day of _____, 2024.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ,
City Clerk

APPROVED AS TO FORM:

Hanosky Hernandez *HK*

HANOSKY HERNANDEZ,
Sr. Assistant City Attorney



CITY OF AURORA

Council Agenda Commentary

Item Title: Intergovernmental Agreement (IGA) with Colorado Department of Transportation (CDOT) for the Aurora Traffic Signal Equipment Upgrade Project (Resolution)
Item Initiator: Carlie Campuzano, Manager of Traffic, Public Works
Staff Source/Legal Source: Carlie Campuzano, Traffic Manager, Public Works / Michelle Gardner, Senior Assistant City Attorney
Outside Speaker: N/A
Council Goal: 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

COUNCIL MEETING DATES:

Study Session: 8/26/2024

Regular Meeting: 9/9/2024

2nd Regular Meeting (if applicable): N/A

Item requires a Public Hearing: Yes No

ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor name: Stephanie Hancock, Council Member
 Carlie Campuzano, Traffic Manager, Public Works / Michelle Gardner, Senior Assistant City Attorney
 Sponsor: Stephanie Hancock, Council Member
 Carlie Campuzano, Traffic Manager, Public Works / Michelle Gardner, Senior Assistant City Attorney

ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field above.

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Transportation, Airports & Public Works

Policy Committee Date: 6/26/2024

Action Taken/Follow-up: (Check all that apply)

- Recommends Approval
- Does Not Recommend Approval
- Forwarded Without Recommendation
- Minutes Not Available
- Minutes Attached

HISTORY (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

City staff reviews all known grant opportunities and compares to project opportunities within the city in a effort to leverage funding for the greater benefit of Aurora residents. In past Regional Transportation Operations and Technology (RTO&T) calls, staff has had great success in applying for and receiving grants.

At the August 24, 2023 meeting of the Transportation, Airports, and Public Works Policy Committee, staff provided an overview of the Denver Regional Council of Governments (DRCOG) FY2022-2027 RTO&T program application calls.

At the June 26, 2024 meeting of the Transportation, Airports, and Public Works Policy Committee, staff presented this intergovernmental agreement (IGA). Committee members unanimously supported moving the IGA forward to Study Session. Minutes for both TAPS meetings are attached.

ITEM SUMMARY (Brief description of item, discussion, key points, recommendations, etc.)

The City of Aurora applied for three Denver Regional Council of Governments (DRCOG) 2024-2027 Regional Transportation Operations and Technology (RTO&T) grants, administered by the Colorado Department of Transportation (CDOT). This item is an Intergovernmental agreement with CDOT to administer one of the three grant projects.

The Traffic Signal Equipment Upgrade grant application includes procurement of 42 multi-modal detection devices and uninterruptable power supplies at intersections along DRCOG eligible corridors. The detection devices will continuously collect vehicular, pedestrian, bicycle, and truck data and they will allow staff to remotely monitor detection functionality.

This project is funded with 100% grant funds and 0% local match. DRCOG will contribute \$1,021,000 to fully fund this project.

FISCAL IMPACT

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact
- Budgeted Expenditure Impact
- Non-Budgeted Expenditure Impact
- Workload Impact
- No Fiscal Impact

REVENUE IMPACT

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

BUDGETED EXPENDITURE IMPACT

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

N/A

NON-BUDGETED EXPENDITURE IMPACT

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

WORKLOAD IMPACT

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

N/A

QUESTIONS FOR COUNCIL

Does the City Council support moving forward the resolution for the Intergovernmental Agreement between the Colorado Department of Transportation and the City of Aurora for the Aurora Traffic Signal Equipment Upgrade Project to the next available Regular Meeting?

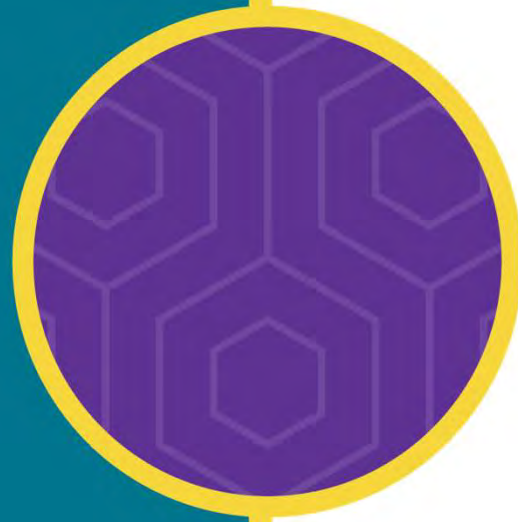
LEGAL COMMENTS

Governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units only if such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve. (Colo. Rev. Stat. Section 29-1-203(1)). City Council may, by resolution, enter into intergovernmental agreements with other governmental units or special districts for the joint use of buildings, equipment or facilities, and for furnishing or receiving commodities or services. (City Charter Section 10-12). (M. Gardner)

Study Session

August 26, 2024

- Carlie Campuzano



IGAs with CDOT for
the Communications
Upgrade Project, the
Traffic Management
Center Project, and
the Traffic Signal
Equipment
Upgrades Project



DRCOG Grant Application



- Regional Transportation Operations and Technology (RTO&T) set-aside program
- Federal grant funding administered through DRCOG
- Funds are used for deployment of technology, tools, or coordinated signal system elements
- Aurora applied for and received awards for 3 projects:
 - Traffic Signal Equipment Upgrade (previous IGA)
 - Communications Infrastructure Upgrade (these IGAs)
 - Traffic Management Center (these IGAs)

RTO&T Project Funding



Description	Federal Request	Local Match	Local Over Match
Application # 1 – Communications Infrastructure Upgrade	\$736,000	\$184,000	\$87,000
Application # 2 – Traffic Management Center (TMC)	\$1,101,000	\$275,250	\$219,750
Application # 3 – Traffic Signal Equipment Upgrades	\$1,021,000	\$0	\$0
Totals:	\$2,858,000	\$766,000	

Project Description: Communications Infrastructure Upgrade



This project connects Aurora to existing fiber

- This will connect 12 signalized locations, 2 City facilities
- Federal funding requested for procurement of:
 - Fiber components (materials and construction) to connect 12 traffic signals and 2 City facilities to CDOT's fiber backbone

Proposed Fiber Connections



Project Description: Traffic Management Center



Douglas County TMC

Convert existing space at the North Satellite Facility to a function traffic management center

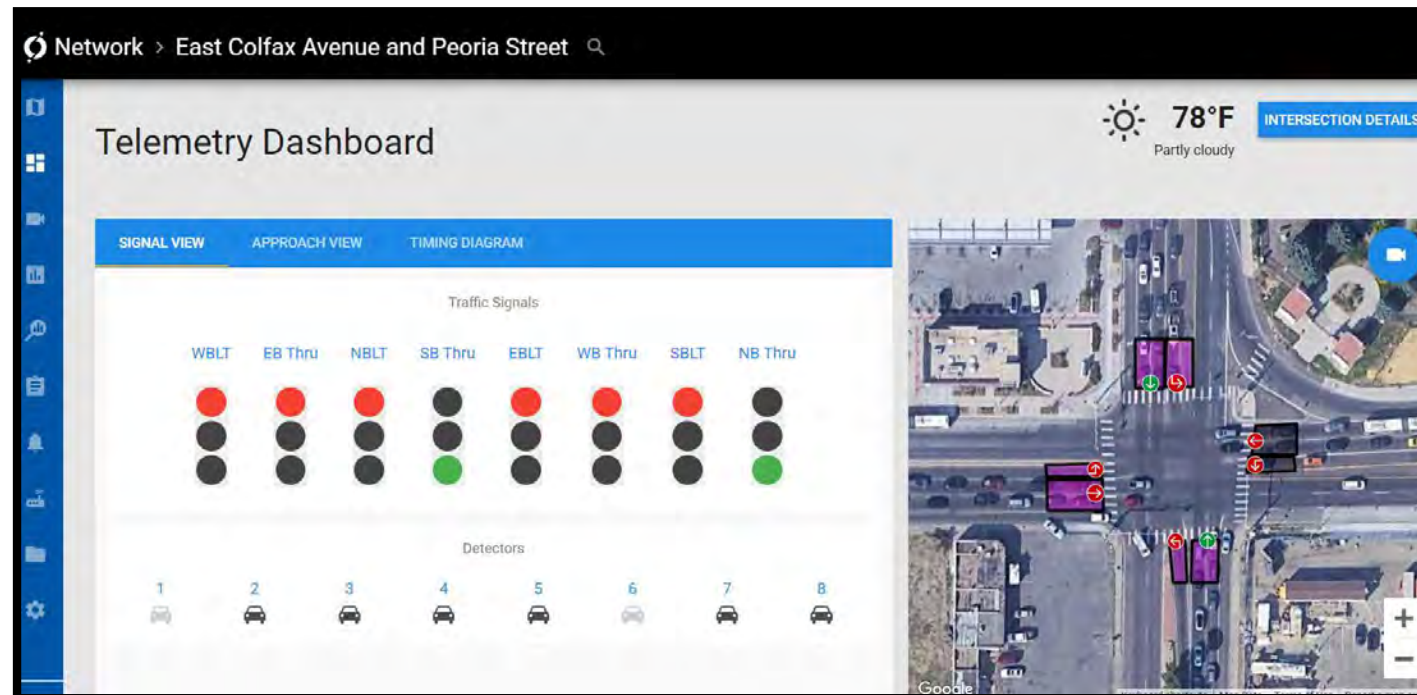
- Federal funding requested for procurement of:
 - Hardware, Software, Configuration/Setup



Project Description



- Traffic Signal Equipment Upgrades
 - 42 multimodal detection units and 42 uninterrupted power supplies
 - Federal funding will be used to procure the hardware
 - Installations will be performed by staff



Question for the Committee



- Does the City Council support moving forward the Resolutions for the three Intergovernmental Agreements between the Colorado Department of Transportation and the City of Aurora for the Communications Infrastructure Upgrade Project, the Traffic Management Center Project, and the Traffic Signal Equipment Upgrade Project to the next available Regular Council Meeting?



Questions?



Transportation, Airports and Public Works (TAPS) Policy Committee Meeting

August 24, 2023

Members Present: Council Member (CM) Juan Marcano, Chair; Council Member (CM) Angela Lawson, Vice-Chair, Council Member (CM) Ruben Medina; Council Member (CM) Francoise Bergan

Others Present: Carlie Campuzano, Elly Watson, Julie Patterson, Traci Burton, Rachel Allen, Brian Rulla, James Paral, Lynne Center, Ryan Germeroth, Tom Worker-Braddock, Mac Callison, Mindy Parnes, Huiliang Liu, Haley Busch Johansen, Michelle Gardner, Cindy Colip, Laura Perry, and Scott Bauman

1. WELCOME AND INTRODUCTION

2. APPROVAL OF MINUTES

The minutes for the July 27, 2023 TAPS meeting were approved as written.

3. CONSENT ITEMS (None)

4. GENERAL BUSINESS

4.a. DRCOG 2024-2027 Regional Transportation Operations and Technology Set-Aside Application Update

Summary of Issue and Discussion:

Carlie Campuzano, Traffic Manager in the Public Works Department, presented on recent grant applications they submitted the previous month that were part of the DRCOG Regional Transportation Operations and Technology Set-Aside Program. She said this program was focused on transportation technology projects. She stated the three applications they submitted were to upgrade the traffic signal communication system, create a traffic management center, and upgrade different traffic signal equipment. The three projects totaled \$2.8 million with a local match of approximately \$700,000. Ms. Campuzano said the applications were being scored and reviewed and they were hoping to hear back next month.

Ms. Campuzano gave some background on how their system operated and initiatives they were working with as far as fiber. She stated that the city has a lot of traffic signals and other field devices, and staff needs to bring back data from them. She said traffic signals currently operate on a wireless network comprised of radios throughout the city, but the overall bandwidth of the communications

network is limited, which limits the type of data that can be brought back. She said staff has identified the need for fiber to bolster the existing communications system. She said the Public Works Department kicked off a fiber master plan project in 2021, and they pulled resources together along with Aurora Water and Aurora IT to create the plan. She said they were working with a consultant on a fiber master plan and planned on presenting it later in the year. Ms. Campuzano showed maps of where the city would benefit from fiber. She noted a high priority segment for them was connecting different city facilities along Chambers Rd and Smoky Hill Pkwy. She pointed out that it would not happen overnight as the total cost is about 80 million dollars for City-wide fiber. Ms. Campuzano said they identified a potential cost sharing opportunity with CDOT, because they already have fiber along I-225, I-70, and Colfax, and CDOT is open to letting the city use 8 strands of fiber for City traffic and IT purposes. She said City staff drafted a proposal and submitted it to CDOT earlier in the year, which they reviewed and approved. She said it would help the City improve data reliability and capacity.

Ms. Campuzano discussed the grant application for a communications infrastructure upgrade, which was aimed at doing the connection work needed to connect to the CDOT fiber. She said staff are working on a formal agreement with CDOT that would be presented in a few months as an IGA. She stated it would allow the city to connect 12 traffic signals and two city facilities. She also spoke about the application for equipment for the traffic management center (TMC), which would pay for a lot of the hardware needed for a future TMC. She also talked about the application to purchase different hardware equipment, including 42 video detection units and battery backup power supplies.

Committee Discussion:

CM Lawson thanked C. Campuzano for the presentation. She asked if they looked at the future growth of the city and any needs they would have.

Ms. Campuzano said they did have a portion of the fiber master plan and extra maps that addressed the area of the city that was growing. She said that staff already updated design standards to require developers to install conduit proactively as a part of new projects.

CM Lawson stated that was good to know. She said it was a little concerning that the older part of the city was going to be more difficult to make it happen and hoped they would examine that to make sure everything is somewhat on a level playing field for everyone in the city.

CM Marcano asked if it was eligible for federal grant funding with the broadband money they recently approved.

Cindy Colip stated that she did not know, but staff would reach out to Scott Newman in IT.

CM Marcano asked if they were still looking to lease broadband access to other providers or explore municipal broadband in the future.

Ms. Campuzano said that was something Scott was looking at and they would have him there to provide answers when they present the Fiber Master Plan. She said they tried to overestimate quantities in order to lease out strands, so it was a consideration.

Outcome: Information only.

Follow-up Action: No follow-up needed.

Transportation, Airports and Public Works (TAPS) Policy Committee Meeting

June 26, 2024

Members Present: Council Member (CM) Stephanie Hancock, Chair; Council Member (CM) Francoise Bergan, Vice-Chair; Council Member (CM) Angela Lawson, Member

Others Present: Carlie Campuzano, Julie Patterson, Ryan Germeroth, Mac Callison, Huiliang Liu, Haley Busch Johansen, Laura Perry, Cathy Valencia, Mindy Parnes, Stephanie Sinclair, Adrian Morris, Traci Burton, Jeannine Rustad, Marc Tamburro, Brian Rulla, Nicholas Johnson, Daniel Clark, Hector Reynoso, Rachel Allen, Michelle Gardner

Guest: Keith Borsheim

1. WELCOME AND INTRODUCTION

2. APPROVAL OF MAY 16, 2024 MEETING MINUTES

3. CONSENT ITEMS (None)

4. GENERAL BUSINESS

4.a. Consideration to Approve a Resolution for the IGA with CDOT for the Aurora Traffic Signal Equipment Upgrade Project

Summary of Issue and Discussion:

Carlie Campuzano, Traffic Manager, asked for consideration and approval for a resolution for the IGA (Intergovernmental Agreement) with Colorado Department of Transportation (CDOT) for the Aurora Traffic Signal Equipment Upgrade Project. This is for a grant project applied for through DRCOG (Denver Regional Council of Governments) for the Regional Transportation Operations and Technology set-side program that is administered by CDOT. C. Campuzano noted that they applied for three different grant projects for traffic items and received funding for all three, which are for communications infrastructure, traffic management center, and this project, which is for traffic signal equipment upgrades. Staff selected 42 locations to upgrade multimodal detection units which provide data and metrics as well as 42 backup power supply units. The federal funding will procure the hardware and internal staff will phase in the installations.

Committee Discussion:

CM Bergan asked what the criteria was for choosing the 42 locations.

C. Campuzano responded that the locations were determined primarily based on which corridors were eligible, but they tend to be high volume and higher crash locations.

CM Lawson inquired if there was any regional coordination to do something on Parker Road.

C. Campuzano said there was a lot of multijurisdictional coordination, and there is a city-wide safety action plan coming up which includes all of Aurora that is funded by DRCOG. She said she would bring forward updates on that next year.

Outcome: The Committee recommended the item move forward to Study Session.

Follow-up Action: Staff will move the item forward to Study Session.

4.b. Consideration to Approve a Resolution for the IGA with CDOT for the Main Task Order for Fiber and Equipment Exchange

Summary of Issue and Discussion:

Carlie Campuzano, Traffic Manager, asked for consideration and approval for a resolution for the IGA with CDOT for the Main Task Order for Fiber and Equipment Exchange, which will also set them up for a future option letter for a construction project. Through the Fiber Master Plan process, staff set goals and strategies for deploying fiber in the city and coordinated with external stakeholders. This coordination included the identification of a high priority sharing opportunity with CDOT. This IGA is the Main Task Order that defines how fiber and equipment will be shared between Aurora and CDOT, and it does not involve any funding.

Committee Discussion: None.

Outcome: The Committee recommended the item move forward to Study Session.

Follow-up Action: Staff will move the item forward to Study Session.

4.c. Connecting Aurora - Aurora Citywide Multimodal Transportation Master Plan Project Update

Summary of Issue and Discussion:

Keith Borsheim, Consultant Project Manager, gave an update on Connecting Aurora, the Citywide Multimodal Transportation Master Plan Project. They are 85 to 90% done with existing conditions analysis, have completed the first round of public engagement, and hope to present the draft vision, mission, and goals to Council next month. The project team hosted four in-person open houses, an online open house, an online map, and attended six community events and popups. They also had extensive engagement efforts through social-media, newsletters, flyers, post cards and traditional media coverages, etc., and received great feedback. The feedback showed that people feel somewhat safe in a vehicle, but somewhat unsafe with other non-vehicle modes of transportation. Regarding vehicle travel, they heard about driving challenges, important factors on why people travel in a car, and how often and how long people are traveling via a vehicle. For walking, they heard about what prevents people from walking and what desired sidewalk improvements are. For biking, they heard about what prevents people from biking and what desired bikeway improvements are. On the public transit, they found that most people do not use

STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT
Signature and Cover Page

State Agency Department of Transportation		Agreement Routing Number 24-HA1-XC-00048	
Local Agency CITY OF AURORA		Agreement Effective Date The later of the effective date or April 03, 2024	
Agreement Description FY25 Aurora Traffic Signal Equipment Upgrade		Agreement Expiration Date April 02, 2034	
Project # STU M055- 072 (26185)	Region # R1	Contract Writer DMM	Agreement Maximum Amount \$1,021,000.00

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.

<p align="center">LOCAL AGENCY CITY OF AURORA</p> <hr/> <p align="center">By: Mike Coffman, Mayor</p> <p>Date: _____</p>	<p align="center">STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director</p> <hr/> <p align="center">Keith Stefanik, P.E., Chief Engineer</p> <p>Date: _____</p>
<p>Additional Local Agency Signatures Attest:</p> <hr/> <p align="center">Kadee Rodriguez, City Clerk</p> <p>Date: _____</p> <p>Approved as to Form: _____ Michelle Gardner, Sr. Assistant City Attorney</p> <p>Date: _____</p>	<p align="center">LEGAL REVIEW Philip J. Weiser, Attorney General</p> <hr/> <p align="center">Assistant Attorney General</p> <hr/> <p align="center">By: (Print Name and Title)</p> <p>Date: _____</p>
<p>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>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____ Department of Transportation</p> <p>Effective Date: _____</p>	

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- EXHIBIT S, PII CERTIFICATION
- EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Effective Date

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

B. Initial Term and Extension

The Parties’ respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on April 02, 2034 as shown on the Signature and Cover Page for this Agreement, unless sooner terminated or further extended in accordance with the terms of this Agreement. Upon request of Local Agency, the State may, in its sole discretion, extend the term of this Agreement by Option Letter pursuant **§7.E.iv**. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in **Exhibit C**.

C. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, and this ARPA Award is not appropriated, or otherwise become unavailable to fund this ARPA Award the State, in its discretion, may terminate this Agreement in whole or in part. This subsection shall not apply to a termination of this Agreement by the State for breach by Local Agency, which shall be governed by **§14.A.i**.

i. Method and Content

The State shall notify Local Agency by providing written notice to Local Agency of the termination and be in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Local Agency shall be subject to **§14.A.i.a**

iii. Payments

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

D. Local Agency Termination Under Federal Requirements

Local Agency may request termination of the ARPA Award by sending notice to the State, which includes the effective date of the termination. If this ARPA Award is terminated in this manner, then Local Agency shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. AUTHORITY

Authority to enter into this Agreement exists in the law as follows:

A. Federal Authority

Pursuant to Title I, Subtitle A, of the “Fixing America’s Surface Transportation Act” (FAST Act) of 2015, and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the “Federal Provisions”), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration (“FHWA”).

Pursuant to Title VI of the Social Security Act, Section 602 of the “Coronavirus State and Local Fiscal Recovery Funds”, a part of the American Rescue Plan, provides state, local and Tribal governments with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery.

B. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-104.5.

4. PURPOSE

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT’s Stewardship Agreement with the FHWA and/or USDT as shown in **Exhibit C**.

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “**Agreement**” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. “**Agreement Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- C. “**ARPA**” means American Rescue Plan Act, funded by the US Department of the Treasury (“USDT”). See “SLFRF” below.
- D. “**Award**” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- E. “**Budget**” means the budget for the Work described in **Exhibit C**.
- F. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S..
- G. “**Chief Procurement Officer**” means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202 to procure or supervise the procurement of all supplies and services needed by the State.
- H. “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- I. “**Consultant**” means a professional engineer or designer hired by Local Agency to design the Work Product.
- J. “**Contractor**” means the general construction contractor hired by Local Agency to construct the Work.

- K. “**CORA**” means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- L. “**Effective Date**” means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Agreement.
- M. “**Evaluation**” means the process of examining Local Agency’s Work and rating it based on criteria established in §6, **Exhibit A** and **Exhibit E**.
- N. “**Exhibits**” means the following exhibits attached to this Agreement:
- i. **Exhibit A**, Scope of Work.
 - ii. **Exhibit B**, Sample Option Letter.
 - iii. **Exhibit C**, Funding Provisions
 - iv. **Exhibit D**, Local Agency Resolution
 - v. **Exhibit E**, Local Agency Contract Administration Checklist
 - vi. **Exhibit F**, Certification for Federal-Aid Contracts
 - vii. **Exhibit G**, Disadvantaged Business Enterprise
 - viii. **Exhibit H**, Local Agency Procedures for Consultant Services
 - ix. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts
 - x. **Exhibit J**, Additional Federal Requirements
 - xi. **Exhibit K**, The Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions
 - xii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form
 - xiii. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the “Uniform Guidance”)
 - xiv. **Exhibit N**, Federal Treasury Provisions
 - xv. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds
 - xvi. **Exhibit P**, SLFRF Subrecipient Quarterly Report
 - xvii. **Exhibit Q**, SLFRF Reporting Modification Form
 - xviii. **Exhibit R**, Applicable Federal Awards
 - xix. **Exhibit S**, PII Certification
 - xx. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source
- O. “**Expiration Date**” means the date on which this Agreement expires, as shown on the Signature and Cover Page for this Agreement.
- P. “**Extension Term**” means the period of time by which the ARPA Expiration Date is extended by the State through delivery of an updated ARPA Letter.
- Q. “**Federal Award**” means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- R. “**Federal Awarding Agency**” means a Federal agency providing a Federal Award to a Recipient. The US Department of the Treasury is the Federal Awarding Agency for the Federal Award, which may be the subject of this Agreement.
- S. “**FHWA**” means the Federal Highway Administration, which is one of the twelve administrations under the Office of the Secretary of Transportation at the U.S. Department of Transportation. FHWA provides stewardship over the construction, maintenance and preservation of the Nation’s highways and tunnels. FHWA is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- T. “**Goods**” means any movable material acquired, produced, or delivered by Local Agency as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Local Agency in connection with the Services.

- U. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- V. **“Initial Term”** means the time period defined in **§2.B**.
- W. **“Local Funds”** means the funds provided by the Local Agency as their obligated contribution to the federal and/or State Awards to receive the federal and/or State funding.
- X. **“Notice to Proceed”** means the letter issued by the State to the Local Agency stating the date the Local Agency can begin work subject to the conditions of this Agreement.
- Y. **“OMB”** means the Executive Office of the President, Office of Management and Budget.
- Z. **“Oversight”** means the term as it is defined in the Stewardship Agreement between CDOT and the FHWA.
- AA. **“Party”** means the State or Local Agency, and **“Parties”** means both the State and Local Agency.
- BB. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- CC. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- DD. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, et. seq., C.R.S.
- EE. **“Recipient”** means the Colorado Department of Transportation (CDOT) for this Federal Award.
- FF. **“Services”** means the services to be performed by Local Agency as set forth in this Agreement and shall include any services to be rendered by Local Agency in connection with the Goods.
- GG. **“SLFRF”** means State and Local Fiscal Recovery Funds, provided by ARPA, funded by the US Treasury Department.
- HH. **“Special Funding”** means an award by Federal agency or the State which may include but is not limited to one or a combination of Multimodal Transportation & Mitigation Options Funding, Revitalizing Main Streets, Safer Main Streets, Stimulus Funds, Coronavirus Response and Relief Supplemental Funds, ARPA, SLFRF, or COVID Relief.
- II. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII and State personnel records not subject to disclosure under CORA.
- JJ. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).
- KK. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- LL. **“State Purchasing Director”** means the position described in the Colorado Procurement Code and its implementing regulations.

- MM. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- NN. “**Sub-Award**” means this Award by the State to Local Agency funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to this Sub-Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- OO. “**Subcontractor**” means third parties, if any, engaged by Local Agency to aid in performance of the Work.
- PP. “**Subrecipient**” means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency.
- QQ. “**Tax Information**” means Federal and State of Colorado tax information including, without limitation, Federal and State tax returns, return information, and such other tax-related information as may be protected by Federal and State law and regulation. Tax Information includes but is not limited to all information defined as Federal tax Information in Internal Revenue Service Publication 1075.
- RR. “**Uniform Guidance**” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- SS. “**USDT**” The United States Department of the Treasury (**USDT**) is the national treasury and finance department of the federal government of the United States where it serves as an executive department. The USDT funds ARPA.
- TT. “**Work**” means the delivery of the Goods and performance of the Services in compliance with CDOT’s Local Agency Manual described in this Agreement.
- UU. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

6. SCOPE OF WORK

Local Agency shall complete the Work as described in this Agreement and in accordance with the provisions of **Exhibit A**, and the Local Agency Manual. The State shall have no liability to compensate Local Agency for the delivery of any Goods or the performance of any Services that are not specifically set forth in this Agreement. Work may be divided into multiple phases that have separate periods of performance. The State may not compensate for Work that Local Agency performs outside of its designated phase performance period. The performance period of phases, including, but not limited to Design, Construction, Right of Way, Utilities, or Environment phases, are identified in **Exhibit C**. The State may unilaterally modify **Exhibit C** from time to time, at its sole discretion, to extend the Agreement Expiration Date and/or to extend the period of performance for a phase of Work authorized under this Agreement. To exercise these options to extend the Agreement Expiration Date and/or to update the phase performance period extension option, the State will provide written notice to Local Agency in a form substantially equivalent to **Exhibit B**. The State’s unilateral extension of the Agreement Expiration Date and/or the phase performance periods will not amend or alter in any way the funding provisions or any other terms specified in this Agreement, notwithstanding the options listed under **§7.E**

A. Local Agency Commitments

i. Design

If the Work includes preliminary design, final design, design work sheets, or special provisions and estimates (collectively referred to as the “Plans”), Local Agency shall ensure that it and its Contractors comply with and are responsible for satisfying the following requirements:

- a. Perform or provide the Plans to the extent required by the nature of the Work.
 - b. Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
 - c. Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
 - d. Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
 - e. Stamp the Plans as produced by a Colorado registered professional engineer.
 - f. Provide final assembly of Plans and all other necessary documents.
 - g. Ensure the Plans are accurate and complete.
 - h. Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT, and when final, they will be deemed incorporated herein.
- ii. Local Agency Work
- a. Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA) 42 U.S.C. § 12101, et. seq., and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
 - b. Local Agency shall afford the State ample opportunity to review the Plans and shall make any changes in the Plans that are directed by the State to comply with FHWA requirements.
 - c. Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**. If Local Agency enters into a contract with a Consultant for the Work:
 - 1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, Local Agency shall not enter into such Consultant contract.
 - 2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
 - 3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
 - 4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.
 - 5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from Local Agency's attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b) and (d).
 - 6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
 - (a) The design work under this Agreement shall be compatible with the requirements of the contract between Local Agency and the State (which is incorporated herein by this

reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

- (b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.
- (c) The consultant shall review the construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.
- (d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. Construction

If the Work includes construction, Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing construction Contractor claims; construction supervision; and meeting the quality control requirements of the FHWA/CDOT Stewardship Agreement, as described in **Exhibit E**.

- a. The State may, after providing written notice of the reason for the suspension to Local Agency, suspend the Work, wholly or in part, due to the failure of Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
- b. Local Agency shall be responsible for the following:
 - 1) Appointing a qualified professional engineer, licensed in the State of Colorado, as Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures, as defined in the CDOT Local Agency Manual (https://www.codot.gov/business/designsupport/bulletins_manuals/2006-local-agency-manual).
 - 2) For the construction Services, advertising the call for bids, following its approval by the State, and awarding the construction contract(s) to the lowest responsible bidder(s).
 - (a) All Local Agency's advertising and bid awards pursuant to this Agreement shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that Local Agency and its Contractor(s) incorporate Form 1273 (Exhibit I) in its entirety, verbatim, into any subcontract(s) for Services as terms and conditions thereof, as required by 23 C.F.R. 633.102(e).
 - (b) Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. Local Agency must accept or reject such bids within three (3) working days after they are publicly opened.
 - (c) If Local Agency accepts bids and makes awards that exceed the amount of available Agreement Funds, Local Agency shall provide the additional funds necessary to complete the Work or not award such bids.
 - (d) The requirements of **§6.A.iii.b.2** also apply to any advertising and bid awards made by the State.

- (e) The State (and in some cases FHWA) must approve in advance all Force Account Construction, and Local Agency shall not initiate any such Services until the State issues a written Notice to Proceed.

iv. Right of Way (ROW) and Acquisition/Relocation

- a. If Local Agency purchases a ROW for a State highway, including areas of influence, Local Agency shall convey the ROW to CDOT promptly upon the completion of the project/construction.
- b. Any acquisition/relocation activities shall comply with all applicable federal and State statutes and regulations, including but not limited to, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.
- c. The Parties' respective responsibilities for ensuring compliance with acquisition, relocation and incidentals depend on the level of federal participation as detailed in CDOT's Right of Way Manual (located at <http://www.codot.gov/business/manuals/right-of-way>); however, the State always retains oversight responsibilities.
- d. The Parties' respective responsibilities at each level of federal participation in CDOT's Right of Way Manual, and the State's reimbursement of Local Agency costs will be determined pursuant the following categories:
 - 1) Right of way acquisition (3111) for federal participation and non-participation;
 - 2) Relocation activities, if applicable (3109);
 - 3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

v. Utilities

If necessary, Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company that may become involved in the Work. Prior to the Work being advertised for bids, Local Agency shall certify in writing to the State that all such clearances have been obtained.

vi. Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, Local Agency shall make timely application to the Public Utilities Commission ("PUC") requesting its order providing for the installation of the proposed improvements. Local Agency shall not proceed with that part of the Work before obtaining the PUC's order. Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities, and:

- a. Execute an agreement with the railroad company setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- b. Obtain the railroad's detailed estimate of the cost of the Work.
- c. Establish future maintenance responsibilities for the proposed installation.
- d. Proscribe in the agreement the future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- e. Establish future repair and/or replacement responsibilities, as between the railroad company and the Local Agency, in the event of accidental destruction or damage to the installation.

vii. Environmental Obligations

Local Agency shall perform all Work in accordance with the requirements of current federal and State environmental regulations, including the National Environmental Policy Act of 1969 (NEPA) as applicable.

viii. Maintenance Obligations

Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. Local Agency shall conduct such maintenance and operations in accordance with all applicable statutes, ordinances, and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

ix. Monitoring Obligations

Local Agency shall respond in a timely manner to and participate fully with the monitoring activities described in §7.F.vi.

B. State's Commitments

- i. The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
- ii. Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any Work constituting major structures designed by, or that are the responsibility of, Local Agency, as identified in **Exhibit E**.

7. PAYMENTS

A. Maximum Amount

Payments to Local Agency are limited to the unpaid, obligated balance of the Agreement Funds set forth in **Exhibit C**. The State shall not pay Local Agency any amount under this Agreement that exceeds the Agreement Maximum set forth in **Exhibit C**.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Local Agency in the amounts and in accordance with conditions set forth in **Exhibit C**.
- b. Local Agency shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Local Agency and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Local Agency shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.
- e. If a project is funded in part with Federal or State special funding there may be an expiration date for the funds. The expiration date applies to grants and local funds used to match grants. To receive payment or credit for the match, Work must be completed or substantially completed, as outlined in the terms of the grant, prior to the expiration date of the special funding and invoiced in compliance with the rules outlined in the award of the funding. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.

ii. Interest

Amounts not paid by the State within 45 days after the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 46th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Local Agency shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Payment Disputes

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

iv. Available Funds-Contingency-Termination

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

v. Erroneous Payments

The State may recover, at the State's discretion, payments made to Local Agency in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Local Agency. The State may recover such payments by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Local Agency, or by any other appropriate method for collecting debts owed to the State. The close out of a Federal Award does not affect the right of FHWA or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period (as defined below in **§9.A.**).

vi. Federal Recovery

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

C. Local Agency Funds

Local Agency shall provide their obligated contribution funds as outlined in **§7.A.** and **Exhibit C**. Local Agency shall have raised the full amount of their funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Local Agency and paid into Local Agency's treasury. Local Agency represents to the State that the amount designated "Local Agency Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. Local Agency may evidence such obligation by an appropriate ordinance/resolution or other authority letter expressly authorizing Local Agency to enter into this Agreement and to expend its match share of the Work. A copy of any such ordinance/resolution or authority letter is attached hereto as **Exhibit D** if applicable. Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of

Local Agency. Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes, or penalties of any nature, except as required by Local Agency's laws or policies.

D. Reimbursement of Local Agency Costs

The State shall reimburse Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and §7. However, any costs incurred by Local Agency prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Local Agency for costs or expenses incurred or performance by the Local Agency prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the Local Agency. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement. The applicable principles described in 2 C.F.R. Part 200 shall govern the State's obligation to reimburse all costs incurred by Local Agency and submitted to the State for reimbursement hereunder, and Local Agency shall comply with all such principles. The State shall reimburse Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C**. Local Agency costs for Work performed prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. Local Agency costs for Work performed after any Performance Period End Date for a respective phase of the Work, is not reimbursable. Allowable costs shall be:

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

E. Unilateral Modification of Agreement Funds Budget by State Option Letter

The State may, at its discretion, issue an "Option Letter" to Local Agency to add or modify Work phases in the Work schedule in **Exhibit C** if such modifications do not increase total budgeted Agreement Funds. Such Option Letters shall amend and update **Exhibit C**, Sections 2 or 4 of the Table, and sub-sections B and C of the **Exhibit C**. Option Letters shall not be deemed valid until signed by the State Controller or an authorized delegate. **This is NOT a Notice to Proceed.** Modification of **Exhibit C** by unilateral Option Letter is permitted only in the specific scenarios listed below. The State will exercise such options by providing Local Agency a fully executed Option Letter, in a form substantially equivalent to **Exhibit B**. Such Option Letters will be incorporated into this Agreement. This applies to the entire Scope of Work.

i. Option to Begin a Phase and/or Increase or Decrease the Encumbrance Amount

The State may require by Option Letter that Local Agency begin a new Work phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous Work (but may not include Right of Way Acquisition/Relocation or Railroads) as detailed in **Exhibit A**. Such Option Letters may not modify the other terms and conditions stated in this Agreement and must decrease the amount budgeted and encumbered for one or more other Work phases so that the total amount of budgeted Agreement Funds remains the same. The State may also change the funding sources so long as the amount budgeted remains the same and the Local Agency contribution does not increase. The State may also issue a unilateral Option Letter to increase and/or decrease the total encumbrance amount of two or more existing Work phases, as long as the total amount of budgeted Agreement Funds remains the same, replacing the original Agreement Funding exhibit (**Exhibit C**) with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

ii. Option to Transfer Funds from One Phase to Another Phase.

The State may require or permit Local Agency to transfer Agreement Funds from one Work phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another phase as a result of changes to State, federal, and local match funding. In such case, the original funding exhibit (**Exhibit C**) will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The Agreement Funds transferred from one Work phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a

fully executed Option Letter to Local Agency within thirty (30) days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iii. Option to Exercise Options i and ii.

The State may require Local Agency to add a Work phase as detailed in **Exhibit A**, and encumber and transfer Agreement Funds from one Work phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The addition of a Work phase and encumbrance and transfer of Agreement Funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within 30 days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iv. Option to Extend Agreement/Phase Term and/or modify the OMB Uniform Guidance. The State, at its discretion, shall have the option to extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.). In order to exercise this option, the State shall provide written notice to the Local Agency in a form substantially equivalent to **Exhibit B**.

F. Accounting

Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

i. Local Agency Performing the Work

If Local Agency is performing the Work, it shall document all allowable costs, including any approved Services contributed by Local Agency or subcontractors, using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

ii. Local Agency-Checks or Draws

Checks issued or draws made by Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. Local Agency shall keep on file all checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents in the office of Local Agency, clearly identified, readily accessible, and to the extent feasible, separate and apart from all other Work documents.

iii. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. Local Agency shall reimburse the State for the costs of any such services from the budgeted Agreement Funds as provided for in **Exhibit C**. If FHWA Agreement Funds are or become unavailable, or if Local Agency terminates this Agreement prior to the Work being approved by the State or otherwise completed, then all actual incurred costs of such services and assistance provided by the State shall be reimbursed to the State by Local Agency at its sole expense.

iv. Local Agency-Invoices

Local Agency's invoices shall describe in detail the reimbursable costs incurred by Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and Local Agency shall not submit more than one invoice per month.

v. Invoicing Within 60 Days

The State shall not be liable to reimburse Local Agency for any costs invoiced more than 60 days after the date on which the costs were incurred, including costs included in Local Agency's final invoice. The State may withhold final payment to Local Agency at the State's sole discretion until completion of final audit. Any costs incurred by Local Agency that are not allowable under 2 C.F.R. Part 200 shall be Local Agency's responsibility, and the State will deduct such disallowed costs from any payments due to Local Agency. The State will not reimburse costs for Work performed after the Performance Period End Date for a respective Work phase. The State will not reimburse costs for Work performed prior to Performance

Period End Date, but for which an invoice is received more than 60 days after the Performance Period End Date.

vi. Risk Assessment & Monitoring

Pursuant to 2 C.F.R. 200.331(b), – CDOT will evaluate Local Agency’s risk of noncompliance with federal statutes, regulations, and terms and conditions of this Agreement. Local Agency shall complete a Risk Assessment Form (**Exhibit L**) when that may be requested by CDOT. The risk assessment is a quantitative and/or qualitative determination of the potential for Local Agency’s non-compliance with the requirements of the Federal Award. The risk assessment will evaluate some or all of the following factors:

- Experience: Factors associated with the experience and history of the Subrecipient with the same or similar Federal Awards or grants.
- Monitoring/Audit: Factors associated with the results of the Subrecipient’s previous audits or monitoring visits, including those performed by the Federal Awarding Agency, when the Subrecipient also receives direct federal funding. Include audit results if Subrecipient receives single audit, where the specific award being assessed was selected as a major program.
- Operation: Factors associated with the significant aspects of the Subrecipient’s operations, in which failure could impact the Subrecipient’s ability to perform and account for the contracted goods or services.
- Financial: Factors associated with the Subrecipient’s financial stability and ability to comply with financial requirements of the Federal Award.
- Internal Controls: Factors associated with safeguarding assets and resources, deterring and detecting errors, fraud and theft, ensuring accuracy and completeness of accounting data, producing reliable and timely financial and management information, and ensuring adherence to its policies and plans.
- Impact: Factors associated with the potential impact of a Subrecipient’s non-compliance to the overall success of the program objectives.
- Program Management: Factors associated with processes to manage critical personnel, approved written procedures, and knowledge of rules and regulations regarding federal-aid projects.

Following Local Agency’s completion of the Risk Assessment Tool (**Exhibit L**), CDOT will determine the level of monitoring it will apply to Local Agency’s performance of the Work. This risk assessment may be re-evaluated after CDOT begins performing monitoring activities.

G. Close Out

Local Agency shall close out this Award within 90 days after the Final Phase Performance End Date. If SLFRF Funds are used the Local Agency shall close out that portion of the Award within 45 days after the ARPA Award Expiration Date. Close out requires Local Agency’s submission to the State of all deliverables defined in this Agreement, and Local Agency’s final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If FHWA or US Treasury has not closed this Federal Award within one (1) year and 90 days after the Final Phase Performance End Date due to Local Agency’s failure to submit required documentation, then Local Agency may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

8. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to §19 or pursuant to any exhibit, for any contract having a term longer than 3 months, Local Agency shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than ten (10) Business Days following the end of each calendar quarter or at such time as otherwise specified by the State. If SLFRF Funds are used the report must be in the format of **Exhibit P**.

B. Litigation Reporting

If Local Agency is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Local Agency's ability to perform its obligations under this Agreement, Local Agency shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in §16.

C. Performance and Final Status

Local Agency shall submit all financial, performance and other reports to the State no later than 60 calendar days after the Final Phase Performance End Date or sooner termination of this Agreement, containing an Evaluation of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

D. Violations Reporting

Local Agency must disclose, in a timely manner, in writing to the State and FHWA, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. Penalties for noncompliance may include suspension or debarment (2 CFR Part 180 and 31 U.S.C. 3321).

9. LOCAL AGENCY RECORDS

A. Maintenance

Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Local Agency shall maintain such records for a period (the "Record Retention Period") pursuant to the requirements of the funding source and for a minimum of three (3) years following the date of submission to the State of the final expenditure report, whichever is longer, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Local Agency in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three (3) years following final disposition of such property.

B. Inspection

Records during the Record Retention Period. Local Agency shall make Local Agency Records available during normal business hours at Local Agency's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two (2) Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Local Agency's performance of its obligations under this Agreement using procedures as determined by the State. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. Local Agency shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Local Agency. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. If Local Agency enters into a subcontract with an entity that would also be considered a Subrecipient, then the subcontract entered into by Local Agency shall contain provisions permitting both Local Agency and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

D. Final Audit Report

Local Agency shall promptly submit to the State a copy of any final audit report of an audit performed on Local Agency's records that relates to or affects this Agreement or the Work, whether the audit is conducted

by Local Agency or a third party. Additionally, if Local Agency is required to perform a single audit under 2 CFR 200.501, *et seq.*, then Local Agency shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Local Agency shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Local Agency for the sole and exclusive benefit of the State, unless those State Records are otherwise publicly available at the time of disclosure or are subject to disclosure by Local Agency under CORA. Local Agency shall not, without prior written approval of the State, use for Local Agency's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Agreement. Local Agency shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. Local Agency shall immediately forward any request or demand for State Records to the State's principal representative. If Local Agency or any of its Subcontractors will or may receive the following types of data, Local Agency or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Award as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Award, if applicable. Local Agency shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

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

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

If Local Agency becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Local Agency can establish that none of Local Agency or any of its agents, employees, assigns, or Subcontractors are the cause or source of the Incident, Local Agency shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Local Agency shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which

may include, but is not limited to, developing, and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding Personally Identifying Information “PII”

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

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Local Agency shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Local Agency under this Agreement. Such a conflict of interest would arise when a Local Agency or Subcontractor’s employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement. Officers, employees, and agents of Local Agency may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

12. INSURANCE

Local Agency shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Local Agency Insurance

Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S. (the “GIA”) and shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Subcontractor Requirements

Local Agency shall ensure that each Subcontractor that is a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA. Local Agency shall ensure that each Subcontractor that is not a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement all of the following insurance policies:

i. Workers' Compensation

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

ii. General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate.

iii. Automobile Liability

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

iv. Protected Information (this insurance requirement only applies if the Subcontractor has or will have access to State Confidential Information)

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$2,000,000 general aggregate.

v. Professional Liability Insurance (this insurance requirement only applies if the Subcontractor is providing professional services including but not limited to engineering, architectural, landscape architectural, professional surveying, industrial hygiene services, or any other commonly understood professional service)

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

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

vi. Crime Insurance

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

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

vii. Cyber/Network Security and Privacy Liability

Liability insurance covering all civil, regulatory and statutory damages, contractual damages, data breach management exposure, and any loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of breach, violation or infringement of right to privacy rights through improper use or disclosure of protected consumer data protection law,

confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$2,000,000 general aggregate.

C. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Local Agency and Subcontractors. In the event of cancellation of any commercial general liability policy, the carrier shall provide at least 10 days prior written notice to CDOT.

D. Primacy of Coverage

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

E. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Local Agency and Local Agency shall forward such notice to the State in accordance with §16 within 7 days of Local Agency's receipt of such notice.

F. Subrogation Waiver

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

G. Certificates

For each commercial insurance plan provided by Local Agency under this Agreement, Local Agency shall provide to the State certificates evidencing Local Agency's insurance coverage required in this Agreement within seven (7) Business Days following the Effective Date. Local Agency shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following the Effective Date, except that, if Local Agency's subcontract is not in effect as of the Effective Date, Local Agency shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following Local Agency's execution of the subcontract. No later than 15 days before the expiration date of Local Agency's or any Subcontractor's coverage, Local Agency shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Local Agency shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §12.

13. BREACH

A. Defined

The failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner, shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization, or similar law, by or against Local Agency, or the appointment of a receiver or similar officer for Local Agency or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §14 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and

may immediately terminate this Agreement in whole or in part or institute any other remedy in the Agreement in order to protect the public interest of the State.

14. REMEDIES

A. State's Remedies

If Local Agency is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §13.B, shall have all of the remedies listed in this §14.A. in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Local Agency's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

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

b. Payments

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

c. Damages and Withholding

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

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

Withhold payment to Local Agency until Local Agency corrects its Work.

c. Deny Payment

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

d. Removal

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

e. Intellectual Property

If any Work infringes a patent, copyright, trademark, trade secret, or other intellectual property right, Local Agency shall, as approved by the State (a) secure that right to use such Work for the State or Local Agency; (b) replace the Work with non infringing Work or modify the Work so that it becomes non infringing; or, (c) remove any infringing Work and refund the amount paid for such Work to the State.

B. Local Agency's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Local Agency, following the notice and cure period in §13.B and the dispute resolution process in §15 shall have all remedies available at law and equity.

15. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

If the initial resolution described in §15.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of CDOT as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

C. Questions of Fact

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

16. NOTICES AND REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) by hand with receipt required, (ii) by certified or registered mail to such Party’s principal representative at the address set forth below or (iii) as an email with read receipt requested to the principal representative at the email address, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party’s principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §16 without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

For the State

Colorado Department of Transportation (CDOT)
Chris Vokurka, P.E. I – Signals
CDOT
2829 W Howard Pl
Denver, CO 80204
303-512-4058
christopher.vokurka@state.co.us

For the Local Agency

CITY OF AURORA
Carlie Campuzano, Traffic Manager
15151 E Alameda Pkwy Ste 3200
Aurora, CO 80012
303-739-7309
ccampuza@auroragov.org

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

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

i. Copyrights

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

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

ii. Patents

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

iii. Assignments and Assistance

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

B. Exclusive Property of the State

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

C. Exclusive Property of Local Agency

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

18. GOVERNMENTAL IMMUNITY

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

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

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

20. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

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

C. Binding Effect

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

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Digital Signatures

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

H. Entire Understanding

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

I. Jurisdiction and Venue

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

J. Modification

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

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

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

L. Order of Precedence

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

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

M. Severability

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

N. Survival of Certain Agreement Terms

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

O. Third Party Beneficiaries

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

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations.

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

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

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

U. Accessibility

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

V. Taxes

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

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

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

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

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(19), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S., applicable Local Agency law, rule or regulation.

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

Any term included in this Contract that requires the Parties to indemnify or hold Contractor harmless; requires the Parties to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy

available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

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

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

22. FEDERAL REQUIREMENTS

Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and State laws, and their implementing regulations, as they currently exist and may hereafter be amended. A summary of applicable federal provisions are attached hereto as **Exhibit F, Exhibit I, Exhibit J, Exhibit K, Exhibit M, Exhibit N** and **Exhibit O** are hereby incorporated by this reference.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Local Agency will comply with all requirements of **Exhibit G** and **Exhibit E**, Local Agency Contract Administration Checklist, regarding DBE requirements for the Work, except that if Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If Local Agency uses any State- approved DBE program for this Agreement, Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of Local Agency's DBE program does not waive or modify the sole responsibility of Local Agency for use of its program.

EXHIBIT A
SCOPE OF WORK

Name of Project: FY25 Aurora Traffic Signal Equipment Upgrade
Project Number: STU M055-072
SubAccount #: 26185

The project will deploy new video detection systems and UPS at 42 intersections along the DRCOG roadway network within the City of Aurora. Project components will include all video detection systems, mounting hardware, cabling, power supplies, cabinet components, licensing, integration, and testing. The equipment will be purchased from qualified vendors and the installation work will be completed by City of Aurora staff.

Currently, intersections without video detection are unable to provide multimodal detection, 24/7 traffic counts, and remote configuration of detection zones. The absence of these elements results in increased maintenance costs as well as an increased need for external count data services. Existing detection is sometimes unreliable and cannot always be monitored remotely. The installation of video detection will address these issues.

Currently, intersections without Uninterruptible Power Supplies (UPS) are at risk of becoming inoperable in the event of a power failure. The UPS also provides power conditioning to incoming utility power thereby providing clean and stable power that can extend the life of the traffic signal equipment within the cabinet. The installation of UPS will address these issues and allow the intersections to continue to operate.

This project is for the procurement of equipment only and the City will complete the installation with our own workforce.

If ARPA funds are used, all ARPA funds must be encumbered by December 31, 2024. All work funded by ARPA must be completed by December 31, 2026 and all bills must be submitted to CDOT for payment by January 31, 2027. These bills must be paid by CDOT by March 31, 2027.

By accepting funds for this Scope of Work, Local Agency acknowledges, understands, and accepts the continuing responsibility for the safety of the traveling public after initial acceptance of the project. **Local Agency is responsible for maintaining and operating the scope of work described in this Exhibit A constructed under this Agreement at its own cost and expense during its useful life.**

EXHIBIT B

SAMPLE IGA OPTION LETTER

Date	State Fiscal Year	Option Letter No.
Project Code	Original Agreement #	

Vendor Name:

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous and to update encumbrance amount(s).

Option to unilaterally transfer funds from one phase to another phase.

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous, to update encumbrance amount(s), and to unilaterally transfer funds from one phase to another phase.

Option to unilaterally extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify OMB Guidance.

Option A

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to authorize the Local Agency to add a phase and to encumber funds for the phase based on changes in funding availability and authorization. The total encumbrance is (or increased) by \$0.00. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option B

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to transfer funds based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option C

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to 1) release the Local Agency to begin a phase; 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from phases based on variance in actual phase costs and

original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option D

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. This is made part of the original Agreement and replaces the Expiration Date shown on the Signature and Cover Page. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2, C-3**, etc.).

The effective date of this option letter is upon approval of the State Controller or delegate.

STATE OF COLORADO
Jared S. Polis
Department of Transportation

By: _____
Keith Stefanik, P.E., Chief Engineer
(For) Shoshana M. Lew, Executive Director

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

STATE OF COLORADO
STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Colorado Department of Transportation

Date: _____

EXHIBIT C - FUNDING PROVISIONS

City of Aurora - STU M055-072 (26185)

A. Cost of Work Estimate

The Local Agency has estimated the total cost of the Work to be \$1,021,000.00, which is to be funded as follows:

1. FUNDING			
a.	Federal Funds (100% of STBG Award)		\$1,021,000.00
b.	Local Agency Funds (0% of STBG Award)		\$0.00
TOTAL FUNDS ALL SOURCES			\$1,021,000.00
2. OMB UNIFORM GUIDANCE			
a.	Federal Award Identification Number (FAIN):		TBD
b.	Name of Federal Awarding Agency:		FHWA
c.	Local Agency Unique Entity Identifier		KVZATDBDECG8
d.	Assistance Listing # Highway Planning and Construction		ALN 20.205
e.	Is the Award for R&D?		No
f.	Indirect Cost Rate (if applicable)		N/A
g.	Amount of Federal Funds Obligated by this Action:		\$0.00
h.	Amount of Federal Funds Obligated to Date (including this Action):		\$0.00
3. ESTIMATED PAYMENT TO LOCAL AGENCY			
a.	Federal Funds Budgeted		\$1,021,000.00
b.	Less Estimated Federal Share of CDOT-Incurred Costs		\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		100%	\$1,021,000.00
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY		0%	\$0.00
TOTAL PROJECT ESTIMATED FUNDING		100%	\$1,021,000.00
4. FOR CDOT ENCUMBRANCE PURPOSES			
a.	Total Encumbrance Amount (Federal funds + Local Agency funds)		\$1,021,000.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109		\$0.00
NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS			\$1,021,000.00

Note: No funds are currently available. Design and Construction funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.

WBS Element 26185.10.30	Performance Period Start*/End Date TBD-TBD	Design 3020	\$0.00
WBS Element 26185.20.10	Performance Period Start*/End Date TBD- TBD	Const. 3301	\$0.00

*The Local Agency should not begin work until all three (3) of the following are in place: 1) Phase Performance Period Start Date; 2) the execution of the document encumbering funds for the respective phase; and 3) Local Agency receipt of the official Notice to Proceed. Any work performed before these three (3) milestones are achieved will not be reimbursable.

B. Funding Ratios

The funding ratio for the federal funds for this Work is 100% federal funds to 0% Local Agency funds, and this ratio applies only to the \$1,021,000.00 that is eligible for federal funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$1,021,000.00, and additional federal funds are not available, the Local Agency shall pay all such excess costs. If the total

cost of performance of the Work is less than \$1,021,000.00, then the amounts of Local Agency and federal funds will be decreased in accordance with the funding ratio described in **A1**. **This applies to the entire scope of Work.**

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$1,021,000.00. For CDOT accounting purposes, the federal funds of \$1,021,000.00 and the Local Agency funds of \$0.00 will be encumbered for a total encumbrance of \$1,021,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total budget is \$1,021,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work.**

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving \$750,000 or more from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of 2 CFR part 200, subpart F (Audit Requirements) see also, 49 CFR 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$750,000

If the Local Agency expends less than \$750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure of \$750,000 or more-Highway Funds Only

If the Local Agency expends \$750,000 or more, in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure of \$750,000 or more-Multiple Funding Sources

If the Local Agency expends \$750,000 or more in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

EXHIBIT D


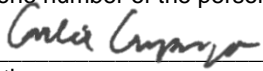
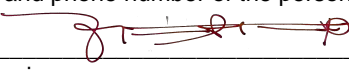
LOCAL AGENCY RESOLUTION (IF APPLICABLE)

**Exhibit E -
Local Agency Contract Administration Checklist**

COLORADO DEPARTMENT OF TRANSPORTATION			
LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. STU M055-072	STIP No. SDR9000	Project Code 26185	Region 1
Project Location City of Aurora			Date 01/1/2023
Project Description FY25-Aurora Traffic Signal Equipment Upgrade			
Local Agency Aurora	Local Agency Project Manager Carlie Campuzano		
CDOT Resident Engineer Alvin Stamp	CDOT Project Manager Chris Vokurka		
INSTRUCTIONS:			
This checklist shall be used to establish the contractual administrative responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency Agreement. Section numbers (NO.) correspond to the applicable chapters of the <i>CDOT Local Agency Desk Reference (Local Agency Manual)</i> . LAWR numbers correspond to the applicable flowchart in the Local Agency Web Resource.			
The checklist shall be prepared by placing an X under the responsible party, opposite each of the tasks. The X denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, # will denote that CDOT must concur or approve.			
Tasks that will be performed by Headquarters staff are indicated with an X in the CDOT column under Responsible Party. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.			
The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.			
Note: Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.			

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
TIP / STIP AND LONG-RANGE PLANS				
	2.1	Review Project to ensure it is consistent with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION				
	4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement). <i>Please write in "NA", if Not Applicable.</i>		x
PROJECT DEVELOPMENT				
1	5.1	Prepare Design Data - CDOT Form 463	x	X
	5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
2	5.3	Conduct Consultant Selection/Execute Consultant Agreement	X	#
		<ul style="list-style-type: none"> • Project Development • Construction Contract Administration (including Fabrication Inspection Services) 	x	#
3,3A	5.4	Conduct Design Scoping Review Meeting	x	X
3,6	5.5	Conduct Public Involvement		X
3	5.6	Conduct Field Inspection Review (FIR)		X

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
4	5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	#
5	5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
3	5.9	Obtain Utility and Railroad Agreements	X	
3	5.10	Conduct Final Office Review (FOR)	X	
3A	5.11	Justify Force Account Work by the Local Agency	X	#
3B	5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	#
3	5.13	Document Design Exceptions - CDOT Form 464	X	#
3	5.14	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	X	
	5.15	Ensure Authorization of Funds for Construction		X
	5.16	Electronic Signatures	X	
	5.17	Records Management	X	
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE				
3	6.1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist).		X
	6.2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> 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.) Alvin Stamp  2/20/2024 _____ CDOT Resident Engineer (Signature on File) Date		X
	6.3	Set On-the-Job Training Goals (CDOT Region EEO/Civil Rights Specialist) "NA", if Not Applicable		X
3	6.4	Title VI Assurances	X	#
6,7		Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)	X	#
ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS				
6,7	7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	#
7	7.2	Advertise for Bids	X	#
7	7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7	7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7	7.5	Open Bids	X	
7	7.6	Process Bids for Compliance		
		Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals. <i>Please write in "NA", if Not Applicable.</i>		X
		Evaluate CDOT Form 1416 - Good Faith Effort Report and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals. <i>"NA", if Not Applicable.</i>		X
		Submit required documentation for CDOT award concurrence	X	
	7.7	Concurrence from CDOT to Award		X
	7.8	Approve Rejection of Low Bidder		X
7,8	7.9	Award Contract	X	#
8	7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT				
8	8.1	Issue Notice to Proceed to the Contractor	X	#
8	8.2	Project Safety	X	
8	8.3	Conduct Conferences:		
		Pre-construction Conference (Appendix B) • Fabrication Inspection Notifications	X	
		Pre-survey • Construction staking • Monumentation	X X	
		Partnering (Optional)	X	X
		Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	X	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
		Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
		HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
8	8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
9	8.5	Supervise Construction		
		A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Carlie Campuzano  303-739-7309 Local Agency Professional Engineer or CDOT Resident Engineer Phone number	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	
		Fabrication Inspection and documentation	X	
9	8.6	Approve Shop Drawings	X	#
9	8.7	Perform Traffic Control Inspections	X	
9	8.8	Perform Construction Surveying	X	
9	8.9	Monument Right-of-Way	X	
9,9A	8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent) Provide the name and phone number of the person authorized for this task. Carlie Campuzano  303-739-7309 Local Agency Representative Phone number	X	#
9	8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	#
9B	8.12	Prepare and Authorize Change Orders	X	#
9B	8.13	Submit Change Order Package to CDOT	X	
9A	8.14	Prepare Local Agency Reimbursement Requests	X	
9	8.15	Monitor Project Financial Status	X	#
9	8.16	Prepare and Submit Monthly Progress Reports	X	#
9	8.17	Resolve Contractor Claims and Disputes	X	#
	8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. Alvin Stamp  2/202/824 CDOT Resident Engineer Phone number		X
9	8.19	Ongoing Oversight of DBE Participation		
MATERIALS				
9,9C	9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	X	#
9,9C	9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	X X	X
9C	9.3	Perform Project Acceptance Samples and Tests	X	
9C	9.4	Perform Laboratory Verification Tests	X	
9C	9.5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
9C	9.6	Approve Sources of Materials	X	
9C	9.7	Independent Assurance Testing (IAT). Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/> <ul style="list-style-type: none"> • Generate IAT schedule • Schedule and provide notification • Conduct IAT 	X X	X
9C	9.8	Approve mix designs <ul style="list-style-type: none"> • Concrete • Hot mix asphalt 	X X	# #
9C	9.9	Check Final Materials Documentation	X	#
9C	9.10	Complete and Distribute Final Materials Documentation	X	
CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE				
9	10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
8,9	10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to CDOT EEO/Civil Rights Specialist	X	#
9	10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
9	10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
9	10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. <ul style="list-style-type: none"> • Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements. • Complete CDOT Form 838 – OJT Trainee / Apprentice Record. • Complete CDOT Form 200 - OJT Training Questionnaire 	X	
9	10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	#
9	10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS				
	11.1	Conduct Final Project Inspection.(Resident Engineer or CDOT PM with mandatory Local Agency participation.) Resident Engineer initiates CDOT Form 1212 - Final Acceptance Report.		X
10	11.2	Write Final Project Acceptance Letter	X	
10	11.3	Advertise for Final Settlement	X	
11	11.4	Prepare and Distribute Final As-Constructed Plans	X	
11	11.5	Prepare EEO Certification and Collect EEO Forms	X	
11	11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11	11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	X
11	11.8	Obtain CDOT Form 1419 from the Contractor and Submit to the CDOT Project Manager	X	
	11.9	(FHWA Form 47 discontinued)	N/A	N/A
	11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		X
11	11.11	Process Final Payment	X	
	11.12	Complete and Submit CDOT Form 950 - Project Closure	X	X
11	11.13	Retain Project Records	X	
11	11.14	Retain Final Version of Local Agency Contract Administration Checklist	X	X

cc: CDOT Resident Engineer/Project Manager
CDOT Region Program Engineer
CDOT Region EEO/Civil Rights Specialist

CDOT Region Materials Engineer
CDOT Contracts and Market Analysis Branch
Local Agency Project Manager

EXHIBIT F
CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

EXHIBIT G

DISADVANTAGED BUSINESS ENTERPRISES

SECTION 1. Policy

It is the policy of the Colorado Department of Transportation (CDOT) that Disadvantaged Business Enterprises (DBEs) shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Accordingly, CDOT's federally approved DBE Program Plan shall apply to this agreement.

SECTION 2. Subrecipient and Participant Obligation.

The Local Agency and its subrecipients agrees to ensure that DBEs certified through the Colorado Unified Certification Program have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement.

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

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

SECTION 3. DBE Program.

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

Local Agency requirements can be found at:

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

EXHIBIT H

LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded Local Agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states “The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost” and according to 23 CFR 172.5 “Price shall not be used as a factor in the analysis and selection phase.” Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a Local Agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting Local Agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting Local Agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The Local Agency shall not advertise any federal aid contract without prior review by the CDOT Regional Civil Rights Office (RCRO) to determine whether the contract shall be subject to a DBE contract goal. If the RCRO determines a goal is necessary, then the Local Agency shall include the goal and the applicable provisions within the advertisement. The Local Agency shall not award a contract to any Contractor or Consultant without the confirmation by the CDOT Civil Rights and Business Resource Center that the Contractor or Consultant has demonstrated good faith efforts. The Local Agency shall work with the CDOT RCRO to ensure compliance with the established terms during the performance of the contract.
5. The Local Agency shall require that all contractors pay subcontractors for satisfactory performance of work no later than 30 days after the receipt of payment for that work from the contractor. For construction projects, this time period shall be reduced to seven days in accordance with Colorado Revised Statute 24-91-103(2). If the Local Agency withholds retainage from contractors and/or allows contractors to withhold retainage from subcontractors, such retainage provisions must comply with 49 CFR 26.29.
6. Payments to all Subconsultants shall be made within thirty days of receipt of payment from [the Local Agency] or no later than ninety days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify [the Local Agency] no later than the required date for payment. Such notification shall include the amount disputed and justification for the withholding. The Consultant shall maintain records of payment that show amounts paid to all Subconsultants. Good cause does not include the Consultant's failure to submit an invoice to the Local Agency or to deposit payments made.
7. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,

- b. Approach to the Work,
 - c. Ability to furnish professional services.
 - d. Anticipated design concepts, and
 - e. Alternative methods of approach for furnishing the professional services. Evaluation factors for final selection are the consultant's:
 - a. Abilities of their personnel,
 - b. Past performance,
 - c. Willingness to meet the time and budget requirement,
 - d. Location,
 - e. Current and projected work load,
 - f. Volume of previously awarded contracts, and
 - g. Involvement of minority consultants.
8. Once a consultant is selected, the Local Agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.
9. A qualified Local Agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the Local Agency prepares a performance evaluation (a CDOT form is available) on the consultant.

CRS §§24-30-1401 THROUGH 24-30-1408, 23 CFR PART 172, AND P.D. 400.1, PROVIDE ADDITIONAL DETAILS FOR COMPLYING WITH THE PRECEEDING EIGHT (8) STEPS.

EXHIBIT I

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

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

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements (1) Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements (1) Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT J
ADDITIONAL FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

Clean Air Act

Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts more than \$100,000).

Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally assisted programs.

Nondiscrimination

The Local Agency shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color national origin, sex, age or disability. Prior to the receipt of any Federal financial assistance from CDOT, the Local Agency shall execute the attached Standard DOT Title VI assurance. As appropriate, the Local Agency shall include Appendix A, B, or C to the Standard DOT Title VI assurance in any contract utilizing federal funds, land, or other aid. The Local Agency shall also include the following in all contract advertisements:

The [Local Agency], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (79 Stat. 252, 42 US.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, DBEs will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for any award.

ADA

In any contract utilizing federal funds, land, or other federal aid, the Local Agency shall require the federal-aid recipient or contractor to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees, and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions §22

The Contractor will include the provisions of this Exhibit J in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

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SAMPLE

The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination

Assurances for Local Agencies

DOT Order No. 1050.2A

The [Local Agency] (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Colorado Department of Transportation and the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

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

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including the FHWA, FTA, or FAA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FHWA, FTA, and FAA assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated or will be (with regard to a "facility") operated or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all FHWA, FTA and FAA programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
3. "The [Local Agency] in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity

4. to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."
5. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
6. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
7. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
8. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
9. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
10. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
11. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
12. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the [Local Agency] also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA, FTA, and FAA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by CDOT, FHWA, FTA, or FAA. You must keep records, reports, and submit the material for review

upon request to CDOT, FHWA, FTA, or FAA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

[Local Agency] gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FHWA, FTA, and FAA. This ASSURANCE is binding on [Local Agency], other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FHWA, FTA, and FAA funded programs. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

(Name of Recipient)

by _____
(Signature of Authorized Official)

DATED _____

APPENDIX A

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

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

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the [Local Agency] will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), the Regulations for the Administration of (*Name of Appropriate Program*), and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the [Local Agency] all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto [Local Agency] and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the [Local Agency] its successors and assigns.

The [Local Agency], in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the [Local Agency] will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [,] and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the [Local Agency] pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. *
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the [Local Agency] will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the [Local Agency] and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by [Local Agency] pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non- discrimination covenants, [Local Agency] will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued. *
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will there upon revert to and vest in and become the absolute property of [Local Agency] of Transportation and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

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

Pertinent Non-Discrimination Authorities:

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

EXHIBIT K

FFATA SUPPLEMENTAL FEDERAL PROVISIONS

**State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13**

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

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. “Award” means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

1.1.1. Grants;

1.1.2. Contracts;

1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);

1.1.4. Loans;

1.1.5. Loan Guarantees;

1.1.6. Subsidies;

1.1.7. Insurance;

1.1.8. Food commodities;

1.1.9. Direct appropriations;

1.1.10. Assessed and voluntary contributions; and

1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

1.1.12. Technical assistance, which provides services in lieu of money;

1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;

1.1.14. Any award classified for security purposes; or

1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. “Contract” means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

1.3. “Contractor” means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.

1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpartC;

1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;

1.5.2. A foreign public entity;

1.5.3. A domestic or foreign non-profit organization;

- 1.5.4. A domestic or foreign for-profit organization; and
- 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109- 282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
- 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17 **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
 - 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
 - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 4.2. In the preceding fiscal year, Contractor received:
 - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 To SAM. A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

7.1.1 Subrecipient DUNS Number;

7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

7.1.3 Subrecipient Parent DUNS Number;

7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

7.2.1 Subrecipient's DUNS Number as registered in SAM.

7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

8.2 A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

8.3 Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

8.4 There are no Transparency Act reporting requirements for Vendors.

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

EXHIBIT L

SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT

CDOT SUBRECIPIENT RISK ASSESSMENT		Date: _____		
Name of Entity (Subrecipient):				
Name of Project / Program:				
Estimated Award Period:				
Entity Executive Director or VP:				
Entity Chief Financial Officer:				
Entity Representative for this Self Assessment:				
Instructions: (See "Instructions" tab for more information) 1. Check only one box for each question. All questions are required to be answered. 2. Utilize the "Comment" section below the last question for additional responses. 3. When complete, check the box at the bottom of the form to authorize.		Yes	No	N/A
EXPERIENCE ASSESSMENT		Yes	No	N/A
1 Is your entity new to operating or managing federal funds (has not done so within the past three years)?		<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"/> <i>1 to 2</i>	<input type="checkbox"/> <i>>3</i>	<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"/> <i>>10%</i>	<input type="checkbox"/> <i><10%</i>	<input type="checkbox"/>
9 Has your entity returned lapsed* funds? *Funds "lapse" when they are no longer available for obligation.		<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"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		≥ 6	2 to 5	< 2		
IMPACT ASSESSMENT				Yes	No	N/A
18	For this upcoming federal award or in the immediate future, does your entity have any potential conflicts of interest* in accordance with applicable Federal awarding agency policy? If Yes, please disclose these conflicts in writing, along with supporting information, and submit with this form. (*Any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Subrecipient's obligations to the State.)	<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." SAMExclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

6.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

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

7.1 Event of Default. Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute an event of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

8. Effective Date. The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.

9. Performance Measurement. The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes.

The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

Exhibit N
Federal Treasury Provisions

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury’s Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.
- 1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
 - 2.1.1. “Award” means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
 - 2.1.2. “Entity” means:
 - 2.1.2.1. a Non-Federal Entity;
 - 2.1.2.2. a foreign public entity;
 - 2.1.2.3. a foreign organization;
 - 2.1.2.4. a non-profit organization;
 - 2.1.2.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
 - 2.1.2.6. a foreign non-profit organization (only for 2 CFR part 170) only);
 - 2.1.2.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
 - 2.1.2.8. a foreign for-profit organization (for 2 CFR part 170 only).
 - 2.1.3. “Executive” means an officer, managing partner or any other employee in a management position.
 - 2.1.4. “Expenditure Category (EC)” means the category of eligible uses as defined by the US Department of Treasury in “Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds” report available at www.treasury.gov.

- 2.1.5. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
- 2.1.6. “Grant” means the Grant to which these Federal Provisions are attached.
- 2.1.7. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.8. “Non-Federal Entity” means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 2.1.9. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
- 2.1.9.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.9.2. Is not organized primarily for profit; and
 - 2.1.9.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.10. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.11. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.12. “Prime Recipient” means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.13. “Subaward” means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. “Subrecipient” or “Subgrantee” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.15. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
- 2.1.15.1. Salary and bonus;
 - 2.1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the

fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

2.1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;

2.1.15.4. Change in present value of defined benefit and actuarial pension plans;

2.1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;

2.1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.

2.1.16. "Transparency Act" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.

2.1.17. "Uniform Guidance" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

2.1.18. "Unique Entity ID" means the Unique Entity ID established by the federal government for a Grantee at <https://sam.gov/content/home>.

3. COMPLIANCE.

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

3.2. Per US Treasury Final Award requirements, grantee programs or services must not include a term or conditions that undermines efforts to stop COVID-19 or discourages compliance with recommendations and CDC guidelines.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND UNIQUE ENTITY ID (UEI) REQUIREMENTS.

4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually.

4.2. UEI. Grantee shall provide its Unique Entity ID to its Prime Recipient, and shall update Grantee's information in Sam.gov at least annually.

5. TOTAL COMPENSATION.

5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and

5.1.2. In the preceding fiscal year, Grantee received:

- 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.3. 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

- 6.1. If Grantee is a Subrecipient of the Award pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below \$30,000 no reporting required; if more than \$30,000 and less than \$50,000 then FFATA reporting is required; and, \$50,000 and above SLFRF reporting is required.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. Grantee shall report as set forth below.
 - 8.1.1. Grantee shall use the SLFRF Subrecipient Quarterly Report Workbook as referenced in Exhibit P to report to the State Agency within ten (10) days following each quarter ended September, December, March and June. Additional information on specific requirements are detailed in the SLFRF Subrecipient Quarterly Report Workbooks and "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

EC 1 – Public Health

All Public Health Projects

- a) Description of structure and objectives
- b) Description of relation to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

COVID-19 Interventions and Mental Health (1.4, 1.11, 1.12, 1.13)

- a) Amount of total project used for evidence-based programs
- b) Evaluation plan description

COVID-19 Small Business Economic Assistance (1.8)

- a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

- a) Number of non-profits served

COVID-19 Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (1.10)

- a) Sector of employer
- b) Purpose of funds

EC 2 – Negative Economic Impacts

All Negative Economic Impacts Projects

- a) Description of project structure and objectives
- b) Description of project's response to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Amount of total project used for evidence-based programs and description of evaluation plan (*not required for 2.5, 2.8, 2.21-2.24, 2.27-2.29, 2.31, 2.34-2.36*)
- e) Number of workers enrolled in sectoral job training programs
- f) Number of workers completing sectoral job training programs
- g) Number of people participating in summer youth employment programs
- h) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

Household Assistance (2.1-2.8)

- a) Number of households served

- b) Number of people or households receiving eviction prevention services (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*
- c) Number of affordable housing units preserved or developed (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*

Healthy Childhood Environments (2.11-2.13)

- a) Number of children served by childcare and early learning *(Federal guidance may change this requirement in July 2022)*
- b) Number of families served by home visiting *(Federal guidance may change this requirement in July 2022)*

Education Assistance (2.14, 2.24-2.27)

- a) National Center for Education Statistics (“NCES”) School ID or NCES District ID
- b) Number of students participating in evidence-based programs *(Federal guidance may change this requirement in July 2022)*

Housing Support (2.15, 2.16, 2.18)

- a) Number of people or households receiving eviction prevention services *(Federal guidance may change this requirement in July 2022)*
- b) Number of affordable housing units preserved or developed *(Federal guidance may change this requirement in July 2022)*

Small Business Economic Assistance (2.29-2.33)

- a) Number of small businesses served

Assistance to Non-Profits (2.34)

- a) Number of non-profits served

Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (2.35-2.36)

- a) Sector of employer
- b) Purpose of funds
- c) If other than travel, tourism and hospitality (2.36) – description of hardship

EC 3 – Public Health – Negative Economic Impact: Public Sector Capacity

Payroll for Public Health and Safety Employees (EC 3.1)

- a) Number of government FTEs responding to COVID-19

Rehiring Public Sector Staff (EC 3.2)

- a) Number of FTEs rehired by governments

EC 4 – Premium Pay

All Premium Pay Projects

- a) List of sectors designated as critical by the chief executive of the jurisdiction, if beyond those listed in the final rule
- b) Numbers of workers served
- c) Employer sector for all subawards to third-party employers
- d) Written narrative justification of how premium pay is responsive to essential work during the public health emergency for non-exempt workers or those making over 150 percent of the state/county’s average annual wage

- e) Number of workers to be served with premium pay in K-12 schools

EC 5 – Infrastructure Projects

All Infrastructure Projects

- a) Projected/actual construction start date (month/year)
- b) Projected/actual initiation of operations date (month/year)
- c) Location (for broadband, geospatial data of locations to be served)
- d) Projects over \$10 million
 - i. Prevailing wage certification or detailed project employment and local impact report
 - ii. Project labor agreement certification or project workforce continuity plan
 - iii. Prioritization of local hires
 - iv. Community benefit agreement description, if applicable

Water and sewer projects (EC 5.1-5.18)

- a) National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- b) Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
- c) Median Household Income of service area
- d) Lowest Quintile Income of the service area

Broadband projects (EC 5.19-5.21)

- a) Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
 - i. If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
 - ii. Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- b) Additional programmatic data will be required for broadband projects and will be defined in a subsequent version of the US Treasury Reporting Guidance, including, but not limited to (*Federal guidance may change this requirement in July 2022*):
 - i. Number of households (broken out by households on Tribal lands and those not on Tribal lands) that have gained increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, with the number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download and number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
 - ii. Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) that have projected increased access to broadband meeting the minimum speed standards in areas that previously

lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization, with the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

- iii. Narrative identifying speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering, technology to be deployed, miles of fiber, cost per mile, cost per passing, number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download, number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload, and number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization. Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

All Expenditure Categories

- a) Program income earned and expended to cover eligible project costs

8.1.2. A Subrecipient shall report the following data elements to Prime Recipient no later than five days after the end of the month following the month in which the Subaward was made.

- 8.1.2.1. Subrecipient Unique Entity ID;
- 8.1.2.2. Subrecipient Unique Entity ID if more than one electronic funds transfer (EFT) account;
- 8.1.2.3. Subrecipient parent's organization Unique Entity ID;
- 8.1.2.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

- 8.1.2.5. Subrecipient’s top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 8.1.2.6. Subrecipient’s Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.
- 8.1.3. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, the following data elements:
- 8.1.3.1. Subrecipient’s Unique Entity ID as registered in SAM.
 - 8.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
 - 8.1.3.3. Narrative identifying methodology for serving disadvantaged communities. See the "Project Demographic Distribution" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. This requirement is applicable to all projects in Expenditure Categories 1 and 2.
 - 8.1.3.4. Narrative identifying funds allocated towards evidenced-based interventions and the evidence base. See the “Use of Evidence” section in the “Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds” report available at www.treasury.gov. See section 8.1.1 for relevant Expenditure Categories.
 - 8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the public health and negative economic impacts of COVID-19. This requirement is applicable to Expenditure Categories 1 and 2. For aid to travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12), also provide the sector of employer, purpose of funds, and if not travel, tourism and hospitality a description of the pandemic impact on the industry.
 - 8.1.3.6. Narrative identifying the sector served and designated as critical to the health and well-being of residents by the chief executive of the jurisdiction and the number of workers expected to be served. For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county’s average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is higher, OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions, include justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19 but should not include personally identifiable information. This requirement applies to EC 4.1, and 4.2.
 - 8.1.3.7. For infrastructure projects (EC 5), or capital expenditures in any expenditure category, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and location (for broadband, geospatial location data). For projects over \$10 million:
 - 8.1.3.8. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less

than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.

