

Greeley City Council Agenda

Regular Meeting
Tuesday, April 4, 2023 at 6:00 p.m.

City Council Chambers at City Center South, 1001 11th Ave, Greeley, CO 80631 Zoom Webinar link: <https://greeleygov.zoom.us/j/86218464323>

NOTICE:

City Council Meetings are held on the 1st and 3rd Tuesdays of each month in the City Council Chambers. Meetings are conducted in a hybrid format, with a Zoom webinar in addition to the in person meeting in Council Chambers.

City Council members may participate in this meeting via electronic means pursuant to their adopted policies and protocol.

Members of the public are also invited to choose how to participate in Council meetings in the manner that works best for them.

Watch Meetings:



Meetings are open to the public and can be attended in person by anyone.



Meetings are televised live on GTV8 on cable television.



Meetings are livestreamed on the City's website, Greeleygov.com as well as YouTube at [Youtube.com/CityofGreeley](https://www.youtube.com/CityofGreeley)

For more information about this meeting or to request reasonable accommodations, contact the City Clerk's Office at 970-350-9740 or by email at cityclerk@greeleygov.com.

Meeting agendas, minutes, and archived videos are available on the City's meeting portal at greeley-co.municodemeetings.com

Comment in real time:

During the public input portion of the meeting and public hearings:



In person attendees can address the Council in the Chambers.



The public can join the Zoom Webinar and comment from the remote meeting.

Submit written comments:



Email comments about any item on the agenda before Noon on the day of the meeting to cityclerk@greeleygov.com



Written comments can be mailed or Dropped off at the City Clerk's office at City Hall, at 1000 10th St. Greeley, CO 80631



Mayor
John Gates

Councilmembers

Tommy Butler
Ward I

Deb DeBoutez
Ward II

Johnny Olson
Ward III

Dale Hall
Ward IV

Brett Payton
At-Large

Ed Clark
At-Large

**A City Achieving
Community Excellence**
Greeley promotes a healthy, diverse economy and high quality of life responsive to all its residents and neighborhoods, thoughtfully managing its human and natural resources in a manner that creates and sustains a safe, unique, vibrant and rewarding community in which to live, work, and play.

City Council Meeting Agenda

April 04, 2023 at 6:00 PM

City Council Chambers, City Center South, 1001 11th Ave & via
Zoom at <https://greeleygov.zoom.us/j/86218464323>

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of the Agenda
5. Recognitions and Proclamations
6. Citizen Input
7. Reports from Mayor and Councilmembers
8. Initiatives from Mayor and Councilmembers

Consent Agenda

The Consent Agenda is a meeting management tool to allow the City Council to handle several routine items with one action.

Councilmembers may request an item be pulled off the Consent Agenda and considered separately under the next agenda item in the order they were listed.

9. Consideration of a motion to approve the City Council Proceedings of March 7, 2023 and March 21, 2023 and Work Session Proceedings of March 14, 2023
10. Consideration of a Resolution of the City Council of the City of Greeley authorizing the city to enter into an intergovernmental agreement with the Colorado Department of Transportation for a citywide comprehensive signal timing project
11. Consideration of a Resolution Approving Change Order - ERP Staffing, System and Project

- [12.](#) Introduction and first reading of an Ordinance changing the official zoning map of the City of Greeley, Colorado, from Commercial High Density (C-H) to Industrial Low Density (I-L) changing the underlying land use designations for approximately 2.54 acres of property located at the northwest corner of 31st Avenue and 29th Street
- [13.](#) Introduction and first reading of an Ordinance extending the period during which the Greeley Downtown Development Authority may allocate and collect tax increment financing for the Downtown Development Authority Area within the City of Greeley

End of Consent Agenda

- [14.](#) Pulled Consent Agenda Items
- [15.](#) Consideration of a Resolution approving a Redevelopment Agreement between 1024 8th Avenue, LLC, DDA and the City of Greeley
- [16.](#) Scheduling of Meetings, Other Events
- [17.](#) Consideration of a motion authorizing the City Attorney to prepare any required resolutions, agreements, and ordinances to reflect action taken by the City Council at this meeting and any previous meetings, and authorizing the Mayor and City Clerk to sign all such resolutions, agreements, and ordinances
- [18.](#) Consideration of a motion to go into Executive Session for the purpose of reviewing feedback and the process of completing the annual performance review of the City Attorney.
19. Adjournment



Council Agenda Summary

Title

Recognitions and Proclamations

Summary

Mayor Gates will present proclamations acknowledging the following:

Arbor Day

Sexual Assault Awareness Month

National Mayor's Challenge for Water Conservation

Councilmember Butler will present the *What's Great about Greeley* Report.

Attachments

Arbor Day Proclamation

Sexual Assault Awareness Month Proclamation

National Mayor's Challenge for Water Conservation Proclamation

What's Great about Greeley Report



ARBOR DAY

WHEREAS, Union Colony founder Nathan Meeker promised that a network of irrigation ditches would eventually transform Greeley into the “Garden Spot of the West” and in June 1870, ordered trees from Illinois which arrived by boxcar and which were “heeled in” along the banks of the Cache la Poudre river near Island Grove Park; and

WHEREAS, these original trees did not survive the first winter, Meeker encouraged Colonists to participate in “Village Improvement Campaigns” which meant - “Plant Trees!” Trees growing along the Cache la Poudre and in the foothills west of Greeley were dug up, brought to Lincoln Park by wagons, and transplanted to the park’s lawn areas adjacent to the streets. With 100-foot-wide streets, these trees had ample space to grow and provide a shaded canopy over the streets and sidewalks; and

WHEREAS, “Mr. Meeker used to say that those who took pleasure in setting out trees lived longer than those who took no interest in that direction”; and

WHEREAS, in 1872 J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees which culminated in the planting of over one million trees in Nebraska; and

WHEREAS, Arbor Day is now observed throughout the nation and the world; and

WHEREAS, as leaves appear on thousands of Greeley’s trees with the arrival of spring, we are reminded again that trees are, and always will be, an integral part of Greeley’s urban and residential design; and

WHEREAS, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community.

NOW THEREFORE, I, John Gates, Mayor of the City of Greeley, Colorado, do hereby proclaim April 29, 2023 as *Arbor Day* in the City of Greeley, and I urge all citizens to support efforts to protect our trees and woodlands and to plant trees to promote the well-being of present and future generations.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official seal of the City of Greeley, Colorado, this 4th day of April, 2023.

John Gates
Mayor



Sexual Assault Awareness Month

WHEREAS, April is Sexual Assault Awareness Month (SAAM). Sexual Assault Awareness Month calls attention to the fact that sexual violence is widespread and impacts every person in the community. SAAM aims to raise public awareness about sexual violence and educate communities about how to prevent it; and

WHEREAS, systems of oppression such as racism, sexism, classism, heterosexism, ageism, ableism, etc. contribute to higher rates of sexual harassment, assault, and abuse. Unfortunately, those same groups are also the most impacted by inequitable systems of oppression in our society; and

WHEREAS, statistics show that more than one in four non-Hispanic Black women (29%) in the United States were raped in their lifetime; more than four in five American Indian and Alaska Native women (84.3%) have experienced violence in their lifetime; one in three Hispanic women (34.8%) reported unwanted sexual contact in their lifetime, 32.9% of adults with intellectual disabilities have experienced sexual violence; and 47% of all transgender people have been sexually assaulted at some point in their lives; and

WHEREAS, we recognize that it will take ending all forms of oppression to end sexual violence worldwide and making a connection between various forms of oppression and the underlying causes of sexual assault is crucial to making holistic and lasting change; and

WHEREAS, the theme of this year's Sexual Assault Awareness Month campaign is "Drawing Connections: Prevention Demands Equity". The campaign calls on all individuals, communities, organization, and institutions to change the systems surrounding us to build equity and respect within the community, workplace, and the future our youth hold.

NOW, THEREFORE, I, John Gates, by virtue of the authority vested in me as Mayor of the City of Greeley, do hereby proclaim April 2023 as **Sexual Assault Awareness Month** in Greeley and join communities across the country in taking action to prevent sexual violence and recognize that each day of the year is an opportunity to create change for the future.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official seal of the City of Greeley, Colorado, this 4th day of April, 2023.

John Gates
Mayor



National Mayor's Challenge for Water Conservation

WHEREAS, the City of Greeley, the state of Colorado continues to explore ways to manage residential consumption of water and power, and to inspire its residents to care for our natural resources and become better environmental stewards; and

WHEREAS, Greeley's diverse water portfolio of water sources creates reliability and resiliency. Part of Greeley's core values are water planning, water efficiency and stewardship for navigating droughts, wildfires and uncertainty of the Colorado River;

WHEREAS, the 12th annual National Mayor's Challenge for Water Conservation presented by the Wyland Foundation, with support from the U.S EPA WaterSense, The Toro Company, and the National League of Cities, is a non-profit challenge to residents to encourage pollution reduction and smart water use; and

WHEREAS, with the encouragement of their mayor, residents may register their participation in their city's Challenge, online, by making simple pledges to decrease their water use and to reduce pollution for the period of one year, thereby assisting their cities to apply local, State, and Federal water conservation strategies and to target mandated reductions; and

WHEREAS, from April 1-30, 2023, the City of Greeley wishes to inspire its residents and its neighboring communities to take the "Wyland Mayor's Challenge for Water Conservation" by making a series of online pledges at mywaterpledge.com to reduce their impact on the environment and to see immediate savings in their water, trash, and electricity bills;

NOW, THEREFORE, I, John Gates, by virtue of the authority vested in me as Mayor of the City of Greeley, do hereby proclaim:

That the City of Greeley agrees and supports the "Wyland Mayor's Challenge for Water Conservation" emphasis.

That the program is to be implemented from April 1-30, 2023, through a series of communication and outreach strategies, whether new or existing, to encourage Greeley residents to take the water conservation "Challenge."

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official seal of the City of Greeley, Colorado, this 4th day of April 2023.

John Gates
Mayor



City Council Meeting
April 4, 2023

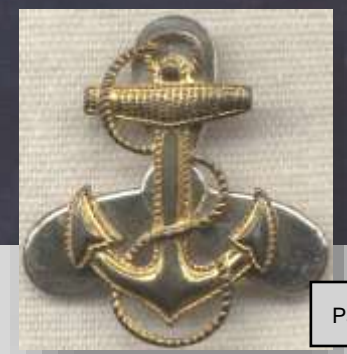
A Story Best Lived In.

***In all ways, we will transmit
this City not only, not less, but
greater and more beautiful than
it was transmitted to us.***

- Athenian Oath

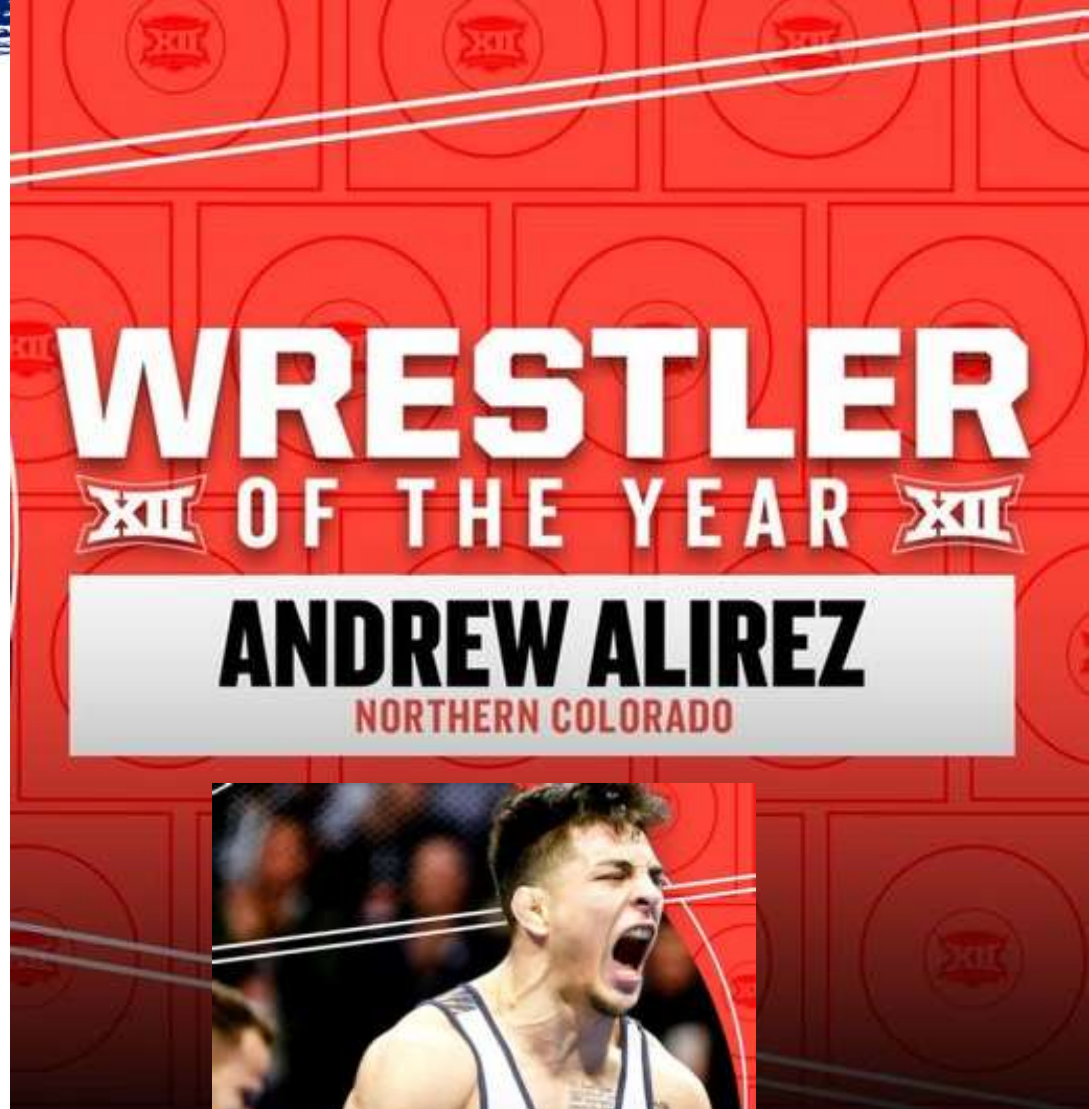
Annie May Pierce Named Fox 31's 'Serving Those Who Serve Hero of the Month'

- WWII – Women Accepted for Volunteer Emergency Service (WAVES)
- Worked in medical labs at military bases



UNC's Andrew Alirez Named Big 12 Wrestler of the Year

- First All-American Honor
- 2023 Big 12 Wrestler of the Year



UNC Golfer Marija Jucmane Named Big Sky Women's Golfer of the Week

- University of Northern Colorado graduate student
- Native of Riga, Latvia



Four District 6 Students Earn Daniels Fund Scholarship

- Hailey Walter, Early College Academy
- Raymos Castillo, Frontier Academy
- Kylee Wofe, Greeley West
- Rhianon Hampton, University High School
- Receive up to \$100,000 over four years towards undergraduate degree





A Story Best Lived In.



Council Agenda Summary

Title

Citizen Input

Summary

During this 15-minute portion of the meeting, anyone may address the Council on any item of City Business appropriate for Council consideration that is not already listed as a public hearing on this evening's agenda.

As this meeting is being conducted in a hybrid format, citizen input will be accepted first from those in the City Council Chambers, and then from the virtual meeting audience via the meeting's webinar.

Written comments submitted for any item on the agenda will be placed in the public record and provided to the Council for their review and should include the name and city of residence of the person submitting the comments for the record.



Council Agenda Summary

Title

Reports from Mayor and Councilmembers

Summary

During this portion of the meeting any Councilmember may offer announcements or reports on recent events and happenings. These reports should be a summary of the Councilmember's attendance at assigned board/commission meetings and should include key highlights and points that may require additional decision and discussion by the full Council at a future time.



Council Agenda Summary

Title

Initiatives from Mayor and Councilmembers

Summary

During this portion of the meeting any Councilmember may bring before the Council any business that the member feels should be deliberated upon by the Council. These matters need not be specifically listed on the Agenda, but formal action on such matters shall be deferred until a subsequent Council meeting.

Initiatives will generally fall into three categories:

- 1) A policy item for Council deliberation and direction for a future Worksession, Committee meeting, or regular/special Council meeting;
- 2) A request to the City Manager for information or research;
- 3) A request involving administrative processes or procedures.

At the close of this portion of the meeting, the Mayor will confirm Council's consensus that the individual requests be pursued.

Attachments

Status Report of Council Initiatives and Related Information

Greeley City Council

Status Report of Council Initiatives

Initiative No.	Council Member Initiating	Council Request	Council Meeting or Work Session Date Requested	Status or Disposition (After completion, item is shown one time as completed and then removed.)	Next Steps & Schedule	Anticipated Deliverable & Date (Report, Council Presentation, etc.)	Assigned to:
15-2021	Olson	Formation of a committee for implementation of a funding strategy for the 35th and 47th interchanges.	December 7, 2021 Council Meeting	Councilmember Olson will be following up with Manager Lee and Director Trombino on next steps	Pending outcome of federal grant application submitted	Report to Council early 2023	Paul Trombino
09-2022	Butler	Review traffic and safety surrounding 15 acre open area between 71st Avenue and 8th Street	June 7, 2022 Council Meeting	Requested that Public Works review the traffic and to improve safety in this congested area.	Additional signage installed for traffic and parking. Staff worked with School District, builder and GPD to ensure road is passable for school buses. GPD will focus enforcement times to ensure compliance with posted speed limit. Staff developing neighborhood safety improvement options and working with School District on transportation issues to improve coordination and support related to safety and infrastructure around school sites.	Anticipate providing report to Council on Improvements in early 2023	Paul Trombino
10-2022	Butler	Review costs and strategies to live stream Planning Commission and Water Board meetings for public and Councilmembers	June 7, 2022 Council Meeting	Asked staff to investigate the cost of live streaming Planning Commission and Water and Sewer Board meetings and return to Council with findings	Additional technology costs ~ \$15,000. Parts are backordered, eta approx. mid-January. Anticipate additional operation costs to include 1 add'l staff at each B&C meeting to accommodate hybrid meeting. Assessing costs related to staffing, overtime expenses or other flexible staff options. Some testing has occurred for broadcasting of meetings. Additional equipment testing will be done once equipment is received. Staff will identify long-term operational impacts at that time.	Anticipated report to Council 1st Qtr 2023	Kelli Johnson
16-2022	Clark	Concerns over the increase in incidents and safety in the tunnel under Hwy 34 in the Hillside/Farr Park neighborhood	November 1, 2022 Council Meeting	Requested staff study implementing a closure of the tunnel entrance between the hours of 10:00 PM and 7:00 AM over safety concerns	Neighborhood meeting scheduled for 1/25/23 5:30 - 7:00 pm at Jackson Elementary.	Report to Council between 3/25/23 and 5/31/23	Paul Trombino/Becky Safarik
17-2022	DeBoutez	Expressed concern about neighborhood issues, i.e. speeding and noise violations. Expressed concern about growing number of Air BNB's in neighborhoods and additional nuisances from those rentals	November 15, 2022 Council Meeting February 21, 2023 Council Meeting	Requested GPD and PW research technologies available for traffic calming, speed/red light cameras and decibel measuring devices to improve safety, wellbeing and quality of life in Greeley. Requested staff also research effects of Air BNB rentals on neighborhood nuisance problems. Add this research to current PW/GPD report on adding technology tools to combat neighborhood issues.	CMO recommendation - Do we invest in additional technology tools and structure to combat neighborhood issues? PW/GPD provide report on technologies available, cost of such technology, and how different technologies are used in other communities and the results of implementing such technology. GPD completed research and provided to CMO. Waiting for direction on if this will be provided in CM report to Council or at WS. (3/21/23)	Work Session report/CMO recommendation on neighborhood issues and technological options	Adam Turk/Paul Trombino

Item No. 8.

01-2023	Butler	Costs and feasibility study of translation services for agendas and meetings	January 3, 2023 Council Meeting	Request staff research the costs and feasibility of translating the agenda, agenda packet and live streamed meetings in other languages? Is Spanish the predominant language for translation or are other languages also appropriate?	CCO to work with C&E to gather statistical information for report.	Work Session Report	City Clerk's Office/Communication & Engagement
03-2023	Butler	Limits on individual campaign contributions	February 7, 2023 Council Meeting	Research and gather information from other municipalities to determine if they have implemented campaign contribution limits and provide update of what the process would be to set limits for individual campaign contributions	CCO/CAO to come back to Council at a work session regarding the process	CCO/CAO report to Council	CCO/CAO
04-2023	Hall	Bridge over creek along the Poudre River Trail in Pumpkin Ridge area	March 7, 2023 Council Meeting	Would like a written report to Council regarding the history of the project and possibility of putting a wooden foot bridge across the trail and the timeline	Public Works	PW report to Council	PW
05-2023	Butler	History and status of food tax rebate program	March 7, 2023 Council Meeting	Requested staff provide information at a work session on the history of the Food Tax Rebate Program and the current status of the program	Finance	CMO/Finance report to Council	Finance
06-2023	Clark/DeBoutez	Asked staff to research zoning codes for artificial grass in housing developments	March 21, 2023 Council Meeting	Asked staff to research the zoning regulations and standards for putting artificial grass in residents' front yards and research the landscape code and provide updates on the alternatives for water conservation	Community Development/Water Conservation	CMO/Report to Council	CD/Water



Council Agenda Summary

Title:

Consideration of a motion to approve the City Council Proceedings of March 7, 2023 and March 21, 2023 and Work Session Proceedings of March 14, 2023

Summary:

Meetings of the City Council were held in the City Council's Chambers on March 7, 2023 and March 21, 2023. A work session of the City Council was held in the City Council's Chambers on March 14, 2023. The draft proceedings of each meeting have been prepared and are being presented for the Council's review and approval.

Decision Options:

- 1) To approve the proceedings of the Council meeting of March 7, 2023 as presented; and/or
- 2) To approve the proceedings of the Council meeting of March 21, 2023 as presented; and/or
- 3) To approve the proceedings of the Council work session of March 14, 2023 as presented; and/or
- 4) Amend the Council meeting proceedings of March 7, 2023, if amendments or corrections are needed, and approve as amended; and/or
- 5) Amend the Council meeting proceedings of March 21, 2023, if amendments or corrections are needed, and approve as amended; and/or
- 6) Amend the Council work session proceedings of March 14, 2023, if amendments or corrections are needed, and approve as amended.

Council's Recommended Action:

A motion to approve the City Council proceedings and Work Session Proceedings as presented (or amended).

Attachments:

- Draft Council meeting proceedings of March 7, 2023
- Draft Council meeting proceedings of March 21, 2023
- Draft Council work session proceedings of March 14, 2023

City of Greeley, Colorado
CITY COUNCIL PROCEEDINGS
March 7, 2023

1. Call to Order

Mayor Gates called the meeting to order at 6:00 p.m. in the City Council Chambers at 1001 11th Ave, Greeley, Colorado, with hybrid participation available via the City's Zoom platform.

2. Pledge of Allegiance

Mayor Gates led the Pledge of Allegiance.

3. Roll Call

Heidi Leatherwood, City Clerk, called the roll.

Present:

Mayor John Gates
Councilmember Tommy Butler
Councilmember Deb DeBoutez
Councilmember Dale Hall
Mayor Pro Tem Brett Payton
Councilmember Ed Clark
Councilmember Johnny Olson

4. Approval of the Agenda

City Manager Lee noted that Item 12 would be a motion to continue the public hearing to the next City Council meeting on March 21, 2023, and order the Ordinance amending Title 24 of the Greeley Municipal Code by repealing Title 2, Chapter 9 (Metropolitan Districts) and enacting Title 24, Chapter 12 (Metropolitan Districts) to be published in full.

5. Recognitions and Proclamations

Mayor Gates read the proclamation for National Developmental Disabilities Awareness Month. Debbie Fatomiloye and Anthony Dorsey-Kountz were present in Council Chambers to accept; and

Mayor Gates read the proclamation for Kiwanis Club Stars of Tomorrow 75th Anniversary. Margie Martinez and other Kiwanis Club members were present to accept.

Mayor Pro Tem Payton presented *What's Great about Greeley?*

6. Citizen Input

1. Ross Lightsey spoke about the sidewalk by Pumpkin Ridge and investigating the possibility of installing a foot bridge off of 10th Street to increase the safety of the community. Mayor Gates requested City Staff to reach out to Mr. Lightsey.
2. Bill Gillard spoke about Terry Ranch, voting on 4A and homeless issues.
3. Steve Teets spoke about the City's Food Tax Rebate Program.
4. David Meek spoke about meeting with staff to discuss Museum interactions.
5. Mary Clithero-Titmus spoke about the sidewalk concern by Pumpkin Ridge and would like a safe way to cross on 10th Street/Highway 34.
6. John Brown spoke about footbridge to cross 10th Street/highway 34 by Pumpkin Ridge and Sheep Draw.

7. Reports from Mayor and Councilmembers

Councilmember Olson gave an update from his committee meetings with North Front Range and US 34. The committee has started the regional transportation planning process and for 2050.

Councilmember DeBoutez shared her experience at the Downtown Art Walk last Friday night. She noted that 31 downtown businesses participated in the art walk and encouraged residents to view the local art that will be displayed all month.

Councilmember Butler thanked city staff for hosting a meeting with State representatives to discuss affordable housing.

8. Initiatives from Mayor and Councilmembers

Councilmember Hall requested a written report from city staff to include goals and timeline to find a solution for a safe crossing by Sheep Draw at 10th Street/highway 34. Council has consensus to move forward with the initiative.

Councilmember Olson indicated he has been asked to sit on the US Department of Transportation Resiliency Committee for the nation, as a representative for the City of Greeley. Council is in consensus for Councilmember Olson to represent the City on this committee.

Councilmember Butler asked staff to conduct research and give a presentation at a work session explaining the City's current food sales rebate program including the history of the program, the current rebate, how it works and statistics on individuals that utilize the program over the years. Council is in consensus on this request.

Consent Agenda

9. **Consideration of a motion to approve the City Council Proceedings of February 21, 2023**
10. **Introduction and first reading of an Ordinance appropriating additional sums to defray the expenses and liabilities of the City of Greeley for the balance of the fiscal year of 2023 and for funds held in reserve for encumbrances through December 31, 2022**

Councilmember Olson moved to approve the Consent Agenda Items 9 and 10. Mayor Pro Tem Payton seconded the motion. The motion passed 7-0 at 6:38 p.m.

End of Consent Agenda

11. **Pulled Consent Agenda Items**

None.

12. **Consideration of a motion to set the public hearing and second reading of an Ordinance amending Title 24 of the Greeley Municipal Code by repealing Title 2, Chapter 9 (Metropolitan Districts) and enacting Title 24, Chapter 12 (Metropolitan Districts) and making amendments thereto**

The City Clerk's Office has asked for this item to be continued to City Council meeting on March 21, 2023.

Mayor Pro Tem Payton made a motion to set the public hearing and second reading of an Ordinance amending Title 24 of the Greeley Municipal Code by repealing Title 2, Chapter 9 (Metropolitan Districts) and enacting Title 24, Chapter 12 (Metropolitan Districts) and making amendments thereto to March 21, 2023 and to publish the Ordinance in full. Councilmember Olson seconded the motion. The motion passed 7-0 at 6:40 p.m.

13. **Public hearing and consideration of a Resolution to approve the 2045 Transportation Master Plan – Greeley on the Go**

Paul Trombino, Public Works Director, introduced the item with a presentation at 6:40 p.m.

The City of Greeley initiated the Greeley on the Go Transportation Master Plan process in 2021 to update the 2035 Comprehensive Transportation Plan (adopted in 2011).

The key differences between the current and proposed transportation plan begin with the establishment of plan goals – safety, multimodal network, equity & health, economic vitality, environment & technology, and funding & strategic investments. Additionally,

the new plan is focused on urban design geared towards vibrant and inviting neighborhoods. This plan was recommended for Council approval by the Citizen Transportation Advisory Board and Planning Commission.

The City Council reviewed the plan at a work session on February 28, 2023.

The public hearing opened at 7:00 p.m.

1. Steve Teets spoke about including the City of Evans in transportation needs.
2. Bill Gillard spoke about future transportation needs of electric vehicles.

With no additional speakers, the public hearing closed at 7:05 p.m.

Councilmember Olson moved to adopt the Resolution. Councilmember Hall seconded the motion. The motion passed 7-0 at 7:06 p.m.

14. Public hearing to consider a motion to approve the Allocation Plan for HOME Investment Partnership Program-American Rescue Plan grant from the U.S. Department of Housing and Urban Development

In September 2021, the City of Greeley was allocated funds from the U. S. Department of Housing and Urban Development (HUD). The funds, which are a part of the American Rescue Plan and identified as HOME-ARP, must be applied for by the City by March 31, 2023. HOME-ARP funds can only be used for certain activity groups.

The Greeley Urban Renewal Authority (GURA) met and recommended that City Council approve the Allocation Plan. Following approval by the City Council, the Allocation Plan will be entered into HUD's Integrated Disbursement and Information System (IDIS) for review and approval.

Councilmember Olson asked if there was a match requirement from the city for the grant, what was being purchased, and what the long term plan was. In response, Mr. Snow replied that no match is required for the grant. Assistant City Manager Juliana Kitten also responded that the money would not pay for the shelter and there are two other grant options from the State the city could layer onto this grant depending on the direction Council would like to go.

Councilmember Butler asked if the grant money would help keep the cold weather shelter open. In response to the question, Ms. Kitten replied that the grant will not come into play for several months and the shelter will be closed for the season by then.

Councilmember DeBoutez asked if regional partners are applying for this grant and if we can coordinate with them to work together for a regional service plan. In response , Ms. Kitten replied that Fort Collins is interested in working together.

The public hearing opened at 7:20 p.m.

1. Steve Teets spoke about ideas to use the funding to help the community.

2. Bill Gillard raised the question of who is responsible for paying for the services after the grant funding has run out.

With no additional speakers, the public hearing closed at 7:25 p.m.

Councilmember DeBoutez moved to approve the motion. Councilmember Butler seconded the motion. The motion passed 6-1 at 7:25 p.m. with Councilmember Clark voting “nay”.

15. Scheduling of Meetings, Other Events

None.

16. **Consideration of a motion authorizing the City Attorney to prepare any required resolutions, agreements, and ordinances to reflect action taken by the City Council at this meeting and any previous meetings, and authorizing the Mayor and City Clerk to sign all such resolutions, agreements, and ordinances**

Mayor Pro Payton moved to approve the motion. Councilmember Butler seconded the motion. The motion passed 7-0 at 7:25 p.m.

17. **Consideration of a motion to go into Executive Session for the purpose of completing the annual performance review of the City Manager**

Mayor Pro Tem Payton moved to approve the motion. Councilmember Olson seconded the motion. The motion passed 7-0 at 7:26 p.m.

18. Adjournment

Mayor Gates adjourned the meeting at 7:26 p.m.

17. The Executive Session was called to order at 7:32 p.m. for the purpose of completing the annual performance review of the City Manager.

Present at this executive session are the following persons: All members of City Council and City Manager Raymond Lee.

A motion to go into an Executive Session to discuss the following matter as provided under C.R.S. Section 24-6-402(4)(f) and Greeley Municipal Code Section 2.151(6)(a): To discuss personnel reporting to the City Council.

Mayor Gates cautioned each participant to confine discussion to the stated purpose and

reminded that no formal action may occur in Executive Session. If at any point any participant believed that the discussion was going outside the proper scope of the Executive Session, participants were advised to interrupt the discussion and raise an objection.

The meeting concluded at 8:58 p.m.

The recordings will be retained as provided in the City's records retention policy and in conformity with the Colorado Open Meetings Law for a period of 90 days.

Approved:

John D. Gates, Mayor

Attest:

Heidi Leatherwood, City Clerk

City of Greeley, Colorado
CITY COUNCIL PROCEEDINGS
March 21, 2023

1. Call to Order

Mayor Gates called the meeting to order at 6:00 p.m. in the City Council Chambers at 1001 11th Ave, Greeley, Colorado, with hybrid participation available via the City's Zoom platform.

2. Pledge of Allegiance

Mayor Gates led the Pledge of Allegiance.

3. Roll Call

Deputy City Clerk Tasha Reynolds called the roll.

Present:

Mayor John Gates
Councilmember Tommy Butler
Councilmember Deb DeBoutez
Mayor Pro Tem Brett Payton
Councilmember Ed Clark
Councilmember Johnny Olson

Councilmember Dale Hall was absent. (Excused)

4. Approval of the Agenda

City Manager Lee indicated that Item No. 9, University of Northern Colorado Update, will be removed.

5. Recognitions and Proclamations

Mayor Gates read the Parkinson's Disease Awareness Month Proclamation. Kristi Martin was present in to receive on behalf of the Parkinson's Association of the Rockies.

Mayor Gates read the Fair Housing Month proclamation, and Ben Snow, Economic, Health and Housing Director, was present to receive.

Mayor Gates introduced University of Northern Colorado (UNC) President Andy Feinstein, UNC Wrestling Coach Troy Nickerson and UNC wrestler Andrew Alirez. Mayor Gates recognized Mr. Alirez's athletic accomplishment of winning the NCAA wrestling title and gave him a key to the City.

6. Citizen Input

1. James Smith spoke about encampments and provided a letter for the record, and flash drives with photos to be given to specific city staff.
2. David Meek spoke about clearing his name and asked Deputy City Manager Tripp to facilitate his apology letter to the young man from his interaction at the Museum.
3. Edwin Grant spoke about the Federal Fair Housing Act and a related court case.
4. Dr. Lightsey spoke about their family building a home in Pumpkin Ridge and spoke in opposition of the new construction in Pumpkin Ridge up to Sheep Draw due to safety concerns.

7. Reports from Mayor and Councilmembers

Councilmember Butler spoke about Greeley Day at the Capital in Denver. Mayor Gates appreciated the staff and community partners that showed up to support the City of Greeley.

Councilmember Olson Poudre Learning Center and it is amazing to see what has been done with the Go NOCO funding.

8. Initiatives from Mayor and Councilmembers

Councilmember Clark spoke about the sidewalk that ends at Pumpkin Ridge and asks staff to follow up with Council about the plan to put something there. The Council consensus was to keep working on this as this was a prior initiative.

Councilmember Clark spoke about two citizens who reached out to him regarding allowing artificial grass. He would like to see rules and regulations about this as they were asked to remove it in the front yard and what other communities are doing. Councilmember DeBoutez suggested that water conservation staff offer recommendations as well. The Mayor asked the City Manager to have staff follow up.

9. University of Northern Colorado (UNC) update

This item was removed, as UNC President spoke under Recognitions. See above.

Consent Agenda

10. Approval of the City Council Work Session Proceedings of February 28, 2023.

11. Consideration of 2022 Consolidated CDBG and HOME Program Annual Performance Report

12. Consideration of a Resolution authorizing entry into an intergovernmental agreement for treated water service with the City of Evans, Colorado

Councilmember Butler moved to approve the Consent Agenda Items 10-12. Councilmember Olson seconded the motion. The motion passed 6-0 at 6:41 p.m. with Councilmember Hall absent.

End of Consent Agenda

13. Pulled Consent Agenda Items

None.

14. Public hearing and second reading of an Ordinance amending Title 24 of the Greeley Municipal Code by repealing Title 2, Chapter 9 (Metropolitan Districts) and enacting Title 24, Chapter 12 (Metropolitan Districts) and making amendments thereto

Interim Community Development Director Becky Safarik introduced the new Interim Planning Manager, Don Threewitt, who shared the presentation at 6:42 p.m.

The Metropolitan District Code Updates include both technical and procedural updates. Greeley adopted its metropolitan District Code and Model Service Pan in 2007 and updated them in 2018. In general, Greeley standards reflect the minimum standards found in State Statutes.

Phase 1 includes the technical revisions presented now.

Phase 2 (late 2023) will include the enhancements and policy updates.

The overview of amendments include:

- Relocating Metro District regulations into Development Code
- Dropping obsolete references
- Shifting minimum Metro District size from geographic size to minimum debt limit
- Disallowing eminent domain authority
- Adding application deadlines for annual election cycles
- Adding public notice provisions consistent with Development Code provisions

The amendment meets the four review criteria as required.

Mr. Threewitt mentioned that staff had found some errors in the ordinance and wished to propose amendments and have the ordinance republished in full.

Proposed Amendments:

In Appendix A of the Ordinance,

- 1. Section 24-1208 (a) first line, the word “or” is to be removed; and line 2, the words “along with” is to be removed.**
- 2. Section 24-1211 (7) the words “section 2-530” was removed and not replaced. Replace with “in section 24-1219.”**

- 3. Section 24-1221 (a) line 3, the words “section 2-530” was removed and not replaced. Replace with the words “in section 24-1219.”**

The public hearing opened at 6:46 p.m.

With no speakers, the public hearing closed at 6:47 p.m.

Mayor Pro Tem Payton moved to adopt the ordinance and publish it by title only.

Councilmember Clark seconded the motion.

City Attorney Doug Marek said that if Council wished to amend, then there would have to be a motion to amend first, followed by a second motion to adopt and publish in full.

Mayor Pro Tem Payton withdrew his initial motion.

Councilmember Payton moved to amend the ordinance. Councilmember Butler seconded the motion. The motion passed 6-0 at 6:48 p.m. with Councilmember Hall absent.

Mayor Pro Tem Payton moved to adopt the ordinance, as amended, and publish in full. Councilmember Butler seconded the motion. The motion passed 6-0 at 6:49 p.m. with Councilmember Hall absent.

- 15. Public hearing for consideration of changes to approved 2023 CDBG and HOME budgets for U.S. Department of Housing and Urban Development Annual Action Plan**

Economic Health and Housing Director Ben Snow, introduced the item at 6:50 p.m.

The 2023 budgets for the Community Development Block Grant (CDBG) and HOME Investment Partnership Program (HOME) grant were recommended in August 2022 by the Greeley Urban Renewal Authority (GURA) Board and approved in October 2022 by City Council. Since that time, loan payoffs were received for an old project (Meeker Commons) in both the CDBG and HOME programs.

When the CDBG budget was approved in October 2022, it was with the understanding that if the approved budget was larger or smaller than projected, the infrastructure activity would absorb the change; however, the new projected budget is large enough to need to return through the citizen participation process.

Both budgets are still subject to change. Staff proposes that the infrastructure activity continue to absorb any increase/decrease.

Councilmember Butler wanted to disclose that he is currently a board member for Habitat for Humanity and had talked to Mr. Snow earlier about it.

Councilmember DeBoutez asked if the projects will remain “affordable housing” if the loans have been paid. In response, Mr. Snow affirmed that they would.

The public hearing opened at 6:54 p.m.

With no speakers, the public hearing closed at 6:55 p.m.

Councilmember Clark moved to approve the motion. Councilmember DeBoutez seconded the motion. The motion passed 6-0 at 6:55 p.m. with Councilmember Hall absent.

16. Public hearing and second reading of an Ordinance appropriating additional sums to defray the expenses and liabilities of the City of Greeley for the balance of the fiscal year of 2023 and for funds held in reserve for encumbrances through December 31, 2022

Finance Director John Karner introduced the item with a presentation at 6:56 p.m.

The appropriation contains three groups:

- grants and other revenues following the 2023 budget process
- support of operational needs post 2023 budget process; and
- completion of projects and commitments carrying forward into 2023

Councilmember Butler added that he was pleased with the additional dollars going towards additional sidewalks this year.

The public hearing opened at 7:01 p.m.

1. Edwin Grant asked about Items 13-15 on the agenda and where they are published. In response, City Attorney Doug Marek noted for City publishing requirements, that if the ordinance is passed on first reading, it is published in full context in the Greeley Tribune. If they are adopted on second reading with no amendments, then the ordinance is published in the Greeley Tribune by its title only. If the ordinance is amended on second reading, then by requirement, it is published again in full context. Ordinances are also available on the city website and can be requested from the City Clerk’s Office.

2. Steven Grant asked for more information about a funding line request for cultural development. In response, Finance Director John Karner explained this item is for citywide training. In addition, Deputy City Manager Paul Fetherston added that the majority of the funding is designated to support the cultural development and health of the organization.

With no additional speakers, the public hearing closed at 7:05 p.m.

Councilmember Olson clarified that the funds used for city organizational culture development means being able to hire and retain the best staff because they are excited about the work environment. This makes the City better.

Councilmember DeBoutez moved to adopt the ordinance and publish by title only. Councilmember Clark seconded the motion. The motion passed 6-0 at 7:06 p.m. with Councilmember Hall absent.

17. Appointment of applicants to the Citizen Budget Advisory Committee, Citizen Transportation Advisory Board, Greeley Art Commission, Museum Advisory Board and the Union Colony Civic Center Advisory Board

Deputy City Clerk Tasha Reynolds announced the appointments:

- Citizen Budget Advisory Committee - Lori Williams; 3-year term
- Greeley Art Commission - Debbie Pilch, Kathy Sage, Molly McIntosh; 3-year terms
- Union Colony Civic Center Advisory Board - Mark Pugatch, Perry Bell; 3-year terms
- Citizen Transportation Advisory Board - Steve Teets; 3-year term
- Museum Advisory Board - David Melendez; 3-year term

18. Scheduling of Meetings, Other Events

Next week's work session on March 28 was confirmed cancelled as several Councilmembers will be at the National League of Cities Conference.

19. Consideration of a motion authorizing the City Attorney to prepare any required resolutions, agreements, and ordinances to reflect action taken by the City Council at this meeting and any previous meetings, and authorizing the Mayor and City Clerk to sign all such resolutions, agreements, and ordinances

Mayor Pro Tem Payton moved to approve the motion. Councilmember Butler seconded the motion. The motion passed 6-0 at 7:09 p.m. with Councilmember Hall absent.

20. Consideration of a motion to go into Executive Session to receive legal advice from the City Attorney and to determine positions, develop strategy, and give instructions to negotiators regarding 2023 collective bargaining with Greeley Firefighters

Mayor Pro Tem Payton moved to approve the motion. Councilmember Olson seconded the motion. The motion passed 6-0 at 7:09 p.m. with Councilmember Hall absent.

21. Consideration of a motion to go into Executive Session for the purpose of completing the annual performance review of the Municipal Judge

Councilmember Payton moved to approve the motion. Councilmember Olson seconded the motion. The motion passed 6-0 at 7:11 p.m. with Councilmember Hall absent.

22. Adjournment

Mayor Gates adjourned the meeting at 7:11 p.m.

- 20.** The Executive Session was called to order at 7:21 p.m. to receive legal advice from the City Attorney and to determine positions, develop strategy, and give instructions to negotiators regarding 2023 collective bargaining with Greeley Firefighters.

Present for participation in the Executive Session were all members of City Council except Councilmember Hall, who was excused, plus the following:

Doug Marek, City Attorney
Noel Mink, Human Resources Director
Raymond Lee, City Manager
Paul Fetherston, Deputy City Manager
Brian Kuznik, Fire Chief
John Karner, Finance Director

A motion to go into an Executive Session for a conferral with the City Attorney to receive legal advice and to determine positions, develop strategies, and provide instructions to negotiators regarding collective bargaining, as provided in C.R.S. 24-6-402(4)(b) and 24-6-402(4)(e)(I), and Greeley Municipal Code 2-151(a)(2) and 2-151(a)(5)

Mayor Gates cautioned each participant to confine discussion to the stated purpose and reminded that no formal action may occur in Executive Session. If at any point any participant believed that the discussion was going outside the proper scope of the Executive Session, participants were advised to interrupt the discussion and raise an objection.

The meeting concluded at 7:55 p.m. and the current Executive Session was adjourned.

The recording will be retained as provided in the City's records retention policy and in conformity with the Colorado Open Meetings Law for a period of 90 days.

- 21.** The Executive Session was called to order at 7:57 p.m. for the purpose of completing the annual performance review of the City Council Appointees –Municipal Judge

Present for participation in the Executive Session were all members of the City Council except Councilmember Hall, who was absent, and Human Resources Director Noel Mink.

A motion to go into an Executive Session to discuss the following matter as provided under C.R.S. Section 24-6-402(4)(f) and Greeley Municipal Code Section 2.151(6)(a): To discuss personnel reporting to the City Council, the Municipal Court Judge.

Human Resources Director Noel Mink left the room at 8:02 pm.
Judge Gonzales entered the room at 8:02 pm.
Judge Gonzales left the room at 8:33 pm.

Mayor Gates cautioned each participant to confine discussion to the stated purpose and reminded that no formal action may occur in Executive Session. If at any point any participant believed that the discussion was going outside the proper scope of the Executive Session, participants were advised to interrupt the discussion and raise an objection.