- 8.1.3.8.1. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.
 - 8.1.3.8.2. Whether the project prioritizes local hires.
 - 8.1.3.8.3. Whether the project has a Community Benefit Agreement, with a description of any such agreement.
- 8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor's Office and Office of the State Controller. The State of Colorado may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Exhibit Q – SLFRF Reporting Modification Form.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.
- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS.

- 10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

11. SINGLE AUDIT REQUIREMENTS.

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

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

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.
 - 12.1.1. [Applicable to federally assisted construction Agreements.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.
 - 12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).

- 12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements,” and any implementing regulations issued by the Federal Awarding Agency.
- 12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 12.1.7. Never Contract with the Enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never Contract with the Enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- 12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

- 12.1.9. Title VI of the Civil Rights Act. The Subgrantee, Contractor, Subcontractor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury’s Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury’s Title VI regulations, 31 CRF Part 22, and herein incorporated by reference and made part of this Agreement or agreement.

13. CERTIFICATIONS.

- 13.1. Subrecipient Certification. Subrecipient shall sign a “State of Colorado Agreement with Recipient of Federal Recovery Funds” Certification Form in Exhibit E and submit to State Agency with signed grant agreement.
- 13.2. Unless prohibited by Federal statutes or regulations, Prime Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Grantee with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

15. EVENT OF DEFAULT AND TERMINATION.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.
- 15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
- 15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
- 15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

- 15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- 15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or
- 15.2.5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

EXHIBIT O

AGREEMENT WITH SUBSUBRECIPIENT OF FEDERAL RECOVERY FUNDS

Section 602(b) of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021), authorizes the Department of the Treasury (Treasury) to make payments to certain Subrecipients from the Coronavirus State Fiscal Recovery Fund. The State of Colorado has signed and certified a separate agreement with Treasury as a condition of receiving such payments from the Treasury. This agreement is between your organization and the State and your organization is signing and certifying the same terms and conditions included in the State's separate agreement with Treasury. Your organization is referred to as a Subrecipient.

As a condition of your organization receiving federal recovery funds from the State, the authorized representative below hereby (i) certifies that your organization will carry out the activities listed in section 602(c) of the Act and (ii) agrees to the terms attached hereto. Your organization also agrees to use the federal recovery funds as specified in bills passed by the General Assembly and signed by the Governor.

Under penalty of perjury, the undersigned official certifies that the authorized representative has read and understood the organization's obligations in the Assurances of Compliance and Civil Rights Requirements, that any information submitted in conjunction with this assurances document is accurate and complete, and that the organization is in compliance with the nondiscrimination requirements.

Subrecipient Name _____

Authorized Representative: _____

Title: _____

Signature: _____

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
TERMS AND CONDITIONS

1. Use of Funds.
 - a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 602(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.
 - b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Subrecipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award. Subrecipient also agrees to comply with any reporting requirements established by the Governor's Office and Office of the State Controller.
4. Maintenance of and Access to Records
 - a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs. Subrecipient shall follow guidance on administrative costs issued by the Governor's Office and Office of the State Controller.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.
8. Conflicts of Interest. The State of Colorado understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy

is applicable to each activity funded under this award. Subrecipient and Contractors must disclose in writing to the Office of the State Controller or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Office of the State Controller shall disclose such conflict to Treasury.

9. Compliance with Applicable Law and Regulations.

a. Subrecipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

- i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
- ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and Subcontractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury’s implementing regulation at 31 C.F.R. Part 19.
 - i. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - ii. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - iii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
- iv. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

- v. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
 - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. Remedial Actions. In the event of Subrecipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.
11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number SLFRF0126 awarded to the State of Colorado by the U.S. Department of the Treasury.”
14. Debts Owed the Federal Government.
- a. Any funds paid to the Subrecipient (1) in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.
 - b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury’s initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.
15. Disclaimer.
- a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or Subcontractor under this award.
 - b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.
16. Protections for Whistleblowers.
- a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.
 - b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;

- iii. The Government Accountability Office;
- iv. A Treasury employee responsible for Agreement or grant oversight or management;
- v. An authorized official of the Department of Justice or other law enforcement agency;
- vi. A court or grand jury; or
- vii. A management official or other employee of Subrecipient, Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.

c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees, Subrecipients, and Contractors to adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance, regulated programs, licenses, procurement Agreements by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.
3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Contractors, Subcontractors, successors, transferees, and assignees:

The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.
7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.
9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of

discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub- Subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

EXHIBIT P

SLFRF SUBRECIPIENT QUARTERLY REPORT

1. SLFRF SUBRECIPIENT QUARTERLY REPORT WORKBOOK

- 1.1 The SLFRF Subrecipient Quarterly Report Workbook must be submitted to the State Agency within ten (10) days following each quarter ended September, December, March and June. The SLFRF Subrecipient Quarterly Report Workbook can be found at:

<https://osc.colorado.gov/american-rescue-plan-act> (see SLFRF Grant Agreement Templates tab)

EXHIBIT Q

SAMPLE SLFRF REPORTING MODIFICATION FORM

Local Agency:		Agreement No:	
Project Title:		Project No:	
Project Duration:	To:	From:	
State Agency:	CDOT		

This form serves as notification that there has been a change to the reporting requirements set forth in the original SLFRF Grant Agreement.

The following reporting requirements have been (add/ remove additional rows as necessary):

Updated Reporting Requirement (Add/Delete/Modify)	Project Number	Reporting Requirement

By signing this form, the Local Agency agrees to and acknowledges the changes to the reporting requirements set forth in the original SLFRF Grant Agreement. All other terms and conditions of the original SLFRF Grant Agreement, with any approved modifications, remain in full force and effect. Grantee shall submit this form to the State Agency within 10 business days of the date sent by that Agency.

 Local Agency

 Date

 CDOT Program Manager

 Date

EXHIBIT R
APPLICABLE FEDERAL AWARDS

FEDERAL AWARD(S) APPLICABLE TO THIS GRANT AWARD

Federal Awarding Office	US Department of the Treasury
Grant Program	Coronavirus State and Local Fiscal Recovery Funds
Assistance Listing Number	21.027
Federal Award Number	SLFRP0126
Federal Award Date *	May 18, 2021
Federal Award End Date	December 31, 2024
Federal Statutory Authority	Title VI of the Social Security Act, Section 602
Total Amount of Federal Award (this is <u>not</u> the amount of this grant agreement)	\$3,828,761,790

* Funds may not be available through the Federal Award End Date subject to the provisions in §2 and §5 below.

EXHIBIT S

PII Certification

STATE OF COLORADO

**LOCAL AGENCY CERTIFICATION FOR ACCESS TO PII THROUGH A
DATABASE OR AUTOMATED NETWORK**

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

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

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT T

CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

Checklist for required exhibits due to funding sources. Required Exhibits are dependent on the source of funding. This is a guide to assist in the incorporation and completion of Exhibits in relation to funding sources.

Exhibit	Funding only from FHWA	Funding only from ARPA	FHWA and ARPA Funding
EXHIBIT A, SCOPE OF WORK	✓	✓	✓
EXHIBIT B, SAMPLE OPTION LETTER	✓	✓	✓
EXHIBIT C, FUNDING PROVISIONS	✓	✓	✓
EXHIBIT D, LOCAL AGENCY RESOLUTION (IF APPLICABLE)	✓	✓	✓
EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST	✓	✓	✓
EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS	✓		✓
EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE	✓		✓
EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES	✓		✓
EXHIBIT I, FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS	✓		✓
EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS	✓		✓
EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS	✓	✓	✓
EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM	✓	✓	✓
EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS	✓		✓

EXHIBIT N, FEDERAL TREASURY PROVISIONS		✓	✓
EXHIBIT O, AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS		✓	✓
EXHIBIT P, SLFRF SUBRECIPIENT QUARTERLY REPORT		✓	✓
EXHIBIT Q, SLFRF REPORTING MODIFICATION FORM		✓	✓
EXHIBIT R, APPLICABLE FEDERAL AWARDS		✓	✓
EXHIBIT S, PII CERTIFICATAION	✓	✓	✓
EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE	✓	✓	✓

RESOLUTION NO. R2024-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO,
APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF
AURORA AND THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) FOR
THE AURORA TRAFFIC SIGNAL UPGRADE PROJECT

WHEREAS, the City of Aurora, Colorado (the “City”), and the State of Colorado Department of Transportation (“CDOT”), collectively “the Parties”, as government agencies, are authorized by the provisions of Colo. Const., art. XIV, § 18(2)(a) and C.R.S. §§ 29-1-201, et seq., to contract with one another to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the City applied for three Denver Regional Council of Governments (“DRCOG”) 2024-2027 Regional Transportation Operations and Technology (RTO&T) grants, administered by CDOT; and

WHEREAS, the Traffic Signal Equipment Upgrade grant application is one of the three grant projects and includes procurement of 42 multi-modal detection devices and uninterruptable power supplies at intersections along DRCOG eligible corridors (“the Project”); and

WHEREAS, the detection devices will continuously collect vehicular, pedestrian, bicycle, and truck data and they will allow staff to remotely monitor detection functionality; and

WHEREAS, the Project is funded with 100% grant funds and no local match; and

WHEREAS, DRCOG will contribute \$1,021,000 to fully fund the Project; and

WHEREAS, Section 10-12 of the City Charter authorizes City Council to approve, by resolution, the execution of contracts, and amendments thereto, with other governmental units for furnishing or receiving commodities or services; and

WHEREAS, the City Council of the City of Aurora finds and determines that it is in the best interests of the City and its citizens to authorize the execution of the Intergovernmental Agreement between the City and CDOT for the Aurora Traffic Signal Upgrade Project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The Resolution Approving the Intergovernmental Agreement between the City and CDOT for the Aurora Traffic Signal Upgrade Project is hereby approved.

Section 2. The Mayor and the City Clerk are hereby authorized to execute and deliver the intergovernmental agreement on behalf of the City in substantially the form presented at this meeting, with such technical additions, deletions, and variations as the City Attorney may deem necessary or appropriate and not inconsistent with this Resolution.

Section 3. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this ____ day of _____, 2024.

MIKE COFFMAN, Mayor

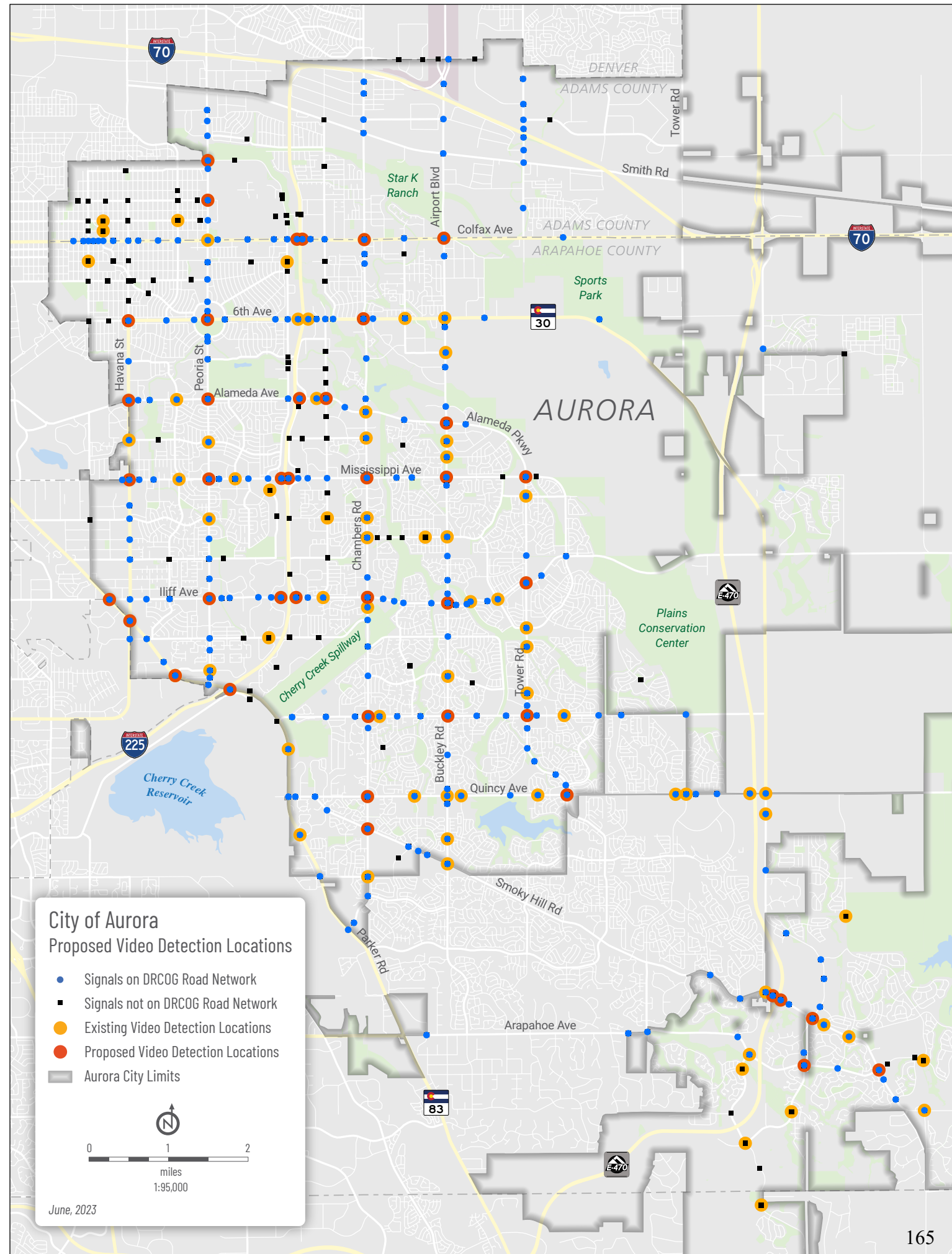
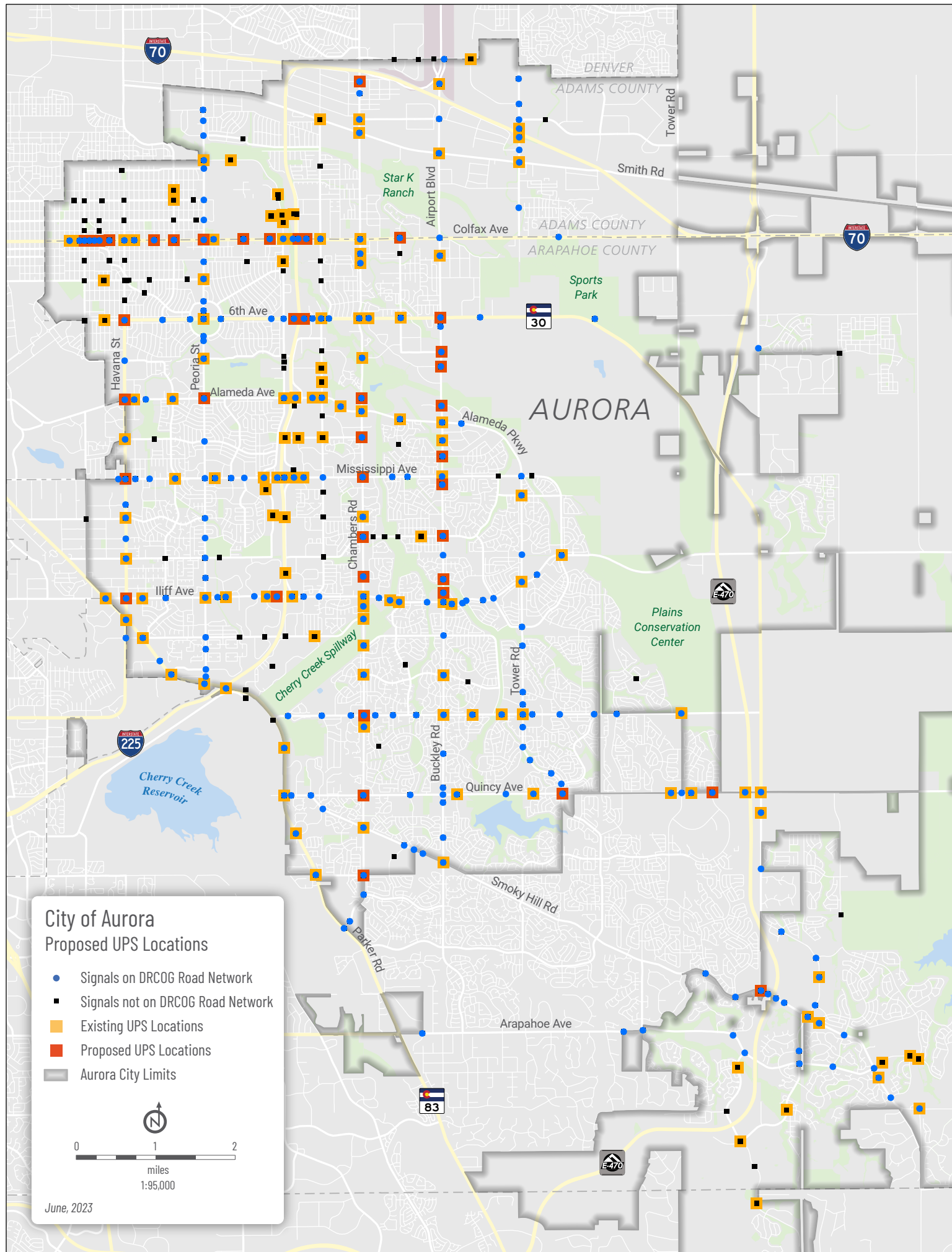
ATTEST:

KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:

Michelle Gardner RLA

MICHELLE GARDNER, Sr. Assistant City Attorney





CITY OF AURORA

Council Agenda Commentary

Item Title: Intergovernmental Agreement (IGA) with Colorado Department of Transportation (CDOT) for Communications Infrastructure Improvement Project (Resolution)
Item Initiator: Carlie Campuzano, Traffic Manager, Public Works
Staff Source/Legal Source: Carlie Campuzano, Traffic Manager, Public Works / Michelle Gardner, Senior Assistant City Attorney
Outside Speaker: N/A
Council Goal: 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

COUNCIL MEETING DATES:

Study Session: 8/26/2024

Regular Meeting: 9/9/2024

2nd Regular Meeting (if applicable): N/A

Item requires a Public Hearing: Yes No

ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor Name: Stephanie Hancock, Council Member
Carlie Campuzano, Traffic Manager, Public Works / Michelle Gardner, Senior Assistant City Attorney

ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field above.

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Transportation, Airports & Public Works

Policy Committee Date: 8/15/2024

Action Taken/Follow-up: (Check all that apply)

- Recommends Approval Does Not Recommend Approval
 Forwarded Without Recommendation Minutes Not Available
 Minutes Attached

HISTORY *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

City staff reviews all known grant opportunities and compares to project opportunities within the city in a effort to leverage funding for the greater benefit of Aurora residents. In past Regional Transportation Operations and Technology (RTO&T) calls, staff has had great success in applying for and receiving grants.

At the August 24, 2023 meeting of the Transportation, Airports, and Public Works Policy Committee, staff provided an overview of the Denver Regional Council of Governments (DRCOG) FY2022-2027 RTO&T program application calls. (minutes attached)

At the August 15, 2024 meeting of the Transportation, Airports, and Public Works Policy Committee, staff presented this intergovernmental agreement (IGA). Committee members unanimously supported moving the IGA forward to Study Session.

ITEM SUMMARY *(Brief description of item, discussion, key points, recommendations, etc.)*

The City of Aurora applied for three Denver Regional Council of Governments (DRCOG) 2024-2027 Regional Transportation Operations and Technology (RTO&T) grants, administered by the Colorado Department of Transportation (CDOT). This item is an intergovernmental agreement with CDOT to administer one of the three grant projects.

The Communications Infrastructure Upgrade Project will install fiber optic conduit and cable to connect to 12 **traffic signals and 2 city facilities. This will improve bandwidth and reliability for the City's traffic data devices.** It will also allow for traffic signal timing to be updated more quickly.

This project is funded with 80% grant funds and 20% local match. DRCOG will contribute \$736,000 and the City of Aurora will contribute \$197,000 (\$184,000 in match funds and an additional \$87,000 in overmatch funds).

FISCAL IMPACT

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact Budgeted Expenditure Impact Non-Budgeted Expenditure Impact
 Workload Impact No Fiscal Impact

REVENUE IMPACT

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

BUDGETED EXPENDITURE IMPACT

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

City Match funds are budgeted in 49743 – Transportation Improvement Program Match.

NON-BUDGETED EXPENDITURE IMPACT

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

WORKLOAD IMPACT

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

N/A. Workload will be absorbed into FTE positions in the Traffic Engineering and Operations units of Public Works Transportation and Mobility.

QUESTIONS FOR COUNCIL

Does the City Council support moving forward the resolution for the Intergovernmental Agreement between the Colorado Department of Transportation and the City of Aurora for the Communications Infrastructure Upgrade Project to the next available Regular Meeting?

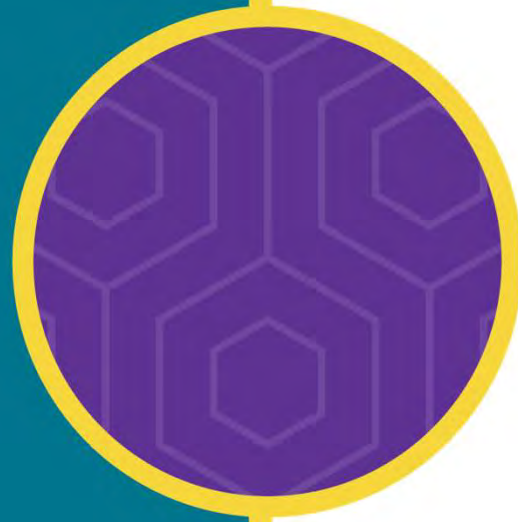
LEGAL COMMENTS

Governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units only if such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve. (Colo. Rev. Stat. Section 29-1-203(1)). City Council may, by resolution, enter into intergovernmental agreements with other governmental units or special districts for the joint use of buildings, equipment or facilities, and for furnishing or receiving commodities or services. (City Charter Section 10-12). (M. Gardner)

Study Session

August 26, 2024

- Carlie Campuzano



IGAs with CDOT for the Communications Upgrade Project, the Traffic Management Center Project, and the Traffic Signal Equipment Upgrades Project



DRCOG Grant Application



- Regional Transportation Operations and Technology (RTO&T) set-aside program
- Federal grant funding administered through DRCOG
- Funds are used for deployment of technology, tools, or coordinated signal system elements
- Aurora applied for and received awards for 3 projects:
 - Traffic Signal Equipment Upgrade (previous IGA)
 - Communications Infrastructure Upgrade (these IGAs)
 - Traffic Management Center (these IGAs)

RTO&T Project Funding



Description	Federal Request	Local Match	Local Over Match
Application # 1 – Communications Infrastructure Upgrade	\$736,000	\$184,000	\$87,000
Application # 2 – Traffic Management Center (TMC)	\$1,101,000	\$275,250	\$219,750
Application # 3 – Traffic Signal Equipment Upgrades	\$1,021,000	\$0	\$0
Totals:	\$2,858,000	\$766,000	

Project Description: Communications Infrastructure Upgrade



This project connects Aurora to existing fiber

- This will connect 12 signalized locations, 2 City facilities
- Federal funding requested for procurement of:
 - Fiber components (materials and construction) to connect 12 traffic signals and 2 City facilities to CDOT's fiber backbone

Proposed Fiber Connections



Project Description: Traffic Management Center



Douglas County TMC

Convert existing space at the North Satellite Facility to a function traffic management center

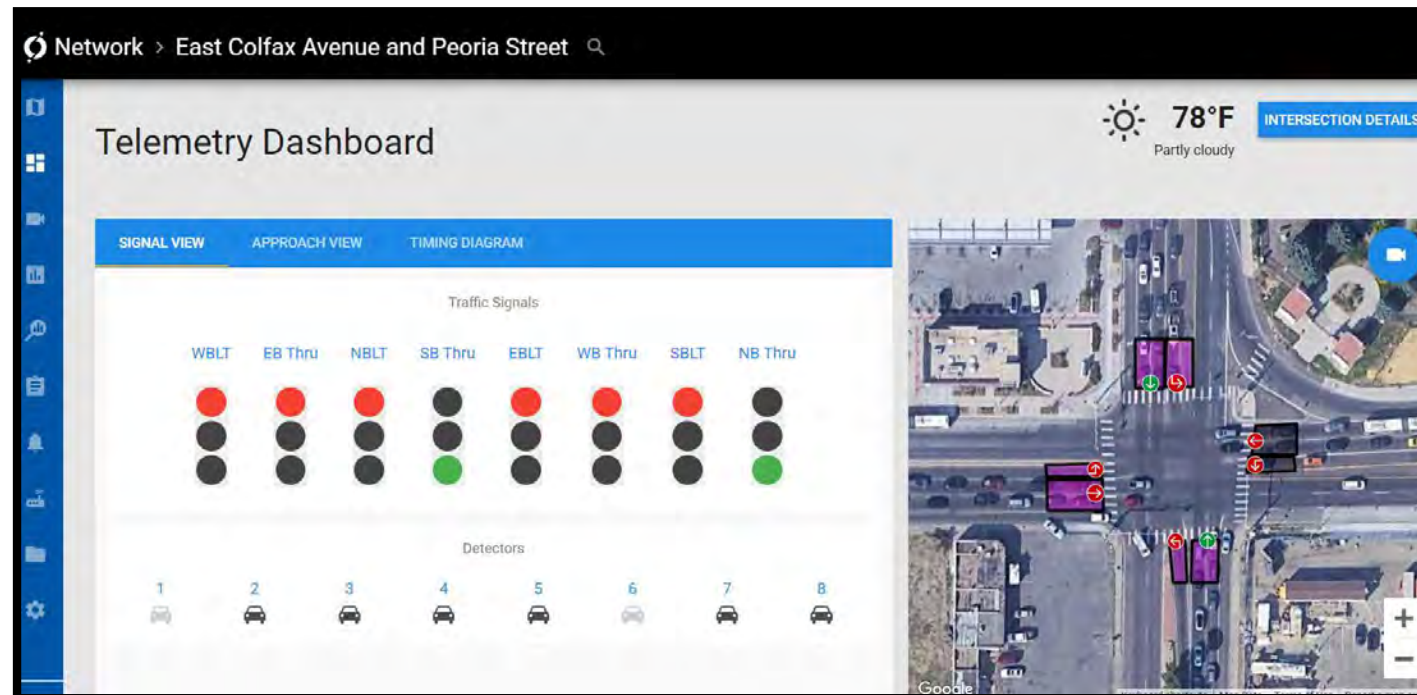
- Federal funding requested for procurement of:
 - Hardware, Software, Configuration/Setup



Project Description



- Traffic Signal Equipment Upgrades
 - 42 multimodal detection units and 42 uninterrupted power supplies
 - Federal funding will be used to procure the hardware
 - Installations will be performed by staff



Question for the Committee



- Does the City Council support moving forward the Resolutions for the three Intergovernmental Agreements between the Colorado Department of Transportation and the City of Aurora for the Communications Infrastructure Upgrade Project, the Traffic Management Center Project, and the Traffic Signal Equipment Upgrade Project to the next available Regular Council Meeting?



Questions?



Transportation, Airports and Public Works (TAPS) Policy Committee Meeting

August 24, 2023

Members Present: Council Member (CM) Juan Marcano, Chair; Council Member (CM) Angela Lawson, Vice-Chair, Council Member (CM) Ruben Medina; Council Member (CM) Francoise Bergan

Others Present: Carlie Campuzano, Elly Watson, Julie Patterson, Traci Burton, Rachel Allen, Brian Rulla, James Paral, Lynne Center, Ryan Germeroth, Tom Worker-Braddock, Mac Callison, Mindy Parnes, Huiliang Liu, Haley Busch Johansen, Michelle Gardner, Cindy Colip, Laura Perry, and Scott Bauman

1. WELCOME AND INTRODUCTION

2. APPROVAL OF MINUTES

The minutes for the July 27, 2023 TAPS meeting were approved as written.

3. CONSENT ITEMS (None)

4. GENERAL BUSINESS

4.a. DRCOG 2024-2027 Regional Transportation Operations and Technology Set-Aside Application Update

Summary of Issue and Discussion:

Carlie Campuzano, Traffic Manager in the Public Works Department, presented on recent grant applications they submitted the previous month that were part of the DRCOG Regional Transportation Operations and Technology Set-Aside Program. She said this program was focused on transportation technology projects. She stated the three applications they submitted were to upgrade the traffic signal communication system, create a traffic management center, and upgrade different traffic signal equipment. The three projects totaled \$2.8 million with a local match of approximately \$700,000. Ms. Campuzano said the applications were being scored and reviewed and they were hoping to hear back next month.

Ms. Campuzano gave some background on how their system operated and initiatives they were working with as far as fiber. She stated that the city has a lot of traffic signals and other field devices, and staff needs to bring back data from them. She said traffic signals currently operate on a wireless network comprised of radios throughout the city, but the overall bandwidth of the communications

network is limited, which limits the type of data that can be brought back. She said staff has identified the need for fiber to bolster the existing communications system. She said the Public Works Department kicked off a fiber master plan project in 2021, and they pulled resources together along with Aurora Water and Aurora IT to create the plan. She said they were working with a consultant on a fiber master plan and planned on presenting it later in the year. Ms. Campuzano showed maps of where the city would benefit from fiber. She noted a high priority segment for them was connecting different city facilities along Chambers Rd and Smoky Hill Pkwy. She pointed out that it would not happen overnight as the total cost is about 80 million dollars for City-wide fiber. Ms. Campuzano said they identified a potential cost sharing opportunity with CDOT, because they already have fiber along I-225, I-70, and Colfax, and CDOT is open to letting the city use 8 strands of fiber for City traffic and IT purposes. She said City staff drafted a proposal and submitted it to CDOT earlier in the year, which they reviewed and approved. She said it would help the City improve data reliability and capacity.

Ms. Campuzano discussed the grant application for a communications infrastructure upgrade, which was aimed at doing the connection work needed to connect to the CDOT fiber. She said staff are working on a formal agreement with CDOT that would be presented in a few months as an IGA. She stated it would allow the city to connect 12 traffic signals and two city facilities. She also spoke about the application for equipment for the traffic management center (TMC), which would pay for a lot of the hardware needed for a future TMC. She also talked about the application to purchase different hardware equipment, including 42 video detection units and battery backup power supplies.

Committee Discussion:

CM Lawson thanked C. Campuzano for the presentation. She asked if they looked at the future growth of the city and any needs they would have.

Ms. Campuzano said they did have a portion of the fiber master plan and extra maps that addressed the area of the city that was growing. She said that staff already updated design standards to require developers to install conduit proactively as a part of new projects.

CM Lawson stated that was good to know. She said it was a little concerning that the older part of the city was going to be more difficult to make it happen and hoped they would examine that to make sure everything is somewhat on a level playing field for everyone in the city.

CM Marcano asked if it was eligible for federal grant funding with the broadband money they recently approved.

Cindy Colip stated that she did not know, but staff would reach out to Scott Newman in IT.

CM Marcano asked if they were still looking to lease broadband access to other providers or explore municipal broadband in the future.

Ms. Campuzano said that was something Scott was looking at and they would have him there to provide answers when they present the Fiber Master Plan. She said they tried to overestimate quantities in order to lease out strands, so it was a consideration.

Outcome: Information only.

Follow-up Action: No follow-up needed.

STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT
Signature and Cover Page

State Agency Department of Transportation			Agreement Routing Number 25-HA1-XC-00109
Local Agency CITY OF AURORA			Agreement Effective Date The later of the effective date or July 25, 2024
Agreement Description FY26 Aurora Communications Infrastructure Improvements			Agreement Expiration Date July 24, 2034
Project # STU M055- 071 (26182)	Region # R1	Contract Writer DM	Agreement Maximum Amount \$920,000.00

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.

<p align="center">LOCAL AGENCY CITY OF AURORA</p> <hr/> <p align="center">By: Mike Coffman, Mayor</p> <p>Date: _____</p>	<p align="center">STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director</p> <hr/> <p align="center">Keith Stefanik, P.E., Chief Engineer</p> <p>Date: _____</p>
<p>Additional Local Agency Signatures Attest:</p> <hr/> <p align="center">Kadee Rodriguez, City Clerk</p> <p>Date: _____</p> <p>Approved as to Form: _____ Michelle Gardner, Sr. Assistant City Attorney</p> <p>Date: _____</p>	<p align="center">LEGAL REVIEW Philip J. Weiser, Attorney General</p> <hr/> <p align="center">Assistant Attorney General</p> <hr/> <p align="center">By: (Print Name and Title)</p> <p>Date: _____</p>
<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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- EXHIBIT R, APPLICABLE FEDERAL AWARDS
- EXHIBIT S, PII CERTIFICATION
- EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Effective Date

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

B. Initial Term and Extension

The Parties’ respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on July 24, 2034 as shown on the Signature and Cover Page for this Agreement, unless sooner terminated or further extended in accordance with the terms of this Agreement. Upon request of Local Agency, the State may, in its sole discretion, extend the term of this Agreement by Option Letter pursuant **§7.E.iv**. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in **Exhibit C**.

C. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, and this ARPA Award is not appropriated, or otherwise become unavailable to fund this ARPA Award the State, in its discretion, may terminate this Agreement in whole or in part. This subsection shall not apply to a termination of this Agreement by the State for breach by Local Agency, which shall be governed by **§14.A.i**.

i. Method and Content

The State shall notify Local Agency by providing written notice to Local Agency of the termination and be in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Local Agency shall be subject to **§14.A.i.a**

iii. Payments

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

D. Local Agency Termination Under Federal Requirements

Local Agency may request termination of the ARPA Award by sending notice to the State, which includes the effective date of the termination. If this ARPA Award is terminated in this manner, then Local Agency shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. AUTHORITY

Authority to enter into this Agreement exists in the law as follows:

A. Federal Authority

Pursuant to Title I, Subtitle A, of the “Fixing America’s Surface Transportation Act” (FAST Act) of 2015, and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the “Federal Provisions”), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration (“FHWA”).

Pursuant to Title VI of the Social Security Act, Section 602 of the “Coronavirus State and Local Fiscal Recovery Funds”, a part of the American Rescue Plan, provides state, local and Tribal governments with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery.

B. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-104.5.

4. PURPOSE

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT’s Stewardship Agreement with the FHWA and/or USDT as shown in **Exhibit C**.

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “**Agreement**” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. “**Agreement Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- C. “**ARPA**” means American Rescue Plan Act, funded by the US Department of the Treasury (“USDT”). See “SLFRF” below.
- D. “**Award**” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- E. “**Budget**” means the budget for the Work described in **Exhibit C**.
- F. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S..
- G. “**Chief Procurement Officer**” means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202 to procure or supervise the procurement of all supplies and services needed by the State.
- H. “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- I. “**Consultant**” means a professional engineer or designer hired by Local Agency to design the Work Product.
- J. “**Contractor**” means the general construction contractor hired by Local Agency to construct the Work.

- K. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- L. **“Effective Date”** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Agreement.
- M. **“Evaluation”** means the process of examining Local Agency’s Work and rating it based on criteria established in §6, **Exhibit A** and **Exhibit E**.
- N. **“Exhibits”** means the following exhibits attached to this Agreement:
- i. **Exhibit A**, Scope of Work.
 - ii. **Exhibit B**, Sample Option Letter.
 - iii. **Exhibit C**, Funding Provisions
 - iv. **Exhibit D**, Local Agency Resolution
 - v. **Exhibit E**, Local Agency Contract Administration Checklist
 - vi. **Exhibit F**, Certification for Federal-Aid Contracts
 - vii. **Exhibit G**, Disadvantaged Business Enterprise
 - viii. **Exhibit H**, Local Agency Procedures for Consultant Services
 - ix. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts
 - x. **Exhibit J**, Additional Federal Requirements
 - xi. **Exhibit K**, The Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions
 - xii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form
 - xiii. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the “Uniform Guidance”)
 - xiv. **Exhibit N**, Federal Treasury Provisions
 - xv. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds
 - xvi. **Exhibit P**, SLFRF Subrecipient Quarterly Report
 - xvii. **Exhibit Q**, SLFRF Reporting Modification Form
 - xviii. **Exhibit R**, Applicable Federal Awards
 - xix. **Exhibit S**, PII Certification
 - xx. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source
- O. **“Expiration Date”** means the date on which this Agreement expires, as shown on the Signature and Cover Page for this Agreement.
- P. **“Extension Term”** means the period of time by which the ARPA Expiration Date is extended by the State through delivery of an updated ARPA Letter.
- Q. **“Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- R. **“Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. The US Department of the Treasury is the Federal Awarding Agency for the Federal Award, which may be the subject of this Agreement.
- S. **“FHWA”** means the Federal Highway Administration, which is one of the twelve administrations under the Office of the Secretary of Transportation at the U.S. Department of Transportation. FHWA provides stewardship over the construction, maintenance and preservation of the Nation’s highways and tunnels. FHWA is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- T. **“Goods”** means any movable material acquired, produced, or delivered by Local Agency as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Local Agency in connection with the Services.

- U. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- V. **“Initial Term”** means the time period defined in **§2.B**.
- W. **“Local Funds”** means the funds provided by the Local Agency as their obligated contribution to the federal and/or State Awards to receive the federal and/or State funding.
- X. **“Notice to Proceed”** means the letter issued by the State to the Local Agency stating the date the Local Agency can begin work subject to the conditions of this Agreement.
- Y. **“OMB”** means the Executive Office of the President, Office of Management and Budget.
- Z. **“Oversight”** means the term as it is defined in the Stewardship Agreement between CDOT and the FHWA.
- AA. **“Party”** means the State or Local Agency, and **“Parties”** means both the State and Local Agency.
- BB. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- CC. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- DD. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, et. seq., C.R.S.
- EE. **“Recipient”** means the Colorado Department of Transportation (CDOT) for this Federal Award.
- FF. **“Services”** means the services to be performed by Local Agency as set forth in this Agreement and shall include any services to be rendered by Local Agency in connection with the Goods.
- GG. **“SLFRF”** means State and Local Fiscal Recovery Funds, provided by ARPA, funded by the US Treasury Department.
- HH. **“Special Funding”** means an award by Federal agency or the State which may include but is not limited to one or a combination of Multimodal Transportation & Mitigation Options Funding, Revitalizing Main Streets, Safer Main Streets, Stimulus Funds, Coronavirus Response and Relief Supplemental Funds, ARPA, SLFRF, or COVID Relief.
- II. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII and State personnel records not subject to disclosure under CORA.
- JJ. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).
- KK. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- LL. **“State Purchasing Director”** means the position described in the Colorado Procurement Code and its implementing regulations.

- MM. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- NN. “**Sub-Award**” means this Award by the State to Local Agency funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to this Sub-Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- OO. “**Subcontractor**” means third parties, if any, engaged by Local Agency to aid in performance of the Work.
- PP. “**Subrecipient**” means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency.
- QQ. “**Tax Information**” means Federal and State of Colorado tax information including, without limitation, Federal and State tax returns, return information, and such other tax-related information as may be protected by Federal and State law and regulation. Tax Information includes but is not limited to all information defined as Federal tax Information in Internal Revenue Service Publication 1075.
- RR. “**Uniform Guidance**” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- SS. “**USDT**” The United States Department of the Treasury (**USDT**) is the national treasury and finance department of the federal government of the United States where it serves as an executive department. The USDT funds ARPA.
- TT. “**Work**” means the delivery of the Goods and performance of the Services in compliance with CDOT’s Local Agency Manual described in this Agreement.
- UU. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

6. SCOPE OF WORK

Local Agency shall complete the Work as described in this Agreement and in accordance with the provisions of **Exhibit A**, and the Local Agency Manual. The State shall have no liability to compensate Local Agency for the delivery of any Goods or the performance of any Services that are not specifically set forth in this Agreement. Work may be divided into multiple phases that have separate periods of performance. The State may not compensate for Work that Local Agency performs outside of its designated phase performance period. The performance period of phases, including, but not limited to Design, Construction, Right of Way, Utilities, or Environment phases, are identified in **Exhibit C**. The State may unilaterally modify **Exhibit C** from time to time, at its sole discretion, to extend the Agreement Expiration Date and/or to extend the period of performance for a phase of Work authorized under this Agreement. To exercise these options to extend the Agreement Expiration Date and/or to update the phase performance period extension option, the State will provide written notice to Local Agency in a form substantially equivalent to **Exhibit B**. The State’s unilateral extension of the Agreement Expiration Date and/or the phase performance periods will not amend or alter in any way the funding provisions or any other terms specified in this Agreement, notwithstanding the options listed under **§7.E**

A. Local Agency Commitments

i. Design

If the Work includes preliminary design, final design, design work sheets, or special provisions and estimates (collectively referred to as the “Plans”), Local Agency shall ensure that it and its Contractors comply with and are responsible for satisfying the following requirements:

- a. Perform or provide the Plans to the extent required by the nature of the Work.
 - b. Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
 - c. Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
 - d. Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
 - e. Stamp the Plans as produced by a Colorado registered professional engineer.
 - f. Provide final assembly of Plans and all other necessary documents.
 - g. Ensure the Plans are accurate and complete.
 - h. Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT, and when final, they will be deemed incorporated herein.
- ii. Local Agency Work
- a. Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA) 42 U.S.C. § 12101, et. seq., and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
 - b. Local Agency shall afford the State ample opportunity to review the Plans and shall make any changes in the Plans that are directed by the State to comply with FHWA requirements.
 - c. Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**. If Local Agency enters into a contract with a Consultant for the Work:
 - 1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, Local Agency shall not enter into such Consultant contract.
 - 2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
 - 3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
 - 4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.
 - 5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from Local Agency's attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b) and (d).
 - 6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
 - (a) The design work under this Agreement shall be compatible with the requirements of the contract between Local Agency and the State (which is incorporated herein by this

reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

- (b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.
- (c) The consultant shall review the construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.
- (d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. Construction

If the Work includes construction, Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing construction Contractor claims; construction supervision; and meeting the quality control requirements of the FHWA/CDOT Stewardship Agreement, as described in **Exhibit E**.

- a. The State may, after providing written notice of the reason for the suspension to Local Agency, suspend the Work, wholly or in part, due to the failure of Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
- b. Local Agency shall be responsible for the following:
 - 1) Appointing a qualified professional engineer, licensed in the State of Colorado, as Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures, as defined in the CDOT Local Agency Manual (https://www.codot.gov/business/designsupport/bulletins_manuals/2006-local-agency-manual).
 - 2) For the construction Services, advertising the call for bids, following its approval by the State, and awarding the construction contract(s) to the lowest responsible bidder(s).
 - (a) All Local Agency's advertising and bid awards pursuant to this Agreement shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that Local Agency and its Contractor(s) incorporate Form 1273 (Exhibit I) in its entirety, verbatim, into any subcontract(s) for Services as terms and conditions thereof, as required by 23 C.F.R. 633.102(e).
 - (b) Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. Local Agency must accept or reject such bids within three (3) working days after they are publicly opened.
 - (c) If Local Agency accepts bids and makes awards that exceed the amount of available Agreement Funds, Local Agency shall provide the additional funds necessary to complete the Work or not award such bids.
 - (d) The requirements of **§6.A.iii.b.2** also apply to any advertising and bid awards made by the State.

- (e) The State (and in some cases FHWA) must approve in advance all Force Account Construction, and Local Agency shall not initiate any such Services until the State issues a written Notice to Proceed.

iv. Right of Way (ROW) and Acquisition/Relocation

- a. If Local Agency purchases a ROW for a State highway, including areas of influence, Local Agency shall convey the ROW to CDOT promptly upon the completion of the project/construction.
- b. Any acquisition/relocation activities shall comply with all applicable federal and State statutes and regulations, including but not limited to, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.
- c. The Parties' respective responsibilities for ensuring compliance with acquisition, relocation and incidentals depend on the level of federal participation as detailed in CDOT's Right of Way Manual (located at <http://www.codot.gov/business/manuals/right-of-way>); however, the State always retains oversight responsibilities.
- d. The Parties' respective responsibilities at each level of federal participation in CDOT's Right of Way Manual, and the State's reimbursement of Local Agency costs will be determined pursuant the following categories:
 - 1) Right of way acquisition (3111) for federal participation and non-participation;
 - 2) Relocation activities, if applicable (3109);
 - 3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

v. Utilities

If necessary, Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company that may become involved in the Work. Prior to the Work being advertised for bids, Local Agency shall certify in writing to the State that all such clearances have been obtained.

vi. Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, Local Agency shall make timely application to the Public Utilities Commission ("PUC") requesting its order providing for the installation of the proposed improvements. Local Agency shall not proceed with that part of the Work before obtaining the PUC's order. Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities, and:

- a. Execute an agreement with the railroad company setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- b. Obtain the railroad's detailed estimate of the cost of the Work.
- c. Establish future maintenance responsibilities for the proposed installation.
- d. Proscribe in the agreement the future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- e. Establish future repair and/or replacement responsibilities, as between the railroad company and the Local Agency, in the event of accidental destruction or damage to the installation.

vii. Environmental Obligations

Local Agency shall perform all Work in accordance with the requirements of current federal and State environmental regulations, including the National Environmental Policy Act of 1969 (NEPA) as applicable.

viii. Maintenance Obligations

Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. Local Agency shall conduct such maintenance and operations in accordance with all applicable statutes, ordinances, and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

ix. Monitoring Obligations

Local Agency shall respond in a timely manner to and participate fully with the monitoring activities described in §7.F.vi.

B. State's Commitments

- i. The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
- ii. Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any Work constituting major structures designed by, or that are the responsibility of, Local Agency, as identified in **Exhibit E**.

7. PAYMENTS

A. Maximum Amount

Payments to Local Agency are limited to the unpaid, obligated balance of the Agreement Funds set forth in **Exhibit C**. The State shall not pay Local Agency any amount under this Agreement that exceeds the Agreement Maximum set forth in **Exhibit C**.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Local Agency in the amounts and in accordance with conditions set forth in **Exhibit C**.
- b. Local Agency shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Local Agency and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Local Agency shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.
- e. If a project is funded in part with Federal or State special funding there may be an expiration date for the funds. The expiration date applies to grants and local funds used to match grants. To receive payment or credit for the match, Work must be completed or substantially completed, as outlined in the terms of the grant, prior to the expiration date of the special funding and invoiced in compliance with the rules outlined in the award of the funding. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.

ii. Interest

Amounts not paid by the State within 45 days after the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 46th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Local Agency shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Payment Disputes

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

iv. Available Funds-Contingency-Termination

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

v. Erroneous Payments

The State may recover, at the State's discretion, payments made to Local Agency in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Local Agency. The State may recover such payments by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Local Agency, or by any other appropriate method for collecting debts owed to the State. The close out of a Federal Award does not affect the right of FHWA or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period (as defined below in **§9.A.**).

vi. Federal Recovery

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

C. Local Agency Funds

Local Agency shall provide their obligated contribution funds as outlined in **§7.A.** and **Exhibit C**. Local Agency shall have raised the full amount of their funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Local Agency and paid into Local Agency's treasury. Local Agency represents to the State that the amount designated "Local Agency Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. Local Agency may evidence such obligation by an appropriate ordinance/resolution or other authority letter expressly authorizing Local Agency to enter into this Agreement and to expend its match share of the Work. A copy of any such ordinance/resolution or authority letter is attached hereto as **Exhibit D** if applicable. Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of

Local Agency. Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes, or penalties of any nature, except as required by Local Agency's laws or policies.

D. Reimbursement of Local Agency Costs

The State shall reimburse Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and §7. However, any costs incurred by Local Agency prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Local Agency for costs or expenses incurred or performance by the Local Agency prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the Local Agency. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement. The applicable principles described in 2 C.F.R. Part 200 shall govern the State's obligation to reimburse all costs incurred by Local Agency and submitted to the State for reimbursement hereunder, and Local Agency shall comply with all such principles. The State shall reimburse Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C**. Local Agency costs for Work performed prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. Local Agency costs for Work performed after any Performance Period End Date for a respective phase of the Work, is not reimbursable. Allowable costs shall be:

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

E. Unilateral Modification of Agreement Funds Budget by State Option Letter

The State may, at its discretion, issue an "Option Letter" to Local Agency to add or modify Work phases in the Work schedule in **Exhibit C** if such modifications do not increase total budgeted Agreement Funds. Such Option Letters shall amend and update **Exhibit C**, Sections 2 or 4 of the Table, and sub-sections B and C of the **Exhibit C**. Option Letters shall not be deemed valid until signed by the State Controller or an authorized delegate. **This is NOT a Notice to Proceed.** Modification of **Exhibit C** by unilateral Option Letter is permitted only in the specific scenarios listed below. The State will exercise such options by providing Local Agency a fully executed Option Letter, in a form substantially equivalent to **Exhibit B**. Such Option Letters will be incorporated into this Agreement. This applies to the entire Scope of Work.

i. Option to Begin a Phase and/or Increase or Decrease the Encumbrance Amount

The State may require by Option Letter that Local Agency begin a new Work phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous Work (but may not include Right of Way Acquisition/Relocation or Railroads) as detailed in **Exhibit A**. Such Option Letters may not modify the other terms and conditions stated in this Agreement and must decrease the amount budgeted and encumbered for one or more other Work phases so that the total amount of budgeted Agreement Funds remains the same. The State may also change the funding sources so long as the amount budgeted remains the same and the Local Agency contribution does not increase. The State may also issue a unilateral Option Letter to increase and/or decrease the total encumbrance amount of two or more existing Work phases, as long as the total amount of budgeted Agreement Funds remains the same, replacing the original Agreement Funding exhibit (**Exhibit C**) with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

ii. Option to Transfer Funds from One Phase to Another Phase.

The State may require or permit Local Agency to transfer Agreement Funds from one Work phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another phase as a result of changes to State, federal, and local match funding. In such case, the original funding exhibit (**Exhibit C**) will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The Agreement Funds transferred from one Work phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a

fully executed Option Letter to Local Agency within thirty (30) days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iii. Option to Exercise Options i and ii.

The State may require Local Agency to add a Work phase as detailed in **Exhibit A**, and encumber and transfer Agreement Funds from one Work phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2, C-3**, etc.) attached to the Option Letter. The addition of a Work phase and encumbrance and transfer of Agreement Funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within 30 days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iv. Option to Extend Agreement/Phase Term and/or modify the OMB Uniform Guidance. The State, at its discretion, shall have the option to extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2, C-3**, etc.). In order to exercise this option, the State shall provide written notice to the Local Agency in a form substantially equivalent to **Exhibit B**.

F. Accounting

Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

i. Local Agency Performing the Work

If Local Agency is performing the Work, it shall document all allowable costs, including any approved Services contributed by Local Agency or subcontractors, using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

ii. Local Agency-Checks or Draws

Checks issued or draws made by Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. Local Agency shall keep on file all checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents in the office of Local Agency, clearly identified, readily accessible, and to the extent feasible, separate and apart from all other Work documents.

iii. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. Local Agency shall reimburse the State for the costs of any such services from the budgeted Agreement Funds as provided for in **Exhibit C**. If FHWA Agreement Funds are or become unavailable, or if Local Agency terminates this Agreement prior to the Work being approved by the State or otherwise completed, then all actual incurred costs of such services and assistance provided by the State shall be reimbursed to the State by Local Agency at its sole expense.

iv. Local Agency-Invoices

Local Agency's invoices shall describe in detail the reimbursable costs incurred by Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and Local Agency shall not submit more than one invoice per month.

v. Invoicing Within 60 Days

The State shall not be liable to reimburse Local Agency for any costs invoiced more than 60 days after the date on which the costs were incurred, including costs included in Local Agency's final invoice. The State may withhold final payment to Local Agency at the State's sole discretion until completion of final audit. Any costs incurred by Local Agency that are not allowable under 2 C.F.R. Part 200 shall be Local Agency's responsibility, and the State will deduct such disallowed costs from any payments due to Local Agency. The State will not reimburse costs for Work performed after the Performance Period End Date for a respective Work phase. The State will not reimburse costs for Work performed prior to Performance

Period End Date, but for which an invoice is received more than 60 days after the Performance Period End Date.

vi. Risk Assessment & Monitoring

Pursuant to 2 C.F.R. 200.331(b), – CDOT will evaluate Local Agency’s risk of noncompliance with federal statutes, regulations, and terms and conditions of this Agreement. Local Agency shall complete a Risk Assessment Form (**Exhibit L**) when that may be requested by CDOT. The risk assessment is a quantitative and/or qualitative determination of the potential for Local Agency’s non-compliance with the requirements of the Federal Award. The risk assessment will evaluate some or all of the following factors:

- Experience: Factors associated with the experience and history of the Subrecipient with the same or similar Federal Awards or grants.
- Monitoring/Audit: Factors associated with the results of the Subrecipient’s previous audits or monitoring visits, including those performed by the Federal Awarding Agency, when the Subrecipient also receives direct federal funding. Include audit results if Subrecipient receives single audit, where the specific award being assessed was selected as a major program.
- Operation: Factors associated with the significant aspects of the Subrecipient’s operations, in which failure could impact the Subrecipient’s ability to perform and account for the contracted goods or services.
- Financial: Factors associated with the Subrecipient’s financial stability and ability to comply with financial requirements of the Federal Award.
- Internal Controls: Factors associated with safeguarding assets and resources, deterring and detecting errors, fraud and theft, ensuring accuracy and completeness of accounting data, producing reliable and timely financial and management information, and ensuring adherence to its policies and plans.
- Impact: Factors associated with the potential impact of a Subrecipient’s non-compliance to the overall success of the program objectives.
- Program Management: Factors associated with processes to manage critical personnel, approved written procedures, and knowledge of rules and regulations regarding federal-aid projects.

Following Local Agency’s completion of the Risk Assessment Tool (**Exhibit L**), CDOT will determine the level of monitoring it will apply to Local Agency’s performance of the Work. This risk assessment may be re-evaluated after CDOT begins performing monitoring activities.

G. Close Out

Local Agency shall close out this Award within 90 days after the Final Phase Performance End Date. If SLFRF Funds are used the Local Agency shall close out that portion of the Award within 45 days after the ARPA Award Expiration Date. Close out requires Local Agency’s submission to the State of all deliverables defined in this Agreement, and Local Agency’s final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If FHWA or US Treasury has not closed this Federal Award within one (1) year and 90 days after the Final Phase Performance End Date due to Local Agency’s failure to submit required documentation, then Local Agency may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

8. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to §19 or pursuant to any exhibit, for any contract having a term longer than 3 months, Local Agency shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than ten (10) Business Days following the end of each calendar quarter or at such time as otherwise specified by the State. If SLFRF Funds are used the report must be in the format of **Exhibit P**.

B. Litigation Reporting

If Local Agency is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Local Agency's ability to perform its obligations under this Agreement, Local Agency shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in §16.

C. Performance and Final Status

Local Agency shall submit all financial, performance and other reports to the State no later than 60 calendar days after the Final Phase Performance End Date or sooner termination of this Agreement, containing an Evaluation of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

D. Violations Reporting

Local Agency must disclose, in a timely manner, in writing to the State and FHWA, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. Penalties for noncompliance may include suspension or debarment (2 CFR Part 180 and 31 U.S.C. 3321).

9. LOCAL AGENCY RECORDS

A. Maintenance

Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Local Agency shall maintain such records for a period (the "Record Retention Period") pursuant to the requirements of the funding source and for a minimum of three (3) years following the date of submission to the State of the final expenditure report, whichever is longer, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Local Agency in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three (3) years following final disposition of such property.

B. Inspection

Records during the Record Retention Period. Local Agency shall make Local Agency Records available during normal business hours at Local Agency's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two (2) Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Local Agency's performance of its obligations under this Agreement using procedures as determined by the State. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. Local Agency shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Local Agency. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. If Local Agency enters into a subcontract with an entity that would also be considered a Subrecipient, then the subcontract entered into by Local Agency shall contain provisions permitting both Local Agency and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

D. Final Audit Report

Local Agency shall promptly submit to the State a copy of any final audit report of an audit performed on Local Agency's records that relates to or affects this Agreement or the Work, whether the audit is conducted

by Local Agency or a third party. Additionally, if Local Agency is required to perform a single audit under 2 CFR 200.501, *et seq.*, then Local Agency shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Local Agency shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Local Agency for the sole and exclusive benefit of the State, unless those State Records are otherwise publicly available at the time of disclosure or are subject to disclosure by Local Agency under CORA. Local Agency shall not, without prior written approval of the State, use for Local Agency's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Agreement. Local Agency shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. Local Agency shall immediately forward any request or demand for State Records to the State's principal representative. If Local Agency or any of its Subcontractors will or may receive the following types of data, Local Agency or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Award as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Award, if applicable. Local Agency shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

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

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

If Local Agency becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Local Agency can establish that none of Local Agency or any of its agents, employees, assigns, or Subcontractors are the cause or source of the Incident, Local Agency shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Local Agency shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which

may include, but is not limited to, developing, and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding Personally Identifying Information "PII"

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

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Local Agency shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Local Agency under this Agreement. Such a conflict of interest would arise when a Local Agency or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement. Officers, employees, and agents of Local Agency may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

12. INSURANCE

Local Agency shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Local Agency Insurance

Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA") and shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Subcontractor Requirements

Local Agency shall ensure that each Subcontractor that is a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA. Local Agency shall ensure that each Subcontractor that is not a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement all of the following insurance policies:

i. Workers' Compensation

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

ii. General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate; and
- d. \$50,000 any 1 fire.

iii. Automobile Liability

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

iv. Protected Information (this insurance requirement only applies if the Subcontractor has or will have access to State Confidential Information)

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$2,000,000 general aggregate.

v. Professional Liability Insurance (this insurance requirement only applies if the Subcontractor is providing professional services including but not limited to engineering, architectural, landscape architectural, professional surveying, industrial hygiene services, or any other commonly understood professional service)

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

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

vi. Crime Insurance

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

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

vii. Cyber/Network Security and Privacy Liability

Liability insurance covering all civil, regulatory and statutory damages, contractual damages, data breach management exposure, and any loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of breach, violation or infringement of right to privacy rights through improper use or disclosure of protected consumer data protection law,

confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$2,000,000 general aggregate.

C. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Local Agency and Subcontractors. In the event of cancellation of any commercial general liability policy, the carrier shall provide at least 10 days prior written notice to CDOT.

D. Primacy of Coverage

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

E. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Local Agency and Local Agency shall forward such notice to the State in accordance with §16 within 7 days of Local Agency's receipt of such notice.

F. Subrogation Waiver

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

G. Certificates

For each commercial insurance plan provided by Local Agency under this Agreement, Local Agency shall provide to the State certificates evidencing Local Agency's insurance coverage required in this Agreement within seven (7) Business Days following the Effective Date. Local Agency shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following the Effective Date, except that, if Local Agency's subcontract is not in effect as of the Effective Date, Local Agency shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following Local Agency's execution of the subcontract. No later than 15 days before the expiration date of Local Agency's or any Subcontractor's coverage, Local Agency shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Local Agency shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §12.

13. BREACH

A. Defined

The failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner, shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization, or similar law, by or against Local Agency, or the appointment of a receiver or similar officer for Local Agency or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §14 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and

may immediately terminate this Agreement in whole or in part or institute any other remedy in the Agreement in order to protect the public interest of the State.

14. REMEDIES

A. State's Remedies

If Local Agency is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §13.B, shall have all of the remedies listed in this §14.A. in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Local Agency's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

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

b. Payments

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

c. Damages and Withholding

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

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

Withhold payment to Local Agency until Local Agency corrects its Work.

c. Deny Payment

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

d. Removal

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

e. Intellectual Property

If any Work infringes a patent, copyright, trademark, trade secret, or other intellectual property right, Local Agency shall, as approved by the State (a) secure that right to use such Work for the State or Local Agency; (b) replace the Work with non infringing Work or modify the Work so that it becomes non infringing; or, (c) remove any infringing Work and refund the amount paid for such Work to the State.

B. Local Agency's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Local Agency, following the notice and cure period in §13.B and the dispute resolution process in §15 shall have all remedies available at law and equity.

15. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

If the initial resolution described in §15.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of CDOT as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

C. Questions of Fact

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

16. NOTICES AND REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered **(i)** by hand with receipt required, **(ii)** by certified or registered mail to such Party's principal representative at the address set forth below or **(iii)** as an email with read receipt requested to the principal representative at the email address, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §16 without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

For the State

Colorado Department of Transportation (CDOT)
Christopher Vokurka, PE I
2829 W Howard Pl
Denver, CO 80204
303-620-6385
Christopher.vokurka@state.co.us

For the Local Agency

CITY OF AURORA
Carlie Campuzano, Traffic Manager
15151 E Alameda Pkwy, Suite 3200
Aurora, CO 80012
303-739-7309
ccampuza@auroragov.org

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

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

i. Copyrights

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

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

ii. Patents

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

iii. Assignments and Assistance

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

B. Exclusive Property of the State

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

C. Exclusive Property of Local Agency

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

18. GOVERNMENTAL IMMUNITY

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

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

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

20. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

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

C. Binding Effect

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

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Digital Signatures

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

H. Entire Understanding

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

I. Jurisdiction and Venue

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

J. Modification

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

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

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

L. Order of Precedence

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

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

M. Severability

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

N. Survival of Certain Agreement Terms

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

O. Third Party Beneficiaries

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

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations.

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

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

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

U. Accessibility

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

V. Taxes

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

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

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

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

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(19), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S., applicable Local Agency law, rule or regulation.

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

Any term included in this Contract that requires the Parties to indemnify or hold Contractor harmless; requires the Parties to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy

available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

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

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

22. FEDERAL REQUIREMENTS

Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and State laws, and their implementing regulations, as they currently exist and may hereafter be amended. A summary of applicable federal provisions are attached hereto as **Exhibit F, Exhibit I, Exhibit J, Exhibit K, Exhibit M, Exhibit N** and **Exhibit O** are hereby incorporated by this reference.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Local Agency will comply with all requirements of **Exhibit G** and **Exhibit E**, Local Agency Contract Administration Checklist, regarding DBE requirements for the Work, except that if Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If Local Agency uses any State- approved DBE program for this Agreement, Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of Local Agency's DBE program does not waive or modify the sole responsibility of Local Agency for use of its program.

EXHIBIT A
SCOPE OF WORK

Name of Project: FY26 Aurora Communications Infrastructure Improvements
Project Number: STU M055-071
SubAccount #: 26182

The City of Aurora Traffic Engineering Division of Public Works has a need for up to eight (8) dark fibers along US-40, I-70, and I-225 to connect existing traffic signals on CDOT's roadway system to the City's central traffic signal system. This connection allows the City of Aurora to proactively monitor the traffic signals on CDOT's arterial roadways from a remote location, respond to alarms, assess the problem, and dispatch maintenance personnel before problems are called in by motorists. The connection will reduce both the maintenance response time and the time to repair. Connection to the fiber strands will allow the City to remotely upload/download signal timing plans for many signalized intersections, increasing the efficiency of the intersection especially during times of incident management, inclement weather, and special event management. The City will also utilize the central system to synchronize the time of day for each multiple times per day to minimize clock drift and effectively utilize offsets for signal coordination on CDOT's arterial corridors.

The scope of this project is to connect the CDOT fiber standards to the existing City central traffic signal system network. Project components will include hardware, cabling, power supplies, server and server racks, licensing, integration, and testing. The equipment will be purchased from qualified vendors and the installation work will be completed by licensed contractors.

The approach of this project is broken down into two phases. These are:

Design Phase – Local Agency Funding Only

- Final engineering and design. This is a consultant task that includes final design and engineering and the development of the full concept of the TMC space and equipment.

Construction Phase

- Installation. This will be a contractor's task. The contractor shall manage the installation details and device configurations. All equipment will be installed in the existing City of Aurora traffic operations and maintenance north satellite administration building.
- System integration. This is a contractor's task that includes server configuration, device integration, software deployment (as required), testing, and training.

If ARPA funds are used, all ARPA funds must be encumbered by December 31, 2024. All work funded by ARPA must be completed by December 31, 2026 and all bills must be submitted to CDOT for payment by January 31, 2027. These bills must be paid by CDOT by March 31, 2027.

By accepting funds for this Scope of Work, Local Agency acknowledges, understands, and accepts

the continuing responsibility for the safety of the traveling public after initial acceptance of the project. **Local Agency is responsible for maintaining and operating the scope of work described in this Exhibit A constructed under this Agreement at its own cost and expense during its useful life.**

EXHIBIT B

SAMPLE IGA OPTION LETTER

Date	State Fiscal Year	Option Letter No.
Project Code	Original Agreement #	

Vendor Name:

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous and to update encumbrance amount(s).

Option to unilaterally transfer funds from one phase to another phase.

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous, to update encumbrance amount(s), and to unilaterally transfer funds from one phase to another phase.

Option to unilaterally extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify OMB Guidance.

Option A

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to authorize the Local Agency to add a phase and to encumber funds for the phase based on changes in funding availability and authorization. The total encumbrance is (or increased) by \$0.00. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option B

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to transfer funds based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option C

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to 1) release the Local Agency to begin a phase; 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from phases based on variance in actual phase costs and

original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option D

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. This is made part of the original Agreement and replaces the Expiration Date shown on the Signature and Cover Page. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2, C-3**, etc.).

The effective date of this option letter is upon approval of the State Controller or delegate.

STATE OF COLORADO
Jared S. Polis
Department of Transportation

By: _____
Keith Stefanik, P.E., Chief Engineer
(For) Shoshana M. Lew, Executive Director

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

STATE OF COLORADO
STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Colorado Department of Transportation

Date: _____

EXHIBIT C - FUNDING PROVISIONS

City of Aurora - STU M055-071 (26182)

A. Cost of Work Estimate

The Local Agency has estimated the total cost of the Work to be \$920,000.00, which is to be funded as follows:

1. FUNDING		
a.	Federal Funds (80% of STBG Award)	\$736,000.00
b.	Local Agency Funds (20% of STBG Award)	\$184,000.00
TOTAL FUNDS ALL SOURCES		\$920,000.00
2. OMB UNIFORM GUIDANCE		
a.	Federal Award Identification Number (FAIN):	TBD
b.	Name of Federal Awarding Agency:	FHWA
c.	Local Agency Unique Entity Identifier	KVZATDBDECG8
d.	Assistance Listing # Highway Planning and Construction	ALN 20.205
e.	Is the Award for R&D?	No
f.	Indirect Cost Rate (if applicable)	N/A
g.	Amount of Federal Funds Obligated by this Action:	\$0.00
h.	Amount of Federal Funds Obligated to Date (including this Action):	\$0.00
3. ESTIMATED PAYMENT TO LOCAL AGENCY		
a.	Federal Funds Budgeted	\$736,000.00
b.	Less Estimated Federal Share of CDOT-Incurred Costs	\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		80% \$736,000.00
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY		20% \$184,000.00
TOTAL PROJECT ESTIMATED FUNDING		100% \$920,000.00
4. FOR CDOT ENCUMBRANCE PURPOSES		
a.	Total Encumbrance Amount (Federal funds + Local Agency funds)	\$920,000.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$0.00
NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS		\$920,000.00

Note: No funds are currently available. Design and Construction funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.

WBS Element 26182.10.30	Performance Period Start*/End Date TBD-TBD	Design 3020	\$0.00
WBS Element 26182.20.10	Performance Period Start*/End Date TBD- TBD	Const. 3301	\$0.00

* The Local Agency should not begin work until all three (3) of the following are in place: 1) Phase Performance Period Start Date; 2) the execution of the document encumbering funds for the respective phase; and 3) Local Agency receipt of the official Notice to Proceed. Any work performed before these three (3) milestones are achieved will not be reimbursable.

B. Funding Ratios

The funding ratio for the federal funds for this Work is 80% federal funds to 20% Local Agency funds, and this ratio applies only to the \$920,000.00 that is eligible for federal funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$920,000.00, and additional federal funds are not available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than \$920,000.00, then the amounts of Local Agency and federal

funds will be decreased in accordance with the funding ratio described in **A1**. **This applies to the entire scope of Work.**

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$736,000.00. For CDOT accounting purposes, the federal funds of \$736,000.00 and the Local Agency funds of \$184,000.00 will be encumbered for a total encumbrance of \$920,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total budget is \$920,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work.**

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving \$750,000 or more from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of 2 CFR part 200, subpart F (Audit Requirements) see also, 49 CFR 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$750,000

If the Local Agency expends less than \$750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure of \$750,000 or more-Highway Funds Only

If the Local Agency expends \$750,000 or more, in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure of \$750,000 or more-Multiple Funding Sources

If the Local Agency expends \$750,000 or more in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

EXHIBIT D


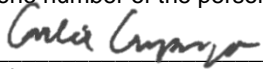
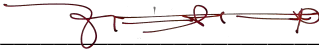
LOCAL AGENCY RESOLUTION (IF APPLICABLE)

**Exhibit E -
Local Agency Contract Administration Checklist**

COLORADO DEPARTMENT OF TRANSPORTATION			
LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. STU M055-071	STIP No. SDR9000	Project Code 26182	Region 1
Project Location City of Aurora			Date 04/25/2024
Project Description FY26-Aurora Communications Improvements			
Local Agency Aurora	Local Agency Project Manager Carlie Campuzano		
CDOT Resident Engineer Alvin Stamp	CDOT Project Manager Chris Vokurka		
INSTRUCTIONS:			
This checklist shall be used to establish the contractual administrative responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency Agreement. Section numbers (NO.) correspond to the applicable chapters of the <i>CDOT Local Agency Desk Reference (Local Agency Manual)</i> . LAWR numbers correspond to the applicable flowchart in the Local Agency Web Resource.			
The checklist shall be prepared by placing an X under the responsible party, opposite each of the tasks. The X denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, # will denote that CDOT must concur or approve.			
Tasks that will be performed by Headquarters staff are indicated with an X in the CDOT column under Responsible Party. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.			
The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.			
Note: Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.			

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

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
4	5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	#
5	5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
3	5.9	Obtain Utility and Railroad Agreements	X	
3	5.10	Conduct Final Office Review (FOR)	X	
3A	5.11	Justify Force Account Work by the Local Agency	X	#
3B	5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	#
3	5.13	Document Design Exceptions - CDOT Form 464	X	#
3	5.14	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	X	
	5.15	Ensure Authorization of Funds for Construction		X
	5.16	Electronic Signatures	X	
	5.17	Records Management	X	
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE				
3	6.1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist).		X
	6.2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> 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.)  <u>5/13/2024</u> CDOT Resident Engineer (Signature on File) Date		X
	6.3	Set On-the-Job Training Goals (CDOT Region EEO/Civil Rights Specialist) "NA", if Not Applicable		X
3	6.4	Title VI Assurances	X	#
6,7		Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)	X	#
ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS				
6,7	7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	#
7	7.2	Advertise for Bids	X	#
7	7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7	7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7	7.5	Open Bids	X	
7	7.6	Process Bids for Compliance		
		Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals. <i>Please write in "NA", if Not Applicable.</i>		X
		Evaluate CDOT Form 1416 - Good Faith Effort Report and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals. <i>"NA", if Not Applicable.</i>		X
		Submit required documentation for CDOT award concurrence	X	
	7.7	Concurrence from CDOT to Award		X
	7.8	Approve Rejection of Low Bidder		X
7,8	7.9	Award Contract	X	#
8	7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT				
8	8.1	Issue Notice to Proceed to the Contractor	X	#
8	8.2	Project Safety	X	
8	8.3	Conduct Conferences:		
		Pre-construction Conference (Appendix B) • Fabrication Inspection Notifications	X	
		Pre-survey • Construction staking • Monumentation	X X	
		Partnering (Optional)	X	X
		Structural Concrete Pre-Pour (Agenda is in CDOT Construction Manual)	X	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
		Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
		HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
8	8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
9	8.5	Supervise Construction		
		A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Carlie Campuzano  303-739-7309 Local Agency Professional Engineer or CDOT Resident Engineer Phone number	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	
		Fabrication Inspection and documentation	X	
9	8.6	Approve Shop Drawings	X	#
9	8.7	Perform Traffic Control Inspections	X	
9	8.8	Perform Construction Surveying	X	
9	8.9	Monument Right-of-Way	X	
9,9A	8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent) Provide the name and phone number of the person authorized for this task. Carlie Campuzano  303-739-7309 Local Agency Representative Phone number	X	#
9	8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	#
9B	8.12	Prepare and Authorize Change Orders	X	#
9B	8.13	Submit Change Order Package to CDOT	X	
9A	8.14	Prepare Local Agency Reimbursement Requests	X	
9	8.15	Monitor Project Financial Status	X	#
9	8.16	Prepare and Submit Monthly Progress Reports	X	#
9	8.17	Resolve Contractor Claims and Disputes	X	#
	8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task.  303-512-5110 CDOT Resident Engineer Phone number		X
9	8.19	Ongoing Oversight of DBE Participation		
MATERIALS				
9,9C	9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	X	#
9,9C	9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	X X	X
9C	9.3	Perform Project Acceptance Samples and Tests	X	
9C	9.4	Perform Laboratory Verification Tests	X	
9C	9.5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
9C	9.6	Approve Sources of Materials	X	
9C	9.7	Independent Assurance Testina (IAT). Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/> <ul style="list-style-type: none"> • Generate IAT schedule • Schedule and provide notification • Conduct IAT 	X X	X
9C	9.8	Approve mix designs <ul style="list-style-type: none"> • Concrete • Hot mix asphalt 	X X	# #
9C	9.9	Check Final Materials Documentation	X	#
9C	9.10	Complete and Distribute Final Materials Documentation	X	
CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE				
9	10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
8,9	10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to CDOT EEO/Civil Rights Specialist	X	#
9	10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
9	10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
9	10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. <ul style="list-style-type: none"> • Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements. • Complete CDOT Form 838 – OJT Trainee / Apprentice Record. • Complete CDOT Form 200 - OJT Training Questionnaire 	X	
9	10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	#
9	10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS				
	11.1	Conduct Final Project Inspection.(Resident Engineer or CDOT PM with mandatory Local Agency participation.) Resident Engineer initiates CDOT Form 1212 - Final Acceptance Report.		X
10	11.2	Write Final Project Acceptance Letter	X	
10	11.3	Advertise for Final Settlement	X	
11	11.4	Prepare and Distribute Final As-Constructed Plans	X	
11	11.5	Prepare EEO Certification and Collect EEO Forms	X	
11	11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11	11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	X
11	11.8	Obtain CDOT Form 1419 from the Contractor and Submit to the CDOT Project Manager	X	
	11.9	(FHWA Form 47 discontinued)	N/A	N/A
	11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		X
11	11.11	Process Final Payment	X	
	11.12	Complete and Submit CDOT Form 950 - Project Closure	X	X
11	11.13	Retain Project Records	X	
11	11.14	Retain Final Version of Local Agency Contract Administration Checklist	X	X

cc: CDOT Resident Engineer/Project Manager
CDOT Region Program Engineer
CDOT Region EEO/Civil Rights Specialist

CDOT Region Materials Engineer
CDOT Contracts and Market Analysis Branch
Local Agency Project Manager

EXHIBIT F

CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub- recipients shall certify and disclose accordingly.

EXHIBIT G

DISADVANTAGED BUSINESS ENTERPRISES

SECTION 1. Policy

It is the policy of the Colorado Department of Transportation (CDOT) that Disadvantaged Business Enterprises (DBEs) shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Accordingly, CDOT's federally approved DBE Program Plan shall apply to this agreement.

SECTION 2. Subrecipient and Participant Obligation.

The Local Agency and its subrecipients agrees to ensure that DBEs certified through the Colorado Unified Certification Program have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement.

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

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

SECTION 3. DBE Program.

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

Local Agency requirements can be found at:

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

EXHIBIT H

LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded Local Agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states “The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost” and according to 23 CFR 172.5 “Price shall not be used as a factor in the analysis and selection phase.” Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a Local Agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting Local Agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting Local Agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The Local Agency shall not advertise any federal aid contract without prior review by the CDOT Regional Civil Rights Office (RCRO) to determine whether the contract shall be subject to a DBE contract goal. If the RCRO determines a goal is necessary, then the Local Agency shall include the goal and the applicable provisions within the advertisement. The Local Agency shall not award a contract to any Contractor or Consultant without the confirmation by the CDOT Civil Rights and Business Resource Center that the Contractor or Consultant has demonstrated good faith efforts. The Local Agency shall work with the CDOT RCRO to ensure compliance with the established terms during the performance of the contract.
5. The Local Agency shall require that all contractors pay subcontractors for satisfactory performance of work no later than 30 days after the receipt of payment for that work from the contractor. For construction projects, this time period shall be reduced to seven days in accordance with Colorado Revised Statute 24-91-103(2). If the Local Agency withholds retainage from contractors and/or allows contractors to withhold retainage from subcontractors, such retainage provisions must comply with 49 CFR 26.29.
6. Payments to all Subconsultants shall be made within thirty days of receipt of payment from [the Local Agency] or no later than ninety days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify [the Local Agency] no later than the required date for payment. Such notification shall include the amount disputed and justification for the withholding. The Consultant shall maintain records of payment that show amounts paid to all Subconsultants. Good cause does not include the Consultant's failure to submit an invoice to the Local Agency or to deposit payments made.
7. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,

- b. Approach to the Work,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services.

Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
- b. Past performance,
- c. Willingness to meet the time and budget requirement,
- d. Location,
- e. Current and projected work load,
- f. Volume of previously awarded contracts, and
- g. Involvement of minority consultants.

8. Once a consultant is selected, the Local Agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.

9. A qualified Local Agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the Local Agency prepares a performance evaluation (a CDOT form is available) on the consultant.

CRS §§24-30-1401 THROUGH 24-30-1408, 23 CFR PART 172, AND P.D. 400.1,
PROVIDE ADDITIONAL DETAILS FOR COMPLYING WITH THE PRECEEDING
EIGHT (8) STEPS.

EXHIBIT I**REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

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

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements (1) Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements (1) Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

4. **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT J
ADDITIONAL FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

Clean Air Act

Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts more than \$100,000).

Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally assisted programs.

Nondiscrimination

The Local Agency shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color national origin, sex, age or disability. Prior to the receipt of any Federal financial assistance from CDOT, the Local Agency shall execute the attached Standard DOT Title VI assurance. As appropriate, the Local Agency shall include Appendix A, B, or C to the Standard DOT Title VI assurance in any contract utilizing federal funds, land, or other aid. The Local Agency shall also include the following in all contract advertisements:

The [Local Agency], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (79 Stat. 252, 42 US.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, DBEs will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for any award.