The meeting concluded at 8:36 p.m. and the Executive session was adjourned.

The recording will be retained as provided in the City's records retention policy and in conformity with the Colorado Open Meetings Law for a period of 90 days.

Approved:

John D. Gates, Mayor Attest:

Attest:

Tasha Reynolds, Deputy City Clerk

City of Greeley, Colorado
CITY COUNCIL WORK SESSION REPORT
March 14, 2023

1. Call to Order

Mayor Pro Tem Brett Payton called the meeting to order at 6:00 p.m. in the City Council Chambers at 1001 11th Ave, Greeley, Colorado, with hybrid participation available via the City's Zoom platform.

2. Pledge of Allegiance

Mayor Pro Tem Brett Payton led the Pledge of Allegiance.

3. Roll Call

City Clerk Heidi Leatherwood called the roll.

The following members of Council were present:

Councilmember Tommy Butler

Councilmember Deb DeBoutez

Councilmember Dale Hall

Mayor Pro Tem Brett Payton

Councilmember Ed Clark

Councilmember Johnny Olson – participated via zoom

Mayor John Gates was absent. (Excused)

4. Reports from Mayor and Council Members

Mayor Pro Tem Brett Payton asked for reports from councilmembers
None.

5. City Council Agenda and Meeting Management Software Implementation

City Clerk, Heidi Leatherwood, introduced the item with a presentation at 6:01 p.m. CivicClerk representative, Gabby Bond, was available to address any questions.

Ms. Leatherwood noted that the City of Greeley purchased Municode Meetings as its digital agenda management system in 2018 and recently upgraded the system to CivicClerk.

CivicClerk solves some challenges including:

1. The use of customizable workflow approvals.
2. Technology to stream through the system in conjunction with Zoom and YouTube.
3. Users can view via a mobile device or tablet.

4. Integrates with Laserfiche and Municode Codification systems and will easily move existing data from the current agenda management system to the new one.

As councilmembers will have their own Board/Council Portal, Ms. Leatherwood presented some of the useful features that the internal facing system offers including:

- Agenda packets and search capability for past information if needed.
- Ability to join the meeting system from anywhere that has internet access.
- Electronic vote-casting ability that will display to the monitors in Chambers.
- Ability to annotate, highlight and take notes in this portal.

Ms. Leatherwood shared the timeline of the project noting that the Go Live date is scheduled for June 2023.

Councilmember DeBoutez asked if the system would provide the capability for closed captioning. In response to the question, Ms. Leatherwood answered that the system has this capability.

Councilmember Butler asked if the system would have streaming capabilities across multiple platforms. In response, Ms. Bond expressed that the system has many live streaming options such as Facebook, YouTube and Zoom.

Councilmember Butler also asked if this new software came at an additional cost. In response, Ms. Leatherwood replied that this is an upgrade within the same company and so there is an additional cost for the added features.

6. City Council Initiative - Board and Commission Meeting Time Survey Results

City Clerk Heidi Leatherwood and Deputy City Clerk Sarah Jacobsen presented on the City Council Initiative – Board and Commission Meeting Time Survey Results at 6:08 p.m.

Ms. Leatherwood reminded Council of the initiative presented during the September 6, 2022, Regular Meeting, in which the City Council requested research from staff on the feasibility of Boards and Commissions to consider alternative meeting times. The times considered were before 9 a.m. and after 5 p.m.

The City Clerk's Office (CCO) developed an online survey that was distributed to all current Board and Commissions members. The Council was provided with a packet of information to review.

Ms. Leatherwood summarized the results of the survey:

- a majority of the board members who responded were open to the possibility of an alternate meeting time. Ms. Leatherwood noted that it was individual members of many boards who were open to alternate times, not entire boards.

Additional comments included concerns that stated:

- changing meeting times may not necessarily lead to an increase in public participation and engagement.
- Current members and staff might have conflicts with new meeting times

Councilmember Butler asserted that people should be able to access board participation regardless of if they are working. He suggested asking boards to move meeting times and/or suggested that boards (such as Water and Sewer Board and Planning Commission) use a hybrid format. In response, Ms. Leatherwood noted that the Planning Commission and Water and Sewer Board now have the option to have hybrid, as technology in Council Chambers is available.

Councilmember Olson asked if the boards have the authority to change meeting times on their own. In response, City Attorney Doug Marek replied that they do, however, they must work with staff. Councilmember Olsen added that he does not want the boards to feel forced by council.

Councilmember DeBoutez suggested that maybe additional information from the community could be collected using “Speak Up Greeley” about convenient meeting times.

Councilmember Clark agreed that the City could do better advertising of boards and commission meeting times and shared Councilmember Olson’s sentiment that council should allow the boards to make these types of decisions.

Councilmember Payton added that the boards have the power to take responsibility. He asked if larger boards such as Planning Commission and Water & Sewer Board were currently being recorded. Interim CD Director, Becky Safarik, replied that the Planning Commission will start recording its meetings next month.

Councilmember Dale Hall added that he concurs with Councilmember Olson and Councilmember Clark. The council consensus was to reach out to all the boards and ask that they add an agenda item on an upcoming meeting to discuss and decide if it would be appropriate to change to an alternate meeting time and/or meeting format.

7. Scheduling of Meetings, Other Events

None.

8. Adjournment

Mayor Pro Tem Brett Payton adjourned the meeting at 6:27 p.m.

Approved:

Brett Payton, Mayor Pro Tem

Attest:

Heidi Leatherwood, City Clerk



Council Agenda Summary

April 4, 2023

Key Staff Contact: Paul Trombino, Public Works Director

Title:

Consideration of a Resolution of the City Council of the City of Greeley authorizing the city to enter into an intergovernmental agreement with the Colorado Department of Transportation for a citywide comprehensive signal timing project

Summary:

Through a competitive grant process, facilitated by the North Front Range Metropolitan Planning Organization (NFRMPO), the City of Greeley has been awarded a Congestion Mitigation and Air Quality (CMAQ) grant for a comprehensive retiming of traffic signals citywide. The City operates 123 traffic signals and is proposing to retime all of the signals excluding twenty-six (26) that operate on 10th Street, US 85 and US 34 currently under adaptive control. The last comprehensive retiming was completed in 2016. Comprehensive retiming should be completed on a 5-year cycle. The adoption of this Resolution will facilitate staff's ability to receive reimbursement for this citywide traffic signal retiming project.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	Yes
If yes, what is the initial, or, onetime impact?	\$283,000
What is the annual impact?	N/A
What fund of the City will provide Funding?	General Fund
What is the source of revenue within the fund?	Sales Tax
Is there grant funding for this item?	Yes
If yes, does this grant require a match?	Yes
Is this grant onetime or ongoing?	Onetime
Additional Comments:	\$ 273,000.00 in CMAQ grant funding will be matched with the \$10,000 in local funding for a total project cost of \$283,000.

Legal Issues:

None.

Other Issues and Considerations:

None.

Strategic Focus Area:



Infrastructure and Mobility



Quality of Life

Decision Options:

- 1) Adopt the resolution as presented; or
- 2) Amend the resolution and adopt as amended; or
- 3) Deny the resolution; or
- 4) Continue consideration of the resolution to a date certain.

Council's Recommended Action:

A motion to adopt the Resolution.

Attachments:

Resolution

Intergovernmental Agreement

**THE CITY OF GREELEY, COLORADO
RESOLUTION 8, 2023**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GREELEY
AUTHORIZING THE CITY TO ENTER INTO AN INTERGOVERNMENTAL
AGREEMENT WITH THE COLORADO DEPARTMENT OF
TRANSPORTATION FOR A CITYWIDE COMPREHENSIVE
SIGNAL TIMING PROJECT**

WHEREAS, in accordance with §29-1-203, governments may cooperate or contract with one another to provide function, service or facility lawfully authorized to each of the cooperating or contracting units of government; and

WHEREAS, the City of Greeley (“City”) desires to enter into an Intergovernmental Agreement (“IGA”) with the Colorado Department of Transportation (“CDOT”) to conduct a citywide comprehensive signal timing project (“Project”); and

WHEREAS, the City believes the Project will be beneficial as the current signal timing network is outdated and insufficient for current traffic volumes through the City, and it will decrease travel time, safety, improve air quality, and allow for smoother traffic flow; and

WHEREAS, the Project is over 95% federally funded, utilizing Congestion Mitigation and Air Quality funds, with CDOT overseeing the Project; and

WHEREAS, it is in the best interest of the citizens of the City of Greeley for Council to enter into this IGA.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREELEY, COLORADO:

Section 1. The City Council hereby authorizes the City to enter into the IGA entitled “Citywide Comprehensive Signal Timing (23048),” a copy of which is attached hereto and incorporated herein as Exhibit A.

Section 2. City staff is hereby authorized to make changes and modifications to the IGA, so long as the substance remains unchanged.

Section 3. This Resolution shall become effective immediately upon its passage, as provided by the Greeley City Charter.

PASSED AND ADOPTED, SIGNED AND APPROVED THIS ____ DAY OF APRIL, 2023.

ATTEST:

**THE CITY OF GREELEY,
COLORADO**

**By: _____
City Clerk**

**By: _____
Mayor**

STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT
Signature and Cover Page

State Agency Department of Transportation		Agreement Routing Number 22-HA4-XC-00052	
Local Agency CITY OF GREELEY		Agreement Effective Date The later of the effective date or March 21, 2022	
Agreement Description Citywide Signal Retiming		Agreement Expiration Date March 20, 2032	
Project # AQC M570-055 (23048)	Region # 4	Contract Writer TCH	Agreement Maximum Amount \$283,000.00

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 GREELEY</p> <p>APPROVED AS TO SUBSTANCE:</p> <p>By: _____ Raymond Lee, City Manager</p> <p>Date: _____</p>	<p align="center">STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director</p> <p>_____</p> <p align="center">Stephen Harelson, P.E., Chief Engineer</p> <p>Date: _____</p>
<p>REVIEWED FOR AVAILABILITY OF FUNDS:</p> <p>By: _____ John Karner, Director of Finance</p> <p>Date: _____</p> <p>APPROVED AS TO LEGAL FORM:</p> <p>By: _____ Douglas Marek, City Attorney</p> <p>Date: _____</p>	<p align="center">LEGAL REVIEW Philip J. Weiser, Attorney General</p> <p>_____</p> <p align="center">Assistant Attorney General</p> <p>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 as shown on the Signature and Cover Page for this Agreement, unless sooner terminated or further extended in accordance with the terms of this Agreement. Upon request of Local Agency, the State may, in its sole discretion, extend the term of this ARPA Award 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”).

B. State Authority

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

4. PURPOSE

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT’s Stewardship Agreement with the FHWA.

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “**Agreement**” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. “**Agreement Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- C. “**ARPA**” means American Rescue Plan Act, funded by the US Treasury Department. See “SLFRF” below.
- D. “**Award**” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- E. “**Budget**” means the budget for the Work described in **Exhibit C**.
- F. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S..
- G. “**Chief Procurement Officer**” means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202 to procure or supervise the procurement of all supplies and services needed by the State.
- H. “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- I. “**Consultant**” means a professional engineer or designer hired by Local Agency to design the Work Product.
- J.. “**Contractor**” means the general construction contractor hired by Local Agency to construct the Work.
- K. “**CORA**” means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- L. “**Effective Date**” means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Agreement.
- M. “**Evaluation**” means the process of examining Local Agency’s Work and rating it based on criteria established in **§6, Exhibit A** and **Exhibit E**.

- N. **“Exhibits”** means the following exhibits attached to this Agreement:
- i. **Exhibit A**, Scope of Work.
 - ii. **Exhibit B**, Sample Option Letter.
 - iii. **Exhibit C**, Funding Provisions
 - iv. **Exhibit D**, Local Agency Resolution
 - v. **Exhibit E**, Local Agency Contract Administration Checklist
 - vi. **Exhibit F**, Certification for Federal-Aid Contracts
 - vii. **Exhibit G**, Disadvantaged Business Enterprise
 - viii. **Exhibit H**, Local Agency Procedures for Consultant Services
 - ix. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts
 - x. **Exhibit J**, Additional Federal Requirements
 - xi. **Exhibit K**, The Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions
 - xii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form
 - xiii. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the “Uniform Guidance”)
 - xiv. **Exhibit N**, Federal Treasury Provisions
 - xv. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds
 - xvi. **Exhibit P**, SLFRF Subrecipient Quarterly Report
 - xvii. **Exhibit Q**, SLFRF Reporting Modification Form
 - xviii. **Exhibit R**, Applicable Federal Awards
 - xix. **Exhibit S**, Checklist of Required Exhibits Dependent on Funding Source
- O. **“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. **“Matching Funds”** means the funds provided by the Local Agency as a match required to receive the federal 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.
- 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. “**Work**” means the delivery of the Goods and performance of the Services in compliance with CDOT’s Local Agency Manual described in this Agreement.
- TT. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

6. SCOPE OF WORK

Local Agency shall complete the Work as described in this Agreement and in accordance with the provisions of **Exhibit A**, and the Local Agency Manual. The State shall have no liability to compensate Local Agency for the delivery of any Goods or the performance of any Services that are not specifically set forth in this Agreement.

Work may be divided into multiple phases that have separate periods of performance. The State may not compensate for Work that Local Agency performs outside of its designated phase performance period. The performance period of phases, including, but not limited to Design, Construction, Right of Way, Utilities, or Environment phases, are identified in **Exhibit C**. The State may unilaterally modify **Exhibit C** from time to time, at its sole discretion, to extend the period of performance for a phase of Work authorized under this Agreement. To exercise this phase performance period extension option, the State will provide written notice to Local Agency in a form substantially equivalent to **Exhibit B**. The State’s unilateral extension of phase performance periods will not amend or alter in any way the funding provisions or any other terms specified in this Agreement, notwithstanding the options listed under **§7.E**

A. Local Agency Commitments

i. Design

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

- a. Perform or provide the Plans to the extent required by the nature of the Work.
- b. Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
- c. Prepare provisions and estimates in accordance with the most current version of the State’s Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
- d. Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.

- e. Stamp the Plans as produced by a Colorado registered professional engineer.
 - f. Provide final assembly of Plans and all other necessary documents.
 - g. Ensure the Plans are accurate and complete.
 - h. Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT, and when final, they will be deemed incorporated herein.
- ii. Local Agency Work
- a. Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA) 42 U.S.C. § 12101, et. seq., and applicable federal regulations and standards as contained in the document “ADA Accessibility Requirements in CDOT Transportation Projects”.
 - b. Local Agency shall afford the State ample opportunity to review the Plans and shall make any changes in the Plans that are directed by the State to comply with FHWA requirements.
 - c. Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**. If Local Agency enters into a contract with a Consultant for the Work:
 - 1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State’s approval. If not approved by the State, Local Agency shall not enter into such Consultant contract.
 - 2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
 - 3) Local Agency shall require that all billings under the Consultant contract comply with the State’s standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
 - 4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.
 - 5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from Local Agency’s attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b) and (d).
 - 6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
 - (a) The design work under this Agreement shall be compatible with the requirements of the contract between Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.
 - (b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.
 - (c) The consultant shall review the construction Contractor’s shop drawings for conformance with the contract documents and compliance with the provisions of the State’s publication, Standard Specifications for Road and Bridge Construction, in connection with this work.

- (d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. Construction

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

- a. The State may, after providing written notice of the reason for the suspension to Local Agency, suspend the Work, wholly or in part, due to the failure of Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
- b. Local Agency shall be responsible for the following:
- 1) Appointing a qualified professional engineer, licensed in the State of Colorado, as Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures, as defined in the CDOT Local Agency Manual (https://www.codot.gov/business/designsupport/bulletins_manuals/2006-local-agency-manual).
 - 2) For the construction Services, advertising the call for bids, following its approval by the State, and awarding the construction contract(s) to the lowest responsible bidder(s).
 - (a) All Local Agency's advertising and bid awards pursuant to this Agreement shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that Local Agency and its Contractor(s) incorporate Form 1273 (Exhibit I) in its entirety, verbatim, into any subcontract(s) for Services as terms and conditions thereof, as required by 23 C.F.R. 633.102(e).
 - (b) Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. Local Agency must accept or reject such bids within 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. Matching Funds

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

D. Reimbursement of Local Agency Costs

The State shall reimburse Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and **§7**. However, any costs incurred by Local Agency prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Local Agency for costs or expenses incurred or performance by the Local Agency prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the Local Agency. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance

with the provisions of this Agreement. The applicable principles described in 2 C.F.R. Part 200 shall govern the State's obligation to reimburse all costs incurred by Local Agency and submitted to the State for reimbursement hereunder, and Local Agency shall comply with all such principles. The State shall reimburse Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C**. Local Agency costs for Work performed prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. Local Agency costs for Work performed after any Performance Period End Date for a respective phase of the Work, is not reimbursable. Allowable costs shall be:

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

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

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

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

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

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

The State may require or permit Local Agency to transfer Agreement Funds from one Work phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another phase as a result of changes to State, federal, and local match funding. In such case, the original funding exhibit (**Exhibit C**) will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The Agreement Funds transferred from one Work phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within thirty (30) days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iii. Option to Exercise Options i and ii.

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

- iv. Option to Extend Agreement/Phase Term 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 five (5) Business Days following the end of each calendar quarter or at such time as otherwise specified by the State. If SLFRF Funds are used the report must be in the format of **Exhibit P**.

B. Litigation Reporting

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

C. Performance and Final Status

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

D. Violations Reporting

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

9. LOCAL AGENCY RECORDS

A. Maintenance

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

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Local Agency shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Local Agency under this Agreement. Such a conflict of

interest would arise when a Local Agency or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement. Officers, employees and agents of Local Agency may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

12. INSURANCE

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

A. Local Agency Insurance

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

B. Subcontractor Requirements

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

i. Workers' Compensation

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

ii. General Liability

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

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate; and
- d. \$50,000 any 1 fire.

iii. Automobile Liability

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

iv. Protected Information

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

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

v. Professional Liability Insurance

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

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

vi. Crime Insurance

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

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

vii. Cyber/Network Security and Privacy Liability

Liability insurance covering all civil, regulatory and statutory damages, contractual damages, data breach management exposure, and any loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of breach, violation or infringement of right to privacy rights through improper use or disclosure of protect consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

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

C. Additional Insured

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

D. Primacy of Coverage

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

E. Cancellation

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

F. Subrogation Waiver

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

G. Certificates

For each commercial insurance plan provided by Local Agency under this Agreement, Local Agency shall provide to the State certificates evidencing Local Agency's insurance coverage required in this Agreement within 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 cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Local Agency shall assign to the State all of Local Agency's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Local Agency shall take timely, reasonable and necessary action to protect and preserve property in the possession of Local Agency but in which the State has an interest. At the State's request, Local Agency shall return materials owned by the State in Local Agency's possession at the time of any termination. Local Agency shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

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

c. Damages and Withholding

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

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

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

c. Deny Payment

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

d. Removal

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

e. Intellectual Property

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

B. Local Agency's Remedies

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

15. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior

departmental management staff member designated by the State and a senior manager designated by Local Agency for resolution.

B. Resolution of Controversies

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

16. NOTICES AND REPRESENTATIVES

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

For the State

Colorado Department of Transportation (CDOT)
Jake Oneal, EIT II
CDOT Region 4
10601 West 10th Street
Greeley, CO 80634
970-350-2143
jake.oneal@state.co.us

For the Local Agency

City of Greeley
Scott Logan, City Traffic Engineer
1300 A Street, Building H
Greeley, CO 80631
970-350-9555
Scott.Logan@greeleygov.com

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

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

enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire.

i. Copyrights

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

ii. Patents

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

iii. Assignments and Assistance

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

B. Exclusive Property of the State

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

C. Exclusive Property of Local Agency

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

18. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the

State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. The following applies through June 30, 2022: no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

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

20. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

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

C. Binding Effect

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

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Digital Signatures

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

H. Entire Understanding

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

I. Jurisdiction and Venue

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

J. Modification

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

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

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

L. Order of Precedence

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

- i. 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**, Statement 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**, Checklist of Required Exhibits Dependent on Funding Source.
- xxii. 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

Local Agency shall comply with and adhere to Section 508 of the U.S. Rehabilitation Act of 1973, as amended, and §§24-85-101, *et seq.*, C.R.S. Local Agency shall comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards and available at <https://www.w3.org/TR/WCAG21/>.

V. Taxes

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

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

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

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

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

H. SOFTWARE PIRACY PROHIBITION.

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

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

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

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

[*Not applicable to intergovernmental agreements*] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and (iii) has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

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.

24. DISPUTES

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer 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.

EXHIBIT A
SCOPE OF WORK

Name of Project: Citywide Signal Re-timing
Project Number: AQC M570-055
SubAccount #: 23048

The Colorado Department of Transportation (“CDOT”) will oversee the City of Greeley when the City completes the Citywide Signal Retiming project. (Hereinafter referred to as “this work”) CDOT and the City of Greeley believes it will be beneficial to perform this work because signal retiming would help improve travel times, reduce delay, and improve air quality along the City’s signalized corridors. The City has completed the necessary preliminary studies to implement this proposal. All work will conform to the MUTCD.

This work will consist of collecting existing traffic data, analyzing signal timings, and implementing new timings that optimizes traffic flow. The design phase of this work is scheduled to begin during federal fiscal year 2023. The design phase will identify more exact requirements, qualities, and attributes for this work. (Herein after referred to as “the exact work”). The exact work shall be used to complete the construction phase of the project. The construction phase of the project is estimated to begin in federal fiscal year 2023 and shall finish as soon as reasonably possible.

This work will conform to the parameters articulated in the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction, AASHTO “A Policy on Geometric Design of Highways and Streets”, AASHTO “Roadside Design Guide”, and the CDOT Project Development Manual, CDOT M&S Standards, CDOT Design Guide, CDOT Construction Manual, Manual on Uniform Traffic Control Devices, Highway Capacity Manual, along with all applicable State and Federal guidelines

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

If this project is funded with Multimodal Transportation & Mitigation Options Funding (MMOF) these funding expenditures must be invoiced by June 1st of the year they expire.

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EXHIBIT B**SAMPLE IGA OPTION LETTER**

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

Vendor Name:

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

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

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

Option to unilaterally extend the 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: _____
Stephen Harelson, P.E., Chief Engineer
(For) Shoshana M. Lew, Executive Director

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

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

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

By: _____
Colorado Department of Transportation

Date: _____

EXHIBIT C - FUNDING PROVISIONS**Greeley Project # AQC M570-055 (23048)****A. Cost of Work Estimate**

The Local Agency has estimated the total cost the Work to be \$283,000.00, which is to be funded as follows:

1. BUDGETED FUNDS			
a.	Federal Funds (96.47% of AQC Award)		\$273,000.00
b.	Local Agency Matching Funds (3.53% of AQC Award)		\$10,000.00
TOTAL BUDGETED FUNDS			\$283,000.00
2. OMB UNIFORM GUIDANCE			
a.	Federal Award Identification Number (FAIN):		TBD
b.	Name of Federal Awarding Agency:		FHWA
c.	CFDA # Highway Planning and Construction		CFDA 20.205
d.	Is the Award for R&D?		No
e.	Indirect Cost Rate (if applicable)		N/A
3. ESTIMATED PAYMENT TO LOCAL AGENCY			
a.	Federal Funds		\$273,000.00
b.	Less Estimated Federal Share of CDOT-Incurred Costs		\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY			\$273,000.00
4. FOR CDOT ENCUMBRANCE PURPOSES			
a.	Total Encumbrance		\$283,000.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109		\$0.00
NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS			\$283,000.00

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 23048.10.30	Performance Period Start*/End Date TBD - TBD	Design 3020	\$0.00
WBS Element 23048.20.10	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. Matching Funds

The matching ratio for the federal funds for this Work is 96.47% federal funds to 3.53% Local Agency funds, and this ratio applies only to the \$283,000.00 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 \$283,000.00, and additional federal funds are available for the Work, the Local Agency shall pay 3.53% of all such costs eligible for federal funding and 100% of all other costs. If additional federal funds are not available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than \$283,000.00, then the amounts of Local Agency and federal funds will be decreased in accordance with the funding ratio described herein. **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 \$273,000.00. For CDOT accounting purposes, the federal funds of \$273,000.00 and the Local Agency funds of \$10,000.00 will be encumbered for a total encumbrance of \$283,000.00, 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 participating funds and the Local Agency matching 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 AGREEMENT ADMINISTRATION CHECKLIST** Final Update 8, 2023

COLORADO DEPARTMENT OF TRANSPORTATION LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. AQC M570-055	STIP No. SNF5173.059	Project Code 23048	Region 4
Project Location Citywide Signalized Intersections within the City of Greeley			Date 2/19/2022
Project Description Citywide Signal Retiming			
Local Agency City of Greeley	Local Agency Project Manager Scott Logan		
CDOT Resident Engineer Bryce Reeves	CDOT Project Manager Jake Oneal		
INSTRUCTIONS:			
This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i> .			
The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.			
Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.			
The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.			
Note: Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2.1	Review Project to ensure it is 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)		X
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463	X	
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement <ul style="list-style-type: none"> • Project Development • Construction Contract Administration (including Fabrication Inspection Services) 	X	#
5.4	Conduct Design Scoping Review Meeting	X	#
5.5	Conduct Public Involvement	X	
5.6	Conduct Field Inspection Review (FIR)	X	#
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	#
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
5.9	Obtain Utility and Railroad Agreements	X	
5.10	Conduct Final Office Review (FOR)	X	#

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
5.11	Justify Force Account Work by the Local Agency	X	#
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	#
5.13	Document Design Exceptions - CDOT Form 464	X	#
5.14	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	X	#
5.15	Ensure Authorization of Funds for Construction		X
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
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.) Bryce Reeves 3/20/20 _____ CDOT Resident Engineer (Signature on File) Date		X
6.3	Set On-the-Job Training Goals (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances	X	
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks		X
7.2	Advertise for Bids	X	#
7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals		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		X
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	#
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor	X	#
8.2	Project Safety	X	
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B) • Fabrication Inspection Notifications	X	#
	Pre-survey • Construction staking • Monumentation	X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	X	#
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	#
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	#
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
8.5	Supervise Construction A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." <u>Scott Logan</u> <u>970-350-9555</u> Local Agency Professional Engineer or Phone number CDOT Resident Engineer	X	
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
	Fabrication Inspection and documentation	X	
8.6	Approve Shop Drawings	X	
8.7	Perform Traffic Control Inspections	X	#
8.8	Perform Construction Surveying	X	
8.9	Monument Right-of-Way	X	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent) Provide the name and phone number of the person authorized for this task. <u>Scott Logan</u> <u>970-350-9555</u> Local Agency Representative Phone number	X	
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	
8.12	Prepare and Authorize Change Orders	X	#
8.13	Submit Change Order Package to CDOT	X	
8.14	Prepare Local Agency Reimbursement Requests	X	
8.15	Monitor Project Financial Status	X	
8.16	Prepare and Submit Monthly Progress Reports	X	
8.17	Resolve Contractor Claims and Disputes	X	
8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. <u>Bryce Reeves</u> <u>970-350-2126</u> CDOT Resident Engineer Phone number		X
8.19	Ongoing Oversight of DBE Participation	X	
MATERIALS			
9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	X	
9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	X X	X
9.3	Perform Project Acceptance Samples and Tests	X	
9.4	Perform Laboratory Verification Tests	X	
9.5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X	
9.6	Approve Sources of Materials	X	
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/> • Generate IAT schedule • Schedule and provide notification • Conduct IAT	X X	X

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

cc: CDOT Resident Engineer/Project Manager
CDOT Region Program Engineer
CDOT Region EEO/Civil Rights Specialist
CDOT Region Materials Engineer
CDOT Contracts and Market Analysis Branch
Local Agency Project Manager

EXHIBIT F
CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

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

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

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

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

EXHIBIT G
DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

The recipient or its the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency upon request: Business Programs Office

Colorado Department of Transportation 2829 West Howard Place
Denver, Colorado 80204
Phone: (303) 757-9007

REQUIRED BY 49 CFR PART 26

EXHIBIT H

LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

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

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

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

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

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

- a. Qualifications,

b. Approach to the Work,
c. Ability to furnish professional services.
d. Anticipated design concepts, and
e. Alternative methods of approach for furnishing the professional services. Evaluation factors for final selection are the consultant's:

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

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

EXHIBIT I

FEDERAL-AID CONTRACT PROVISIONS FOR CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Government wide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

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

I. GENERAL

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

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

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

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

II. NONDISCRIMINATION

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

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

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

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

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

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

- a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.
- b. The contractor will accept as its operating policy the following statement:

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

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

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

- a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
- c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
- d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

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

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

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

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

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

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

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

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

- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

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

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

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

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

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

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

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract.

The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt.

Contracting agencies may elect to apply these requirements to other projects.

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

1. Minimum wages:

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

2. Withholding:

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally- assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis- Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements.

It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (i) That the payroll for the payroll period contains the information required to be provided under §5.5(a)(3)
 - (ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices.

Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity.

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

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

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

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

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and

7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility:

- a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

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

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

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

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

1. Instructions for Certification– First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below.

The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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

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

* * * * *

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESSROAD CONTRACTS

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

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

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

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

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

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

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

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

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

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

EXHIBIT J

ADDITIONAL FEDERAL REQUIREMENTS

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

Executive Order 11246

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

Copeland "Anti-Kickback" Act

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

Davis-Bacon Act

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

Contract Work Hours and Safety Standards Act

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

Clear Air Act

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

Energy Policy and Conservation Act

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

OMB Circulars

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

Hatch Act

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

Nondiscrimination

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

The [Local Agency], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (79 Stat. 252, 42 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 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, disadvantaged business enterprises will be afforded full and fair opportunity

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

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

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

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

(Name of Recipient)

by _____
(Signature of Authorized Official)

DATED _____

APPENDIX A

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

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

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

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

(HABENDUM CLAUSE)

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

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

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

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

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

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

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

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

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

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

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

APPENDIX E

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

Pertinent Non-Discrimination Authorities:

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

EXHIBIT K**FFATA SUPPLEMENTAL FEDERAL PROVISIONS**

State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. “Award” means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

1.1.1. Grants;

1.1.2. Contracts;

1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);

1.1.4. Loans;

1.1.5. Loan Guarantees;

1.1.6. Subsidies;

1.1.7. Insurance;

1.1.8. Food commodities;

1.1.9. Direct appropriations;

1.1.10. Assessed and voluntary contributions; and

1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

1.1.12. Technical assistance, which provides services in lieu of money;

1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;

1.1.14. Any award classified for security purposes; or

1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. “Contract” means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

1.3. “Contractor” means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.

1.5. “Entity” means all of the following as defined at 2 CFR part 25, 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.				Yes		
2. Utilize the "Comment" section below the last question for additional responses.				No		
3. When complete, check the box at the bottom of the form to authorize.				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"/> ≥ 6	<input type="checkbox"/> 2 to 5	<input type="checkbox"/> < 2
IMPACT ASSESSMENT		Yes	No	N/A
18	For this upcoming federal award or in the immediate future, does your entity have any potential conflicts of interest* in accordance with applicable Federal awarding agency policy? If Yes, please disclose these conflicts in writing, along with supporting information, and submit with this form. (*Any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Subrecipient's obligations to the State.)	<input type="checkbox"/>	<input type="checkbox"/>	
19	For this award, has your entity disclosed to CDOT, in writing, violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award? Response options: YES = Check if have one or more violation(s) and have either disclosed previously to CDOT or as part of this form. In the comment section, list all violations with names of supporting documentation and submit with this form. NO = Check if have one or more violation(s) and have not disclosed previously or will not disclose as part of this form. Explain in the comment section. N/A = Check if have no violations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PROGRAM MANAGEMENT ASSESSMENT		Yes	No	N/A
20	Does your entity have a written process/procedure or certification statement approved by your governing board ensuring critical project personnel are capable of effectively managing Federal-aid projects? If Yes, please submit with this form.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21	Does your entity have written procurement policies or certification statement for consultant selection approved by your governing board in compliance with 23 CFR 172*? If Yes, please submit with this form. (*The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications, at a fair and reasonable price.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22	a) Is your staff familiar with the relevant CDOT manuals and federal program requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b) Does your entity have a written policy or a certification statement approved by your governing board assuring federal-aid projects will receive adequate inspections? If Yes, please submit with this form.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c) Does your entity have a written process or a certification statement approved by your governing board assuring a contractor's work will be completed in conformance with approved plans and specifications? If Yes, please submit with this form.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>


d) Does your entity have a written policy or certification statement approved by your governing board assuring that materials installed on the projects are sampled and tested per approved processes. <i>If Yes, please submit with this form.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Does your entity have a written policy or certification statement approved by your governing board assuring that only US manufactured steel will be incorporated into the project (<i>Buy America requirements</i>)? <i>If Yes, please submit with this form.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments - As needed, include the question number and provide comments related to the above questions. Insert additional rows as needed.</p>			
<p><input type="checkbox"/> By checking this box, the Executive Director, VP or Chief Financial Officer of this entity certifies that all information provided on this form is true and correct.</p> <p style="text-align: right;"> Tool Version: v2.0 (081816)</p>			

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. "Data Universal Numbering System (DUNS) Number" means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet's website may be found at: <http://fedgov.dnb.com/webform>.
 - 2.1.3. "Entity" means:
 - 2.1.3.1. a Non-Federal Entity;
 - 2.1.3.2. a foreign public entity;
 - 2.1.3.3. a foreign organization;
 - 2.1.3.4. a non-profit organization;
 - 2.1.3.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
 - 2.1.3.6. a foreign non-profit organization (only for 2 CFR part 170) only;

- 2.1.3.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
- 2.1.3.8. a foreign for-profit organization (for 2 CFR part 170 only).
- 2.1.4. “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.5. “Expenditure Category (EC)” means the category of eligible uses as defined by the US Department of Treasury in “Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds” report available at www.treasury.gov.
- 2.1.6. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
- 2.1.7. “Grant” means the Grant to which these Federal Provisions are attached.
- 2.1.8. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.9. “Non-Federal Entity means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 2.1.10. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
 - 2.1.10.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.10.2. Is not organized primarily for profit; and
 - 2.1.10.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.11. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.12. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.13. “Prime Recipient” means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.14. “Subaward” means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.

- 2.1.15. “Subrecipient” or “Subgrantee” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.16. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
- 2.1.16.1. Salary and bonus;
 - 2.1.16.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 2.1.16.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.16.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.16.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 2.1.16.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.17. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 2.1.18. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

3. COMPLIANCE.

- 3.1. Grantee shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado, at its discretion, may provide written notification to Grantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 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 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS.

- 4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 4.2. DUNS. Grantee shall provide its DUNS number to its Prime Recipient, and shall update Grantee's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Grantee's information.

5. TOTAL COMPENSATION.

- 5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and
 - 5.1.2. In the preceding fiscal year, Grantee received:
 - 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.2.3. 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

- 6.1. If Grantee is a Subrecipient of the Award pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below \$30,000 no reporting required; if more than \$30,000 and less than \$50,000 then FFATA reporting is required; and, \$50,000 and above SLFRF reporting is required.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. Grantee shall report as set forth below.
- 8.1.1. Grantee shall use the SLFRF Subrecipient Quarterly Report Workbook as referenced in Exhibit F to report to the State Agency within ten (10) days following each quarter ended September, December, March and June. Additional information on specific requirements are detailed in the SLFRF Subrecipient Quarterly Report Workbooks and "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

EC 1 – Public Health**All Public Health Projects**

- a) Description of structure and objectives
- b) Description of relation to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification

v. Labor reporting

COVID-19 Interventions and Mental Health (1.4, 1.11, 1.12, 1.13)

- a) Amount of total project used for evidence-based programs
- b) Evaluation plan description

COVID-19 Small Business Economic Assistance (1.8)

- a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

- a) Number of non-profits served

COVID-19 Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (1.10)

- a) Sector of employer
- b) Purpose of funds

EC 2 – Negative Economic Impacts**All Negative Economic Impacts Projects**

- a) Description of project structure and objectives
- b) Description of project's response to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Amount of total project used for evidence-based programs and description of evaluation plan (*not required for 2.5, 2.8, 2.21-2.24, 2.27-2.29, 2.31, 2.34-2.36*)
- e) Number of workers enrolled in sectoral job training programs
- f) Number of workers completing sectoral job training programs
- g) Number of people participating in summer youth employment programs
- h) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

Household Assistance (2.1-2.8)

- a) Number of households served
- b) Number of people or households receiving eviction prevention services (2.2 & 2.5 only) (*Federal guidance may change this requirement in July 2022*)
- c) Number of affordable housing units preserved or developed (2.2 & 2.5 only) (*Federal guidance may change this requirement in July 2022*)

Healthy Childhood Environments (2.11-2.13)

- a) Number of children served by childcare and early learning (*Federal guidance may change this requirement in July 2022*)
- b) Number of families served by home visiting (*Federal guidance may change this requirement in July 2022*)

Education Assistance (2.14, 2.24-2.27)

- a) National Center for Education Statistics (“NCES”) School ID or NCES District ID
- b) Number of students participating in evidence-based programs (*Federal guidance may change this requirement in July 2022*)

Housing Support (2.15, 2.16, 2.18)

- a) Number of people or households receiving eviction prevention services (*Federal guidance may change this requirement in July 2022*)
- b) Number of affordable housing units preserved or developed (*Federal guidance may change this requirement in July 2022*)

Small Business Economic Assistance (2.29-2.33)

- a) Number of small businesses served

Assistance to Non-Profits (2.34)

- a) Number of non-profits served

Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (2.35-2.36)

- a) Sector of employer
- b) Purpose of funds
- c) If other than travel, tourism and hospitality (2.36) – description of hardship

EC 3 – Public Health – Negative Economic Impact: Public Sector Capacity

Payroll for Public Health and Safety Employees (EC 3.1)

- a) Number of government FTEs responding to COVID-19

Rehiring Public Sector Staff (EC 3.2)

- a) Number of FTEs rehired by governments

EC 4 – Premium Pay

All Premium Pay Projects

- a) List of sectors designated as critical by the chief executive of the jurisdiction, if beyond those listed in the final rule
- b) Numbers of workers served
- c) Employer sector for all subawards to third-party employers
- d) Written narrative justification of how premium pay is responsive to essential work during the public health emergency for non-exempt workers or those making over 150 percent of the state/county’s average annual wage
- e) Number of workers to be served with premium pay in K-12 schools

EC 5 – Infrastructure Projects

All Infrastructure Projects

- a) Projected/actual construction start date (month/year)
- b) Projected/actual initiation of operations date (month/year)
- c) Location (for broadband, geospatial data of locations to be served)
- d) Projects over \$10 million
 - i. Prevailing wage certification or detailed project employment and local impact report

- ii. Project labor agreement certification or project workforce continuity plan
- iii. Prioritization of local hires
- iv. Community benefit agreement description, if applicable

Water and sewer projects (EC 5.1-5.18)

- a) National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- b) Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
- c) Median Household Income of service area
- d) Lowest Quintile Income of the service area

Broadband projects (EC 5.19-5.21)

- a) Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
 - i. If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
 - ii. Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- b) Additional programmatic data will be required for broadband projects and will be defined in a subsequent version of the US Treasury Reporting Guidance, including, but not limited to (*Federal guidance may change this requirement in July 2022*):
 - i. Number of households (broken out by households on Tribal lands and those not on Tribal lands) that have gained increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, with the number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download and number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
 - ii. Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) that have projected increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization, with the number of each type of institution with access to the minimum

- speed standard of reliable 100 Mbps symmetrical upload and download; and number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.
- iii. Narrative identifying speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering, technology to be deployed, miles of fiber, cost per mile, cost per passing, number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download, number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload, and number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization. Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

All Expenditure Categories

- a) Program income earned and expended to cover eligible project costs
- 8.1.2. A Subrecipient shall report the following data elements to Prime Recipient no later than five days after the end of the month following the month in which the Subaward was made.
- 8.1.2.1. Subrecipient DUNS Number;
- 8.1.2.2. Subrecipient DUNS Number if more than one electronic funds transfer (EFT) account;
- 8.1.2.3. Subrecipient parent's organization DUNS Number;
- 8.1.2.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 8.1.2.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

- 8.1.2.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.
- 8.1.3. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, the following data elements:
- 8.1.3.1. Subrecipient's DUNS Number as registered in SAM.
- 8.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
- 8.1.3.3. Narrative identifying methodology for serving disadvantaged communities. See the "Project Demographic Distribution" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. This requirement is applicable to all projects in Expenditure Categories 1 and 2.
- 8.1.3.4. Narrative identifying funds allocated towards evidenced-based interventions and the evidence base. See the "Use of Evidence" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. See section 8.1.1 for relevant Expenditure Categories.
- 8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the public health and negative economic impacts of COVID-19. This requirement is applicable to Expenditure Categories 1 and 2. For aid to travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12), also provide the sector of employer, purpose of funds, and if not travel, tourism and hospitality a description of the pandemic impact on the industry.
- 8.1.3.6. Narrative identifying the sector served and designated as critical to the health and well-being of residents by the chief executive of the jurisdiction and the number of workers expected to be served. For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county's average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is higher, OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions, include justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19 but should not include personally identifiable information. This requirement applies to EC 4.1, and 4.2.
- 8.1.3.7. For infrastructure projects (EC 5), or capital expenditures in any expenditure category, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and

location (for broadband, geospatial location data). For projects over \$10 million:

- 8.1.3.8. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.
 - 8.1.3.8.1. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.
 - 8.1.3.8.2. Whether the project prioritizes local hires.
 - 8.1.3.8.3. Whether the project has a Community Benefit Agreement, with a description of any such agreement.
- 8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor's Office and Office of the State Controller. The State of Colorado may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Exhibit G – SLFRF Reporting Modification Form.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.
- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS.

- 10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

11. SINGLE AUDIT REQUIREMENTS.

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

- 11.1.1. Election. A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. Exemption. If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. Subrecipient Compliance Responsibility. A Subrecipient shall procure or otherwise arrange for the audit required by Subpart F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with 2 CFR 200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Subpart F-Audit Requirements.

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.
 - 12.1.1. [Applicable to federally assisted construction Agreements.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.
 - 12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).

- 12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements,” and any implementing regulations issued by the Federal Awarding Agency.
- 12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 12.1.7. Never Agreement with the enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never Agreement with the enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

- 12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.
- 12.1.9. Title VI of the Civil Rights Act. The Subgrantee, Contractor, Subcontractor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S. C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CRF Part 22, and herein incorporated by reference and made part of this Agreement or agreement.

13. CERTIFICATIONS.

- 13.1. Subrecipient Certification. Subrecipient shall sign a "State of Colorado Agreement with Recipient of Federal Recovery Funds" Certification Form in Exhibit 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

By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

EXHIBIT O

AGREEMENT WITH SUBSUBLECIPIENT OF FEDERAL RECOVERY FUNDS

Section 602(b) of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021), authorizes the Department of the Treasury (Treasury) to make payments to certain Subrecipients from the Coronavirus State Fiscal Recovery Fund. The State of Colorado has signed and certified a separate agreement with Treasury as a condition of receiving such payments from the Treasury. This agreement is between your organization and the State and your organization is signing and certifying the same terms and conditions included in the State’s separate agreement with Treasury. Your organization is referred to as a Subrecipient.

As a condition of your organization receiving federal recovery funds from the State, the authorized representative below hereby (i) certifies that your organization will carry out the activities listed in section 602(c) of the Act and (ii) agrees to the terms attached hereto. Your organization also agrees to use the federal recovery funds as specified in bills passed by the General Assembly and signed by the Governor.

Under penalty of perjury, the undersigned official certifies that the authorized representative has read and understood the organization’s obligations in the Assurances of Compliance and Civil Rights Requirements, that any information submitted in conjunction with this assurances document is accurate and complete, and that the organization is in compliance with the nondiscrimination requirements.

Subrecipient Name _____

Authorized Representative: _____

Title: _____

Signature: _____

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
TERMS AND CONDITIONS

1. Use of Funds.
 - a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 602(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.
 - b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Subrecipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award. Subrecipient also agrees to comply with any reporting requirements established by the Governor's Office and Office of the State Controller.
4. Maintenance of and Access to Records
 - a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs. Subrecipient shall follow guidance on administrative costs issued by the Governor's Office and Office of the State Controller.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.
8. Conflicts of Interest. The State of Colorado understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy

is applicable to each activity funded under this award. Subrecipient and Contractors must disclose in writing to the Office of the State Controller or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Office of the State Controller shall disclose such conflict to Treasury.