ADA

In any contract utilizing federal funds, land, or other federal aid, the Local Agency shall require the federal-aid recipient or contractor to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees, and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions §22

The Contractor will include the provisions of this Exhibit J in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

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SAMPLE

The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination

Assurances for Local Agencies

DOT Order No. 1050.2A

The [Local Agency] (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Colorado Department of Transportation and the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

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

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including the FHWA, FTA, or FAA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FHWA, FTA, and FAA assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated or will be (with regard to a "facility") operated or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all FHWA, FTA and FAA programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
3. "The [Local Agency] in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity

4. to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."
5. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
6. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
7. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
8. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
9. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
10. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
11. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
12. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the [Local Agency] also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA, FTA, and FAA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by CDOT, FHWA, FTA, or FAA. You must keep records, reports, and submit the material for review

upon request to CDOT, FHWA, FTA, or FAA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

[Local Agency] gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FHWA, FTA, and FAA. This ASSURANCE is binding on [Local Agency], other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FHWA, FTA, and FAA funded programs. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

(Name of Recipient)

by _____
(Signature of Authorized Official)

DATED _____

APPENDIX A

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

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

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the [Local Agency] will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), the Regulations for the Administration of (*Name of Appropriate Program*), and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the [Local Agency] all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto [Local Agency] and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the [Local Agency] its successors and assigns.

The [Local Agency], in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the [Local Agency] will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [,] and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the [Local Agency] pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. *
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the [Local Agency] will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the [Local Agency] and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by [Local Agency] pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non- discrimination covenants, [Local Agency] will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued. *
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will there upon revert to and vest in and become the absolute property of [Local Agency] of Transportation and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

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

Pertinent Non-Discrimination Authorities:

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

EXHIBIT K

FFATA SUPPLEMENTAL FEDERAL PROVISIONS

**State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13**

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

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. “Award” means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

1.1.1. Grants;

1.1.2. Contracts;

1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);

1.1.4. Loans;

1.1.5. Loan Guarantees;

1.1.6. Subsidies;

1.1.7. Insurance;

1.1.8. Food commodities;

1.1.9. Direct appropriations;

1.1.10. Assessed and voluntary contributions; and

1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

1.1.12. Technical assistance, which provides services in lieu of money;

1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;

1.1.14. Any award classified for security purposes; or

1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. “Contract” means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

1.3. “Contractor” means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.

1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpartC;

1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;

1.5.2. A foreign public entity;

1.5.3. A domestic or foreign non-profit organization;

- 1.5.4. A domestic or foreign for-profit organization; and
- 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109- 282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17 **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
 - 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
 - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 4.2. In the preceding fiscal year, Contractor received:
 - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

- 7.1 To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:
- 7.1.1** Subrecipient DUNS Number;
 - 7.1.2** Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
 - 7.1.3** Subrecipient Parent DUNS Number;
 - 7.1.4** Subrecipient’s address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
 - 7.1.5** Subrecipient’s top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 7.1.6** Subrecipient’s Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.
- 7.2 To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:
- 7.2.1** Subrecipient’s DUNS Number as registered in SAM.
 - 7.2.2** Primary Place of Performance Information, including: Street Address, City, State, Country, Zipcode + 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 arrangements 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"/>	
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"/>	
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"/>	
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"/>	
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"/>	
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>	
9 Has your entity returned lapsed* funds? *Funds "lapse" when they are no longer available for obligation.		<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"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		≥ 6	2 to 5	< 2		
IMPACT ASSESSMENT				Yes	No	N/A
18	For this upcoming federal award or in the immediate future, does your entity have any potential conflicts of interest* in accordance with applicable Federal awarding agency policy? If Yes, please disclose these conflicts in writing, along with supporting information, and submit with this form. (*Any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Subrecipient's obligations to the State.)	<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"/>
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"/>
<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." SAMExclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

6.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

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

7.1 Event of Default. Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute an event of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

8. Effective Date. The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.

9. Performance Measurement. The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes.

The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

Exhibit N
Federal Treasury Provisions

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury’s Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.
- 1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
 - 2.1.1. “Award” means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
 - 2.1.2. “Entity” means:
 - 2.1.2.1. a Non-Federal Entity;
 - 2.1.2.2. a foreign public entity;
 - 2.1.2.3. a foreign organization;
 - 2.1.2.4. a non-profit organization;
 - 2.1.2.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
 - 2.1.2.6. a foreign non-profit organization (only for 2 CFR part 170) only);
 - 2.1.2.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
 - 2.1.2.8. a foreign for-profit organization (for 2 CFR part 170 only).
 - 2.1.3. “Executive” means an officer, managing partner or any other employee in a management position.
 - 2.1.4. “Expenditure Category (EC)” means the category of eligible uses as defined by the US Department of Treasury in “Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds” report available at www.treasury.gov.

- 2.1.5. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
- 2.1.6. “Grant” means the Grant to which these Federal Provisions are attached.
- 2.1.7. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.8. “Non-Federal Entity” means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 2.1.9. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
- 2.1.9.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.9.2. Is not organized primarily for profit; and
 - 2.1.9.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.10. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.11. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.12. “Prime Recipient” means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.13. “Subaward” means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. “Subrecipient” or “Subgrantee” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.15. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
- 2.1.15.1. Salary and bonus;
 - 2.1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the

fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

2.1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;

2.1.15.4. Change in present value of defined benefit and actuarial pension plans;

2.1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;

2.1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.

2.1.16. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.

2.1.17. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

2.1.18. “Unique Entity ID” means the Unique Entity ID established by the federal government for a Grantee at <https://sam.gov/content/home>.

3. COMPLIANCE.

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

3.2. Per US Treasury Final Award requirements, grantee programs or services must not include a term or conditions that undermines efforts to stop COVID-19 or discourages compliance with recommendations and CDC guidelines.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND UNIQUE ENTITY ID (UEI) REQUIREMENTS.

4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually.

4.2. UEI. Grantee shall provide its Unique Entity ID to its Prime Recipient, and shall update Grantee’s information in Sam.gov at least annually.

5. TOTAL COMPENSATION.

5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and

5.1.2. In the preceding fiscal year, Grantee received:

- 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.3. 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

- 6.1. If Grantee is a Subrecipient of the Award pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below \$30,000 no reporting required; if more than \$30,000 and less than \$50,000 then FFATA reporting is required; and, \$50,000 and above SLFRF reporting is required.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. Grantee shall report as set forth below.
 - 8.1.1. Grantee shall use the SLFRF Subrecipient Quarterly Report Workbook as referenced in Exhibit P to report to the State Agency within ten (10) days following each quarter ended September, December, March and June. Additional information on specific requirements are detailed in the SLFRF Subrecipient Quarterly Report Workbooks and "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

EC 1 – Public Health

All Public Health Projects

- a) Description of structure and objectives
- b) Description of relation to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

COVID-19 Interventions and Mental Health (1.4, 1.11, 1.12, 1.13)

- a) Amount of total project used for evidence-based programs
- b) Evaluation plan description

COVID-19 Small Business Economic Assistance (1.8)

- a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

- a) Number of non-profits served

COVID-19 Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (1.10)

- a) Sector of employer
- b) Purpose of funds

EC 2 – Negative Economic Impacts

All Negative Economic Impacts Projects

- a) Description of project structure and objectives
- b) Description of project's response to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Amount of total project used for evidence-based programs and description of evaluation plan (*not required for 2.5, 2.8, 2.21-2.24, 2.27-2.29, 2.31, 2.34-2.36*)
- e) Number of workers enrolled in sectoral job training programs
- f) Number of workers completing sectoral job training programs
- g) Number of people participating in summer youth employment programs
- h) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

Household Assistance (2.1-2.8)

- a) Number of households served

- b) Number of people or households receiving eviction prevention services (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*
- c) Number of affordable housing units preserved or developed (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*

Healthy Childhood Environments (2.11-2.13)

- a) Number of children served by childcare and early learning *(Federal guidance may change this requirement in July 2022)*
- b) Number of families served by home visiting *(Federal guidance may change this requirement in July 2022)*

Education Assistance (2.14, 2.24-2.27)

- a) National Center for Education Statistics (“NCES”) School ID or NCES District ID
- b) Number of students participating in evidence-based programs *(Federal guidance may change this requirement in July 2022)*

Housing Support (2.15, 2.16, 2.18)

- a) Number of people or households receiving eviction prevention services *(Federal guidance may change this requirement in July 2022)*
- b) Number of affordable housing units preserved or developed *(Federal guidance may change this requirement in July 2022)*

Small Business Economic Assistance (2.29-2.33)

- a) Number of small businesses served

Assistance to Non-Profits (2.34)

- a) Number of non-profits served

Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (2.35-2.36)

- a) Sector of employer
- b) Purpose of funds
- c) If other than travel, tourism and hospitality (2.36) – description of hardship

EC 3 – Public Health – Negative Economic Impact: Public Sector Capacity

Payroll for Public Health and Safety Employees (EC 3.1)

- a) Number of government FTEs responding to COVID-19

Rehiring Public Sector Staff (EC 3.2)

- a) Number of FTEs rehired by governments

EC 4 – Premium Pay

All Premium Pay Projects

- a) List of sectors designated as critical by the chief executive of the jurisdiction, if beyond those listed in the final rule
- b) Numbers of workers served
- c) Employer sector for all subawards to third-party employers
- d) Written narrative justification of how premium pay is responsive to essential work during the public health emergency for non-exempt workers or those making over 150 percent of the state/county’s average annual wage

- e) Number of workers to be served with premium pay in K-12 schools

EC 5 – Infrastructure Projects

All Infrastructure Projects

- a) Projected/actual construction start date (month/year)
- b) Projected/actual initiation of operations date (month/year)
- c) Location (for broadband, geospatial data of locations to be served)
- d) Projects over \$10 million
 - i. Prevailing wage certification or detailed project employment and local impact report
 - ii. Project labor agreement certification or project workforce continuity plan
 - iii. Prioritization of local hires
 - iv. Community benefit agreement description, if applicable

Water and sewer projects (EC 5.1-5.18)

- a) National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- b) Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
- c) Median Household Income of service area
- d) Lowest Quintile Income of the service area

Broadband projects (EC 5.19-5.21)

- a) Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
 - i. If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
 - ii. Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- b) Additional programmatic data will be required for broadband projects and will be defined in a subsequent version of the US Treasury Reporting Guidance, including, but not limited to (*Federal guidance may change this requirement in July 2022*):
 - i. Number of households (broken out by households on Tribal lands and those not on Tribal lands) that have gained increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, with the number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download and number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
 - ii. Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) that have projected increased access to broadband meeting the minimum speed standards in areas that previously

lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization, with the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

- iii. Narrative identifying speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering, technology to be deployed, miles of fiber, cost per mile, cost per passing, number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download, number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload, and number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization. Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

All Expenditure Categories

- a) Program income earned and expended to cover eligible project costs

8.1.2. A Subrecipient shall report the following data elements to Prime Recipient no later than five days after the end of the month following the month in which the Subaward was made.

- 8.1.2.1. Subrecipient Unique Entity ID;
- 8.1.2.2. Subrecipient Unique Entity ID if more than one electronic funds transfer (EFT) account;
- 8.1.2.3. Subrecipient parent's organization Unique Entity ID;
- 8.1.2.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

- 8.1.2.5. Subrecipient’s top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 8.1.2.6. Subrecipient’s Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.
- 8.1.3. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, the following data elements:
- 8.1.3.1. Subrecipient’s Unique Entity ID as registered in SAM.
 - 8.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
 - 8.1.3.3. Narrative identifying methodology for serving disadvantaged communities. See the "Project Demographic Distribution" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. This requirement is applicable to all projects in Expenditure Categories 1 and 2.
 - 8.1.3.4. Narrative identifying funds allocated towards evidenced-based interventions and the evidence base. See the “Use of Evidence” section in the “Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds” report available at www.treasury.gov. See section 8.1.1 for relevant Expenditure Categories.
 - 8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the public health and negative economic impacts of COVID-19. This requirement is applicable to Expenditure Categories 1 and 2. For aid to travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12), also provide the sector of employer, purpose of funds, and if not travel, tourism and hospitality a description of the pandemic impact on the industry.
 - 8.1.3.6. Narrative identifying the sector served and designated as critical to the health and well-being of residents by the chief executive of the jurisdiction and the number of workers expected to be served. For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county’s average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is higher, OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions, include justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19 but should not include personally identifiable information. This requirement applies to EC 4.1, and 4.2.
 - 8.1.3.7. For infrastructure projects (EC 5), or capital expenditures in any expenditure category, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and location (for broadband, geospatial location data). For projects over \$10 million:
 - 8.1.3.8. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less

than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.

- 8.1.3.8.1. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.
 - 8.1.3.8.2. Whether the project prioritizes local hires.
 - 8.1.3.8.3. Whether the project has a Community Benefit Agreement, with a description of any such agreement.
- 8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor's Office and Office of the State Controller. The State of Colorado may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Exhibit Q – SLFRF Reporting Modification Form.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.
- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS.

- 10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

11. SINGLE AUDIT REQUIREMENTS.

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

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

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.
 - 12.1.1. [Applicable to federally assisted construction Agreements.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.
 - 12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).

- 12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements,” and any implementing regulations issued by the Federal Awarding Agency.
- 12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 12.1.7. Never Contract with the Enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never Contract with the Enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- 12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

- 12.1.9. Title VI of the Civil Rights Act. The Subgrantee, Contractor, Subcontractor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury’s Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S. C. § 2000d et seq., as implemented by the Department of the Treasury’s Title VI regulations, 31 CRF Part 22, and herein incorporated by reference and made part of this Agreement or agreement.

13. CERTIFICATIONS.

- 13.1. Subrecipient Certification. Subrecipient shall sign a “State of Colorado Agreement with Recipient of Federal Recovery Funds” Certification Form in Exhibit E and submit to State Agency with signed grant agreement.
- 13.2. Unless prohibited by Federal statutes or regulations, Prime Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Grantee with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

15. EVENT OF DEFAULT AND TERMINATION.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.
- 15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
 - 15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
 - 15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

- 15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- 15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or
- 15.2.5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

EXHIBIT O

AGREEMENT WITH SUBSUBRECIPIENT OF FEDERAL RECOVERY FUNDS

Section 602(b) of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021), authorizes the Department of the Treasury (Treasury) to make payments to certain Subrecipients from the Coronavirus State Fiscal Recovery Fund. The State of Colorado has signed and certified a separate agreement with Treasury as a condition of receiving such payments from the Treasury. This agreement is between your organization and the State and your organization is signing and certifying the same terms and conditions included in the State’s separate agreement with Treasury. Your organization is referred to as a Subrecipient.

As a condition of your organization receiving federal recovery funds from the State, the authorized representative below hereby (i) certifies that your organization will carry out the activities listed in section 602(c) of the Act and (ii) agrees to the terms attached hereto. Your organization also agrees to use the federal recovery funds as specified in bills passed by the General Assembly and signed by the Governor.

Under penalty of perjury, the undersigned official certifies that the authorized representative has read and understood the organization’s obligations in the Assurances of Compliance and Civil Rights Requirements, that any information submitted in conjunction with this assurances document is accurate and complete, and that the organization is in compliance with the nondiscrimination requirements.

Subrecipient Name _____

Authorized Representative: _____

Title: _____

Signature: _____

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
TERMS AND CONDITIONS

1. Use of Funds.
 - a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 602(c) of the Social Security Act (the Act) and Treasury’s regulations implementing that section and guidance.
 - b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury’s implementing regulations, Subrecipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award. Subrecipient also agrees to comply with any reporting requirements established by the Governor’s Office and Office of the State Controller.
4. Maintenance of and Access to Records
 - a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), Treasury’s regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs. Subrecipient shall follow guidance on administrative costs issued by the Governor’s Office and Office of the State Controller.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.
8. Conflicts of Interest. The State of Colorado understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy

is applicable to each activity funded under this award. Subrecipient and Contractors must disclose in writing to the Office of the State Controller or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Office of the State Controller shall disclose such conflict to Treasury.

9. Compliance with Applicable Law and Regulations.

a. Subrecipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

- i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
- ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and Subcontractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury’s implementing regulation at 31 C.F.R. Part 19.
- 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 subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.
3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Contractors, Subcontractors, successors, transferees, and assignees:

The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.
7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.
9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of

discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub- Subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

EXHIBIT P

SLFRF SUBRECIPIENT QUARTERLY REPORT

1. SLFRF SUBRECIPIENT QUARTERLY REPORT WORKBOOK

- 1.1 The SLFRF Subrecipient Quarterly Report Workbook must be submitted to the State Agency within ten (10) days following each quarter ended September, December, March and June. The SLFRF Subrecipient Quarterly Report Workbook can be found at:
<https://osc.colorado.gov/american-rescue-plan-act> (see SLFRF Grant Agreement Templates tab)

EXHIBIT Q

SAMPLE SLFRF REPORTING MODIFICATION FORM

Local Agency:		Agreement No:	
Project Title:		Project No:	
Project Duration: To:		From:	
State Agency:	CDOT		

This form serves as notification that there has been a change to the reporting requirements set forth in the original SLFRF Grant Agreement.

The following reporting requirements have been (add/ remove additional rows as necessary):

Updated Reporting Requirement (Add/Delete/Modify)	Project Number	Reporting Requirement

By signing this form, the Local Agency agrees to and acknowledges the changes to the reporting requirements set forth in the original SLFRF Grant Agreement. All other terms and conditions of the original SLFRF Grant Agreement, with any approved modifications, remain in full force and effect. Grantee shall submit this form to the State Agency within 10 business days of the date sent by that Agency.

 Local Agency

 Date

 CDOT Program Manager

 Date

Exhibit R
APPLICABLE FEDERAL AWARDS

FEDERAL AWARD(S) APPLICABLE TO THIS GRANT AWARD

Federal Awarding Office	US Department of the Treasury
Grant Program	Coronavirus State and Local Fiscal Recovery Funds
Assistance Listing Number	21.027
Federal Award Number	SLFRP0126
Federal Award Date *	May 18, 2021
Federal Award End Date	December 31, 2024
Federal Statutory Authority	Title VI of the Social Security Act, Section 602
Total Amount of Federal Award (this is <u>not</u> the amount of this grant agreement)	\$3,828,761,790

* Funds may not be available through the Federal Award End Date subject to the provisions in §2 and §5 below.

EXHIBIT S

PII Certification

STATE OF COLORADO

**LOCAL AGENCY CERTIFICATION FOR ACCESS TO PII THROUGH A
DATABASE OR AUTOMATED NETWORK**

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

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

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT T

CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

Checklist for required exhibits due to funding sources. Required Exhibits are dependent on the source of funding. This is a guide to assist in the incorporation and completion of Exhibits in relation to funding sources.

Exhibit	Funding only from FHWA	Funding only from ARPA	FHWA and ARPA Funding
EXHIBIT A, SCOPE OF WORK	✓	✓	✓
EXHIBIT B, SAMPLE OPTION LETTER	✓	✓	✓
EXHIBIT C, FUNDING PROVISIONS	✓	✓	✓
EXHIBIT D, LOCAL AGENCY RESOLUTION (IF APPLICABLE)	✓	✓	✓
EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST	✓	✓	✓
EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS	✓		✓
EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE	✓		✓
EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES	✓		✓
EXHIBIT I, FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS	✓		✓
EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS	✓		✓
EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS	✓	✓	✓
EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM	✓	✓	✓
EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS	✓		✓

EXHIBIT N, FEDERAL TREASURY PROVISIONS		✓	✓
EXHIBIT O, AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS		✓	✓
EXHIBIT P, SLFRF SUBRECIPIENT QUARTERLY REPORT		✓	✓
EXHIBIT Q, SLFRF REPORTING MODIFICATION FORM		✓	✓
EXHIBIT R, APPLICABLE FEDERAL AWARDS		✓	✓
EXHIBIT S, PII CERTIFICATAION	✓	✓	✓
EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE	✓	✓	✓

RESOLUTION NO. R2024- _____

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO,
FOR THE INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF AURORA AND
COLORADO DEPARTMENT OF TRANSPORTATION FOR THE COMMUNICATIONS
INFRASTRUCTURE UPDATE PROJECT

WHEREAS, the City of Aurora, Colorado (the “City”), and the State of Colorado Department of Transportation (“CDOT”), collectively “the Parties”, as government agencies, are authorized by the provisions of Colo. Const., art. XIV, § 18(2)(a) and C.R.S. §§ 29-1-201, et seq., to contract with one another to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the City applied for three Denver Regional Council of Governments (DRCOG) 2024-2027 Regional Transportation Operations and Technology (RTO&T) grants, administered by CDOT; and

WHEREAS, The City and CDOT desire to enter into the intergovernmental agreement for CDOT to administer one of the three grant projects; and

WHEREAS, the Communications Infrastructure Upgrade Project will install fiber optic conduit and cable to connect to twelve (12) traffic signals and two (2) City facilities; and

WHEREAS, the project will improve bandwidth and reliability for the City’s traffic data devices and will allow for traffic signal timing to be updated more quickly; and

WHEREAS, the project is funded with 80% grant funds and 20% local match with DRCOG contributing \$736,000 and the City contributing \$197,000 (\$184,000 in match funds with an additional \$87,000 in overmatch funds); and

WHEREAS, Section 10-12 of the City Charter authorizes the City Council, by resolution, to enter into contracts or agreements, or amendments thereto, with other governmental units or special districts for the joint use of buildings, equipment, or facilities, and for the furnishing or receiving of services.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, THAT:

Section 1. The Intergovernmental Agreement between the City of Aurora and Colorado Department of Transportation for the Communications Infrastructure Update Project is hereby approved.

Section 2. The Mayor and City Clerk are hereby authorized to execute the intergovernmental agreement in substantially the form presented at this meeting with such technical additions, deletions, and variations as may be deemed necessary or appropriate by the City Attorney.

Section 3. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this _____ day of _____, 2024.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:

Michelle Gardner RLA

MICHELLE GARDNER, Sr. Assistant City Attorney



CITY OF AURORA

Council Agenda Commentary

Item Title: Intergovernmental Agreement (IGA) with Colorado Department of Transportation (CDOT) for the Traffic Management Center Project (Resolution)
Item Initiator: Carlie Campuzano, Traffic Manager, Public Works
Staff Source/Legal Source: Carlie Campuzano, Traffic Manager, Public Works / Michelle Gardner, Senior Assistant City Attorney
Outside Speaker: N/A
Council Goal: 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

COUNCIL MEETING DATES:

Study Session: 8/26/2024

Regular Meeting: 9/9/2024

2nd Regular Meeting (if applicable): N/A

Item requires a Public Hearing: Yes No

ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Stephanie Hancock, Council Member
Carlie Campuzano, Traffic Manager, Public Works / Michelle Gardner, Senior Assistant City Attorney

ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field above.

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Transportation, Airports & Public Works

Policy Committee Date: 8/15/2024

Action Taken/Follow-up: (Check all that apply)

- Recommends Approval Does Not Recommend Approval
 Forwarded Without Recommendation Minutes Not Available
 Minutes Attached

HISTORY *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

City staff reviews all known grant opportunities and compares to project opportunities within the city in a effort to leverage funding for the greater benefit of Aurora residents. In past Regional Transportation Operations and Technology (RTO&T) calls, staff has had great success in applying for and receiving grants.

At the August 24, 2023 meeting of the Transportation, Airports, and Public Works Policy Committee, staff provided an overview of the Denver Regional Council of Governments (DRCOG) FY2022-2027 RTO&T program application calls. (minutes attached)

At the August 15, 2024 meeting of the Transportation, Airports, and Public Works Policy Committee, staff presented this intergovernmental agreement (IGA). Committee members unanimously supported moving the IGA forward to Study Session.

ITEM SUMMARY *(Brief description of item, discussion, key points, recommendations, etc.)*

The City of Aurora applied for three Denver Regional Council of Governments (DRCOG) 2024-2027 Regional Transportation Operations and Technology (RTO&T) grants, administered by the Colorado Department of Transportation (CDOT). This item is an intergovernmental agreement with CDOT to administer one of the three grant projects.

The Traffic Management Center grant application includes construction funds to retrofit space at the existing traffic signal workshop into a functional space where data can be reviewed and evaluated. This will help staff to make faster, data driven decisions about traffic operations and maintenance.

This project is funded with 80% grant funds and 20% local match. DRCOG will contribute \$1,101,000 and the City of Aurora will contribute \$495,000 (\$275,250 in match funds and an additional \$219,750 in overmatch funds).

FISCAL IMPACT

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact Budgeted Expenditure Impact Non-Budgeted Expenditure Impact
 Workload Impact No Fiscal Impact

REVENUE IMPACT

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

BUDGETED EXPENDITURE IMPACT

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

City Match funds are budgeted in 49660 – Traffic Management System/Center

NON-BUDGETED EXPENDITURE IMPACT

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

WORKLOAD IMPACT

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

N/A. Workload will be absorbed into FTE positions in the Traffic Engineering and Operations units of Public Works Transportation and Mobility.

QUESTIONS FOR COUNCIL

Does the City Council support moving forward the resolution for the Intergovernmental Agreement between the Colorado Department of Transportation and the City of Aurora for the Traffic Management Center Project to the next available Regular Meeting?

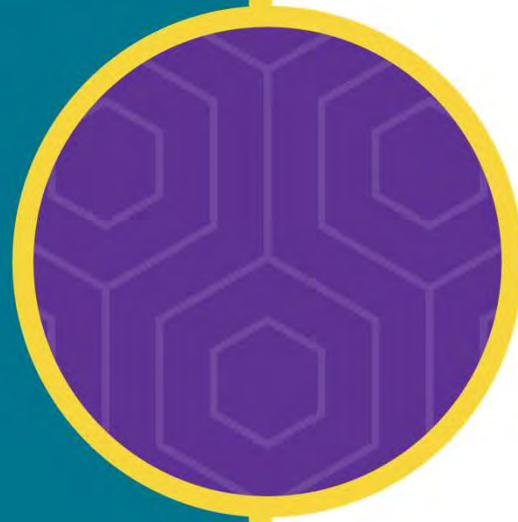
LEGAL COMMENTS

Governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units only if such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve. (Colo. Rev. Stat. Section 29-1-203(1)). City Council may, by resolution, enter into intergovernmental agreements with other governmental units or special districts for the joint use of buildings, equipment or facilities, and for furnishing or receiving commodities or services. (City Charter Section 10-12). (M. Gardner)

Study Session

August 26, 2024

- Carlie Campuzano



IGAs with CDOT for
the Communications
Upgrade Project, the
Traffic Management
Center Project, and
the Traffic Signal
Equipment
Upgrades Project



DRCOG Grant Application



- Regional Transportation Operations and Technology (RTO&T) set-aside program
- Federal grant funding administered through DRCOG
- Funds are used for deployment of technology, tools, or coordinated signal system elements
- Aurora applied for and received awards for 3 projects:
 - Traffic Signal Equipment Upgrade (previous IGA)
 - Communications Infrastructure Upgrade (these IGAs)
 - Traffic Management Center (these IGAs)

RTO&T Project Funding



Description	Federal Request	Local Match	Local Over Match
Application # 1 – Communications Infrastructure Upgrade	\$736,000	\$184,000	\$87,000
Application # 2 – Traffic Management Center (TMC)	\$1,101,000	\$275,250	\$219,750
Application # 3 – Traffic Signal Equipment Upgrades	\$1,021,000	\$0	\$0
Totals:	\$2,858,000	\$766,000	

Project Description: Communications Infrastructure Upgrade



This project connects Aurora to existing fiber

- This will connect 12 signalized locations, 2 City facilities
- Federal funding requested for procurement of:
 - Fiber components (materials and construction) to connect 12 traffic signals and 2 City facilities to CDOT's fiber backbone

Proposed Fiber Connections



Project Description: Traffic Management Center



Douglas County TMC

Convert existing space at the North Satellite Facility to a function traffic management center

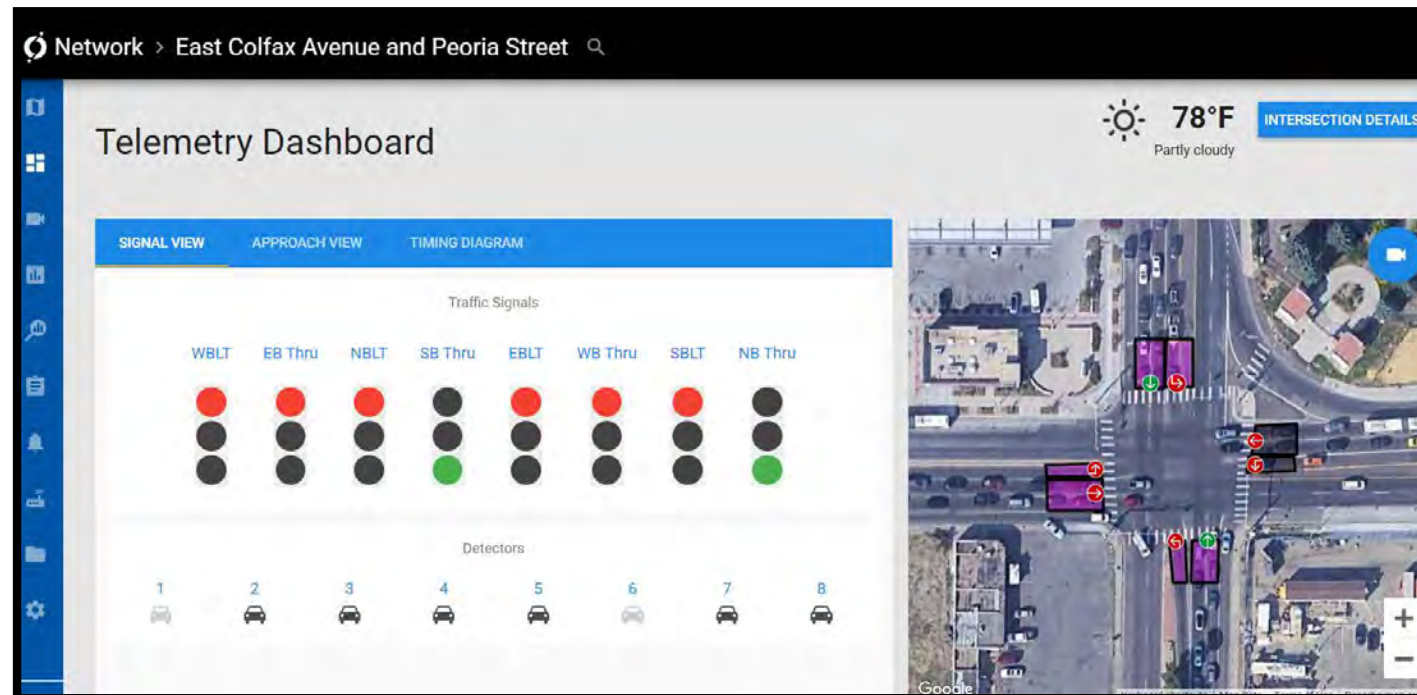
- Federal funding requested for procurement of:
 - Hardware, Software, Configuration/Setup



Project Description



- Traffic Signal Equipment Upgrades
 - 42 multimodal detection units and 42 uninterrupted power supplies
 - Federal funding will be used to procure the hardware
 - Installations will be performed by staff



Question for the Committee



- Does the City Council support moving forward the Resolutions for the three Intergovernmental Agreements between the Colorado Department of Transportation and the City of Aurora for the Communications Infrastructure Upgrade Project, the Traffic Management Center Project, and the Traffic Signal Equipment Upgrade Project to the next available Regular Council Meeting?



Questions?



Transportation, Airports and Public Works (TAPS) Policy Committee Meeting

August 24, 2023

Members Present: Council Member (CM) Juan Marcano, Chair; Council Member (CM) Angela Lawson, Vice-Chair, Council Member (CM) Ruben Medina; Council Member (CM) Francoise Bergan

Others Present: Carlie Campuzano, Elly Watson, Julie Patterson, Traci Burton, Rachel Allen, Brian Rulla, James Paral, Lynne Center, Ryan Germeroth, Tom Worker-Braddock, Mac Callison, Mindy Parnes, Huiliang Liu, Haley Busch Johansen, Michelle Gardner, Cindy Colip, Laura Perry, and Scott Bauman

1. WELCOME AND INTRODUCTION

2. APPROVAL OF MINUTES

The minutes for the July 27, 2023 TAPS meeting were approved as written.

3. CONSENT ITEMS (None)

4. GENERAL BUSINESS

4.a. DRCOG 2024-2027 Regional Transportation Operations and Technology Set-Aside Application Update

Summary of Issue and Discussion:

Carlie Campuzano, Traffic Manager in the Public Works Department, presented on recent grant applications they submitted the previous month that were part of the DRCOG Regional Transportation Operations and Technology Set-Aside Program. She said this program was focused on transportation technology projects. She stated the three applications they submitted were to upgrade the traffic signal communication system, create a traffic management center, and upgrade different traffic signal equipment. The three projects totaled \$2.8 million with a local match of approximately \$700,000. Ms. Campuzano said the applications were being scored and reviewed and they were hoping to hear back next month.

Ms. Campuzano gave some background on how their system operated and initiatives they were working with as far as fiber. She stated that the city has a lot of traffic signals and other field devices, and staff needs to bring back data from them. She said traffic signals currently operate on a wireless network comprised of radios throughout the city, but the overall bandwidth of the communications

network is limited, which limits the type of data that can be brought back. She said staff has identified the need for fiber to bolster the existing communications system. She said the Public Works Department kicked off a fiber master plan project in 2021, and they pulled resources together along with Aurora Water and Aurora IT to create the plan. She said they were working with a consultant on a fiber master plan and planned on presenting it later in the year. Ms. Campuzano showed maps of where the city would benefit from fiber. She noted a high priority segment for them was connecting different city facilities along Chambers Rd and Smoky Hill Pkwy. She pointed out that it would not happen overnight as the total cost is about 80 million dollars for City-wide fiber. Ms. Campuzano said they identified a potential cost sharing opportunity with CDOT, because they already have fiber along I-225, I-70, and Colfax, and CDOT is open to letting the city use 8 strands of fiber for City traffic and IT purposes. She said City staff drafted a proposal and submitted it to CDOT earlier in the year, which they reviewed and approved. She said it would help the City improve data reliability and capacity.

Ms. Campuzano discussed the grant application for a communications infrastructure upgrade, which was aimed at doing the connection work needed to connect to the CDOT fiber. She said staff are working on a formal agreement with CDOT that would be presented in a few months as an IGA. She stated it would allow the city to connect 12 traffic signals and two city facilities. She also spoke about the application for equipment for the traffic management center (TMC), which would pay for a lot of the hardware needed for a future TMC. She also talked about the application to purchase different hardware equipment, including 42 video detection units and battery backup power supplies.

Committee Discussion:

CM Lawson thanked C. Campuzano for the presentation. She asked if they looked at the future growth of the city and any needs they would have.

Ms. Campuzano said they did have a portion of the fiber master plan and extra maps that addressed the area of the city that was growing. She said that staff already updated design standards to require developers to install conduit proactively as a part of new projects.

CM Lawson stated that was good to know. She said it was a little concerning that the older part of the city was going to be more difficult to make it happen and hoped they would examine that to make sure everything is somewhat on a level playing field for everyone in the city.

CM Marcano asked if it was eligible for federal grant funding with the broadband money they recently approved.

Cindy Colip stated that she did not know, but staff would reach out to Scott Newman in IT.

CM Marcano asked if they were still looking to lease broadband access to other providers or explore municipal broadband in the future.

Ms. Campuzano said that was something Scott was looking at and they would have him there to provide answers when they present the Fiber Master Plan. She said they tried to overestimate quantities in order to lease out strands, so it was a consideration.

Outcome: Information only.

Follow-up Action: No follow-up needed.

STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT
Signature and Cover Page

State Agency Department of Transportation		Agreement Routing Number 25-HA1-XC-00108	
Local Agency CITY OF AURORA		Agreement Effective Date The later of the effective date or July 24, 2024	
Agreement Description FY26 Aurora Traffic Management Center		Agreement Expiration Date July 23, 2034	
Project # STU M055- 070 (26181)	Region # R1	Contract Writer DMM	Agreement Maximum Amount \$1,376,250.00

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.

<p align="center">LOCAL AGENCY CITY OF AURORA</p> <hr/> <p align="center">By: Mike Coffman, Mayor</p> <p>Date: _____</p>	<p align="center">STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director</p> <hr/> <p align="center">Keith Stefanik, P.E., Chief Engineer</p> <p>Date: _____</p>
<p align="center">Additional Local Agency Signatures Attest:</p> <hr/> <p align="center">Kadee Rodriguez, City Clerk</p> <p>Date: _____</p> <p>Approved as to Form: _____ Michelle Gardner, Sr. Assistant City Attorney</p> <p>Date: _____</p>	<p align="center">LEGAL REVIEW Philip J. Weiser, Attorney General</p> <hr/> <p align="center">Assistant Attorney General</p> <hr/> <p align="center">By: (Print Name and Title)</p> <p>Date: _____</p>
<p>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>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____ Department of Transportation</p> <p>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 July 23, 2034 as shown on the Signature and Cover Page for this Agreement, unless sooner terminated or further extended in accordance with the terms of this Agreement. Upon request of Local Agency, the State may, in its sole discretion, extend the term of this Agreement by Option Letter pursuant **§7.E.iv**. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in **Exhibit C**.

C. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, and this ARPA Award is not appropriated, or otherwise become unavailable to fund this ARPA Award the State, in its discretion, may terminate this Agreement in whole or in part. This subsection shall not apply to a termination of this Agreement by the State for breach by Local Agency, which shall be governed by **§14.A.i**.

i. Method and Content

The State shall notify Local Agency by providing written notice to Local Agency of the termination and be in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Local Agency shall be subject to **§14.A.i.a**

iii. Payments

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

D. Local Agency Termination Under Federal Requirements

Local Agency may request termination of the ARPA Award by sending notice to the State, which includes the effective date of the termination. If this ARPA Award is terminated in this manner, then Local Agency shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. AUTHORITY

Authority to enter into this Agreement exists in the law as follows:

A. Federal Authority

Pursuant to Title I, Subtitle A, of the “Fixing America’s Surface Transportation Act” (FAST Act) of 2015, and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the “Federal Provisions”), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration (“FHWA”).

Pursuant to Title VI of the Social Security Act, Section 602 of the “Coronavirus State and Local Fiscal Recovery Funds”, a part of the American Rescue Plan, provides state, local and Tribal governments with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery.

B. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-104.5.

4. PURPOSE

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT’s Stewardship Agreement with the FHWA and/or USDT as shown in **Exhibit C**.

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “**Agreement**” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. “**Agreement Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- C. “**ARPA**” means American Rescue Plan Act, funded by the US Department of the Treasury (“USDT”). See “SLFRF” below.
- D. “**Award**” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- E. “**Budget**” means the budget for the Work described in **Exhibit C**.
- F. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S..
- G. “**Chief Procurement Officer**” means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202 to procure or supervise the procurement of all supplies and services needed by the State.
- H. “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- I. “**Consultant**” means a professional engineer or designer hired by Local Agency to design the Work Product.
- J. “**Contractor**” means the general construction contractor hired by Local Agency to construct the Work.

- K. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- L. **“Effective Date”** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Agreement.
- M. **“Evaluation”** means the process of examining Local Agency’s Work and rating it based on criteria established in §6, **Exhibit A** and **Exhibit E**.
- N. **“Exhibits”** means the following exhibits attached to this Agreement:
- i. **Exhibit A**, Scope of Work.
 - ii. **Exhibit B**, Sample Option Letter.
 - iii. **Exhibit C**, Funding Provisions
 - iv. **Exhibit D**, Local Agency Resolution
 - v. **Exhibit E**, Local Agency Contract Administration Checklist
 - vi. **Exhibit F**, Certification for Federal-Aid Contracts
 - vii. **Exhibit G**, Disadvantaged Business Enterprise
 - viii. **Exhibit H**, Local Agency Procedures for Consultant Services
 - ix. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts
 - x. **Exhibit J**, Additional Federal Requirements
 - xi. **Exhibit K**, The Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions
 - xii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form
 - xiii. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the “Uniform Guidance”)
 - xiv. **Exhibit N**, Federal Treasury Provisions
 - xv. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds
 - xvi. **Exhibit P**, SLFRF Subrecipient Quarterly Report
 - xvii. **Exhibit Q**, SLFRF Reporting Modification Form
 - xviii. **Exhibit R**, Applicable Federal Awards
 - xix. **Exhibit S**, PII Certification
 - xx. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source
- O. **“Expiration Date”** means the date on which this Agreement expires, as shown on the Signature and Cover Page for this Agreement.
- P. **“Extension Term”** means the period of time by which the ARPA Expiration Date is extended by the State through delivery of an updated ARPA Letter.
- Q. **“Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- R. **“Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. The US Department of the Treasury is the Federal Awarding Agency for the Federal Award, which may be the subject of this Agreement.
- S. **“FHWA”** means the Federal Highway Administration, which is one of the twelve administrations under the Office of the Secretary of Transportation at the U.S. Department of Transportation. FHWA provides stewardship over the construction, maintenance and preservation of the Nation’s highways and tunnels. FHWA is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- T. **“Goods”** means any movable material acquired, produced, or delivered by Local Agency as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Local Agency in connection with the Services.

- U. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- V. **“Initial Term”** means the time period defined in **§2.B**.
- W. **“Local Funds”** means the funds provided by the Local Agency as their obligated contribution to the federal and/or State Awards to receive the federal and/or State funding.
- X. **“Notice to Proceed”** means the letter issued by the State to the Local Agency stating the date the Local Agency can begin work subject to the conditions of this Agreement.
- Y. **“OMB”** means the Executive Office of the President, Office of Management and Budget.
- Z. **“Oversight”** means the term as it is defined in the Stewardship Agreement between CDOT and the FHWA.
- AA. **“Party”** means the State or Local Agency, and **“Parties”** means both the State and Local Agency.
- BB. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- CC. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- DD. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, et. seq., C.R.S.
- EE. **“Recipient”** means the Colorado Department of Transportation (CDOT) for this Federal Award.
- FF. **“Services”** means the services to be performed by Local Agency as set forth in this Agreement and shall include any services to be rendered by Local Agency in connection with the Goods.
- GG. **“SLFRF”** means State and Local Fiscal Recovery Funds, provided by ARPA, funded by the US Treasury Department.
- HH. **“Special Funding”** means an award by Federal agency or the State which may include but is not limited to one or a combination of Multimodal Transportation & Mitigation Options Funding, Revitalizing Main Streets, Safer Main Streets, Stimulus Funds, Coronavirus Response and Relief Supplemental Funds, ARPA, SLFRF, or COVID Relief.
- II. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII and State personnel records not subject to disclosure under CORA.
- JJ. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).
- KK. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- LL. **“State Purchasing Director”** means the position described in the Colorado Procurement Code and its implementing regulations.

- MM. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- NN. “**Sub-Award**” means this Award by the State to Local Agency funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to this Sub-Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- OO. “**Subcontractor**” means third parties, if any, engaged by Local Agency to aid in performance of the Work.
- PP. “**Subrecipient**” means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency.
- QQ. “**Tax Information**” means Federal and State of Colorado tax information including, without limitation, Federal and State tax returns, return information, and such other tax-related information as may be protected by Federal and State law and regulation. Tax Information includes but is not limited to all information defined as Federal tax Information in Internal Revenue Service Publication 1075.
- RR. “**Uniform Guidance**” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- SS. “**USDT**” The United States Department of the Treasury (**USDT**) is the national treasury and finance department of the federal government of the United States where it serves as an executive department. The USDT funds ARPA.
- TT. “**Work**” means the delivery of the Goods and performance of the Services in compliance with CDOT’s Local Agency Manual described in this Agreement.
- UU. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

6. SCOPE OF WORK

Local Agency shall complete the Work as described in this Agreement and in accordance with the provisions of **Exhibit A**, and the Local Agency Manual. The State shall have no liability to compensate Local Agency for the delivery of any Goods or the performance of any Services that are not specifically set forth in this Agreement. Work may be divided into multiple phases that have separate periods of performance. The State may not compensate for Work that Local Agency performs outside of its designated phase performance period. The performance period of phases, including, but not limited to Design, Construction, Right of Way, Utilities, or Environment phases, are identified in **Exhibit C**. The State may unilaterally modify **Exhibit C** from time to time, at its sole discretion, to extend the Agreement Expiration Date and/or to extend the period of performance for a phase of Work authorized under this Agreement. To exercise these options to extend the Agreement Expiration Date and/or to update the phase performance period extension option, the State will provide written notice to Local Agency in a form substantially equivalent to **Exhibit B**. The State’s unilateral extension of the Agreement Expiration Date and/or the phase performance periods will not amend or alter in any way the funding provisions or any other terms specified in this Agreement, notwithstanding the options listed under **§7.E**

A. Local Agency Commitments

i. Design

If the Work includes preliminary design, final design, design work sheets, or special provisions and estimates (collectively referred to as the “Plans”), Local Agency shall ensure that it and its Contractors comply with and are responsible for satisfying the following requirements:

- a. Perform or provide the Plans to the extent required by the nature of the Work.
 - b. Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
 - c. Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
 - d. Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
 - e. Stamp the Plans as produced by a Colorado registered professional engineer.
 - f. Provide final assembly of Plans and all other necessary documents.
 - g. Ensure the Plans are accurate and complete.
 - h. Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT, and when final, they will be deemed incorporated herein.
- ii. Local Agency Work
- a. Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA) 42 U.S.C. § 12101, et. seq., and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
 - b. Local Agency shall afford the State ample opportunity to review the Plans and shall make any changes in the Plans that are directed by the State to comply with FHWA requirements.
 - c. Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**. If Local Agency enters into a contract with a Consultant for the Work:
 - 1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, Local Agency shall not enter into such Consultant contract.
 - 2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
 - 3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
 - 4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.
 - 5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from Local Agency's attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b) and (d).
 - 6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
 - (a) The design work under this Agreement shall be compatible with the requirements of the contract between Local Agency and the State (which is incorporated herein by this

reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

- (b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.
- (c) The consultant shall review the construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.
- (d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. Construction

If the Work includes construction, Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing construction Contractor claims; construction supervision; and meeting the quality control requirements of the FHWA/CDOT Stewardship Agreement, as described in **Exhibit E**.

- a. The State may, after providing written notice of the reason for the suspension to Local Agency, suspend the Work, wholly or in part, due to the failure of Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
- b. Local Agency shall be responsible for the following:
 - 1) Appointing a qualified professional engineer, licensed in the State of Colorado, as Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures, as defined in the CDOT Local Agency Manual (https://www.codot.gov/business/designsupport/bulletins_manuals/2006-local-agency-manual).
 - 2) For the construction Services, advertising the call for bids, following its approval by the State, and awarding the construction contract(s) to the lowest responsible bidder(s).
 - (a) All Local Agency's advertising and bid awards pursuant to this Agreement shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that Local Agency and its Contractor(s) incorporate Form 1273 (Exhibit I) in its entirety, verbatim, into any subcontract(s) for Services as terms and conditions thereof, as required by 23 C.F.R. 633.102(e).
 - (b) Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. Local Agency must accept or reject such bids within three (3) working days after they are publicly opened.
 - (c) If Local Agency accepts bids and makes awards that exceed the amount of available Agreement Funds, Local Agency shall provide the additional funds necessary to complete the Work or not award such bids.
 - (d) The requirements of **§6.A.iii.b.2** also apply to any advertising and bid awards made by the State.

- (e) The State (and in some cases FHWA) must approve in advance all Force Account Construction, and Local Agency shall not initiate any such Services until the State issues a written Notice to Proceed.

iv. Right of Way (ROW) and Acquisition/Relocation

- a. If Local Agency purchases a ROW for a State highway, including areas of influence, Local Agency shall convey the ROW to CDOT promptly upon the completion of the project/construction.
- b. Any acquisition/relocation activities shall comply with all applicable federal and State statutes and regulations, including but not limited to, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.
- c. The Parties' respective responsibilities for ensuring compliance with acquisition, relocation and incidentals depend on the level of federal participation as detailed in CDOT's Right of Way Manual (located at <http://www.codot.gov/business/manuals/right-of-way>); however, the State always retains oversight responsibilities.
- d. The Parties' respective responsibilities at each level of federal participation in CDOT's Right of Way Manual, and the State's reimbursement of Local Agency costs will be determined pursuant the following categories:
 - 1) Right of way acquisition (3111) for federal participation and non-participation;
 - 2) Relocation activities, if applicable (3109);
 - 3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

v. Utilities

If necessary, Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company that may become involved in the Work. Prior to the Work being advertised for bids, Local Agency shall certify in writing to the State that all such clearances have been obtained.

vi. Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, Local Agency shall make timely application to the Public Utilities Commission ("PUC") requesting its order providing for the installation of the proposed improvements. Local Agency shall not proceed with that part of the Work before obtaining the PUC's order. Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities, and:

- a. Execute an agreement with the railroad company setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- b. Obtain the railroad's detailed estimate of the cost of the Work.
- c. Establish future maintenance responsibilities for the proposed installation.
- d. Proscribe in the agreement the future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- e. Establish future repair and/or replacement responsibilities, as between the railroad company and the Local Agency, in the event of accidental destruction or damage to the installation.

vii. Environmental Obligations

Local Agency shall perform all Work in accordance with the requirements of current federal and State environmental regulations, including the National Environmental Policy Act of 1969 (NEPA) as applicable.

viii. Maintenance Obligations

Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. Local Agency shall conduct such maintenance and operations in accordance with all applicable statutes, ordinances, and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

ix. Monitoring Obligations

Local Agency shall respond in a timely manner to and participate fully with the monitoring activities described in §7.F.vi.

B. State's Commitments

- i. The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
- ii. Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any Work constituting major structures designed by, or that are the responsibility of, Local Agency, as identified in **Exhibit E**.

7. PAYMENTS

A. Maximum Amount

Payments to Local Agency are limited to the unpaid, obligated balance of the Agreement Funds set forth in **Exhibit C**. The State shall not pay Local Agency any amount under this Agreement that exceeds the Agreement Maximum set forth in **Exhibit C**.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Local Agency in the amounts and in accordance with conditions set forth in **Exhibit C**.
- b. Local Agency shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Local Agency and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Local Agency shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.
- e. If a project is funded in part with Federal or State special funding there may be an expiration date for the funds. The expiration date applies to grants and local funds used to match grants. To receive payment or credit for the match, Work must be completed or substantially completed, as outlined in the terms of the grant, prior to the expiration date of the special funding and invoiced in compliance with the rules outlined in the award of the funding. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.

ii. Interest

Amounts not paid by the State within 45 days after the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 46th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Local Agency shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Payment Disputes

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

iv. Available Funds-Contingency-Termination

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

v. Erroneous Payments

The State may recover, at the State's discretion, payments made to Local Agency in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Local Agency. The State may recover such payments by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Local Agency, or by any other appropriate method for collecting debts owed to the State. The close out of a Federal Award does not affect the right of FHWA or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period (as defined below in **§9.A.**).

vi. Federal Recovery

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

C. Local Agency Funds

Local Agency shall provide their obligated contribution funds as outlined in **§7.A.** and **Exhibit C**. Local Agency shall have raised the full amount of their funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Local Agency and paid into Local Agency's treasury. Local Agency represents to the State that the amount designated "Local Agency Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. Local Agency may evidence such obligation by an appropriate ordinance/resolution or other authority letter expressly authorizing Local Agency to enter into this Agreement and to expend its match share of the Work. A copy of any such ordinance/resolution or authority letter is attached hereto as **Exhibit D** if applicable. Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of

Local Agency. Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes, or penalties of any nature, except as required by Local Agency's laws or policies.

D. Reimbursement of Local Agency Costs

The State shall reimburse Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and §7. However, any costs incurred by Local Agency prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Local Agency for costs or expenses incurred or performance by the Local Agency prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the Local Agency. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement. The applicable principles described in 2 C.F.R. Part 200 shall govern the State's obligation to reimburse all costs incurred by Local Agency and submitted to the State for reimbursement hereunder, and Local Agency shall comply with all such principles. The State shall reimburse Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C**. Local Agency costs for Work performed prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. Local Agency costs for Work performed after any Performance Period End Date for a respective phase of the Work, is not reimbursable. Allowable costs shall be:

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

E. Unilateral Modification of Agreement Funds Budget by State Option Letter

The State may, at its discretion, issue an "Option Letter" to Local Agency to add or modify Work phases in the Work schedule in **Exhibit C** if such modifications do not increase total budgeted Agreement Funds. Such Option Letters shall amend and update **Exhibit C**, Sections 2 or 4 of the Table, and sub-sections B and C of the **Exhibit C**. Option Letters shall not be deemed valid until signed by the State Controller or an authorized delegate. **This is NOT a Notice to Proceed.** Modification of **Exhibit C** by unilateral Option Letter is permitted only in the specific scenarios listed below. The State will exercise such options by providing Local Agency a fully executed Option Letter, in a form substantially equivalent to **Exhibit B**. Such Option Letters will be incorporated into this Agreement. This applies to the entire Scope of Work.

i. Option to Begin a Phase and/or Increase or Decrease the Encumbrance Amount

The State may require by Option Letter that Local Agency begin a new Work phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous Work (but may not include Right of Way Acquisition/Relocation or Railroads) as detailed in **Exhibit A**. Such Option Letters may not modify the other terms and conditions stated in this Agreement and must decrease the amount budgeted and encumbered for one or more other Work phases so that the total amount of budgeted Agreement Funds remains the same. The State may also change the funding sources so long as the amount budgeted remains the same and the Local Agency contribution does not increase. The State may also issue a unilateral Option Letter to increase and/or decrease the total encumbrance amount of two or more existing Work phases, as long as the total amount of budgeted Agreement Funds remains the same, replacing the original Agreement Funding exhibit (**Exhibit C**) with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

ii. Option to Transfer Funds from One Phase to Another Phase.

The State may require or permit Local Agency to transfer Agreement Funds from one Work phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another phase as a result of changes to State, federal, and local match funding. In such case, the original funding exhibit (**Exhibit C**) will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The Agreement Funds transferred from one Work phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a

fully executed Option Letter to Local Agency within thirty (30) days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iii. Option to Exercise Options i and ii.

The State may require Local Agency to add a Work phase as detailed in **Exhibit A**, and encumber and transfer Agreement Funds from one Work phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2, C-3**, etc.) attached to the Option Letter. The addition of a Work phase and encumbrance and transfer of Agreement Funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within 30 days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iv. Option to Extend Agreement/Phase Term and/or modify the OMB Uniform Guidance. The State, at its discretion, shall have the option to extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2, C-3**, etc.). In order to exercise this option, the State shall provide written notice to the Local Agency in a form substantially equivalent to **Exhibit B**.

F. Accounting

Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

i. Local Agency Performing the Work

If Local Agency is performing the Work, it shall document all allowable costs, including any approved Services contributed by Local Agency or subcontractors, using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

ii. Local Agency-Checks or Draws

Checks issued or draws made by Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. Local Agency shall keep on file all checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents in the office of Local Agency, clearly identified, readily accessible, and to the extent feasible, separate and apart from all other Work documents.

iii. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. Local Agency shall reimburse the State for the costs of any such services from the budgeted Agreement Funds as provided for in **Exhibit C**. If FHWA Agreement Funds are or become unavailable, or if Local Agency terminates this Agreement prior to the Work being approved by the State or otherwise completed, then all actual incurred costs of such services and assistance provided by the State shall be reimbursed to the State by Local Agency at its sole expense.

iv. Local Agency-Invoices

Local Agency's invoices shall describe in detail the reimbursable costs incurred by Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and Local Agency shall not submit more than one invoice per month.

v. Invoicing Within 60 Days

The State shall not be liable to reimburse Local Agency for any costs invoiced more than 60 days after the date on which the costs were incurred, including costs included in Local Agency's final invoice. The State may withhold final payment to Local Agency at the State's sole discretion until completion of final audit. Any costs incurred by Local Agency that are not allowable under 2 C.F.R. Part 200 shall be Local Agency's responsibility, and the State will deduct such disallowed costs from any payments due to Local Agency. The State will not reimburse costs for Work performed after the Performance Period End Date for a respective Work phase. The State will not reimburse costs for Work performed prior to Performance

Period End Date, but for which an invoice is received more than 60 days after the Performance Period End Date.

vi. Risk Assessment & Monitoring

Pursuant to 2 C.F.R. 200.331(b), – CDOT will evaluate Local Agency’s risk of noncompliance with federal statutes, regulations, and terms and conditions of this Agreement. Local Agency shall complete a Risk Assessment Form (**Exhibit L**) when that may be requested by CDOT. The risk assessment is a quantitative and/or qualitative determination of the potential for Local Agency’s non-compliance with the requirements of the Federal Award. The risk assessment will evaluate some or all of the following factors:

- Experience: Factors associated with the experience and history of the Subrecipient with the same or similar Federal Awards or grants.
- Monitoring/Audit: Factors associated with the results of the Subrecipient’s previous audits or monitoring visits, including those performed by the Federal Awarding Agency, when the Subrecipient also receives direct federal funding. Include audit results if Subrecipient receives single audit, where the specific award being assessed was selected as a major program.
- Operation: Factors associated with the significant aspects of the Subrecipient’s operations, in which failure could impact the Subrecipient’s ability to perform and account for the contracted goods or services.
- Financial: Factors associated with the Subrecipient’s financial stability and ability to comply with financial requirements of the Federal Award.
- Internal Controls: Factors associated with safeguarding assets and resources, deterring and detecting errors, fraud and theft, ensuring accuracy and completeness of accounting data, producing reliable and timely financial and management information, and ensuring adherence to its policies and plans.
- Impact: Factors associated with the potential impact of a Subrecipient’s non-compliance to the overall success of the program objectives.
- Program Management: Factors associated with processes to manage critical personnel, approved written procedures, and knowledge of rules and regulations regarding federal-aid projects.

Following Local Agency’s completion of the Risk Assessment Tool (**Exhibit L**), CDOT will determine the level of monitoring it will apply to Local Agency’s performance of the Work. This risk assessment may be re-evaluated after CDOT begins performing monitoring activities.

G. Close Out

Local Agency shall close out this Award within 90 days after the Final Phase Performance End Date. If SLFRF Funds are used the Local Agency shall close out that portion of the Award within 45 days after the ARPA Award Expiration Date. Close out requires Local Agency’s submission to the State of all deliverables defined in this Agreement, and Local Agency’s final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If FHWA or US Treasury has not closed this Federal Award within one (1) year and 90 days after the Final Phase Performance End Date due to Local Agency’s failure to submit required documentation, then Local Agency may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

8. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to §19 or pursuant to any exhibit, for any contract having a term longer than 3 months, Local Agency shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than ten (10) Business Days following the end of each calendar quarter or at such time as otherwise specified by the State. If SLFRF Funds are used the report must be in the format of **Exhibit P**.

B. Litigation Reporting

If Local Agency is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Local Agency's ability to perform its obligations under this Agreement, Local Agency shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in §16.

C. Performance and Final Status

Local Agency shall submit all financial, performance and other reports to the State no later than 60 calendar days after the Final Phase Performance End Date or sooner termination of this Agreement, containing an Evaluation of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

D. Violations Reporting

Local Agency must disclose, in a timely manner, in writing to the State and FHWA, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. Penalties for noncompliance may include suspension or debarment (2 CFR Part 180 and 31 U.S.C. 3321).

9. LOCAL AGENCY RECORDS

A. Maintenance

Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Local Agency shall maintain such records for a period (the "Record Retention Period") pursuant to the requirements of the funding source and for a minimum of three (3) years following the date of submission to the State of the final expenditure report, whichever is longer, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Local Agency in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three (3) years following final disposition of such property.

B. Inspection

Records during the Record Retention Period. Local Agency shall make Local Agency Records available during normal business hours at Local Agency's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two (2) Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Local Agency's performance of its obligations under this Agreement using procedures as determined by the State. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. Local Agency shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Local Agency. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. If Local Agency enters into a subcontract with an entity that would also be considered a Subrecipient, then the subcontract entered into by Local Agency shall contain provisions permitting both Local Agency and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

D. Final Audit Report

Local Agency shall promptly submit to the State a copy of any final audit report of an audit performed on Local Agency's records that relates to or affects this Agreement or the Work, whether the audit is conducted

by Local Agency or a third party. Additionally, if Local Agency is required to perform a single audit under 2 CFR 200.501, *et seq.*, then Local Agency shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Local Agency shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Local Agency for the sole and exclusive benefit of the State, unless those State Records are otherwise publicly available at the time of disclosure or are subject to disclosure by Local Agency under CORA. Local Agency shall not, without prior written approval of the State, use for Local Agency's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Agreement. Local Agency shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. Local Agency shall immediately forward any request or demand for State Records to the State's principal representative. If Local Agency or any of its Subcontractors will or may receive the following types of data, Local Agency or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Award as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Award, if applicable. Local Agency shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

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

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

If Local Agency becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Local Agency can establish that none of Local Agency or any of its agents, employees, assigns, or Subcontractors are the cause or source of the Incident, Local Agency shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Local Agency shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which

may include, but is not limited to, developing, and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding Personally Identifying Information “PII”

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

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Local Agency shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Local Agency under this Agreement. Such a conflict of interest would arise when a Local Agency or Subcontractor’s employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement. Officers, employees, and agents of Local Agency may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

12. INSURANCE

Local Agency shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Local Agency Insurance

Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the “GIA”) and shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Subcontractor Requirements

Local Agency shall ensure that each Subcontractor that is a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA. Local Agency shall ensure that each Subcontractor that is not a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement all of the following insurance policies:

i. Workers' Compensation

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

ii. General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate; and
- d. \$50,000 any 1 fire.

iii. Automobile Liability

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

iv. Protected Information (this insurance requirement only applies if the Subcontractor has or will have access to State Confidential Information)

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$2,000,000 general aggregate.

v. Professional Liability Insurance (this insurance requirement only applies if the Subcontractor is providing professional services including but not limited to engineering, architectural, landscape architectural, professional surveying, industrial hygiene services, or any other commonly understood professional service)

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

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

vi. Crime Insurance

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

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

vii. Cyber/Network Security and Privacy Liability

Liability insurance covering all civil, regulatory and statutory damages, contractual damages, data breach management exposure, and any loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of breach, violation or infringement of right to privacy rights through improper use or disclosure of protected consumer data protection law,

confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$2,000,000 general aggregate.

C. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Local Agency and Subcontractors. In the event of cancellation of any commercial general liability policy, the carrier shall provide at least 10 days prior written notice to CDOT.

D. Primacy of Coverage

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

E. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Local Agency and Local Agency shall forward such notice to the State in accordance with §16 within 7 days of Local Agency's receipt of such notice.

F. Subrogation Waiver

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

G. Certificates

For each commercial insurance plan provided by Local Agency under this Agreement, Local Agency shall provide to the State certificates evidencing Local Agency's insurance coverage required in this Agreement within seven (7) Business Days following the Effective Date. Local Agency shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following the Effective Date, except that, if Local Agency's subcontract is not in effect as of the Effective Date, Local Agency shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following Local Agency's execution of the subcontract. No later than 15 days before the expiration date of Local Agency's or any Subcontractor's coverage, Local Agency shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Local Agency shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §12.

13. BREACH

A. Defined

The failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner, shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization, or similar law, by or against Local Agency, or the appointment of a receiver or similar officer for Local Agency or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §14 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and

may immediately terminate this Agreement in whole or in part or institute any other remedy in the Agreement in order to protect the public interest of the State.

14. REMEDIES

A. State's Remedies

If Local Agency is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §13.B, shall have all of the remedies listed in this §14.A. in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Local Agency's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

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

b. Payments

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

c. Damages and Withholding

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

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

Withhold payment to Local Agency until Local Agency corrects its Work.

c. Deny Payment

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

d. Removal

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

e. Intellectual Property

If any Work infringes a patent, copyright, trademark, trade secret, or other intellectual property right, Local Agency shall, as approved by the State (a) secure that right to use such Work for the State or Local Agency; (b) replace the Work with non infringing Work or modify the Work so that it becomes non infringing; or, (c) remove any infringing Work and refund the amount paid for such Work to the State.

B. Local Agency's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Local Agency, following the notice and cure period in §13.B and the dispute resolution process in §15 shall have all remedies available at law and equity.

15. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

If the initial resolution described in §15.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of CDOT as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

C. Questions of Fact

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

16. NOTICES AND REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered **(i)** by hand with receipt required, **(ii)** by certified or registered mail to such Party's principal representative at the address set forth below or **(iii)** as an email with read receipt requested to the principal representative at the email address, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §16 without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

For the State

Colorado Department of Transportation (CDOT)
Christopher Vokurka, PE 1
CDOT
2829 W Howard Pl
Denver, CO 80204
303-620-6385
christopher.vokurka@state.co.us

For the Local Agency

CITY OF AURORA
Carlie Campuzano, Traffic Manager
15151 E Alameda Pkwy Ste 3200
Aurora, CO 80012
303-739-7309
ccampuza@auroragov.org

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

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

i. Copyrights

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

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

ii. Patents

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

iii. Assignments and Assistance

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

B. Exclusive Property of the State

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

C. Exclusive Property of Local Agency

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

18. GOVERNMENTAL IMMUNITY

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

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

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

20. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

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

C. Binding Effect

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

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Digital Signatures

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

H. Entire Understanding

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

I. Jurisdiction and Venue

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

J. Modification

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

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

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

L. Order of Precedence

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

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

M. Severability

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

N. Survival of Certain Agreement Terms

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

O. Third Party Beneficiaries

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

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations.

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

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

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

U. Accessibility

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

V. Taxes

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

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

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

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

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(19), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S., applicable Local Agency law, rule or regulation.

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

Any term included in this Contract that requires the Parties to indemnify or hold Contractor harmless; requires the Parties to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy

available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

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

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

22. FEDERAL REQUIREMENTS

Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and State laws, and their implementing regulations, as they currently exist and may hereafter be amended. A summary of applicable federal provisions are attached hereto as **Exhibit F, Exhibit I, Exhibit J, Exhibit K, Exhibit M, Exhibit N** and **Exhibit O** are hereby incorporated by this reference.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Local Agency will comply with all requirements of **Exhibit G** and **Exhibit E**, Local Agency Contract Administration Checklist, regarding DBE requirements for the Work, except that if Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If Local Agency uses any State- approved DBE program for this Agreement, Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of Local Agency's DBE program does not waive or modify the sole responsibility of Local Agency for use of its program.

EXHIBIT A
SCOPE OF WORK

Name of Project: FY26 Aurora Traffic Management Center
Project Number: STU M055-070
SubAccount #: 26181

The City of Aurora Traffic Engineering Division of Public Works has a need for a Traffic Management Center (TMC). Traffic Engineering and Operations currently manages the City's nearly 400 traffic signals using a variety of transportation management software on multiple servers accessible from various locations within the City. The proposed TMC will provide traffic engineers and operations staff a single location to monitor the health of the traffic signal network, intelligent traffic systems (ITS) devices, traffic flow, and incident management allowing better and more efficient management of the Aurora roadway network.

The scope of this project is to deploy a new traffic management center to monitor the roadway network within the City of Aurora. Project components will include staff terminals, monitoring systems (video wall), hardware, cabling, power supplies, server and server racks, licensing, integration, and testing. The equipment will be purchased from qualified vendors and the installation work will be completed by licensed contractors.

The approach of this project is broken down into two phases. These are:

Design Phase – Local Agency Funding Only

- Final engineering and design. This is a consultant task that includes final design and engineering and the development of the full concept of the TMC space and equipment.

Construction Phase

- Installation. This will be a City contractor's task. The contractor shall manage the installation details and device configurations. All equipment will be installed in the existing City of Aurora traffic operations and maintenance shop.
- System integration. This is a contractor's task that includes server configuration, device integration, software deployment, testing, and training.

If ARPA funds are used, all ARPA funds must be encumbered by December 31, 2024. All work funded by ARPA must be completed by December 31, 2026 and all bills must be submitted to CDOT for payment by January 31, 2027. These bills must be paid by CDOT by March 31, 2027.

By accepting funds for this Scope of Work, Local Agency acknowledges, understands, and accepts the continuing responsibility for the safety of the traveling public after initial acceptance of the

project. Local Agency is responsible for maintaining and operating the scope of work described in this Exhibit A constructed under this Agreement at its own cost and expense during its useful life.

EXHIBIT B

SAMPLE IGA OPTION LETTER

Date	State Fiscal Year	Option Letter No.
Project Code	Original Agreement #	

Vendor Name:

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous and to update encumbrance amount(s).

Option to unilaterally transfer funds from one phase to another phase.

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous, to update encumbrance amount(s), and to unilaterally transfer funds from one phase to another phase.

Option to unilaterally extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify OMB Guidance.

Option A

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to authorize the Local Agency to add a phase and to encumber funds for the phase based on changes in funding availability and authorization. The total encumbrance is (or increased) by \$0.00. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option B

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to transfer funds based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option C

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to 1) release the Local Agency to begin a phase; 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from phases based on variance in actual phase costs and

original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option D

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. This is made part of the original Agreement and replaces the Expiration Date shown on the Signature and Cover Page. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2, C-3**, etc.).

The effective date of this option letter is upon approval of the State Controller or delegate.

STATE OF COLORADO
Jared S. Polis
Department of Transportation

By: _____
Keith Stefanik, P.E., Chief Engineer
(For) Shoshana M. Lew, Executive Director

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

STATE OF COLORADO
STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Colorado Department of Transportation

Date: _____

EXHIBIT C - FUNDING PROVISIONS

City of Aurora - STU M055-070 (26181)

A. Cost of Work Estimate

The Local Agency has estimated the total cost of the Work to be \$1,376,250.00, which is to be funded as follows:

1. FUNDING		
a.	Federal Funds (80% of type of STBG Award)	\$1,101,000.00
b.	Local Agency Funds (20% of type of STBG Award)	\$275,250.00
TOTAL FUNDS ALL SOURCES		\$1,376,250.00
2. OMB UNIFORM GUIDANCE		
a.	Federal Award Identification Number (FAIN):	TBD
b.	Name of Federal Awarding Agency:	FHWA
c.	Local Agency Unique Entity Identifier	KVZATDBDECG8
d.	Assistance Listing # Highway Planning and Construction	ALN 20.205
e.	Is the Award for R&D?	No
f.	Indirect Cost Rate (if applicable)	N/A
g.	Amount of Federal Funds Obligated by this Action:	\$0.00
h.	Amount of Federal Funds Obligated to Date (including this Action):	\$0.00
3. ESTIMATED PAYMENT TO LOCAL AGENCY		
a.	Federal Funds Budgeted	\$1,101,000.00
b.	Less Estimated Federal Share of CDOT-Incurred Costs	\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		80% \$1,101,000.00
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY		20% \$275,250.00
TOTAL PROJECT ESTIMATED FUNDING		100% \$1,376,250.00
4. FOR CDOT ENCUMBRANCE PURPOSES		
a.	Total Encumbrance Amount (Federal funds + Local Agency funds)	\$1,376,250.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$0.00
NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS		\$1,376,250.00

Note: No funds are currently available. Design and Construction funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.

WBS Element 26181.10.30	Performance Period Start*/End Date TBD-TBD	Design 3020	\$0.00
WBS Element 26181.20.10	Performance Period Start*/End Date TBD- TBD	Const. 3301	\$0.00

*The Local Agency should not begin work until all three (3) of the following are in place: 1) Phase Performance Period Start Date; 2) the execution of the document encumbering funds for the respective phase; and 3) Local Agency receipt of the official Notice to Proceed. Any work performed before these three (3) milestones are achieved will not be reimbursable.

B. Funding Ratios

The funding ratio for the federal funds for this Work is 80% federal funds to 20% Local Agency funds, and this ratio applies only to the \$1,376,250.00 that is eligible for federal funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$1,376,250.00, and additional federal funds are not available, the Local Agency shall pay all such excess costs. If the total

cost of performance of the Work is less than \$1,376,250.00, then the amounts of Local Agency and federal funds will be decreased in accordance with the funding ratio described in **A1**. **This applies to the entire scope of Work.**

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$1,101,000.00. For CDOT accounting purposes, the federal funds of \$1,101,000.00 and the Local Agency funds of \$275,250.00 will be encumbered for a total encumbrance of \$1,376,250.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total budget is \$1,376,250.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work.**

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving \$750,000 or more from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of 2 CFR part 200, subpart F (Audit Requirements) see also, 49 CFR 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$750,000

If the Local Agency expends less than \$750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure of \$750,000 or more-Highway Funds Only

If the Local Agency expends \$750,000 or more, in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure of \$750,000 or more-Multiple Funding Sources

If the Local Agency expends \$750,000 or more in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

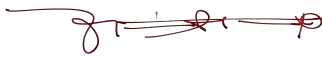
EXHIBIT D


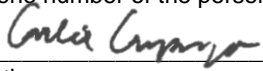
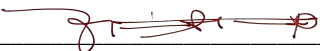
LOCAL AGENCY RESOLUTION (IF APPLICABLE)

**Exhibit E -
Local Agency Contract Administration Checklist**

COLORADO DEPARTMENT OF TRANSPORTATION			
LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. STU M055-070	STIP No. SDR9000	Project Code 26181	Region 1
Project Location City of Aurora			Date 04/25/2024
Project Description FY26-Aurora Traffic Signal Management Center			
Local Agency Aurora		Local Agency Project Manager Carlie Campuzano	
CDOT Resident Engineer Alvin Stamp		CDOT Project Manager Chris Vokurka	
<p>INSTRUCTIONS:</p> <p>This checklist shall be used to establish the contractual administrative responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency Agreement. Section numbers (NO.) correspond to the applicable chapters of the <i>CDOT Local Agency Desk Reference (Local Agency Manual)</i>. LAWR numbers correspond to the applicable flowchart in the Local Agency Web Resource.</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, # will denote that CDOT must concur or approve.</p> <p>Tasks that will be performed by Headquarters staff are indicated with an X in the CDOT column under Responsible Party. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.</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>			

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
TIP / STIP AND LONG-RANGE PLANS				
	2.1	Review Project to ensure it is consistent with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION				
	4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement). <i>Please write in "NA", if Not Applicable.</i>		x
PROJECT DEVELOPMENT				
1	5.1	Prepare Design Data - CDOT Form 463	x	X
	5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
2	5.3	Conduct Consultant Selection/Execute Consultant Agreement		#
		<ul style="list-style-type: none"> • Project Development • Construction Contract Administration (including Fabrication Inspection Services) 	X x	# #
3,3A	5.4	Conduct Design Scoping Review Meeting	x	X
3,6	5.5	Conduct Public Involvement		X
3	5.6	Conduct Field Inspection Review (FIR)		X

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
4	5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	#
5	5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
3	5.9	Obtain Utility and Railroad Agreements	X	
3	5.10	Conduct Final Office Review (FOR)	X	
3A	5.11	Justify Force Account Work by the Local Agency	X	#
3B	5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	#
3	5.13	Document Design Exceptions - CDOT Form 464	X	#
3	5.14	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	X	
	5.15	Ensure Authorization of Funds for Construction		X
	5.16	Electronic Signatures	X	
	5.17	Records Management	X	
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE				
3	6.1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist).		X
	6.2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> 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.)  _____ Date 5/13/2024 CDOT Resident Engineer (Signature on File)		X
	6.3	Set On-the-Job Training Goals (CDOT Region EEO/Civil Rights Specialist) "NA", if Not Applicable		X
3	6.4	Title VI Assurances	X	#
6,7		Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)	X	#
ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS				
6,7	7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	#
7	7.2	Advertise for Bids	X	#
7	7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7	7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7	7.5	Open Bids	X	
7	7.6	Process Bids for Compliance		
		Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals. <i>Please write in "NA", if Not Applicable.</i>		X
		Evaluate CDOT Form 1416 - Good Faith Effort Report and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals. <i>"NA", if Not Applicable.</i>		X
		Submit required documentation for CDOT award concurrence	X	
	7.7	Concurrence from CDOT to Award		X
	7.8	Approve Rejection of Low Bidder		X
7,8	7.9	Award Contract	X	#
8	7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT				
8	8.1	Issue Notice to Proceed to the Contractor	X	#
8	8.2	Project Safety	X	
8	8.3	Conduct Conferences:		
		Pre-construction Conference (Appendix B) • Fabrication Inspection Notifications	X	
		Pre-survey • Construction staking • Monumentation	X X	
		Partnering (Optional)	X	X
		Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	X	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
		Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
		HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
8	8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
9	8.5	Supervise Construction		
		A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Carlie Campuzano  303-739-7309 Local Agency Professional Engineer or CDOT Resident Engineer Phone number	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	
		Fabrication Inspection and documentation	X	
9	8.6	Approve Shop Drawings	X	#
9	8.7	Perform Traffic Control Inspections	X	
9	8.8	Perform Construction Surveying	X	
9	8.9	Monument Right-of-Way	X	
9,9A	8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent) Provide the name and phone number of the person authorized for this task. Carlie Campuzano  303-739-7309 Local Agency Representative Phone number	X	#
9	8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	#
9B	8.12	Prepare and Authorize Change Orders	X	#
9B	8.13	Submit Change Order Package to CDOT	X	
9A	8.14	Prepare Local Agency Reimbursement Requests	X	
9	8.15	Monitor Project Financial Status	X	#
9	8.16	Prepare and Submit Monthly Progress Reports	X	#
9	8.17	Resolve Contractor Claims and Disputes	X	#
	8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task.  303-512-5110 CDOT Resident Engineer Phone number		X
9	8.19	Ongoing Oversight of DBE Participation		
MATERIALS				
9,9C	9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	X	#
9,9C	9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	X X	X
9C	9.3	Perform Project Acceptance Samples and Tests	X	
9C	9.4	Perform Laboratory Verification Tests	X	
9C	9.5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
9C	9.6	Approve Sources of Materials	X	
9C	9.7	Independent Assurance Testina (IAT). Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/> <ul style="list-style-type: none"> • Generate IAT schedule • Schedule and provide notification • Conduct IAT 	X X	X
9C	9.8	Approve mix designs <ul style="list-style-type: none"> • Concrete • Hot mix asphalt 	X X	# #
9C	9.9	Check Final Materials Documentation	X	#
9C	9.10	Complete and Distribute Final Materials Documentation	X	
CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE				
9	10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
8,9	10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to CDOT EEO/Civil Rights Specialist	X	#
9	10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
9	10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
9	10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. <ul style="list-style-type: none"> • Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements. • Complete CDOT Form 838 – OJT Trainee / Apprentice Record. • Complete CDOT Form 200 - OJT Training Questionnaire 	X	
9	10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	#
9	10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS				
	11.1	Conduct Final Project Inspection.(Resident Engineer or CDOT PM with mandatory Local Agency participation.) Resident Engineer initiates CDOT Form 1212 - Final Acceptance Report.		X
10	11.2	Write Final Project Acceptance Letter	X	
10	11.3	Advertise for Final Settlement	X	
11	11.4	Prepare and Distribute Final As-Constructed Plans	X	
11	11.5	Prepare EEO Certification and Collect EEO Forms	X	
11	11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11	11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	X
11	11.8	Obtain CDOT Form 1419 from the Contractor and Submit to the CDOT Project Manager	X	
	11.9	(FHWA Form 47 discontinued)	N/A	N/A
	11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		X
11	11.11	Process Final Payment	X	
	11.12	Complete and Submit CDOT Form 950 - Project Closure	X	X
11	11.13	Retain Project Records	X	
11	11.14	Retain Final Version of Local Agency Contract Administration Checklist	X	X

cc: CDOT Resident Engineer/Project Manager
CDOT Region Program Engineer
CDOT Region EEO/Civil Rights Specialist

CDOT Region Materials Engineer
CDOT Contracts and Market Analysis Branch
Local Agency Project Manager

EXHIBIT F

CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub- recipients shall certify and disclose accordingly.