9. Compliance with Applicable Law and Regulations.

a. Subrecipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

- i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
- ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and Subcontractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - i. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - ii. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - iii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
- iv. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

- v. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
 - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. Remedial Actions. In the event of Subrecipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.
11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number SLFRF0126 awarded to the State of Colorado by the U.S. Department of the Treasury.”
14. Debts Owed the Federal Government.
- a. Any funds paid to the Subrecipient (1) in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.
 - b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury’s initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.
15. Disclaimer.
- a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or Subcontractor under this award.
 - b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.
16. Protections for Whistleblowers.
- a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.
 - b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;

- iii. The Government Accountability Office;
- iv. A Treasury employee responsible for Agreement or grant oversight or management;
- v. An authorized official of the Department of Justice or other law enforcement agency;
- vi. A court or grand jury; or
- vii. A management official or other employee of Subrecipient, Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.

c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

1. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees, Subrecipients, and Contractorsto adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance, regulated programs, licenses, procurement Agreements by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.
3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Contractors, Subcontractors, successors, transferees, and assignees:

The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.
7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.
9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of

discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub- Subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

EXHIBIT P

SLFRF SUBRECIPIENT QUARTERLY REPORT

1. SLFRF SUBRECIPIENT QUARTERLY REPORT WORKBOOK

- 1.1 The SLFRF Subrecipient Quarterly Report Workbook must be submitted to the State Agency within ten (10) days following each quarter ended September, December, March and June. The SLFRF Subrecipient Quarterly Report Workbook can be found at:

<https://osc.colorado.gov/american-rescue-plan-act> (see SLFRF Grant Agreement Templates tab)

EXHIBIT Q

SAMPLE SLFRF REPORTING MODIFICATION FORM

Local Agency:		Agreement No:	
Project Title:		Project No:	
Project Duration:	To:	From:	
State Agency:	CDOT		

This form serves as notification that there has been a change to the reporting requirements set forth in the original SLFRF Grant Agreement.

The following reporting requirements have been (add/ remove additional rows as necessary):

Updated Reporting Requirement (Add/Delete/Modify)	Project Number	Reporting Requirement

By signing this form, the Local Agency agrees to and acknowledges the changes to the reporting requirements set forth in the original SLFRF Grant Agreement. All other terms and conditions of the original SLFRF Grant Agreement, with any approved modifications, remain in full force and effect. Grantee shall submit this form to the State Agency within 10 business days of the date sent by that Agency.

 Local Agency

 Date

 CDOT Program Manager

 Date

EXHIBIT R
APPLICABLE FEDERAL AWARDS

FEDERAL AWARD(S) APPLICABLE TO THIS GRANT AWARD

Federal Awarding Office	US Department of the Treasury
Grant Program	Coronavirus State and Local Fiscal Recovery Funds
Assistance Listing Number	21.027
Federal Award Number	SLFRP0126
Federal Award Date *	May 18, 2021
Federal Award End Date	December 31, 2024
Federal Statutory Authority	Title VI of the Social Security Act, Section 602
Total Amount of Federal Award (this is <u>not</u> the amount of this grant agreement)	\$3,828,761,790

* Funds may not be available through the Federal Award End Date subject to the provisions in §2 and §5 below.

EXHIBIT S**CHECKLIST OF REQUIRED EXHIBITS DEPENDENT OF 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	✓		✓
EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST	✓	✓	✓
EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS	✓		✓
EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE	✓		✓
EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES	✓		✓
EXHIBIT I, FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS	✓		✓
EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS	✓		✓
EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS	✓	✓	✓
EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM	✓	✓	✓
EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS	✓		✓
EXHIBIT N, FEDERAL TREASURY PROVISIONS		✓	✓

EXHIBIT O, AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS		✓	✓
EXHIBIT P, SLFRF SUBRECIPIENT QUARTERLY REPORT		✓	✓
EXHIBIT Q, SLFRF REPORTING MODIFICATION FORM		✓	✓
EXHIBIT R, APPLICABLE FEDERAL AWARDS		✓	✓
EXHIBIT S, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE	✓	✓	✓



Council Agenda Summary

April 4, 2023

Key Staff Contact: Bret Naber, IT Director

Title:

Consideration of a Resolution Approving Change Order - ERP Staffing, System and Project

Summary:

In order to support the progress that has and continues to be made in iterating the Enterprise Resource Planning (ERP) system, staff is seeking City Council approval of a change order request for external third party support of managed services through the end of the year and additional specific project initiative needs.

Based upon personnel changes in the critical payroll function in early 2023, payroll supplemental services are required which can be provided by the City's current third party managed services. The request – for which supplemental appropriations were approved by City Council on March 21, 2023 – will support payroll operations for up to 4 months while key payroll positions are recruited and hired. In addition, the following critical needs will be supported through this change order:

- Reporting: The City has and continues to struggle with securing reliable reports from the ERP. The City remains in discussions with Oracle about its obligations to and financial support of these additional third party resources.
- Managed Services: Staff has identified the need to extend the existing managed services engagement through the end of the year to assist in the maintenance of the ERP Oracle environment. These services primarily include mandatory compliance updates, assessment of impacts, documentation and testing services, knowledge transfer and training, and operational support for activities such as financial year end, audit, and other critical ERP functions.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	Yes
If yes, what is the initial, or, onetime impact?	Onetime
What is the annual impact?	\$447,174
What fund of the City will provide Funding?	Project Fund Managed by Information Technology
What is the source of revenue within the fund?	General Fund – included in Supplemental Appropriation approved by City Council on March 21, 2023

Legal Issues:

None

Strategic Focus Area:



High-Performance Government

Decision Options:

- 1) Adopt the resolution as presented; or
- 2) Amend the resolution and adopt as amended; or
- 3) Deny the resolution; or
- 4) Continue consideration of the resolution to a date certain.

Council's Recommended Action:

A motion to Approve the Resolution

Attachments:

Resolution
Change Order

THE CITY OF GREELEY, COLORADO

RESOLUTION 10, 2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GREELEY, COLORADO APPROVING A CHANGE ORDER WITH METAFORMERS

WHEREAS, on May 3, 2022, the City of Greeley contracted with a company called Metaformers to support the implementation of the Oracle Enterprise Resource Planning (ERP) system; and

WHEREAS, on May 16, 2022 and December 13, 2022, the City approved change orders to the existing contract with Metaformers to allow an increased scope of work to support the ERP implementation; and

WHEREAS, the City of Greeley has experienced staff turnover in the payroll division of the Department of Finance and staff members have determined that having staff from Metaformers assist with this critical function while additional staff is hired is in the best interests of the City; and

WHEREAS, this Change Order will also allow Metaformers to assist in developing additional reports which will be beneficial to the City; and

WHEREAS, authorization of this Change Order will also allow the City to extend the managed services engagement with Metaformers through the end of the year; and

WHEREAS, the Change Order is in the amount of \$443,887 which requires approval of City Council pursuant to Section 6-486 of the Greeley Municipal Code.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREELEY, COLORADO:

Section 1. The Change Order number 3 in the amount of \$443,887 is hereby approved.

Section 2. This Resolution shall become effective immediately upon its passage.

PASSED, AND ADOPTED, SIGNED AND APPROVED THIS _____ DAY OF APRIL, 2023.

ATTEST:

THE CITY OF GREELEY, COLORADO

By: _____
City Clerk

By: _____
John Gates, Mayor



CHANGE ORDER FORM

Project Information

Change Order #:	3	Date:	March 24, 2023
Project Name:	Oracle 2.0 Post Go-Live Support & system Refinement Services		
Bid Number:	FS21-12-192	Dept/Division:	Information Technology
Original Budget Unit #:	100100019011	PO #:	
New Oracle Charge Number:	3	Project Number:	11399
		Oracle PO:	20221563
Oracle Expenditure Type:	7435	Expenditure Organization:	100.1000.19011
Project Manager:	Bret Naber	Title:	Chief Information Officer

Contractor/Consultant Information

Contractor/Consultant:	Metaformers	Email:	[REDACTED]
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The CONTRACTOR/CONSULTANT is hereby directed to perform the WORK described in the CONTRACT for design/construction as amended by this CHANGE ORDER.

See attached **2** sheets with full explanation for the change order.

Compensation to Contractor/Consultant

The original contract sum was:	\$2,305,327.00
The net change by previous change order was: (Change Order #1 & #2 Total)	\$575,500.00
The contract sum prior to this change order was:	\$2,880,827.00
The contract sum will be: (See List) Increased	\$443,887.00
The new contract sum, including this change order is:	\$3,324,714.00
The contract time will be: (See List) Unchanged	Dec-23
The new date for project completion is:	

This CHANGE ORDER is intended to, and the OWNER agrees that it shall, fairly and adequately compensate the CONTRACTOR/CONSULTANT for the extra direct costs (time and materials, etc.) as well as all expenses and damages which may result from any delays, suspensions, stretch-outs, scheduling, inefficiencies and accelerations in the WORK associated with this CHANGE ORDER, and the CONTRACTOR/CONSULTANT releases the OWNER from any claims for such expenses and damages.

This CHANGE ORDER is intended to, and the CONTRACTOR/CONSULTANT agrees that it does, provide the CONTRACTOR/CONSULTANT a reasonable and adequate period of time in which to complete the WORK in accordance with the CONTRACT for establishment of policies, as amended by this CHANGE ORDER, and the CONTRACTOR/CONSULTANT releases the OWNER from any claims for additional time to perform the WORK associated with this CHANGE ORDER.

The Contract Documents may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The Contract Documents, including all component parts set forth above, may be executed and delivered by electronic signature by any of the parties and all parties consent to the use of electronic signatures.

Signatures for City Council

IN WITNESS WHEREOF, the parties have caused this instrument to be executed in two (2) original counterparts as of the day and year first above written.

Approved as to Substance	Reviewed as to Legal Form
City Manager	City Attorney
Certification of Contract Funds Availability	Departmental Certification
Director of Finance	Department Director
Purchasing Official	Project Manager

Certification of Content by Contractor/Consultant

Representative of Contractor/Consultant	Title
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Additional Approval:

_____ Budget _____ Supervisor _____ CPC _____ Finance

Cumulative change orders totalling \$1,019,387 for a total of 44.2%.

CHANGE ORDER FORM



Project Information

Change Order #:	3
Project Name:	Oracle 2.0 Post Go-Live Support & system Refinement Services
Date:	3/24/2023
Project Manager:	Bret Naber

Change Order Justification

Why was this not in original contract?	Due to staff turnover, extension of managed services to the end of 2023, and additional specific project initiative needs.
Budget Impact/Funding	Increase \$443,887
Impact to project schedule	No impact to schedule
Detailed Explanation Of Change Order	The following change order requests have been internally approved and appropriated through Council. Payroll supplemental services are required due to a critical staff shortage in the Payroll Office. Services can be provided by our vendor to keep Payroll operations running for 3-4 months while we rehire the key positions. Additional reporting needs have surfaced and could be accommodated with additional resources from our vendor. We have specific report needs documented and prioritized. These reports will be custom and will assist with several other ongoing initiatives. We need to extend our managed services engagement through the end of the year. These services assist in the maintenance of the ERP Oracle environment. Managed Services include mandatory compliance updates, assessment of impacts, documentation and testing services. These services also include knowledge transfer and training. These services will also provide operational support for activities such as financial year end, audit, and other critical ERP functions.

Meta Formers	
\$293,287.00	Managed Services / Project Infusion
\$75,000.00	Payroll - Supplemental Services
\$75,600.00	Reporting
\$443,887.00	Total

Services to assist in the maintenance of the ERP Oracle environment. Managed Services include mandatory compliance updates, assessment of impacts, documentation and testing services. These services also include knowledge transfer and training. Operational support for activities such as year end, audit, and other critical ERP functions.

Payroll Supplemental services are required due to a critical staff shortage in the Payroll Office. Services can be provided by our vendor to keep Payroll operations running for 3 months while we rehire the key positions.

Additional reporting needs have surfaced and could be accommodated with additional resources from our vendor. We have specific report needs documented and prioritized. These reports will be custom and will assist with several other ongoing initiatives.



Council Agenda Summary

April 4, 2023

Key Staff Contact: Becky Safarik, Interim Community Development Director; Caleb Jackson, Planner III

Title:

Introduction and first reading of an Ordinance changing the official zoning map of the City of Greeley, Colorado, from Commercial High Density (C-H) to Industrial Low Density (I-L) changing the underlying land use designations for approximately 2.54 acres of property located at the northwest corner of 31st Avenue and 29th Street

Summary:

Abel Cisneros-Castillo, represented by Emily Tarantini and Eric Wernsman, has submitted a request to rezone approximately 2.54 acres of undeveloped land located at the northwest corner of 31st Avenue at 29th Street from C-H (Commercial High Intensity) to I-L (Industrial Low Intensity) zoning district.

The applicant has requested the rezone to allow the site to be used for light industrial uses such as warehousing, outdoor storage, office and other services, such as an aesthetician studio.

The Planning Commission will consider this request at its March 28, 2023 meeting.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	No
Is there grant funding for this item?	N/A

Legal Issues:

Consideration of this matter is a quasi-judicial process.

Other Issues and Considerations:

Conformance with the Comprehensive Plan and Development Code

Strategic Focus Area:

N/A

Decision Options:

- 1) Introduce the ordinance as presented; or
- 2) Amend the ordinance and introduce as amended; or
- 3) Deny the ordinance; or
- 4) Continue consideration of the ordinance to a date certain.

Council's Recommended Action:

A motion to introduce the ordinance and schedule the public hearing and second reading for April 18, 2023.

Attachments:

Ordinance
Project Vicinity Map
Staff Report
Project Narrative

**CITY OF GREELEY, COLORADO
ORDINANCE NO. 11, 2023
CASE NO. ZON2022-0017**

AN ORDINANCE CHANGING THE OFFICIAL ZONING MAP OF THE CITY OF GREELEY, COLORADO, FROM COMMERCIAL HIGH DENSITY (C-H) TO INDUSTRIAL LOW DENSITY (I-L) CHANGING THE UNDERLYING LAND USE DESIGNATIONS FOR APPROXIMATELY 2.54 ACRES OF PROPERTY LOCATED AT THE NORTHWEST CORNER OF 31ST AVENUE AND 29TH STREET.

BE IT ORDAINED BY THE CITY COUNCIL OF GREELEY, COLORADO:

Section 1. The following described property located in the City of Greeley is hereby changed from the zoning district referred to as C-H (Commercial High Intensity) to I-L (Industrial Low Intensity), in the City of Greeley, County of Weld, State of Colorado:

Legal Description

A parcel of land, being inclusive of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, Block 2 of Arlington Heights, recorded July 15, 1887 in Book 2 at Page 19 as Reception No. 25765 of the Records of Weld County, and a portion of 16th Street Right of Way, 7th Avenue Right of Way and 20' Alley Right of Way, located in the Southwest Quarter of Section 8, Township Five North (T.5N.), Range Sixty-five West (R.65W.) of the Sixth Principal Meridian (6th P.M.), City of Greeley, County of Weld, State of Colorado and being more particularly described as follows:

BEGINNING at the Southeast corner of said Lot 10 of Block 2, Arlington Heights and assuming the East line of said Block 2 of Arlington Heights as bearing South 00°02'24" East being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2011, with all other bearings contained herein relative thereto;

THENCE South 89°57'36" West along the South line of said Lot 10 a distance of 200.00 feet to the centerline of said 20' Alley Right of Way;

THENCE North 00°02'24" West along said centerline a distance of 300.00 feet to the centerline of said 16th Street, 100' Right of Way;

THENCE North 89°57'36" East along said centerline a distance of 250.00 feet to the centerline of said 7th Avenue, 100' Right of Way;

THENCE South 00°02'24" East along said centerline a distance of 300.00 feet to the extended line of the South line of said Lot 10;

THENCE South 89°57'36" West along said line a distance of 50.00 feet to the POINT OF BEGINNING.

Said described parcel of land contains 75,000 Square Feet or 1.722 Acres, more or less (±) and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

Section 2. The boundaries of the pertinent zoning districts as shown on the official zoning map are hereby changed so as to accomplish the above-described zoning changes, and the Mayor and City Clerk are hereby authorized and directed to sign and attest an entry which shall be made on the official zoning map to reflect this change.

Section 3. This ordinance shall become effective five (5) days after its final publication as provided by the Greeley City Charter.

PASSED AND ADOPTED, SIGNED AND APPROVED, THIS _____ DAY OF _____, 2023.

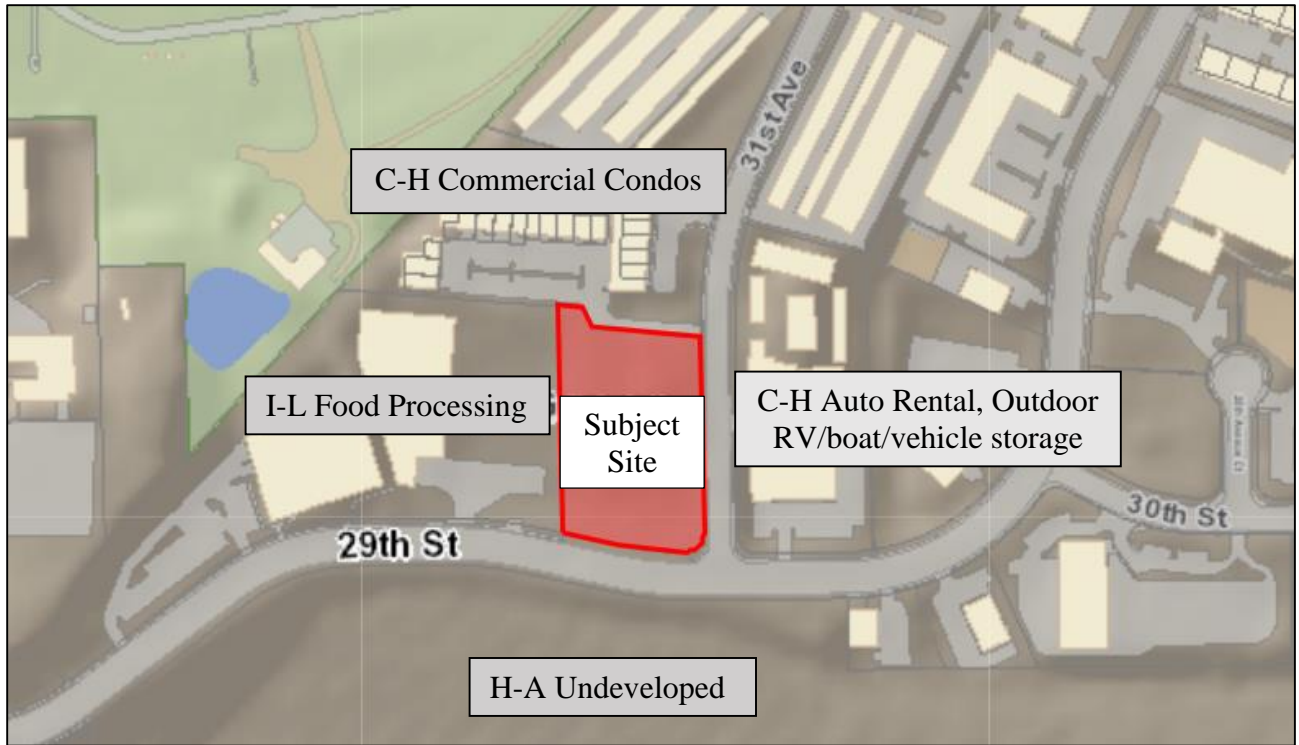
ATTEST:

THE CITY OF GREELEY, COLORADO

City Clerk

Mayor

VICINITY MAP ZON2022-0017



PLANNING COMMISSION SUMMARY

ITEMS: Rezoning

FILE NUMBER: ZON2022-0017

PROJECT: Cisneros Rezoning

LOCATION: Northwest corner of 31st Avenue at 29th Street

APPLICANT: Emily Tarantini and Eric Wernsman on behalf of Abel Cisneros-Castillo

CASE PLANNER: Caleb Jackson, AICP | Planner III

PLANNING COMMISSION HEARING DATE: March 28, 2023

PLANNING COMMISSION FUNCTION:

The Planning Commission shall consider the staff report, along with testimony and comments made by the applicant and the public and shall then make a recommendation to the City Council regarding the application in the form of a finding based on the review criteria in Section 24-204(b) of the Development Code.

EXECUTIVE SUMMARY

Emily Tarantini and Eric Wernsman on behalf of Abel Cisneros-Castillo petitions to rezone 2.54 acres of land located at the northwest corner of 31st Avenue at 29th Street from C-H (Commercial High Intensity) to I-L (Industrial Low Intensity) zone district.

A. REQUEST

The applicant requests approval of a rezone from C-H (Commercial High Intensity) to I-L (Industrial Low Intensity) zone district.

B. STAFF RECOMMENDATION

Approval

C. LOCATION

Abutting Zoning:

North: C-H (Commercial High Intensity)

South: H-A (Holding Agriculture)

East: C-H (Commercial High Intensity)

West: I-L (Industrial Low Intensity)

Surrounding Land Uses:

North: Commercial Condos

South: Undeveloped

East: Auto Rental, Outdoor RV/Boat/Vehicle Storage

West: Food Processing

Site Characteristics:

The 2.54-acre site at the northwest corner of 31st Avenue at 29th Street is undeveloped. The property generally slopes from the northwest to the southeast. The site is generally vegetated with grasses and has no significant trees.

D. BACKGROUND

The subject site was annexed in 1980, zoned the equivalent of C-H (Commercial High Intensity), and remains undeveloped.

E. APPROVAL CRITERIA

Development Code Section 24-204 Rezoning Procedures

The review criteria found in Section 24-204(b) of the Development Code shall be used to evaluate the rezoning application.

1. The proposal is in accordance with the goals and objectives of the Comprehensive Plan and any other plan, policy or guidance adopted pursuant to that plan.

The Imagine Greeley Comprehensive Plan’s Land Use Guidance Map identifies the site for an Employment, Industrial, and Commercial Area. Supported uses in such areas include industrial and commercial. The following comprehensive plan objectives also support the request:

Objective GC-1.2 Form of Growth

Encourage a compact urban form over sprawl or leap-frog development.

Objective GC-4.3 Infill Compatibility

Promote the use of site design and building architecture that is sympathetic to the surrounding area and enhances the desirable character and form of the neighborhood or area.

Staff Comment: The proposal complies with the land use guidance map and other objectives from the comprehensive plan.

The proposal complies with this criterion.