EXHIBIT G

DISADVANTAGED BUSINESS ENTERPRISES

SECTION 1. Policy

It is the policy of the Colorado Department of Transportation (CDOT) that Disadvantaged Business Enterprises (DBEs) shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Accordingly, CDOT's federally approved DBE Program Plan shall apply to this agreement.

SECTION 2. Subrecipient and Participant Obligation.

The Local Agency and its subrecipients agrees to ensure that DBEs certified through the Colorado Unified Certification Program have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement.

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

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

SECTION 3. DBE Program.

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

Local Agency requirements can be found at:

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

EXHIBIT H

LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded Local Agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states “The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost” and according to 23 CFR 172.5 “Price shall not be used as a factor in the analysis and selection phase.” Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a Local Agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting Local Agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting Local Agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The Local Agency shall not advertise any federal aid contract without prior review by the CDOT Regional Civil Rights Office (RCRO) to determine whether the contract shall be subject to a DBE contract goal. If the RCRO determines a goal is necessary, then the Local Agency shall include the goal and the applicable provisions within the advertisement. The Local Agency shall not award a contract to any Contractor or Consultant without the confirmation by the CDOT Civil Rights and Business Resource Center that the Contractor or Consultant has demonstrated good faith efforts. The Local Agency shall work with the CDOT RCRO to ensure compliance with the established terms during the performance of the contract.
5. The Local Agency shall require that all contractors pay subcontractors for satisfactory performance of work no later than 30 days after the receipt of payment for that work from the contractor. For construction projects, this time period shall be reduced to seven days in accordance with Colorado Revised Statute 24-91-103(2). If the Local Agency withholds retainage from contractors and/or allows contractors to withhold retainage from subcontractors, such retainage provisions must comply with 49 CFR 26.29.
6. Payments to all Subconsultants shall be made within thirty days of receipt of payment from [the Local Agency] or no later than ninety days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify [the Local Agency] no later than the required date for payment. Such notification shall include the amount disputed and justification for the withholding. The Consultant shall maintain records of payment that show amounts paid to all Subconsultants. Good cause does not include the Consultant's failure to submit an invoice to the Local Agency or to deposit payments made.
7. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,

- b. Approach to the Work,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services.

Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
- b. Past performance,
- c. Willingness to meet the time and budget requirement,
- d. Location,
- e. Current and projected work load,
- f. Volume of previously awarded contracts, and
- g. Involvement of minority consultants.

8. Once a consultant is selected, the Local Agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.

9. A qualified Local Agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the Local Agency prepares a performance evaluation (a CDOT form is available) on the consultant.

CRS §§24-30-1401 THROUGH 24-30-1408, 23 CFR PART 172, AND P.D. 400.1,
PROVIDE ADDITIONAL DETAILS FOR COMPLYING WITH THE PRECEEDING
EIGHT (8) STEPS.

EXHIBIT I

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

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

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements* (1) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements* (1) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT J
ADDITIONAL FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

Clean Air Act

Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts more than \$100,000).

Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally assisted programs.

Nondiscrimination

The Local Agency shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color national origin, sex, age or disability. Prior to the receipt of any Federal financial assistance from CDOT, the Local Agency shall execute the attached Standard DOT Title VI assurance. As appropriate, the Local Agency shall include Appendix A, B, or C to the Standard DOT Title VI assurance in any contract utilizing federal funds, land, or other aid. The Local Agency shall also include the following in all contract advertisements:

The [Local Agency], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (79 Stat. 252, 42 US.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, DBEs will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for any award.

ADA

In any contract utilizing federal funds, land, or other federal aid, the Local Agency shall require the federal-aid recipient or contractor to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees, and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions §22

The Contractor will include the provisions of this Exhibit J in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

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SAMPLE

The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination

Assurances for Local Agencies

DOT Order No. 1050.2A

The [Local Agency] (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Colorado Department of Transportation and the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

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

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including the FHWA, FTA, or FAA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FHWA, FTA, and FAA assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated or will be (with regard to a "facility") operated or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all FHWA, FTA and FAA programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
3. "The [Local Agency] in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity

4. to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."
5. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
6. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
7. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
8. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
9. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
10. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
11. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
12. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the [Local Agency] also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA, FTA, and FAA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by CDOT, FHWA, FTA, or FAA. You must keep records, reports, and submit the material for review

upon request to CDOT, FHWA, FTA, or FAA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

[Local Agency] gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FHWA, FTA, and FAA. This ASSURANCE is binding on [Local Agency], other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FHWA, FTA, and FAA funded programs. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

(Name of Recipient)

by _____
(Signature of Authorized Official)

DATED _____

APPENDIX A

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

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

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the [Local Agency] will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), the Regulations for the Administration of (*Name of Appropriate Program*), and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the [Local Agency] all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto [Local Agency] and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the [Local Agency] its successors and assigns.

The [Local Agency], in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the [Local Agency] will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [,] and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the [Local Agency] pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. *
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the [Local Agency] will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the [Local Agency] and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by [Local Agency] pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non- discrimination covenants, [Local Agency] will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued. *
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will there upon revert to and vest in and become the absolute property of [Local Agency] of Transportation and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

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

Pertinent Non-Discrimination Authorities:

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

EXHIBIT K

FFATA SUPPLEMENTAL FEDERAL PROVISIONS

**State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13**

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

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. “Award” means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

1.1.1. Grants;

1.1.2. Contracts;

1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);

1.1.4. Loans;

1.1.5. Loan Guarantees;

1.1.6. Subsidies;

1.1.7. Insurance;

1.1.8. Food commodities;

1.1.9. Direct appropriations;

1.1.10. Assessed and voluntary contributions; and

1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

1.1.12. Technical assistance, which provides services in lieu of money;

1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;

1.1.14. Any award classified for security purposes; or

1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. “Contract” means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

1.3. “Contractor” means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.

1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpartC;

1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;

1.5.2. A foreign public entity;

1.5.3. A domestic or foreign non-profit organization;

- 1.5.4. A domestic or foreign for-profit organization; and
- 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109- 282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17 **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
 - 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
 - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 4.2. In the preceding fiscal year, Contractor received:
 - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

- 7.1 **To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:
 - 7.1.1 Subrecipient DUNS Number;
 - 7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
 - 7.1.3 Subrecipient Parent DUNS Number;
 - 7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
 - 7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.
- 7.2 **To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:
 - 7.2.1 Subrecipient's DUNS Number as registered in SAM.
 - 7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zipcode + 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 arrangements 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"/> <i>1 to 2</i>	<input type="checkbox"/> <i>>3</i>	<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"/> <i>>10%</i>	<input type="checkbox"/> <i><10%</i>	<input type="checkbox"/>
9 Has your entity returned lapsed* funds? *Funds "lapse" when they are no longer available for obligation.		<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"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		≥ 6	2 to 5	< 2		
IMPACT ASSESSMENT				Yes	No	N/A
18	For this upcoming federal award or in the immediate future, does your entity have any potential conflicts of interest* in accordance with applicable Federal awarding agency policy? If Yes, please disclose these conflicts in writing, along with supporting information, and submit with this form. (*Any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Subrecipient's obligations to the State.)	<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"/>
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"/>
<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." SAMExclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

6.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

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

7.1 Event of Default. Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute an event of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

8. Effective Date. The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.

9. Performance Measurement. The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes.

The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

Exhibit N
Federal Treasury Provisions

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury’s Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.
- 1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
 - 2.1.1. “Award” means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
 - 2.1.2. “Entity” means:
 - 2.1.2.1. a Non-Federal Entity;
 - 2.1.2.2. a foreign public entity;
 - 2.1.2.3. a foreign organization;
 - 2.1.2.4. a non-profit organization;
 - 2.1.2.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
 - 2.1.2.6. a foreign non-profit organization (only for 2 CFR part 170) only);
 - 2.1.2.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
 - 2.1.2.8. a foreign for-profit organization (for 2 CFR part 170 only).
 - 2.1.3. “Executive” means an officer, managing partner or any other employee in a management position.
 - 2.1.4. “Expenditure Category (EC)” means the category of eligible uses as defined by the US Department of Treasury in “Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds” report available at www.treasury.gov.

- 2.1.5. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
- 2.1.6. “Grant” means the Grant to which these Federal Provisions are attached.
- 2.1.7. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.8. “Non-Federal Entity” means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 2.1.9. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
- 2.1.9.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.9.2. Is not organized primarily for profit; and
 - 2.1.9.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.10. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.11. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.12. “Prime Recipient” means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.13. “Subaward” means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. “Subrecipient” or “Subgrantee” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.15. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
- 2.1.15.1. Salary and bonus;
 - 2.1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the

fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

2.1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;

2.1.15.4. Change in present value of defined benefit and actuarial pension plans;

2.1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;

2.1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.

2.1.16. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.

2.1.17. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

2.1.18. “Unique Entity ID” means the Unique Entity ID established by the federal government for a Grantee at <https://sam.gov/content/home>.

3. COMPLIANCE.

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

3.2. Per US Treasury Final Award requirements, grantee programs or services must not include a term or conditions that undermines efforts to stop COVID-19 or discourages compliance with recommendations and CDC guidelines.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND UNIQUE ENTITY ID (UEI) REQUIREMENTS.

4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually.

4.2. UEI. Grantee shall provide its Unique Entity ID to its Prime Recipient, and shall update Grantee’s information in Sam.gov at least annually.

5. TOTAL COMPENSATION.

5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and

5.1.2. In the preceding fiscal year, Grantee received:

- 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.3. 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

- 6.1. If Grantee is a Subrecipient of the Award pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below \$30,000 no reporting required; if more than \$30,000 and less than \$50,000 then FFATA reporting is required; and, \$50,000 and above SLFRF reporting is required.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. Grantee shall report as set forth below.
 - 8.1.1. Grantee shall use the SLFRF Subrecipient Quarterly Report Workbook as referenced in Exhibit P to report to the State Agency within ten (10) days following each quarter ended September, December, March and June. Additional information on specific requirements are detailed in the SLFRF Subrecipient Quarterly Report Workbooks and "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

EC 1 – Public Health

All Public Health Projects

- a) Description of structure and objectives
- b) Description of relation to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

COVID-19 Interventions and Mental Health (1.4, 1.11, 1.12, 1.13)

- a) Amount of total project used for evidence-based programs
- b) Evaluation plan description

COVID-19 Small Business Economic Assistance (1.8)

- a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

- a) Number of non-profits served

COVID-19 Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (1.10)

- a) Sector of employer
- b) Purpose of funds

EC 2 – Negative Economic Impacts

All Negative Economic Impacts Projects

- a) Description of project structure and objectives
- b) Description of project's response to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Amount of total project used for evidence-based programs and description of evaluation plan (*not required for 2.5, 2.8, 2.21-2.24, 2.27-2.29, 2.31, 2.34-2.36*)
- e) Number of workers enrolled in sectoral job training programs
- f) Number of workers completing sectoral job training programs
- g) Number of people participating in summer youth employment programs
- h) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

Household Assistance (2.1-2.8)

- a) Number of households served

- b) Number of people or households receiving eviction prevention services (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*
- c) Number of affordable housing units preserved or developed (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*

Healthy Childhood Environments (2.11-2.13)

- a) Number of children served by childcare and early learning *(Federal guidance may change this requirement in July 2022)*
- b) Number of families served by home visiting *(Federal guidance may change this requirement in July 2022)*

Education Assistance (2.14, 2.24-2.27)

- a) National Center for Education Statistics (“NCES”) School ID or NCES District ID
- b) Number of students participating in evidence-based programs *(Federal guidance may change this requirement in July 2022)*

Housing Support (2.15, 2.16, 2.18)

- a) Number of people or households receiving eviction prevention services *(Federal guidance may change this requirement in July 2022)*
- b) Number of affordable housing units preserved or developed *(Federal guidance may change this requirement in July 2022)*

Small Business Economic Assistance (2.29-2.33)

- a) Number of small businesses served

Assistance to Non-Profits (2.34)

- a) Number of non-profits served

Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (2.35-2.36)

- a) Sector of employer
- b) Purpose of funds
- c) If other than travel, tourism and hospitality (2.36) – description of hardship

EC 3 – Public Health – Negative Economic Impact: Public Sector Capacity

Payroll for Public Health and Safety Employees (EC 3.1)

- a) Number of government FTEs responding to COVID-19

Rehiring Public Sector Staff (EC 3.2)

- a) Number of FTEs rehired by governments

EC 4 – Premium Pay

All Premium Pay Projects

- a) List of sectors designated as critical by the chief executive of the jurisdiction, if beyond those listed in the final rule
- b) Numbers of workers served
- c) Employer sector for all subawards to third-party employers
- d) Written narrative justification of how premium pay is responsive to essential work during the public health emergency for non-exempt workers or those making over 150 percent of the state/county’s average annual wage

- e) Number of workers to be served with premium pay in K-12 schools

EC 5 – Infrastructure Projects

All Infrastructure Projects

- a) Projected/actual construction start date (month/year)
- b) Projected/actual initiation of operations date (month/year)
- c) Location (for broadband, geospatial data of locations to be served)
- d) Projects over \$10 million
 - i. Prevailing wage certification or detailed project employment and local impact report
 - ii. Project labor agreement certification or project workforce continuity plan
 - iii. Prioritization of local hires
 - iv. Community benefit agreement description, if applicable

Water and sewer projects (EC 5.1-5.18)

- a) National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- b) Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
- c) Median Household Income of service area
- d) Lowest Quintile Income of the service area

Broadband projects (EC 5.19-5.21)

- a) Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
 - i. If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
 - ii. Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- b) Additional programmatic data will be required for broadband projects and will be defined in a subsequent version of the US Treasury Reporting Guidance, including, but not limited to (*Federal guidance may change this requirement in July 2022*):
 - i. Number of households (broken out by households on Tribal lands and those not on Tribal lands) that have gained increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, with the number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download and number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
 - ii. Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) that have projected increased access to broadband meeting the minimum speed standards in areas that previously

lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization, with the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

- iii. Narrative identifying speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering, technology to be deployed, miles of fiber, cost per mile, cost per passing, number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download, number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload, and number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization. Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

All Expenditure Categories

- a) Program income earned and expended to cover eligible project costs
- 8.1.2. A Subrecipient shall report the following data elements to Prime Recipient no later than five days after the end of the month following the month in which the Subaward was made.
- 8.1.2.1. Subrecipient Unique Entity ID;
 - 8.1.2.2. Subrecipient Unique Entity ID if more than one electronic funds transfer (EFT) account;
 - 8.1.2.3. Subrecipient parent's organization Unique Entity ID;
 - 8.1.2.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

- 8.1.2.5. Subrecipient’s top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 8.1.2.6. Subrecipient’s Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.
- 8.1.3. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, the following data elements:
- 8.1.3.1. Subrecipient’s Unique Entity ID as registered in SAM.
 - 8.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
 - 8.1.3.3. Narrative identifying methodology for serving disadvantaged communities. See the "Project Demographic Distribution" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. This requirement is applicable to all projects in Expenditure Categories 1 and 2.
 - 8.1.3.4. Narrative identifying funds allocated towards evidenced-based interventions and the evidence base. See the “Use of Evidence” section in the “Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds” report available at www.treasury.gov. See section 8.1.1 for relevant Expenditure Categories.
 - 8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the public health and negative economic impacts of COVID-19. This requirement is applicable to Expenditure Categories 1 and 2. For aid to travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12), also provide the sector of employer, purpose of funds, and if not travel, tourism and hospitality a description of the pandemic impact on the industry.
 - 8.1.3.6. Narrative identifying the sector served and designated as critical to the health and well-being of residents by the chief executive of the jurisdiction and the number of workers expected to be served. For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county’s average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is higher, OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions, include justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19 but should not include personally identifiable information. This requirement applies to EC 4.1, and 4.2.
 - 8.1.3.7. For infrastructure projects (EC 5), or capital expenditures in any expenditure category, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and location (for broadband, geospatial location data). For projects over \$10 million:
 - 8.1.3.8. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less

than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.

- 8.1.3.8.1. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.
 - 8.1.3.8.2. Whether the project prioritizes local hires.
 - 8.1.3.8.3. Whether the project has a Community Benefit Agreement, with a description of any such agreement.
- 8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor's Office and Office of the State Controller. The State of Colorado may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Exhibit Q – SLFRF Reporting Modification Form.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.
- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS.

- 10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

11. SINGLE AUDIT REQUIREMENTS.

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

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

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.
 - 12.1.1. [Applicable to federally assisted construction Agreements.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.
 - 12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).

- 12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements,” and any implementing regulations issued by the Federal Awarding Agency.
- 12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 12.1.7. Never Contract with the Enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never Contract with the Enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- 12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

- 12.1.9. Title VI of the Civil Rights Act. The Subgrantee, Contractor, Subcontractor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury’s Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury’s Title VI regulations, 31 CRF Part 22, and herein incorporated by reference and made part of this Agreement or agreement.

13. CERTIFICATIONS.

- 13.1. Subrecipient Certification. Subrecipient shall sign a “State of Colorado Agreement with Recipient of Federal Recovery Funds” Certification Form in Exhibit E and submit to State Agency with signed grant agreement.
- 13.2. Unless prohibited by Federal statutes or regulations, Prime Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Grantee with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

15. EVENT OF DEFAULT AND TERMINATION.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.
- 15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
- 15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
- 15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

- 15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- 15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or
- 15.2.5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

EXHIBIT O

AGREEMENT WITH SUBSUBRECIPIENT OF FEDERAL RECOVERY FUNDS

Section 602(b) of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021), authorizes the Department of the Treasury (Treasury) to make payments to certain Subrecipients from the Coronavirus State Fiscal Recovery Fund. The State of Colorado has signed and certified a separate agreement with Treasury as a condition of receiving such payments from the Treasury. This agreement is between your organization and the State and your organization is signing and certifying the same terms and conditions included in the State’s separate agreement with Treasury. Your organization is referred to as a Subrecipient.

As a condition of your organization receiving federal recovery funds from the State, the authorized representative below hereby (i) certifies that your organization will carry out the activities listed in section 602(c) of the Act and (ii) agrees to the terms attached hereto. Your organization also agrees to use the federal recovery funds as specified in bills passed by the General Assembly and signed by the Governor.

Under penalty of perjury, the undersigned official certifies that the authorized representative has read and understood the organization’s obligations in the Assurances of Compliance and Civil Rights Requirements, that any information submitted in conjunction with this assurances document is accurate and complete, and that the organization is in compliance with the nondiscrimination requirements.

Subrecipient Name _____

Authorized Representative: _____

Title: _____

Signature: _____

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
TERMS AND CONDITIONS

1. Use of Funds.
 - a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 602(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.
 - b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Subrecipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award. Subrecipient also agrees to comply with any reporting requirements established by the Governor's Office and Office of the State Controller.
4. Maintenance of and Access to Records
 - a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs. Subrecipient shall follow guidance on administrative costs issued by the Governor's Office and Office of the State Controller.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.
8. Conflicts of Interest. The State of Colorado understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy

is applicable to each activity funded under this award. Subrecipient and Contractors must disclose in writing to the Office of the State Controller or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Office of the State Controller shall disclose such conflict to Treasury.

9. Compliance with Applicable Law and Regulations.

a. Subrecipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

- i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
- ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and Subcontractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury’s implementing regulation at 31 C.F.R. Part 19.
- 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 subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.
3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Contractors, Subcontractors, successors, transferees, and assignees:

The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.
7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.
9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of

discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub- Subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

EXHIBIT P

SLFRF SUBRECIPIENT QUARTERLY REPORT

1. SLFRF SUBRECIPIENT QUARTERLY REPORT WORKBOOK

- 1.1 The SLFRF Subrecipient Quarterly Report Workbook must be submitted to the State Agency within ten (10) days following each quarter ended September, December, March and June. The SLFRF Subrecipient Quarterly Report Workbook can be found at:
<https://osc.colorado.gov/american-rescue-plan-act> (see SLFRF Grant Agreement Templates tab)

EXHIBIT Q

SAMPLE SLFRF REPORTING MODIFICATION FORM

Local Agency:		Agreement No:	
Project Title:		Project No:	
Project Duration: To:		From:	
State Agency:	CDOT		

This form serves as notification that there has been a change to the reporting requirements set forth in the original SLFRF Grant Agreement.

The following reporting requirements have been (add/ remove additional rows as necessary):

Updated Reporting Requirement (Add/Delete/Modify)	Project Number	Reporting Requirement

By signing this form, the Local Agency agrees to and acknowledges the changes to the reporting requirements set forth in the original SLFRF Grant Agreement. All other terms and conditions of the original SLFRF Grant Agreement, with any approved modifications, remain in full force and effect. Grantee shall submit this form to the State Agency within 10 business days of the date sent by that Agency.

 Local Agency

 Date

 CDOT Program Manager

 Date

Exhibit R
APPLICABLE FEDERAL AWARDS

FEDERAL AWARD(S) APPLICABLE TO THIS GRANT AWARD

Federal Awarding Office	US Department of the Treasury
Grant Program	Coronavirus State and Local Fiscal Recovery Funds
Assistance Listing Number	21.027
Federal Award Number	SLFRP0126
Federal Award Date *	May 18, 2021
Federal Award End Date	December 31, 2024
Federal Statutory Authority	Title VI of the Social Security Act, Section 602
Total Amount of Federal Award (this is <u>not</u> the amount of this grant agreement)	\$3,828,761,790

* Funds may not be available through the Federal Award End Date subject to the provisions in §2 and §5 below.

EXHIBIT S

PII Certification

STATE OF COLORADO

**LOCAL AGENCY CERTIFICATION FOR ACCESS TO PII THROUGH A
DATABASE OR AUTOMATED NETWORK**

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

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

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT T

CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

Checklist for required exhibits due to funding sources. Required Exhibits are dependent on the source of funding. This is a guide to assist in the incorporation and completion of Exhibits in relation to funding sources.

Exhibit	Funding only from FHWA	Funding only from ARPA	FHWA and ARPA Funding
EXHIBIT A, SCOPE OF WORK	✓	✓	✓
EXHIBIT B, SAMPLE OPTION LETTER	✓	✓	✓
EXHIBIT C, FUNDING PROVISIONS	✓	✓	✓
EXHIBIT D, LOCAL AGENCY RESOLUTION (IF APPLICABLE)	✓	✓	✓
EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST	✓	✓	✓
EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS	✓		✓
EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE	✓		✓
EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES	✓		✓
EXHIBIT I, FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS	✓		✓
EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS	✓		✓
EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS	✓	✓	✓
EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM	✓	✓	✓
EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS	✓		✓

EXHIBIT N, FEDERAL TREASURY PROVISIONS		✓	✓
EXHIBIT O, AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS		✓	✓
EXHIBIT P, SLFRF SUBRECIPIENT QUARTERLY REPORT		✓	✓
EXHIBIT Q, SLFRF REPORTING MODIFICATION FORM		✓	✓
EXHIBIT R, APPLICABLE FEDERAL AWARDS		✓	✓
EXHIBIT S, PII CERTIFICATAION	✓	✓	✓
EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE	✓	✓	✓

RESOLUTION NO. R2024- _____

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO,
FOR THE INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF AURORA AND
COLORADO DEPARTMENT OF TRANSPORTATION FOR THE TRAFFIC
MANAGEMENT CENTER PROJECT

WHEREAS, the City of Aurora, Colorado (the “City”), and the State of Colorado Department of Transportation (“CDOT”), collectively “the Parties”, as government agencies, are authorized by the provisions of Colo. Const., art. XIV, § 18(2)(a) and C.R.S. §§ 29-1-201, et seq., to contract with one another to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the City applied for three Denver Regional Council of Governments (DRCOG) 2024-2027 Regional Transportation Operations and Technology (RTO&T) grants, administered by CDOT; and

WHEREAS, The City and CDOT desire to enter into the intergovernmental agreement for CDOT to administer one of the three grant projects; and

WHEREAS, the Traffic Management Center grant application includes construction funds to retrofit space at the existing traffic signal workshop into a functional space where data can be reviewed and evaluated; and

WHEREAS, the grant application will help City staff to make faster, data driven decisions about traffic operations and maintenance; and

WHEREAS, the Traffic Management Center project is funded with 80% grant funds and 20% local match, with DRCOG contributing \$1,101,000 and the City contributing \$495,000 (\$275,250 in match funds with an additional \$219,750 in overmatch funds); and

WHEREAS, Section 10-12 of the City Charter authorizes the City Council, by resolution, to enter into contracts or agreements, or amendments thereto, with other governmental units or special districts for the joint use of buildings, equipment, or facilities, and for the furnishing or receiving of services.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, THAT:

Section 1. The Intergovernmental Agreement between the City of Aurora and Colorado Department of Transportation for the Traffic Management Center Project is hereby approved.

Section 2. The Mayor and City Clerk are hereby authorized to execute the intergovernmental agreement in substantially the form presented at this meeting with such technical additions, deletions, and variations as may be deemed necessary or appropriate by the City Attorney.

Section 3. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this _____ day of _____, 2024.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:

RLA

Michelle Gardner
MICHELLE GARDNER, Sr. Assistant City Attorney



CITY OF AURORA

Council Agenda Commentary

Item Title: Intergovernmental Agreement (IGA) with Colorado Department of Transportation (CDOT) for the Main Task Order for Fiber and Equipment Exchange (Resolution)
Item Initiator: Carlie Campuzano, Traffic Manager, Public Works
Staff Source/Legal Source: Carlie Campuzano, Traffic Manager, Public Works / Michelle Gardner, Senior Assistant City Attorney
Outside Speaker: N/A
Council Goal: 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

COUNCIL MEETING DATES:

Study Session: 8/26/2024

Regular Meeting: 9/9/2024

2nd Regular Meeting (if applicable): N/A

Item requires a Public Hearing: Yes No

ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Stephanie Hancock, Council Member
Carlie Campuzano, Traffic Manager, Public Works / Michelle Gardner, Senior Assistant City Attorney

ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field above.

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Transportation, Airports & Public Works

Policy Committee Date: 6/26/2024

Action Taken/Follow-up: (Check all that apply)

- Recommends Approval Does Not Recommend Approval
 Forwarded Without Recommendation Minutes Not Available
 Minutes Attached

HISTORY *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

At the April 25, 2024 meeting of the Transportation, Airports, and Public Works Policy Committee, staff presented the Fiber Master Plan for approval. The City of Aurora created the Fiber Master Plan to guide planning and decision making related to deployment of a city-wide fiber optic communications system. The Fiber Master Plan includes recommendations related to sharing fiber optic cable with other agencies. One opportunity that was identified in the plan was leasing fiber optic strands from the Colorado Department of Transportation (CDOT).

At the June 26, 2024 meeting of the Transportation, Airports, and Public Works Policy Committee, staff presented this intergovernmental agreement (IGA). Committee members unanimously supported moving the IGA forward to Study Session. Minutes for both TAPS meetings are attached.

ITEM SUMMARY *(Brief description of item, discussion, key points, recommendations, etc.)*

This item is a Main Task Order IGA agreement between the City of Aurora and CDOT which grants the City access to CDOT right-of-way and allows each agency to enter into agreements to exchange services. The City and CDOT plan to execute a future task order to this master agreement to allow for sharing of fiber optic strands along I-225 and I-70 consistent with recommendations in the Fiber Master Plan. This IGA only covers terms of the Main Task Order and does not involve funding.

FISCAL IMPACT

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact Budgeted Expenditure Impact Non-Budgeted Expenditure Impact
 Workload Impact No Fiscal Impact

REVENUE IMPACT

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

BUDGETED EXPENDITURE IMPACT

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

N/A

NON-BUDGETED EXPENDITURE IMPACT

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

WORKLOAD IMPACT

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

N/A

QUESTIONS FOR COUNCIL

Does City Council support moving forward the resolution for the Intergovernmental Agreement between the Colorado Department of Transportation and the City of Aurora for the Main Task Order for Fiber and Equipment Exchange to the next available Regular Meeting?

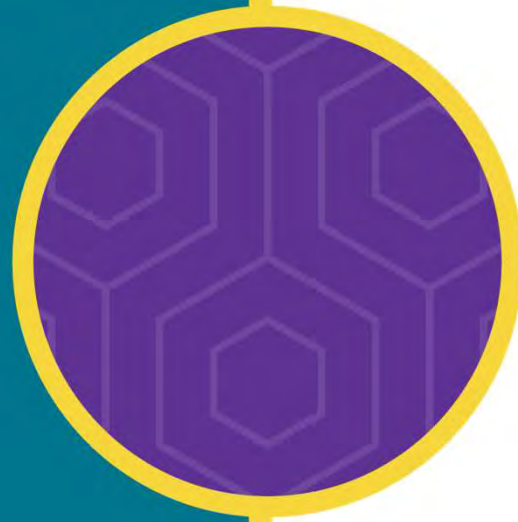
LEGAL COMMENTS

Governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units only if such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve. (Colo. Rev. Stat. Section 29-1-203(1)). City Council may, by resolution, enter into intergovernmental agreements with other governmental units or special districts for the joint use of buildings, equipment or facilities, and for furnishing or receiving commodities or services. (City Charter Section 10-12). (M. Gardner)

Study Session

August 26, 2024

- Carlie Campuzano



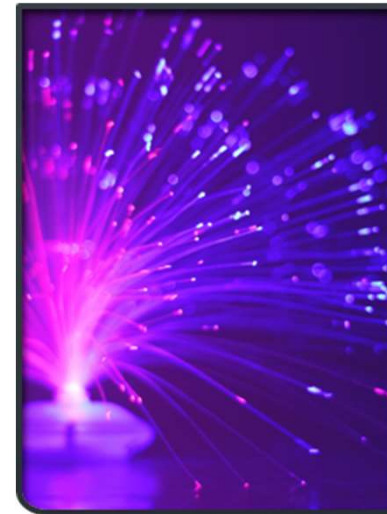
IGA with CDOT for Fiber Sharing



Fiber Optic Master Plan Goals



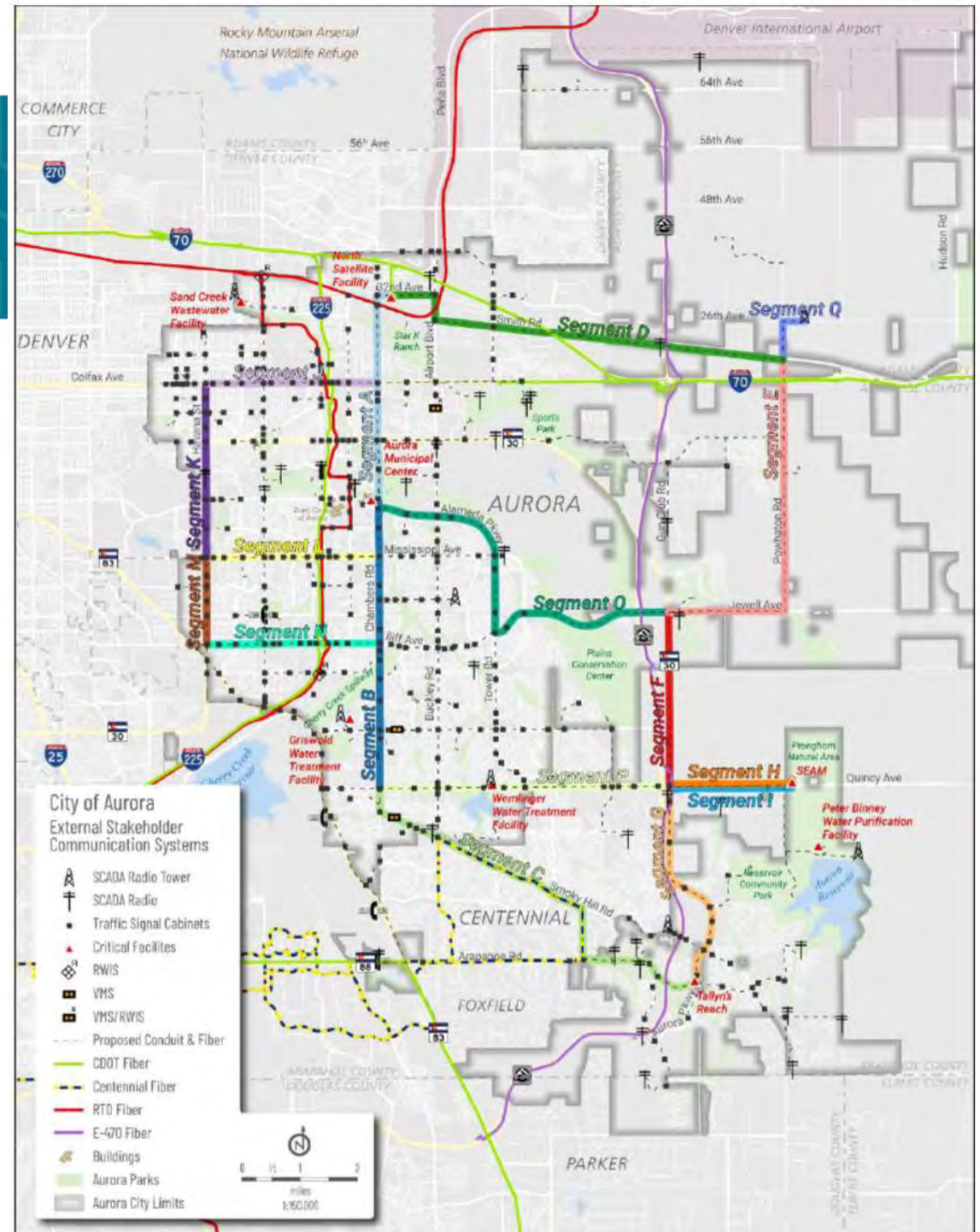
- Fiber Master Plan was presented to TAPS on April 25, 2024
- City-Wide Fiber Master Plan was developed by Public Works, IT, and Aurora Water
 - Goal is to support City's current and future communication needs
- City-wide effort led by three departments
- Developed existing conditions report, future plan report, deployment plan report



Fiber Optic Future Plan

- Future full build out plan was developed using feedback from internal city groups as well as other agencies

Figure 4: Centennial, CDOT, and RTD Existing Fiber Optic Infrastructure Map with Proposed Backbone Segments



CDOT Fiber Sharing

- Through stakeholder meetings as part of the Fiber Master Plan project, staff identified a fiber sharing opportunity with CDOT
- Aurora staff have been working with CDOT staff to prepare a fiber sharing agreement
- This IGA is a Main Task Order which defines how fiber and other equipment will be shared between the two agencies

Figure 1: CDOT Fiber Routes Where the City is Requesting Dark Fiber



CDOT Fiber Sharing



- This IGA does not involve funding
- Aurora has been awarded a DRCOG grant to design and construct tie ins to the CDOT fiber for City use

Question for the Committee



- Does the City Council support moving forward the Resolution for the Intergovernmental Agreement between the Colorado Department of Transportation and the City of Aurora for the Main Task Order for Fiber and Equipment Exchange to the next available Regular Meeting?



Questions?



Transportation, Airports and Public Works (TAPS) Policy Committee Meeting

April 25, 2024

Members Present: Council Member (CM) Stephanie Hancock, Chair; Council Member (CM) Francoise Bergan, Vice-Chair; Council Member (CM) Angela Lawson, Member

Others Present: Mayor Michael Coffman, Carlie Campuzano, Julie Patterson, Ryan Germeroth, Mac Callison, Huiliang Liu, Haley Busch Johansen, Cindy Colip, Laura Perry, Scott Bauman, Cathy Valencia, Mindy Parnes, Rachel Allen, Leticia Callanen, Stephanie Sinclair, Josh Smith, Angela Sims-Ceja, Chris Bliden, Matthew Chapman, Brent Budny, Adrian Morris, Brianna Medema, Elly Watson

1. WELCOME AND INTRODUCTION

2. APPROVAL OF MARCH 21, 2024 MEETING MINUTES

3. CONSENT ITEMS (None)

4. GENERAL BUSINESS

4.a Parker/Quincy/Smoky Hill Project Update

Summary of Issue and Discussion:

Cathy Valencia, Transportation Project Delivery Manager, gave an update on the Parker/Quincy/Smoky Hill Improvements Project, which will reduce congestion and improve operational performance and safety in the project area. She stated they were currently finishing up the final design and it implements operational, safety, and accessibility improvements. She explained the project is partially funded through the Transportation Improvement Program grant by DRCOG and will receive close to \$6 million for construction. She discussed the project timeline, with construction beginning in the Fall of 2024, and they expect it to take one year.

Committee Discussion:

CM Lawson stated this would improve the area significantly and she is happy about the project. She asked how they would get out information to the impacted residents, because a year timeframe will be impactful.

C. Valencia assured her they will keep them in the loop when construction begins, and they will be coordinating with Communications to keep the public informed.

CM Hancock commented that they want to make sure people are aware and she is looking forward to it coming to fruition.

Outcome:

Information only.

Follow-up Action:

No follow-up needed.

4.b A Resolution by the City Council of Aurora to Adopt the Fiber Optic Master Plan

Summary of Issue and Discussion:

Josh Smith, Technical Infrastructure Manager for the IT Department, explained what fiber is and the purpose for fiber. He said right now city fiber is very limited, and the city wants more to allow them to operate signals more quickly and to provide better bandwidth for city facilities. He stated they worked with a company outside of the city to help develop this and have a draft proposal together.

Carlie Campuzano, Traffic Manager, presented on the citywide Fiber Optic Master Plan Project. She voiced that they separated the project into three separate phases, an existing conditions phase, future plan phase, and deployment plan phase. She said they coordinated with groups within the city and external coordination to identify what other agencies already have, discussed what they want to get to, what could future projects look like if they ever wanted to have a joint project, or any ability to share resources amongst each other. She explained that they wanted to communicate with traffic signals in the city and intelligent transportation systems.

Josh Smith voiced that the speed of the signals they have now are very slow and explained the distinction between broadband and city fiber. He stated the city provides internet access and email services to water facilities, but the operational technology is very specific.

Angela Sims-Ceja added that the water system for operational technology mimics the traffic system and is used to manage the infrastructure to operational technology for water. She said it was an excellent opportunity for the departments to all get their heads together and think about what it takes to plan for future development of fiber for all departments and piece it out in priority order to get needs met and split cost.

C. Campuzano stated they tried to identify the different communication needs for different groups, including more coverage, higher bandwidth, and more reliability for traffic and water.

J. Smith noted that IT needs to support city-wide communication by reducing third party service providers and costs.

C. Campuzano touched on some of the benefits to the community through the plan, including allowing staff to be more proactive with signal timing, push out updates and alerts more quickly, and be more proactive with maintenance and operations of all the traffic devices. She stated they took all the existing data and tried to lay out what they needed for the future and ranked the priorities in their deployment plan. She discussed next steps, including pursuing high priority segments with some funding already received, a fiber sharing agreement with CDOT, requiring fiber conduit to be installed with new roadway construction, and adding fiber communication requests to the Capital Improvement Plan. C. Campuzano asked the TAPS Committee to adopt the Fiber Optic Master Plan forward to study session.

Committee Discussion:

CM Bergan asked how the build out plan would help the southern part of her ward off Arapahoe and along E-470 corridor.

C. Campuzano explained they were trying to get connectivity to bring all the data back to where the signal shop and future traffic communication center will be, and it will allow them to get further south and get high bandwidth connection to high points to reposition radios and get better coverage to her ward.

CM Bergan asked about fiber sharing and if we would be able to share fiber with Centennial on Smoky Hill and Arapahoe.

C. Campuzano answered if they can get communications north-south, then they can talk about sharing opportunities for their extra capacity along Smoky Hill. She said they met with Centennial, and they were supportive and interested in those opportunities.

CM Bergan asked if public safety was a different system or connected.

J. Smith responded that public safety was included under city systems and Districts 1 and 2 were already on fiber with backup connectivity, and city fiber to Tallyn’s was high on the list. He said they run three different connections from two different providers there with the 911 Center coming in through different paths, but they are getting ready to add another one.

CM Bergan stated she had a meeting last week with Crown Castle, where they talked about their technology being different than others, and asked if that is what they were looking at.

C. Campuzano said theirs would be a conduit to be bored underground and a little more expensive but less evasive for pavement and other utility conflicts and considerations.

C. Colip added micro trenching is a direct bury and is damaging to cable, so they wanted significant fiber protected in a conduit.

J. Smith added micro trenching generally runs small cable fiber counts and they need high fiber counts.

Outcome:

The Committee recommended the item move forward to Study Session.

Follow-up Action:

Staff will move the item forward to Study Session.

5. MISCELLANEOUS MATTERS

6. ANTICIPATED TOPICS FOR NEXT MEETING

- IGA between the City of Aurora and City & County of Denver regarding the operations and maintenance plan for a portion of 68th Avenue
- CDOT Fiber IGA

Transportation, Airports and Public Works (TAPS) Policy Committee Meeting

June 26, 2024

Members Present: Council Member (CM) Stephanie Hancock, Chair; Council Member (CM) Francoise Bergan, Vice-Chair; Council Member (CM) Angela Lawson, Member

Others Present: Carlie Campuzano, Julie Patterson, Ryan Germeroth, Mac Callison, Huiliang Liu, Haley Busch Johansen, Laura Perry, Cathy Valencia, Mindy Parnes, Stephanie Sinclair, Adrian Morris, Traci Burton, Jeannine Rustad, Marc Tamburro, Brian Rulla, Nicholas Johnson, Daniel Clark, Hector Reynoso, Rachel Allen, Michelle Gardner

Guest: Keith Borsheim

1. WELCOME AND INTRODUCTION

2. APPROVAL OF MAY 16, 2024 MEETING MINUTES

3. CONSENT ITEMS (None)

4. GENERAL BUSINESS

4.a. Consideration to Approve a Resolution for the IGA with CDOT for the Aurora Traffic Signal Equipment Upgrade Project

Summary of Issue and Discussion:

Carlie Campuzano, Traffic Manager, asked for consideration and approval for a resolution for the IGA (Intergovernmental Agreement) with Colorado Department of Transportation (CDOT) for the Aurora Traffic Signal Equipment Upgrade Project. This is for a grant project applied for through DRCOG (Denver Regional Council of Governments) for the Regional Transportation Operations and Technology set-side program that is administered by CDOT. C. Campuzano noted that they applied for three different grant projects for traffic items and received funding for all three, which are for communications infrastructure, traffic management center, and this project, which is for traffic signal equipment upgrades. Staff selected 42 locations to upgrade multimodal detection units which provide data and metrics as well as 42 backup power supply units. The federal funding will procure the hardware and internal staff will phase in the installations.

Committee Discussion:

CM Bergan asked what the criteria was for choosing the 42 locations.

C. Campuzano responded that the locations were determined primarily based on which corridors were eligible, but they tend to be high volume and higher crash locations.

CM Lawson inquired if there was any regional coordination to do something on Parker Road.

C. Campuzano said there was a lot of multijurisdictional coordination, and there is a city-wide safety action plan coming up which includes all of Aurora that is funded by DRCOG. She said she would bring forward updates on that next year.

Outcome: The Committee recommended the item move forward to Study Session.

Follow-up Action: Staff will move the item forward to Study Session.

4.b. Consideration to Approve a Resolution for the IGA with CDOT for the Main Task Order for Fiber and Equipment Exchange

Summary of Issue and Discussion:

Carlie Campuzano, Traffic Manager, asked for consideration and approval for a resolution for the IGA with CDOT for the Main Task Order for Fiber and Equipment Exchange, which will also set them up for a future option letter for a construction project. Through the Fiber Master Plan process, staff set goals and strategies for deploying fiber in the city and coordinated with external stakeholders. This coordination included the identification of a high priority sharing opportunity with CDOT. This IGA is the Main Task Order that defines how fiber and equipment will be shared between Aurora and CDOT, and it does not involve any funding.

Committee Discussion: None.

Outcome: The Committee recommended the item move forward to Study Session.

Follow-up Action: Staff will move the item forward to Study Session.

4.c. Connecting Aurora - Aurora Citywide Multimodal Transportation Master Plan Project Update

Summary of Issue and Discussion:

Keith Borsheim, Consultant Project Manager, gave an update on Connecting Aurora, the Citywide Multimodal Transportation Master Plan Project. They are 85 to 90% done with existing conditions analysis, have completed the first round of public engagement, and hope to present the draft vision, mission, and goals to Council next month. The project team hosted four in-person open houses, an online open house, an online map, and attended six community events and popups. They also had extensive engagement efforts through social-media, newsletters, flyers, post cards and traditional media coverages, etc., and received great feedback. The feedback showed that people feel somewhat safe in a vehicle, but somewhat unsafe with other non-vehicle modes of transportation. Regarding vehicle travel, they heard about driving challenges, important factors on why people travel in a car, and how often and how long people are traveling via a vehicle. For walking, they heard about what prevents people from walking and what desired sidewalk improvements are. For biking, they heard about what prevents people from biking and what desired bikeway improvements are. On the public transit, they found that most people do not use

STATE OF COLORADO MAIN TASK ORDER INTERGOVERNMENTAL AGREEMENT (NON-EXPENDITURE)

COVER PAGE

State Agency Colorado Department of Transportation (CDOT)	Contract Routing Number 24-HAA-XE-00005 SAP Number 351002094		
Contractor City of Aurora	Contract Performance Beginning Date Effective Date		
Contract Authority Colorado Constitution, Article XIV, § 18(2)(a), C.R.S. § 24-110-101 et seq.	Initial Contract Expiration Date Twenty (20) years from the Effective Date		
Contract Purpose This Contract is for 1) CDOT to grant Contractor nonexclusive right-of-way access and infeasible right-to-use components in exchange for equivalent value of in-kind services as compensation; and 2) CDOT to grant Contractor nonexclusive right-of-way access and use of excess fiber strands in exchange for equivalent value of in-kind fiber strands as compensation.			
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Contract: <ol style="list-style-type: none"> 1. Exhibit A – Statement of Work (Infrastructure Exchange and Dark Fiber Lease) 2. Exhibit B – Sample Option Letter 3. Exhibit C – Form of Task Order 4. Exhibit D – Fee Schedule 5. Exhibit E – Unsolicited Proposal <p>In the event of a conflict or inconsistency between this Contract and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> 1. Colorado Special Provisions in §17 of the main body of this Contract. 2. The provisions of the other sections of the main body of this Contract. 3. Exhibit A, Statement of Work 4. Executed Option Letters (if any). 5. Executed Task Orders (if any). 6. Exhibit D, Fee Schedule 7. Exhibit E, Contractor’s Unsolicited Proposal 			
Principal Representatives <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> For the State: Allie Axley, Branch Manager Colorado Department of Transportation 425C Corporate Circle Golden, CO 80401 allie.axley@state.co.us </td> <td style="width: 50%; border: none;"> For the Contractor: Carlie Campuzano, PE, PTOE, Traffic Manager City of Aurora 15151 E. Alameda Parkway Aurora, CO 80012 ccampuza@auroragov.org </td> </tr> </table>		For the State: Allie Axley, Branch Manager Colorado Department of Transportation 425C Corporate Circle Golden, CO 80401 allie.axley@state.co.us	For the Contractor: Carlie Campuzano, PE, PTOE, Traffic Manager City of Aurora 15151 E. Alameda Parkway Aurora, CO 80012 ccampuza@auroragov.org
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SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

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

<p>CONTRACTOR The City of Aurora, Colorado</p> <hr/> <p>By: Mike Coffman, Mayor</p> <p>Date: _____</p>	<p>STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director</p> <hr/> <p>By: Keith Stefanik, P.E., Chief Engineer</p> <p>Effective Date: _____</p>
<p>CONTRACTOR The City of Aurora, Colorado</p> <hr/> <p>By: Kadee Rodriguez, City Clerk</p> <p>Effective Date: _____</p>	<p>CONTRACTOR The City of Aurora, Colorado</p> <hr/> <p>By: Michelle Gardner, Sr. City Attorney</p> <p>Effective Date: _____</p>

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1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Contract shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Contract before the Effective Date.

B. Initial Term

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

C. Extension Terms

The Parties shall have the option to extend the performance under this Contract beyond the Initial Term for a period, or for successive periods, of ten years or less at the same rates and under the same terms specified in the Contract (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to the Contractor in a form substantially equivalent to the Sample Option Letter attached to this Contract. The Parties shall agree in writing to the Extension Term prior to the State providing this written notice. The total duration of this Contract, including the exercise of any options to extend, shall not exceed twenty years from its Effective Date.

If either Party elects to not extend the Contract, it must give the other Party at least two (2) years’ written notice of its intention to not renew. If the Contract is not renewed or is terminated, the Contractor shall remove all Contractor Facilities within the CDOT Right-of-Way and restore impacted areas to pre-installation conditions. If the agreement is terminated by CDOT, the corresponding maintenance intergovernmental agreement between CDOT and the City of Aurora (Contractor) will need to be amended or terminated as well.

D. Early Termination in the Public Interest

The State and Contractor are entering into this Contract to serve the public interest of the City of Aurora, State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State or the Contractor, in its discretion, may terminate this Contract in whole or in part. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right nor Contractor's right to terminate for convenience. This subsection shall not apply to a termination of this Contract by the State for Breach of Contract by Contractor, which shall be governed by **§12.A.i.**

i. Method and Content

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

ii. Obligations and Rights

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

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. "**Breach of Contract**" means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. If Contractor is debarred or suspended under §24-109-105, C.R.S., at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- B. "**Business Day**" means any day other than Saturday, Sunday, or a legal holiday as listed in §24-11-101(1), C.R.S.
- C. "**Contract**" means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- D. "**Contractor Facilities**" means all handholes, cabinets, poles, caissons, power feeds, communications equipment, utility lines and connections (including splice points), and all other related and necessary equipment for the operation of the Contractor's communications capabilities."
- E. "**CORA**" means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
- F. "**Deliverable**" means the outcome to be achieved or output to be provided, in the form of a tangible or intangible Good or Service that is produced as a result of Contractor's Work that is intended to be delivered to the State by Contractor.
- G. "**Effective Date**" means the date on which this Contract is approved and signed by the Chief Engineer of the Colorado Department of Transportation or designee, as shown on the Signature Page for this Contract.
- H. "**Exhibits**" means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- I. "**Extension Term**" means the time period defined in **§2.C.**
- J. "**Fiber Infrastructure**" (whether or not the term is capitalized) mean conduits, pipes, optical fiber cable, splices and splice boxes, manholes, handholes, buildings (including, as applicable, towers and monopoles), fences and associated security equipment and materials, and other equipment and materials, such as supporting elements, marker tape, marker posts, locating beacons and equipment, and other materials and equipment necessary or appurtenant to a fiber optic network, all located within CDOT ROW. For additional clarity, "**CDOT Fiber Infrastructure**" refers to Fiber Infrastructure owned by CDOT or provided by a third party to CDOT (whether or not the same is provided via IRU, lease, license, or otherwise to Contractor by CDOT pursuant to this Contract), and "**Leased Contractor Fiber Infrastructure**" or "**Leased Fiber**" refers to Fiber Infrastructure leased by the Contractor as provided herein and includes the supporting infrastructure installed by the Contractor or a third party to support the Contractor's use of the leased Fiber Infrastructure.

- K. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- L. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et seq.*, C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- M. **“Initial Term”** means the time period defined in §2.B.
- N. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- O. **“Right-of-Way”**, **“ROW”** or **“CDOT ROW”** means easements, licenses, or other rights in real estate owned or controlled by the State in which the State grants Contractor the right to perform work and otherwise design, engineer, construct, install, occupy, operate, maintain and upgrade Fiber Infrastructure in accordance with this Contract.
- P. **“Services”** means the services to be performed by Contractor as set forth in this Contract, and shall include any services to be rendered by Contractor in connection with the Goods.
- 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.
- T. **“Subcontractor”** means any third party engaged by Contractor to aid in performance of the Work.
- U. **“Task Order”** means a document issued in accordance with §4.B of this Contract that specifically describes the Work to be performed on a Project.
- V. **“Work”** means the Goods delivered and Services performed pursuant to this Contract.
- W. **“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 Contract that is defined elsewhere in this Contract or in an Exhibit shall be construed and interpreted as defined in that section or in that Exhibit.

4. STATEMENT OF WORK AND TASK ORDERS

A. General Statement of Work

The State leases to the Contractor and the Contractor leases from the State, upon the terms and provisions in this Contract, the CDOT Fiber Infrastructure, as identified in Exhibit A, which is attached hereto and incorporated by this reference, and any Task Order.

B. Task Orders

The State may execute Task Orders to authorize Contractor to perform portions of the Work. The State may execute Task Orders in its discretion and the State is not required to execute any minimum number of Task Orders under this Contract.

i. Task Order Development

To initiate a Task Order, the State will provide a request to Contractor describing the general scope and intent of the Work it desires Contractor to perform under that Task Order and the timeline for Contractor to submit a proposal in response to the request. Contractor shall submit a proposal to the State, within the timeline provided by the State, in response to the State's request that contains, without limitation, a description of all of the following for the Project described in that Task Order:

- a. The final deliverables and other end results of the Project that the State will use to determine if the Project is complete and the dates on which those deliverables and other end results will be complete.
- b. All activities necessary for Contractor to complete the Project. This description may be in the form of a work breakdown structure if requested or approved by the State.
- c. All timelines and milestones that the State will use to determine if Contractor is on schedule to complete the Project. This description may be in the form of a project plan if requested or approved by the State.
- d. The total price of the Project, including a breakdown of any applicable materials costs, labor costs and other cost components as requested by the State as described in this Contract. The total price of a Project shall be determined based on the rates described in this Contract, and Contractor shall not include any work in a Task Order for which an applicable rate is not provided in this Contract.
- e. Contractor may complete a Project in phases, so long as all other requirements of this paragraph **4.B.i** are included for each phase of the Project.

The State may direct Contractor to make changes to any proposal Contractor submits to the State. Contractor shall make all changes as directed by the State and may modify its price for the Project contained in that proposal to account for those changes. The State may accept or reject any proposal Contractor submits at any time, and may choose to not proceed with a Project prior to execution of a Task Order for that Project, in its sole discretion.

ii. Task Order Issuance

If the State accepts a proposal from Contractor, then the State will include that proposal as the statement of work for a Task Order. The State shall execute that Task Order in a form substantially similar to the Form of Task Order attached to this Contract. Contractor shall not begin work on any Project until the Task Order for that Project is fully executed.

iii. Task Order Completion

Contractor shall perform the Project described in each Task Order that the State has executed, within the timelines and by the due dates described in that Task Order. The obligations and requirements of a Task Order shall be deemed to be obligations and requirements of this Contract.

iv. Task Order Modifications

When the Parties desire to modify a Task Order, Contractor shall update its proposal that was included in the Task Order to account for the modification the Parties desire to make. If both Parties agree to the updated proposal, they may modify the Task Order by executing an amendment to the Task Order that includes the updated proposal. No modified requirement of a Task Order shall be enforceable prior to the execution of the amendment to the Task Order that includes that modification. This paragraph **4.B.iv** shall not apply to any modification to a Task Order that only modifies timelines within a Project without changing the due date of any deliverable or other end result, or only modifies the breakdown of costs within a Project without changing the total maximum amount for any State Fiscal Year, which may be made if the State approves of the modification in writing.

v. Task Order Termination

Regardless of the date of any deliverable or other end result of a Task Order, all Task Orders shall automatically terminate upon the date that this Contract expires or is terminated for any reason, unless the State directs otherwise in writing.

B. Access

Contractor shall have access to the CDOT Fiber Infrastructure to install, operate, upgrade, repair, and maintain Contractor Facilities. Contractor shall have access twenty-four (24) hours a day, seven (7) days a week to Contractor's Facilities located within the CDOT Right-of-Way.

C. Destruction of or Damage to the Contractor's Facilities

In the event the Facilities on the CDOT Fiber Infrastructure are damaged or destroyed by a third party, fire or other casualty to the extent Contractor's Facilities are unusable, Contractor at its option may (i) restore or modify the Contractor's Facilities with all due diligence, or (ii) terminate this Contract by written notice to the State without penalty.

2. CONTRACTOR PAYMENTS TO STATE

A. In exchange for the lease of the CDOT Fiber Infrastructure, Contractor shall pay the State in the amounts and in accordance with the schedule and other conditions set forth in Exhibit A and the terms of each Task Order. Contractor shall pay the State the annual lease fee and electric fee calculated pursuant to Exhibit D ("Contract Fees").

B. The State shall have no liability to compensate Contractor for the installation or removal of Contractor's Facilities under this Contract.

3. REPORTING - NOTIFICATION

A. Litigation Reporting

If Contractor 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 Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's Principal Representative identified on the Cover Page for this Contract.

B. Incident Notice and Remediation

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

4. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: **(i)** the date three years after the date this Contract expires or is terminated, **(ii)** final payment under this Contract is made, **(iii)** the resolution of any pending Contract matters, or **(iv)** if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

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

C. Monitoring

The State, the federal government, and any other duly authorized agent of a governmental agency, in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by the State or that governmental entity. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Audit Report

Contractor shall promptly submit to the State a copy of any final audit report of an audit performed on Contractor's records that relates to or affects this Contract or the Work, whether the audit is conducted by Contractor or a third party.

5. [RESERVED]

6. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor 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 Contractor under this Contract. Such a conflict of interest would arise when a Contractor 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 Contract.

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor 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 Contract.

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

7. INSURANCE

Contractor 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 Contract. All insurance policies required by this Contract that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Contractor Insurance

The Contractor 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 Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. In addition to the foregoing, Contractor 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 Contract.

B. Workers’ Compensation

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

C. Automobile Liability

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

D. Pollution Legal Liability Coverage

If any operations are anticipated that might in any way result in the creation of a pollution exposure, Pollution Legal Liability Insurance with minimum limits of liability as follows:

- i. \$1,000,000 each claim; and
- ii. \$1,000,000 annual aggregate.

E. Subcontractor Requirements

Contractor 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 Contract, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor’s obligations under the GIA. Contractor 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 Contract all of the following insurance policies:

i. Workers’ Compensation

Worker’s Compensation insurance as required by state statute, and employers’ liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

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

- 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 one 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. 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.

v. 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.
- vi. Pollution Legal Liability Coverage

If any operations are anticipated that might in any way result in the creation of a pollution exposure, Pollution Legal Liability Insurance with minimum limits of liability as follows:

- a. \$1,000,000 each claim; and
- b. \$1,000,000 annual aggregate.

The policy shall be written on a claims made form, with an extended reporting period of at least two-year following finalization of this Contract.

B. 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 Contractor and Subcontractors.

C. Primacy of Coverage

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

D. Cancellation

The above 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 Contractor and Contractor shall forward such notice to the State in accordance with §14 within seven days of Contractor's receipt of such notice.

E. Subrogation Waiver

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

F. Certificates

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

2. BREACH OF CONTRACT

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

3. REMEDIES

A. State's Remedies

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

i. Termination for Breach of Contract

In the event of Contractor's uncured breach, the State may terminate this Contract, which is the subject of the breach, in whole or in part. Contractor shall continue performance of this Contract to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Contractor 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, Contractor 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 Contract's terms. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor but in which the State has an interest. At the State's request, Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Contractor 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. Damages and Withholding

Notwithstanding any other remedial action by the State, and to the extent allowed by law, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor.

ii. Remedies Not Involving Termination

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

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in the performance schedule. Contractor shall promptly cease performing Work in accordance with the State's directive.

b. Removal

Demand immediate removal of any of Contractor'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 Contract is deemed by the State to be contrary to the public interest or the State's best interest.

B. Contractor's Remedies

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

4. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

If the initial resolution described in §13.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 the State Agency named on the Cover Page of this Contract as described in §24-101-301(30), C.R.S., for resolution in accordance with the provisions of §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (collectively, 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.

5. NOTICES AND REPRESENTATIVES

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

6. [RESERVED]

7. GENERAL PROVISIONS

A. Assignment

Contractor’s rights and obligations under this Contract 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 Contractor’s rights and obligations approved by the State shall be subject to the provisions of this Contract.

B. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the State. Contractor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Contract 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 Contract.

C. Binding Effect

Except as otherwise provided in §16.A, all provisions of this Contract, 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 Contract and the performance of such Party’s obligations have been duly authorized.

E. Captions and References

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract 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. The captions and headings set forth in this IGA are for reference only and shall not be construed so as to define or limit its terms and provisions.

F. Counterparts

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

G. Entire Understanding

This Contract 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 Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this Contract 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.

I. Modification

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

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

Any reference in this Contract 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 Contract.

K. External Terms and Conditions

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

L. Severability

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

M. Survival of Certain Contract Terms

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

N. Taxes

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

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§16.A**, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract 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 Contract are incidental to this Contract, 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 Contract, 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 Contract 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

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

S. Licenses, Permits, and Other Authorizations

- i. Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Contract, 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 Contract.
- ii. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, shall obtain prior to the Effective Date and maintain at all times during the term of this Contract, at its sole expense, a certificate of authority to transact business in the State of Colorado and designate a registered agent in Colorado to accept service of process.

T. Indemnification

- i. Each Party will be responsible for its own negligent or intentional acts or omissions and for those of its employees, officers, agents and volunteers.
- ii. The Parties agree that in the event any claim or suit is brought against either or both Parties by any third party as a result of the operation of this Contract, both parties will cooperate with each other, and with any insuring entity or entities of the Parties, in defending such claim or suit. Each Party shall bear the costs of their own defense and settlements, if applicable.
- iii. The Parties hereto intend that nothing herein shall be deemed or construed as a waiver by either Party of the rights, immunities, limitations, or protections afforded to them under the Colorado Governmental Immunity Act (§24-10-101, C.R.S., et seq.) as now or hereafter amended or otherwise available at law or equity.

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

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

A. 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.

B. 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.**

C. 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.

D. 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.

E. 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.

F. 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.

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Exhibit A-1, Statement of Work (INFRASTRUCTURE EXCHANGE)

1. Contract Description

- a. CDOT may grant non-exclusive access to CDOT Right-of-Way (ROW) and Infeasible Right-to-Use (IRU) components of CDOT fiber infrastructure. In exchange for either ROW access, an IRU or a combination of both ROW access and an IRU, CDOT shall be granted an equivalent value of in-kind services as compensation for the use of CDOT ROW and / or an IRU for CDOT fiber Infrastructure.

2. Contractor Responsibilities

Contractor shall perform and be responsible for the following functions as applicable for each task order:

- a. Manage and administer work, as outlined in each task order, records and all related activities to ensure that all applicable federal and state statutes, regulations, standards, plans, specifications and procedures are satisfied.
- b. Prepare and provide project plans to CDOT in hard copy and appropriate electronic format as required by CDOT for review, comment and approval prior to submitting for a CDOT Region Permit for the installation and construction of fiber infrastructure in the CDOT ROW.
- c. Provide as-constructed plans showing any changes or deviations required from the project plans within 3 days of project closeout. As-constructed plans shall be provided in the same electronic formation as project plans and be provided in SHP file format in the WGS_1984_UTM_Zone_13N projected coordinate system and the GCS_WGS_1984 geographic coordinate system. Contractor's SHP file shall include details as specified in the as-constructed SHP file specification and accurate within 3 feet. An inventory of fiber strand assignments shall be provided with the as-constructed plans.
- d. Apply for and obtain the applicable CDOT Region Utility Permit and comply with all applicable provisions, terms and conditions of the applicable CDOT Region Utility Permit.
- e. Apply for and obtain the applicable CDOT Region Maintenance Permit and comply with all applicable provisions, terms and conditions of the applicable CDOT Region Maintenance Permit in order to perform maintenance activities on all Contractor owned infrastructure unless otherwise specified in the task order.
- f. Apply for and obtain any and all other federal, state and/or local permits that may be necessary.
- g. Perform all installation, construction and splicing in accordance with CDOT's Standard Specifications for Road and Bridge Construction, ITS Specifications, as applicable and CDOT approved project plans.
- h. Following proper execution of each task order, but prior to the performance or commencement of any installation or construction work authorized by the applicable CDOT Region Utility Permit, Contractor shall, in accordance with the general provisions of C.R.S. 38-26-106, duly execute and deliver to CDOT a good and sufficient payment bond and performance bond, or other acceptable surety approved by CDOT, equal to one hundred (100) percent of the estimated construction costs (the "Construction Security Deposit") of the fiber facility infrastructure identified in each properly executed task order, which bond shall secure Contractor's payment bond and performance bond with respect to each properly executed task order's identified fiber facility infrastructure within CDOT ROW and remain in effect until Contractor has completed work or construction of the identified fiber facility infrastructure within the CDOT ROW, and received written notice of acceptance by CDOT of the completed work by the CDOT Project Inspector, notice of which shall not be unreasonably withheld from the Contractor. In the event Contractor's agreement with CDOT is terminated following commencement of construction but prior to completion of the identified fiber facility infrastructure build, Contractor agrees to surrender the Construction Security Deposit in the sum equal to one hundred (100) percent of the remaining estimated construction cost of the fiber facility infrastructure identified in each properly executed task order so that CDOT may complete construction of the fiber facility infrastructure identified in each properly executed task order. Upon completion of construction of the fiber facility infrastructure identified in each properly executed task order, CDOT shall return, without interest, any remaining portion of said cash deposit in the event the Construction Security Deposit is in the form of a cash deposit, and in the event the

Construction Security Deposit is in the form of either a bond or letter of credit, CDOT agrees to cooperate with Contractor in cancelling such bond or letter of credit.

- i. In addition, upon completion of the fiber facility infrastructure identified in each properly executed task order, and throughout the entire duration of this Agreement, Contractor shall provide and maintain with CDOT either a cash deposit, bond from an insurance company licensed to do business in the State of Colorado, or unconditional irrevocable letter of credit with CDOT as beneficiary in a sum approved by CDOT and identified in each properly executed task order (the "Post-Construction Security Deposit") as a guarantee for faithful performance of the terms and conditions of this Agreement. Contractor may choose whether the Post-Construction Security Deposit will be in the form of a cash deposit, bond, or unconditional irrevocable letter of credit. If at any time Contractor fails to keep and perform any or all of the terms, covenants and conditions of this Agreement, CDOT shall have the right and may, at its sole option, appropriate and apply all or any portion of said Post-Construction Security Deposit to the performance of the terms and conditions of this Agreement. Upon termination of this Agreement, CDOT shall return, without interest, any remaining portion of said cash deposit in the event that the Post-Construction Security Deposit is a cash deposit, and in the event the Post-Construction Security Deposit is in the form of either a bond or letter of credit, CDOT agrees to cooperate with Contractor in cancelling such bond or letter of credit. If at any time during the duration of this Agreement it is necessary for CDOT and Contractor to enter into litigation that pertains to this Agreement, CDOT shall have the right to apply the Post-Construction Security Deposit to any legal fees they may incur as a result of the litigation provided that CDOT is the prevailing party and Contractor agrees to replenish the Post-Construction Security Deposit within thirty (30) days to the sum identified in each properly executed task order. In the event CDOT depletes all or a portion of the Post-Construction Security Deposit for any other purposes authorized by this Agreement, Contractor agrees to replenish the Post-Construction Security Deposit within thirty (30) days to the sum identified in each properly executed task order.
- j. Comply with provision pertaining to federal and state law regarding nondiscrimination, competitive neutrality and equal access to fiber infrastructure on CDOT ROW, which access is granted to Contractor on a non-exclusive basis. These provisions require that Contractor allow competitor access to excess fiber capacity on commercially reasonable terms consistent with federal and state law, access of which shall not be unreasonably withheld by Contractor.
- k. Grant CDOT an IRU to applicable fiber infrastructure as described in executed task orders. These IRUs shall be imputed upon execution of the task order without further action being necessary.
- l. May, notwithstanding anything to the contrary, lease or license the Contractor fiber infrastructure to third parties without prior written consent of CDOT. Contractor shall inform CDOT in writing of such assignments of responsibilities.
- m. Contractor may utilize sub-contractors to perform any or all of its obligations under this Agreement without obtaining the prior written consent or approval of CDOT, provided that said sub-contractors comply with all provisions of this Agreement, the applicable CDOT Region Utility Permit(s), and the applicable CDOT Region Maintenance Permit(s).
- n. Contractor shall perform all applicable maintenance related activities on the Contractor owned fiber optic infrastructure, unless otherwise specified in an executed task order.
- o. Contractor shall, with respect to any and all Routine Preventative Maintenance and/or Emergency and Extraordinary Repairs performed on the Contractor owned fiber infrastructure within the CDOT ROW, restore the affected area, including but not limited to, landscaping, trees, sod, sprinkler systems and pathways, to the same or better condition as before. Failure by Contractor to comply with this provision shall provide basis for CDOT to seek restitution from Contractor for all damages and any and all other remedies that are afforded CDOT within this Agreement. Contractor shall maintain the Contractor owned fiber infrastructure in good repair and in tenantable condition free of trash and debris during the term of this Agreement.
- p. Not impede, restrict or limit in any manner whatsoever CDOT performance of construction or repairs on CDOT Fiber Infrastructure (which shall be performed by CDOT or CDOT contractors at CDOT's sole

cost and expense) in accordance with CDOT's immediate business need, in CDOT's sole discretion, to perform or cause to be performed such construction or repairs on the CDOT Fiber Infrastructure including, but not limited to, type of construction or repair, date and time to perform the construction or repair and time required to perform the construction or repair all of which shall be determined solely based on CDOT's discretion upon prior written notification provided to Contractor that shall be acceptable in the form of an email with an electronic receipt.

- q. Comply with all provisions identified in C.R.S. 9-1.5-101 et seq, as applicable, if and to the extent that any of the Work required within the CDOT ROW meets the definition of Subsurface Utility Engineering-Required Project as stated in C.R.S. 9-1.5-101 et seq.
- r. Contractor shall assign any ducts, fiber strands, or other fiber infrastructure within 90 days of execution of a task order.
- s. Contractor shall provide contact information list for their entity's staff that are responsible for managing the fiber infrastructure including emergency contacts when Emergency and Extraordinary Repairs are necessary.
- t. Within sixty (60) days of termination, non-renewal, or expiration, Company may remove any equipment and other appurtenances, but Company shall not excavate or disturb the topsoil in removal thereof, and all conduit and fiber installed in CDOT's ROW shall be abandoned in place and shall become the sole property of CDOT.

3. CDOT Responsibilities

- a. CDOT ITS shall review project plans and provide approval or comments within fifteen (15) business days after receipt.
- b. Issue the applicable CDOT Region Utility Permit(s) within forty-five (45) days business days of receiving Company's properly completed and compliant application including all other required federal, state and/or local permits provided that no mitigating circumstances, requirements, clearances or other issues must be addressed thereby making issuance of said CDOT Region Utility Permit(s) not possible within forty-five (45) days.
- c. Issue the applicable CDOT Region Maintenance Permit(s) within forty-five (45) days of receiving Company's properly completed and compliant application provided that no mitigating circumstances or other issues must be addressed thereby making issuance of said CDOT Region Maintenance Permit(s) not possible within forty-five (45) days.
- d. Assign a CDOT Project Inspector to perform construction inspection activities, as deemed necessary, to ensure that the fiber infrastructure is properly installed and constructed and properly spliced in accordance with all applicable plans and specifications as identified in executed task orders.
- e. Grant Contractor an IRU to applicable fiber infrastructure as described in executed task orders. These IRUs shall be imputed upon execution of the task order without further action being necessary.
- f. CDOT shall perform all applicable maintenance related activities on the CDOT owned fiber optic infrastructure, unless otherwise specified in an executed task order including:
 - i. Routine Preventative Maintenance: Routine Preventative Maintenance, as applicable, shall at a minimum consist of, but not be limited to, periodic inspection of the project facility, including reinstallation of knocked down fiber location markers and replacement of damaged or missing fiber location markers, clearing and cleaning debris from the facility pull boxes so that they are visible and performing locates within three (3) business days from receipt of UNCC notice unless Force Majeure, severe weather, highway closures or extreme safety hazards exist. CDOT shall supply materials such as, but not limited to, fiber location markers at its own expense and shall perform all necessary Route Preventative Maintenance at its own expense and shall not seek reimbursement for any and all costs associated with Route Preventative Maintenance performed.
 - ii. Registering the Project Facility: CDOT shall register or cause to be registered the project facility. CDOT shall be solely responsible to pay all costs to repair and/or replace the project

- facility due only to failure to perform locates, or to perform locates in a timely manner, resulting in damage and/or cutting or severing the fiber infrastructure in the project facility. CDOT shall not be responsible to register or cause to be registered any lateral conduit or fiber optic cable the other party installs, neither shall CDOT be responsible to pay for any costs to repair and/or replace any lateral conduit or fiber optic cable installed by the other party.
- iii. Emergency and Extraordinary Repairs: Emergency and Extraordinary Repairs shall mean repairs required as a result of the fiber optic cables in the project facility have been damaged, cut, or severed and repairs required as a result of pull boxes being crushed or damaged. CDOT shall perform and be solely responsible to pay for all necessary Emergency and Extraordinary Repairs including splicing and reconnecting of the fibers in the project facility. CDOT's standard for restoral of outages and damages are best effort.
 - iv. Scheduled Maintenance: CDOT may need to conduct work that requires a scheduled outage of their fiber optic cable. In the event of a scheduled outage CDOT shall provide 3 days notice for any scheduled outage not to exceed 8 hours unless it is an emergency repair.
 - v. Notification: In the event that Emergency and Extraordinary Repairs are performed, the parties shall notify each other as soon as is reasonable and practicable, and shall make reasonable effort to notify each other while such Emergency and Extraordinary Repair is in progress. Notification shall include, to the extent practicable, the nature, location and duration of the emergency and extraordinary repair. A telephone call followed by an email with an electronic receipt shall constitute acceptable notification.
 - vi. Entering the Parties Pull Boxes: For safety and security reasons CDOT, including but not limited to, CDOT's employees, sub-contractors, agents, entities, affiliates, etc. shall NOT enter Contractor labeled pull boxes, vaults and/or manholes without receiving written permission. For safety and security reasons the Contractor, including but not limited to, the City's employees, sub-contractors, agents, entities, affiliates, etc. shall NOT enter CDOT's pull boxes, vaults and/or manholes without receiving written permission. Written permission shall be acceptable in the form of email with an electronic receipt, except where entry is necessary to perform Emergency and Extraordinary Repairs.
 - vii. Loss of Use: Either Party's loss of use of the Project Facility shall not entitle such Party to any damages or loss from the other Party, in any manner whatsoever, for loss of use, which loss of use could be attributed, but not limited to, as a result of any Routine Preventative Maintenance, Registering the Project Facility with UNCC, Emergency and Extraordinary Repairs or any other activity described in this same Section or any other unforeseen circumstance that may result in such loss of use, and such loss of use does not relieve either Party from any obligations assumed by this Agreement, or from complete and proper fulfillment of the terms and conditions of this Agreement, neither does it entitle either Party to any compensation for damages or loss from the other Party, in any manner whatsoever, for such loss of use.
 - g. CDOT shall, at all times have the right to access and inspect all equipment and infrastructure within the CDOT ROW to ensure that it complies with environmental regulations, the terms and conditions of this Agreement, applicable CDOT Region Utility Permit(s) and the applicable CDOT Maintenance Permit(s).
 - h. CDOT shall assign any ducts, fiber strands, or other fiber infrastructure within 90 days of execution of a task order.
4. Relocation: Each Party recognizes that from time to time due to highway and/or transportation projects in the CDOT ROW, it may become necessary to relocate either a portion, or all, of the infrastructure installed as part of the executed task orders. If such relocation becomes necessary for whatever reason, CDOT shall be solely responsible for all costs incurred to relocate all CDOT infrastructure, except that CDOT shall not be responsible for any costs incurred to relocate all Contractor infrastructure. To accomplish relocation of Contractor infrastructure for which Contractor is solely and entirely responsible, Contractor shall have the following two (2) options:

- a. Hire a contractor to relocate Contractor infrastructure in accordance with CDOT construction plans and schedules. Contractor shall direct such contractor to coordinate with the contractor CDOT hires to perform construction and relocation of the CDOT infrastructure to ensure that Contractor infrastructure is relocated in a coordinated manner and that the project is successfully completed.
- b. Authorize the contractor hired by CDOT to relocate Contractor infrastructure in accordance with CDOT construction plans and schedules. Contractor shall be solely responsible to pay for all cost associated to relocate Contractor infrastructure. Due to the vested interest that Contractor has in fiber infrastructure installed in the CDOT ROW, CDOT shall use commercially reasonable efforts to give Contractor notice of relocation as soon as CDOT becomes aware of such relocation and CDOT shall keep Contractor well informed throughout the entire relocation process, including but not limited to, development of relocation project plans and schedules. Also, CDOT shall give Contractor an official notice that identifies the schedule at least one hundred twenty (120) days prior to the commencement of such relocation project.

**EXHIBIT A-2, STATEMENT OF WORK
(DARK FIBER LEASE)**

1. Contract Description

- a. CDOT owns and controls multiple fiber optic telecommunications cables located within the public Right-of-Way (ROW) along state highways. CDOT, in its sole discretion, may make capacity on its statewide fiber optic telecommunications backbone cable available. If CDOT determines excess capacity is available on CDOT fiber cables, CDOT may choose to allow Contractor non-exclusive access to CDOT ROW and use of excess fiber strands along specific corridors as identified in each executed Task Order.

2. Contractor Responsibilities

Contractor shall perform and be responsible for the following functions as applicable for each task order:

- a. Procure, provide install and maintain handholes at the splice point(s) to access the leased dark fiber strands. After infrastructure is in place and ready for fiber splice work, Contractor shall submit written request for splice work to CDOT ITS.
- b. Contractor is responsible for any networking designs and implementation as it is associated to the optronics to extend between A location and Z locations.
- c. Perform all applicable maintenance related activities, on Contractor owned handhole(s) and infrastructure including required relocations.
- d. Apply for and obtain the applicable CDOT Region Utility Permit and comply with all applicable provisions, terms and conditions of the applicable CDOT Region Utility Permit.
- e. Apply for and obtain the applicable CDOT Region Maintenance Permit and comply with all applicable provisions, terms and conditions of the applicable CDOT Region Maintenance Permit.
- f. Pay an annual fee as shown in Exhibit D and further described below in Section 5. Payment. The annual fee for this agreement is \$0 since this is an exchange of fiber for maintenance services.
- g. Provide contact information list for their entity's staff that are responsible for managing the fiber infrastructure including emergency contacts when Emergency and Extraordinary Repairs are necessary.
- h. Within sixty (60) days of termination, non-renewal, or expiration, Company may remove any equipment and other appurtenances, but Company shall not excavate or disturb the topsoil in removal thereof, and all conduit and fiber installed in CDOT's ROW shall be abandoned in place and shall become the sole property of CDOT.

3. CDOT Responsibilities

- a. CDOT shall provide strands of dark fiber for an annual lease fee as identified in each executed Task Order.
- b. CDOT shall identify and assign leased strands for Contractor use within 90 days of execution of the task order.
- c. CDOT shall conduct all associated testing and splice work on CDOT owned facilities, otherwise coordination will be needed with the cable owner by the Contractor, unless otherwise specified in properly executed task order.
- d. Issue the applicable CDOT Region Utility Permit(s) within forty-five (45) business days of receiving Company's properly completed and compliant application including all other required federal, state and/or local permits provided that no mitigating circumstances, requirements, clearances or other issues must be addressed thereby making issuance of said CDOT Region Utility Permit(s) not possible within forty-five (45) days.
- e. Issue the applicable CDOT Region Maintenance Permit(s) within forty-five (45) days of receiving Company's properly completed and compliant application provided that no mitigating circumstances or other issues must be addressed thereby making issuance of said CDOT Region Maintenance Permit(s) not possible within forty-five (45) days.

- f. CDOT shall perform all applicable maintenance related activities on the CDOT owned fiber optic cables, including:
- i. Routine Preventative Maintenance: Routine Preventative Maintenance, as applicable, shall at a minimum consist of, but not be limited to, periodic inspection of the project facility, including reinstallation of knocked down fiber location markers and replacement of damaged or missing fiber location markers, clearing and cleaning debris from the facility pull boxes so that they are visible and performing locates within three (3) business days from receipt of UNCC notice unless Force Majeure, severe weather, highway closures or extreme safety hazards exist. CDOT shall supply materials such as, but not limited to, fiber location markers at its own expense and shall perform all necessary Route Preventative Maintenance at its own expense and shall not seek reimbursement for any and all costs associated with Route Preventative Maintenance performed.
 - ii. Registering the Project Facility: CDOT shall register or cause to be registered the project facility. CDOT shall be solely responsible to pay all costs to repair and/or replace the project facility due only to failure to perform locates, or to perform locates in a timely manner, resulting in damage and/or cutting or severing the fiber infrastructure in the project facility. CDOT shall not be responsible to register or cause to be registered any lateral conduit or fiber optic cable the other party installs, neither shall CDOT be responsible to pay for any costs to repair and/or replace any lateral conduit or fiber optic cable installed by the other party.
 - iii. Emergency and Extraordinary Repairs: Emergency and Extraordinary Repairs shall mean repairs required as a result of the fiber optic cables in the project facility have been damaged, cut, or severed and repairs required as a result of pull boxes being crushed or damaged. CDOT shall perform and be solely responsible to pay for all necessary Emergency and Extraordinary Repairs including splicing and reconnecting of the fibers in the project facility. CDOT's standard for restoral of outages and damages are best effort.
 - iv. Scheduled Maintenance: CDOT may need to conduct work that requires a scheduled outage of their fiber optic cable. In the event of a scheduled outage CDOT shall provide 3 days notice for any scheduled outage not to exceed 8 hours unless it is an emergency repair.
 - v. Notification: In the event that Emergency and Extraordinary Repairs are performed, the parties shall notify each other as soon as is reasonable and practicable, and shall make reasonable effort to notify each other while such Emergency and Extraordinary Repair is in progress. Notification shall include, to the extent practicable, the nature, location and duration of the Emergency and Extraordinary Repair. A telephone call followed by an email with an electronic receipt shall constitute acceptable notification.
 - vi. Entering the Parties Pull Boxes: For safety and security reasons CDOT, including but not limited to, CDOT's employees, sub-contractors, agents, entities, affiliates, etc. shall NOT enter Contractor labeled pull boxes, vaults and/or manholes without receiving written permission. For safety and security reasons the Contractor, including but not limited to, the City's employees, sub-contractors, agents, entities, affiliates, etc. shall NOT enter CDOT's pull boxes, vaults and/or manholes without receiving written permission. Written permission shall be acceptable in the form of email with an electronic receipt, except where entry is necessary to perform Emergency and Extraordinary Repairs.
 - vii. Loss of Use: Either Party's loss of use of the Project Facility shall not entitle such Party to any damages or loss from the other Party, in any manner whatsoever, for loss of use, which loss of use could be attributed, but not limited to, as a result of any Routine Preventative Maintenance, Registering the Project Facility with UNCC, Emergency and Extraordinary Repairs or any other activity described in this same Section or any other unforeseen circumstance that may result in such loss of use, and such loss of use does not relieve either Party from any obligations assumed by this Agreement, or from complete and proper fulfillment of the terms and conditions of this

Denver, CO 80204

Or at such place as CDOT from time to time designates by notice. In the event CDOT has not received the Total Annual Lease Payment hereunder within thirty (30) days after said payment becomes due and owing, a late charge of five percent (5%) of that Total Annual Lease Payment shall be assessed to the Contractor. Both CDOT and the Contractor agree that acceptance by CDOT of the late payment does not waive CDOT's right to declare the Contractor in default of this Lease Agreement. If fees owed by the Contractor are 90 days or more past due, CDOT may disconnect leased dark fibers.

EXHIBIT B, SAMPLE OPTION LETTER

State Agency Department of Transportation	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Contractor City of Aurora	Original Contract Number Insert CMS number or Other Contract Number of the Original Contract
Option Contract Number Insert CMS Number or Other Contract Number of this Option	
Contract Performance Beginning Date The later of the Effective Date or Month Day, Year	
Current Contract Expiration Date Month Day, Year	

1. OPTIONS:

Option to extend for an Extension Term

2. REQUIRED PROVISIONS:

For use with Option: 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.

3. OPTION EFFECTIVE DATE:

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

<p>STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director</p> <p>_____</p> <p>By: Keith Stefanik, P.E., Chief Engineer</p> <p>Option Letter Effective Date: _____</p>
--

EXHIBIT C, FORM OF TASK ORDER

State Agency Colorado Department of Transportation (CDOT)	Task Order Number Insert the Option Number (e.g. "1" for the first option) ²
Contractor City of Aurora	Original Contract Routing Number Insert CMS number or Other Contract Number of the Master Task Order Contract
	Task Order Routing Number Insert CMS number or Other Contract Number of this Task Order
	Task Order Performance Beginning Date The later of the Task Order Effective Date or Month Day, Year
	Task Order Expiration Date Month Day, Year

In accordance with §4.B of the Original Contract referenced above, Contractor shall complete the following Project:

1. **PROJECT DESCRIPTION**
Contractor shall complete the Project described in Contractor’s proposal that is attached hereto and incorporated herein (the “Proposal”). All terminology used in this Task Order and the Proposal shall be interpreted in accordance with the Original Contract unless specifically defined differently in this Task Order.
2. **PAYMENT**
Contractor shall make payments to the State in accordance with the provisions of Exhibit A (Dark Fiber Lease). The State shall have no payment obligations to Contractor under Exhibit A.
3. **PERFORMANCE PERIOD**
Contractor shall complete all Work on the Project described in this Task Order by the Task Order Expiration Date stated above. Contractor shall not perform any Work on the Project described in the Proposal prior to the Task Order Performance Beginning Date or after the Task Order Expiration Date stated above.
4. **TASK ORDER EFFECTIVE DATE:**
The effective date of this Task Order is upon approval of the State Controller.

CONTRACTOR City of Aurora <hr/> By: _____ Date: _____	STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director <hr/> By: Keith Stefanik, P.E., Chief Engineer Effective Date: _____
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EXHIBIT D, FEE SCHEDULE

Lease Fee Calculator

Entity Details

Lessee Entity Name:	CRISTALINA
Public or Private?	Public
Point of Contact Name:	JOHN CARROLL
Point of Contact Title:	JOHN CARROLL
Street Address:	10000 N. ALPINE AVE
City, State, Zip Code:	PHOENIX, AZ 85020
Phone or Contact Phone:	602 998 7188
Point of Contact Email:	john.carroll@crystalina.com
Desired Begin Lease Date:	9/1/2014

*This is only a highly (DOT) estimate and not a contract by the DOT.

Standard DOT Variables:	
Lease Rate:	\$ 1,150 per strand per mile per year
Annual Increase:	3%
Fiber Lease Term:	20 years

Notes: DOT Standard Variables are based on the DOT Standard Variables, which are based on the DOT Standard Variables of publicly DOT Standard Variables. It may be necessary to consult with the DOT.

Description of Payment Calculations

The first annual lease payment is calculated as First Year Lease Fee Estimate = (Fiber Strand * Lease Rate per Strand * Corridor Length) / 20 year lease agreement.

The second (and subsequent) annual lease payments are calculated as Next Year Lease Fee Estimate = (1 + Annual Increase) * Previous Year Lease payment.

The initial upfront payment is 5% of the total lease value, which is the sum of all annual lease payments.

Total Contract Value:	\$ 292,344
One Time Up Front Fee:	\$ 14,617
Total Dark Fiber Lease Fee:	\$ 306,961

Fiber Lease Estimate Payment Table

# of Fiber	Corridor Description	State Highway	Begin Mile Point	End Mile Point	Corridor Length	Annual Lease Payments																				
						1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	
2	Power Tel 40-76	US-40	85.3	91.3	2	\$ 1,400	\$ 1,442	\$ 1,485	\$ 1,530	\$ 1,576	\$ 1,625	\$ 1,672	\$ 1,722	\$ 1,773	\$ 1,827	\$ 1,881	\$ 1,938	\$ 1,996	\$ 2,056	\$ 2,118	\$ 2,181	\$ 2,247	\$ 2,314	\$ 2,383	\$ 2,453	
2	US-76 to I-17	I-17	111.3	121.3	5.0	\$ 5,920	\$ 6,098	\$ 6,289	\$ 6,483	\$ 6,682	\$ 6,884	\$ 7,091	\$ 7,302	\$ 7,517	\$ 7,735	\$ 7,957	\$ 8,183	\$ 8,413	\$ 8,647	\$ 8,885	\$ 9,127	\$ 9,373	\$ 9,623	\$ 9,877	\$ 10,135	
2	Power Tel 20-21	I-20	0	11.0	7.0	\$ 5,330	\$ 5,486	\$ 5,647	\$ 5,813	\$ 5,984	\$ 6,161	\$ 6,343	\$ 6,531	\$ 6,724	\$ 6,922	\$ 7,125	\$ 7,333	\$ 7,546	\$ 7,764	\$ 7,987	\$ 8,215	\$ 8,448	\$ 8,686	\$ 8,929	\$ 9,177	
					0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
					0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
					0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Annual Lease Fee Estimate						\$ 10,650	\$ 11,026	\$ 11,413	\$ 11,813	\$ 12,227	\$ 12,656	\$ 13,100	\$ 13,559	\$ 14,034	\$ 14,525	\$ 15,032	\$ 15,556	\$ 16,097	\$ 16,656	\$ 17,233	\$ 17,828	\$ 18,441	\$ 19,073	\$ 19,724	\$ 20,395	\$ 21,086

EXHIBIT E, UNSOLICITED PROPOSAL



City of Aurora

North of Denver • quality of life

Unsolicited Proposal

Submitted: CDOT ITS Branch
Colorado Department of Transportation
425C Corporate Circle
Golden, CO 80401

Proposing Entity	Authorized Person
Name: City of Aurora Address: 15151 East Alameda Parkway Aurora, CO 80012 Main Phone: 303.739.7000 State of Colorado Business Licenses #: N/A	Name: Carlie Campuzano Title: Traffic Manager Address: 15151 East Alameda Parkway, Aurora, CO 80012 Phone: 303.739.7309 Email: ccampuza@auroragov.org Signature: <i>Carlie Campuzano</i>

Purpose for Unsolicited Bid:

The City of Aurora (henceforth referred to as the City) and the Colorado Department of Transportation (CDOT) previously executed an Intergovernmental Agreement (IGA) which states that the City will maintain and operate 76 state signals within City limits. CDOT has requested that the City take over the Operations and Maintenance (O&M) of two (2) additional existing traffic signals on US-40 (East Colfax Avenue) at Tower Road and at Dunkirk Street that are not currently part of the IGA. Furthermore, the City will be assuming the O&M duties for four (4) new traffic signals near the new I-70/South Picadilly Road interchange. In exchange for taking over the O&M responsibilities for the combined six (6) traffic signals, the City is requesting eight (8) dark fibers from CDOT along US-40, I-70, and I-225 to interconnect the traffic signals to the City's central traffic signal system. The benefit to CDOT of having these traffic signals interconnected to the City's central traffic signal system include the following:

- Allows the City to proactively monitor the traffic signals on CDOT's arterial roadways from a remote location and respond to alarms before problems are called in by motorists. It also allows the City to assess the problem prior to sending maintenance personnel to the field, thereby ensuring that the spare parts needed for repair are

available on the maintenance vehicle, which reduces both the maintenance response time and the time to repair.

- Allows the City to remotely upload/download signal timing plans for each CDOT signalized intersection, as needed, without having to dispatch City traffic maintenance personnel to access the site. This increases the efficiency of the intersection especially during times of incident management, inclement weather, and special event management.
- Allows the City to synchronize the time of day for each controller from the central traffic signal system multiple times per day to minimize clock drift and effectively utilize offsets for signal coordination on CDOT's arterial corridors.
- Supports a future Center-to-Center (C2C) connection between CDOT and the City similar to the current C2C connections that CDOT has with the City of Lakewood and City & County of Denver for monitoring each agency's traffic signals.
- Supports potential future installations of CCTV and advanced technologies for connected-vehicle applications.
- Contributes to CDOT's mission for providing the best transportation system for Colorado that effectively moves people, goods, and information.
- Aligns with CDOT's values for working together and with others to respond effectively to customers' needs.

The eight (8) dark fibers requested on I-225 will allow the City to provide fiber connectivity between its main facilities while also providing intangible benefits to CDOT for connecting to traffic signals at CDOT's I-225 interchanges (e.g., 17th Place, 6th Avenue, Colfax Avenue, Alameda Avenue, Mississippi Avenue, and Iliff Avenue) as well as adjacent CDOT arterial facilities with traffic signals O&M by the City including US-40 (Colfax Avenue), CO-30 (East 6th Avenue/South Havana Street), and CO-83 (South Parker Road) for the same benefits to CDOT previously listed. Figure 1 highlights the six traffic signals that the City is considering to take over O&M for CDOT as part of this unsolicited proposal for dark fibers. The six traffic signals are shown as Future Aurora Traffic Signals along with all of the other CDOT traffic signals currently operated and maintained by the City (designated as CDOT Senate Bill 8 Signals).

Without CDOT dark fibers to support signal interconnect, the City will not have remote access to these CDOT signalized intersections via the central traffic signal system. Situations such as traffic signal in flash, failed detector, stuck pedestrian push button, etc. will require notification from the traveling public, law enforcement, or traffic signal maintenance crews. The City would then have to dispatch maintenance personnel to assess the issue at the site since this cannot be performed remotely through the central traffic signal system without fiber interconnect. Repairs could be initiated or the maintenance personnel may need to delay repairs in order to travel back to the shop for necessary parts that were not anticipated, which could extend the restoration time at these CDOT signalized intersections thereby impeding efficient signal operations and arterial progression.

The CDOT fiber routes shown in Figure 1 are the segments on which the City is requesting dark fiber.

Figure 1: CDOT Fiber Routes Where the City is Requesting Dark Fiber



I. Project Characteristics

- A. Description of the proposed project including purpose, state highway location, beginning and ending points.
1. *CDOT has requested that the City take over the O&M of two (2) existing traffic signals on US-40 (East Colfax Avenue) at Tower Road and at Dunkirk Street. Additionally, the City will be assuming the O&M duties for four (4) new traffic signals near the new I-70/South Picadilly Road interchange. In exchange for taking over the O&M responsibilities for the combined six (6) traffic signals, the City is requesting dark fibers from CDOT to interconnect the traffic signals to the City's central traffic signal system.*
 2. *US-40 (East Colfax Avenue), I-70, and I-225*
 3. *US-40: from Tower Road to new I-70/South Picadilly Road interchange; I-70: from new I-70/South Picadilly Road interchange to I-225; and I-225: from I-70 to CO-83.*
- B. Construction to be performed, e.g., plowing, boring, pavement cuts, type and number of conduits, power/fiber cable (number of strands), pull boxes and any other power infrastructure/equipment to be installed. *Existing dark fibers from CDOT is what is being requested in exchange for taking over the O&M of six (6) CDOT traffic signals by the City. Accordingly, construction is expected to include providing lateral conduits and fiber to existing CDOT splice points or extending existing lateral conduits and fiber to existing CDOT splice points.*
- C. Access to existing CDOT fiber optic conduit and/or fiber optic cable including specific locations. *Access to existing CDOT dark fiber will be at the nearest existing CDOT splice point. Specific locations can be identified pending coordination with CDOT.*
- D. Proposed schedule for implementing the project, including the estimated time for completion. *TBD*
- E. Identify critical factors to ensure the project's success. *Having up-to-date information on existing CDOT splice points and buffer tubes that dark fibers can be accessed.*
- F. Identify any anticipated adverse social, economic and environmental impacts, and strategies or actions to mitigate the anticipated impacts. *There are no anticipated adverse social, economic, and environmental impacts.*

- G. Identify unique and innovative methods, techniques and/or approaches that may be employed on the project. *N/A*

II. Qualifications, Capabilities and Experience

- A. Description of proposer's qualifications and capabilities to ensure successful completion of the proposed project. *N/A*

- B. Identify related experience with similar projects that proposer successfully implemented, including experience in working and/or partnering with the public sector. *N/A*

- C. Describe project management techniques that are integral factors and how they will be applied for achieving successful implementation of the proposed project. *N/A*

III. Public Benefits

- A. Identify potential contribution of the proposed project to the department's mission and how the proposed project will benefit the overall transportation system.

1. *As previously stated, the benefits to CDOT for having these traffic signals interconnected to the City's central traffic signal system include the following:*

- *Allows the City to proactively monitor the traffic signals on CDOT's arterial roadways from a remote location and respond to alarms before problems are called in by motorists. It also allows the City to assess the problem prior to sending maintenance personnel to the field, thereby ensuring that the spare parts needed for repair is available on the maintenance vehicle, which reduces both the maintenance response time and the time to repair.*
- *Allows the City to remotely upload/download signal timing plans for each CDOT signalized intersection, as needed, without having to dispatch City traffic maintenance personnel to access the site. This increases the efficiency of the intersection especially during times of incident management, inclement weather, and special event management.*
- *Allows the City to synchronize the time of day for each controller from the central traffic signal system multiple times per day to minimize clock drift and effectively utilize offsets for signal coordination on CDOT's arterial corridors.*
- *Supports a future C2C connection between CDOT and the City similar to the current C2C connections that CDOT has with the City*

of Lakewood and City & County of Denver for monitoring each agency's traffic signals.

- *Contributes to CDOT's mission for providing the best transportation system for Colorado that effectively moves people, goods, and information.*
 - *Aligns with CDOT's values for working together and with others to respond effectively to customers' needs.*
- B. Identify the commensurate private contribution in conjunction with the public asset utilized to implement the project such as; cash, equal sharing of proposer's fiber optic infrastructure within or outside project limits, maintenance including locates and splicing, other in-kind benefits, e.g., engineering services, and describe how the commensurate private contribution was calculated.

In exchange for taking over the O&M responsibilities for the combined six (6) CDOT traffic signals previously identified, the City is requesting eight (8) dark fibers from CDOT to interconnect the traffic signals to the City's central traffic signal system. An estimate of the lease fee value is provided below using CDOT's current Lease Fee Calculator for a public agency.

RESOLUTION NO. R2024 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA,
COLORADO, FOR THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY
OF AURORA AND THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT)
FOR THE MAIN TASK ORDER FOR FIBER AND EQUIPMENT EXCHANGE

WHEREAS, the City of Aurora (“City”) has created the Fiber Master Plan to guide planning and decision making related to deployment of a city-wide fiber optic communications system; and

WHEREAS, the Fiber Master Plan includes recommendations related to sharing fiber optic cable with other agencies, and one opportunity that was identified in the plan was leasing fiber optic strands from the Colorado Department of Transportation (“CDOT”); and

WHEREAS, the City and CDOT desire to enter into an intergovernmental agreement that grants the City access to CDOT right-of-way and allows each agency to enter into agreements to exchange services; and

WHEREAS, the City and CDOT plan to execute a future task order to this master agreement to allow for sharing of fiber optic strands along I-225 and I-70 consistent with recommendations in the Fiber Master Plan; and

WHEREAS, this intergovernmental agreement only covers terms of the Main Task Order and does not involve any funding agreement; and

WHEREAS, the City and CDOT, as government agencies, are authorized by the provisions of Colo. Const., art. XIV, § 18(2)(a) and C.R.S. §§ 29-1-201, et seq., to contract through intergovernmental agreements with one another to provide any function, service or facility lawfully authorized to each; and

WHEREAS, Section 10-12 of the City Charter authorizes City Council to approve, by resolution, the execution of contracts, and amendments thereto, with other governmental units for furnishing or receiving commodities or services; and

WHEREAS, the City Council of the City of Aurora finds and determines that it is in the best interest of the City and its citizens to execute the Intergovernmental Agreement between the City of Aurora and CDOT for the Main Task Order for Fiber and Equipment Exchange.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The Intergovernmental Agreement between the City of Aurora and the Colorado Department of Transportation for the Main Task Order for Fiber and Equipment Exchange is hereby approved.

Section 2. The Mayor and the City Clerk are hereby authorized to execute and deliver any agreement in substantially the form presented at this meeting, with such technical additions, deletions, and variations as the City Attorney may deem necessary or appropriate and not inconsistent with this resolution.

Section 3. All prior resolutions or any parts that are inconsistent herewith are hereby rescinded.

RESOLVED AND PASSED this _____ day of _____, 2024.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:

RLA

Michelle Gardner
MICHELLE GARDNER, Sr. Assistant City Attorney



CITY OF AURORA

Council Agenda Commentary

Item Title: Intergovernmental Agreement (IGA) between Aurora and Parker for Snow Removal and Street Sweeping on Kings Point Way (Resolution)
Item Initiator: Marc Tamburro, Manager Of Street Opetations, Public Works
Staff Source/Legal Source: Marc Tamburro, Manager of Street Operations, Public Works / Michelle Gardner, Senior Assistant City Attorney
Outside Speaker: N/A
Council Goal: 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

COUNCIL MEETING DATES:

Study Session: 8/26/2024

Regular Meeting: 9/9/2024

2nd Regular Meeting (if applicable): N/A

Item requires a Public Hearing: Yes No

ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Marc Tamburro, Manager of Street Operation, Public Works / Michelle Gardner, Senior Assistant City Attorney

ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field above.

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Transportation, Airports & Public Works

Policy Committee Date: 6/26/2024

Action Taken/Follow-up: (Check all that apply)

- Recommends Approval Does Not Recommend Approval
 Forwarded Without Recommendation Minutes Not Available
 Minutes Attached

HISTORY (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

In 2019, the City of Aurora entered into an Intergovernmental Agreement with the Town of Parker for the design, construction and maintenance of Kings Point Way to provide access to commercial and residential developments located in Aurora and Parker. The Town of Parker funded the design and construction and has been maintaining the roadway since it was constructed. The Town’s development, west of Kings Point Way, required the roadway to meet fire access requirements.

ITEM SUMMARY (Brief description of item, discussion, key points, recommendations, etc.)

This item is for the Maintenance IGA Between the City Of Aurora and the Town Of Parker for Kings Point Way regarding Snow Removal and Street Sweeping for five (5) years following final acceptance.

Under this IGA, the Town of Parker agrees to perform snow removal and street sweeping for the next 5 years following final acceptance. This IGA also includes the conveyance Special Warranty Deeds from Parker to Aurora and slope easement agreements, as was originally contemplated as part of this project.

Further, Aurora agrees to maintain the slope easements by ensuring a proper line of sight, lateral support and a proper drainage grade for Kings Point Way.

At the conclusion of the 5 year maintenance period, all maintenance responsibilities including snow removal and street sweeping pass on to the City Of Aurora.

Staff’s recommendation is to move this IGA and Resolution forward through the Council approval process.

FISCAL IMPACT

Select all that apply. (If no fiscal impact, click that box and skip to “Questions for Council”)

- Revenue Impact Budgeted Expenditure Impact Non-Budgeted Expenditure Impact
 Workload Impact No Fiscal Impact

REVENUE IMPACT

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

BUDGETED EXPENDITURE IMPACT

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

N/A-The Street Sweeping and Snow Removal will be funded by the Town of Parker

NON-BUDGETED EXPENDITURE IMPACT

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

WORKLOAD IMPACT

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

N/A

QUESTIONS FOR COUNCIL

Does the Concil wish to move this resolution for the IGA between Aurora and Parker forward to the next regular meeting?

LEGAL COMMENTS

Governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units only if such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve. (Colo. Rev. Stat. Section 29-1-203(1)). City Council may, by resolution, enter into intergovernmental agreements with other governmental units or special districts for the joint use of buildings, equipment or facilities, and for furnishing or receiving commodities or services. (City Charter Section 10-12). (M. Gardner)

RESOLUTION NO. R2024-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO,
APPROVING THE INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE
CITY OF AURORA AND THE TOWN OF PARKER FOR SNOW REMOVAL AND STREET
SWEEPING MAINTENANCE ON KINGS POINT WAY

WHEREAS, the City of Aurora, Colorado (“City”), and the Town of Parker (“Parker”), collectively “the Parties”, as government agencies, are authorized by the provisions of Colo. Const., art. XIV, § 18(2)(a) and C.R.S. §§ 29-1-201, et seq., to contract with one another to provide any function, service or facility lawfully authorized to each; and

WHEREAS, Aurora and Parker entered into an Intergovernmental Agreement on January 28, 2019 (“Agreement”), regarding the design, construction, and maintenance of Kings Point Way (the “Project”); and

WHEREAS, Parker designed and constructed the Project at no cost to Aurora and in accordance with the Agreement; and

WHEREAS, the Parties agree that Parker is responsible for snow removal and street sweeping of the Project for a period of five (5) years following final acceptance of the Project (the “Maintenance Commitment”); and

WHEREAS, under the Agreement, the details of the Maintenance Commitment is to be memorialized in a separate agreement between the Parties prior to final acceptance of the Project by Aurora and Parker’s conveyance of the right-of-way and easements for the Project to Aurora; and

WHEREAS, the Parties desire to enter into this IGA to identify Parker’s responsibility for snow removal and street sweeping for a period of five (5) years, and to allow for final acceptance of the Project by Aurora, and to finalize Parker’s conveyance of right-of-way and permanent easements to Aurora for the Project; and

WHEREAS, Section 10-12 of the City Charter authorizes City Council to approve, by resolution, the execution of contracts, and amendments thereto, with other governmental units for furnishing or receiving commodities or services.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The Intergovernmental Agreement by and between the City of Aurora and the Town of Parker for Snow Removal and Street Sweeping Maintenance on Kings Point Way is hereby approved.

Section 2. The Mayor and the City Clerk are hereby authorized to execute and deliver the Intergovernmental Agreement on behalf of the City in substantially the form presented at this meeting, with such technical additions, deletions, and variations as the City Attorney may deem necessary or appropriate and not inconsistent with this Resolution.

Section 3. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this ____ day of _____, 2024.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:

RLA

Michelle Gardner
MICHELLE GARDNER, Sr. Assistant City Attorney

**INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN THE CITY OF AURORA, COLORADO, AND THE TOWN OF
PARKER FOR SNOW REMOVAL AND STREET SWEEPING MAINTENANCE ON
KINGS POINT WAY**

THIS INTERGOVERNMENTAL AGREEMENT (“IGA”) is made and entered into this _____ day of _____, 2024, by and between the City of Aurora, Colorado, a home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado (“Aurora”), and the Town of Parker, a Colorado home rule municipality (“Parker”), hereinafter referred to as the “Parties.”

RECITALS

A. Aurora and Parker entered into an Intergovernmental Agreement on January 28, 2019 (“Agreement”), regarding the design, construction, and maintenance of Kings Point Way (the “Project”).

B. Parker designed and constructed the Project as described in **Exhibit A to the Agreement**, which is incorporated by reference, at no cost to Aurora and in accordance with the Agreement.

C. The Parties agree that Parker is responsible for snow removal and street sweeping of the Project for a period of five (5) years following final acceptance of the Project (the “Maintenance Commitment”).

D. Under the Agreement, the details of the Maintenance Commitment will be memorialized in a separate agreement between the Parties prior to final acceptance of the Project by Aurora and Parker’s conveyance of the right-of-way and easements for the Project to Aurora.

E. The Parties are authorized to enter into this Intergovernmental Agreement (“IGA”) by their respective home rule Charters, by Colorado Constitution, art. XIV, § 18 and art. XX, and by Title 29, art. 1, part 2, C.R.S.

F. The Parties desire to enter into this IGA to memorialize i) Parker’s responsibility for snow removal and street sweeping for a period of five (5) years; ii) for final acceptance of the Project by Aurora; and iii) Parker’s conveyance of right-of-way and permanent easements to Aurora for the Project.

NOW, THEREFORE, it is mutually understood by and between the Parties:

1. Parker Maintenance Commitment. Parker shall perform snow removal and street sweeping for the Project, at no cost to Aurora, consistent with the expectations set forth in **Exhibit B**, which is attached hereto and incorporated herein by reference. Parker shall perform snow removal and street sweeping using current snow removal and street sweeping procedures and prioritization schedules of Parker. Parker shall maintain the existing Type-3 barricades on Kings Point Way during the term of the IGA, unless directed to be removed in writing by Aurora.

2. Aurora Final Acceptance. Within thirty (30) days of the date that both Aurora and Parker execute this IGA, Aurora will deliver a letter to Parker, which letter shall constitute final

acceptance and completion of the Project, as contemplated by the Agreement (the “Final Acceptance Letter”).

3. Conveyance to Aurora. Within thirty (30) days of Parker’s receipt of the Final Acceptance Letter, Parker will convey to Aurora the right-of-way and assign to Aurora the permanent easements for the Project, in the forms attached as **Exhibits C-1 and C-2, and D-1, D-2, D-3 and D-4**, respectively, which are attached hereto and incorporated by this reference.

4. Term. The term of this IGA shall commence on the date of the Final Acceptance Letter and shall continue in full force and effect for a period of five (5) years, at which time the IGA shall automatically expire.

5. Notice. Any notice required or permitted by this MOU shall be in writing and shall be deemed to have been sufficiently given for all purposes if hand delivered or sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given, at the address set forth below, or at such other address as has been previously furnished in writing, to the other party. All notices so given shall be considered effective on the earlier of actual receipt or seventy-two (72) hours after deposit in the United States mail with the proper address (and by registered or certified mail, return receipt requested, postage prepaid), as set forth below. Either party, by notice so given, may change the address to which future notices shall be sent.

Town of Parker: Director of Engineering/Public Works
Town of Parker
20120 E. Mainstreet
Parker, Colorado 80138

With a copy to: Parker Town Attorney
Town of Parker
20120 E. Mainstreet
Parker, Colorado 80138

City of Aurora: Director of Public Works
City of Aurora
15151 E. Alameda Parkway, Suite 3200
Aurora, Colorado 80012

With a copy to: Aurora City Attorney
City of Aurora
15151 E. Alameda Parkway, Suite 5300
Aurora, Colorado 80012

6. Appropriation. Pursuant to C.R.S. § 29-1-110, the financial obligations of Parker and Aurora contained herein which are payable after the current fiscal year are contingent upon funds for that purpose being annually appropriated, budgeted and otherwise made available by the governing bodies of the Parties.

7. No Waiver of Governmental Immunity Act. The Parties hereto understand and agree that Parker and Aurora, their officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this IGA, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as from time to time amended, or otherwise available to Parker and Aurora.

8. Additional Documents. The Parties agree to execute any additional documents or take any additional action that is necessary to carry out the intent of this IGA.

9. Colorado Law. This IGA shall be governed by the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Douglas, State of Colorado, and the Parties waive any right to remove any action to any other court, whether state or federal.

10. Separate Entities. The Parties enter into this IGA as separate, independent governmental entities and shall maintain such status throughout.

11. No Third-Party Beneficiaries. The enforcement of the terms and conditions of this IGA, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this IGA shall give or allow any such claim or right of action by any other or third person. Any beneficiary of the terms and conditions of this IGA are not intended beneficiaries, but are incidental beneficiaries only.

12. Recitals. The recitals to this IGA are incorporated herein by this reference.

13. Entirety. This IGA merges and supersedes all prior negotiations, representations, and agreements between the Parties hereof and constitutes the entire agreement between the Parties concerning the subject matter hereof.

14. Legal Effect of IGA. This IGA is an expression of intent by Aurora and Parker to establish Parker's responsibilities for snow removal and street sweeping, and Aurora's responsibility to provide final acceptance for the Project.

IN WITNESS WHEREOF, this Intergovernmental Agreement is executed by Aurora and Parker, as of the date first written above.

CITY OF AURORA, COLORADO

Mike Coffman, Mayor

ATTEST:

Kadee Rodriguez, City Clerk

APPROVED AS TO FORM:

Michelle Gardner, Sr. Assistant City Attorney

TOWN OF PARKER, COLORADO

Jeff Toborg, Mayor

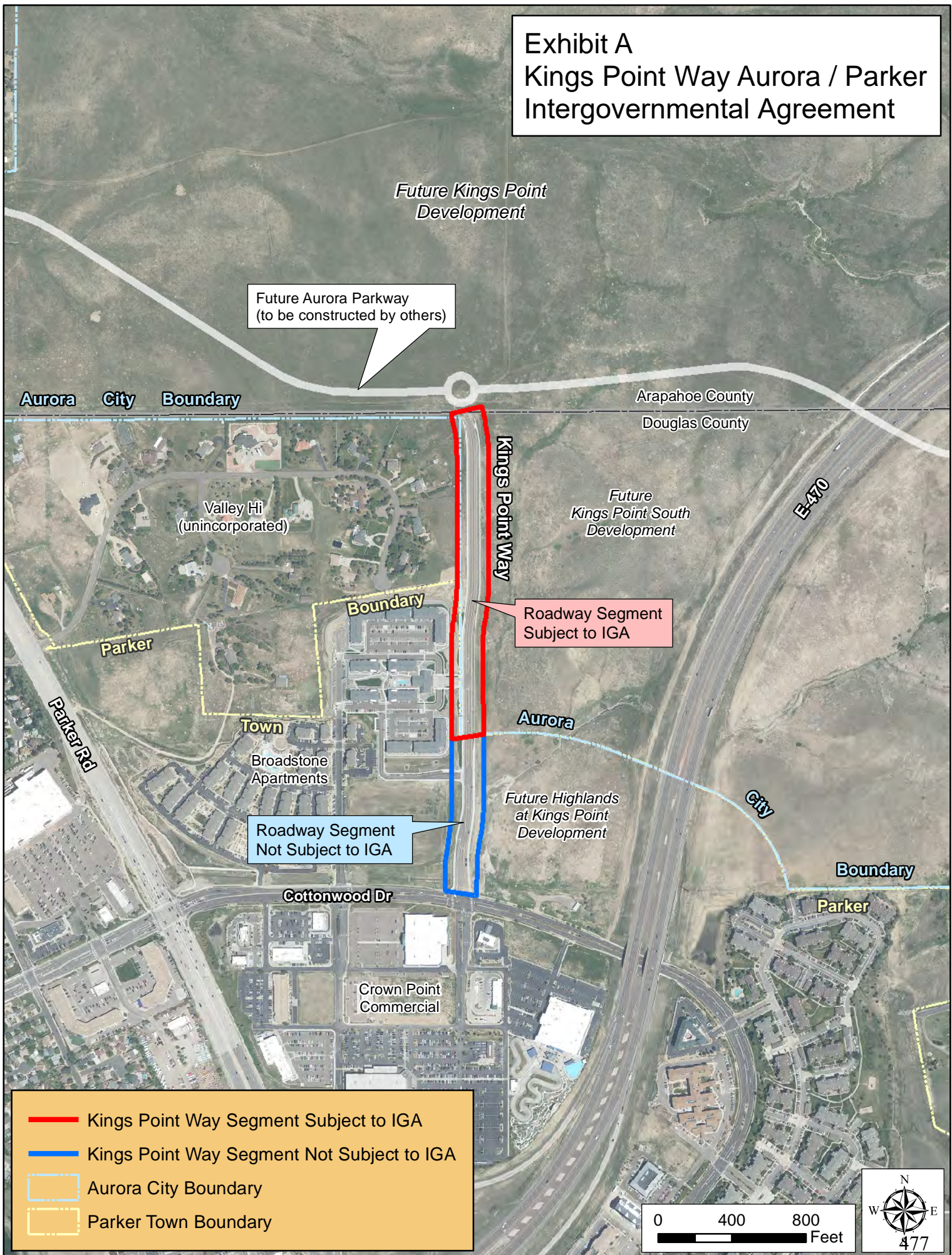
ATTEST:

Chris Vanderpool, Town Clerk

APPROVED AS TO FORM:

Jamie Wynn, Town Attorney

Exhibit A Kings Point Way Aurora / Parker Intergovernmental Agreement



Future Aurora Parkway
(to be constructed by others)

Future Kings Point
Development

Aurora City Boundary

Arapahoe County
Douglas County

Valley Hi
(unincorporated)

Future
Kings Point South
Development

E-470

Kings Point Way

Roadway Segment
Subject to IGA

Parker

Boundary

Aurora

Parker Rd

Town

Broadstone
Apartments

Future Highlands
at Kings Point
Development

City

Roadway Segment
Not Subject to IGA

Boundary

Cottonwood Dr

Parker

Crown Point
Commercial

- Kings Point Way Segment Subject to IGA
- Kings Point Way Segment Not Subject to IGA
- - - Aurora City Boundary
- - - Parker Town Boundary

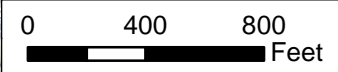


EXHIBIT B

SNOW REMOVAL AND STREET SWEEPING SERVICES TO BE PROVIDED

Under this Intergovernmental Agreement, the Town of Parker will provide snow removal and street sweeping services for Kings Point Way for the section as identified located within the incorporated boundary of the City of Aurora in Exhibit A.

The snow removal service the Town of Parker will perform include and are limited to:

- 1) Snow removal from the roadway (sidewalks are not included); and
- 2) Chemical treatment for snow and/or ice (at the discretion of the Town of Parker).

Work covered under this IGA shall be consistent with the Town of Parker's written procedures and/or best practices. In its sole discretion, but consistent with the snow removal practice for collector roadways set forth in the Town of Parker's respective regulations and practices, The Town will utilize liquid deicing products and/or granular soluble deicing products where possible to avoid residue from sanding.

EXHIBIT C-1

SPECIAL WARRANTY DEED

The **TOWN OF PARKER**, a Colorado home rule municipality, Grantor, whose street address is 20120 East Mainstreet, Parker, Colorado 80138, County of Douglas, State of Colorado, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby sells and conveys to the **CITY OF AURORA**, Colorado, a home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado, whose street address is 15151 E. Alameda Parkway, Aurora, Colorado 80012, and its successors and assigns forever, the real property described in **Exhibit A**, attached hereto and made a part hereof, in the County of Douglas, State of Colorado, together with improvements, if any, and with all its appurtenances, if any, and WARRANTS THE TITLE against all persons claiming under Grantor, subject to those matters listed in **Exhibit B**, attached hereto and made a part hereof.

Signed this _____ day of _____, 2024.

GRANTOR: TOWN OF PARKER, COLORADO

Exhibit – do not sign _____
Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Town Clerk

EXHIBIT A
LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 3;

THENCE ALONG THE WESTERLY LINE OF SAID NORTHWEST QUARTER NORTH 00°07'08" WEST, A DISTANCE OF 830.05 FEET TO THE NORTHWEST CORNER OF THAT PARCEL OF LAND RECORDED AT RECEPTION NO. 2016072202 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER'S OFFICE, AND THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID WESTERLY LINE NORTH 00°07'08" WEST, A DISTANCE OF 520.90 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 810.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 89°57'42" EAST;

THENCE DEPARTING SAID WESTERLY LINE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06°52'53", AN ARC LENGTH OF 97.28 FEET;

THENCE TANGENT TO SAID CURVE NORTH 06°55'11" EAST, A DISTANCE OF 150.14 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 730.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°02'19", AN ARC LENGTH OF 89.68 FEET;

THENCE NON-TANGENT TO SAID CURVE NORTH 89°52'52" EAST, A DISTANCE OF 80.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 810.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 89°52'52" WEST;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°02'19", AN ARC LENGTH OF 99.51 FEET;

THENCE TANGENT TO SAID CURVE SOUTH 06°55'11" WEST, A DISTANCE OF 150.14 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 730.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°02'19", AN ARC LENGTH OF 89.68 FEET;

THENCE TANGENT TO SAID CURVE SOUTH 00°07'08" EAST, A DISTANCE OF 504.26 FEET TO THE NORTHEAST CORNER OF SAID PARCEL RECORDED AT RECEPTION NO. 2016072202 AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 1438.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 08°42'50" EAST;

THENCE WESTERLY ALONG THE NORTHERLY LINE OF SAID PARCEL AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°14'21", AN ARC LENGTH OF 81.30 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 1.562 ACRES, (68,030 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.

DEAN E. CATES, PLS
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

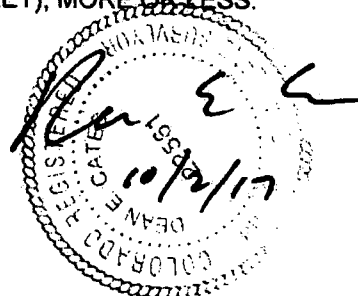
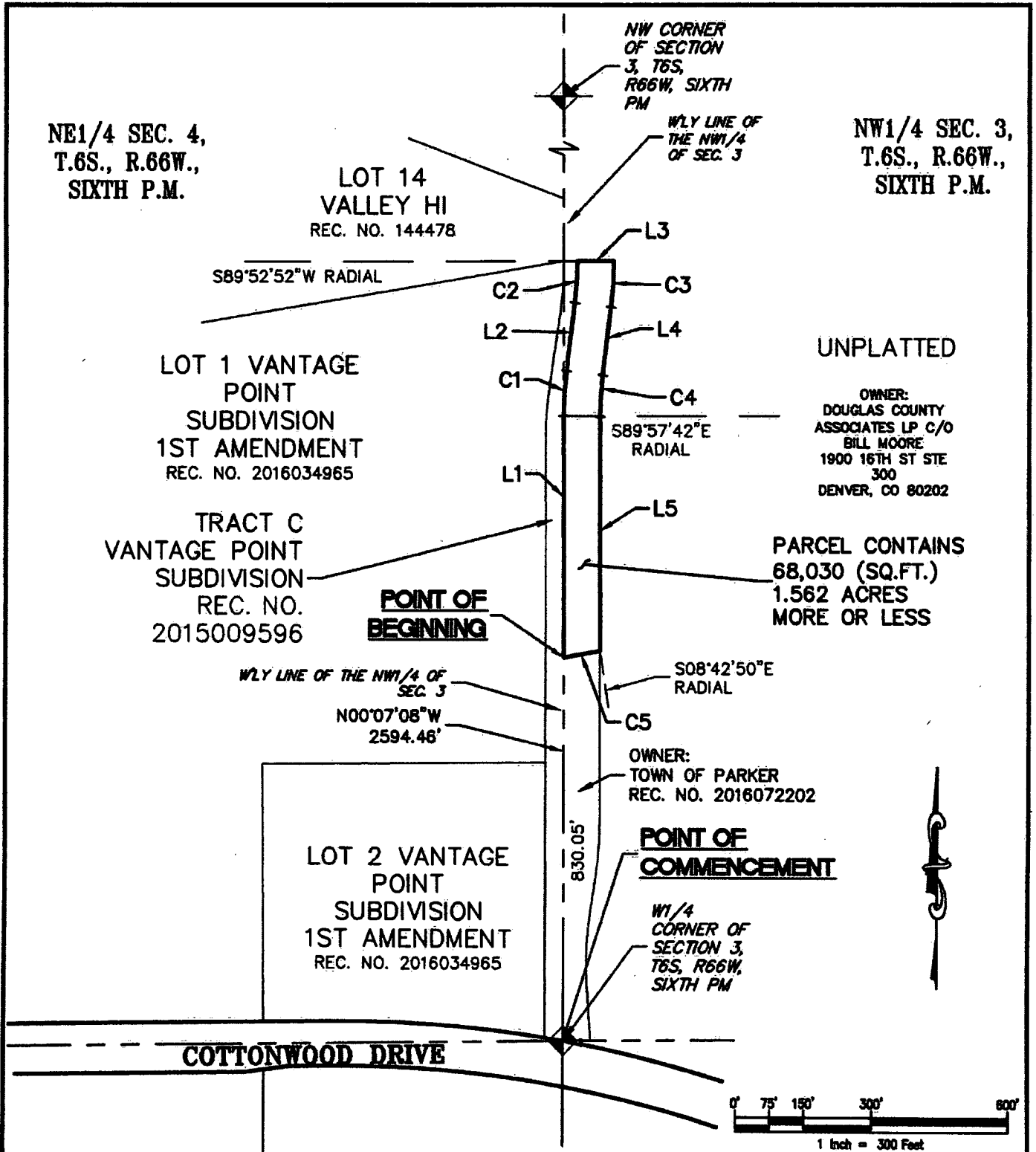


ILLUSTRATION TO EXHIBIT A



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: G:\31917-05\DWG\EXHIBITS\
 DWG NAME: ROW_DC ASSOC
 DWG: DEC CHK:
 DATE: 09-19-17
 SCALE: 1" = 300'



300 East Mineral Ave,
 Suite 1
 Littleton, Colorado 80122
 Phone: (303) 713-1899
 Fax: (303) 713-1897
 www.aztecconsultants.com

EXHIBIT A
NW 1/4 S3, T6S, R66W, SIXTH PM
DOUGLAS COUNTY, COLORADO

JOB NUMBER 31917-05

2 OF 3 SHEETS

ILLUSTRATION TO EXHIBIT A

LINE TABLE		
LINE	BEARING	LENGTH
L1	N00°07'08"W	520.90'
L2	N06°55'11"E	150.14'
L3	N89°52'52"E	80.00'
L4	S06°55'11"W	150.14'
L5	S00°07'08"E	504.26'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	6°52'53"	810.00'	97.28'
C2	7°02'19"	730.00'	89.68'
C3	7°02'19"	810.00'	99.51'
C4	7°02'19"	730.00'	89.68'
C5	3°14'21"	1438.00'	81.30'

NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: G:\31917-05\DWG\EXHIBITS\
 DWG NAME: ROW_DC ASSOC
 DWG: DEC CHK:
 DATE: 09-19-17
 SCALE: NA



300 East Mineral Ave.
 Suite 1
 Littleton, Colorado 80122
 Phone: (303) 713-1899
 Fax: (303) 713-1897
 www.aztecconsultants.com

EXHIBIT A
 NW1/4 S3, T6S, R66W, SIXTH PM
 DOUGLAS COUNTY, COLORADO

JOB NUMBER 31917-05

3 OF 3 SHEETS

EXHIBIT B

Exceptions

1. Reservations contained in the Patent:

From: The United States of America

To: Union Pacific Railway

Recording Date: March 18, 1897

Recording No.: Book 16 Page 115

And

Recording Date: March 19, 2014

Recording No.: Reception No. D4022050, Arapahoe County Records

2. None-exclusive easements for ingress and egress and the provisions thereof as described in deeds recorded July 10, 1978 in Book 336 at Page 80 and Book 336 at Page 87 and August 29, 1981 in Book 420 at Page 48.

3. Pioneer Ditch and Pioneer Ditch First Enlargement as evidenced by deed recorded August 9, 1984 in Book 534 at Page 107.

4. Terms, conditions, provisions, agreements and obligations contained in the Agreement as set forth below:

Recording Date: November 19, 1986

Recording No.: Book 4959 at Page 616, in Arapahoe County Records

1st Amendment to Agreement recorded November 19, 1986 in Book 4959 at Page 648 and 2nd

Amendment recorded November 4, 1987 in Book 5302 at Page 647, in Arapahoe County Records.

5. The effect of a letter from Douglas County Planning Commission:

Recording Date: December 10, 1986

Recording No.: Book 686 Page 673

6. Any taxes or assessments by reason of the inclusion of the Land in the Cherry Creek Basin Authority: 01/16/2019 12:56 PM Title Report No.: N0020781-010-TO2-ES

Recording Date: May 6, 1988

Recording No.: Book 790 Page 718

7. Terms, conditions, provisions, agreements and obligations contained in the Certificate of Organization for the E-470 Public Highway Authority as set forth below:

Recording Date: May 12, 1988

Recording No.: Book 792 Page 3

Amendment to Certificate of Organization for the E-470 Public Highway Authority:

Recording Date: December 19, 1995

Recording No.: Book 1307 Page 235

8. Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 88-13 for annexation of lands to the City of Aurora as set forth below:

Recording Date: June 1, 1988

Recording No.: Book 795 at Page 13

9. Terms, conditions, provisions, agreements and obligations contained in the Kings Point Phase II Development Map as set forth below:

Recording Date: June 14, 1988

Recording No.: Reception No. 8813355

10. Terms, conditions, provisions, agreements and obligations contained in the Agreement as set forth below:

Recording Date: July 6, 1988

Recording No.: Book 801 Page 471

11. Terms, conditions, provisions, agreements and obligations contained in the Resolution No. R-989-045 as set forth below:

Recording Date: August 3, 1989

Recording No.: Book 866 Page 802

12. Terms, conditions, provisions, agreements and obligations contained in the Crown Point Center Development Guide as set forth below:

Recording Date: January 11, 1990

Recording No.: Book 892 Page 1016

13. Terms, conditions, provisions, agreements and obligations contained in the Seventeen Mile Venture Annexation Agreement as set forth below:

Recording Date: January 11, 1990

Recording No.: Book 892 Page 1152

14. Terms, conditions, provisions, agreements and obligations contained in the Lundieck Investments, Ltd. Annexation Agreement as set forth below:

Recording Date: January 11, 1990

Recording No.: Book 892 Page 1183

15. The Effect of Annexation Map:

Recording Date: January 11, 1990

Recording No.: Reception No. 9001003

01/16/2019 12:56 PM Title Report No.: N0020781-010-TO2-ES

16. Terms, conditions, provisions, agreements and obligations contained in the Agreement as set forth below:

Recording Date: August 2, 1994

Recording No.: Book 7654 Page 592, Arapahoe County Records

17. Each and every right or rights of access to and from any portion of the E-470 highway and an easement for multi-use and incidental purposes granted to the E-470 Public Highway Authority by the instrument recorded April 26, 1999 in Book 1698 at Page 1250, together with the terms, conditions, stipulations, provisions and obligations as contained therein and terms, conditions, stipulations and provisions as set forth in Common Use Agreement recorded April 10, 2015 at Reception No. 2015023172.

18. The effect of rezoning Ordinances recorded July 25, 2000 in Book 1873 at Page 28, Book 1873 at Page 30 and August 11, 2004 at Reception No. 83925.

19. Any interest of Bill Moore, Ross Brazil, Eric McClure and Jerry Weigand in subject property by virtue of Memorandum of Agreement recorded November 20, 2002 at Reception No. 2002125960.

20. Any taxes or assessments by reason of the inclusion of the Land in the Kings Point South Metro District No. 1, as evidenced by instrument(s) recorded December 16, 2002 at Reception No. 137220 and January 30, 2003 at Reception No. 12388.

21. Any taxes or assessments by reason of the inclusion of the Land in the Kings Point South Metro District No. 2, as evidenced by instrument(s) recorded December 16, 2002 at Reception No. 137222 and January 30, 2003 at Reception No. 12389.

22. Terms, conditions, provisions, agreements and obligations contained in the Agreement for Possession and Use of the Right of Way as set forth below:
Recording Date: April 23, 2003
Recording No.: Reception No. 2003057363
23. Terms, conditions, provisions, agreements and obligations contained in the Resolution No. R-004-126, Pertaining to Zoning as set forth below:
Recording Date: August 11, 2004
Recording No.: Reception No. 2004083925
24. Terms, conditions, provisions, agreements and obligations contained in the Notice of Referee Ruling as set forth below:
Recording Date: March 23, 2005
Recording No.: Reception No. 2005025151
25. The effect of Certification of the Regional Transportation District (RTD) current District Area recorded March 3, 2016 at Reception No. 2016012841.
26. Terms, conditions, provisions, agreements and obligations contained in the Pre-Annexation Agreement as set forth below:
Recording Date: October 21, 2016
Recording No.: Reception No. 2016075382
27. Lack of access to and from a publicly dedicated road, highway or street.
28. Terms, conditions, provisions, agreements and obligations contained in the Conveyance of Ground Water Rights as set forth below:
Recording Date: September 14, 2017
Recording No.: Reception No. 2017062583
29. Terms, conditions, provisions, agreements and obligations contained in the Agreement for Inclusion into Cottonwood Water and Sanitation District as set forth below:
Recording Date: September 14, 2017
Recording No.: Reception No. 2017062584
30. Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 2.253, Series of 2017 as set forth below:
Recording Date: October 18, 2017
Recording No.: Reception No. 2017070996
Highlands at King's Point Annexation Map:
Recording Date: October 18, 2017
Recording No.: Reception No. 2017070997
31. Terms, conditions, provisions, agreements and obligations contained in the Annexation Agreement Highlands at Kings Point Property as set forth below:
Recording Date: October 18, 2017
Recording No.: Reception No. 2017071061
32. Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 3.331, Series of 2017 as set forth below:
Recording Date: October 18, 2017
Recording No.: Reception No. 2017071067
33. Easements, notes, terms, conditions, provisions, agreements and obligations contained in the Highlands at Kings Point Development Plan as set forth below:
Recording Date: October 18, 2017

Recording No.: Reception No. 2017071083

34. Terms, conditions, provisions, agreements and obligations contained in the Highlands at Kings Point Planned Development – Development Guide as set forth below:

Recording Date: October 19, 2017

Recording No.: Reception No. 20170712138. Reservations contained in the Patent:

From: The United States of America

To: Union Pacific Railway

Recording Date: March 18, 1897

Recording No.: Book 16 Page 115

And

Recording Date: March 19, 2014

Recording No.: Reception No. D4022050, Arapahoe County Records

EXHIBIT C-2

SPECIAL WARRANTY DEED

The **TOWN OF PARKER**, a Colorado home rule municipality, Grantor, whose street address is 20120 East Mainstreet, Parker, Colorado 80138, County of Douglas, State of Colorado, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby sells and conveys to the **CITY OF AURORA**, Colorado, a home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado, whose street address is 15151 E. Alameda Parkway, Aurora, Colorado 80012, and its successors and assigns forever, the real property described in **Exhibit A**, attached hereto and made a part hereof, in the County of Douglas, State of Colorado, together with improvements, if any, and with all its appurtenances, if any, and WARRANTS THE TITLE against all persons claiming under Grantor, subject to those matters listed in **Exhibit B**, attached hereto and made a part hereof.

Signed this _____ day of _____, 2024.

GRANTOR: TOWN OF PARKER, COLORADO

Exhibit – do not sign _____
Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Town Clerk

EXHIBIT A

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 3 AND THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE 6th PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 3, WHENCE THE WEST LINE OF SAID NORTHWEST QUARTER BEARS SOUTH 00°07'08" EAST, WITH ALL BEARINGS HEREIN BEING REFERENCED TO SAID LINE;

THENCE ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER, NORTH 89°35'41" EAST, A DISTANCE OF 79.92 FEET;

THENCE DEPARTING SAID NORTH LINE, SOUTH 11°10'53" EAST, A DISTANCE OF 78.31 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 810.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°03'45", AN ARC LENGTH OF 156.39 FEET;

THENCE SOUTH 00°07'08" EAST, A DISTANCE OF 676.14 FEET;

THENCE SOUTH 89°52'52" WEST, A DISTANCE OF 80.00 FEET;

THENCE NORTH 00°07'08" WEST, A DISTANCE OF 676.14 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 730.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°10'52", AN ARC LENGTH OF 167.94 FEET;

THENCE NORTH 18°29'36" WEST, A DISTANCE OF 34.16 FEET TO THE NORTHEAST CORNER OF VALLEY HI, A SUBDIVISION PLAT RECORDED AT RECEPTION NO. 144478, IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF SAID COUNTY;

THENCE ALONG THE NORTH BOUNDARY OF SAID PLAT, SOUTH 89°35'41" WEST, A DISTANCE OF 30.00 FEET;

THENCE DEPARTING SAID NORTH BOUNDARY, NORTH 00°07'08" WEST, A DISTANCE OF 33.00 FEET TO THE NORTH LINE OF SAID NORTHEAST QUARTER OF SECTION 4;

THENCE ALONG SAID NORTH LINE, NORTH 89°35'41" EAST, A DISTANCE OF 30.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 1.699 ACRES, (73,998 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.

GERALD E. BOYSEN JR., PLS NO. 32428
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
(303) 713-1898

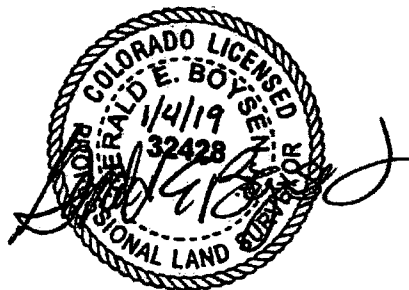
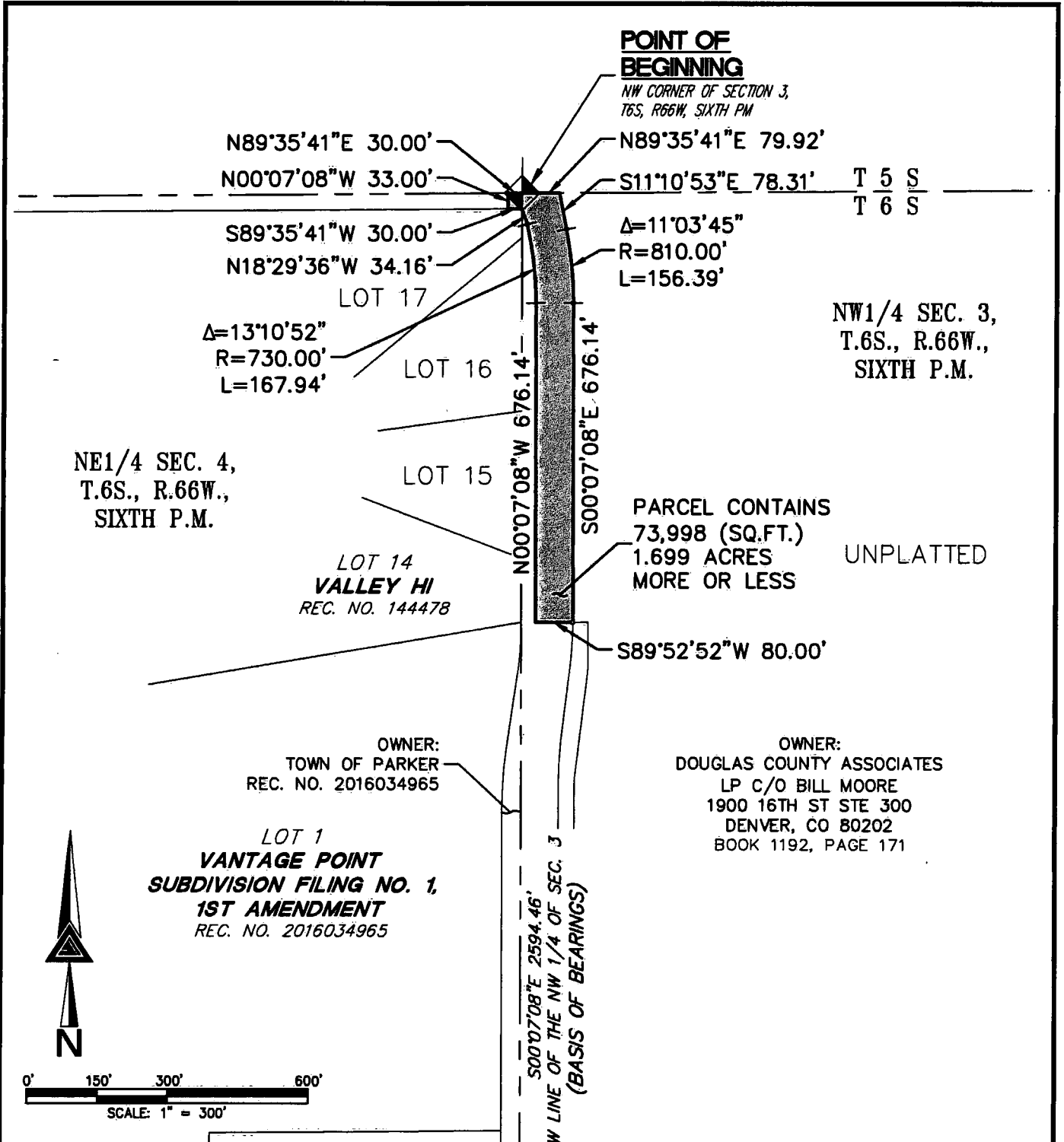


ILLUSTRATION TO EXHIBIT A



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH:
DWG NAME: 2018-12-27 - ROW TAKE 1.DWG
DWG: CWB CHK: GEB
DATE: 01/03/2019
SCALE: 1" = 300'

AZTEC
CONSULTANTS, INC.

300 East Mineral Ave,
Suite 1
Littleton, Colorado 80122
Phone: (303)713-1898
Fax: (303)713-1897
www.aztecconsultants.com

Q:\24918-15 - Kings Point Way - Legal Descriptions\Draw\EXHIBITS

ROW TAKE 1
NE 1/4 SEC 4., NW 1/4 SEC. 3, T.6S., R.66W., 6TH P.M.
DOUGLAS COUNTY, COLORADO
JOB NUMBER 24918-15 2 OF 2 SHEETS

EXHIBIT B

Exceptions

1. Reservations contained in the Patent:

From: The United States of America

To: Union Pacific Railway

Recording Date: March 18, 1897

Recording No.: Book 16 Page 115

And

Recording Date: March 19, 2014

Recording No.: Reception No. D4022050, Arapahoe County Records

2. None-exclusive easements for ingress and egress and the provisions thereof as described in deeds recorded July 10, 1978 in Book 336 at Page 80 and Book 336 at Page 87 and August 29, 1981 in Book 420 at Page 48.

3. Pioneer Ditch and Pioneer Ditch First Enlargement as evidenced by deed recorded August 9, 1984 in Book 534 at Page 107.

4. Terms, conditions, provisions, agreements and obligations contained in the Agreement as set forth below:

Recording Date: November 19, 1986

Recording No.: Book 4959 at Page 616, in Arapahoe County Records

1st Amendment to Agreement recorded November 19, 1986 in Book 4959 at Page 648 and 2nd

Amendment recorded November 4, 1987 in Book 5302 at Page 647, in Arapahoe County Records.

5. The effect of a letter from Douglas County Planning Commission:

Recording Date: December 10, 1986

Recording No.: Book 686 Page 673

6. Any taxes or assessments by reason of the inclusion of the Land in the Cherry Creek Basin Authority: 01/16/2019 12:56 PM Title Report No.: N0020781-010-TO2-ES

Recording Date: May 6, 1988

Recording No.: Book 790 Page 718

7. Terms, conditions, provisions, agreements and obligations contained in the Certificate of Organization for the E-470 Public Highway Authority as set forth below:

Recording Date: May 12, 1988

Recording No.: Book 792 Page 3

Amendment to Certificate of Organization for the E-470 Public Highway Authority:

Recording Date: December 19, 1995

Recording No.: Book 1307 Page 235

8. Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 88-13 for annexation of lands to the City of Aurora as set forth below:

Recording Date: June 1, 1988

Recording No.: Book 795 at Page 13

9. Terms, conditions, provisions, agreements and obligations contained in the Kings Point Phase II Development Map as set forth below:

Recording Date: June 14, 1988

Recording No.: Reception No. 8813355

10. Terms, conditions, provisions, agreements and obligations contained in the Agreement as set forth below:

Recording Date: July 6, 1988

Recording No.: Book 801 Page 471

11. Terms, conditions, provisions, agreements and obligations contained in the Resolution No. R-989-045 as set forth below:

Recording Date: August 3, 1989

Recording No.: Book 866 Page 802

12. Terms, conditions, provisions, agreements and obligations contained in the Crown Point Center Development Guide as set forth below:

Recording Date: January 11, 1990

Recording No.: Book 892 Page 1016

13. Terms, conditions, provisions, agreements and obligations contained in the Seventeen Mile Venture Annexation Agreement as set forth below:

Recording Date: January 11, 1990

Recording No.: Book 892 Page 1152

14. Terms, conditions, provisions, agreements and obligations contained in the Lundieck Investments, Ltd. Annexation Agreement as set forth below:

Recording Date: January 11, 1990

Recording No.: Book 892 Page 1183

15. The Effect of Annexation Map:

Recording Date: January 11, 1990

Recording No.: Reception No. 9001003

01/16/2019 12:56 PM Title Report No.: N0020781-010-TO2-ES

16. Terms, conditions, provisions, agreements and obligations contained in the Agreement as set forth below:

Recording Date: August 2, 1994

Recording No.: Book 7654 Page 592, Arapahoe County Records

17. Each and every right or rights of access to and from any portion of the E-470 highway and an easement for multi-use and incidental purposes granted to the E-470 Public Highway Authority by the instrument recorded April 26, 1999 in Book 1698 at Page 1250, together with the terms, conditions, stipulations, provisions and obligations as contained therein and terms, conditions, stipulations and provisions as set forth in Common Use Agreement recorded April 10, 2015 at Reception No. 2015023172.

18. The effect of rezoning Ordinances recorded July 25, 2000 in Book 1873 at Page 28, Book 1873 at Page 30 and August 11, 2004 at Reception No. 83925.

19. Any interest of Bill Moore, Ross Brazil, Eric McClure and Jerry Weigand in subject property by virtue of Memorandum of Agreement recorded November 20, 2002 at Reception No. 2002125960.

20. Any taxes or assessments by reason of the inclusion of the Land in the Kings Point South Metro District No. 1, as evidenced by instrument(s) recorded December 16, 2002 at Reception No. 137220 and January 30, 2003 at Reception No. 12388.

21. Any taxes or assessments by reason of the inclusion of the Land in the Kings Point South Metro District No. 2, as evidenced by instrument(s) recorded December 16, 2002 at Reception No. 137222 and January 30, 2003 at Reception No. 12389.

22. Terms, conditions, provisions, agreements and obligations contained in the Agreement for Possession and Use of the Right of Way as set forth below:
Recording Date: April 23, 2003
Recording No.: Reception No. 2003057363
23. Terms, conditions, provisions, agreements and obligations contained in the Resolution No. R-004-126, Pertaining to Zoning as set forth below:
Recording Date: August 11, 2004
Recording No.: Reception No. 2004083925
24. Terms, conditions, provisions, agreements and obligations contained in the Notice of Referee Ruling as set forth below:
Recording Date: March 23, 2005
Recording No.: Reception No. 2005025151
25. The effect of Certification of the Regional Transportation District (RTD) current District Area recorded March 3, 2016 at Reception No. 2016012841.
26. Terms, conditions, provisions, agreements and obligations contained in the Pre-Annexation Agreement as set forth below:
Recording Date: October 21, 2016
Recording No.: Reception No. 2016075382
27. Lack of access to and from a publicly dedicated road, highway or street.
28. Terms, conditions, provisions, agreements and obligations contained in the Conveyance of Ground Water Rights as set forth below:
Recording Date: September 14, 2017
Recording No.: Reception No. 2017062583
29. Terms, conditions, provisions, agreements and obligations contained in the Agreement for Inclusion into Cottonwood Water and Sanitation District as set forth below:
Recording Date: September 14, 2017
Recording No.: Reception No. 2017062584
30. Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 2.253, Series of 2017 as set forth below:
Recording Date: October 18, 2017
Recording No.: Reception No. 2017070996
Highlands at King's Point Annexation Map:
Recording Date: October 18, 2017
Recording No.: Reception No. 2017070997
31. Terms, conditions, provisions, agreements and obligations contained in the Annexation Agreement Highlands at Kings Point Property as set forth below:
Recording Date: October 18, 2017
Recording No.: Reception No. 2017071061
32. Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 3.331, Series of 2017 as set forth below:
Recording Date: October 18, 2017
Recording No.: Reception No. 2017071067
33. Easements, notes, terms, conditions, provisions, agreements and obligations contained in the Highlands at Kings Point Development Plan as set forth below:
Recording Date: October 18, 2017

Recording No.: Reception No. 2017071083

34. Terms, conditions, provisions, agreements and obligations contained in the Highlands at Kings Point Planned Development – Development Guide as set forth below:

Recording Date: October 19, 2017

Recording No.: Reception No. 20170712138. Reservations contained in the Patent:

From: The United States of America

To: Union Pacific Railway

Recording Date: March 18, 1897

Recording No.: Book 16 Page 115

And

Recording Date: March 19, 2014

Recording No.: Reception No. D4022050, Arapahoe County Records

EXHIBIT D-1

**ASSIGNMENT AND ASSUMPTION AGREEMENT FOR
SLOPE EASEMENT AGREEMENT (RECORDED AT
DOUGLAS COUNTY CLERK AND RECORDER RECEPTION NO. 2019034593)**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT FOR SLOPE EASEMENT AGREEMENT (the “Agreement”) is dated as of _____, 2024 (the “Effective Date”), and is made by and between the Town of Parker, a Colorado home rule municipality (the “Assignor”), and the City of Aurora, a Colorado home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado (the “Assignee”).

RECITALS

A. Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability company, as the grantor and the Town of Parker, as grantee, entered into the “Slope Easement Agreement” on June 17, 2019, which was recorded on June 17, 2019, with the Douglas County Clerk and Recorder’s Office, at Reception No. 2019034593 (the “Agreement”), which is attached hereto as **Exhibit 1** and incorporated by this reference (the “Easement Agreement”).

B. The Assignor desires to assign the Easement Agreement to Assignee and Assignee desires to assume all of the Assignor’s obligations under the Easement Agreement, subject to the prior written approval of the Town of Parker.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Assignor hereby assigns all of its obligations, rights, title and interest under the Easement Agreement to Assignee.
2. Assignee hereby assumes all of the Assignor’s obligations, rights, title and interest under the Easement Agreement.
3. The Assignor represents and warrants that it has satisfied all conditions precedent, as required by the Easement Agreement for this assignment by the Assignor and assumption by Assignee.
4. The parties hereto warrant and represent that they have the express authority to so execute and bind themselves and the parties for whom they are acting to the terms and provisions of this Agreement.
5. The parties hereto warrant and represent that they have executed this Agreement, based upon their own knowledge and free will.
6. Should any provision of this Agreement be declared or determined to be null and void, inoperative, illegal or invalid for any reason, the validity of the remaining parts, terms or provisions shall not be affected thereby and they shall retain their full force and effect and said

null, void, inoperative, illegal or invalid part, term or provision, shall be deemed not to be part of this Agreement.

7. This Agreement shall, in all respects, be interpreted, enforced and governed under the laws of the State of Colorado.

8. The Recitals of this Agreement are incorporated herein by this reference.

9. This Agreement merges and supercedes all prior negotiations, representations and agreements of the parties hereto, as of the date first above written.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

ASSIGNOR: TOWN OF PARKER, a Colorado home rule municipality

Exhibit – do not sign _____
Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Town Clerk

APPROVED AS TO FORM:

Jamie Wynn, Town Attorney

ASSIGNEE: CITY OF AURORA, a Colorado home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado

Exhibit – do not sign _____
Director of Public Works or Designee

APPROVED AS TO FORM:

Michelle Gardner, Sr. Assistant City Attorney

EXHIBIT 1

SLOPE EASEMENT AGREEMENT

THIS SLOPE EASEMENT AGREEMENT, made this 17th day of June, 2019, between Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability limited partnership, whose legal address is 50 S. Glenmoor Circle, Englewood, Colorado 80113-7121 (the "Grantor"), and the Town of Parker, a Colorado home rule municipality, whose legal address is 20120 E. Mainstreet, Parker, Colorado 80138 (the "Grantee").

THE GRANTOR, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns forever, a perpetual easement over, across and on, the following described real property located in the County of Douglas, State of Colorado, and described as follows:

(See attached Exhibit "A")

Said easement is for the purpose of providing and maintaining (1) a proper sight distance and line of sight, (2) lateral support, and (3) proper drainage grade, as determined by the Parker Public Works Department, for a public roadway, road shoulder and attendant road improvements and construction. Grantee, its successors, contractors or assigns, and their agents and employees shall have full right to enter at all times upon said premises to survey, construct, repair, remove, replace, reconstruct, inspect, improve and maintain a suitable slope or grade which will provide the above mentioned proper sight distance and line of sight, lateral support, and proper drainage grade.

Grantor retains the right to use said property for any and all purposes which will not interfere with the Grantee's full use and enjoyment of the rights acquired herein, including the growing and cultivating of trees, shrubs and other plant materials as well as landscaping. Provided, however, Grantor or his successors, assigns and subsequent Grantees, will not use or improve said property or grant any easements upon, over, across or under said property without first obtaining the written consent of the Grantee. Such consent will not be unreasonably withheld provided that the sight distance and line of sight, lateral support and proper drainage grade necessary for the roadway and its attendant facilities, as determined by the Grantee, is maintained.

Grantor for himself, his successors and assigns, does covenant, grant, bargain and agree with the Grantee, its successors and assigns, that at the time of the signing and delivery of this easement, he is well seized of the property on which the easement above conveyed is located, and has good, sure, perfect, absolute and indefeasible estate, in law, in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the above easement in the manner and form set forth above, and that the property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, monetary encumbrances and restrictions of whatever kind or nature whatsoever, except for non-delinquent real property taxes and that certain deed of trust referenced in the Consent of Lender attached to this Agreement.

Grantor and Grantee agree that this Easement may be released by Grantee upon the construction of an approved development on the Easement Property which provides the necessary subjacent support and protection of Kings Point Way that is created by this Easement.

SLOPE EASEMENT AGREEMENT

THIS SLOPE EASEMENT AGREEMENT, made this 17th day of June, 2019, between Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability limited partnership, whose legal address is 50 S. Glenmoor Circle, Englewood, Colorado 80113-7121 (the "Grantor"), and the Town of Parker, a Colorado home rule municipality, whose legal address is 20120 E. Mainstreet, Parker, Colorado 80138 (the "Grantee").

THE GRANTOR, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns forever, a perpetual easement over, across and on, the following described real property located in the County of Douglas, State of Colorado, and described as follows:

(See attached Exhibit "A")

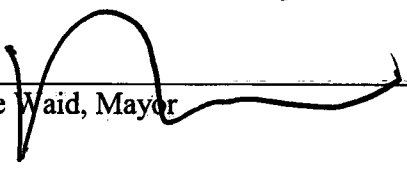
Said easement is for the purpose of providing and maintaining (1) a proper sight distance and line of sight, (2) lateral support, and (3) proper drainage grade, as determined by the Parker Public Works Department, for a public roadway, road shoulder and attendant road improvements and construction. Grantee, its successors, contractors or assigns, and their agents and employees shall have full right to enter at all times upon said premises to survey, construct, repair, remove, replace, reconstruct, inspect, improve and maintain a suitable slope or grade which will provide the above mentioned proper sight distance and line of sight, lateral support, and proper drainage grade.

Grantor retains the right to use said property for any and all purposes which will not interfere with the Grantee's full use and enjoyment of the rights acquired herein, including the growing and cultivating of trees, shrubs and other plant materials as well as landscaping. Provided, however, Grantor or his successors, assigns and subsequent Grantees, will not use or improve said property or grant any easements upon, over, across or under said property without first obtaining the written consent of the Grantee. Such consent will not be unreasonably withheld provided that the sight distance and line of sight, lateral support and proper drainage grade necessary for the roadway and its attendant facilities, as determined by the Grantee, is maintained.

Grantor for himself, his successors and assigns, does covenant, grant, bargain and agree with the Grantee, its successors and assigns, that at the time of the signing and delivery of this easement, he is well seized of the property on which the easement above conveyed is located, and has good, sure, perfect, absolute and indefeasible estate, in law, in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the above easement in the manner and form set forth above, and that the property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, monetary encumbrances and restrictions of whatever kind or nature whatsoever, except for non-delinquent real property taxes and that certain deed of trust referenced in the Consent of Lender attached to this Agreement.

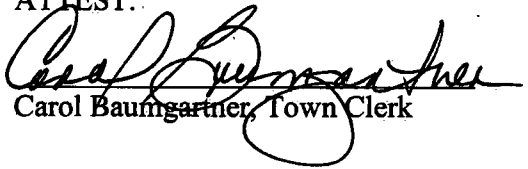
Grantor and Grantee agree that this Easement may be released by Grantee upon the construction of an approved development on the Easement Property which provides the necessary adjacent support and protection of Kings Point Way that is created by this Easement.

TOWN OF PARKER, COLORADO



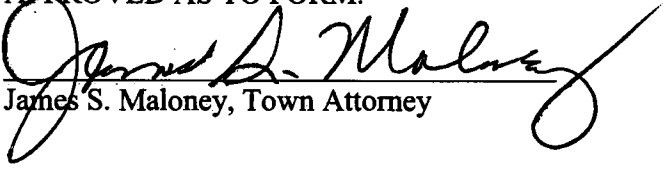
Mike Waid, Mayor

ATTEST:



Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:



James S. Maloney, Town Attorney

CONSENT OF LENDER

Consolidated Equities, Ltd., a Colorado corporation ("Lender"), as the beneficiary under that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, recorded on June 21, 1995, at Reception No. 9527329, in the real property records of the Douglas County Clerk and Recorder's Office; modified on February 1, 2001, at Reception No. 1007263 in the real property records of the Douglas County Clerk and Recorder's Office; and assigned on June 20, 2001, at Reception No. 1055308 in the real property records of the Douglas County Clerk and Recorder's Office (the "Deed of Trust"), hereby agrees that it has consented to the terms and provisions of this Drainage Easement Agreement and that any subsequent foreclosure of the Deed of Trust secured by the property described herein shall not extinguish this Slope Easement Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed these presents as of the 7 day of JUNE, 2019.