2. The proposal can fulfill the intent of the zoning district considering the relationship to surrounding areas.

Staff Comment: The proposal fulfills the intent of the zoning district and is compatible with the surrounding area.

The proposal complies with this criterion.

3. Whether the area changed, or is it changing to such a degree that it is in the public interest to rezone the subject property to encourage development or redevelopment of the area

Staff Comment: The area is developing into a commercial and increasingly industrial area. It is in the public interest to rezone the property to encourage development of the site.

The proposal complies with this criterion.

4. Whether the existing zoning been in place for a substantial time without development, and if this indicates the existing zoning is inappropriate given development trends in the vicinity.

Staff Comment: The current zoning has existed since 1980 without development. Over time, commercial and increasingly low intensity industrial development has occurred in the area. As such, I-L (Industrial Low Intensity) zoning is more appropriate for the subject site.

The proposal complies with this criterion.

5. The proposed zoning will enable development in character with existing or anticipated development in the area considering the design of streets, civic spaces and other open space; the pattern, scale and format of buildings and sites; and the compatibility and transitions with other complimentary uses and development.

Staff Comment: The proposed rezoning would provide additional options and opportunities to develop the site with low intensity industrial uses that compliment nearby commercial and industrial uses.

The proposal complies with this criterion.

6. The City or other agencies have the ability to provide services or facilities that may be necessary for anticipated uses in the proposed district.

Staff Comment: The subject site has adequate access to services and facilities. Any proposed development of the subject site would be reviewed for compliance with city standards and improvements to existing infrastructure may be required at that time.

The proposal complies with this criterion.

7. The change will serve a community need, provide an amenity or accommodate development that is not possible under the current zoning or that was not

anticipated at the time of the initial zoning of the property, making the proposed zoning more appropriate than the current zoning.

Staff Comment: The proposed rezoning would allow development options that are more appropriate for the site than the current zoning district.

The proposal complies with this criterion

8. Any reasonably anticipated negative impacts on the area or adjacent property either are mitigated by sound planning, design and engineering practices or are outweighed by broader public benefits to the surrounding community.

Staff Comment: Any reasonably anticipated negative impacts on this area resulting from this rezoning would be mitigated as part of the development review process by the consistent enforcement of Municipal Code and Development Code requirements regarding landscaping buffers, architectural features, setbacks, and other relevant codes and policies.

The proposal complies with this criterion.

9. The recommendations of professional staff or advisory review bodies.

Staff Comment: City staff recommends approval of this rezoning request.

F. SITE CHARACTERISTICS

1. SUBDIVISION HISTORY

The property was platted as part of Gallery Green III Subdivision in 1979.

2. HAZARDS

No known hazards impact development of the site.

3. WILDLIFE

The subject site is an area where development could have high impacts on wildlife. Development of the subject site would require conformance with adopted standards to evaluate development impacts on wildlife and take appropriate mitigation measures.

4. FLOODPLAIN

The site is not located within a floodplain, according to the adopted Federal Emergency Management Administration (FEMA) flood data.

5. DRAINAGE AND EROSION

Any proposed development of the site would require the documentation and review by City staff of all drainage, detention, water quality, and erosion mitigation as a condition of the development of the site.

6. TRANSPORTATION

Existing infrastructure is present to provide vehicular access to the site. Transportation would be further considered with development and would include provision of any warranted infrastructure for pedestrian, cyclist, and motor vehicle access and impacts.

G. SERVICES

1. WATER

The site can be adequately served by existing water infrastructure. Water service will be further evaluated with development and the applicant will be required to make any necessary improvements to serve the property.

2. SANITATION SEWER

The site can be adequately served by existing sewer infrastructure. Sewer service will be further evaluated with development and the applicant will be required to make any necessary improvements to serve the property.

3. EMERGENCY SERVICES

Emergency services are available and can adequately serve the subject property.

4. PARKS/OPEN SPACES

Park demand is typically generated by residential development. Adequate parks and open spaces are being planned for and acquired in the vicinity.

5. SCHOOLS

School demand is typically generated by residential development. The subject site is adequately served by existing schools.

H. NEIGHBORHOOD IMPACTS

1. VISUAL

Any development application for the property would be reviewed for compliance with the Development Code requirements regarding visual impacts. Industrial zoning and development is typical for the area, minimizing the potential for jarring visual impacts.

2. NOISE

Any potential noise created by future development will be regulated by the Municipal Code.

I. PUBLIC NOTICE AND COMMENT

Public notices were completed as follows:

- Notice was placed on the City of Greeley's website by March 13, 2023.
- A sign was posted on the property on March 10, 2023.
- Notice was mailed to 56 property owners on March 6, 2023.

J. MINERAL ESTATE OWNER NOTIFICATION

Mineral notice is not required for a rezone request.

K. PLANNING COMMISSION MOTIONS

Recommended (Approval)

Based on the application received and the preceding analysis, the Planning Commission finds that the proposed rezoning from C-H (Commercial High Intensity) Zone District to the I-L (Industrial Low Intensity) Zone District meets the Development Code criteria, Section 24-204, and therefore, recommends approval of the rezone to the City Council.

Alternative (Denial)

Based on the application received and the preceding analysis, the Planning Commission finds that the proposed rezoning from C-H (Commercial High Intensity) Zone District to the I-L (Industrial Low Intensity) Zone District does not meet the Development Code criteria, Section 24-204, and therefore, recommends denial of the rezone to the City Council.

ATTACHMENTS

Attachment A – Vicinity Map

Attachment B – Project Narrative

Attachment C – Rezoning Plan Set (available upon request)

Attachment D – Neighborhood Notification Boundary Map (available upon request)

December 2, 2022

Planning & Zoning Department

1100 10th Street - 2nd Floor

Greeley, CO 80631

Re: Cisneros (NW Corner of W. 29th St. & 31st Ave.)- Project Narrative for Rezone

Rezoning request:

The applicant is requesting to rezone the vacant 2-acre property to I-L (Industrial Low Intensity) from its current C-H (Commercial High Intensity) zone to allow for the development of industrial uses, including warehousing with associated outdoor storage, along with commercial uses.

Rezoning approval criteria including justification for the rezoning request:

The request to rezone the property to I-L will allow the property owner to pursue an industrial development on the site, specifically: warehousing, outdoor storage, office and services including an aesthetician studio. The proposed land use meets the intent of the I-L zone district in providing employment opportunities along with a lower intensity industrial character that will not have significant impacts to the surrounding areas as they are of a similar land use and in some cases the same zone district.

The proposed land use of warehousing with the variety of commercial uses is permitted within the I-L zone, additionally the outdoor storage area is subject to size and screening limitations which will be complied with the following landscape screening and fencing requirements.

Consistency with the goals, policies, and strategies in the City's Comprehensive Plan:

The subject property appears to be located within the Employment, Industrial and Commercial future land use area within the Comprehensive Plan. This area generally outlines a vision for industrial, manufacturing, and other employment uses that can offer a variety of land uses to serve employment needs and retail needs. The Comprehensive Plan objectives of Economic Diversification and Support of Entrepreneurs (ED-1.4 & ED-1.5) can be tied to the proposed development as the applicant is the business owner of a local company within northern Colorado hoping to expand as it offers employment opportunities. The variety of land uses proposed within the building also diversify the level of services being offered within an industrial/commercial area, attracting and supporting Greeley residents.

The I-L zone standards along with the Comprehensive Plan seek to protect any adjacent residential area from any negative impacts, in this case the surrounding land uses are all a commercial and industrial nature and there are no residential neighborhoods within an immediate proximity to the site.

The property appears to be located within the Greeley/Weld Enterprise Zone, promoting employment-type land uses and offering tax incentives. The subject property appears to be the only vacant lot within the industrial/commercial area, the rezoning is encouraging and allowing redevelopment of a potential infill site that has been vacant for several years which is in support of the Comprehensive goal – GC-4: Prioritize Infill and Redevelopment.

Consistency with the existing and surrounding zoning:



The requested zoning is consistent with the area and existing land uses and zoning. The adjacent property to the west is zoned I-L with an industrial manufacturing and distribution land use, including outdoor storage. Properties to the north and east appear to be a mixture of commercial and low intensity industrial uses, zoned C-H. The large parcel that is located south of the property and West 29th Street is zoned H-A (Holding Agriculture), it is currently being farmed and also contains oil and gas wells. The Comprehensive Plan includes this area within its future land use designation of Employment, Industrial and Commercial.

Rezoning Review Criteria

1. The proposal is in accordance with the goals and objectives of the Comprehensive Plan and any other plan, policy or guidance adopted pursuant to that plan.

The property is located within the Employment, Industrial and Commercial future land use area within the Comprehensive Plan. Rezoning the site to I-L will not only be compatible with the adjacent zoning to the west but will also be compatible with surrounding land uses. Specific goals that support this development proposal and rezoning acquired from the Comprehensive plan can be found within the objectives of Economic Diversification and Support of Entrepreneurs (ED-1.4 & ED-1.5) as well as the goal GC-4: Prioritize Infill and Redevelopment.

2. The proposal can fulfill the intent of the zoning district considering the relationship to surrounding areas.

The surrounding area appears to have an established industrial/commercial-like campus setting. Existing businesses within the area are commercial and industrial in nature, the proposed

development will be in-line with the surrounding businesses and will meet the standards of the I-L zone district.

3. Whether the area changed, or is it changing to such a degree that it is in the public interest to rezone the subject property to encourage development or redevelopment of the area.

The parcel has been vacant for several years with the existing C-H zoning possibly because of the inability to provide for outdoor storage. The request to rezone to I-L will encourage the development of the last vacant lot in the vicinity while providing compatible development standards that will fit within the context of the area.

4. Whether the existing zoning been in place for a substantial time without development, and if this indicates the existing zoning is inappropriate given development trends in the vicinity.

The property and the area in general have been zoned C-H since the 1990's, beginning in 2015 (approximately) the parcels immediately west of the site have been rezoned to I-L indicating that development in the area or perhaps within this particular corner lend itself to an industrial/manufacturing type of land use that are in need of larger outdoor storage areas.

5. The proposed zoning will enable development in character with existing or anticipated development in the area considering the design of streets, civic spaces, and other open space; the pattern, scale and format of buildings and sites; and the compatibility and transitions with other complimentary uses and development.

The I-L zoning can encourage development within the area that is compatible in scale and pattern with existing land uses and buildings that appear to be of a commercial and industrial nature. The I-L zoning also provides the appropriate level of development and design requirements for this type of business in context with the area.

6. The City or other agencies have the ability to provide services or facilities that may be necessary for anticipated uses in the proposed district.

There are adequate public facilities available to serve this development.

7. The change will serve a community need, provide an amenity or accommodate development that is not possible under the current zoning or that was not anticipated at the time of the initial zoning of the property, making the proposed zoning more appropriate than the current zoning.

The proposed development provides employment opportunities as well as serves Greeley residents. Additionally, the commercial land use proposed within the building will provide opportunities for residents to avail themselves of the services.

8. Any reasonably anticipated negative impacts on the area or adjacent property either are mitigated by sound planning, design and engineering practices or are outweighed by broader public benefits to the surrounding community.

Land within the general area is currently existing commercial and industrial business that can support an additional similar land use. There are no anticipated negative impacts to the area.

Please feel free to reach out with any questions,

Emily Tarantini

tarantini.emily@gmail.com

303-585-1055



Council Agenda Summary

April 4, 2023

Key Staff Contact: Becky Safarik, Interim Community Development Director

Title:

Introduction and first reading of an Ordinance extending the period during which the Greeley Downtown Development Authority may allocate and collect tax increment financing for the Downtown Development Authority Area within the City of Greeley

Summary:

The Greeley Downtown Development Authority (DDA) was established in 1998. An associated Plan of Development was approved by the City Council in November 2002, establishing 2003 as the property tax increment base assessment year. State law allows downtown development authorities to collect tax increment revenue from new construction, change of taxable status or change in land use entitlements that is in excess of the base year for thirty years. This places the final year for such tax increment collection for the Greeley DDA at 2033 (with taxes received by the DDA in 2034). State law also allows municipalities to grant a 20-year extension in the last 10 years of the initial 30-year period. Many other Colorado cities have taken advantage of this opportunity to retain a dedicated income stream to support private investment in their downtowns. Tax increment funds can be used to support a broad range of eligible redevelopment activities consistent with the originally adopted Plan of Development.

The Greeley DDA requests Council approval to extend the DDA tax increment district for twenty years consistent with state law, for which it is now eligible.

Over the life of the Greeley DDA tax increment district, the Authority has devoted its tax increment funds for major redevelopment projects such as the DoubleTree Hotel, Maddie Apartments, 55 Resort Apartments, and over a dozen significant building rehabilitation projects. The tax increment funds have also been used for matching façade grants for storefronts, public art, tree lighting, wayfinding, and other streetscape improvements throughout the district.

On September 2, 2008, City Council passed and adopted the DDA's call for a special mail ballot election on November 4, 2008 for the purpose of submitting two ballot measures to the qualified electors of the Greeley Downtown Development Authority District. Qualified electors voted in favor of both a five mill levy on all real and personal property and \$50,000,000 debt to finance the objects and purposes contained in the DDA's Plan of Development. The mill levy has provided a means to help support the operation of the DDA. There is no sunset on this 5-mill assessment as long as the DDA is in existence.

The DDA is charged with furthering the mission to create, support and promote meaningful experiences, business growth and private development. The City of Greeley recently approved an update to the previous Downtown Investment Strategy with an ambitious set of objectives for the next 10 years. To capitalize on that momentum and work plan, it is important to have a

sustainable and somewhat predictable income stream to stimulate private reinvestment in the downtown. The DDA TIF dollars are the first funds tapped for downtown redevelopment projects and to support those projects that don't qualify for additional City support. With a large percentage of the DDA District comprised of tax-exempt properties (39% in 2022) the importance of this resource cannot be overstated.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	N/A
Is there grant funding for this item?	N/A

Legal Issues:

Consideration of this matter is a legislative process.

Other Issues and Considerations:

This item is also scheduled for a broader discussion at the April 11, 2023 Council Work Session.

Strategic Focus Area:



Business Growth



Community Vitality



Quality of Life

Decision Options:

- 1) Introduce the ordinance as presented; or
- 2) Amend the ordinance and introduce as amended; or
- 3) Deny the ordinance; or
- 4) Continue consideration of the ordinance to a date certain.

Council's Recommended Action:

A motion to introduce the ordinance and schedule the public hearing and second reading for April 18, 2023.

Attachments:

Ordinance

CITY OF GREELEY, COLORADO

ORDINANCE NO. 12, 2023

AN ORDINANCE EXTENDING THE PERIOD DURING WHICH THE GREELEY DOWNTOWN DEVELOPMENT AUTHORITY MAY ALLOCATE AND COLLECT TAX INCREMENT FINANCING FOR THE DOWNTOWN DEVELOPMENT AUTHORITY AREA WITHIN THE CITY OF GREELEY

WHEREAS, the Downtown Development Authority ("the Authority") of Greeley presented a Plan of Development area encompassing the legal boundaries of the Authority ("Area"); and

WHEREAS, the Plan of Development was approved by City Council with Resolution No. 63, 2002, on November 19, 2002; and,

WHEREAS, pursuant to Resolution No. 63, 2002 the Authority was empowered to collect tax increment financing ("TIF") as a tool for encouraging new development within the Area; and,

WHEREAS, pursuant to Colorado law, the Authority's authorization to collect TIF exists for thirty years, through 2033, with tax received in 2034; and,

WHEREAS, the Authority presented a modification to the 2002 Plan of Development which City Council approved by Resolution 64, 2009; and,

WHEREAS, pursuant to § 31-25-807(3)(a)(IV)(A), C.R.S., the period of time in which the Authority may collect TIF may be extended by an additional twenty (20) years by an ordinance enacted by City Council; and,

WHEREAS, after input from the public, presentation by the Authority, review of the Plan, and recommendations of the Planning Commission, City Council finds it is in the best interests of the City to extend the period of time in which the Authority may collect TIF to encourage new development within the area encompassing said legal boundaries of the Authority, to halt or prevent deterioration of property values and/or structures within the Plan of Development and further to halt or prevent the growth of blighted areas therein; and,

WHEREAS, on the first day of the Property Tax Extension the established base year for the allocation of property taxes (the "Base") must be advanced by ten years, and upon the completion of the first ten years of Property Tax Extension, the Base must be advanced by one year for every additional year through the final ten years; and

WHEREAS, City Council finds that the extension of the Plain for an additional 20 years will afford maximum opportunity consistent with the needs and plans of the municipality as a whole for redevelopment properties in areas within the Plan of Development within the Authority's boundaries by the Authority and by private enterprise.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREELEY, COLORADO:

Section 1. The City Council hereby finds that there is a need to continue taking corrective measures in order to halt and prevent deterioration of property values and the structures within the Plan of Development area.

Section 2. The City Council hereby finds that the Plan of Development, as modified, affords the maximum opportunity, consistent with the sound needs and plans of the City as a whole, for the redevelopment of the Plan of Development area, by both the Authority and private enterprise.

Section 3. The City Council hereby extends the period of time in which the Authority may collect TIF by twenty additional years, to and including the year 2053, with tax collected in 2054, according to the applicable provisions and procedures of State and local law.

Section 4. That on the first day of the extension of property taxes the established base year for the allocation of property taxes is advanced by ten years.

Section 5. That upon the completion of the first ten years of extension of property taxes, the base year for the allocation of property taxes be advanced by one year for every additional year through the final ten years.

Section 6. This Ordinance shall become effective five days following publication as provided by the Greeley City Charter.

PASSED, ADOPTED, SIGNED AND APPROVED THIS _____ DAY OF _____, 2023.

ATTEST:

THE CITY OF GREELEY, COLORADO

By: _____
City Clerk

By: _____
Mayor



Council Agenda Summary

Title:

Pulled Consent Agenda Items

Summary:

Pulled Consent Agenda items will be considered in the order they appeared on the consent agenda.



Council Agenda Summary

April 4, 2023

Key Staff Contact: Benjamin Snow, Economic Health & Housing Director

Title:

Consideration of a Resolution approving a Redevelopment Agreement between 1024 8th Avenue, LLC, DDA and the City of Greeley

Summary:

The City Council endorsed the establishment of a Redevelopment Incentive Program in 2018. This program outlines a combination of incentives available to qualified redevelopment projects in the City’s Redevelopment District. For individual projects, the level of support is scaled to the amount of the private investment and the funds are extended from a special fund set up for this purpose.

The City’s “Redevelopment Assistance Funds” may be used to underwrite a portion or all of the development fees that would be owed the City for the new construction. As such, these incentive funds stay within City accounts but are transferred to credit the Development Fee Fund on behalf of the approved redevelopment project. Since program approval, the City has approved agreements with 55 Resort on the former Garnsey & Wheeler site on 8th Avenue, Richmark Real Estate Partners for three redevelopment sites on 8th Avenue (The Maddie) and with Greeley Land, LLC on a site at 1750 6th Street near UNC Jackson Field for a second phase of multi-family student-oriented apartments (University Flats Phase II). All of these projects have been completed.

As with any of the City’s economic development assistance programs, the incentive funding extended is memorialized in a formal agreement which sets out the terms and conditions and performance expectations to assure the City funds will be used to leverage the private investment in a manner as proposed. The agreement also offers reliance for the developer that the City’s funds will be provided as expected, an important element for project financing and execution.

The attached resolution approving the use of the Redevelopment Incentive fund for this project outlines the Intergovernmental Agreement and Redevelopment Agreement between the developers (1024 8th Avenue, LLC), the Downtown Development Authority, and the City of Greeley. The DDA Board approved its portion of this Agreement at its March 23 regular meeting. The following chart summarizes the key elements of the Redevelopment Agreement:

REDEVELOPMENT AGREEMENT	
Goal	Support desired redevelopment at the minimum level necessary to close the funding differential between construction of a similar project in an undeveloped area and that within the redevelopment district,

Project	Residential development that would include a minimum of 194 multi-family apartments, with related amenities. This is the former furniture store building located on the NEC of 8 th Avenue and 11 th Street.
Parties	1024 8 th Avenue, LLC Greeley Downtown Development Authority City of Greeley
Investment	Developer estimates a minimum of \$55MM in new building value related to construction costs for the full project (does not include land costs, soft costs or furniture, fixtures or equipment; in total, the private investment would exceed \$73M).
Assistance	The DDA will reimburse the Project the net new property taxes paid by the developer and received by the DDA from the date of project completion through the life of the DDA tax increment district (2032), but not more than \$1.7MM. The DDA reimbursement may be used only for payment of eligible DDA costs as defined in the Agreement. The City will underwrite the Project's Development Fees, based on the actual value of building construction as constructed up to 100% of the fees if the project exceeds \$30MM as proposed, but not more than \$3.1MM
Performance Assurances	The DDA will reimburse the Project from property taxes actually paid by the developer. The City will reserve the Project's development fee payment with the Agreement but will only credit the fees due upon project completion. The Developer is liable for the Project's development fees if construction is not commenced within 18 months from the date of the Agreement, or completed within 24 months from the date of Commencement. Developer will post a financial security for the value of that fee payment until the project is complete. The developer may not sell or transfer any part of the project to another party, except Permitted Assignees, without revocation of the City's Redevelopment Assistance Fund incentives.
Other conditions	Developer must construct the Project substantially consistent with the elevations submitted, City Development Code standards, and the Design Guidelines contained in the Agreement.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	Yes
If yes, what is the initial, or, onetime impact?	Up to \$3.1MM, from the Redevelopment Assistance Fund; up to \$1.7MM in Property Tax Increment revenue from the DDA's Fund (administered through the City, expended over the life of the TIF District).

Legal Issues:

Redevelopment Agreements must be approved by Council Resolution

Other Issues and Considerations:

None.

Strategic Focus Area:



Business Growth



Community Vitality



Housing for All

Decision Options:

- 1) Adopt the resolution as presented; or
- 2) Amend the resolution and adopt as amended; or
- 3) Deny the resolution; or
- 4) Continue consideration of the resolution to a date certain.