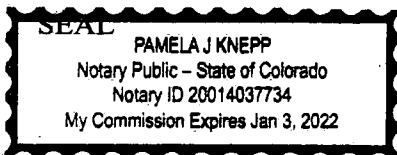
LENDER: CONSOLIDATED EQUITIES, LTD., a Colorado corporation

By: [Signature]
[Name/Title]

STATE OF Colorado)
)ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 7th day of June, 2019, by Peter Nederman, as V.P. of Consolidated Equities, Ltd.

My commission expires: 1/3/22



[Signature]
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE 6th PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 3, WHENCE THE WEST LINE OF SAID NORTHWEST QUARTER BEARS SOUTH 00°07'08" EAST, WITH ALL BEARINGS HEREIN BEING REFERENCED TO SAID LINE;

THENCE ALONG SAID WEST LINE, SOUTH 00°07'08" EAST, A DISTANCE OF 33.00 FEET TO THE NORTHEAST CORNER OF VALLEY HI, A SUBDIVISION PLAT RECORDED AT RECEPTION NO. 144478 IN THE OFFICE OF THE CLERK AND RECORDER OF SAID COUNTY, AND THE **POINT OF BEGINNING**;

THENCE DEPARTING SAID WEST LINE, SOUTH 18°29'36" EAST, A DISTANCE OF 34.16 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 730.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 76°42'00" WEST;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°10'52", AN ARC LENGTH OF 167.94 FEET;

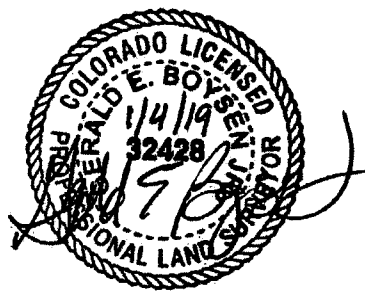
THENCE ALONG A LINE BEING THIRTY (30) FEET EAST OF AND PARALLEL WITH SAID WEST LINE OF THE NORTHWEST QUARTER, SOUTH 00°07'08" EAST, A DISTANCE OF 676.14 FEET;

THENCE SOUTH 89°52'52" WEST, A DISTANCE OF 30.00 FEET TO THE SOUTHEAST CORNER OF SAID VALLEY HI AND SAID WEST LINE;

THENCE ALONG SAID WEST LINE, NORTH 00°07'08" WEST, A DISTANCE OF 875.02 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 0.560 ACRES, (24,391 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



GERALD E. BOYSEN JR., PLS NO. 32428
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
(303) 713-1898

EXHIBIT D-2

**ASSIGNMENT AND ASSUMPTION AGREEMENT FOR
SLOPE EASEMENT AGREEMENT (RECORDED AT
DOUGLAS COUNTY CLERK AND RECORDER RECEPTION NO. 2019034594)**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT FOR SLOPE EASEMENT AGREEMENT (the “Agreement”) is dated as of _____, 2024 (the “Effective Date”), and is made by and between the Town of Parker, a Colorado home rule municipality (the “Assignor”), and the City of Aurora, a Colorado home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado (the “Assignee”).

RECITALS

A. Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability company, as the grantor and the Town of Parker, as grantee, entered into the “Slope Easement Agreement” on June 17, 2019, which was recorded on June 17, 2019, with the Douglas County Clerk and Recorder’s Office, at Reception No. 2019034594 (the “Agreement”), which is attached hereto as **Exhibit 1** and incorporated by this reference (the “Easement Agreement”).

B. The Assignor desires to assign the Easement Agreement to Assignee and Assignee desires to assume all of the Assignor’s obligations under the Easement Agreement, subject to the prior written approval of the Town of Parker.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Assignor hereby assigns all of its obligations, rights, title and interest under the Easement Agreement to Assignee.
2. Assignee hereby assumes all of the Assignor’s obligations, rights, title and interest under the Easement Agreement.
3. The Assignor represents and warrants that it has satisfied all conditions precedent, as required by the Easement Agreement for this assignment by the Assignor and assumption by Assignee.
4. The parties hereto warrant and represent that they have the express authority to so execute and bind themselves and the parties for whom they are acting to the terms and provisions of this Agreement.
5. The parties hereto warrant and represent that they have executed this Agreement, based upon their own knowledge and free will.
6. Should any provision of this Agreement be declared or determined to be null and void, inoperative, illegal or invalid for any reason, the validity of the remaining parts, terms or provisions shall not be affected thereby and they shall retain their full force and effect and said

null, void, inoperative, illegal or invalid part, term or provision, shall be deemed not to be part of this Agreement.

7. This Agreement shall, in all respects, be interpreted, enforced and governed under the laws of the State of Colorado.

8. The Recitals of this Agreement are incorporated herein by this reference.

9. This Agreement merges and supercedes all prior negotiations, representations and agreements of the parties hereto, as of the date first above written.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

ASSIGNOR: TOWN OF PARKER, a Colorado home rule municipality

Exhibit – do not sign _____
Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Town Clerk

APPROVED AS TO FORM:

Jamie Wynn, Town Attorney

ASSIGNEE: CITY OF AURORA, a Colorado home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado

Exhibit – do not sign _____
Director of Public Works or Designee

APPROVED AS TO FORM:

Michelle Gardner, Sr. Assistant City Attorney

EXHIBIT 1

SLOPE EASEMENT AGREEMENT

THIS SLOPE EASEMENT AGREEMENT, made this 17th day of June, 2019, between Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability limited partnership, whose legal address is 50 S. Glenmoor Circle, Englewood, Colorado 80113-7121 (the "Grantor"), and the Town of Parker, a Colorado home rule municipality, whose legal address is 20120 E. Mainstreet, Parker, Colorado 80138 (the "Grantee").

THE GRANTOR, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns forever, a perpetual easement over, across and on, the following described real property located in the County of Douglas, State of Colorado, and described as follows:

(See attached Exhibit "A")

Said easement is for the purpose of providing and maintaining (1) a proper sight distance and line of sight, (2) lateral support, and (3) proper drainage grade, as determined by the Parker Public Works Department, for a public roadway, road shoulder and attendant road improvements and construction. Grantee, its successors, contractors or assigns, and their agents and employees shall have full right to enter at all times upon said premises to survey, construct, repair, remove, replace, reconstruct, inspect, improve and maintain a suitable slope or grade which will provide the above mentioned proper sight distance and line of sight, lateral support, and proper drainage grade.

Grantor retains the right to use said property for any and all purposes which will not interfere with the Grantee's full use and enjoyment of the rights acquired herein, including the growing and cultivating of trees, shrubs and other plant materials as well as landscaping. Provided, however, Grantor or his successors, assigns and subsequent Grantees, will not use or improve said property or grant any easements upon, over, across or under said property without first obtaining the written consent of the Grantee. Such consent will not be unreasonably withheld provided that the sight distance and line of sight, lateral support and proper drainage grade necessary for the roadway and its attendant facilities, as determined by the Grantee, is maintained.

Grantor for himself, his successors and assigns, does covenant, grant, bargain and agree with the Grantee, its successors and assigns, that at the time of the signing and delivery of this easement, he is well seized of the property on which the easement above conveyed is located, and has good, sure, perfect, absolute and indefeasible estate, in law, in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the above easement in the manner and form set forth above, and that the property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, monetary encumbrances and restrictions of whatever kind or nature whatsoever, except for non-delinquent real property taxes and that certain deed of trust referenced in the Consent of Lender attached to this Agreement.

Grantor and Grantee agree that this Easement may be released by Grantee upon the construction of an approved development on the Easement Property which provides the necessary adjacent support and protection of Kings Point Way that is created by this Easement.

SLOPE EASEMENT AGREEMENT

THIS SLOPE EASEMENT AGREEMENT, made this 17th day of June, 2019, between Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability limited partnership, whose legal address is 50 S. Glenmoor Circle, Englewood, Colorado 80113-7121 (the "Grantor"), and the Town of Parker, a Colorado home rule municipality, whose legal address is 20120 E. Mainstreet, Parker, Colorado 80138 (the "Grantee").

THE GRANTOR, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns forever, a perpetual easement over, across and on, the following described real property located in the County of Douglas, State of Colorado, and described as follows:

(See attached Exhibit "A")

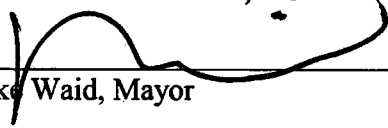
Said easement is for the purpose of providing and maintaining (1) a proper sight distance and line of sight, (2) lateral support, and (3) proper drainage grade, as determined by the Parker Public Works Department, for a public roadway, road shoulder and attendant road improvements and construction. Grantee, its successors, contractors or assigns, and their agents and employees shall have full right to enter at all times upon said premises to survey, construct, repair, remove, replace, reconstruct, inspect, improve and maintain a suitable slope or grade which will provide the above mentioned proper sight distance and line of sight, lateral support, and proper drainage grade.

Grantor retains the right to use said property for any and all purposes which will not interfere with the Grantee's full use and enjoyment of the rights acquired herein, including the growing and cultivating of trees, shrubs and other plant materials as well as landscaping. Provided, however, Grantor or his successors, assigns and subsequent Grantees, will not use or improve said property or grant any easements upon, over, across or under said property without first obtaining the written consent of the Grantee. Such consent will not be unreasonably withheld provided that the sight distance and line of sight, lateral support and proper drainage grade necessary for the roadway and its attendant facilities, as determined by the Grantee, is maintained.

Grantor for himself, his successors and assigns, does covenant, grant, bargain and agree with the Grantee, its successors and assigns, that at the time of the signing and delivery of this easement, he is well seized of the property on which the easement above conveyed is located, and has good, sure, perfect, absolute and indefeasible estate, in law, in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the above easement in the manner and form set forth above, and that the property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, monetary encumbrances and restrictions of whatever kind or nature whatsoever, except for non-delinquent real property taxes and that certain deed of trust referenced in the Consent of Lender attached to this Agreement.

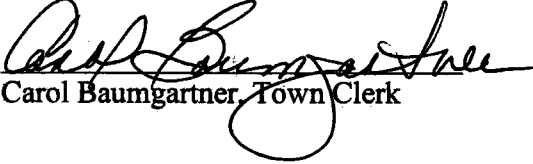
Grantor and Grantee agree that this Easement may be released by Grantee upon the construction of an approved development on the Easement Property which provides the necessary subjacent support and protection of Kings Point Way that is created by this Easement.

TOWN OF PARKER, COLORADO



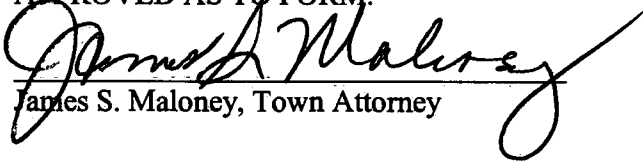
Mike Waid, Mayor

ATTEST:



Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:



James S. Maloney, Town Attorney

EXHIBIT A
LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 3;

THENCE ALONG THE WESTERLY LINE OF SAID NORTHWEST QUARTER NORTH 00°07'08" WEST, A DISTANCE OF 1350.95 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID WESTERLY LINE NORTH 00°07'08" WEST, A DISTANCE OF 335.49 FEET;

THENCE DEPARTING SAID WESTERLY LINE NORTH 89°52'52"EAST, A DISTANCE OF 30.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 730.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 89°52'52" WEST;

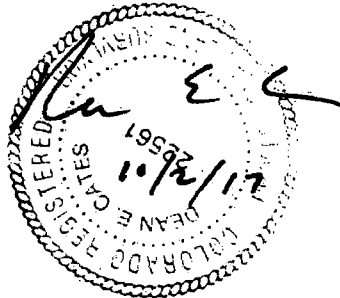
THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°02'19", AN ARC LENGTH OF 89.68 FEET;

THENCE TANGENT TO SAID CURVE SOUTH 06°55'11" WEST, A DISTANCE OF 150.14 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 810.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06°52'53", AN ARC LENGTH OF 97.28 FEET TO THE POINT OF BEGINNING.

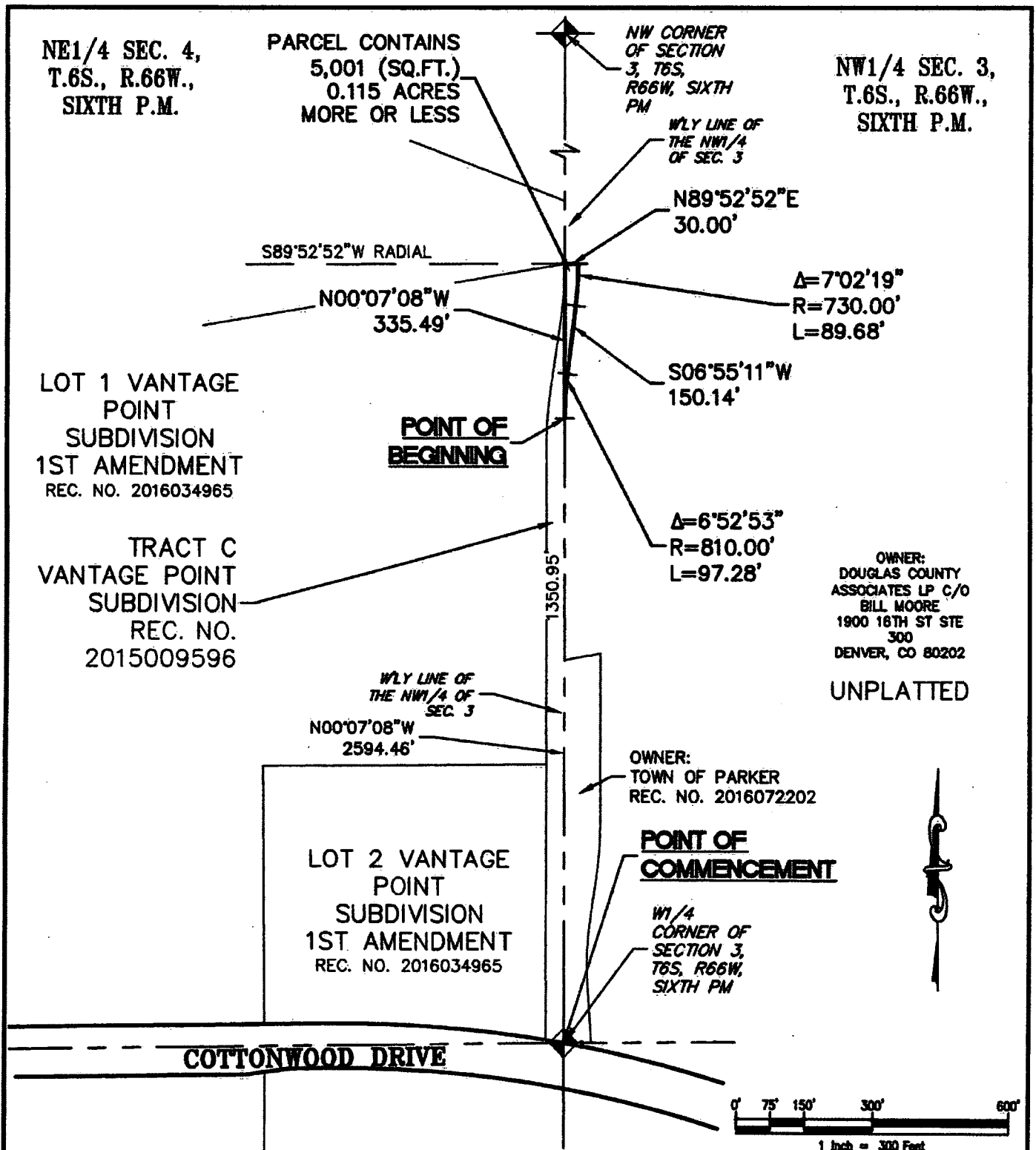
CONTAINING AN AREA OF 0.115 ACRES, (5,001 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



DEAN E. CATES, PLS
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

ILLUSTRATION TO EXHIBIT A



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: G:\31917-05\DWG\EXHIBITS\
DWG NAME: SLOPE_DC_ASSOC
DWG: DEC CHK:
DATE: 09-21-17
SCALE: 1" = 300'



300 East Mineral Ave.
Suite 1
Littleton, Colorado 80122
Phone: (303)713-1898
Fax: (303)713-1897
www.aztecconsultants.com

EXHIBIT A
NW1/4 S3, T6S, R66W, SIXTH PM
DOUGLAS COUNTY, COLORADO

JOB NUMBER 31917-05

2 OF 2 SHEETS

EXHIBIT D-3

**ASSIGNMENT AND ASSUMPTION AGREEMENT FOR
SLOPE EASEMENT AGREEMENT (RECORDED AT
DOUGLAS COUNTY CLERK AND RECORDER RECEPTION NO. 2019034595)**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT FOR SLOPE EASEMENT AGREEMENT (the “Agreement”) is dated as of _____, 2024 (the “Effective Date”), and is made by and between the Town of Parker, a Colorado home rule municipality (the “Assignor”), and the City of Aurora, a Colorado home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado (the “Assignee”).

RECITALS

A. Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability company, as the grantor and the Town of Parker, as grantee, entered into the “Slope Easement Agreement” on June 17, 2019, which was recorded on June 17, 2019, with the Douglas County Clerk and Recorder’s Office, at Reception No. 2019034595 (the “Agreement”), which is attached hereto as **Exhibit 1** and incorporated by this reference (the “Easement Agreement”).

B. The Assignor desires to assign the Easement Agreement to Assignee and Assignee desires to assume all of the Assignor’s obligations under the Easement Agreement, subject to the prior written approval of the Town of Parker.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Assignor hereby assigns all of its obligations, rights, title and interest under the Easement Agreement to Assignee.
2. Assignee hereby assumes all of the Assignor’s obligations, rights, title and interest under the Easement Agreement.
3. The Assignor represents and warrants that it has satisfied all conditions precedent, as required by the Easement Agreement for this assignment by the Assignor and assumption by Assignee.
4. The parties hereto warrant and represent that they have the express authority to so execute and bind themselves and the parties for whom they are acting to the terms and provisions of this Agreement.
5. The parties hereto warrant and represent that they have executed this Agreement, based upon their own knowledge and free will.
6. Should any provision of this Agreement be declared or determined to be null and void, inoperative, illegal or invalid for any reason, the validity of the remaining parts, terms or provisions shall not be affected thereby and they shall retain their full force and effect and said

null, void, inoperative, illegal or invalid part, term or provision, shall be deemed not to be part of this Agreement.

7. This Agreement shall, in all respects, be interpreted, enforced and governed under the laws of the State of Colorado.

8. The Recitals of this Agreement are incorporated herein by this reference.

9. This Agreement merges and supercedes all prior negotiations, representations and agreements of the parties hereto, as of the date first above written.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

ASSIGNOR: TOWN OF PARKER, a Colorado home rule municipality

Exhibit – do not sign _____
Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Town Clerk

APPROVED AS TO FORM:

Jamie Wynn, Town Attorney

ASSIGNEE: CITY OF AURORA, a Colorado home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado

Exhibit – do not sign _____
Director of Public Works or Designee

APPROVED AS TO FORM:

Michelle Gardner, Sr. Assistant City Attorney

EXHIBIT 1

SLOPE EASEMENT AGREEMENT

THIS SLOPE EASEMENT AGREEMENT, made this 17th day of June, 2019, between Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability limited partnership, whose legal address is 50 S. Glenmoor Circle, Englewood, Colorado 80113-7121 (the "Grantor"), and the Town of Parker, a Colorado home rule municipality, whose legal address is 20120 E. Mainstreet, Parker, Colorado 80138 (the "Grantee").

THE GRANTOR, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns forever, a perpetual easement over, across and on, the following described real property located in the County of Douglas, State of Colorado, and described as follows:

(See attached Exhibit "A")

Said easement is for the purpose of providing and maintaining (1) a proper sight distance and line of sight, (2) lateral support, and (3) proper drainage grade, as determined by the Parker Public Works Department, for a public roadway, road shoulder and attendant road improvements and construction. Grantee, its successors, contractors or assigns, and their agents and employees shall have full right to enter at all times upon said premises to survey, construct, repair, remove, replace, reconstruct, inspect, improve and maintain a suitable slope or grade which will provide the above mentioned proper sight distance and line of sight, lateral support, and proper drainage grade.

Grantor retains the right to use said property for any and all purposes which will not interfere with the Grantee's full use and enjoyment of the rights acquired herein, including the growing and cultivating of trees, shrubs and other plant materials as well as landscaping. Provided, however, Grantor or his successors, assigns and subsequent Grantees, will not use or improve said property or grant any easements upon, over, across or under said property without first obtaining the written consent of the Grantee. Such consent will not be unreasonably withheld provided that the sight distance and line of sight, lateral support and proper drainage grade necessary for the roadway and its attendant facilities, as determined by the Grantee, is maintained.

Grantor for himself, his successors and assigns, does covenant, grant, bargain and agree with the Grantee, its successors and assigns, that at the time of the signing and delivery of this easement, he is well seized of the property on which the easement above conveyed is located, and has good, sure, perfect, absolute and indefeasible estate, in law, in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the above easement in the manner and form set forth above, and that the property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, monetary encumbrances and restrictions of whatever kind or nature whatsoever, except for non-delinquent real property taxes and that certain deed of trust referenced in the Consent of Lender attached to this Agreement.

Grantor and Grantee agree that this Easement may be released by Grantee upon the construction of an approved development on the Easement Property which provides the necessary subjacent support and protection of Kings Point Way that is created by this Easement.

SLOPE EASEMENT AGREEMENT

THIS SLOPE EASEMENT AGREEMENT, made this 17th day of June, 2019, between Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability limited partnership, whose legal address is 50 S. Glenmoor Circle, Englewood, Colorado 80113-7121 (the "Grantor"), and the Town of Parker, a Colorado home rule municipality, whose legal address is 20120 E. Mainstreet, Parker, Colorado 80138 (the "Grantee").

THE GRANTOR, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns forever, a perpetual easement over, across and on, the following described real property located in the County of Douglas, State of Colorado, and described as follows:

(See attached Exhibit "A")

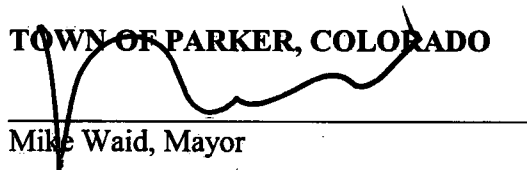
Said easement is for the purpose of providing and maintaining (1) a proper sight distance and line of sight, (2) lateral support, and (3) proper drainage grade, as determined by the Parker Public Works Department, for a public roadway, road shoulder and attendant road improvements and construction. Grantee, its successors, contractors or assigns, and their agents and employees shall have full right to enter at all times upon said premises to survey, construct, repair, remove, replace, reconstruct, inspect, improve and maintain a suitable slope or grade which will provide the above mentioned proper sight distance and line of sight, lateral support, and proper drainage grade.

Grantor retains the right to use said property for any and all purposes which will not interfere with the Grantee's full use and enjoyment of the rights acquired herein, including the growing and cultivating of trees, shrubs and other plant materials as well as landscaping. Provided, however, Grantor or his successors, assigns and subsequent Grantees, will not use or improve said property or grant any easements upon, over, across or under said property without first obtaining the written consent of the Grantee. Such consent will not be unreasonably withheld provided that the sight distance and line of sight, lateral support and proper drainage grade necessary for the roadway and its attendant facilities, as determined by the Grantee, is maintained.

Grantor for himself, his successors and assigns, does covenant, grant, bargain and agree with the Grantee, its successors and assigns, that at the time of the signing and delivery of this easement, he is well seized of the property on which the easement above conveyed is located, and has good, sure, perfect, absolute and indefeasible estate, in law, in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the above easement in the manner and form set forth above, and that the property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, monetary encumbrances and restrictions of whatever kind or nature whatsoever, except for non-delinquent real property taxes and that certain deed of trust referenced in the Consent of Lender attached to this Agreement.

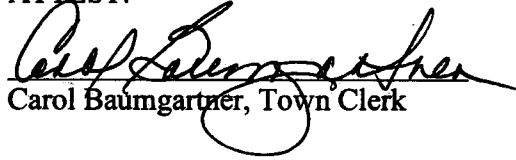
Grantor and Grantee agree that this Easement may be released by Grantee upon the construction of an approved development on the Easement Property which provides the necessary subjacent support and protection of Kings Point Way that is created by this Easement.

TOWN OF PARKER, COLORADO



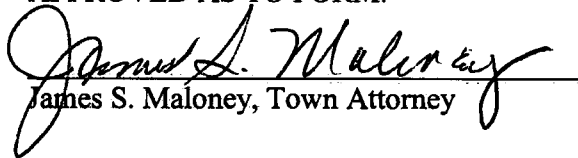
Mike Waid, Mayor

ATTEST:



Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:



James S. Maloney, Town Attorney

CONSENT OF LENDER

Consolidated Equities, Ltd., a Colorado corporation ("Lender"), as the beneficiary under that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, recorded on June 21, 1995, at Reception No. 9527329, in the real property records of the Douglas County Clerk and Recorder's Office; modified on February 1, 2001, at Reception No. 1007263 in the real property records of the Douglas County Clerk and Recorder's Office; and assigned on June 20, 2001, at Reception No. 1055308 in the real property records of the Douglas County Clerk and Recorder's Office (the "Deed of Trust"), hereby agrees that it has consented to the terms and provisions of this Drainage Easement Agreement and that any subsequent foreclosure of the Deed of Trust secured by the property described herein shall not extinguish this Slope Easement Agreement.

7 IN WITNESS WHEREOF, the undersigned have duly executed these presents as of the 7 day of JUNE, 2019.

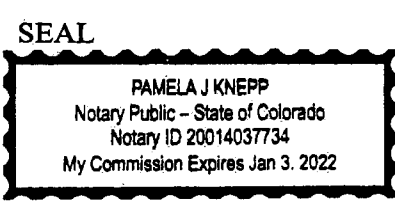
LENDER: CONSOLIDATED EQUITIES, LTD., a Colorado corporation

By: [Signature]
[Name/Title]
V.P.

STATE OF Colorado)
)ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 7th day of JUNE, 2019, by Peter Nederman, as V.P. of Consolidated Equities, Ltd.

My commission expires: 1/3/22



[Signature]
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE 6th PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 3, WHENCE THE WEST LINE OF SAID NORTHWEST QUARTER BEARS SOUTH 00°07'08" EAST, WITH ALL BEARINGS HEREIN BEING REFERENCED TO SAID LINE;

THENCE ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER, NORTH 89°35'41" EAST, A DISTANCE OF 79.92 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTH LINE, NORTH 89°35'41" EAST, A DISTANCE OF 20.36 FEET;

THENCE DEPARTING SAID NORTH LINE, SOUTH 11°10'53" EAST, A DISTANCE OF 74.51 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 830.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°03'45", AN ARC LENGTH OF 160.25 FEET;

THENCE SOUTH 00°07'08" EAST, A DISTANCE OF 236.81 FEET;

THENCE SOUTH 15°09'29" EAST, A DISTANCE OF 96.35 FEET;

THENCE SOUTH 00°07'08" EAST, A DISTANCE OF 99.17 FEET;

THENCE SOUTH 24°37'16" WEST, A DISTANCE OF 59.74 FEET;

THENCE SOUTH 00°07'08" EAST, A DISTANCE OF 192.86 FEET;

THENCE SOUTH 89°52'52" WEST, A DISTANCE OF 20.00 FEET;

THENCE NORTH 00°07'08" WEST, A DISTANCE OF 676.14 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 810.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°03'45", AN ARC LENGTH OF 156.39 FEET;

THENCE NORTH 11°10'53" WEST, A DISTANCE OF 78.31 FEET TO THE POINT OF BEGINNING.

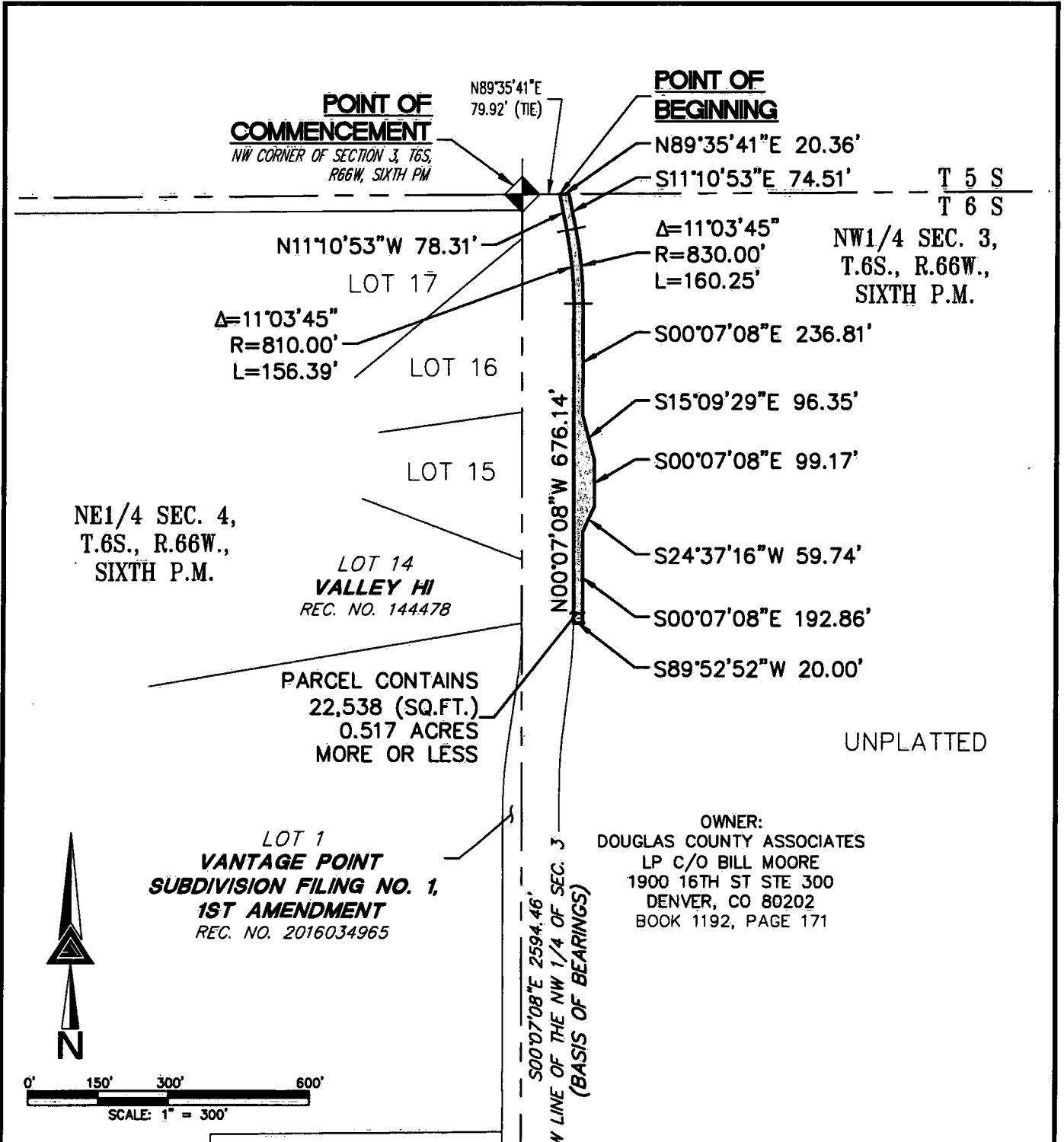
CONTAINING AN AREA OF 0.517 ACRES, (22,538 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.

GERALD E. BOYSEN JR., PLS NO. 32428
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
(303) 713-1898



ILLUSTRATION TO EXHIBIT A



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH:
DWG NAME: 2018-12-27 - SLOPE EASEMENT 2.DWG
DWG: CWB CHK: GEB
DATE: 01/03/2019
SCALE: 1" = 300'

AZTEC
CONSULTANTS, INC.

300 East Mineral Ave,
Suite 1
Littleton, Colorado 80122
Phone: (303)713-1898
Fax: (303)713-1897
www.aztecconsultants.com

Q:\24918-15 - Kings Point Way - Legal Descriptions\Dwg\EXHIBITS

SLOPE EASEMENT 2
NW 1/4 SEC. 3, T.6S., R.66W., 6TH P.M.
DOUGLAS COUNTY, COLORADO

JOB NUMBER 24918-15 2 OF 2 SHEETS

EXHIBIT D-4

**ASSIGNMENT AND ASSUMPTION AGREEMENT FOR
SLOPE EASEMENT AGREEMENT (RECORDED AT
DOUGLAS COUNTY CLERK AND RECORDER RECEPTION NO. 2019034596)**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT FOR SLOPE EASEMENT AGREEMENT (the “Agreement”) is dated as of _____, 2024 (the “Effective Date”), and is made by and between the Town of Parker, a Colorado home rule municipality (the “Assignor”), and the City of Aurora, a Colorado home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado (the “Assignee”).

RECITALS

A. Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability company, as the grantor and the Town of Parker, as grantee, entered into the “Slope Easement Agreement” on June 17, 2019, which was recorded on June 17, 2019, with the Douglas County Clerk and Recorder’s Office, at Reception No. 2019034596 (the “Agreement”), which is attached hereto as **Exhibit 1** and incorporated by this reference (the “Easement Agreement”).

B. The Assignor desires to assign the Easement Agreement to Assignee and Assignee desires to assume all of the Assignor’s obligations under the Easement Agreement, subject to the prior written approval of the Town of Parker.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Assignor hereby assigns all of its obligations, rights, title and interest under the Easement Agreement to Assignee.

2. Assignee hereby assumes all of the Assignor’s obligations, rights, title and interest under the Easement Agreement.

3. The Assignor represents and warrants that it has satisfied all conditions precedent, as required by the Easement Agreement for this assignment by the Assignor and assumption by Assignee.

4. The parties hereto warrant and represent that they have the express authority to so execute and bind themselves and the parties for whom they are acting to the terms and provisions of this Agreement.

5. The parties hereto warrant and represent that they have executed this Agreement, based upon their own knowledge and free will.

6. Should any provision of this Agreement be declared or determined to be null and void, inoperative, illegal or invalid for any reason, the validity of the remaining parts, terms or provisions shall not be affected thereby and they shall retain their full force and effect and said

null, void, inoperative, illegal or invalid part, term or provision, shall be deemed not to be part of this Agreement.

7. This Agreement shall, in all respects, be interpreted, enforced and governed under the laws of the State of Colorado.

8. The Recitals of this Agreement are incorporated herein by this reference.

9. This Agreement merges and supercedes all prior negotiations, representations and agreements of the parties hereto, as of the date first above written.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

ASSIGNOR: TOWN OF PARKER, a Colorado home rule municipality

Exhibit – do not sign _____
Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Town Clerk

APPROVED AS TO FORM:

Jamie Wynn, Town Attorney

ASSIGNEE: CITY OF AURORA, a Colorado home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado

Exhibit – do not sign _____
Director of Public Works or Designee

APPROVED AS TO FORM:

Michelle Gardner, Sr. Assistant City Attorney

EXHIBIT 1

SLOPE EASEMENT AGREEMENT

THIS SLOPE EASEMENT AGREEMENT, made this 17th day of June, 2019, between Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability limited partnership, whose legal address is 50 S. Glenmoor Circle, Englewood, Colorado 80113-7121 (the "Grantor"), and the Town of Parker, a Colorado home rule municipality, whose legal address is 20120 E. Mainstreet, Parker, Colorado 80138 (the "Grantee").

THE GRANTOR, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns forever, a perpetual easement over, across and on, the following described real property located in the County of Douglas, State of Colorado, and described as follows:

(See attached Exhibit "A")

Said easement is for the purpose of providing and maintaining (1) a proper sight distance and line of sight, (2) lateral support, and (3) proper drainage grade, as determined by the Parker Public Works Department, for a public roadway, road shoulder and attendant road improvements and construction. Grantee, its successors, contractors or assigns, and their agents and employees shall have full right to enter at all times upon said premises to survey, construct, repair, remove, replace, reconstruct, inspect, improve and maintain a suitable slope or grade which will provide the above mentioned proper sight distance and line of sight, lateral support, and proper drainage grade.

Grantor retains the right to use said property for any and all purposes which will not interfere with the Grantee's full use and enjoyment of the rights acquired herein, including the growing and cultivating of trees, shrubs and other plant materials as well as landscaping. Provided, however, Grantor or his successors, assigns and subsequent Grantees, will not use or improve said property or grant any easements upon, over, across or under said property without first obtaining the written consent of the Grantee. Such consent will not be unreasonably withheld provided that the sight distance and line of sight, lateral support and proper drainage grade necessary for the roadway and its attendant facilities, as determined by the Grantee, is maintained.

Grantor for himself, his successors and assigns, does covenant, grant, bargain and agree with the Grantee, its successors and assigns, that at the time of the signing and delivery of this easement, he is well seized of the property on which the easement above conveyed is located, and has good, sure, perfect, absolute and indefeasible estate, in law, in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the above easement in the manner and form set forth above, and that the property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, monetary encumbrances and restrictions of whatever kind or nature whatsoever, except for non-delinquent real property taxes and that certain deed of trust referenced in the Consent of Lender attached to this Agreement.

Grantor and Grantee agree that this Easement may be released by Grantee upon the construction of an approved development on the Easement Property which provides the necessary subjacent support and protection of Kings Point Way that is created by this Easement.

SLOPE EASEMENT AGREEMENT

THIS SLOPE EASEMENT AGREEMENT, made this 17th day of June, 2019, between Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability limited partnership, whose legal address is 50 S. Glenmoor Circle, Englewood, Colorado 80113-7121 (the "Grantor"), and the Town of Parker, a Colorado home rule municipality, whose legal address is 20120 E. Mainstreet, Parker, Colorado 80138 (the "Grantee").

THE GRANTOR, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns forever, a perpetual easement over, across and on, the following described real property located in the County of Douglas, State of Colorado, and described as follows:

(See attached Exhibit "A")

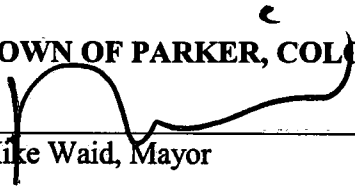
Said easement is for the purpose of providing and maintaining (1) a proper sight distance and line of sight, (2) lateral support, and (3) proper drainage grade, as determined by the Parker Public Works Department, for a public roadway, road shoulder and attendant road improvements and construction. Grantee, its successors, contractors or assigns, and their agents and employees shall have full right to enter at all times upon said premises to survey, construct, repair, remove, replace, reconstruct, inspect, improve and maintain a suitable slope or grade which will provide the above mentioned proper sight distance and line of sight, lateral support, and proper drainage grade.

Grantor retains the right to use said property for any and all purposes which will not interfere with the Grantee's full use and enjoyment of the rights acquired herein, including the growing and cultivating of trees, shrubs and other plant materials as well as landscaping. Provided, however, Grantor or his successors, assigns and subsequent Grantees, will not use or improve said property or grant any easements upon, over, across or under said property without first obtaining the written consent of the Grantee. Such consent will not be unreasonably withheld provided that the sight distance and line of sight, lateral support and proper drainage grade necessary for the roadway and its attendant facilities, as determined by the Grantee, is maintained.

Grantor for himself, his successors and assigns, does covenant, grant, bargain and agree with the Grantee, its successors and assigns, that at the time of the signing and delivery of this easement, he is well seized of the property on which the easement above conveyed is located, and has good, sure, perfect, absolute and indefeasible estate, in law, in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the above easement in the manner and form set forth above, and that the property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, monetary encumbrances and restrictions of whatever kind or nature whatsoever, except for non-delinquent real property taxes and that certain deed of trust referenced in the Consent of Lender attached to this Agreement.

Grantor and Grantee agree that this Easement may be released by Grantee upon the construction of an approved development on the Easement Property which provides the necessary subjacent support and protection of Kings Point Way that is created by this Easement.

TOWN OF PARKER, COLORADO



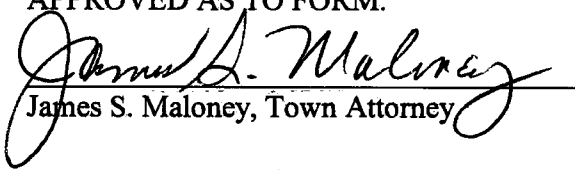
Mike Waid, Mayor

ATTEST:



Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:



James S. Maloney, Town Attorney

CONSENT OF LENDER

Consolidated Equities, Ltd., a Colorado corporation ("Lender"), as the beneficiary under that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, recorded on June 21, 1995, at Reception No. 9527329, in the real property records of the Douglas County Clerk and Recorder's Office; modified on February 1, 2001, at Reception No. 1007263 in the real property records of the Douglas County Clerk and Recorder's Office; and assigned on June 20, 2001, at Reception No. 1055308 in the real property records of the Douglas County Clerk and Recorder's Office (the "Deed of Trust"), hereby agrees that it has consented to the terms and provisions of this Drainage Easement Agreement and that any subsequent foreclosure of the Deed of Trust secured by the property described herein shall not extinguish this Slope Easement Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed these presents as of the 7th day of June, 2019.

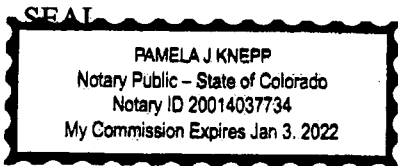
LENDER: CONSOLIDATED EQUITIES, LTD., a Colorado corporation

By: [Signature]
[Peter Nederman / title]
V.P.

STATE OF Colorado)
)ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 7th day of June, 2019, by Peter Nederman, as V.P. of Consolidated Equities, Ltd.

My commission expires: 1/3/22



[Signature]
Notary Public

EXHIBIT A
LEGAL DESCRIPTION

A PART OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED IN A WARRANTY DEED RECORDED ON APRIL 13, 1994 IN BOOK 1192 AT PAGE 171, IN THE RECORDS OF THE DOUGLAS COUNTY, COLORADO, CLERK AND RECORDER, LOCATED IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 3, WHENCE THE NORTHWEST CORNER OF SAID SECTION 3 BEARS NORTH 00°07'08" WEST, A DISTANCE OF 2,594.46 FEET;

THENCE ALONG THE WEST LINE OF SAID NORTHWEST QUARTER, NORTH 00°07'08" WEST, A DISTANCE OF 830.05 FEET TO THE NORTHWEST CORNER OF THAT PARCEL OF LAND RECORDED AT RECEPTION NO. 2016072202 IN SAID RECORDS, AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 1,438.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 11°57'11" EAST;

THENCE DEPARTING SAID WEST LINE, ALONG THE NORTHERLY LINE OF SAID PARCEL, EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°14'21", AN ARC LENGTH OF 81.30 FEET TO THE POINT OF BEGINNING;

THENCE DEPARTING SAID NORTHERLY LINE NON-TANGENT TO SAID CURVE, NORTH 00°07'08" WEST, A DISTANCE OF 504.26 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 730.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°02'19", AN ARC LENGTH OF 89.68 FEET;

THENCE TANGENT TO SAID CURVE, NORTH 06°55'11" EAST, A DISTANCE OF 150.14 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 810.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°02'19", AN ARC LENGTH OF 99.51 FEET;

THENCE NON-TANGENT TO SAID CURVE NORTH 89°52'52" EAST, A DISTANCE OF 32.60 FEET;

THENCE SOUTH 00°07'08" EAST, A DISTANCE OF 104.03 FEET;

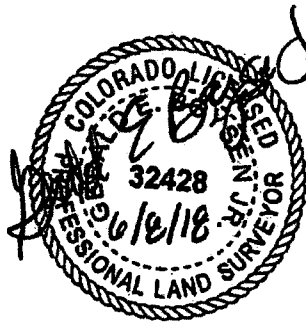
THENCE SOUTH 06°55'11" WEST, A DISTANCE OF 233.44 FEET;

THENCE SOUTH 00°07'08" EAST, A DISTANCE OF 501.53 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 1,438.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 07°20'46" EAST;

THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°22'04", AN ARC LENGTH OF 34.33 FEET TO THE POINT OF BEGINNING.

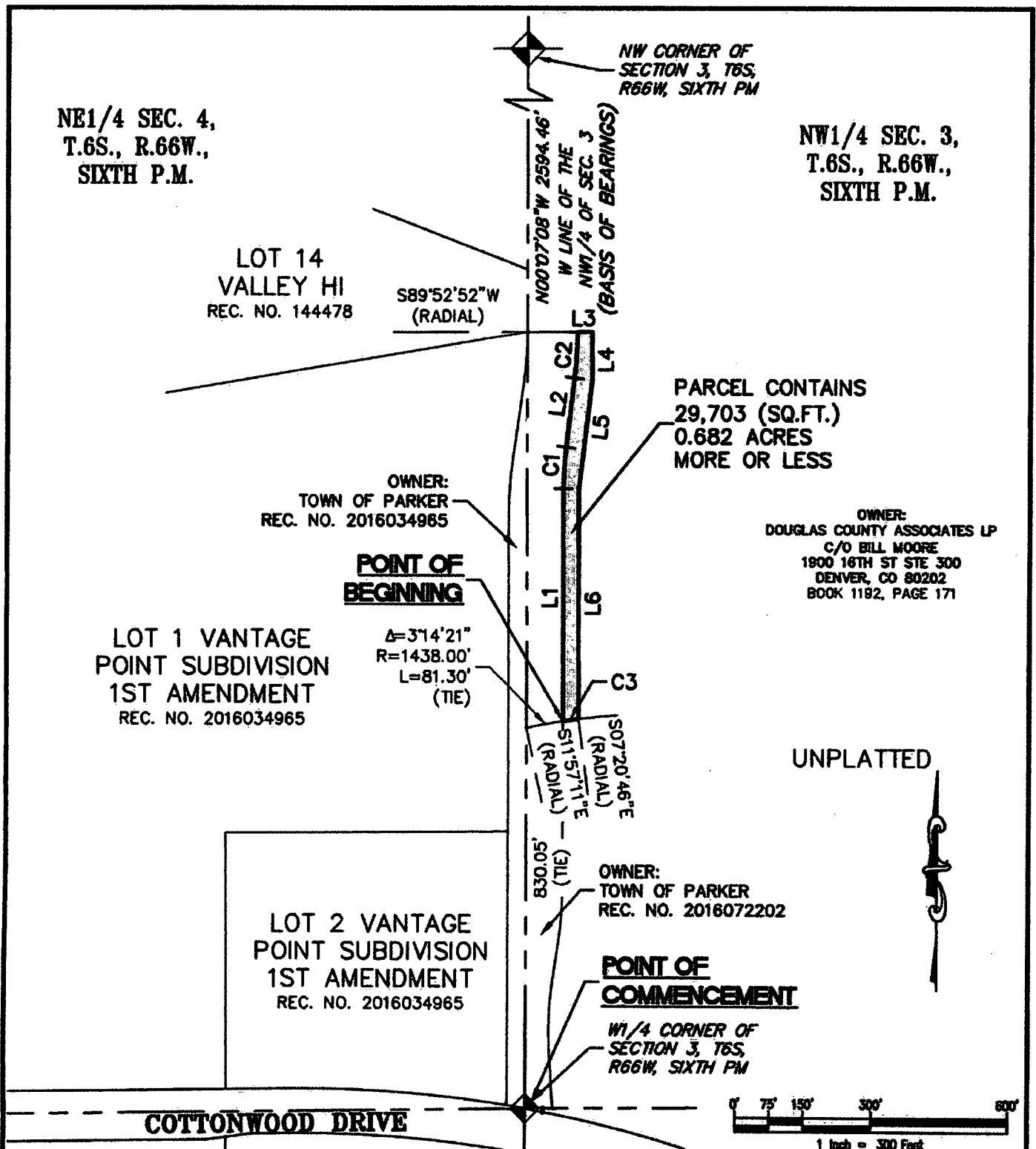
CONTAINING AN AREA OF 0.682 ACRES, (29,703 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



GERALD E. BOYSEN, JR., PLS NO. 32428
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

ILLUSTRATION TO EXHIBIT A



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: Q:\4618-15\DWG\EXHIBITS\
 DWG NAME: SLOPE 2_DC ASSOC REV
 DWG: GB CHK: JRW
 DATE: 06-07-2018
 SCALE: 1" = 300'



300 East Mineral Ave,
 Suite 1
 Littleton, Colorado 80122
 Phone: (303)713-1898
 Fax: (303)713-1897
 www.aztecconsultants.com

EXHIBIT A
NW 1/4 S3, T6S, R66W, SIXTH PM
DOUGLAS COUNTY, COLORADO
 JOB NUMBER 24918-15 3 OF 4 SHEETS

ILLUSTRATION TO EXHIBIT A

LINE TABLE		
LINE	BEARING	LENGTH
L1	N00°07'08"W	504.26'
L2	N06°55'11"E	150.14'
L3	N89°52'52"E	32.60'
L4	S00°07'08"E	104.03'
L5	S06°55'11"W	233.44'
L6	S00°07'08"E	501.53'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	7°02'19"	730.00'	89.68'
C2	7°02'19"	810.00'	99.51'
C3	1°22'04"	1438.00'	34.33'

NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: G:\24918-15\DWG\EXHIBITS\
 DWG NAME: SLOPE 2_DC ASSOC REV
 DWG: DEC CHC
 DATE: 06-07-2018
 SCALE: NA



300 East Mineral Ave.
 Suite 1
 Littleton, Colorado 80122
 Phone: (303)713-1899
 Fax: (303)713-1897
 www.aztecconsultants.com

EXHIBIT A
 NW1/4 S3, T6S, R66W, SIXTH PM
 DOUGLAS COUNTY, COLORADO
 JOB NUMBER 24918-15

3 OF 3 SHEETS

Study Session

August 26, 2024

Marc Tamburro,
Manager Of Street
Operations

Intergovernmental Agreement(IGA)
Between City Of Aurora And The
Town Of Parker

Snow Removal And Street Sweeping
On Kings Point Way





Kings Point Way

- South of Arapahoe/Douglas County Line
- North of Cottonwood Dr
- East of Parker Rd
- West of E-470
- Two Lane Collector
- Turn Lanes and Bike Lanes



- Aurora and Parker entered into an IGA January 28, 2019, regarding the design, construction and maintenance of Kings Point Way
- Parker designed and constructed the project at no cost to Aurora
- Douglas County and the Town of Parker entered into a Slope Easement Agreement
- Aurora and Parker agreed that Parker will be responsible for snow removal and street sweeping for 5 years following final acceptance
- Aurora will be responsible for ownership and maintenance of the project following final acceptance



IGA RESPONSIBILITIES

AURORA

- ROW Conveyance
 - Slope Easement Agreement
 - A proper site distance and line of sight
 - Lateral Support
 - Proper Drainage Grade

PARKER

- 5 Year Agreement
 - Snow Removal
 - Street Sweeping



Questions & Discussion

Does the Council Policy Committee support moving forward the Resolution and the Intergovernmental Agreement between the City of Aurora and the Town of Parker for the Snow Removal and Street Sweeping of Kings Point Way to the next regular meeting?

SPECIAL WARRANTY DEED

The **TOWN OF PARKER**, a Colorado home rule municipality, Grantor, whose street address is 20120 East Mainstreet, Parker, Colorado 80138, County of Douglas, State of Colorado, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby sells and conveys to the **CITY OF AURORA**, Colorado, a home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado, whose street address is 15151 E. Alameda Parkway, Aurora, Colorado 80012, and its successors and assigns forever, the real property described in **Exhibit A**, attached hereto and made a part hereof, in the County of Douglas, State of Colorado, together with improvements, if any, and with all its appurtenances, if any, and WARRANTS THE TITLE against all persons claiming under Grantor, subject to those matters listed in **Exhibit B**, attached hereto and made a part hereof.

Signed this ____ day of _____, 2024.

GRANTOR: TOWN OF PARKER, COLORADO

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Town Clerk

EXHIBIT A

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 3 AND THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE 6th PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 3, WHENCE THE WEST LINE OF SAID NORTHWEST QUARTER BEARS SOUTH 00°07'08" EAST, WITH ALL BEARINGS HEREIN BEING REFERENCED TO SAID LINE;

THENCE ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER, NORTH 89°35'41" EAST, A DISTANCE OF 79.92 FEET;

THENCE DEPARTING SAID NORTH LINE, SOUTH 11°10'53" EAST, A DISTANCE OF 78.31 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 810.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°03'45", AN ARC LENGTH OF 156.39 FEET;

THENCE SOUTH 00°07'08" EAST, A DISTANCE OF 676.14 FEET;

THENCE SOUTH 89°52'52" WEST, A DISTANCE OF 80.00 FEET;

THENCE NORTH 00°07'08" WEST, A DISTANCE OF 676.14 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 730.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°10'52", AN ARC LENGTH OF 167.94 FEET;

THENCE NORTH 18°29'36" WEST, A DISTANCE OF 34.16 FEET TO THE NORTHEAST CORNER OF VALLEY HI, A SUBDIVISION PLAT RECORDED AT RECEPTION NO. 144478, IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF SAID COUNTY;

THENCE ALONG THE NORTH BOUNDARY OF SAID PLAT, SOUTH 89°35'41" WEST, A DISTANCE OF 30.00 FEET;

THENCE DEPARTING SAID NORTH BOUNDARY, NORTH 00°07'08" WEST, A DISTANCE OF 33.00 FEET TO THE NORTH LINE OF SAID NORTHEAST QUARTER OF SECTION 4;

THENCE ALONG SAID NORTH LINE, NORTH 89°35'41" EAST, A DISTANCE OF 30.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 1.699 ACRES, (73,998 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.

GERALD E. BOYSEN JR., PLS NO. 32428
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
(303) 713-1898

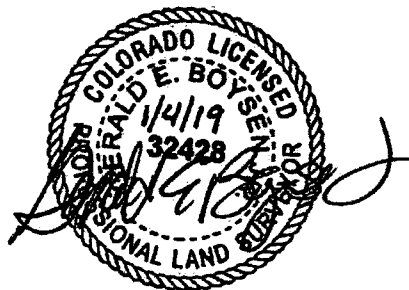
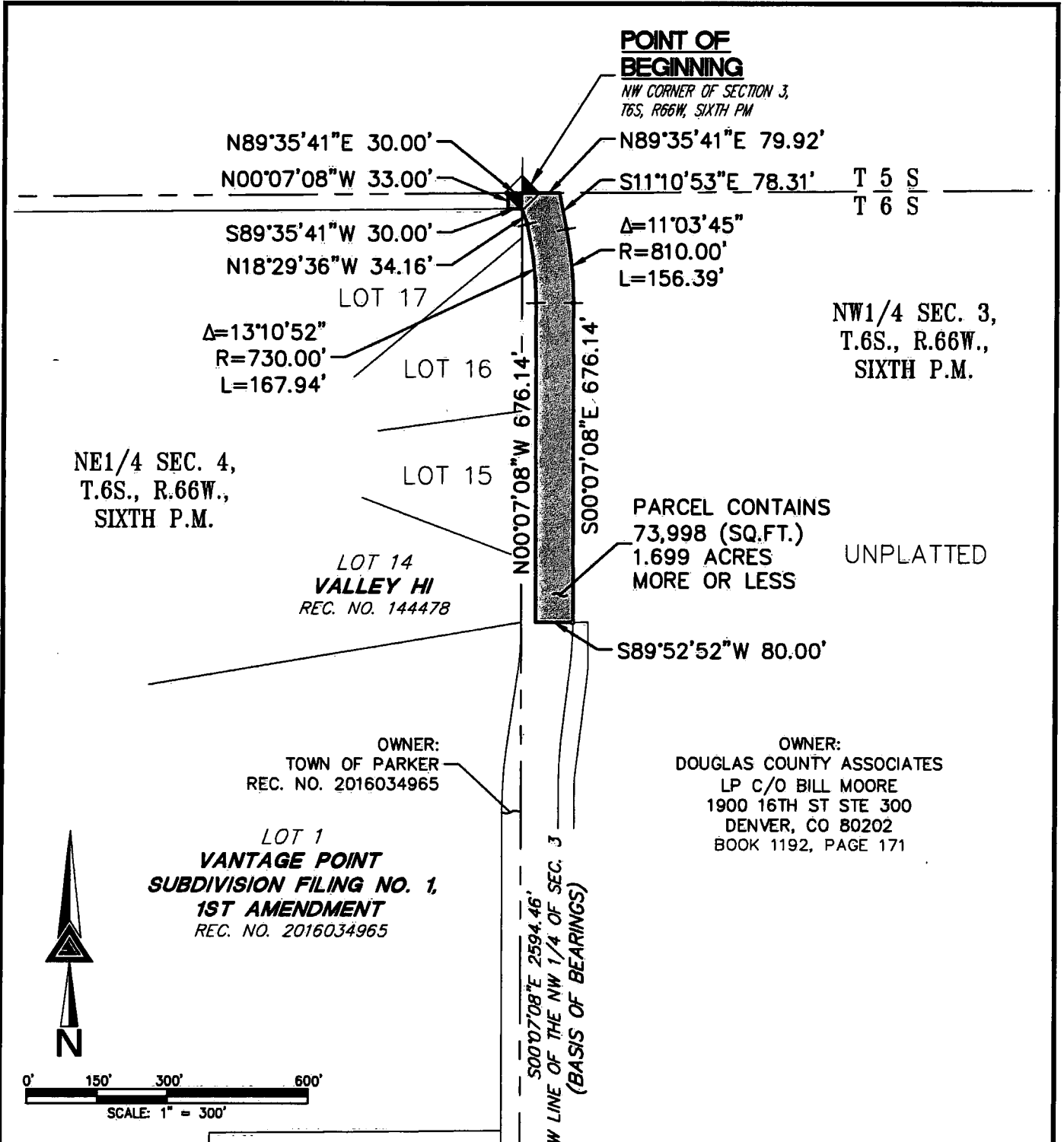


ILLUSTRATION TO EXHIBIT A



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH:
 DWG NAME: 2018-12-27 - ROW TAKE 1.DWG
 DWG: CWB CHK: GEB
 DATE: 01/03/2019
 SCALE: 1" = 300'


AZTEC
 CONSULTANTS, INC.
 300 East Mineral Ave,
 Suite 1
 Littleton, Colorado 80122
 Phone: (303)713-1898
 Fax: (303)713-1897
 www.aztecconsultants.com
 Q:\24918-15 - Kings Point Way - Legal Descriptions\Draw\EXHIBITS

ROW TAKE 1
 NE 1/4 SEC 4., NW 1/4 SEC. 3, T.6S., R.66W., 6TH P.M.
DOUGLAS COUNTY, COLORADO
 JOB NUMBER 24918-15 2 OF 2 SHEETS

EXHIBIT B

Exceptions

1. Reservations contained in the Patent:

From: The United States of America

To: Union Pacific Railway

Recording Date: March 18, 1897

Recording No.: Book 16 Page 115

And

Recording Date: March 19, 2014

Recording No.: Reception No. D4022050, Arapahoe County Records

2. None-exclusive easements for ingress and egress and the provisions thereof as described in deeds recorded July 10, 1978 in Book 336 at Page 80 and Book 336 at Page 87 and August 29, 1981 in Book 420 at Page 48.

3. Pioneer Ditch and Pioneer Ditch First Enlargement as evidenced by deed recorded August 9, 1984 in Book 534 at Page 107.

4. Terms, conditions, provisions, agreements and obligations contained in the Agreement as set forth below:

Recording Date: November 19, 1986

Recording No.: Book 4959 at Page 616, in Arapahoe County Records

1st Amendment to Agreement recorded November 19, 1986 in Book 4959 at Page 648 and 2nd

Amendment recorded November 4, 1987 in Book 5302 at Page 647, in Arapahoe County Records.

5. The effect of a letter from Douglas County Planning Commission:

Recording Date: December 10, 1986

Recording No.: Book 686 Page 673

6. Any taxes or assessments by reason of the inclusion of the Land in the Cherry Creek Basin Authority: 01/16/2019 12:56 PM Title Report No.: N0020781-010-TO2-ES

Recording Date: May 6, 1988

Recording No.: Book 790 Page 718

7. Terms, conditions, provisions, agreements and obligations contained in the Certificate of Organization for the E-470 Public Highway Authority as set forth below:

Recording Date: May 12, 1988

Recording No.: Book 792 Page 3

Amendment to Certificate of Organization for the E-470 Public Highway Authority:

Recording Date: December 19, 1995

Recording No.: Book 1307 Page 235

8. Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 88-13 for annexation of lands to the City of Aurora as set forth below:

Recording Date: June 1, 1988

Recording No.: Book 795 at Page 13

9. Terms, conditions, provisions, agreements and obligations contained in the Kings Point Phase II Development Map as set forth below:

Recording Date: June 14, 1988

Recording No.: Reception No. 8813355

10. Terms, conditions, provisions, agreements and obligations contained in the Agreement as set forth below:

Recording Date: July 6, 1988

Recording No.: Book 801 Page 471

11. Terms, conditions, provisions, agreements and obligations contained in the Resolution No. R-989-045 as set forth below:

Recording Date: August 3, 1989

Recording No.: Book 866 Page 802

12. Terms, conditions, provisions, agreements and obligations contained in the Crown Point Center Development Guide as set forth below:

Recording Date: January 11, 1990

Recording No.: Book 892 Page 1016

13. Terms, conditions, provisions, agreements and obligations contained in the Seventeen Mile Venture Annexation Agreement as set forth below:

Recording Date: January 11, 1990

Recording No.: Book 892 Page 1152

14. Terms, conditions, provisions, agreements and obligations contained in the Lundieck Investments, Ltd. Annexation Agreement as set forth below:

Recording Date: January 11, 1990

Recording No.: Book 892 Page 1183

15. The Effect of Annexation Map:

Recording Date: January 11, 1990

Recording No.: Reception No. 9001003

01/16/2019 12:56 PM Title Report No.: N0020781-010-TO2-ES

16. Terms, conditions, provisions, agreements and obligations contained in the Agreement as set forth below:

Recording Date: August 2, 1994

Recording No.: Book 7654 Page 592, Arapahoe County Records

17. Each and every right or rights of access to and from any portion of the E-470 highway and an easement for multi-use and incidental purposes granted to the E-470 Public Highway Authority by the instrument recorded April 26, 1999 in Book 1698 at Page 1250, together with the terms, conditions, stipulations, provisions and obligations as contained therein and terms, conditions, stipulations and provisions as set forth in Common Use Agreement recorded April 10, 2015 at Reception No. 2015023172.

18. The effect of rezoning Ordinances recorded July 25, 2000 in Book 1873 at Page 28, Book 1873 at Page 30 and August 11, 2004 at Reception No. 83925.

19. Any interest of Bill Moore, Ross Brazil, Eric McClure and Jerry Weigand in subject property by virtue of Memorandum of Agreement recorded November 20, 2002 at Reception No. 2002125960.

20. Any taxes or assessments by reason of the inclusion of the Land in the Kings Point South Metro District No. 1, as evidenced by instrument(s) recorded December 16, 2002 at Reception No. 137220 and January 30, 2003 at Reception No. 12388.

21. Any taxes or assessments by reason of the inclusion of the Land in the Kings Point South Metro District No. 2, as evidenced by instrument(s) recorded December 16, 2002 at Reception No. 137222 and January 30, 2003 at Reception No. 12389.

22. Terms, conditions, provisions, agreements and obligations contained in the Agreement for Possession and Use of the Right of Way as set forth below:
Recording Date: April 23, 2003
Recording No.: Reception No. 2003057363
23. Terms, conditions, provisions, agreements and obligations contained in the Resolution No. R-004-126, Pertaining to Zoning as set forth below:
Recording Date: August 11, 2004
Recording No.: Reception No. 2004083925
24. Terms, conditions, provisions, agreements and obligations contained in the Notice of Referee Ruling as set forth below:
Recording Date: March 23, 2005
Recording No.: Reception No. 2005025151
25. The effect of Certification of the Regional Transportation District (RTD) current District Area recorded March 3, 2016 at Reception No. 2016012841.
26. Terms, conditions, provisions, agreements and obligations contained in the Pre-Annexation Agreement as set forth below:
Recording Date: October 21, 2016
Recording No.: Reception No. 2016075382
27. Lack of access to and from a publicly dedicated road, highway or street.
28. Terms, conditions, provisions, agreements and obligations contained in the Conveyance of Ground Water Rights as set forth below:
Recording Date: September 14, 2017
Recording No.: Reception No. 2017062583
29. Terms, conditions, provisions, agreements and obligations contained in the Agreement for Inclusion into Cottonwood Water and Sanitation District as set forth below:
Recording Date: September 14, 2017
Recording No.: Reception No. 2017062584
30. Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 2.253, Series of 2017 as set forth below:
Recording Date: October 18, 2017
Recording No.: Reception No. 2017070996
Highlands at King's Point Annexation Map:
Recording Date: October 18, 2017
Recording No.: Reception No. 2017070997
31. Terms, conditions, provisions, agreements and obligations contained in the Annexation Agreement Highlands at Kings Point Property as set forth below:
Recording Date: October 18, 2017
Recording No.: Reception No. 2017071061
32. Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 3.331, Series of 2017 as set forth below:
Recording Date: October 18, 2017
Recording No.: Reception No. 2017071067
33. Easements, notes, terms, conditions, provisions, agreements and obligations contained in the Highlands at Kings Point Development Plan as set forth below:
Recording Date: October 18, 2017

Recording No.: Reception No. 2017071083

34. Terms, conditions, provisions, agreements and obligations contained in the Highlands at Kings Point Planned Development – Development Guide as set forth below:

Recording Date: October 19, 2017

Recording No.: Reception No. 20170712138. Reservations contained in the Patent:

From: The United States of America

To: Union Pacific Railway

Recording Date: March 18, 1897

Recording No.: Book 16 Page 115

And

Recording Date: March 19, 2014

Recording No.: Reception No. D4022050, Arapahoe County Records

SPECIAL WARRANTY DEED

The **TOWN OF PARKER**, a Colorado home rule municipality, Grantor, whose street address is 20120 East Mainstreet, Parker, Colorado 80138, County of Douglas, State of Colorado, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby sells and conveys to the **CITY OF AURORA**, Colorado, a home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado, whose street address is 15151 E. Alameda Parkway, Aurora, Colorado 80012, and its successors and assigns forever, the real property described in **Exhibit A**, attached hereto and made a part hereof, in the County of Douglas, State of Colorado, together with improvements, if any, and with all its appurtenances, if any, and WARRANTS THE TITLE against all persons claiming under Grantor, subject to those matters listed in **Exhibit B**, attached hereto and made a part hereof.

Signed this ____ day of _____, 2024.

GRANTOR: TOWN OF PARKER, COLORADO

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Town Clerk

EXHIBIT A
LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 3;

THENCE ALONG THE WESTERLY LINE OF SAID NORTHWEST QUARTER NORTH 00°07'08" WEST, A DISTANCE OF 830.05 FEET TO THE NORTHWEST CORNER OF THAT PARCEL OF LAND RECORDED AT RECEPTION NO. 2016072202 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER'S OFFICE, AND THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID WESTERLY LINE NORTH 00°07'08" WEST, A DISTANCE OF 520.90 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 810.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 89°57'42" EAST;

THENCE DEPARTING SAID WESTERLY LINE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06°52'53", AN ARC LENGTH OF 97.28 FEET;

THENCE TANGENT TO SAID CURVE NORTH 06°55'11" EAST, A DISTANCE OF 150.14 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 730.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°02'19", AN ARC LENGTH OF 89.68 FEET;

THENCE NON-TANGENT TO SAID CURVE NORTH 89°52'52" EAST, A DISTANCE OF 80.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 810.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 89°52'52" WEST;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°02'19", AN ARC LENGTH OF 99.51 FEET;

THENCE TANGENT TO SAID CURVE SOUTH 06°55'11" WEST, A DISTANCE OF 150.14 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 730.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°02'19", AN ARC LENGTH OF 89.68 FEET;

THENCE TANGENT TO SAID CURVE SOUTH 00°07'08" EAST, A DISTANCE OF 504.26 FEET TO THE NORTHEAST CORNER OF SAID PARCEL RECORDED AT RECEPTION NO. 2016072202 AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 1438.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 08°42'50" EAST;

THENCE WESTERLY ALONG THE NORTHERLY LINE OF SAID PARCEL AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°14'21", AN ARC LENGTH OF 81.30 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 1.562 ACRES, (68,030 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.

DEAN E. CATES, PLS
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

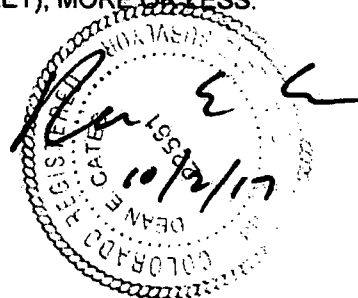
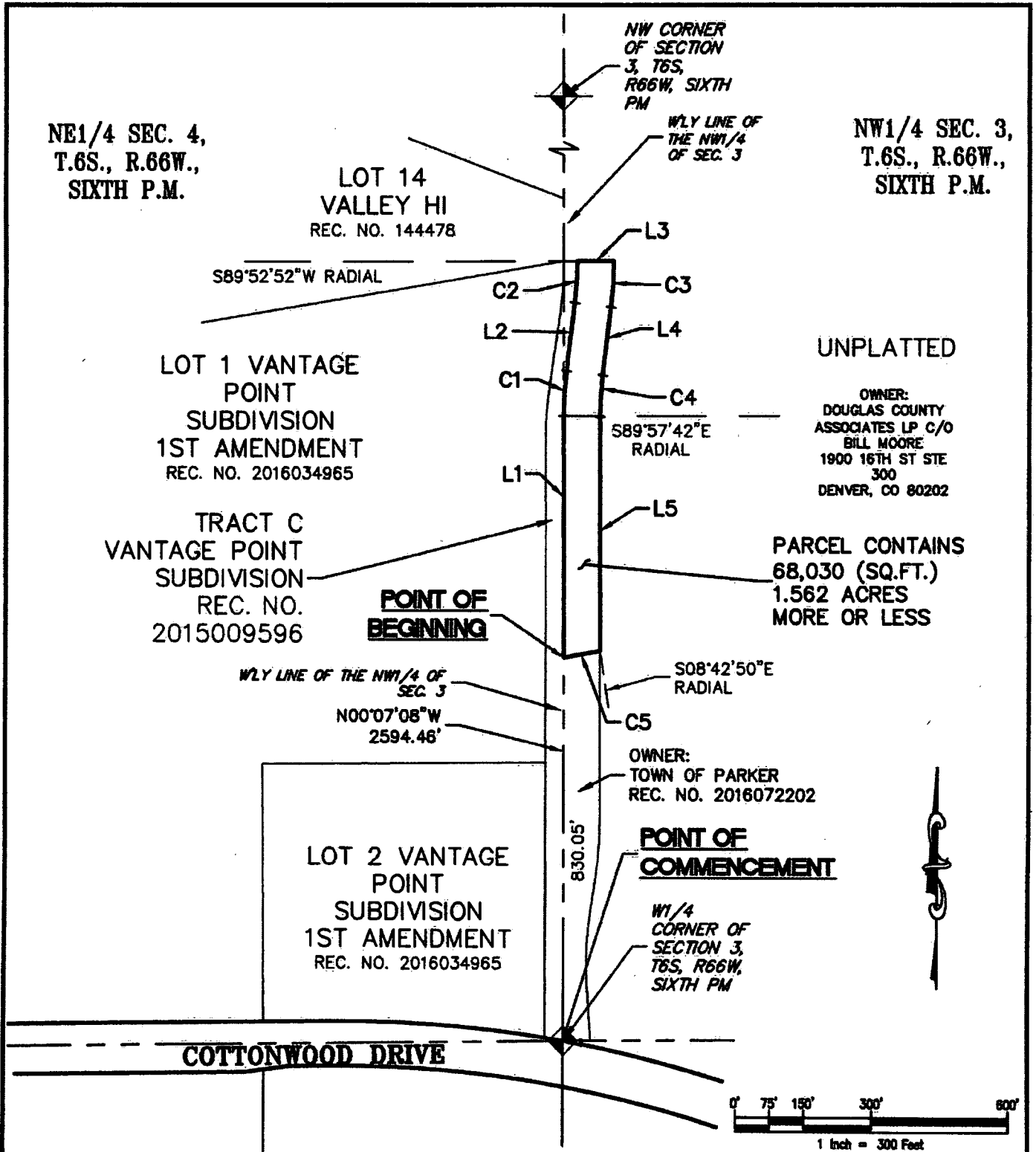


ILLUSTRATION TO EXHIBIT A



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: G:\31917-05\DWG\EXHIBITS\
 DWG NAME: ROW_DC ASSOC
 DWG: DEC CHK:
 DATE: 09-19-17
 SCALE: 1" = 300'



300 East Mineral Ave,
 Suite 1
 Littleton, Colorado 80122
 Phone: (303) 713-1899
 Fax: (303) 713-1897
 www.aztecconsultants.com

EXHIBIT A
NW 1/4 S3, T6S, R66W, SIXTH PM
DOUGLAS COUNTY, COLORADO

JOB NUMBER 31917-05

2 OF 3 SHEETS

ILLUSTRATION TO EXHIBIT A

LINE TABLE		
LINE	BEARING	LENGTH
L1	N00°07'08"W	520.90'
L2	N06°55'11"E	150.14'
L3	N89°52'52"E	80.00'
L4	S06°55'11"W	150.14'
L5	S00°07'08"E	504.26'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	6°52'53"	810.00'	97.28'
C2	7°02'19"	730.00'	89.68'
C3	7°02'19"	810.00'	99.51'
C4	7°02'19"	730.00'	89.68'
C5	3°14'21"	1438.00'	81.30'

NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: G:\31917-05\DWG\EXHIBITS\
 DWG NAME: ROW_DC ASSOC
 DWG: DEC CHK:
 DATE: 09-19-17
 SCALE: NA



300 East Mineral Ave.
 Suite 1
 Littleton, Colorado 80122
 Phone: (303) 713-1899
 Fax: (303) 713-1897
 www.aztecconsultants.com

EXHIBIT A
 NW1/4 S3, T6S, R66W, SIXTH PM
 DOUGLAS COUNTY, COLORADO

JOB NUMBER 31917-05

3 OF 3 SHEETS

EXHIBIT B

Exceptions

1. Reservations contained in the Patent:

From: The United States of America

To: Union Pacific Railway

Recording Date: March 18, 1897

Recording No.: Book 16 Page 115

And

Recording Date: March 19, 2014

Recording No.: Reception No. D4022050, Arapahoe County Records

2. None-exclusive easements for ingress and egress and the provisions thereof as described in deeds recorded July 10, 1978 in Book 336 at Page 80 and Book 336 at Page 87 and August 29, 1981 in Book 420 at Page 48.

3. Pioneer Ditch and Pioneer Ditch First Enlargement as evidenced by deed recorded August 9, 1984 in Book 534 at Page 107.

4. Terms, conditions, provisions, agreements and obligations contained in the Agreement as set forth below:

Recording Date: November 19, 1986

Recording No.: Book 4959 at Page 616, in Arapahoe County Records

1st Amendment to Agreement recorded November 19, 1986 in Book 4959 at Page 648 and 2nd

Amendment recorded November 4, 1987 in Book 5302 at Page 647, in Arapahoe County Records.

5. The effect of a letter from Douglas County Planning Commission:

Recording Date: December 10, 1986

Recording No.: Book 686 Page 673

6. Any taxes or assessments by reason of the inclusion of the Land in the Cherry Creek Basin Authority: 01/16/2019 12:56 PM Title Report No.: N0020781-010-TO2-ES

Recording Date: May 6, 1988

Recording No.: Book 790 Page 718

7. Terms, conditions, provisions, agreements and obligations contained in the Certificate of Organization for the E-470 Public Highway Authority as set forth below:

Recording Date: May 12, 1988

Recording No.: Book 792 Page 3

Amendment to Certificate of Organization for the E-470 Public Highway Authority:

Recording Date: December 19, 1995

Recording No.: Book 1307 Page 235

8. Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 88-13 for annexation of lands to the City of Aurora as set forth below:

Recording Date: June 1, 1988

Recording No.: Book 795 at Page 13

9. Terms, conditions, provisions, agreements and obligations contained in the Kings Point Phase II Development Map as set forth below:

Recording Date: June 14, 1988

Recording No.: Reception No. 8813355

10. Terms, conditions, provisions, agreements and obligations contained in the Agreement as set forth below:

Recording Date: July 6, 1988

Recording No.: Book 801 Page 471

11. Terms, conditions, provisions, agreements and obligations contained in the Resolution No. R-989-045 as set forth below:

Recording Date: August 3, 1989

Recording No.: Book 866 Page 802

12. Terms, conditions, provisions, agreements and obligations contained in the Crown Point Center Development Guide as set forth below:

Recording Date: January 11, 1990

Recording No.: Book 892 Page 1016

13. Terms, conditions, provisions, agreements and obligations contained in the Seventeen Mile Venture Annexation Agreement as set forth below:

Recording Date: January 11, 1990

Recording No.: Book 892 Page 1152

14. Terms, conditions, provisions, agreements and obligations contained in the Lundieck Investments, Ltd. Annexation Agreement as set forth below:

Recording Date: January 11, 1990

Recording No.: Book 892 Page 1183

15. The Effect of Annexation Map:

Recording Date: January 11, 1990

Recording No.: Reception No. 9001003

01/16/2019 12:56 PM Title Report No.: N0020781-010-TO2-ES

16. Terms, conditions, provisions, agreements and obligations contained in the Agreement as set forth below:

Recording Date: August 2, 1994

Recording No.: Book 7654 Page 592, Arapahoe County Records

17. Each and every right or rights of access to and from any portion of the E-470 highway and an easement for multi-use and incidental purposes granted to the E-470 Public Highway Authority by the instrument recorded April 26, 1999 in Book 1698 at Page 1250, together with the terms, conditions, stipulations, provisions and obligations as contained therein and terms, conditions, stipulations and provisions as set forth in Common Use Agreement recorded April 10, 2015 at Reception No. 2015023172.

18. The effect of rezoning Ordinances recorded July 25, 2000 in Book 1873 at Page 28, Book 1873 at Page 30 and August 11, 2004 at Reception No. 83925.

19. Any interest of Bill Moore, Ross Brazil, Eric McClure and Jerry Weigand in subject property by virtue of Memorandum of Agreement recorded November 20, 2002 at Reception No. 2002125960.

20. Any taxes or assessments by reason of the inclusion of the Land in the Kings Point South Metro District No. 1, as evidenced by instrument(s) recorded December 16, 2002 at Reception No. 137220 and January 30, 2003 at Reception No. 12388.

21. Any taxes or assessments by reason of the inclusion of the Land in the Kings Point South Metro District No. 2, as evidenced by instrument(s) recorded December 16, 2002 at Reception No. 137222 and January 30, 2003 at Reception No. 12389.