Council's Recommended Action:

A motion to adopt the Resolution

Attachments:

Resolution
Exhibit A to Resolution (Redevelopment Agreement)
Presentation

**CITY OF GREELEY, COLORADO
RESOLUTION 9, 2023**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF GREELEY AND THE GREELEY DOWNTOWN
DEVELOPMENT AUTHORITY TO ENTER INTO A REDEVELOPMENT
AGREEMENT WITH 1024 8TH AVENUE, LLC, INCLUDING FUNDING FOR
CERTAIN ECONOMIC DEVELOPMENT ACTIVITIES**

WHEREAS, the City of Greeley undertakes economic development initiatives in a number of areas for the betterment of the community; and,

WHEREAS, the City of Greeley also contracts with partner organizations to carry out economic development work on behalf of the City; and,

WHEREAS, the City Council enters into partnership from time to time with the Greeley Downtown Development Authority to undertake certain economic development activities in the city's central business district; and

WHEREAS, the City of Greeley has established a Redevelopment District within which it carries out various initiatives to improve area infrastructure and conditions; and,

WHEREAS, the City has also established a Redevelopment Assistance Fund to support private redevelopment projects consistent with the Downtown Plan of Development, the City's Comprehensive Plan and Development Code; and

WHEREAS, 1024 8th Avenue, LLC, have proposed a Redevelopment Project consistent with the purpose and intent of the City's Redevelopment Assistance Fund; and,

WHEREAS, the Downtown Development Authority has determined the Redevelopment Project is eligible to receive financial support from its Property Tax Increment Fund and has approved the use of said funds as requested by 1024 8th Avenue, LLC; and

WHEREAS, the City of Greeley, Downtown Development Authority, and 1024 8th Avenue, LLC, have come to terms as set forth in a Redevelopment Agreement for the use of City of Greeley Redevelopment Assistance Funds and Downtown Development Authority Property Tax Increment Funds; and

WHEREAS, entering into an agreement with another governmental entity requires the additional action by City Council in the form of a Resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
GREELEY, COLORADO:**

Section 1. The Greeley City Council approves the attached Redevelopment Agreement by and among 1024 8th Avenue, LLC, a Delaware limited liability company, the Greeley Downtown Development Authority, and the City of Greeley, attached hereto as Exhibit A.

Section 2. Approval of this Agreement is contingent upon the final appropriation of funding by the Greeley City Council for the Redevelopment Incentive Program.

Section 3. Approval of this Agreement is also contingent upon Greeley Planning Commission approval of any required land use actions associated with the Project described in the Redevelopment Agreement. Further, nothing in the Greeley City Council approval of this Resolution shall be construed to supersede the authority of or require the Greeley Planning Commission to render approval of any land use actions necessary to construct this Project.

Section 4. This Resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED, SIGNED, APPROVED AND IN EFFECT THIS 4th day of APRIL, 2023.

ATTEST:

THE CITY OF GREELEY, COLORADO

City Clerk

By: _____
Mayor

**REDEVELOPMENT AGREEMENT
(1024 8th Avenue)**

This REDEVELOPMENT AGREEMENT (this “**Agreement**”) dated as of March 23, 2023 (“**Effective Date**”), is made by and among 1024 8TH AVENUE, LLC, a Delaware limited liability company (“**Developer**”), the CITY OF GREELEY, a municipal corporation (“**City**”), and the GREELEY DOWNTOWN DEVELOPMENT AUTHORITY, a body corporate and politic of the State of Colorado (“**Authority**”). Developer, City, and Authority are sometimes collectively called the “**Parties**,” and individually, a “**Party**.”

RECITALS

WHEREAS, Developer is under contract to purchase real property situated at 1024 8th Avenue in Greeley, CO 80631, as described and depicted in Exhibit A attached hereto (“**Property**”); and

WHEREAS, the Property is located within the boundaries of the Downtown Development Authority District (the “**DDA District**”), which is managed by the Authority; and

WHEREAS, the formation of the DDA District also included the establishment of tax increment financing, which provides a financial tool as authorized under state law to stimulate and support certain redevelopment activities; and

WHEREAS, commensurate with the formation of the DDA District, a Plan of Development (“**Plan of Development**”) encompassing the legal boundaries of the Authority was adopted by the Greeley City Council with Resolution No. 63, 2002 on November 19, 2002, and later revised and readopted by the Greeley City Council with Resolution No. 64, 2009 on August 18, 2009; and

WHEREAS, the Authority may extend financial support from its tax increment district to secure the development of the Project; and

WHEREAS, consistent with the City’s Comprehensive Plan, the City has established and adopted a physical area within the community known as the Redevelopment District (“**Redevelopment District**”), within which it has identified property conditions that warrant support to stimulate reinvestment to deter properties from economic and physical deterioration due to their age and condition; and

WHEREAS, with the establishment and adoption of the Redevelopment District, the City Council made findings that establishment of the Redevelopment District would promote the health, safety, prosperity, security, and general welfare of the inhabitants thereof and of the people of this state; will halt or prevent deterioration of property values or structures within the Redevelopment District, will halt or prevent the growth of blighted areas within the Redevelopment District, and will assist the City in the development and redevelopment of the Redevelopment District and in the overall planning to restore or provide for the continuance of the health thereof; and that it would be of especial benefit to the property within the boundaries of the Redevelopment District, and by making such findings authorized the City to incur obligations, and to pledge as security

therefor the tax increments consistent with the provisions of §§ 31-25-801 through -822, C.R.S.; and

WHEREAS, the Redevelopment District incorporates within its boundary the entirety of the DDA District; and

WHEREAS, the Property is also located within the Redevelopment District; and

WHEREAS, Developer intends to redevelop the Property as a mixed-use multi-family residential and incidental retail project, which may also include office, restaurant, bar, and accessory uses, together with related amenities and uses on the Property (collectively, the “**Project**”); and

WHEREAS, construction of the Project is consistent with the adopted Plan of Development and, as such, will reduce conditions of distress or disinvestment in the DDA District; maximize the efficient provision of infrastructure and public services throughout the DDA District; and will assure the availability of housing, goods and services to area residents and businesses; and

WHEREAS, the City has established a limited fund for use within the Redevelopment District to support eligible redevelopment activities by paying for a portion of certain City development fees and charges associated with redevelopment construction, defined herein as the “**Redevelopment Assistance Fund;**” and

WHEREAS, as evidenced by Exhibits B and C, the Project complies with City design and development standards, is consistent with the goals of the Plan of Development, the City’s Comprehensive Plan, and meets the eligibility criteria of the City’s Redevelopment District incentive program; and

WHEREAS, the City has determined that the Property as defined herein, and as proposed for development as a single development, has met the City’s raw water requirement; and

WHEREAS, the Authority has determined that the acquisition, construction and installation of the Project will serve a public purpose and contribute to the redevelopment of the DDA District as contemplated by the Plan of Development.

NOW, THEREFORE, the Parties hereto, for themselves, their successors and assigns, in and for valuable consideration, including but not limited to, the performance of the mutual covenants and promises set forth herein, the receipt and adequacy of which are hereby acknowledged, do hereby covenant and agree as follows:

DEFINITIONS

1. “**Accumulated Tax Increments**” means an amount equal to \$500,000, which is on deposit in the Special Fund, as of the date of this Agreement.

2. “**Act**” means Part 8 of Article 25 of Title 31, Colorado Revised Statutes.

3. **“Ballot Question”** means the following ballot question approved by a majority of the electors voting thereon at an election duly called and held in the DDA District on November 4, 2008:

“SHALL CITY OF GREELEY DEBT BE INCREASED \$50,000,000.00 (MAXIMUM PRINCIPAL AMOUNT) WITH A REPAYMENT COST OF \$102,000,000.00 (MAXIMUM TOTAL PRINCIPAL AND INTEREST COSTS), ALL FOR THE PURPOSE OF FINANCING THE OBJECTS AND PURPOSES CONTAINED IN THE GREELEY DOWNTOWN DEVELOPMENT AUTHORITY'S PLAN OF DEVELOPMENT AS SUCH PLAN MAY BE AMENDED FROM TIME TO TIME (“THE PROJECT”), INCLUDING EQUIPMENT, APPURTENANCES, AND ACQUISITION OF INTEREST IN LANDS FOR SUCH PROJECT, AND INCLUDING RESERVED FUNDS AND OTHER INCIDENTAL COSTS NECESSARY OR APPROPRIATE IN CONNECTION WITH SUCH PROJECT AND FINANCING, ALL AS PROVIDED IN THE AUTHORITY'S APPROVED PLAN OF DEVELOPMENT AND ANY APPROVED AMENDMENTS TO THE AUTHORITY'S PLAN OF DEVELOPMENT; SUCH DEBT TO BE EVIDENCED BY BONDS, NOTES, LOAN AGREEMENTS, REIMBURSEMENT AGREEMENTS OR LEASES WHICH MAY BEAR INTEREST AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF EIGHT PERCENT (8%) PER ANNUM, SUCH INTEREST TO BE PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND PERIODICALLY AS MAY BE DETERMINED BY THE CITY COUNCIL, SUCH DEBT TO BE SOLD IN ONE SERIES OR MORE AT A PRICE ABOVE, BELOW OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE CITY COUNCIL MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF PREMIUM OF NOT MORE THAN 3%, AND WHICH DEBT MAY BE REFINANCED AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF THE MAXIMUM NET EFFECTIVE INTEREST RATE WITHOUT ADDITIONAL VOTER APPROVAL; SUCH DEBT SHALL BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE AUTHORITY, INCLUDING THE REVENUES PLEDGED OR FROM TAXES PLEDGED PURSUANT TO SECTION 31-25-807(3)(B) COLORADO REVISED STATUTES OR BOTH SUCH REVENUES AND TAXES WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE BOARD OF THE AUTHORITY AND THE CITY COUNCIL; AND SHALL THE CITY BE AUTHORIZED TO ISSUE DEBT TO REFUND THE DEBT AUTHORIZED IN THIS QUESTION, PROVIDED THAT AFTER THE ISSUANCE OF SUCH REFUNDING DEBT THE TOTAL OUTSTANDING PRINCIPAL AMOUNT OF ALL DEBT ISSUED PURSUANT TO THIS QUESTION DOES NOT EXCEED THE MAXIMUM PRINCIPAL AMOUNT SET FORTH ABOVE, AND PROVIDED FURTHER THAT ALL DEBT ISSUED BY THE CITY PURSUANT TO THIS QUESTION IS ISSUED ON TERMS THAT DO NOT EXCEED THE REPAYMENT COSTS AUTHORIZED IN THIS QUESTION; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON BE COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, THE CHARTER OF THE CITY OF GREELEY OR ANY OTHER LAW AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE AUTHORITY AND THE CITY OF GREELEY?”

4. **“Cap Amount”** means \$3,100,000, which is the maximum amount of Eligible Development Expenses that the City shall be required to pay under this Agreement.

5. “**Certification of Eligible DDA Costs**” means the Certificate prepared and executed by the Developer after Completion of the Project that sets forth the total amount of Eligible DDA Costs incurred and paid by the Developer in connection with the design, acquisition, construction and installation of the Eligible DDA Improvements, as required pursuant to Section 2.B. hereof.

6. “**City’s Portion**” means the amount of the Eligible Development Expenses that the City will underwrite, conditioned upon Developer’s performance of its obligations pursuant to this Agreement.

7. “**Commence**” or “**Commencement**” means the beginning of on-site physical construction of the Project, including without limitation excavation or grading, but expressly not including demolition of existing structures.

8. “**Completion**” or “**Completed**” means issuance of temporary or final certificates of occupancy for all buildings within the Project.

9. “**Conceptual Elevations**” means Developer’s current conceptual elevations for the buildings comprising the Project as depicted on Exhibit C of this Agreement.

10. “**Design Standards**” refers to the description of required building and site design elements as described in Exhibit B of this Agreement, as modified pursuant to Paragraph 23.

11. “**Developer’s Portion**” means the Eligible Development Expenses, less the City’s Portion, that the Developer is required to pay pursuant to this Agreement.

12. “**District**” means the Downtown Development Authority District.

13. “**Eligible DDA Costs**” means the reasonable and customary expenditures for the design, acquisition, construction and installation of the Eligible DDA Improvements, including without limitation, reasonable and customary soft costs and expenses related to the design, acquisition, construction and installation of the Eligible DDA Improvements, subject to the Increment Cap and the limitations contained herein.

14. “**Eligible Development Expenses**” means all impact fees, development review fees, fees imposed as a condition to the issuance of a City permit, tap fees, and sales and use tax related to the Project, but not incidental construction activity such as permits related to work in the right-of-way.

15. “**Eligible DDA Improvements**” means, collectively, the improvements described in Exhibit D, as it may be amended from time to time in accordance with this Agreement, that are to be designed, acquired, constructed or installed by the Developer as part of the Project, and that the Authority has determined have a public benefit in furtherance of the Act and the Plan of Development. Exhibit D may be amended with the prior written consent of the Executive Director of the Authority.

16. **“Increment Cap”** means the Accumulated Tax Increments and the maximum amount of revenues from the Property Tax Increment Revenue that shall be paid to the Developer under this Agreement to reimburse Eligible DDA Costs, which shall be the lesser of (a) the actual Eligible DDA Costs incurred in connection with the Project, as set forth in the Certification of Eligible DDA Costs, or (b) \$1,700,000.

17. **“O&M Mill Levy”** means the levy of an ad valorem tax by the City at the rate of five mills on the real and personal property within the boundaries of the DDA District to be used for the purpose of paying the Authority’s operations, maintenance and other expenses, as allowed by Section 31-25-817 of the Act.

18. **“Plan of Development”** means the Plan of Development originally approved by the City Council of the City on November 19, 2002, and modified by resolution adopted August 18, 2009 with respect to the DDA District.

19. **“Project”** means a residential project, featuring multi-family residential units and, together with related amenities and uses on the Property.

20. **“Project Costs”** means the costs for construction of the Project set forth on the Developer’s building permit applications, as reconciled at the time of Completion in accordance with § 4.04.255(b) of the Greeley Municipal Code.

21. **“Property”** means certain real property within the downtown area of the City described in Exhibit A hereto.

22. **“Property Tax Base Amount”** means, for purposes of this Agreement, \$493,440, which is the total assessed value of the Property last certified prior to the effective date of this Agreement, as reasonably determined by the Authority based upon data provided by the County Assessor. The Property Tax Base Amount and increment value shall be calculated and adjusted from time to time by the Authority in accordance with § 31-25-807(3)(e), C.R.S., and the rules and regulations of the Property Tax Administrator of the State of Colorado. The determination by the Authority of the Property Tax Base Amount and the increment value shall be conclusive absent manifest error.

23. **“Property Tax Increment Revenue”** means the annual ad valorem property tax revenue received from the Weld County Treasurer for the Property in excess of the amount produced by the levy of those taxing bodies that levy property taxes against the Property Tax Base Amount in accordance with the Act and the regulations of the Property Tax Administrator of the State of Colorado, and credited to the Special Fund, but not including, (a) the O&M Mill Levy, (b) any offsets collected by the Weld County Treasurer for return of overpayments or any reserve funds retained by the City or the Authority for such purposes in accordance with the Act, (c) any collection fees lawfully retained or payable to the City or Weld County for services rendered in connection with the collection of such ad valorem taxes, and (d) the Accumulated Tax Increments.

24. “**Redevelopment Assistance Fund**” means a fund of City monies that has been established and dedicated to provide assistance for the development or improvement of property within the DDA District. The Redevelopment Assistance Fund, which may be replenished from time to time, contains sufficient monies to pay the amount to which the Developer is entitled under this Agreement.

25. “**Special Fund**” means the special fund of the City that has the Accumulated Tax Increments on deposit and into which the Property Tax Increment Revenues are deposited as further set forth in § 31-25-807(3)(a)(II), C.R.S.

AGREEMENT

1. Eligible Development Expenses:

A. Payment of all Eligible Development Expenses shall be deferred until Completion of the Project, or such other time according to the terms of this Agreement, at which time the City shall pay the City’s Portion and the Developer shall pay the Developer’s Portion to the recipients of such Eligible Development Expenses, in accordance with the terms and conditions set forth in this Paragraph 1.

B. At the time Developer obtains each building permit for the Project, Developer shall provide the City with a guaranty, cash escrow, letter of credit, or other security for the payment of all Eligible Development Expenses that would be due (but for the deferment set forth in Paragraph 1(A)) as a condition to issuing such building permit (“**Security**”).

i. If Developer does not pay the entire Developer’s Portion when due in accordance with this Agreement, the City shall send Developer written notice thereof (“**Nonpayment Notice**”). If Developer does not cure such failure within 10 business days after receipt of such Nonpayment Notice, then the City may collect upon the Security in an amount equal to the past due amount of Developer’s Portion, which shall be the City’s sole and exclusive remedy for such failure.

ii. If the Project is Commenced but Developer ceases work on the Project for more than 120 consecutive calendar days (subject to Force Majeure Events) and the Project is not then Completed, the City shall send the Developer written notice thereof (“**Cessation Notice**”). If Developer does not recommence construction of the Project within 30 calendar days after receipt of such Cessation Notice, then the Developer’s Portion shall be deemed to be 100% of the Eligible Development Expenses for the Project, and the City may collect upon the Security in an amount equal to the past due amount of Developer’s Portion, which shall be the City’s sole and exclusive remedy for such failure.

iii. Upon payment of the entire Developer’s Portion for the Project, the Security shall be automatically and forever released and, if applicable, all funds remaining in the Security shall be immediately paid to Developer. The Authority

shall have no right in or to the Security or to bring or join any claims against Developer for failure to pay the Eligible Development Expenses.

C. The City's obligation to pay the City's Portion shall be contingent upon satisfaction of the following conditions:

i. Developer must Commence the Project within 18 calendar months after the Effective Date ("**Commencement Deadline**"), and the Project must be Completed within 24 calendar months after the date of Commencement ("**Completion Deadline**"). Developer may request an extension of either the Commencement Deadline or the Completion Deadline by delivering a written request for the same to the City Manager, which extension may be granted in the City's discretion, which discretion will not be unreasonably withheld.

ii. Developer shall have Completed the Project in substantial compliance with the Design Standards. The City's issuance of a Building Permit shall be deemed conclusive evidence that the proposed design is in compliance with this requirement. Once a Certificate of Occupancy has been issued, the Developer shall be deemed to have complied with this requirement in its entirety.

D. Provided Developer has satisfied the conditions set forth in Paragraph 1(D), the City shall pay the City's Portion out of the Redevelopment Assistance Fund, according to the following schedule:

i. If the Project Costs exceed \$5,000,000, the City's portion will equal 25% of the Eligible Development Expenses.

ii. If the Project Costs exceed \$10,000,000, the City's Portion will equal 50% of the Eligible Development Expenses.

iii. If the Project Costs exceed \$20,000,000, the City's Portion will equal 75% of the Eligible Development Expenses.

iv. If the Project Costs exceed \$30,000,000, the City's Portion will equal 100% of the Eligible Development Expenses.

v. The percentage of the City's Portion shall not increase proportionately for any increment between the dollar amounts set forth in the prior subparagraphs 1.D(i) through (iv).

vi. Notwithstanding the foregoing, the City shall not be obligated to pay any Eligible Development Expenses in excess of the Cap Amount.

E. Upon Completion, Developer shall submit a reconciliation of Project Costs and, subject to final resolution of any contests of such amount, shall provide written notice

to the City (a “**Completion Notice**”) stating the City’s Portion and the total Project Costs, which shall be equal to the total Project Costs as resulting from such reconciliation process.

F. Within 30 calendar days after delivery of the Completion Notice, the City shall pay the City’s Portion out of the Redevelopment Assistance Fund, which the City represents and warrants to Developer contains and shall contain at all times prior to the City’s payment of the City’s Portion funds sufficient to pay the City’s Portion up to the Cap Amount as required by this Agreement.

G. The Developer’s Portion shall equal the total Eligible Development Expenses less the City’s Portion. Developer shall pay the Developer’s Portion within 30 calendar days after delivery of the Completion Notice to the City.

2. Property Tax Increment Revenue.

A. The City has established the Special Fund and shall deposit the Property Tax Increment Revenues into the Special Fund upon receipt. The Parties acknowledge that incremental property taxes that are remitted to the City for deposit in the Special Fund are based on the annual valuation of all properties located within the DDA District, and not on a parcel by parcel basis. Therefore, tax increment revenues are calculated and remitted to the City in the aggregate for the entire District and are not remitted on a parcel by parcel basis. The Authority agrees that it will establish a reasonable methodology for determining the amount of tax increment revenues on deposit in the Special Fund that are allocable to the Property.

B. Upon Completion of the Project, the Developer shall prepare a Certification of Eligible DDA Costs that sets forth the Eligible DDA Costs that were actually incurred and paid by the Developer in connection with the design, acquisition, construction and installation of the Eligible DDA Improvements (the “**Certification of Eligible DDA Costs**”). The Certification of Eligible DDA Costs shall be executed by an authorized representative of the Developer and provided to the City and the Authority, together with bills or statements of account for the Eligible DDA Costs incurred and paid by the Developer.

C. After Completion of the Project and receipt of the Certification of Eligible DDA Costs, the City shall reimburse the Developer for Eligible DDA Costs from Accumulated Tax Increments and Property Tax Increment Revenues on deposit in the Special Fund, in an aggregate amount not exceeding the Increment Cap, in accordance with the following provisions. After Completion and receipt of the Certification of Eligible DDA Costs, the City shall remit the Accumulated Tax Increments to reimburse the Developer for Eligible DDA Costs, subject to the Increment Cap. No later than December 1 in each calendar year, the City and the Authority shall determine the amount of Property Tax Increment Revenues that are on deposit in the Special Fund that are attributable to the Property. The amount of Property Tax Increment Revenues on deposit in the Special Fund shall not include interest, if any, earned on such Revenues. On or prior to December 15 of each calendar year, the City shall remit the Property Tax Increment Revenues on deposit in the Special Fund that are attributable to the Property to the Developer to reimburse the

Developer for Eligible DDA Costs, subject to the Increment Cap. The City's obligation to remit the Accumulated Tax Increments and Property Tax Increment Revenues to the Developer to reimburse the Developer for Eligible DDA Costs is being entered into by the City pursuant to the authority conferred by the Ballot Question.

D. Notwithstanding the foregoing or any provision to the contrary contained in this Agreement, in the event that the Project is not Completed in accordance with the terms and provisions of this Agreement, or in the event that the conditions set forth in Paragraph 1(C) are not complied with by the Developer, the City shall have no obligation to remit the Accumulated Tax Increments or any Property Tax Increment Revenues to the Developer. The obligation to reimburse the Developer for Eligible DDA Costs shall not exceed the Increment Cap and shall terminate upon expiration of the tax increment period established by the Plan of Development and set forth in the Act, and not including any extension of the 30-year tax increment period as set forth in Section 31-25-807(3)(a)(iv) of the Act.