22. Terms, conditions, provisions, agreements and obligations contained in the Agreement for Possession and Use of the Right of Way as set forth below:
Recording Date: April 23, 2003
Recording No.: Reception No. 2003057363
23. Terms, conditions, provisions, agreements and obligations contained in the Resolution No. R-004-126, Pertaining to Zoning as set forth below:
Recording Date: August 11, 2004
Recording No.: Reception No. 2004083925
24. Terms, conditions, provisions, agreements and obligations contained in the Notice of Referee Ruling as set forth below:
Recording Date: March 23, 2005
Recording No.: Reception No. 2005025151
25. The effect of Certification of the Regional Transportation District (RTD) current District Area recorded March 3, 2016 at Reception No. 2016012841.
26. Terms, conditions, provisions, agreements and obligations contained in the Pre-Annexation Agreement as set forth below:
Recording Date: October 21, 2016
Recording No.: Reception No. 2016075382
27. Lack of access to and from a publicly dedicated road, highway or street.
28. Terms, conditions, provisions, agreements and obligations contained in the Conveyance of Ground Water Rights as set forth below:
Recording Date: September 14, 2017
Recording No.: Reception No. 2017062583
29. Terms, conditions, provisions, agreements and obligations contained in the Agreement for Inclusion into Cottonwood Water and Sanitation District as set forth below:
Recording Date: September 14, 2017
Recording No.: Reception No. 2017062584
30. Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 2.253, Series of 2017 as set forth below:
Recording Date: October 18, 2017
Recording No.: Reception No. 2017070996
Highlands at King's Point Annexation Map:
Recording Date: October 18, 2017
Recording No.: Reception No. 2017070997
31. Terms, conditions, provisions, agreements and obligations contained in the Annexation Agreement Highlands at Kings Point Property as set forth below:
Recording Date: October 18, 2017
Recording No.: Reception No. 2017071061
32. Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 3.331, Series of 2017 as set forth below:
Recording Date: October 18, 2017
Recording No.: Reception No. 2017071067
33. Easements, notes, terms, conditions, provisions, agreements and obligations contained in the Highlands at Kings Point Development Plan as set forth below:
Recording Date: October 18, 2017

Recording No.: Reception No. 2017071083

34. Terms, conditions, provisions, agreements and obligations contained in the Highlands at Kings Point Planned Development – Development Guide as set forth below:

Recording Date: October 19, 2017

Recording No.: Reception No. 20170712138. Reservations contained in the Patent:

From: The United States of America

To: Union Pacific Railway

Recording Date: March 18, 1897

Recording No.: Book 16 Page 115

And

Recording Date: March 19, 2014

Recording No.: Reception No. D4022050, Arapahoe County Records

**ASSIGNMENT AND ASSUMPTION AGREEMENT FOR
SLOPE EASEMENT AGREEMENT (RECORDED AT
DOUGLAS COUNTY CLERK AND RECORDER RECEPTION NO. 2019034593)**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT FOR SLOPE EASEMENT AGREEMENT (the “Agreement”) is dated as of _____, 2024 (the “Effective Date”), and is made by and between the Town of Parker, a Colorado home rule municipality (the “Assignor”), and the City of Aurora, a Colorado home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado (the “Assignee”).

RECITALS

A. Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability company, as the grantor and the Town of Parker, as grantee, entered into the “Slope Easement Agreement” on June 17, 2019, which was recorded on June 17, 2019, with the Douglas County Clerk and Recorder’s Office, at Reception No. 2019034593 (the “Agreement”), which is attached hereto as **Exhibit 1** and incorporated by this reference (the “Easement Agreement”).

B. The Assignor desires to assign the Easement Agreement to Assignee and Assignee desires to assume all of the Assignor’s obligations under the Easement Agreement, subject to the prior written approval of the Town of Parker.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Assignor hereby assigns all of its obligations, rights, title and interest under the Easement Agreement to Assignee.

2. Assignee hereby assumes all of the Assignor’s obligations, rights, title and interest under the Easement Agreement.

3. The Assignor represents and warrants that it has satisfied all conditions precedent, as required by the Easement Agreement for this assignment by the Assignor and assumption by Assignee.

4. The parties hereto warrant and represent that they have the express authority to so execute and bind themselves and the parties for whom they are acting to the terms and provisions of this Agreement.

5. The parties hereto warrant and represent that they have executed this Agreement, based upon their own knowledge and free will.

6. Should any provision of this Agreement be declared or determined to be null and void, inoperative, illegal or invalid for any reason, the validity of the remaining parts, terms or provisions shall not be affected thereby and they shall retain their full force and effect and said

null, void, inoperative, illegal or invalid part, term or provision, shall be deemed not to be part of this Agreement.

7. This Agreement shall, in all respects, be interpreted, enforced and governed under the laws of the State of Colorado.

8. The Recitals of this Agreement are incorporated herein by this reference.

9. This Agreement merges and supercedes all prior negotiations, representations and agreements of the parties hereto, as of the date first above written.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

ASSIGNOR: TOWN OF PARKER, a Colorado home rule municipality

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Town Clerk

APPROVED AS TO FORM:

Jamie Wynn, Town Attorney

ASSIGNEE: CITY OF AURORA, a Colorado home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado

Director of Public Works or Designee

APPROVED AS TO FORM:

Michelle Gardner, Sr. Assistant City Attorney

EXHIBIT 1

SLOPE EASEMENT AGREEMENT

THIS SLOPE EASEMENT AGREEMENT, made this 17th day of June, 2019, between Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability limited partnership, whose legal address is 50 S. Glenmoor Circle, Englewood, Colorado 80113-7121 (the "Grantor"), and the Town of Parker, a Colorado home rule municipality, whose legal address is 20120 E. Mainstreet, Parker, Colorado 80138 (the "Grantee").

THE GRANTOR, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns forever, a perpetual easement over, across and on, the following described real property located in the County of Douglas, State of Colorado, and described as follows:

(See attached Exhibit "A")

Said easement is for the purpose of providing and maintaining (1) a proper sight distance and line of sight, (2) lateral support, and (3) proper drainage grade, as determined by the Parker Public Works Department, for a public roadway, road shoulder and attendant road improvements and construction. Grantee, its successors, contractors or assigns, and their agents and employees shall have full right to enter at all times upon said premises to survey, construct, repair, remove, replace, reconstruct, inspect, improve and maintain a suitable slope or grade which will provide the above mentioned proper sight distance and line of sight, lateral support, and proper drainage grade.

Grantor retains the right to use said property for any and all purposes which will not interfere with the Grantee's full use and enjoyment of the rights acquired herein, including the growing and cultivating of trees, shrubs and other plant materials as well as landscaping. Provided, however, Grantor or his successors, assigns and subsequent Grantees, will not use or improve said property or grant any easements upon, over, across or under said property without first obtaining the written consent of the Grantee. Such consent will not be unreasonably withheld provided that the sight distance and line of sight, lateral support and proper drainage grade necessary for the roadway and its attendant facilities, as determined by the Grantee, is maintained.

Grantor for himself, his successors and assigns, does covenant, grant, bargain and agree with the Grantee, its successors and assigns, that at the time of the signing and delivery of this easement, he is well seized of the property on which the easement above conveyed is located, and has good, sure, perfect, absolute and indefeasible estate, in law, in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the above easement in the manner and form set forth above, and that the property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, monetary encumbrances and restrictions of whatever kind or nature whatsoever, except for non-delinquent real property taxes and that certain deed of trust referenced in the Consent of Lender attached to this Agreement.

Grantor and Grantee agree that this Easement may be released by Grantee upon the construction of an approved development on the Easement Property which provides the necessary subjacent support and protection of Kings Point Way that is created by this Easement.

SLOPE EASEMENT AGREEMENT

THIS SLOPE EASEMENT AGREEMENT, made this 17th day of June, 2019, between Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability limited partnership, whose legal address is 50 S. Glenmoor Circle, Englewood, Colorado 80113-7121 (the "Grantor"), and the Town of Parker, a Colorado home rule municipality, whose legal address is 20120 E. Mainstreet, Parker, Colorado 80138 (the "Grantee").

THE GRANTOR, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns forever, a perpetual easement over, across and on, the following described real property located in the County of Douglas, State of Colorado, and described as follows:

(See attached Exhibit "A")

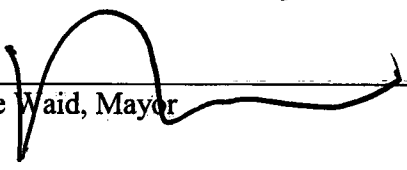
Said easement is for the purpose of providing and maintaining (1) a proper sight distance and line of sight, (2) lateral support, and (3) proper drainage grade, as determined by the Parker Public Works Department, for a public roadway, road shoulder and attendant road improvements and construction. Grantee, its successors, contractors or assigns, and their agents and employees shall have full right to enter at all times upon said premises to survey, construct, repair, remove, replace, reconstruct, inspect, improve and maintain a suitable slope or grade which will provide the above mentioned proper sight distance and line of sight, lateral support, and proper drainage grade.

Grantor retains the right to use said property for any and all purposes which will not interfere with the Grantee's full use and enjoyment of the rights acquired herein, including the growing and cultivating of trees, shrubs and other plant materials as well as landscaping. Provided, however, Grantor or his successors, assigns and subsequent Grantees, will not use or improve said property or grant any easements upon, over, across or under said property without first obtaining the written consent of the Grantee. Such consent will not be unreasonably withheld provided that the sight distance and line of sight, lateral support and proper drainage grade necessary for the roadway and its attendant facilities, as determined by the Grantee, is maintained.

Grantor for himself, his successors and assigns, does covenant, grant, bargain and agree with the Grantee, its successors and assigns, that at the time of the signing and delivery of this easement, he is well seized of the property on which the easement above conveyed is located, and has good, sure, perfect, absolute and indefeasible estate, in law, in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the above easement in the manner and form set forth above, and that the property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, monetary encumbrances and restrictions of whatever kind or nature whatsoever, except for non-delinquent real property taxes and that certain deed of trust referenced in the Consent of Lender attached to this Agreement.

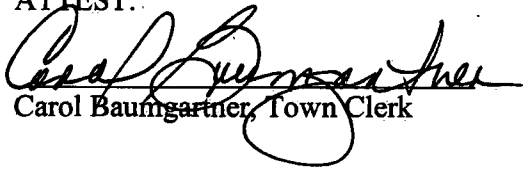
Grantor and Grantee agree that this Easement may be released by Grantee upon the construction of an approved development on the Easement Property which provides the necessary adjacent support and protection of Kings Point Way that is created by this Easement.

TOWN OF PARKER, COLORADO



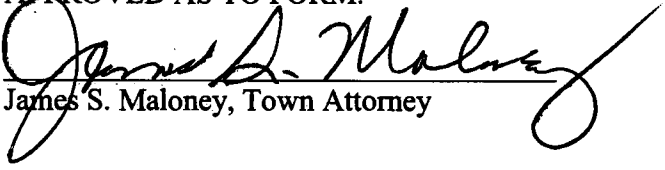
Mike Waid, Mayor

ATTEST:



Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:



James S. Maloney, Town Attorney

CONSENT OF LENDER

Consolidated Equities, Ltd., a Colorado corporation ("Lender"), as the beneficiary under that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, recorded on June 21, 1995, at Reception No. 9527329, in the real property records of the Douglas County Clerk and Recorder's Office; modified on February 1, 2001, at Reception No. 1007263 in the real property records of the Douglas County Clerk and Recorder's Office; and assigned on June 20, 2001, at Reception No. 1055308 in the real property records of the Douglas County Clerk and Recorder's Office (the "Deed of Trust"), hereby agrees that it has consented to the terms and provisions of this Drainage Easement Agreement and that any subsequent foreclosure of the Deed of Trust secured by the property described herein shall not extinguish this Slope Easement Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed these presents as of the 7 day of JUNE, 2019.

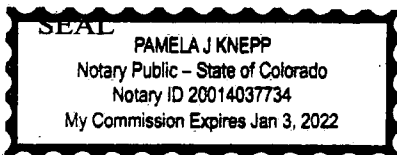
LENDER: CONSOLIDATED EQUITIES, LTD., a Colorado corporation

By: [Signature]
[Name/Title]

STATE OF Colorado)
)ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 7th day of June, 2019, by Peter Nederman, as V.P. of Consolidated Equities, Ltd.

My commission expires: 1/3/22



[Signature]
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE 6th PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 3, WHENCE THE WEST LINE OF SAID NORTHWEST QUARTER BEARS SOUTH 00°07'08" EAST, WITH ALL BEARINGS HEREIN BEING REFERENCED TO SAID LINE;

THENCE ALONG SAID WEST LINE, SOUTH 00°07'08" EAST, A DISTANCE OF 33.00 FEET TO THE NORTHEAST CORNER OF VALLEY HI, A SUBDIVISION PLAT RECORDED AT RECEPTION NO. 144478 IN THE OFFICE OF THE CLERK AND RECORDER OF SAID COUNTY, AND THE **POINT OF BEGINNING**;

THENCE DEPARTING SAID WEST LINE, SOUTH 18°29'36" EAST, A DISTANCE OF 34.16 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 730.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 76°42'00" WEST;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°10'52", AN ARC LENGTH OF 167.94 FEET;

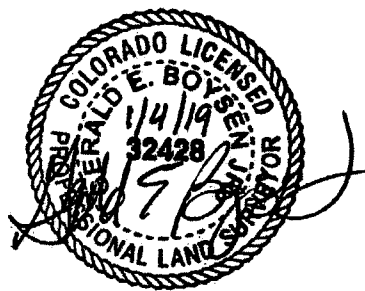
THENCE ALONG A LINE BEING THIRTY (30) FEET EAST OF AND PARALLEL WITH SAID WEST LINE OF THE NORTHWEST QUARTER, SOUTH 00°07'08" EAST, A DISTANCE OF 676.14 FEET;

THENCE SOUTH 89°52'52" WEST, A DISTANCE OF 30.00 FEET TO THE SOUTHEAST CORNER OF SAID VALLEY HI AND SAID WEST LINE;

THENCE ALONG SAID WEST LINE, NORTH 00°07'08" WEST, A DISTANCE OF 875.02 FEET TO THE **POINT OF BEGINNING**.

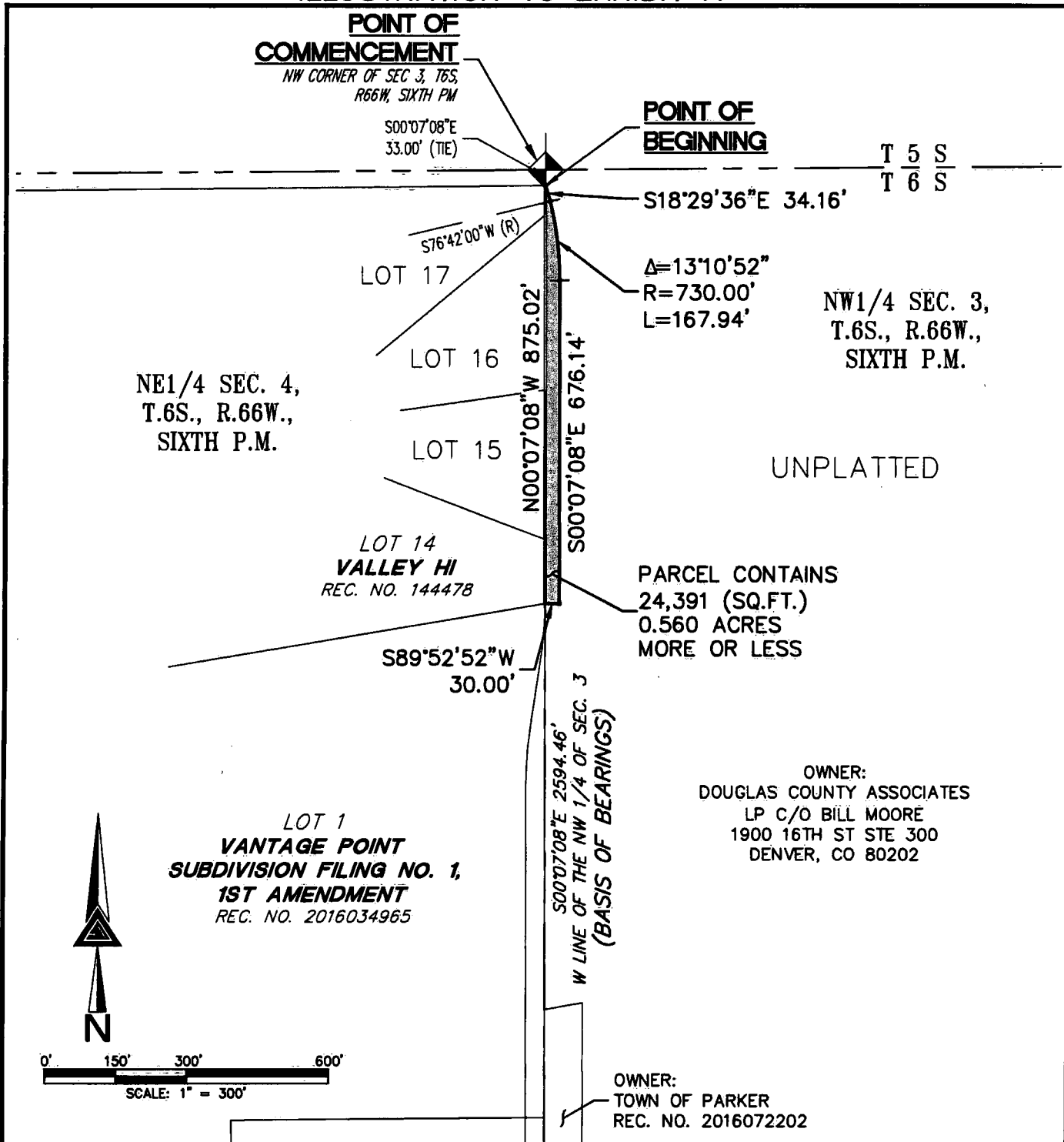
CONTAINING AN AREA OF 0.560 ACRES, (24,391 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



GERALD E. BOYSEN JR., PLS NO. 32428
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
(303) 713-1898

ILLUSTRATION TO EXHIBIT A



POINT OF COMMENCEMENT
NW CORNER OF SEC. 3, T.6S., R.66W., SIXTH PM

POINT OF BEGINNING

T 5 S
T 6 S

NE1/4 SEC. 4,
T.6S., R.66W.,
SIXTH P.M.

NW1/4 SEC. 3,
T.6S., R.66W.,
SIXTH P.M.

UNPLATTED

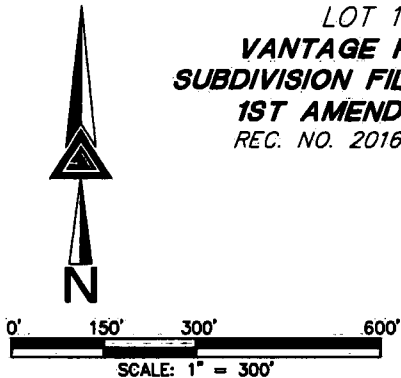
LOT 14
VALLEY HI
REC. NO. 144478

PARCEL CONTAINS
24,391 (SQ.FT.)
0.560 ACRES
MORE OR LESS

LOT 1
VANTAGE POINT
SUBDIVISION FILING NO. 1,
1ST AMENDMENT
REC. NO. 2016034965

OWNER:
DOUGLAS COUNTY ASSOCIATES
LP C/O BILL MOORE
1900 16TH ST STE 300
DENVER, CO 80202

OWNER:
TOWN OF PARKER
REC. NO. 2016072202



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH:
DWG NAME: 2018-12-27 - SLOPE EASEMENT 1.DWG
DWG: CWB CHK: GEB
DATE: 01/03/2019
SCALE: 1" = 300'



300 East Mineral Ave,
Suite 1
Littleton, Colorado 80122
Phone: (303)713-1898
Fax: (303)713-1897
www.aztecconsultants.com

SLOPE EASEMENT 1
NW 1/4 SEC. 3, T.6S., R.66W., 6TH P.M.
DOUGLAS COUNTY, COLORADO

JOB NUMBER 24918-15

2 OF 2 SHEETS

**ASSIGNMENT AND ASSUMPTION AGREEMENT FOR
SLOPE EASEMENT AGREEMENT (RECORDED AT
DOUGLAS COUNTY CLERK AND RECORDER RECEPTION NO. 2019034594)**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT FOR SLOPE EASEMENT AGREEMENT (the “Agreement”) is dated as of _____, 2024 (the “Effective Date”), and is made by and between the Town of Parker, a Colorado home rule municipality (the “Assignor”), and the City of Aurora, a Colorado home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado (the “Assignee”).

RECITALS

A. Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability company, as the grantor and the Town of Parker, as grantee, entered into the “Slope Easement Agreement” on June 17, 2019, which was recorded on June 17, 2019, with the Douglas County Clerk and Recorder’s Office, at Reception No. 2019034594 (the “Agreement”), which is attached hereto as **Exhibit 1** and incorporated by this reference (the “Easement Agreement”).

B. The Assignor desires to assign the Easement Agreement to Assignee and Assignee desires to assume all of the Assignor’s obligations under the Easement Agreement, subject to the prior written approval of the Town of Parker.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Assignor hereby assigns all of its obligations, rights, title and interest under the Easement Agreement to Assignee.
2. Assignee hereby assumes all of the Assignor’s obligations, rights, title and interest under the Easement Agreement.
3. The Assignor represents and warrants that it has satisfied all conditions precedent, as required by the Easement Agreement for this assignment by the Assignor and assumption by Assignee.
4. The parties hereto warrant and represent that they have the express authority to so execute and bind themselves and the parties for whom they are acting to the terms and provisions of this Agreement.
5. The parties hereto warrant and represent that they have executed this Agreement, based upon their own knowledge and free will.
6. Should any provision of this Agreement be declared or determined to be null and void, inoperative, illegal or invalid for any reason, the validity of the remaining parts, terms or provisions shall not be affected thereby and they shall retain their full force and effect and said

null, void, inoperative, illegal or invalid part, term or provision, shall be deemed not to be part of this Agreement.

7. This Agreement shall, in all respects, be interpreted, enforced and governed under the laws of the State of Colorado.

8. The Recitals of this Agreement are incorporated herein by this reference.

9. This Agreement merges and supercedes all prior negotiations, representations and agreements of the parties hereto, as of the date first above written.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

ASSIGNOR: TOWN OF PARKER, a Colorado home rule municipality

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Town Clerk

APPROVED AS TO FORM:

Jamie Wynn, Town Attorney

ASSIGNEE: CITY OF AURORA, a Colorado home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado

Director of Public Works or Designee

APPROVED AS TO FORM:

Michelle Gardner, Sr. Assistant City Attorney

EXHIBIT 1

SLOPE EASEMENT AGREEMENT

THIS SLOPE EASEMENT AGREEMENT, made this 17th day of June, 2019, between Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability limited partnership, whose legal address is 50 S. Glenmoor Circle, Englewood, Colorado 80113-7121 (the "Grantor"), and the Town of Parker, a Colorado home rule municipality, whose legal address is 20120 E. Mainstreet, Parker, Colorado 80138 (the "Grantee").

THE GRANTOR, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns forever, a perpetual easement over, across and on, the following described real property located in the County of Douglas, State of Colorado, and described as follows:

(See attached Exhibit "A")

Said easement is for the purpose of providing and maintaining (1) a proper sight distance and line of sight, (2) lateral support, and (3) proper drainage grade, as determined by the Parker Public Works Department, for a public roadway, road shoulder and attendant road improvements and construction. Grantee, its successors, contractors or assigns, and their agents and employees shall have full right to enter at all times upon said premises to survey, construct, repair, remove, replace, reconstruct, inspect, improve and maintain a suitable slope or grade which will provide the above mentioned proper sight distance and line of sight, lateral support, and proper drainage grade.

Grantor retains the right to use said property for any and all purposes which will not interfere with the Grantee's full use and enjoyment of the rights acquired herein, including the growing and cultivating of trees, shrubs and other plant materials as well as landscaping. Provided, however, Grantor or his successors, assigns and subsequent Grantees, will not use or improve said property or grant any easements upon, over, across or under said property without first obtaining the written consent of the Grantee. Such consent will not be unreasonably withheld provided that the sight distance and line of sight, lateral support and proper drainage grade necessary for the roadway and its attendant facilities, as determined by the Grantee, is maintained.

Grantor for himself, his successors and assigns, does covenant, grant, bargain and agree with the Grantee, its successors and assigns, that at the time of the signing and delivery of this easement, he is well seized of the property on which the easement above conveyed is located, and has good, sure, perfect, absolute and indefeasible estate, in law, in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the above easement in the manner and form set forth above, and that the property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, monetary encumbrances and restrictions of whatever kind or nature whatsoever, except for non-delinquent real property taxes and that certain deed of trust referenced in the Consent of Lender attached to this Agreement.

Grantor and Grantee agree that this Easement may be released by Grantee upon the construction of an approved development on the Easement Property which provides the necessary adjacent support and protection of Kings Point Way that is created by this Easement.

SLOPE EASEMENT AGREEMENT

THIS SLOPE EASEMENT AGREEMENT, made this 17th day of June, 2019, between Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability limited partnership, whose legal address is 50 S. Glenmoor Circle, Englewood, Colorado 80113-7121 (the "Grantor"), and the Town of Parker, a Colorado home rule municipality, whose legal address is 20120 E. Mainstreet, Parker, Colorado 80138 (the "Grantee").

THE GRANTOR, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns forever, a perpetual easement over, across and on, the following described real property located in the County of Douglas, State of Colorado, and described as follows:

(See attached Exhibit "A")

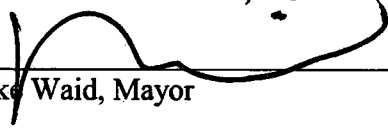
Said easement is for the purpose of providing and maintaining (1) a proper sight distance and line of sight, (2) lateral support, and (3) proper drainage grade, as determined by the Parker Public Works Department, for a public roadway, road shoulder and attendant road improvements and construction. Grantee, its successors, contractors or assigns, and their agents and employees shall have full right to enter at all times upon said premises to survey, construct, repair, remove, replace, reconstruct, inspect, improve and maintain a suitable slope or grade which will provide the above mentioned proper sight distance and line of sight, lateral support, and proper drainage grade.

Grantor retains the right to use said property for any and all purposes which will not interfere with the Grantee's full use and enjoyment of the rights acquired herein, including the growing and cultivating of trees, shrubs and other plant materials as well as landscaping. Provided, however, Grantor or his successors, assigns and subsequent Grantees, will not use or improve said property or grant any easements upon, over, across or under said property without first obtaining the written consent of the Grantee. Such consent will not be unreasonably withheld provided that the sight distance and line of sight, lateral support and proper drainage grade necessary for the roadway and its attendant facilities, as determined by the Grantee, is maintained.

Grantor for himself, his successors and assigns, does covenant, grant, bargain and agree with the Grantee, its successors and assigns, that at the time of the signing and delivery of this easement, he is well seized of the property on which the easement above conveyed is located, and has good, sure, perfect, absolute and indefeasible estate, in law, in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the above easement in the manner and form set forth above, and that the property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, monetary encumbrances and restrictions of whatever kind or nature whatsoever, except for non-delinquent real property taxes and that certain deed of trust referenced in the Consent of Lender attached to this Agreement.

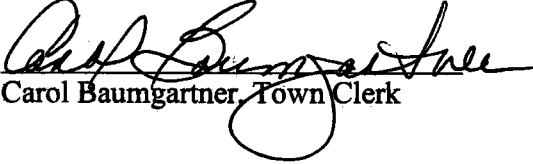
Grantor and Grantee agree that this Easement may be released by Grantee upon the construction of an approved development on the Easement Property which provides the necessary subjacent support and protection of Kings Point Way that is created by this Easement.

TOWN OF PARKER, COLORADO



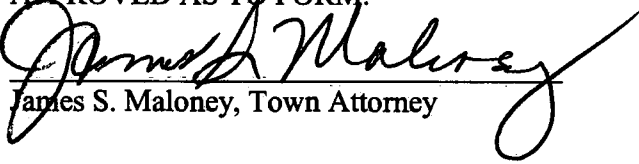
Mike Waid, Mayor

ATTEST:



Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:



James S. Maloney, Town Attorney

**EXHIBIT A
LEGAL DESCRIPTION**

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 3;

THENCE ALONG THE WESTERLY LINE OF SAID NORTHWEST QUARTER NORTH 00°07'08" WEST, A DISTANCE OF 1350.95 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID WESTERLY LINE NORTH 00°07'08" WEST, A DISTANCE OF 335.49 FEET;

THENCE DEPARTING SAID WESTERLY LINE NORTH 89°52'52"EAST, A DISTANCE OF 30.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 730.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 89°52'52" WEST;

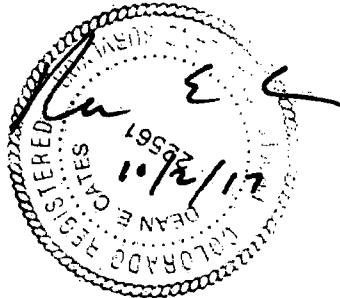
THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°02'19", AN ARC LENGTH OF 89.68 FEET;

THENCE TANGENT TO SAID CURVE SOUTH 06°55'11" WEST, A DISTANCE OF 150.14 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 810.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06°52'53", AN ARC LENGTH OF 97.28 FEET TO THE POINT OF BEGINNING.

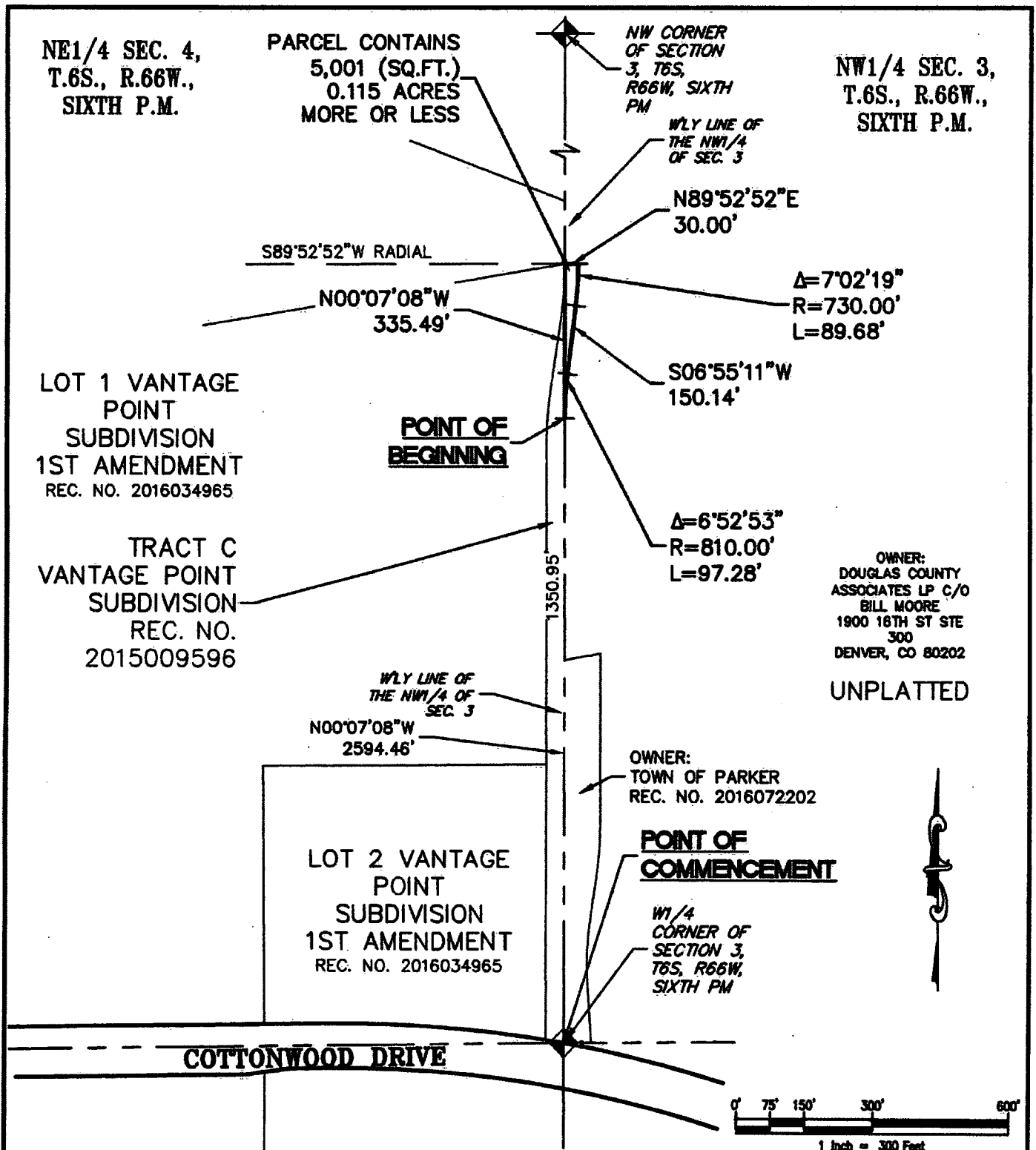
CONTAINING AN AREA OF 0.115 ACRES, (5,001 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



DEAN E. CATES, PLS
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

ILLUSTRATION TO EXHIBIT A



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: G:\31917-05\DWG\EXHIBITS\
 DWG NAME: SLOPE_DC.ASSOC
 DWG: DEC CHK:
 DATE: 09-21-17
 SCALE: 1" = 300'

AZTEC
 CONSULTANTS, INC.
 300 East Mineral Ave,
 Suite 1
 Littleton, Colorado 80122
 Phone: (303)713-1898
 Fax: (303)713-1897
 www.aztecconsultants.com

EXHIBIT A
NW 1/4 S3, T6S, R66W, SIXTH PM
DOUGLAS COUNTY, COLORADO
 JOB NUMBER 31917-05 2 OF 2 SHEETS

**ASSIGNMENT AND ASSUMPTION AGREEMENT FOR
SLOPE EASEMENT AGREEMENT (RECORDED AT
DOUGLAS COUNTY CLERK AND RECORDER RECEPTION NO. 2019034595)**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT FOR SLOPE EASEMENT AGREEMENT (the “Agreement”) is dated as of _____, 2024 (the “Effective Date”), and is made by and between the Town of Parker, a Colorado home rule municipality (the “Assignor”), and the City of Aurora, a Colorado home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado (the “Assignee”).

RECITALS

A. Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability company, as the grantor and the Town of Parker, as grantee, entered into the “Slope Easement Agreement” on June 17, 2019, which was recorded on June 17, 2019, with the Douglas County Clerk and Recorder’s Office, at Reception No. 2019034595 (the “Agreement”), which is attached hereto as **Exhibit 1** and incorporated by this reference (the “Easement Agreement”).

B. The Assignor desires to assign the Easement Agreement to Assignee and Assignee desires to assume all of the Assignor’s obligations under the Easement Agreement, subject to the prior written approval of the Town of Parker.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Assignor hereby assigns all of its obligations, rights, title and interest under the Easement Agreement to Assignee.

2. Assignee hereby assumes all of the Assignor’s obligations, rights, title and interest under the Easement Agreement.

3. The Assignor represents and warrants that it has satisfied all conditions precedent, as required by the Easement Agreement for this assignment by the Assignor and assumption by Assignee.

4. The parties hereto warrant and represent that they have the express authority to so execute and bind themselves and the parties for whom they are acting to the terms and provisions of this Agreement.

5. The parties hereto warrant and represent that they have executed this Agreement, based upon their own knowledge and free will.

6. Should any provision of this Agreement be declared or determined to be null and void, inoperative, illegal or invalid for any reason, the validity of the remaining parts, terms or provisions shall not be affected thereby and they shall retain their full force and effect and said

null, void, inoperative, illegal or invalid part, term or provision, shall be deemed not to be part of this Agreement.

7. This Agreement shall, in all respects, be interpreted, enforced and governed under the laws of the State of Colorado.

8. The Recitals of this Agreement are incorporated herein by this reference.

9. This Agreement merges and supercedes all prior negotiations, representations and agreements of the parties hereto, as of the date first above written.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

ASSIGNOR: TOWN OF PARKER, a Colorado home rule municipality

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Town Clerk

APPROVED AS TO FORM:

Jamie Wynn, Town Attorney

ASSIGNEE: CITY OF AURORA, a Colorado home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado

Director of Public Works or Designee

APPROVED AS TO FORM:

Michelle Gardner, Sr. Assistant City Attorney

EXHIBIT 1

SLOPE EASEMENT AGREEMENT

THIS SLOPE EASEMENT AGREEMENT, made this 17th day of June, 2019, between Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability limited partnership, whose legal address is 50 S. Glenmoor Circle, Englewood, Colorado 80113-7121 (the "Grantor"), and the Town of Parker, a Colorado home rule municipality, whose legal address is 20120 E. Mainstreet, Parker, Colorado 80138 (the "Grantee").

THE GRANTOR, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns forever, a perpetual easement over, across and on, the following described real property located in the County of Douglas, State of Colorado, and described as follows:

(See attached Exhibit "A")

Said easement is for the purpose of providing and maintaining (1) a proper sight distance and line of sight, (2) lateral support, and (3) proper drainage grade, as determined by the Parker Public Works Department, for a public roadway, road shoulder and attendant road improvements and construction. Grantee, its successors, contractors or assigns, and their agents and employees shall have full right to enter at all times upon said premises to survey, construct, repair, remove, replace, reconstruct, inspect, improve and maintain a suitable slope or grade which will provide the above mentioned proper sight distance and line of sight, lateral support, and proper drainage grade.

Grantor retains the right to use said property for any and all purposes which will not interfere with the Grantee's full use and enjoyment of the rights acquired herein, including the growing and cultivating of trees, shrubs and other plant materials as well as landscaping. Provided, however, Grantor or his successors, assigns and subsequent Grantees, will not use or improve said property or grant any easements upon, over, across or under said property without first obtaining the written consent of the Grantee. Such consent will not be unreasonably withheld provided that the sight distance and line of sight, lateral support and proper drainage grade necessary for the roadway and its attendant facilities, as determined by the Grantee, is maintained.

Grantor for himself, his successors and assigns, does covenant, grant, bargain and agree with the Grantee, its successors and assigns, that at the time of the signing and delivery of this easement, he is well seized of the property on which the easement above conveyed is located, and has good, sure, perfect, absolute and indefeasible estate, in law, in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the above easement in the manner and form set forth above, and that the property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, monetary encumbrances and restrictions of whatever kind or nature whatsoever, except for non-delinquent real property taxes and that certain deed of trust referenced in the Consent of Lender attached to this Agreement.

Grantor and Grantee agree that this Easement may be released by Grantee upon the construction of an approved development on the Easement Property which provides the necessary subjacent support and protection of Kings Point Way that is created by this Easement.

SLOPE EASEMENT AGREEMENT

THIS SLOPE EASEMENT AGREEMENT, made this 17th day of June, 2019, between Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability limited partnership, whose legal address is 50 S. Glenmoor Circle, Englewood, Colorado 80113-7121 (the "Grantor"), and the Town of Parker, a Colorado home rule municipality, whose legal address is 20120 E. Mainstreet, Parker, Colorado 80138 (the "Grantee").

THE GRANTOR, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns forever, a perpetual easement over, across and on, the following described real property located in the County of Douglas, State of Colorado, and described as follows:

(See attached Exhibit "A")

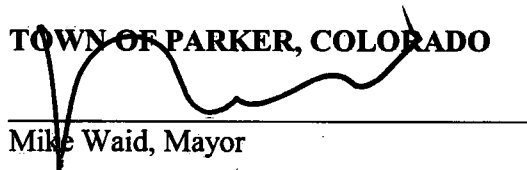
Said easement is for the purpose of providing and maintaining (1) a proper sight distance and line of sight, (2) lateral support, and (3) proper drainage grade, as determined by the Parker Public Works Department, for a public roadway, road shoulder and attendant road improvements and construction. Grantee, its successors, contractors or assigns, and their agents and employees shall have full right to enter at all times upon said premises to survey, construct, repair, remove, replace, reconstruct, inspect, improve and maintain a suitable slope or grade which will provide the above mentioned proper sight distance and line of sight, lateral support, and proper drainage grade.

Grantor retains the right to use said property for any and all purposes which will not interfere with the Grantee's full use and enjoyment of the rights acquired herein, including the growing and cultivating of trees, shrubs and other plant materials as well as landscaping. Provided, however, Grantor or his successors, assigns and subsequent Grantees, will not use or improve said property or grant any easements upon, over, across or under said property without first obtaining the written consent of the Grantee. Such consent will not be unreasonably withheld provided that the sight distance and line of sight, lateral support and proper drainage grade necessary for the roadway and its attendant facilities, as determined by the Grantee, is maintained.

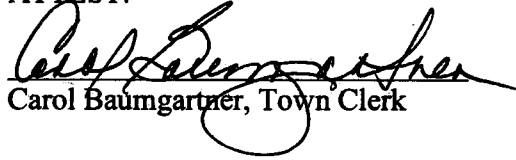
Grantor for himself, his successors and assigns, does covenant, grant, bargain and agree with the Grantee, its successors and assigns, that at the time of the signing and delivery of this easement, he is well seized of the property on which the easement above conveyed is located, and has good, sure, perfect, absolute and indefeasible estate, in law, in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the above easement in the manner and form set forth above, and that the property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, monetary encumbrances and restrictions of whatever kind or nature whatsoever, except for non-delinquent real property taxes and that certain deed of trust referenced in the Consent of Lender attached to this Agreement.

Grantor and Grantee agree that this Easement may be released by Grantee upon the construction of an approved development on the Easement Property which provides the necessary subjacent support and protection of Kings Point Way that is created by this Easement.

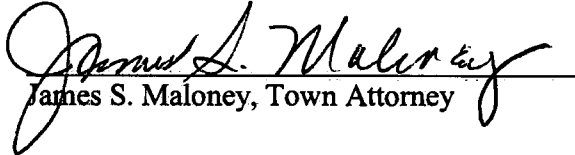
TOWN OF PARKER, COLORADO


Mike Waid, Mayor

ATTEST:


Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:


James S. Maloney, Town Attorney

CONSENT OF LENDER

Consolidated Equities, Ltd., a Colorado corporation ("Lender"), as the beneficiary under that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, recorded on June 21, 1995, at Reception No. 9527329, in the real property records of the Douglas County Clerk and Recorder's Office; modified on February 1, 2001, at Reception No. 1007263 in the real property records of the Douglas County Clerk and Recorder's Office; and assigned on June 20, 2001, at Reception No. 1055308 in the real property records of the Douglas County Clerk and Recorder's Office (the "Deed of Trust"), hereby agrees that it has consented to the terms and provisions of this Drainage Easement Agreement and that any subsequent foreclosure of the Deed of Trust secured by the property described herein shall not extinguish this Slope Easement Agreement.

7 IN WITNESS WHEREOF, the undersigned have duly executed these presents as of the 7 day of JUNE, 2019.

LENDER: CONSOLIDATED EQUITIES, LTD., a Colorado corporation

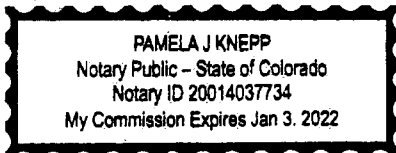
By: [Signature]
[Name/Title]
V.P.

STATE OF Colorado)
)ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 7th day of JUNE, 2019, by Peter Nederman, as V.P. of Consolidated Equities, Ltd.

My commission expires: 1/3/22

SEAL



[Signature]
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE 6th PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 3, WHENCE THE WEST LINE OF SAID NORTHWEST QUARTER BEARS SOUTH 00°07'08" EAST, WITH ALL BEARINGS HEREIN BEING REFERENCED TO SAID LINE;

THENCE ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER, NORTH 89°35'41" EAST, A DISTANCE OF 79.92 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTH LINE, NORTH 89°35'41" EAST, A DISTANCE OF 20.36 FEET;

THENCE DEPARTING SAID NORTH LINE, SOUTH 11°10'53" EAST, A DISTANCE OF 74.51 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 830.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°03'45", AN ARC LENGTH OF 160.25 FEET;

THENCE SOUTH 00°07'08" EAST, A DISTANCE OF 236.81 FEET;

THENCE SOUTH 15°09'29" EAST, A DISTANCE OF 96.35 FEET;

THENCE SOUTH 00°07'08" EAST, A DISTANCE OF 99.17 FEET;

THENCE SOUTH 24°37'16" WEST, A DISTANCE OF 59.74 FEET;

THENCE SOUTH 00°07'08" EAST, A DISTANCE OF 192.86 FEET;

THENCE SOUTH 89°52'52" WEST, A DISTANCE OF 20.00 FEET;

THENCE NORTH 00°07'08" WEST, A DISTANCE OF 676.14 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 810.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°03'45", AN ARC LENGTH OF 156.39 FEET;

THENCE NORTH 11°10'53" WEST, A DISTANCE OF 78.31 FEET TO THE POINT OF BEGINNING.

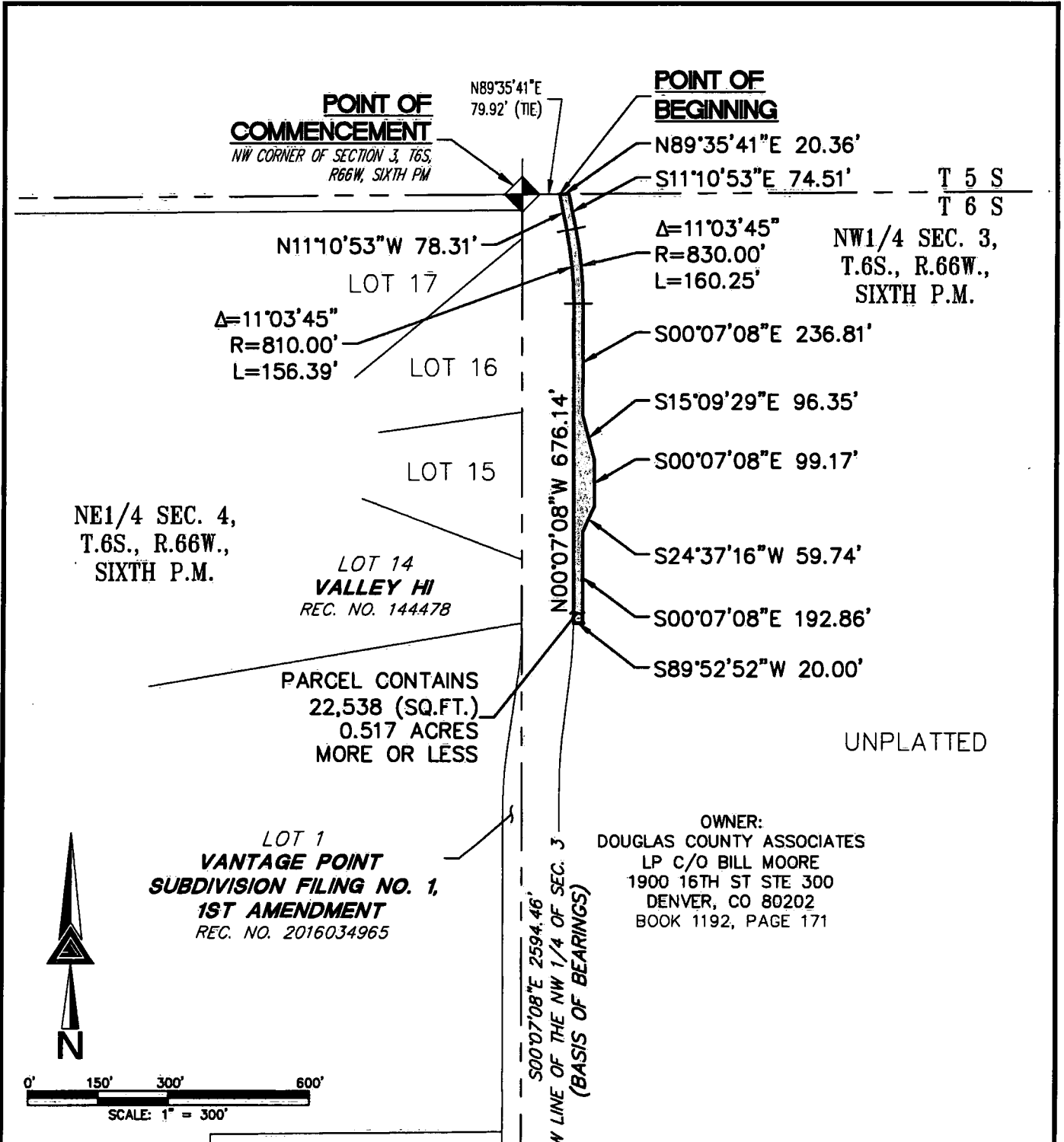
CONTAINING AN AREA OF 0.517 ACRES, (22,538 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.

GERALD E. BOYSEN JR., PLS NO. 32428
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
(303) 713-1898



ILLUSTRATION TO EXHIBIT A



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH:
DWG NAME: 2018-12-27 - SLOPE EASEMENT 2.DWG
DWG: CWB CHK: GEB
DATE: 01/03/2019
SCALE: 1" = 300'

AZTEC
CONSULTANTS, INC.

300 East Mineral Ave,
Suite 1
Littleton, Colorado 80122
Phone: (303)713-1898
Fax: (303)713-1897
www.aztecconsultants.com

Q:\24918-15 - Kings Point Way - Legal Descriptions\Dwg\EXHIBITS

SLOPE EASEMENT 2
NW 1/4 SEC. 3, T.6S., R.66W., 6TH P.M.
DOUGLAS COUNTY, COLORADO

JOB NUMBER 24918-15
2 OF 2 SHEETS

**ASSIGNMENT AND ASSUMPTION AGREEMENT FOR
SLOPE EASEMENT AGREEMENT (RECORDED AT
DOUGLAS COUNTY CLERK AND RECORDER RECEPTION NO. 2019034596)**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT FOR SLOPE EASEMENT AGREEMENT (the “Agreement”) is dated as of _____, 2024 (the “Effective Date”), and is made by and between the Town of Parker, a Colorado home rule municipality (the “Assignor”), and the City of Aurora, a Colorado home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado (the “Assignee”).

RECITALS

A. Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability company, as the grantor and the Town of Parker, as grantee, entered into the “Slope Easement Agreement” on June 17, 2019, which was recorded on June 17, 2019, with the Douglas County Clerk and Recorder’s Office, at Reception No. 2019034596 (the “Agreement”), which is attached hereto as **Exhibit 1** and incorporated by this reference (the “Easement Agreement”).

B. The Assignor desires to assign the Easement Agreement to Assignee and Assignee desires to assume all of the Assignor’s obligations under the Easement Agreement, subject to the prior written approval of the Town of Parker.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Assignor hereby assigns all of its obligations, rights, title and interest under the Easement Agreement to Assignee.

2. Assignee hereby assumes all of the Assignor’s obligations, rights, title and interest under the Easement Agreement.

3. The Assignor represents and warrants that it has satisfied all conditions precedent, as required by the Easement Agreement for this assignment by the Assignor and assumption by Assignee.

4. The parties hereto warrant and represent that they have the express authority to so execute and bind themselves and the parties for whom they are acting to the terms and provisions of this Agreement.

5. The parties hereto warrant and represent that they have executed this Agreement, based upon their own knowledge and free will.

6. Should any provision of this Agreement be declared or determined to be null and void, inoperative, illegal or invalid for any reason, the validity of the remaining parts, terms or provisions shall not be affected thereby and they shall retain their full force and effect and said

null, void, inoperative, illegal or invalid part, term or provision, shall be deemed not to be part of this Agreement.

7. This Agreement shall, in all respects, be interpreted, enforced and governed under the laws of the State of Colorado.

8. The Recitals of this Agreement are incorporated herein by this reference.

9. This Agreement merges and supercedes all prior negotiations, representations and agreements of the parties hereto, as of the date first above written.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

ASSIGNOR: TOWN OF PARKER, a Colorado home rule municipality

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Town Clerk

APPROVED AS TO FORM:

Jamie Wynn, Town Attorney

ASSIGNEE: CITY OF AURORA, a Colorado home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado

Director of Public Works or Designee

APPROVED AS TO FORM:

Michelle Gardner, Sr. Assistant City Attorney

EXHIBIT 1

SLOPE EASEMENT AGREEMENT

THIS SLOPE EASEMENT AGREEMENT, made this 17th day of June, 2019, between Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability limited partnership, whose legal address is 50 S. Glenmoor Circle, Englewood, Colorado 80113-7121 (the "Grantor"), and the Town of Parker, a Colorado home rule municipality, whose legal address is 20120 E. Mainstreet, Parker, Colorado 80138 (the "Grantee").

THE GRANTOR, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns forever, a perpetual easement over, across and on, the following described real property located in the County of Douglas, State of Colorado, and described as follows:

(See attached Exhibit "A")

Said easement is for the purpose of providing and maintaining (1) a proper sight distance and line of sight, (2) lateral support, and (3) proper drainage grade, as determined by the Parker Public Works Department, for a public roadway, road shoulder and attendant road improvements and construction. Grantee, its successors, contractors or assigns, and their agents and employees shall have full right to enter at all times upon said premises to survey, construct, repair, remove, replace, reconstruct, inspect, improve and maintain a suitable slope or grade which will provide the above mentioned proper sight distance and line of sight, lateral support, and proper drainage grade.

Grantor retains the right to use said property for any and all purposes which will not interfere with the Grantee's full use and enjoyment of the rights acquired herein, including the growing and cultivating of trees, shrubs and other plant materials as well as landscaping. Provided, however, Grantor or his successors, assigns and subsequent Grantees, will not use or improve said property or grant any easements upon, over, across or under said property without first obtaining the written consent of the Grantee. Such consent will not be unreasonably withheld provided that the sight distance and line of sight, lateral support and proper drainage grade necessary for the roadway and its attendant facilities, as determined by the Grantee, is maintained.

Grantor for himself, his successors and assigns, does covenant, grant, bargain and agree with the Grantee, its successors and assigns, that at the time of the signing and delivery of this easement, he is well seized of the property on which the easement above conveyed is located, and has good, sure, perfect, absolute and indefeasible estate, in law, in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the above easement in the manner and form set forth above, and that the property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, monetary encumbrances and restrictions of whatever kind or nature whatsoever, except for non-delinquent real property taxes and that certain deed of trust referenced in the Consent of Lender attached to this Agreement.

Grantor and Grantee agree that this Easement may be released by Grantee upon the construction of an approved development on the Easement Property which provides the necessary subjacent support and protection of Kings Point Way that is created by this Easement.

SLOPE EASEMENT AGREEMENT

THIS SLOPE EASEMENT AGREEMENT, made this 17th day of June, 2019, between Douglas County Associates Limited Partnership, LLLP, a Colorado limited liability limited partnership, whose legal address is 50 S. Glenmoor Circle, Englewood, Colorado 80113-7121 (the "Grantor"), and the Town of Parker, a Colorado home rule municipality, whose legal address is 20120 E. Mainstreet, Parker, Colorado 80138 (the "Grantee").

THE GRANTOR, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns forever, a perpetual easement over, across and on, the following described real property located in the County of Douglas, State of Colorado, and described as follows:

(See attached Exhibit "A")

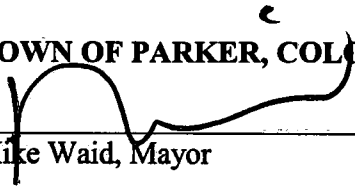
Said easement is for the purpose of providing and maintaining (1) a proper sight distance and line of sight, (2) lateral support, and (3) proper drainage grade, as determined by the Parker Public Works Department, for a public roadway, road shoulder and attendant road improvements and construction. Grantee, its successors, contractors or assigns, and their agents and employees shall have full right to enter at all times upon said premises to survey, construct, repair, remove, replace, reconstruct, inspect, improve and maintain a suitable slope or grade which will provide the above mentioned proper sight distance and line of sight, lateral support, and proper drainage grade.

Grantor retains the right to use said property for any and all purposes which will not interfere with the Grantee's full use and enjoyment of the rights acquired herein, including the growing and cultivating of trees, shrubs and other plant materials as well as landscaping. Provided, however, Grantor or his successors, assigns and subsequent Grantees, will not use or improve said property or grant any easements upon, over, across or under said property without first obtaining the written consent of the Grantee. Such consent will not be unreasonably withheld provided that the sight distance and line of sight, lateral support and proper drainage grade necessary for the roadway and its attendant facilities, as determined by the Grantee, is maintained.

Grantor for himself, his successors and assigns, does covenant, grant, bargain and agree with the Grantee, its successors and assigns, that at the time of the signing and delivery of this easement, he is well seized of the property on which the easement above conveyed is located, and has good, sure, perfect, absolute and indefeasible estate, in law, in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the above easement in the manner and form set forth above, and that the property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, monetary encumbrances and restrictions of whatever kind or nature whatsoever, except for non-delinquent real property taxes and that certain deed of trust referenced in the Consent of Lender attached to this Agreement.

Grantor and Grantee agree that this Easement may be released by Grantee upon the construction of an approved development on the Easement Property which provides the necessary adjacent support and protection of Kings Point Way that is created by this Easement.

TOWN OF PARKER, COLORADO



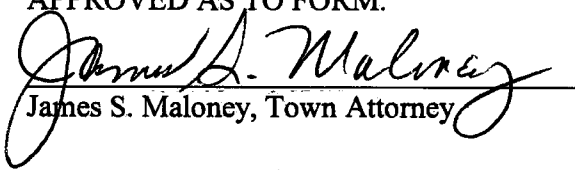
Mike Waid, Mayor

ATTEST:



Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:



James S. Maloney, Town Attorney

CONSENT OF LENDER

Consolidated Equities, Ltd., a Colorado corporation ("Lender"), as the beneficiary under that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, recorded on June 21, 1995, at Reception No. 9527329, in the real property records of the Douglas County Clerk and Recorder's Office; modified on February 1, 2001, at Reception No. 1007263 in the real property records of the Douglas County Clerk and Recorder's Office; and assigned on June 20, 2001, at Reception No. 1055308 in the real property records of the Douglas County Clerk and Recorder's Office (the "Deed of Trust"), hereby agrees that it has consented to the terms and provisions of this Drainage Easement Agreement and that any subsequent foreclosure of the Deed of Trust secured by the property described herein shall not extinguish this Slope Easement Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed these presents as of the 7th day of June, 2019.

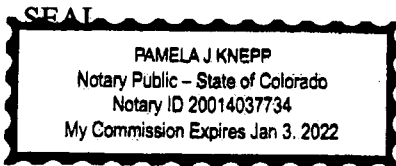
LENDER: CONSOLIDATED EQUITIES, LTD., a Colorado corporation

By: [Signature]
[Peter Nederman / title]
V.P.

STATE OF Colorado)
)ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 7th day of June, 2019, by Peter Nederman, as V.P. of Consolidated Equities, Ltd.

My commission expires: 1/3/22



[Signature]
Notary Public

EXHIBIT A
LEGAL DESCRIPTION

A PART OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED IN A WARRANTY DEED RECORDED ON APRIL 13, 1994 IN BOOK 1192 AT PAGE 171, IN THE RECORDS OF THE DOUGLAS COUNTY, COLORADO, CLERK AND RECORDER, LOCATED IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 3, WHENCE THE NORTHWEST CORNER OF SAID SECTION 3 BEARS NORTH 00°07'08" WEST, A DISTANCE OF 2,594.46 FEET;

THENCE ALONG THE WEST LINE OF SAID NORTHWEST QUARTER, NORTH 00°07'08" WEST, A DISTANCE OF 830.05 FEET TO THE NORTHWEST CORNER OF THAT PARCEL OF LAND RECORDED AT RECEPTION NO. 2016072202 IN SAID RECORDS, AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 1,438.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 11°57'11" EAST;

THENCE DEPARTING SAID WEST LINE, ALONG THE NORTHERLY LINE OF SAID PARCEL, EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°14'21", AN ARC LENGTH OF 81.30 FEET TO THE POINT OF BEGINNING;

THENCE DEPARTING SAID NORTHERLY LINE NON-TANGENT TO SAID CURVE, NORTH 00°07'08" WEST, A DISTANCE OF 504.26 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 730.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°02'19", AN ARC LENGTH OF 89.68 FEET;

THENCE TANGENT TO SAID CURVE, NORTH 06°55'11" EAST, A DISTANCE OF 150.14 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 810.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°02'19", AN ARC LENGTH OF 99.51 FEET;

THENCE NON-TANGENT TO SAID CURVE NORTH 89°52'52" EAST, A DISTANCE OF 32.60 FEET;

THENCE SOUTH 00°07'08" EAST, A DISTANCE OF 104.03 FEET;

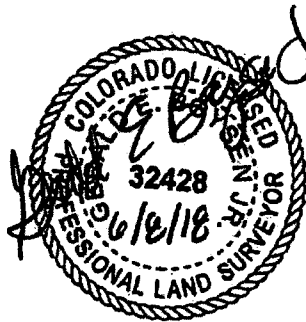
THENCE SOUTH 06°55'11" WEST, A DISTANCE OF 233.44 FEET;

THENCE SOUTH 00°07'08" EAST, A DISTANCE OF 501.53 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 1,438.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 07°20'46" EAST;

THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°22'04", AN ARC LENGTH OF 34.33 FEET TO THE POINT OF BEGINNING.

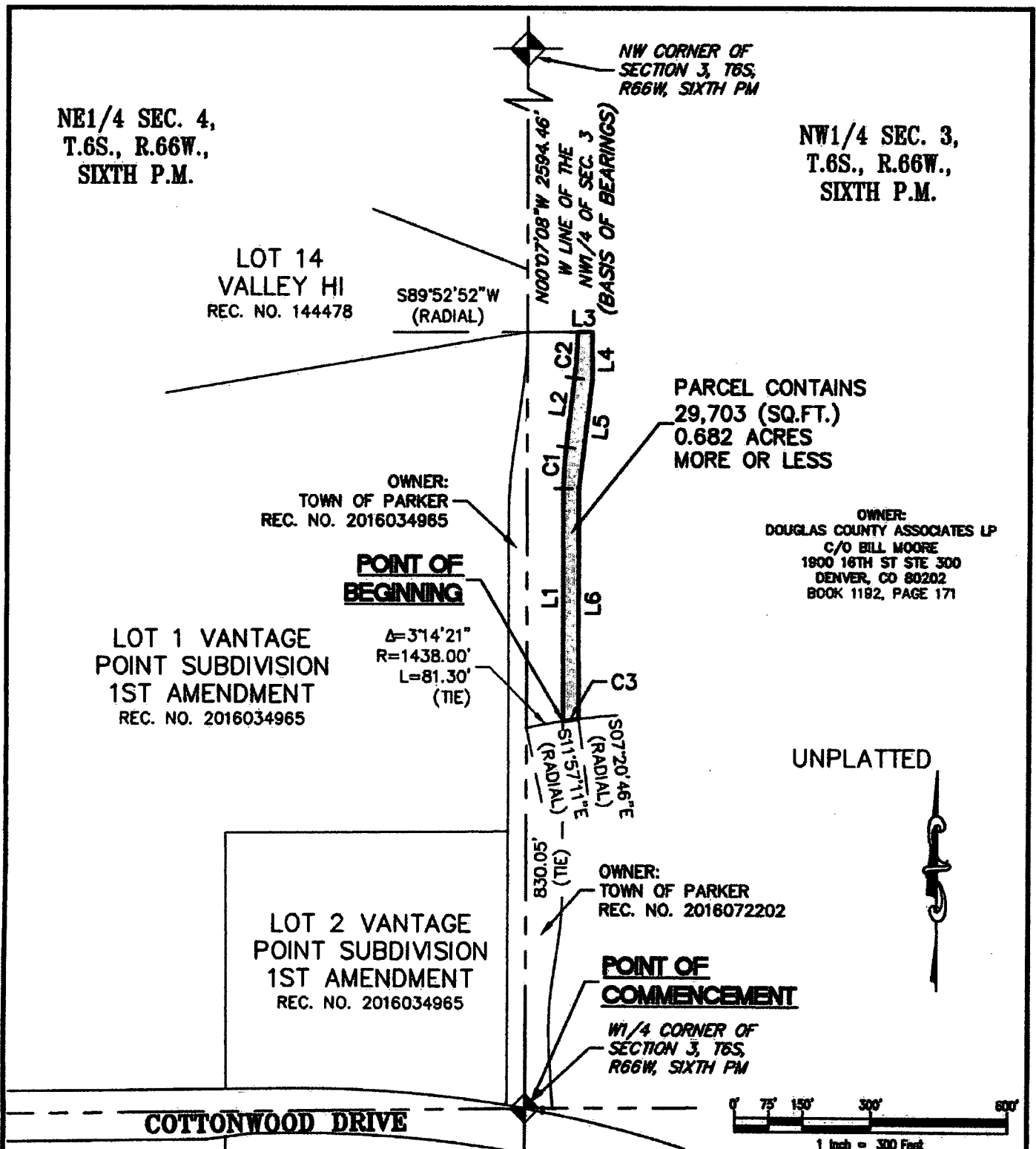
CONTAINING AN AREA OF 0.682 ACRES, (29,703 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



GERALD E. BOYSEN, JR., PLS NO. 32428
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

ILLUSTRATION TO EXHIBIT A



NE1/4 SEC. 4,
T.6S., R.66W.,
SIXTH P.M.

NW1/4 SEC. 3,
T.6S., R.66W.,
SIXTH P.M.

LOT 14
VALLEY HI
REC. NO. 144478

S89°52'52"W
(RADIAL)

N00°07'08"W 2594.46'
W LINE OF THE
NW1/4 OF SEC. 3
(BASIS OF BEARINGS)

PARCEL CONTAINS
29,703 (SQ.FT.)
0.682 ACRES
MORE OR LESS

OWNER:
TOWN OF PARKER
REC. NO. 2016034965

OWNER:
DOUGLAS COUNTY ASSOCIATES LP
C/O BILL MOORE
1900 16TH ST STE 300
DENVER, CO 80202
BOOK 1182, PAGE 171

**POINT OF
BEGINNING**

LOT 1 VANTAGE
POINT SUBDIVISION
1ST AMENDMENT
REC. NO. 2016034965

$\Delta = 3^{\circ}14'21''$
 $R = 1438.00'$
 $L = 81.30'$
(TIE)

L1 L2 L3 L4 L5 L6 L7
C1 C2 C3
S115°57'11"E
S07°20'46"E
S110°15'11"E
(RADIAL)
(RADIAL)
(RADIAL)

UNPLATTED

LOT 2 VANTAGE
POINT SUBDIVISION
1ST AMENDMENT
REC. NO. 2016034965

OWNER:
TOWN OF PARKER
REC. NO. 2016072202

**POINT OF
COMMENCEMENT**

NW1/4 CORNER OF
SECTION 3, T6S,
R66W, SIXTH PM

COTTONWOOD DRIVE



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: Q:\4618-15\DWG\EXHIBITS\
DWG NAME: SLOPE 2_DC ASSOC REV
DWG: GB CHK: JRW
DATE: 06-07-2018
SCALE: 1" = 300'



300 East Mineral Ave,
Suite 1
Littleton, Colorado 80122
Phone: (303)713-1898
Fax: (303)713-1897
www.aztecconsultants.com

EXHIBIT A
NW1/4 S3, T6S, R66W, SIXTH PM
DOUGLAS COUNTY, COLORADO
JOB NUMBER 24918-15 3 OF 4 SHEETS

ILLUSTRATION TO EXHIBIT A

LINE TABLE		
LINE	BEARING	LENGTH
L1	N00°07'08"W	504.26'
L2	N06°55'11"E	150.14'
L3	N89°52'52"E	32.60'
L4	S00°07'08"E	104.03'
L5	S06°55'11"W	233.44'
L6	S00°07'08"E	501.53'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	7°02'19"	730.00'	89.68'
C2	7°02'19"	810.00'	99.51'
C3	1°22'04"	1438.00'	34.33'

NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: G:\24918-15\DWG\EXHIBITS\
 DWG NAME: SLOPE 2_DC ASSOC REV
 DWG: DEC CHC
 DATE: 06-07-2018
 SCALE: NA



300 East Mineral Ave.
 Suite 1
 Littleton, Colorado 80122
 Phone: (303)713-1858
 Fax: (303)713-1897
 www.aztecconsultants.com

EXHIBIT A
 NW1/4 S3, T6S, R66W, SIXTH PM
 DOUGLAS COUNTY, COLORADO

JOB NUMBER 24918-15

3 OF 3 SHEETS

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA AND
THE TOWN OF PARKER REGARDING THE DESIGN, CONSTRUCTION,
OWNERSHIP AND MAINTENANCE OF KINGS POINT WAY**

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into this 28th day of January, 2018⁰¹ by and between the City of Aurora, Colorado, a Colorado home rule municipality ("Aurora"), and Town of Parker, a Colorado home rule municipality ("Parker"), hereinafter collectively referred to as the "Parties."

RECITALS:

A. Aurora and Parker may cooperate or contract with each other to provide any function, service or facility, lawfully authorized to each by the provisions of Colo. Const., art. XIV, § 18(2)(a) and C.R.S. §§ 29-1-201, *et seq.*

B. Aurora and Parker desire to cooperate in the design, construction and maintenance of Kings Point Way, a collector roadway to be constructed between the jurisdictional boundaries of the Parties and the Aurora Parkway, as described in **Exhibit A**, which is attached hereto and incorporated by this reference (the "Project").

C. The construction of the Project will provide access to commercial and residential developments to be located in Aurora and Parker.

D. The Parties intend to set forth the terms of design, construction and maintenance of the Project.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties hereto agree as follows:

1. Project Standards.

a. The Project shall be designed by the Town, at no cost to Aurora, as a nonresidential collector in accordance with the Town of Parker, Colorado, Roadway Design and Construction Criteria Manual, as revised May 2018.

b. All storm drainage improvements for the Project, including sediment and erosion control measures, shall be designed and constructed according to the Town of Parker, Colorado, Storm Drainage and Environmental Criteria Manual, as revised February 2014.

c. The Parties acknowledge and agree that Parker will not be required to obtain any permits from Aurora to design, construct or maintain the Project.

2. Review and Approval of the Project Prior to Construction. Aurora and Parker shall have the right to review and approve the design and construction plans related to the Project, prior to construction. Parker shall have the authority to decide disputes concerning design issues or

standards, and the means and methods used to construct the Project, except where specifically addressed to the contrary in this Agreement.

3. Construction of Project. The Project shall be constructed at no cost to Aurora. Parker shall commence or caused to be commenced construction of the Project at such time as (a) the right-of-way and easements necessary to construct the Project have been conveyed to Parker by Douglas County Associates Limited Partnership, L.L.P., or its successor (“DCA”) and (b) the additional terms and conditions described in Paragraphs 12 and 13.c. of the Annexation Agreement between the Town and DCA, dated October 16, 2017, and recorded with the Douglas County Clerk and Recorder at Reception No. 2017071061, as set forth in **Exhibit B**, which is attached hereto (the “Annexation Agreement”), have been fully satisfied.

4. Inspections/Changes to Project During Construction. Parker shall be responsible for all inspections related to the construction of the Project. Aurora shall be notified of any significant changes to the project during construction and have an opportunity to provide input on design changes.

5. Final Acceptance of Project. Prior to final acceptance of the Project by Aurora, Parker will provide Aurora with testing information, reports and as-builts, as required by the construction contract for the Project, including the assignment of the contractor’s warranty, as provided in the construction contract. Additionally, Aurora and Parker shall conduct a joint inspection of the Project, and if Aurora and Parker find, upon inspection, that the Project is substantially free of defects in materials and workmanship and has been repaired and maintained as and to the extent required in this Agreement, Aurora shall issue a letter to Parker evidencing final acceptance of the Project. Upon final acceptance of the Project and the completion / acceptance of Aurora Parkway, the Project shall be open for use by the travelling public.

6. Maintenance Responsibilities for the Project.

a. Parker shall be responsible for the maintenance of the Project during the warranty period and until final acceptance by Aurora.

b. Parker shall be responsible for snow removal and street sweeping for the Project for a period of five (5) years following final acceptance of the Project by Aurora. The details of this commitment will be memorialized in a memorandum of understanding between the Parties prior to final acceptance by Aurora.

c. Aurora shall be responsible for the ownership and maintenance of the Project following final acceptance of the Project, except for snow removal and street sweeping as provided herein, subject to the completion / final acceptance of Aurora Parkway.

7. Dedication of Right-of-Way and Easements for Kings Point Way. Upon the final acceptance of the Project by Aurora, Parker shall dedicate the right-of-way for the Project to Aurora, at no cost, by special warranty deed, free and clear of all liens and encumbrances. Upon final acceptance of the Project by Aurora, Parker shall transfer the permanent easements needed for the Project to Aurora.

8. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if hand delivered or sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given, at the address set forth below, or at such other address as has been previously furnished in writing, to the other party. All notices so given shall be considered effective on the earlier of actual receipt or seventy-two (72) hours after deposit in the United States mail with the proper address (and by registered or certified mail, return receipt requested, postage prepaid), as set forth below. Either party, by notice so given, may change the address to which future notices shall be sent.

Town of Parker: Director of Engineering/Public Works
Town of Parker
20120 E. Mainstreet
Parker, Colorado 80138

City of Aurora: Director of Public Works
City of Aurora
15151 E. Alameda Parkway
Aurora, Colorado 80012

9. Appropriation. Pursuant to C.R.S. § 29-1-110, the financial obligations of Parker and Aurora contained herein which are payable after the current fiscal year are contingent upon funds for that purpose being annually appropriated, budgeted and otherwise made available.

10. No Waiver of Governmental Immunity Act. The Parties hereto understand and agree that Parker and Aurora, their officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as from time to time amended, or otherwise available to Parker and Aurora.

11. Additional Documents. The Parties agree to execute any additional documents or take any additional action that is necessary to carry out the intent of this Agreement.

12. Colorado Law. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Douglas, State of Colorado, and the Parties waive any right to remove any action to any other court, whether state or federal.

13. Separate Entities. The Parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout.

14. No Third-Party Beneficiaries. The 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, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. Any beneficiary of the terms and conditions of this Agreement are not intended beneficiaries, but are incidental beneficiaries only.

15. Recitals. The recitals to this Agreement are incorporated herein by this reference.

16. Entirety. This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties hereof and constitutes the entire agreement between the Parties concerning the subject matter hereof.

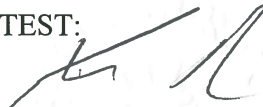
IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto as of the date first written above.

CITY OF AURORA, COLORADO



Bob LeGare, Mayor

ATTEST:



Stephen Bueger City Clerk

APPROVED AS TO FORM:



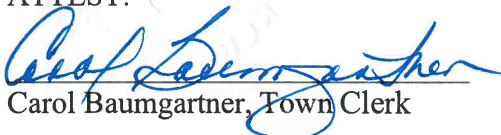
Michelle Gardner, Assistant City Attorney

TOWN OF PARKER, COLORADO



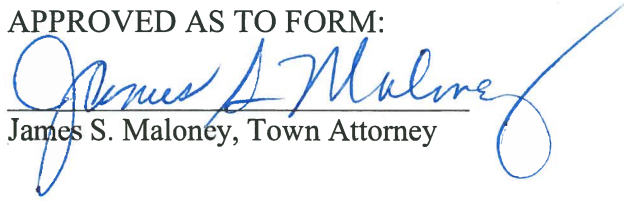
Mike Waid, Mayor

ATTEST:



Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:



James S. Maloney, Town Attorney

EXHIBIT LIST

EXHIBIT A Vicinity Map for the Project

EXHIBIT B Excerpts of the Annexation Agreement

EXHIBIT A

Vicinity Map for the Project



EXHIBIT B

Excerpts of the Annexation Agreement

* * *

12. Aurora Eastern Access Drive¹ to be Designed and Constructed by the Town. The Town shall design and construct the Aurora Eastern Access Drive to be located adjacent to the western boundary of the Kings Point South Property, from the northern terminus of the Parker Eastern Access Drive to the Aurora Parkway, as a full modified, nonresidential collector, including any auxiliary lanes, necessary storm sewer and sidewalk adjacent to the Property, according to the Roadway Manual, and shall use commercially reasonable efforts to substantially complete that Aurora Eastern Access Drive within fifteen (15) months following the satisfaction of the conditions described in Paragraph 13(c) of this Agreement, or at such time as the Aurora Parkway, which is to be designed and constructed by others, is substantially complete and open for use by the public, whichever occurs last. The Town and the Property Owner acknowledge and agree that the source of funding for the design and construction of the Aurora Eastern Access Drive is from the fees and taxes generated from the development of the Property. The Property Owner further acknowledges and agrees that the Town will not consider any form of financial incentive related in any way to the development of the Property until such time as the Town is fully reimbursed for all costs associated with the cost to design and construct the Aurora Eastern Access Drive.

13. Land Dedication. The Property Owner, as the owner of the Property, and the owner of the Kings Point South Property shall either dedicate on a plat or otherwise convey to the Town, as applicable, by special warranty deed, free and clear of all liens and encumbrances, the following real property:

* * *

c. Aurora Eastern Access Drive. The real property to construct a full nonresidential collector, including any auxiliary lanes, necessary storm sewer and sidewalk, from the northern terminus of the Parker Eastern Access Drive to the Aurora Parkway, including all necessary easements as determined by the Town, including, but not limited to, slope, drainage and construction easements, at the time of the first final plat for the Kings Point South Property or upon thirty (30) days' written notice of the Town to the Property Owner, whichever occurs first; provided that (i) a Framework Development Plan Amendment is approved by City of Aurora to permit a road connection to the Town from the Kings Point South Property; (ii) the City of Aurora and the Property Owner, as the owner of the Kings Point South Property, or its successors in interest, approve the alignment of the Aurora Eastern Access Drive; (iii) the Town, or its assigns, notifies the Property Owner in writing that a bidder has been selected to construct the Aurora Eastern Access Drive and the funds necessary to construct the Aurora Eastern Access Drive have been appropriated by the Town, or its assigns; (iv) the City of Aurora, other applicable governmental agencies and utility providers (including the Magellan Pipeline Company) have issued all permits/approvals to the Town to construct the Parker Eastern Access Drive and the Aurora Eastern Access Drive as described herein; and (v) the Town and the City of Aurora have entered into an intergovernmental agreement concerning the ownership and maintenance of the Aurora Eastern Access Drive.

¹ Aurora Eastern Access Drive also known as Kings Point Way.



CITY OF AURORA

Council Agenda Commentary

Item Title: Removing the Sunset Provision (Ordinance)
Item Initiator: Danielle Jurinsky, Council Member
Staff Source/Legal Source: Jason Batchelor, City Manager / Pete Schulte, Manager of Client Services, City Attorney
Outside Speaker: N/A
Council Goal: 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

COUNCIL MEETING DATES:

Study Session: 8/26/2024

Regular Meeting: 9/10/2024

2nd Regular Meeting (if applicable): 9/23/2024

Item requires a Public Hearing: Yes No

ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Danielle Jurinsky, Council Member
Jason Batchelor, City Manager / Pete Schulte, Manager of Client Services, City Attorney
Estimated time: 15 mins

ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field above.

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Public Safety, Courts & Civil Service

Policy Committee Date: 8/8/2024

Action Taken/Follow-up: (Check all that apply)

- Recommends Approval Does Not Recommend Approval
- Forwarded Without Recommendation Minutes Not Available
- Minutes Attached

HISTORY (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

N/A

ITEM SUMMARY (Brief description of item, discussion, key points, recommendations, etc.)

This Ordinance removes the "Sunset Provision" from Ordinance 22-47 related to Retail Theft, adds a City code section for the offense of "Retail Theft," and then restructures the city code to move mandatory minimum sentence provisions currently under Section 1-13 to the specific code sections that the mandatory minimum sentence provisions are applicable.

FISCAL IMPACT

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact Budgeted Expenditure Impact Non-Budgeted Expenditure Impact
- Workload Impact No Fiscal Impact

REVENUE IMPACT

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

BUDGETED EXPENDITURE IMPACT

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

N/A

NON-BUDGETED EXPENDITURE IMPACT

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

WORKLOAD IMPACT

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

N/A

QUESTIONS FOR COUNCIL

Does Council wish to support this Ordinance that removes the "Sunset Provision" from Ordinance 22-47 related to Retail Theft, adds a City code section for the offense of "Retail Theft," and then restructures the city code to move mandatory minimum sentence provisions currently under Section 1-13 to the specific code sections that the mandatory minimum sentence provisions are applicable?

LEGAL COMMENTS

The City Council, as governing body of the city, shall have the power to make ordinances as it shall deem necessary and proper to provide for the safety; preserve the health; promote the prosperity; and improve the morals, order, comfort and convenience of the city and the inhabitants thereof. Aurora City Code §2-32. (Schulte)

ORDINANCE NO. 2024- _____

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, REMOVING THE “SUNSET PROVISION” IN ORDINANCE NUMBER 2022-47 RELATED TO MANDATORY MINIMUM PENALTIES FOR THE OFFENSE OF RETAIL THEFT UNDER THE CITY CODE AND TO AMEND OTHER SECTIONS OF THE CITY CODE FOR CONTINUITY AND STRUCTURE.

WHEREAS, On September 26, 2022, Council approved Ordinance Number 2022-47 which enacted mandatory minimum penalties for those persons convicted of “retail theft,” (Sec. 94-74); and

WHEREAS, Section 3 of this Ordinance stated the following:

“Section 3. The City Council will evaluate the effectiveness of Section 1 of this ordinance and formally act to extend it on _____, 2024, or the provisions of Section of this Ordinance shall expire”; and

WHEREAS, the date of the sunset provision was intended to be 2 years from the date the Ordinance went into effect, with October 26, 2024 being the earliest date the applicable section(s) of the City Code would “sunset” and be removed without further action from Council; and

WHEREAS, since Ordinance 2022-47 went into effect it has been difficult to track the number of cases of “retail theft” due to the lack of a separate city code section defining “retail theft” as a separate offense under the city code; and

WHEREAS, retail theft has continued to be an issue in the City of Aurora and not having the ability to track the effect of Ordinance 2022-47 has limited the ability to evaluate its effectiveness; and

WHEREAS, the City code should be amended to define an offense for “retail theft” to better identify cases filed in the municipal court where the minimum penalty defined by Ordinance 2022-47 applies; and

WHEREAS, the City code should also be amended to place specific penalty provisions for specific offenses in the same section as the offense is defined versus being placed under Section 1-13 General Penalty.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. “Section 3” of Ordinance Number 2022-47 is hereby REPEALED:

Ordinance 2022-47, ~~Section 3. The City Council will evaluate the effectiveness of Section 1 of this ordinance and formally act to extend it on _____, 2024, or the provisions of Section 1 of this Ordinance shall expire.~~

Section 2. That the City Code of the City of Aurora, Colorado, is hereby amended by adding a section, to be numbered Section 94-85, which section reads as follows:

Section 94-85. Retail Theft

- (a) A person commits Retail Theft when the person commits the offense of Theft under Section 94-74 of any goods or merchandise for sale by a business licensed under Section 86-87.**
- (b) As part of the fine or penalty as defined in Section 1-13, every person who pleads guilty or no contest to or is convicted of this offense where the amount of value taken is over \$100.00, a mandatory minimum jail sentence of three (3) days shall be imposed in addition to any other sentence imposed by the Court. The Court shall not set aside or suspend this minimum sentence.**
- (c) Repeat offender.**
 - (1) Upon a conviction of a defendant under this section, if evidence is presented that the defendant has previously been once convicted of Retail Theft or a similar offense under the Aurora City Code, Colorado state law, or the laws of another state, a mandatory minimum jail sentence of ninety (90) days shall be imposed. The Court shall not set aside or suspend this minimum sentence.**
 - (2) Upon a conviction of a defendant under this section, if evidence is presented that the defendant has previously been at least twice convicted of Retail Theft or a similar offense under the Aurora City Code, Colorado state law, or the laws of another state, a mandatory minimum jail sentence of one hundred eighty (180) days shall be imposed. The Court shall not set aside or suspend this minimum sentence.**

Section 3. That Section 94-74 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Section 94-74. Theft.

- (a) A person commits theft when he or she knowingly obtains, retains, or exercises control over anything of value of another having a value of less than \$1,000 without**

authorization or by threat or deception; or receives, loans money by pawn or pledge on, or disposes of anything of value or belonging to another that he or she knows or believes to have been stolen; and

- (1) Intends to deprive the other person permanently of the use or benefit of the thing of value;
- (2) Knowingly uses, conceals, or abandons the thing of value in such manner as to deprive the other person permanently of its use or benefit;
- (3) Uses, conceals, or abandons the thing of value intending that such use, concealment, or abandonment will deprive the other person permanently of its use or benefit; or
- (4) Demands any consideration to which that person is not legally entitled as a condition of restoring the thing of value to the other person.
- (5) Knowingly retains the thing of value more than 72 hours after the agreed-upon time of return in any lease or hire agreement.

(b) It shall be unlawful to knowingly transfer a label or other designation of price from one item to another or alter the item with intent to purchase such item at a lesser cost.

(c) If any person willfully conceals unpurchased goods, wares, or merchandise owned or held by and offered or displayed for sale by any store or other mercantile establishment, whether the concealment is on that person's own body, clothing or otherwise and whether on or off the premises of the store or mercantile establishment, such concealment shall constitute prima facie evidence that the person intended to commit the crime of theft.

(d) It shall be unlawful to procure food or accommodations with the intent to defraud in any public establishment without making payment therefor in accordance with an agreement with such public establishment where the total amount due under such agreement is \$1,000 or less.

(1) For the purposes of this subsection, the following words have the following meanings:

(a) *Agreement with such public establishment* means any written or verbal agreement as to the price to be charged for and the acceptance of food, beverage, service, or accommodations where the price to be charged therefor is printed on a menu or schedule of rates shown to or made available by a public establishment to the patron and includes the acceptance of such food, beverage, service, or accommodations for which a reasonable charge is made.

(b) *Public establishment* means any establishment selling or offering for sale prepared food or beverages to the public generally, or any establishment leasing or renting overnight sleeping

accommodations to the public generally, including but not exclusively restaurants, cafes, dining rooms, lunchcounters, coffeeshops, boardinghouses, hotels, motor hotels, motels, and roominghouses, unless the rental thereof is on a month-to-month basis or a longer period of time.

(2) As part of the fine or penalty imposed under Section 1-13, a person who pleads guilty or no contest to or is convicted of an offense under this subsection where the total due under the agreement is \$15.00 or more:

(a) *Mandatory minimum sentence.* A mandatory minimum jail sentence of three (3) days shall be imposed. The court shall not set aside or suspend this minimum sentence.

(e) For the purpose of this section, the terms "anything having value," "anything of value," and "thing of value" shall include, but not be limited to, the following:

(1) Any tangible or intangible thing, including property, which has value or may be exchanged for monetary consideration, including any "major component of a motor vehicle." A "major component of a motor vehicle" means any of the following parts of a motor vehicle:

- a. The engine;
- b. The transmission;
- c. A front fender;
- d. The hood;
- e. Any door allowing entrance to or egress from the passenger compartment of the vehicle;
- f. The front or rear bumper;
- g. A rear quarter panel;
- h. The deck lid, tailgate, or hatchback;
- i. The trunk floor pan;
- j. The cargo box of a pickup truck;
- k. The frame, or if the vehicle has a unitized body, the supporting structure or structures that serve as the frame;
- l. The cab of a truck;
- m. The body of a passenger vehicle;
- n. An airbag or airbag assembly;
- o. A wheel or tire;
- p. A catalytic converter; or
- q. Any other part of a motor vehicle that is comparable in design or function to any of the parts that have been listed, or that have been labeled with a unique traceable identification number, by the manufacturer of the motor vehicle or part;

(2) Any services for which a person would reasonably expect to provide monetary compensation; or

(3) Any compensation to which a person is entitled for services provided.

(f) For the purposes of this subsection, the term "services" shall not include the provision of shelter or housing for any term whatsoever.

(g) *Evidence of value.*

(1) For purposes of this section, when theft occurs from a store, evidence of the retail value of the thing involved shall be prima facie evidence of the value of the thing involved. Evidence offered to prove retail value may include but shall not be limited to affixed labels and tags, signs, shelf tags, and notices.

(2) For the purposes of this section, in all cases where theft occurs, evidence of the value of the thing involved may be established through the sale price of other similar property and may include but shall not be limited to testimony regarding affixed labels and tags, signs, shelf tags, and notices tending to indicate the price of the thing involved. Hearsay evidence shall not be excluded in determining the value of the thing involved.

Section 4. That Section 94-75 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Section 94-75. Motor Vehicle Theft.

(a) As used in this section, unless the context otherwise requires, the term "motor vehicle" means all vehicles of whatever description propelled by any power other than muscular, except vehicles running on rails.

(b) It shall be unlawful to commit motor vehicle theft. A person commits motor vehicle theft if he or she knowingly obtains or exercises control over a motor vehicle of another without authorization or by threat or deception and if none of the aggravating factors or other circumstances listed in C.R.S. § 18-4-409, as amended, recodified, or reenacted, that would otherwise classify the offense as a felony are present.

(c) As part of the fine or penalty imposed under Section 1-13, a person who pleads guilty or no contest to or is convicted of an offense under this Section:

(1) *Mandatory minimum sentence.* A mandatory minimum jail sentence of sixty (60) days shall be imposed. The court shall not set aside or suspend this minimum sentence.

(2) *Repeat Offender.* If evidence is presented that the defendant has previously been convicted for motor vehicle theft or a similar offense under the Aurora City Code, Colorado state law, or the laws of another state, a mandatory minimum jail sentence of one hundred twenty (120)

days shall be imposed. The court shall not set aside or suspend this minimum sentence.

Section 5. That Section 50-33 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Section 50-33. Failure to appear.

(a) Failure to appear in the municipal court at the designated time, after having been issued a summons and complaint for a violation of any provision of this Code, except for a traffic infraction, shall constitute a violation of this section regardless of the disposition of the original charge. If a partnership, unincorporated association, corporation or other business entity named as defendant fails, without justification, to appear as required at any stage of the proceedings, the court shall note the failure to appear, enter a plea of not guilty if no plea has been entered, and notify the finance department of such failure to appear.

(b) It shall be unlawful for any person to fail to appear in response to any subpoena or show cause order served upon that person, and a bench warrant may be issued by the court for such failure to appear.

(c) The requirement for an appearance in court may be complied with by an appearance of an attorney at law with the permission of the court.

(d) As part of the fine or penalty imposed under Section 1-13, a person who pleads guilty or no contest to or is convicted of an offense under this Section:

(1) *Mandatory minimum sentence.* A mandatory minimum jail sentence of ten (10) days shall be imposed. The court shall not set aside or suspend this minimum sentence.

Section 6. That Section 1-13 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Section 1-13. General Penalty.

(a) ~~Unless otherwise provided in an ordinance or in subsection (j) of this section and w~~With the further exception of those penalties provided for traffic infractions as set out in subsection (f) of this section, whenever in any section of this Code or any section of a rule or regulation promulgated under this Code the doing of any act is required, prohibited or declared to be unlawful and no definite fine or penalty is provided for a violation thereof, any person who shall be convicted of or plead guilty or no contest to a violation of any such section shall, for each

offense, be fined in a sum not more than \$2,650 or imprisoned for up to 364 days, or both such fine and imprisonment. Each day an offense continues shall constitute a separate offense.

(b) The municipal court shall be empowered to permit a person upon conviction to participate in an electronic monitoring program for a period not to exceed 180 days and to pay the costs associated with the program. Electronic monitoring shall consist of the attachment of a device upon the person for the purpose of reporting to a central monitoring office whether the person is in the immediate vicinity of his or her required location. Failure to comply with the electronic monitoring program on the part of an individual shall constitute contempt of the municipal court. The municipal court shall also be empowered to order a person, upon conviction, to be placed upon probation and, as a condition of such probation, may permit the defendant to participate in an electronic monitoring program for a period not to exceed 180 days and to pay all costs associated with the program. Failure to comply with the electronic monitoring program on the part of the defendant shall constitute a violation of the terms and conditions of probation, and upon a showing of probable cause to believe that such a violation has occurred to the municipal court, a judge thereof may issue a warrant for the defendant's arrest, a summons to be served upon the defendant ordering him or her to appear in court on a date certain or may take whatever other action as allowed by ordinance or law regarding a breach of the terms and conditions of probation. In any hearing upon a failure to complete a sentence of electronic monitoring or on an allegation of a violation of the terms and conditions of probation brought under this section, the records or copies thereof of the monitoring organization shall be admissible in evidence and, if the contents thereof indicate one or more violation did occur, then such records shall constitute prima facie evidence that such violation occurred as alleged.

(c) All penalties in codes adopted by reference in this Code are hereby superseded by this section.

(d) The suspension or revocation of any license, permit or other privilege conferred by the city shall not be regarded as a penalty for the purposes of this Code.

(e) In addition to the provisions contained in section 50-299 of this Code relating to the incarceration of a child, the municipal court shall possess the authority to permit a child to participate in an electronic monitoring program either as a result of a direct sentence or as a condition of probation. Electronic monitoring may not exceed 180 days. The municipal court shall also possess the authority to order the child and/or parent to pay the costs of the electronic monitoring. Failure to comply with the electronic monitoring program on the part of the child shall constitute contempt of the municipal court or a violation of probation, as the case may be.

(f) Every person who admits guilt or liability or is otherwise found guilty or liable for any traffic infraction, as defined in division 2 of article II of chapter 134 of this Code, shall be punished by a fine not exceeding \$2,650.00. A jail sentence shall not be available as a punishment for traffic infractions.

(g) No jail sentence shall be imposed upon a partner, corporate officer or other principal of a business entity, if the summons and complaint has been issued in the name of the business entity alone. Any fine imposed upon a business entity shall be reduced to a written judgment and sentence, which shall be collected by the City in the manner provided by law for civil judgments, and any money or other assets recovered shall be remitted to the municipal court, which shall remit the money or other assets to the general fund of the City.

(h) Upon conviction, a plea of guilty or a plea of no contest to any municipal code violation contained in article II of chapter 10; article II of chapter 58; articles II and III of chapter 94; divisions 1 through 3 of article IV of chapter 94; and divisions 1 and 3 of article V of chapter 94 of this Code, the court shall, upon motion, order forfeited to the police department for use in furtherance of the department's functions all monies used in the commission or furtherance of the offense that have been seized by the police department in connection with such offense. This subsection shall be in addition to any other penalty provided for in this Code and shall not preclude the exercise of any other right of forfeiture which may exist under state or federal law.

(i) Every person who pleads guilty or no contest to or is convicted of any violation of article II of chapter 10; article II of chapter 58; articles II, III and IV of chapter 94; divisions 1 through 3 of article V of chapter 94; and article VI of chapter 94 of this Code may be required, by order of the municipal court, to forfeit any weapon and ammunition when such weapon and ammunition was used, possessed or displayed during the course of the criminal episode which gave rise to the conviction, no contest plea or guilty plea or when such weapon and ammunition formed the basis of the complaint. Forfeiture may be an element of sentencing or a condition of probation or deferred judgment.

(1) Title to and ownership of such weapon shall be awarded to the police department upon the attachment of finality of judgment or as soon as possible thereafter. Upon the awarding of title and ownership of such weapon to the police department, the department is authorized to use such weapon for legitimate law enforcement purposes or dispose of it according to ordinance and applicable state law.

(2) Weapons and ammunition subject to forfeiture pursuant to this section shall include but are not limited to weapons and ammunition used, concealed, possessed, displayed or loaned in violation of sections 94-142 through 94-152 of this Code.

~~(j) As part of the fine or penalty as defined in subsection (a) of this section, every person who pleads guilty or no contest to or is convicted of the municipal code offenses in this section shall be sentenced by the municipal court in accordance therewith.~~

~~(1) Section 94-75, Motor vehicle theft.~~

~~a. Mandatory minimum sentence. A mandatory minimum jail sentence of 60 days shall be imposed. The court shall not set aside or suspend this minimum sentence with the first three days to be served at the Aurora Detention Facility and the remaining days to be served at the applicable county jail in the county where the offense occurred.~~

~~b. Repeat offender. If evidence is presented that the defendant has previously been convicted for motor vehicle theft or a similar offense under the Aurora City Code, Colorado state law, or the laws of another state, a mandatory minimum jail sentence of 120 days shall be imposed. The court shall not set aside or suspend this minimum sentence with the first three days to be served at the Aurora Detention Facility and the remaining days to be served at the applicable county jail in the county where the offense occurred.~~

~~(2) Section 50-33, Failure to appear. A mandatory minimum jail sentence of 10 days shall be imposed. The court shall not set aside or suspend this minimum sentence with the first three days to be served at the Aurora Detention Facility and the remaining days to be served at the applicable county jail in the county where the offense occurred.~~

~~(3) Section 94-74, Theft.~~

~~a. For those theft offenses involving “retail theft” with the amount of value taken being over \$100.00, a mandatory minimum jail sentence of three days shall be imposed in addition to any other sentence imposed by the court. The court shall not set aside or suspend this minimum sentence.~~

~~1. For purposes of this section, “retail theft” is defined as theft under section 94-74 of any goods or merchandise offered for sale by a business licensed under section 86-87.~~

~~b. Repeat offender.~~

~~1. If evidence is presented that the defendant has previously been once convicted of retail theft or a similar offense under the Aurora City Code, Colorado state law, or the laws of another state, a mandatory minimum jail sentence of 90 days shall be imposed. The court shall not set aside or suspend this minimum sentence.~~

~~2. If evidence is presented that the defendant has previously been at least twice convicted of retail theft or a similar offense under the~~

~~Aurora City Code, Colorado state law, or the laws of another state, a mandatory minimum jail sentence of 180 days shall be imposed. The court shall not set aside or suspend this minimum sentence.~~

~~e. For those theft offenses involving “defrauding a public establishment” pursuant to section 94-97(d) where the total amount due under the agreement is \$15.00 or more, a mandatory minimum jail sentence of three days shall be imposed in addition to any other sentence imposed by the court. The court shall not set aside or suspend this minimum sentence.~~

Section 7. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

Section 8. Repealer. All orders, resolutions, or ordinances in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this ____ day of _____, 2022.

PASSED AND ORDERED PUBLISHED this ____ day of _____, 2024.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:



PETER A. SCHULTE, Public Safety Group Client Manager



CITY OF AURORA

Council Agenda Commentary

Item Title: Amendment of Chapter 114 of the City Code by Enacting Article V Titled "Shopping Cart Management" (Ordinance)
Item Initiator: Stephanie Hancock, Council Member
Staff Source/Legal Source: Jason Batchelor, City Manager / Pete Schulte, Manager of Client Services, City Attorney
Outside Speaker: N/A
Council Goal: 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

COUNCIL MEETING DATES:

Study Session: 8/26/2024

Regular Meeting: 9/9/2024

2nd Regular Meeting (if applicable): 9/23/2024

Item requires a Public Hearing: Yes No

ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Stephanie Hancock, Council Member
Jason Batchelor, City Manager / Pete Schulte, Manager of Client Services, City Attorney
Estimated time: 10 mins

ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field above.

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Public Safety, Courts & Civil Service

Policy Committee Date: 8/8/2024

Action Taken/Follow-up: (Check all that apply)

- Recommends Approval
- Does Not Recommend Approval
- Forwarded Without Recommendation
- Minutes Not Available
- Minutes Attached

HISTORY (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

N/A

ITEM SUMMARY (Brief description of item, discussion, key points, recommendations, etc.)

This Ordinance provides a legal pathway for the seizure of abandoned, stolen, and lost shopping carts from areas of the city and provides a process for review by the City Manager or Designee.

FISCAL IMPACT

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact
- Budgeted Expenditure Impact
- Non-Budgeted Expenditure Impact
- Workload Impact
- No Fiscal Impact

REVENUE IMPACT

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

BUDGETED EXPENDITURE IMPACT

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

The "review" of any removal of shopping carts will be the responsibility of the City Manager and is expected to be included in the City Manager's current budget.

NON-BUDGETED EXPENDITURE IMPACT

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

WORKLOAD IMPACT

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

N/A

QUESTIONS FOR COUNCIL

Does Council wish to support this Ordinance that provides a legal pathway for the seizure of abandoned, stolen, and lost shopping carts from areas of the city and provides a process for review by the City Manager or Designee?

LEGAL COMMENTS

The City Council, as governing body of the city, shall have the power to make ordinances as it shall deem necessary and proper to provide for the safety; preserve the health; promote the prosperity; and improve the morals, order, comfort and convenience of the city and the inhabitants thereof. Aurora City Code §2-32. (Schulte)

ORDINANCE NO. 2024-_____

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING CHAPTER 114 OF THE CITY CODE BY ENACTING ARTICLE V TITLED “SHOPPING CART MANAGEMENT”

WHEREAS, the City of Aurora, Colorado, (the “City”), is a home rule municipality, organized and existing under and by virtue of Article XX, Section 6 of the Colorado Constitution, and as such the City has the authority to regulate matters of local concern including taxation for local municipal purposes; and

WHEREAS, it is a fundamental purpose of municipal governments to provide for the health, safety, and welfare of the citizens of Aurora; and

WHEREAS, the City Council of the City of Aurora finds and declares that the presence of abandoned, stolen, wrecked and/or dismantled shopping carts on public and private property creates a visual blight, is aesthetically detrimental to the community, is injurious to the general welfare of the citizens, and constitutes a public nuisance; and

WHEREAS, the City Council believes that by establishing an ordinance that facilitates the removal of lost, stolen, or abandoned shopping carts found away from retail establishments is the best way to reduce this source of visual blight, improve the aesthetic appearance of the City and protect the health and safety of the public.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO.

Section 1. Chapter 114, Article V, of the City Code of the City of Aurora, Colorado, is hereby enacted to read as follows:

Article V, Shopping Cart Management.

Section 114-201. – Definitions.

The following definitions are applicable to this Article:

***Camp, camping, or encampment* means the use of property for the purpose of unauthorized overnight occupancy, or to reside or dwell in a place, with shelter, or the use of property for the purpose of overnight occupancy or longer occupancy. Camp or camping includes the use of a vehicle for overnight occupancy where overnight occupancy or overnight camping is not permitted, violates City Code, violates a city rule or regulation, or is not otherwise permitted by the city. Camping does not include napping during the day or picnicking.**

City means the City of Aurora, Colorado, its departments, employees, and agents.

City manager means the city manager of the City of Aurora, Colorado, or designee.

City-owned property means any property owned, leased, or controlled by the city.

Lost, Stolen or Abandoned Shopping Cart means a Shopping Cart removed from the Premises of a Retail Establishment by any person without the written permission or consent of the Owner, or any shopping cart left unattended, discarded, or abandoned upon any public or private property other than the premises of a retail establishment from which the shopping cart was removed, regardless of whether such shopping cart was removed from the premises with the permission of the Owner, unless such person in possession of the shopping cart is an Owner, an Owner's employee, a person or business entity engaged in the business of cart retrieval on behalf of the Owner, or a customer who has written consent, on store letterhead and signed by the Owner, to be in possession of a cart or to remove a cart from the store premises.

Premises of a Retail Establishment means the entire area owned and/or utilized by the business establishment that provides Shopping Carts and/or used by such business establishment's customers, including any parking lot or other area provided by or for an Owner for use by a customer for parking an automobile or other vehicle.

Public property means, by way of illustration, but not limited to, a highway, highway median, any street, street median, road, road median, alley, sidewalk, strips of land between streets and sidewalks, lanes, catch basins, pedestrian or transit mall, bike path, greenway, public parking lot, or any other structure or area encompassed within the public right-of-way; any park, parkway, mountain park, open space, natural area, trail, beach, playground, or other publicly owned recreation facility; a municipal watercourse, bodies of water, watercourses, stormwater infrastructure such as, but not limited to, bridges, pipes, inlets and culverts; or any other grounds, buildings, or other facilities owned or leased by the city or by any other public entity, regardless of whether such public property is vacant or occupied and actively used for any public purpose.

Public right-of-way means an area of land dedicated to the public in fee simple title conveyed to the city for drainage, pedestrian, utility, street lighting, landscaping, roadway, or other purposes.

Retail Establishment means any business that provides shopping carts located in the City, regardless of whether the business is advertised or operated as a retail or wholesale business, and regardless of whether the business is open to the general public, or is a private club or business, or is a membership store.

Shopping Cart means and includes a basket, which is usually mounted on wheels or similar device, that is generally used in a retail establishment by a customer for the purpose of collecting and/or transporting goods of any kind, whether manually, electrically, or otherwise propelled.

Section 114-202. - Removal of Lost, Stolen, or Abandoned Shopping Carts.

- (a) Any Shopping Cart readily identified as once belonging to a Retail Establishment found abandoned in the City away from the Premises of a Retail Establishment shall be seized.**

- (b) It shall be a rebuttable presumption that any Shopping cart readily identified as once belonging to a Retail Establishment located during an abatement of an unauthorized camp under Section 114-107 or in possession of a person away from the Premises of a Retail Establishment has been unlawfully removed from a Retail Establishment and the Shopping cart shall be seized. Evidence to rebut this presumption is information the person in possession of the Shopping Cart has a right of ownership of the Shopping cart at the time of camp abatement. If the person is able to rebut this presumption by the preponderance of the presented evidence prior to seizure, the Shopping cart shall not be seized from the person.**

- (c) The city manager shall develop a policy to handle the disposition of Shopping carts seized under this section.**

Section 114-203. – Review by the City Manager or Designee.

- (a) The city manager or designee shall develop a review process for those persons who wish to have the decision to seize a Shopping cart from their possession reviewed by the City manager or designee and to decide whether to return the seized Shopping cart or similar to the person based on the preponderance of the evidence presented with the request for review that the person is the bona fide owner of a Shopping cart. A person may file a review of the decision to seize a Shopping cart from the person by providing notice as directed within seven (7) days following the seizure of the Shopping cart. The City manager or designee shall provide**

a response to the request for review within five (5) business days after the review request is received.

(b) The City manager shall develop the parameters and/or procedures required to facilitate the review process by the city manager or designee as described.

Section 3. Severability. The provisions of this Ordinance are hereby declared to be severable. If any section, paragraph, clause, or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 4. Repealer. All orders, resolutions, or ordinances in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

Section 5. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

INTRODUCED, READ AND ORDERED PUBLISHED this ____ day of _____, 2024.

PASSED AND ORDERED PUBLISHED BY REFERENCE this ____ day of _____, 2024.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ,
City Clerk

APPROVED AS TO FORM:



PETER SCHULTE, City Attorney's Office
Public Safety Client Group Manager



CITY OF AURORA

Council Agenda Commentary

Item Title: Program for the Retrieval of Abandoned or Unlawfully Removed Shopping Carts from Retailers in the City (Resolution)
Item Initiator: Stephanie Hancock, Council Member
Staff Source/Legal Source: Jason Batchelor, City Manager / Pete Schulte, Manager of Client Services, City Attorney
Outside Speaker: N/A
Council Goal: 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

COUNCIL MEETING DATES:

Study Session: 8/26/2024

Regular Meeting: 9/9/2024

2nd Regular Meeting (if applicable): N/A

Item requires a Public Hearing: Yes No

ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Stephanie Hancock, Council Member
Jason Batchelor, City Manager / Pete Schulte, Manager of Client Services, City Attorney
Estimated time: 10 mins

ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field above.

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Public Safety, Courts & Civil Service

Action Taken/Follow-up: (Check all that apply)

- Recommends Approval
- Does Not Recommend Approval
- Forwarded Without Recommendation
- Minutes Not Available
- Minutes Attached

HISTORY (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

N/A

ITEM SUMMARY (Brief description of item, discussion, key points, recommendations, etc.)

This Resolution directs the City Manager to develop a regular program to collect abandoned or unlawfully removed shopping carts from retailers and to provide funding for the program.

FISCAL IMPACT

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact
- Budgeted Expenditure Impact
- Non-Budgeted Expenditure Impact
- Workload Impact
- No Fiscal Impact

REVENUE IMPACT

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

BUDGETED EXPENDITURE IMPACT

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

N/A

NON-BUDGETED EXPENDITURE IMPACT

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

Currently, the 10 cent retail bag fee is being used to facilitate a pilot program. Depending on how long this fund can support a permanent program will need to be evaluated and later budgeted.

WORKLOAD IMPACT

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

N/A

QUESTIONS FOR COUNCIL

Does Council wish to support this Resolution directing the City Manager to develop a regular program to collect abandoned or unlawfully removed shopping carts from retailers and to provide funding for the program

LEGAL COMMENTS

Pursuant to City Code Section 2-32, City Council has the power conferred by the State Constitution, statute, or City Charter, and such as it shall deem necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of the City and the inhabitants thereof. (Schulte)

RESOLUTION NO. R2024- ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, TO INITIATE A PROGRAM FOR THE RETRIEVAL OF ABANDONED OR UNLAWFULLY REMOVED SHOPPING CARTS FROM RETAILERS IN THE CITY.

WHEREAS, the City Council of the City of Aurora (Council) recognizes that abandoned and unlawfully removed shopping carts from retailers are an unpleasant sight on the cityscape, contributing to neighborhood deterioration and creating hazards for pedestrians and motorists; and

WHEREAS, Council recognizes that abandoned or unlawfully removed shopping carts from retailers can obstruct public rights-of-way, impede stormwater flow, and become receptacles for trash and waste, impacting the cleanliness and aesthetics of the City; and

WHEREAS, Council believes addressing the issue of abandoned shopping carts demonstrates a commitment to improving the quality of life for City residents and enhancing the overall attractiveness, functionality, and safety of our community.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, THAT:

Section 1. The Aurora City Council resolves as follows:

- 1) That the City shall initiate a Shopping Cart Retrieval Program aimed at collecting and returning abandoned or unlawfully removed shopping carts from retailers to their respective retailers.
- 2) That the program shall be administered at the direction of the City Manager, in collaboration with local retailers, property owners, and community organizations.

Section 2. The Objectives of the Program are as follows:

- 1) To reduce the number of abandoned or unlawfully removed shopping carts from retailers in public or private areas within the City.
- 2) To educate retailers about their responsibility to prevent shopping cart removal from their premises and to retrieve abandoned carts in a timely manner.
- 3) To enhance community awareness and engagement through public education campaigns about the proper use and return of shopping carts.

Section 3. Implementation Strategies shall be as follows:

- 1) Collaborate with local retailers to create strategies they can implement to prevent carts from being removed from the store premises
- 2) Create a team of staff or contractors to collect abandoned or unlawfully removed shopping carts from City streets, parks, and other public areas.

- 3) Establish a system to return collected shopping carts to the proper retailers.

Section 4. Funding and Budget:

- 1) Funding for the Shopping Cart Retrieval Program shall be obtained through the allocation of fees collected from grocery store bag sales.
- 2) The City Manager shall identify any additional City funding and seek additional Council approval as part of the budgeting process as needed to support the implementation and operation of the Shopping Cart Retrieval Program if fees collected from grocery store bag sales are not sufficient.
- 3) The City Manager may also seek grant opportunities, partnerships, or sponsorships with local businesses to supplement City funding for the program.

Section 5. Public Outreach and Education:

- 1) Develop and distribute educational materials, such as brochures, posters, and social media campaigns, to inform residents and retailers about the importance of returning shopping carts and the consequences of abandonment.
- 2) Organize community clean-up events and volunteer opportunities to involve residents in the effort to reduce abandoned shopping carts in the City.

Section 6. The Mayor and City Clerk are hereby authorized to execute with such technical additions, deletions, and variations as may be deemed necessary or appropriate by the City Attorney that are not inconsistent with this Resolution.

Section 7. All resolutions or part of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this _____ day of _____, 2024.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:



PETER SCHULTE, Public Safety Client Group Manager, City Attorney



CITY OF AURORA

Council Agenda Commentary

Item Title: Mandatory Impoundment of Vehicles (Ordinance)
Item Initiator: Stephanie Hancock, City Council Member
Staff Source/Legal Source: Jason Batchelor, City Manager / Pete Schulte, Manager of Client Services, City Attorney
Outside Speaker: N/A
Council Goal: 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

COUNCIL MEETING DATES:

Study Session: 8/26/2024

Regular Meeting: 9/9/2024

2nd Regular Meeting (if applicable): 9/23/2024

Item requires a Public Hearing: Yes No

ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Stephanie Hancock, Council Member
Jason Batchelor, City Manager / Pete Schulte, Manager of Client Services, City Attorney
Estimated time: 10 mins

ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field above.

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Public Safety, Courts & Civil Service

Policy Committee Date: 8/8/2024

Action Taken/Follow-up: (Check all that apply)

- Recommends Approval Does Not Recommend Approval
- Forwarded Without Recommendation Minutes Not Available
- Minutes Attached

HISTORY (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

N/A

ITEM SUMMARY (Brief description of item, discussion, key points, recommendations, etc.)

This Ordinance requires a police officer to impound and tow a vehicle that the officer legally stopped if the operator of the vehicle does not have a valid driver's license, valid vehicle registration, AND confirmed insurance on the vehicle. This Ordinance does have an exception for police officers from this requirement if there is an emergency or exigent circumstances not allowing the officer to impound the vehicle.

FISCAL IMPACT

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact Budgeted Expenditure Impact Non-Budgeted Expenditure Impact
 Workload Impact No Fiscal Impact

REVENUE IMPACT

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

BUDGETED EXPENDITURE IMPACT

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

This Ordinance will impact current police department resources in order to comply with this Ordinance.

NON-BUDGETED EXPENDITURE IMPACT

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

WORKLOAD IMPACT

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

Current budgeted police officers will have to absorb this new requirement in their work. No additional FTEs needed.

QUESTIONS FOR COUNCIL

Does Council wish to support this Ordinance to require a police officer to impound and tow a vehicle that the officer has legally stopped if the operator of the vehicle does not have a valid driver's license, valid vehicle registration, AND confirmed insurance on the vehicle?

LEGAL COMMENTS

The City Council, as governing body of the city, shall have the power to make ordinances as it shall deem necessary and proper to provide for the safety; preserve the health; promote the prosperity; and improve the morals, order, comfort and convenience of the city and the inhabitants thereof. Aurora City Code §2-32. (Schulte)

ORDINANCE NO. 2024- _____

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING SECTIONS OF THE CITY CODE PERTAINING TO MANDATORY IMPOUNDMENT OF VEHICLES STOPPED BY A POLICE OFFICER WHERE THE OFFICER HAS PROBABLE CAUSE THAT THE OPERATOR DOES NOT HAVE A VALID DRIVER'S LICENSE, THE VEHICLE IS NOT PROPERLY REGISTERED, AND THE VEHICLE DOES NOT HAVE INSURANCE AS REQUIRED BY LAW

WHEREAS, since the pandemic, the number of motor vehicles on Aurora's roads with expired license plates or expired temporary registration tags has increased exponentially; and

WHEREAS, more often than not, when a vehicle is stopped by a police officer for not having valid registration, the officer finds that the operator also does not have a valid driver's license or insurance covering the operation of the motor vehicle as required by law; and

WHEREAS, the operation of a vehicle on Aurora's roads where the operator does not have a valid driver's license, the vehicle being operated is not registered, and the vehicle being operated does not have insurance covering the operation of a motor vehicle is a public safety hazard to other citizens on the road; and

WHEREAS, it is unsafe and a risk to public safety for a vehicle to be driven on the roadways of Aurora under the three conditions described above;

WHEREAS, Aurora has the authority under its home rule status to govern when a police officer impounds a vehicle after it has been lawfully stopped by a police officer; and

WHEREAS, the City Council finds that to protect public safety, any vehicle that is stopped by a police officer and the police officer has probable cause that the operator does not have a valid driver's license and the vehicle is not registered or insured as required by law is not safe to operate on our roadways and shall be impounded by a police officer.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The City Code of the City of Aurora, Colorado, Sec. 134-37 is hereby amended to read as follows:

Sec. 134-37. Authority to impound vehicles.

(a) Members of the police department are authorized, at their discretion, to remove or have removed at their direction a vehicle from a street or any public way or place to the nearest garage or other place of safety or to a garage or other impound facility designated

or maintained by the police department or by this city, under the circumstances as follows:

- (1) When any vehicle is left unattended upon any bridge, causeway, viaduct, in any underpass or tunnel or where such vehicle constitutes an obstruction to traffic.
- (2) When a vehicle is found being driven upon the street and is in such a condition so as to represent an articulable substantial threat to the health, safety or welfare of the public.
- (3) When any vehicle is parked upon any street or highway in such a manner or under such conditions as to interfere with the free movement of vehicular traffic or with proper street or highway maintenance.
- (4) When any member of the police department has probable cause to believe that vehicle is an abandoned vehicle, as defined in section 134-146
- (5) When the driver of such vehicle is taken into custody by the police department.
- (6) When removal is necessary in the interest of public safety because of fire, flood, storm, or other emergency or disaster.
- (7) When any vehicle is parked in a posted fire lane.
- (8) When any vehicle is found on any property owned or controlled by the city or any other governmental agency except for the rights-of-way of streets or highways and designated parking spaces. This subsection does not apply to city maintenance or city patrol vehicles.
- (9) When any vehicle is parked upon any street scheduled for or upon which cleaning, sweeping, repair or maintenance operations are being conducted, provided that such street has been posted with an authorized sign temporarily prohibiting parking on such street during the involved operations.
- (10) When the vehicle is suspected of containing evidence of a crime, stolen goods or contraband or is evidence in a criminal investigation.
- (11) When a vehicle upon a street or highway is so disabled as to constitute an obstruction to traffic and the person in charge of the vehicle is, by reason of injury, incapacitated to such an extent as to be unable to provide for its custody or removal.
- (12) When any vehicle is left unattended on any street with its engine running or with keys in the ignition switch or lock.

(13) When a vehicle is parked in violation of any traffic ordinance and is an obstruction or hazard or potential obstruction or hazard to any lawful function or limits the normal access to a use of any public or private property.

(14) When the police officer has probable cause to believe that the driver of a vehicle is using license plates or a license permit unlawfully, misusing the license plates or the license permit issued to the driver or a vehicle is driven or parked without proper license plates or a license permit or with no license plates or license permit or a vehicle is driven or parked with an invalid or expired license plate or permit.

(15) When the police officer has probable cause to believe that the driver of a vehicle is driving without an operator's license or chauffeur's license which is current and valid or who does not have such a license in the driver's immediate possession or who drives a vehicle contrary to restrictions imposed upon the license, or who drives a vehicle while his or her operator's or chauffeur's license has been denied, suspended, cancelled, or revoked by the state.

(16) When the driver of any vehicle or the vehicle which the driver is driving is suspected of having been involved in any hit and run accident.

(17) When any vehicle is suspected of being stolen or parts thereof are suspected to be stolen parts.

(18) When a trailer or semitrailer, not connected to a motor vehicle or truck, is kept, stored, or parked on any public roadway within the city for more than 24 hours after having been cited for a violation of section 134-2(c)(4).

(19) Pursuant to section 134-356(c).

(20) When an unlawful vehicle, as defined in section 134-2(c), is kept, stored, or parked on any public right-of-way or roadway more than 24 hours after having been cited as an unlawful vehicle. If an unlawful vehicle, which has been cited as an unlawful vehicle, is found on any roadway within six months of the date of the original citation, it shall be subject to immediate removal or impoundment.

(21) When any vehicle is parked upon any street, highway or city owned property which has been posted as a tow away zone.

(b) Except as may be otherwise provided by the Model Traffic Code, no vehicle impounded in any authorized garage as provided in this section shall be released therefrom until the charge for towing such vehicle into the garage and the storage charges have been paid. The charge for towing or removal of any such vehicle and storage charges shall be fixed by the contract between the city and the towing service/garage. Such charge shall be posted for public inspection in the office of the authorized garage.

The individual tow truck operator shall also carry in his or her possession a list of the charges for services.

(c) Absent emergency or exigent circumstances, a police officer shall impound any vehicle lawfully stopped by the police officer and:

(1) The police officer observes the vehicle as described in (a)(14) [registration requirements] and the police officer has probable cause to believe that the operator is violating any section of Title 42, Article 3, Part 1 of the Colorado Revised Statutes [registration requirements], and

(2) The police officer observes the vehicle as described in (a)(15) [driver license requirements], and the police officer has probable cause to believe that the operator is violating any section of Title 42, Article 2, Part 1 of Colorado Revised Statutes [driver’s license requirements], and

(3) The police officer has probable cause to believe the operator is violating Section 134-8 [Compulsory Insurance] or §42-7-510, Colorado Revised Statutes [Insurance or bond required].

Section 2. Severability. The provisions of this Ordinance are hereby declared to be severable. If any section, paragraph, clause, or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 3. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

Section 4. Repealer. All orders, resolutions, or ordinances in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this _____ day of _____, 2024.

PASSED AND ORDERED PUBLISHED this _____ day of _____, 2024.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:



PETER SCHULTE, PUBLIC SAFETY CLIENT MANAGER



CITY OF AURORA

Council Agenda Commentary

Item Title: Preventing the Public from being Denied Access to the Aurora Reservoir Due to Private or Special Events Held at the Reservoir (Ordinance)
Item Initiator: Danielle Jurinsky, Council Member
Staff Source/Legal Source: Jason Batchelor City Manager / Pete Schulte, Manager of Client Services, City Attorney
Outside Speaker: N/A
Council Goal: 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

COUNCIL MEETING DATES:

Study Session: 8/26/2024

Regular Meeting: 9/9/2024

2nd Regular Meeting (if applicable): 9/23/2024

Item requires a Public Hearing: Yes No

ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Danielle Jurinsky, Council Member

Jason Batchelor, City Manager / Pete Schulte, Manager of Client Services, City Attorney

Estimated time: 10 mins

An ordinance preventing the public from being denied access to the Aurora Reservoir due to private or special events held at the reservoir

Sponsor: Danielle Jurinsky, Council Member

Jason Batchelor, City Manager / Pete Schulte, Manager of Client Services, City Attorney

Estimated time: 10 minutes

ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration

Reason for waiver is described in the Item Details field above.

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Public Safety, Courts & Civil Service

Policy Committee Date: 8/8/2024

Action Taken/Follow-up: (Check all that apply)

- Recommends Approval
- Does Not Recommend Approval
- Forwarded Without Recommendation
- Minutes Not Available
- Minutes Attached

HISTORY (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

N/A

ITEM SUMMARY (Brief description of item, discussion, key points, recommendations, etc.)

This Ordinance does not allow the Aurora Reservoir to be rented out for a special or private event that would deny access to the public not attending the special or private event.

FISCAL IMPACT

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact
- Budgeted Expenditure Impact
- Non-Budgeted Expenditure Impact
- Workload Impact
- No Fiscal Impact

REVENUE IMPACT

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

BUDGETED EXPENDITURE IMPACT

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

NON-BUDGETED EXPENDITURE IMPACT

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

WORKLOAD IMPACT

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

QUESTIONS FOR COUNCIL

Does council wish to support this Ordinance to not allow the Aurora Reservoir to be rented out for a special or private event that would deny access to the public not attending the special or private event?

LEGAL COMMENTS

The City Council, as governing body of the city, shall have the power to make ordinances as it shall deem necessary and proper to provide for the safety; preserve the health; promote the prosperity; and improve the morals, order, comfort and convenience of the city and the inhabitants thereof. Aurora City Code §2-32. (Schulte)

ORDINANCE NO. 2024- ____

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, ADDING SECTION 98-62 TO THE CITY CODE PERTAINING TO THE PUBLIC NOT BEING DENIED ACCESS TO THE AURORA RESERVOIR DUE TO PRIVATE OR SPECIAL EVENTS HELD AT THE RESERVOIR

WHEREAS, the City of Aurora, Colorado, (“City”) offers well-maintained parks, beautiful open space areas, and two scenic reservoirs for the public to enjoy and for private and special events; and

WHEREAS, the Aurora Reservoir has seven park shelters that can be reserved and rented on a first-come, first-serve basis for private events or special events; and

WHEREAS, reserving a park shelter at the Aurora Reservoir does not give the shelter renter exclusive access to the reservoir; and

WHEREAS, the City currently allows individuals and organizations to reserve the entire reservoir for private or special events at any time during the year that prevents other individuals from using the reservoir if not attending the private or special event; and

WHEREAS, the public should not be denied access to the Aurora Reservoir due to a private event or special event being held at the Aurora Reservoir.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The City Code of the City of Aurora, Colorado, is hereby amended by adding a section, to be numbered 98-62, which section reads as follows:

Sec. 98-62. Public access to the Aurora Reservoir.

The Aurora Reservoir shall not be available for rent or use for a special event or private event that closes the entire Reservoir to those individuals not attending the special or private event.

Section 2. Severability. The provisions of this Ordinance are hereby declared to be severable. If any section, paragraph, clause, or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 3 Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

Section 4. Repealer. All orders, resolutions, or ordinances in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this _____ day of _____, 2024.

PASSED AND ORDERED PUBLISHED this _____ day of _____, 2024.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:



PETER SCHULTE, Public Safety Client Group Manager



CITY OF AURORA

Council Agenda Commentary

Item Title: Plan for Transitioning Domestic Violence Cases and Other Related Matters (Resolution)
Item Initiator: Dustin Zvonek, Mayor Pro Tem
Staff Source/Legal Source: Jason Batchelor, City Manager / Jack Bajorek, Interim City Attorney
Outside Speaker: N/A
Council Goal: 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

COUNCIL MEETING DATES:

Study Session: N/A

Regular Meeting: 8/19/2024

2nd Regular Meeting (if applicable): N/A

Item requires a Public Hearing: Yes No

ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Dustin Zvonek, Mayor Pro Tem
Jason Batchelor, City Manager / Jack Bajorek, Interim City Attorney

ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field above.

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Use dropdown menu to select committee from list.

Policy Committee Date: N/A

Action Taken/Follow-up: (Check all that apply)

- | | |
|---|--|
| <input type="checkbox"/> Recommends Approval | <input type="checkbox"/> Does Not Recommend Approval |
| <input type="checkbox"/> Forwarded Without Recommendation | <input type="checkbox"/> Minutes Not Available |
| <input type="checkbox"/> Minutes Attached | |

HISTORY (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

ITEM SUMMARY (Brief description of item, discussion, key points, recommendations, etc.)

This is a continuation of the discussion from the 8/12/2024 Study Session

FISCAL IMPACT

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- | | | |
|--|--|--|
| <input type="checkbox"/> Revenue Impact | <input type="checkbox"/> Budgeted Expenditure Impact | <input type="checkbox"/> Non-Budgeted Expenditure Impact |
| <input type="checkbox"/> Workload Impact | <input type="checkbox"/> No Fiscal Impact | |

REVENUE IMPACT

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

BUDGETED EXPENDITURE IMPACT

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

N/A

NON-BUDGETED EXPENDITURE IMPACT

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

WORKLOAD IMPACT

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

N/A

QUESTIONS FOR COUNCIL

Does Council wish to move this item on to a Regular Agenda for formal approval?

LEGAL COMMENTS

A Council Member has the authority to place items on the Study Session and Regular/Special Meeting agendas. Each such item shall indicate the party requesting the item. (Council Rules of Order and Procedure, B.2.a.)

A resolution may be used for a statement of policy or other matters which are not required to be adopted by ordinance as long as it doesn't include International issues or concerns (Section F, Paragraph 2, Rules of Order and Procedure for the Aurora City Council). An item is appropriate for Council's consideration if it is necessary and proper for the administration of municipal matters (Article 1-3 City Charter). (Wood)

RESOLUTION NO. R2024- ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, ACCEPTING THE PLAN FOR TRANSITIONING THE PROSECUTION OF DOMESTIC VIOLENCE CASES OUT OF THE AURORA MUNICIPAL COURT AS PRESENTED AND OTHER RELATED MATTERS.

WHEREAS, the City Council of the City of Aurora (Council) is committed to ensuring the efficient allocation of taxpayer funds and resources; and

WHEREAS, Council recognizes its responsibility to provide essential services, including those related to domestic violence cases, to its residents; and

WHEREAS, Council believes there is a significant financial burden on the taxpayers of Aurora in subsidizing Adams, Arapahoe, and Douglas Counties for the handling of non-felony domestic violence cases within the City of Aurora; and

WHEREAS, Council believes there is a need to transition the prosecution of domestic violence cases out of the Aurora Municipal Court; and

WHEREAS, on July 8, 2024, Council passed Resolution 24-83 requiring the City Manager, City Attorney, Court Administrator, and Presiding Judge to collaborate with key stakeholders and develop a plan for the transition; and

WHEREAS, on August 12, 2024, a plan was presented to Council during a Study Session which provided Council with relevant information gathered, a foundational plan for moving forward, and the concerns expressed by stakeholders.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, THAT:

Section 1. Council hereby accepts the plan as presented at the Study Session on August 12, 2024, and directs the City Manager, City Attorney, Court Administrator, and Presiding Judge to continue to collaborate with key stakeholders for implementation.

Section 2. The plan shall be modified to reflect that effective July 1, 2025, The Aurora Police Department, and any other person or agency authorized to file a criminal case in the City of Aurora, will cease to file cases which contain allegations of domestic violence in the Aurora Municipal Court.

Section 3. The modified plan shall also reflect that the Municipal Court will continue to hear domestic violence cases that were filed prior to July 1, 2025, through to the conclusion of those cases.

Section 4. The Council Appointees shall continue to work with stakeholders on specific details concerning things such as, staffing, the potential for the use of satellite space, how failure to appear cases will be evaluated, etc..

Section 5. Beginning July 2025, the City Manager, City Attorney, Court Administrator, and Presiding Judge shall provide monthly updates to the Public Safety Committee on the status of any remaining and ongoing domestic violence cases until all such cases are cleared from the Aurora Municipal Court.

Section 6. At the end of the first quarter 2025, the City Manager, City Attorney, Court Administrator, and Presiding Judge shall provide a report to Council detailing the progress made on the modified plan.

Section 7. The City Manager shall oversee the implementation of this resolution and ensure that all necessary steps are taken to facilitate the transition in an orderly and efficient manner.

Section 8. All Resolutions in conflict with this Resolution are hereby repealed only to the extent of such conflict.

RESOLVED AND PASSED this ____ day of _____, 2024.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:

Jack Bajorek

JACK D. BAJOREK, Interim City Attorney



CITY OF AURORA

Council Agenda Commentary

Item Title: Cherry Creek Schools Bond Update
Item Initiator: Jason Batchelor, City Manager
Staff Source/Legal Source: Jason Batchelor, City Manager
Outside Speaker: Scott Smith, Chief Financial and Operations Officer, Cherry Creek Schools
Council Goal: 2012: 2.2--Partner and Cooperate with local educational institutes

COUNCIL MEETING DATES:

Study Session: 8/26/2024

Regular Meeting: N/A

2nd Regular Meeting (if applicable): N/A

Item requires a Public Hearing: Yes No

ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Jason Batchelor, City Manager
Scott Smith, Chief Financial and Operations Officer, Cherry Creek Schools

ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field above.

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: N/A

Policy Committee Date: N/A

Action Taken/Follow-up: *(Check all that apply)*

Recommends Approval

Does Not Recommend Approval

Forwarded Without Recommendation

Minutes Not Available

Minutes Attached

HISTORY *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

N/A

ITEM SUMMARY *(Brief description of item, discussion, key points, recommendations, etc.)*

This is a presentation from Cherry Creek Schools regarding their 2024 mil and bond proposal on the upcoming general election.

FISCAL IMPACT

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact Budgeted Expenditure Impact Non-Budgeted Expenditure Impact
- Workload Impact No Fiscal Impact

REVENUE IMPACT

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

BUDGETED EXPENDITURE IMPACT

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

N/A

NON-BUDGETED EXPENDITURE IMPACT

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

WORKLOAD IMPACT

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

N/A

QUESTIONS FOR COUNCIL

Information only.

LEGAL COMMENTS

This item is informational only. There is no formal council action necessary.
The City Manager shall be responsible to the Council for the proper administration of all affairs of the city placed in his charge and, to that end, shall have the power and duty to make written or verbal reports at any time concerning the affairs of the City. (City Charter, Art. 7-4(e)). (Bajorek)



CITY OF AURORA

Late Submission Approval for Agenda Item

Item Title: Cherry Creek Schools Bond Presentation
Item Initiator: Jason Batchelor, City Manager
Staff Source/Legal Source: Jason Batchelor, City Manager
Outside Speaker: Scott Smith, Chief Financial and Operations Officer, Cherry Creek Schools
Council Goal: 2012: 2.2--Partner and Cooperate with local educational institutes

CRITERIA - PLEASE CONSIDER ITEM FOR LATE SUBMISSION FOR THE FOLLOWING REASON:

- There is a time-sensitive legal requirement that must be met and cannot be met by a future meeting date
- The delay will result in an adverse financial impact to the city
- The item is related to a disaster and must be addressed before the next available meeting

COUNCIL MEETING DATES FOR LATE SUBMISSION:

Study Session: 8/26/2024

Regular Meeting: N/A

EXPLANATION: *(Please provide a detailed explanation as to why the item falls into one or more of the above criteria and why it may not be set for a future meeting date.)*

This is a presentation from Cherry Creek Schools regarding their 2024 mil and bond proposal on the upcoming general election.

I understand the agenda item will not be added to the agenda without submitting this completed form as an attachment in e-Scribe. The agenda item will not be added to the agenda if the workflow is not completed by the WORKFLOW COMPLETED date indicated on the agenda deadline calendar.

Colleen Lindstone

Agenda Item Initiator Name

Colleen Lindstone

Agenda Item Initiator Signature

08.13.24

Date

Jason Batchelor

Late Submission Approver Name (Council Appointee or DCM)

Jason Batchelor

Late Submission Approver Signature

08.13.24

Date



CHERRY CREEK SCHOOL DISTRICT

2024 MILL AND BOND MEASURE

Growing the Excellence of Cherry Creek Schools



School Funding Updates



Dedicated to Excellence
Cherry Creek Schools

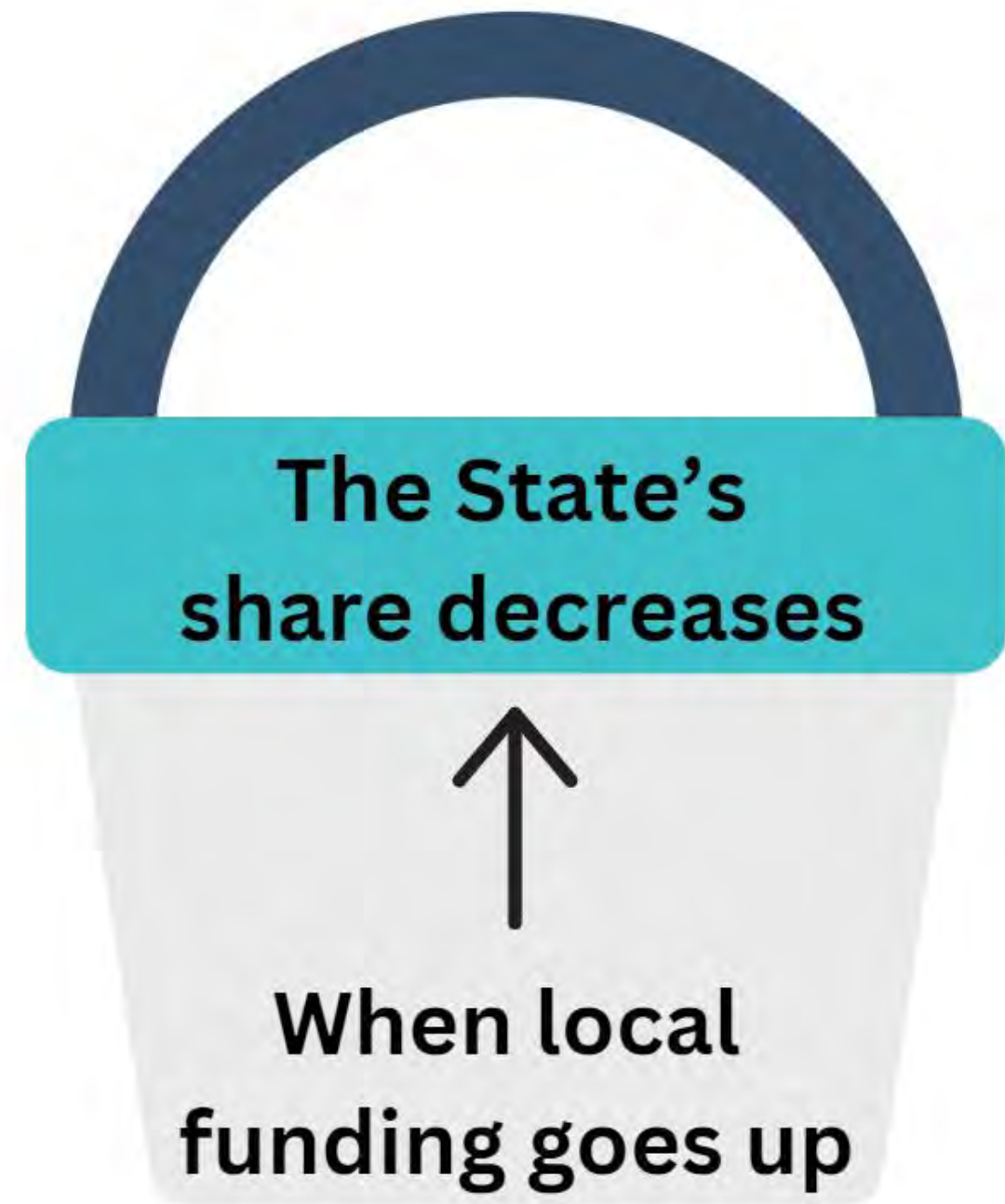
How are schools funded?

The 1994 School Finance Act determines how much funding each school district receives. The funding is a mix of state and local sources.

Any additional local revenue does not provide school districts with additional funds. Rather, it means we simply receive less money from the state.

Capital construction is not included in the School Finance Act formula.

The only way school districts receive more funding is through the voter-approved measures such as a Mill or Bond.

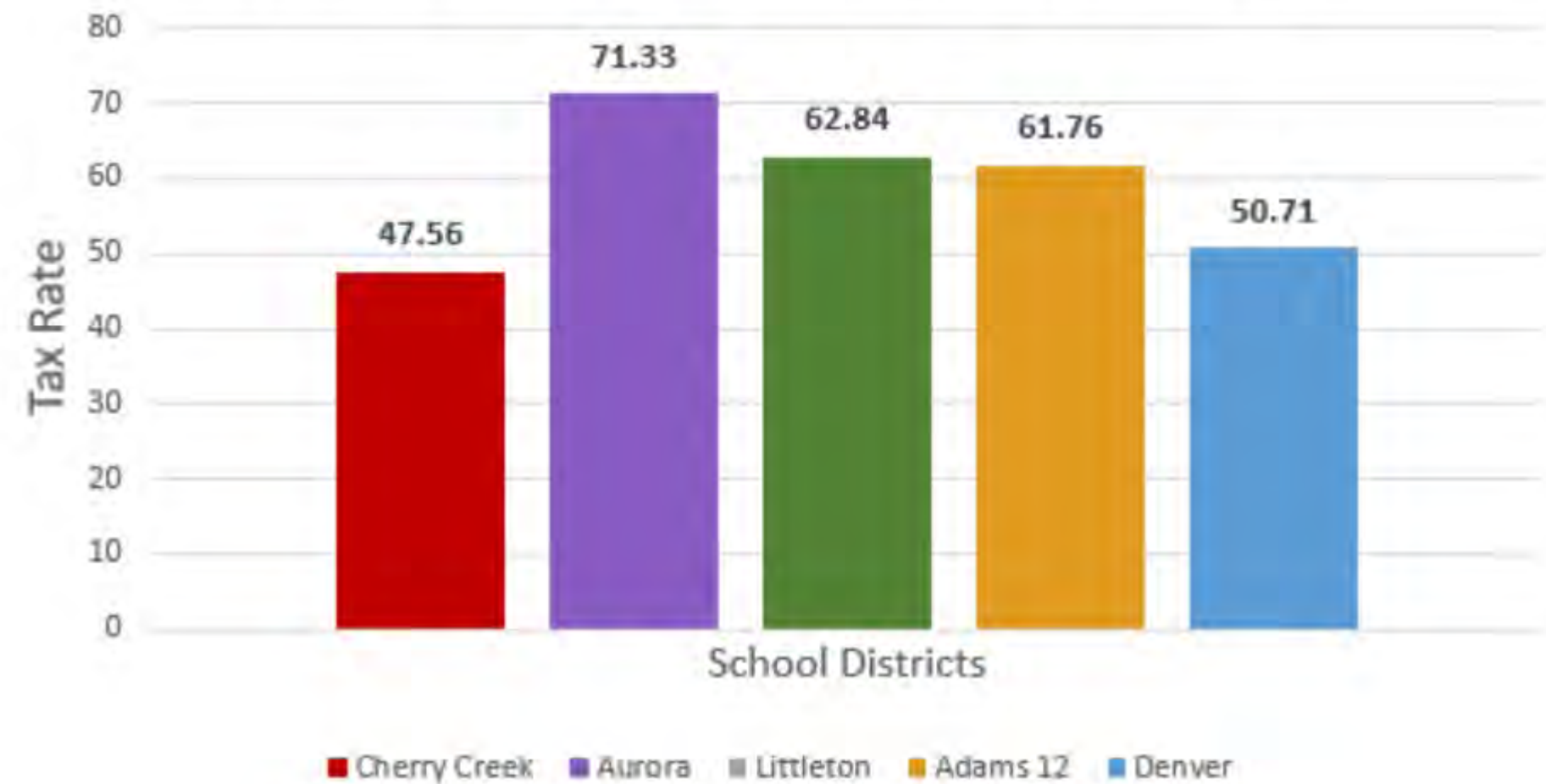


Other Updates



- Recent changes to the School Finance Act increased MLO cap from 25% to 30% of Total Program
 - Sets a time limit of 6 years to receive voter approval
- CCSD taxpayers currently pay less than taxpayers in surrounding school districts
 - Approx. \$800 less than APS on \$500k property value
- \$2+ billion in capital construction improvements slated for Aurora between CCSD & APS bond measures

Current Tax Rates for Local School Districts



CCSD Mill and Bond History & Planning Process

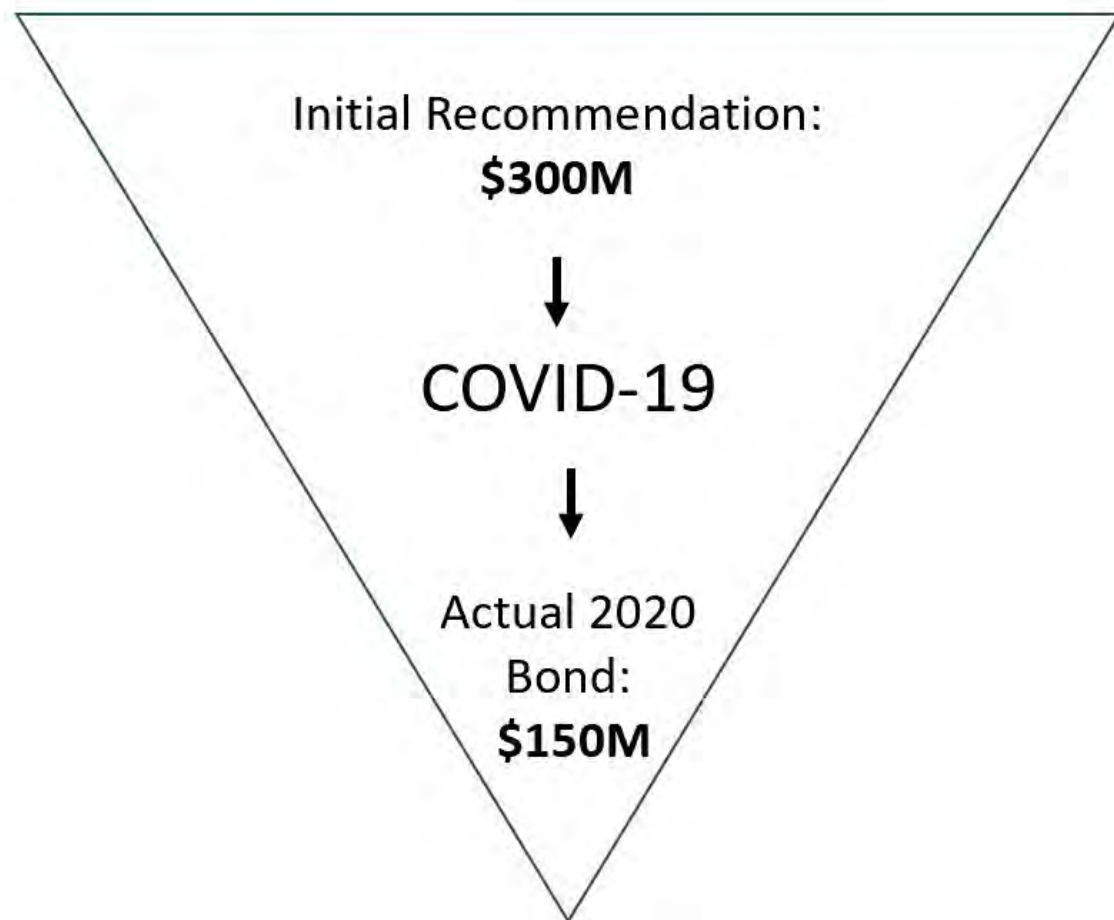


Dedicated to Excellence
Cherry Creek Schools

CCSD Mill & Bond History



The Cherry Creek School District has a history of engaging voters and successfully passing bond and budget measures every four years dating back to 2008. The last successful mill and bond measure passed in November 2020.



2020 Bond Projects

Major Maintenance	\$72M
Woodland Elementary School	\$35M
Safety and Security	\$26M
Traverse Academy	\$19M
Technology	\$12M
High School Innovation	\$9M
Village East Renovations	\$6M
Cherry Creek Innovation Campus	\$5M
Health Centers	\$4M

*Bonds sold at a premium to accomplish \$190M in projects



Interactive Bond Improvement Map



Cherry Creek School District
Mapping Our Future

Cherry Creek Schools continues to invest in its students, staff and facilities, thanks to the generosity of our community. Click the map below to discover how we're putting your tax dollars to work across the district.

Mapping Our Future Introduction

Dedicated to Excellence
Cherry Creek Schools

Overland

Smoky Hill

Eaglecrest

Grandview

Cherokee Trail

Cherry Creek

CHERRY CREEK RESERVOIR

AURORA RESERVOIR

HAMPDEN AVE.

BELLEVIEW AVE.

ARAPAHOE RD.

PARKER RD.

E-470

E-470

I-225

I-25



See how taxpayer dollars are being put to work in Cherry Creek Schools!

Planning Process & Considerations

Long Range Facility Planning Committee

- Group of community members from all six feeder areas and district employees representing different departments and schools
- Began assessment for possible 2024 bond projects in January 2022
- Review age, condition and utilization of buildings; enrollment trends; prior investment and future need; and impact to area schools.

Reduction in 2020 Bond

- Resulted in \$300+ million in planned and deferred maintenance needs
- Approx. \$40M is required annually to keep up with maintenance needs

75-Year-Old-District & Aging Campuses

- 68 out of our 89 buildings are 20+ years old
- 21 schools are 40+ years old
- CCHS built in 1953; Smoky built in 1975

Increasing Costs

- Based on 6% inflation, a \$950M bond passed in November 2024 will be worth \$1.2 billion in 2028

Protecting Taxpayer Investment

- Balancing the need to rebuild the old and maintain the new to maximize community assets



2024 Mill and Bond Package



Dedicated to Excellence
Cherry Creek Schools

Recommended 2024 Mill & Bond

Mill Levy Increase (phased-in) + \$950 Million Bond

For each \$100,000 of home value, this means:

**Our residents can invest to grow the excellence of the
Cherry Creek School District for
less than \$3 a month.**



Proposed 2024 Mill Package



Safety & Security: Protect students and staff by investing in trained security personnel to monitor school buildings.

High-Quality Teachers: Maintain excellence by recruiting, developing, and retaining the very best teachers who have the experience and expertise to enhance student-focused learning and support new, cutting-edge academic and career pathways offered throughout our schools.

Preparing for the Future: Expand access to specialized training, internship, apprenticeship opportunities, and post-graduate certifications for students to pursue their Pathway of Purpose.

Student Health: Provide additional mental health and whole wellbeing support for students to learn how to develop resiliency and prepare them for their next stage of life.

Technology: Provide students and staff with updated and secure technology and digital tools.

Proposed 2024 Bond Package



Safety & Security

- Ballistic Window Film
- Security Camera Replacement
- Access Control System Replacement
- Fire Alarms

Innovation

- **CCIC 2.0:** Expand current Cherry Creek Innovation Campus to accommodate 70% more students and develop/expand 10 career pathways
- **IST 2.0:** Renovate IST building on the Prairie/Overland campus to support in-demand career pathways

Maintenance

- Playgrounds
 - Roofs and plumbing
 - HVAC, electrical, elevators, glazing, flooring, etc.
- *The reduction in the 2020 bond due to COVID-19 has resulted in \$300+ million in deferred and planned maintenance needs currently.*

Technology

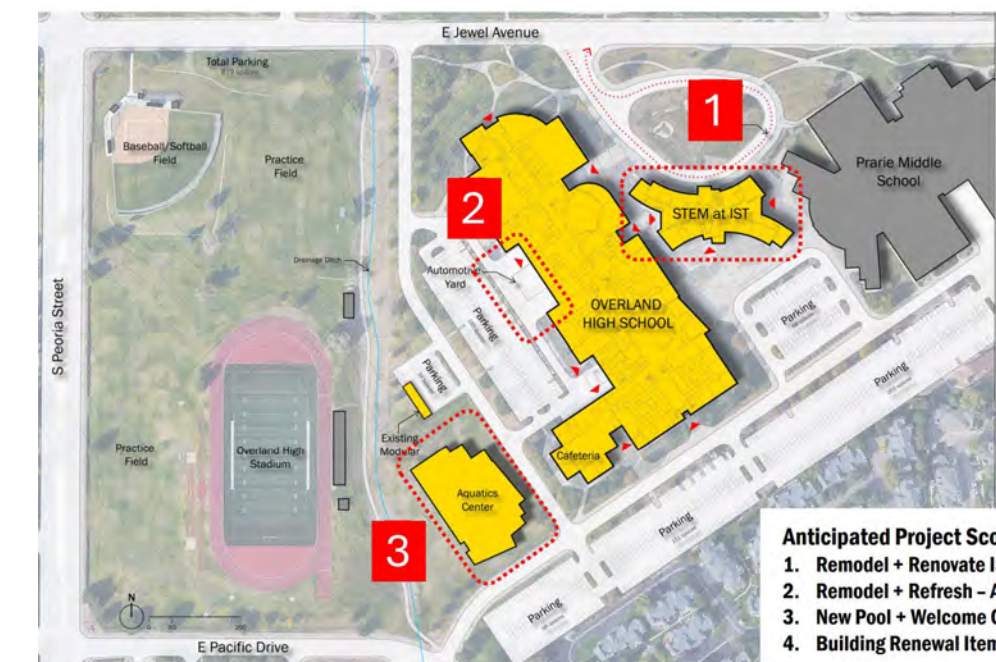
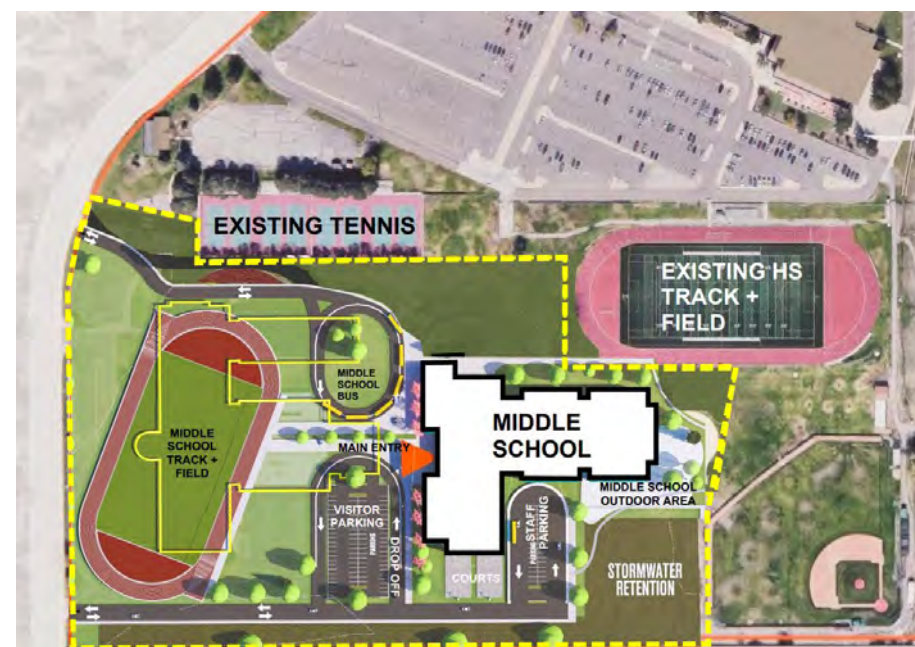
- Classroom Display Replacement
- Data Center & Network Upgrades
- Enhance Fiber Network

Proposed 2024 Bond Package (cont'd)



New Construction/Renovations

- **Laredo/Smoky Hill Campus:** Rebuild Laredo Middle School to meet student and programmatic needs and update SHHS athletic facilities (Phase I)
- **Prairie Middle School/Overland High School Campus:** Build a pool; expand central admissions office; and minor renovations at OHS (Phase I)
- **Cherry Creek K-12 Campus:** Begin process to replace aging and deteriorating buildings on the Cherry Creek K-12 campus (Phase I)
- **Holly Ridge/Holly Hills:** Construct one new PK-5 school to accommodate two schools and meet student and programmatic needs



- Anticipated Project Scope:**
1. Remodel + Renovate IST Building
 2. Remodel + Refresh - Automotive
 3. New Pool + Welcome Center
 4. Building Renewal Items

Next Steps

On August 12th, the CCSD Board of Education unanimously voted to move the mill and bond measure forward and put it on the November 5th ballot. We look forward to continuing to educate our community about these measures.

Learn more at

www.cherrycreekschools.org/MillandBond



Questions



Dedicated to Excellence
Cherry Creek Schools



CITY OF AURORA

Council Agenda Commentary

Item Title: Courtwide Workload Study
Item Initiator: Alison Coombs, City Council Member
Staff Source/Legal Source: Candace Atkinson, Court Administrator/Jack Bajorek, Interim City Attorney
Outside Speaker: Suzanne Tallarico, National Center for State Courts
Council Goal: 2012: 1.5--Maintain an unbiased, independent municipal court

COUNCIL MEETING DATES:

Study Session: 8/26/2024

Regular Meeting: 9/9/2024

2nd Regular Meeting (if applicable): 9/23/2024

Item requires a Public Hearing: Yes No

ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Alison Coombs, City Council Member
 Candace Atkinson, Court Administrator / Jack Bajorek, Interim City Attorney
 Outside Speaker: Suzanne Tallarico, National Center for State Courts
 Estimated time: 20 mins

ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field above.

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: N/A

Policy Committee Date: N/A

Action Taken/Follow-up: (Check all that apply)

- Recommends Approval Does Not Recommend Approval
- Forwarded Without Recommendation Minutes Not Available
- Minutes Attached

HISTORY (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

CM Coombs requested to have this item added to the August 26 study session

ITEM SUMMARY (Brief description of item, discussion, key points, recommendations, etc.)

Enter item summary here

FISCAL IMPACT

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact Budgeted Expenditure Impact Non-Budgeted Expenditure Impact
- Workload Impact No Fiscal Impact

REVENUE IMPACT

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

BUDGETED EXPENDITURE IMPACT

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

NON-BUDGETED EXPENDITURE IMPACT

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

WORKLOAD IMPACT

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

QUESTIONS FOR COUNCIL

Does Council wish to move this item forward?

LEGAL COMMENTS

Council members have authority to place items on the Study Session agenda. Each such item shall indicate the party requesting the item. (City of Aurora City Council Rule of Order and Procedure Section B.2(a)). (Bajorek)



CITY OF AURORA

Late Submission Approval for Agenda Item

Item Title: Courtwide Workload Study
Item Initiator: Fatima Thibou, Executive Specialist
Staff Source/Legal Source: Candace Atkinson, Court Administrator and Detention Director, Angela Garcia, Senior Assistant City Attorney
Outside Speaker: Suzanne Tallarico, National Center for State Court
Council Goal: 2012: 1.0--Assure a safe community for people

CRITERIA - PLEASE CONSIDER ITEM FOR LATE SUBMISSION FOR THE FOLLOWING REASON:

- There is a time-sensitive legal requirement that must be met and cannot be met by a future meeting date
- The delay will result in an adverse financial impact to the city
- The item is related to a disaster and must be addressed before the next available meeting

COUNCIL MEETING DATES FOR LATE SUBMISSION:

Study Session: 8/26/2024

Regular Meeting: NA

EXPLANATION: (Please provide a detailed explanation as to why the item falls into one or more of the above criteria and why it may not be set for a future meeting date.)

I understand the agenda item will not be added to the agenda without submitting this completed form as an attachment in e-Scribe. The agenda item will not be added to the agenda if the workflow is not completed by the WORKFLOW COMPLETED date indicated on the agenda deadline calendar.

Fatima A. Thibou
Agenda Item Initiator Name

[Signature] 8.15.24
Agenda Item Initiator Signature Date

Candace Atkinson
Late Submission Approver Name (Council Appointee or DCM)

[Signature] 8-15-24
Late Submission Approver Signature Date