E. The Developer agrees that the Accumulated Tax Increments and all Property Tax Increment Revenues that it receives from the City shall be applied solely to the reimbursement of Eligible DDA Costs that have been certified to the City and the Authority pursuant to the Certification of Eligible DDA Costs. The estimated Eligible DDA Costs that are expected to be incurred in connection with the Project are set forth in Exhibit D. The costs for individual line items may increase or decrease provided that the total reimbursement for Eligible DDA Costs shall not exceed the Increment Cap. Upon request by the City or the Authority, the Developer shall provide documentation to the City or the Authority evidencing the application of the Accumulated Tax Increments and Property Tax Increment Revenues to the reimbursement of Eligible DDA Costs.

F. The Developer acknowledges that incremental property taxes are remitted to the City in accordance with the policies and procedures adopted by the State Property Tax Administrator, the Weld County Assessor's Office and the Weld County Treasurer's office, and accordingly the timing and payment of the Property Tax Increment Revenues is not within the control of the City or the Authority. Nothing herein shall be construed as a promise or a guarantee by the City or the Authority that the Property Tax Increment Revenues will be collected and remitted to the City for deposit in the Special Fund in any projected or anticipated amount. The Developer acknowledges that the Property Tax Administrator for the State of Colorado and the Weld County Assessor may modify the process for calculating property tax increments, which may reduce the amount of Property Tax Increment Revenues. In addition, the Developer acknowledges that the generation of Property Tax Increment Revenues is significantly dependent upon completion of development of the Project and the Developer acknowledges and agrees that neither the City nor the Authority is responsible for the amount of Property Tax Increment Revenues that will be generated, and the Developer agrees to assume the risk that the amount of Property Tax Increment Revenues that are generated may be insufficient to reimburse Eligible DDA Costs up to the Increment Cap.

G. The City shall keep proper and current itemized records, books, and accounts in which complete and accurate entries will be made of the receipt and use of the Property Tax Increment Revenues deposited in the Special Fund and such other

calculations required by this Agreement or any applicable law or regulation. The City shall prepare, after the close of each fiscal year, a complete financial statement prepared in accordance with generally accepted accounting principles accepted in the United States of America for such year in reasonable detail covering the above information, and if required by statute, certified by a public accountant, and, upon written request, will furnish a copy of such statement to the other Parties within 90 calendar days after the close of each fiscal year. Pursuant to Section 5-11 of the Greeley City Charter, the fiscal year of the City Government shall begin the first day of January in each year and end on the last day of the succeeding December.

H. The Authority shall not enter into any agreement or transaction that impairs the rights of the Parties under this Agreement or prohibits or restricts the Authority's performance of any of its obligations under this Agreement.

I. The Authority has determined that the acquisition, construction and installation of the Project will serve a public purpose and contribute to the redevelopment of the DDA District as contemplated by the Plan of Development.

3. Terms and Conditions of Agreement, Default: In the event a Party fails or refuses to perform according to the terms of this Agreement, that Party shall be declared in default. In the event of a default, the defaulting Party is permitted thirty (30) calendar days to cure said default after receipt of Notice consistent with this Agreement. In the event a default remains uncured after the 30-day period, the Party declaring default may:

A. Terminate the Agreement; or

B. Bring an action for injunction, specific performance, or other appropriate equitable remedy or for mandamus (including without limitation to enforce all obligations to pay all amounts due or owing hereunder).

The foregoing remedies shall be cumulative and shall be the sole and exclusive remedies for a default of this Agreement, and all other remedies are hereby waived. In the event the default causes the other Party not in default to commence legal or equitable action against the defaulting Party, the defaulting Party will be liable to the non-defaulting Party for the costs incurred by reason of the default, including reasonable attorneys' fees and costs. No Party shall be entitled to recover or claim damages for an event of default by the defaulting Party, including, without limitation, lost profits, economic damages, or actual, direct, incidental, consequential, exemplary or punitive damages for any other Party's breach of this Agreement.

4. No Obligation to Construct.

A. Notwithstanding anything to the contrary in this Agreement: (a) Developer shall have no obligation to construct all or any portion of the Project, to construct the Project in accordance with the Design Standards, or to timely Commence or Complete the Project; and (b) Developer may, in its sole discretion, elect to undertake none, all, or only certain phases of the Project, to construct the Project other than as described in the Design

Standards, and to Commence and Complete the Project on a timeline determined by Developer.

B. If Developer does not satisfy the conditions in Paragraph 1(C), the City's Portion shall be zero and the Developer's Portion shall be 100% of the Eligible Development Expenses.

5. No Waiver of Greeley Municipal Code: Except for the express incentives offered by the City as stated herein, this Agreement does not waive any part or provision of the Greeley Municipal Code.

6. Governmental Immunity: The Parties agree that the City and the Authority, in entering this Agreement, do not waive governmental immunity as described in C.R.S. 24-10-101, *et seq.* No part of this Agreement shall be deemed to create a waiver of immunity as defined therein.

7. Service of Notices: All notices required or permitted pursuant to this Agreement must be made in writing and delivered in person, by prepaid overnight express mail or overnight courier service, or by certified mail or registered mail, postage prepaid return receipt requested, to the other Parties' authorized representatives (or their successors) as identified herein at the addresses listed below. All notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if the notice is affirmatively refused or cannot be delivered during customary business hours by reason of (a) the absence of a signatory to acknowledge receipt, or (b) a change of address with respect to which the addressor had neither actual knowledge nor written notice delivered in accordance with this section, then the first attempted delivery shall be deemed to constitute delivery.

For the City:

Raymond C. Lee III
City Manager
City of Greeley
1000 10th Street
Greeley, Colorado 80631

With copy to:

City Attorney
1100 10th Street, Suite 401
Greeley, Colorado 80631

For the Authority:

Greeley Downtown Development Authority
802 9th Street, Suite 100
Greeley, Colorado 80631
Attention: Bianca Fisher, Executive Director
Telephone: (970) 356-6775

Email: bianca@greeleydowntown.com

For Developer:

1024 8th Avenue, LLC
210 West 19th Terrace, Suite 150
Kansas City, MO 64112
Attn: Tadd Miller, CEO

8. Severability: If any provision of this Agreement is determined by a court having jurisdiction to be unenforceable to any extent, the rest of that provision and of this Agreement will remain enforceable to the fullest extent permitted by law.

9. Venue and Governing Law: This Agreement shall be governed by and construed according to the laws of the State of Colorado. Venue for all actions regarding this Agreement shall be in Weld County, Colorado.

10. Assignment:

A. The City, Developer, and Authority shall not assign any rights or obligations under this Agreement without the written consent of the other Parties except as follows.

B. Prior to Completion, Developer may assign, pledge, collaterally assign, or otherwise encumber all or any part of this Agreement, including without limitation its right to receive any payment or reimbursement, without any Party's consent, but after written notice to the City and the Executive Director of Authority containing the name and address of the assignee, to: (a) any lender or other party that provides acquisition, construction, working capital, tenant improvement, or other financing to Developer in connection with the Project or acquisition or ownership of the Property; or (b) one or more subsidiaries, parent companies, special purpose entities, affiliates controlled by or under common control or ownership with Developer, or joint venture entities formed by Developer or with its investors or partners to develop, own, and/or operate all or a portion of the Property or of the improvements to be constructed thereon (each assignee in (a) and (b) being a "**Permitted Assignee**").

C. After Completion, Developer shall have the right to assign all or any portion of this agreement to a purchaser of all or a portion of the Property without the written consent of the other parties, but shall provide written notice to the City and the Executive Director of the Authority containing the name and address of the assignee within 5 business days of such conveyance and assignment.

D. If consent is required, it shall not be unreasonably withheld, delayed or conditioned.

E. The restrictions on assignment contained in this Agreement apply only to a potential assignment of all or a portion of the rights and obligations pursuant to this

Agreement, and shall not be interpreted to restrict in any way the conveyance of one or more interests in all or a portion of the Property.

F. Nothing in this Agreement modifies or waives the obligations or responsibilities of either Developer or Developer's assignee under the Greeley Development Code.

G. No assignment of this Agreement by Developer, whether or not such assignment requires the consent of the City or the Authority, shall relieve Developer of its personal and primary obligations contained within this Agreement. Any purported assignment that does not comply with this provision is void. This Agreement is binding and inures to the benefit of the parties and their respective permitted successors and assigns, subject to this Paragraph 10.

11. No Third Party Beneficiaries: It is expressly understood and agreed that the terms and enforcement of the terms of this Agreement, and all rights of action relating to enforcement, are strictly reserved to the Parties. Nothing in this Agreement shall give or allow any claim or cause of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned Parties that no person or entity, other than the Parties hereto, receiving services or benefits under this Agreement shall be deemed any more than an incidental beneficiary only.

12. Modifications and Amendments: This Agreement shall not be modified, revoked, or amended except by written agreement signed by all Parties.

13. Counterparts: This Agreement may be executed in counterpart originals, each of which shall be deemed an original, and each of which shall be deemed to constitute one and the same Agreement. Additionally, a copy of an executed original Agreement signed by a Party hereto and transmitted by electronic mail shall be deemed an original, and any Party hereto is entitled to rely on the validity, authenticity, and authority of an original transmitted by electronic mail.

14. Nonliability of Officials, Agents, Members, and Employees. Except for willful or wanton actions, no trustee, board member, commissioner, official, employee, consultant, manager, member, shareholder, attorney or agent of any Party, will be personally liable under this Agreement, or in the event of any default, or for any amount that may become due to any Party.

15. Cooperation Regarding Defense. In the event of any litigation or other legal challenge involving this Agreement or the ability of any Party to enter into this Agreement that is not brought by a Party, the Parties will cooperate and jointly defend against such action or challenge, to the extent permitted by law.

16. Additional Documents or Actions. The Parties agree to execute any reasonable additional documents or take any reasonable additional action, including but not limited to estoppel certificates requested or required by lenders or purchasers of the Property, that are: (a) reasonably necessary to carry out this Agreement, (b) reasonably requested by any Party to confirm or clarify the intent of the provisions of this Agreement or the status of the Agreement and the Parties'

actions hereunder, or (c) are reasonably necessary to effectuate the agreements and the intent of this Agreement. If all or any portion of this Agreement, or other agreements approved in connection with this Agreement, are asserted or determined to be invalid, illegal, or are otherwise precluded, the Parties will use reasonable, diligent, good faith efforts to amend, reform, or replace such invalid, illegal, or precluded items to assure, to the extent legally permissible, that each Party substantially receives the benefits that it would have received under this Agreement.

17. Waiver of Breach. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement must be in writing and will not operate or be construed as a waiver of any subsequent breach by any Party.

18. Binding Effect; Entire Agreement. This Agreement will inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this paragraph permits the assignment of this Agreement except as set forth in Paragraph 10. This Agreement represents the entire Agreement among the Parties with respect to the subject matter hereof and supersedes any prior written or oral agreements or understandings with regard to the subject matter of this Agreement.

19. Days. If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to Section 24-11-101(1), C.R.S., such day will be extended until the next day that is not one of the foregoing days.

20. Recording. No Party shall record this Agreement or any memorandum of this Agreement in the real property records of Weld County, Colorado.

21. Good Faith of Parties. In the performance of this Agreement or in considering any requested approval, consent, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, or capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

22. Parties Not Partners. Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties will not be deemed to be partners or joint venturers, and no Party is responsible for any debt or liability of any other Party.

23. Force Majeure If a Force Majeure Event occurs, the deadline for performance of any obligations affected by such Force Majeure Event shall be automatically extended for a period equal to the duration of such Force Majeure Event and Developer shall be excused from the performance of such obligations during such period. "Force Majeure Event" means any one or more of the following events or circumstances that, alone or in combination, directly or indirectly, adversely affects the Developer's performance of an obligation pursuant to this Agreement: fire, earthquake, storm or other casualty; strikes, lockouts, or other labor interruptions or shortages; war, rebellion, riots, acts of terrorism, or other civil unrest; acts of Nature; disruption to local, national, or international transport services; prolonged shortages of materials or equipment, epidemics; severe adverse weather; the discovery of previously unknown facilities, improvements,

or other features or characteristics of the Property; delays in the demolition of existing structures, including without limitation delays related to the remediation or removal of asbestos or other hazardous materials; or negotiation or approval of entitlements, permits, or agreements related to the Project, beyond the reasonable and foreseeable period of time necessary for the review of such applications for entitlements, permits or agreements; Material Litigation; and any other event, similar or dissimilar to the above, whether foreseeable or unforeseeable, known or unknown, that is beyond the Developer's reasonable control. "**Material Litigation**" includes litigation, appeals, and administrative actions related to the entitlement, permitting, development, financing, or construction of the Project, including without limitation claims brought pursuant to C.R.C.P. § 106(a)(4) to the extent not initiated by the Developer, and any litigation brought by Developer against the City, Authority, or both arising out of or related to this Agreement or performance of the obligations set forth herein, but only if such litigation, appeal, or administrative action delays development of the Project for a period of more than five consecutive business days.

24. Design Standards.

A. The parties agree that the Conceptual Elevations comply with the Design Standards and that if Developer develops the Project in accordance with the Conceptual Elevations, Developer shall be deemed to have satisfied the condition in Paragraph 1(B)(ii).

B. Developer shall have the right to modify the Design Standards from time to time in its sole discretion provided that such modifications are approved in writing by the City Manager. If Developer desires to obtain the approval of the City Manager, Developer shall deliver a written request to the City Manager describing or depicting the desired modification. The City Manager shall have 10 business days to review and either approve or disapprove of the requested modification in writing, such approval not to be unreasonably withheld, conditioned, or delayed; provided that if the City Manager disapproves of the requested modification in writing, it shall describe the basis for its disapproval in the written notice to Developer in reasonable detail; provided further, that the City Manager shall only have the right to disapprove of such requested modification if it materially and adversely lessens the quality of the materials described in the Design Standards or otherwise materially and adversely deviates from the Design Standards and the Conceptual Elevations.

C. If the City Manager approves of the requested modification, the Design Standards shall be considered modified for purposes of this Agreement to include the requested modification. If the City Manager does not timely approve or disapprove of the requested modification in writing, it shall be deemed to have approved of the same. If the City Manager timely provides a complete written notice to Developer wherein it disapproves of the requested modification, then the City and Developer shall meet within 10 business days after delivery of such written notice to resolve such dispute and if such dispute is not resolved by written agreement executed by the City and Developer within 10 business days after such meeting, either party may send a notice of default to the other Party and pursue its rights and remedies in accordance with Paragraph 3 above.

D. In the event the City approves any entitlements, permits, or other approvals for the Project that vary from the Design Standards, the Design Standards shall be

considered to have been automatically modified for purposes of this Agreement to include such variances. Provided Developer constructs the Project in compliance with such approved entitlements, permits, and other approvals, as evidenced by issuance of a temporary or final certificate of occupancy for the Project, Developer shall be deemed to have satisfied the condition in Paragraph 1(B)(ii).

25. Estoppel Certificates.

A. The City, at any time and from time to time upon not less than 10 business days' prior written notice from Developer, agrees to execute and deliver to Developer a statement in the form provided by Developer representing, warranting, and certifying to Developer and its successors and assigns: (i) that this Agreement is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect; (ii) that Developer has timely and fully performed its obligations under this Agreement and is not in default under this Agreement, or describing such defaults if they are claimed; (iii) that the Project and Developer's applications for entitlements, permits, or other approvals for the Project comply with the Design Standards, as modified pursuant to Paragraph 24; (iv) whether the Design Standards have been modified pursuant to Paragraph 24, and describing or attaching the modifications; (v) that Developer has timely Commenced or Completed the Project; and (vi) such other matters as Developer may reasonably request.

B. The Authority, at any time and from time to time upon not less than 10 business days' prior written notice from Developer, agrees to execute and deliver to Developer a statement in the form provided by Developer representing, warranting, and certifying to Developer and its successors and assigns: (A) that, to the best of the Authority's knowledge, this Agreement is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect; and (B) that, to the best of the Authority's knowledge, Developer has timely and fully performed its obligations under this Agreement and is not in default under this Agreement, or describing such defaults if they are claimed.

C. The City's or Authority's failure to timely deliver such an executed statement to Developer shall be conclusive evidence that the City or Authority, as applicable, acknowledges and agrees with the representations, warranties, and certifications set forth in the statement provided by Developer for execution, and Developer shall be entitled to rely upon such evidence in constructing the Project and for purposes of enforcing this Agreement.

26. Representations and Warranties

A. Developer represents and warrants to the City and Authority that the following statements are true as of the Effective Date:

i. ***No Litigation.*** There is no pending or, to Developer's actual knowledge, threatened litigation or claim against the Project or the Developer

related to the Project that would prohibit Developer from performing its obligations in this Agreement or render this Agreement invalid.

ii. **Authorization.** Developer has all requisite power and authority to perform its obligations under this Agreement and the execution, delivery, and is duly and validly authorized to execute, enter into, and perform the obligation set forth in this Agreement. Each person executing and delivering this Agreement and all documents to be executed and delivered in regard to the consummation of the transaction herein has due and proper authority to execute and deliver those documents. This Agreement and all documents executed and delivered by Developer in connection with the transaction herein shall constitute valid and binding obligations of Developer, enforceable against Developer in accordance with their terms.

iii. **Organization of Developer.** Developer is a duly organized and validly existing limited liability company under the laws of the State of Delaware and with full power to enter into and to perform its obligations under this Agreement, and the individual executing this Agreement on behalf of the Developer is duly authorized to do so.

iv. **No Breach or Prohibition.** To Developer's actual knowledge, the transactions contemplated by this Agreement are not restrained or prohibited by any injunction, order or judgment rendered by any court or other governmental agency of competent jurisdiction against Developer. To Developer's actual knowledge, neither the execution and delivery of the Agreement, nor the consummation of the transactions contemplated hereby, will (a) be in violation of any agreements to which Developer is a party, or (b) conflict with or result in the breach or violation of any laws applicable to Developer or the Project.

B. The City represents and warrants to Developer and the Authority that the following statements are true as of the Effective Date:

i. **No Litigation.** There is no pending or, to the City's actual knowledge, threatened litigation or claim against the City that would prohibit the City from performing its obligations in this Agreement or render this Agreement invalid.

ii. **Organization.** The City is a home rule municipal corporation organized under the constitution and laws of the State of Colorado, validly existing under the laws of the State of Colorado and has the power and authority to transact the business in which it is engaged.

iii. **Authority.** All governmental proceedings required to be taken on the part of the City to execute and deliver this Agreement and to consummate the transactions contemplated hereby have been duly and validly taken under the Greeley Municipal Charter provisions, subject to any referendum rights set forth in Section 9-3 of such Greeley Municipal Charter. Each person executing and

delivering this Agreement and all documents to be executed and delivered in regard to the consummation of the transaction herein has due and proper authority to execute and deliver those documents. This Agreement and all documents executed and delivered by the City in connection with the transaction herein shall constitute valid and binding obligations of the City, enforceable against the City in accordance with their terms.

iv. ***No Breach or Prohibition.*** To the City's actual knowledge, the transactions contemplated by this Agreement are not restrained or prohibited by any injunction, order or judgment rendered by any court or other governmental agency of competent jurisdiction against the City. To the City's actual knowledge, neither the execution and delivery of the Agreement, nor the consummation of the transactions contemplated hereby, will (a) be in violation of any agreements to which the City is a party, or (b) conflict with or result in the breach or violation of any laws applicable to the City or the Project.

C. The Authority represents and warrants to the City and Developer that the following statements are true as of the Effective Date:

i. ***No Litigation.*** There is no pending or, to the Authority's actual knowledge, threatened litigation or claim against the Authority that would prohibit the Authority from performing its obligations in this Agreement or render this Agreement invalid.

ii. ***Organization.*** The Authority is a body corporate and politic of the State of Colorado, validly existing under the laws of the State of Colorado and has the power to enter into this Agreement.

iii. ***Authority.*** All proceedings required to be taken on the part of the Authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby have been duly and validly taken under the Authority's governing documents. Each person executing and delivering this Agreement has due and proper authority to execute and deliver this Agreement.

iv. ***No Breach or Prohibition.*** To the Authority's actual knowledge, the transactions contemplated by this Agreement are not restrained or prohibited by any injunction, order or judgment rendered by any court or other governmental agency of competent jurisdiction against the Authority. To the Authority's actual knowledge, neither the execution and delivery of the Agreement, nor the consummation of the transactions contemplated hereby, will (a) be in violation of any agreements to which the Authority is a party, or (b) conflict with or result in the breach or violation of any laws applicable to the Authority.

[SIGNATURE PAGES TO FOLLOW]

The Parties hereby agree to the same and execute this Agreement by their duly authorized representatives as follows:

City of Greeley, Colorado

Mayor

City Clerk

Date

Greeley Downtown Development Authority

Authorized Signature

Printed Name

Date

Developer

1024 8th Avenue, LLC, a Delaware limited liability company

**By: Tadd Miller, CEO
Authorized Agent**

Approved as to Substance:

City Manager

Approved as to Legal Form:

City Attorney

Approved as to Availability of Funds:

Director of Finance

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF WELD, STATE OF COLORADO, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

LOTS 9 AND 10 AND THE WEST HALF OF LOT 11, BLOCK 78, CITY OF GREELEY, COUNTY OF WELD, STATE OF COLORADO.

AND

LOT 1, BLOCK 78, ROTH SUBDIVISION, A SUBDIVISION OF THE CITY OF GREELEY, COUNTY OF WELD, STATE OF COLORADO.

AND

THE EAST HALF OF LOT 12, ALL OF LOTS 13 AND 14, BLOCK 78, CITY OF GREELEY, COUNTY OF WELD, STATE OF COLORADO.

AND

LOT 2, BLOCK 78, ROTH SUBDIVISION, A SUBDIVISION OF THE CITY OF GREELEY, COUNTY OF WELD, STATE OF COLORADO.

PARCEL B:

THE SOUTH 100 FEET OF LOTS 15 AND 16, BLOCK 78, CITY OF GREELEY, COUNTY OF WELD, STATE OF COLORADO.

EXHIBIT B

DESIGN GUIDELINES

All development design shall conform to the Greeley Municipal Code and, also, reflect historic architectural elements and character with substantial attention to the following characteristics:

- A. Use of brick as a key building material, especially at the pedestrian level;
- B. Use of accent color on buildings to create a vibrant streetscape;
- C. Strong corner building elements to clearly define entry points and add interest, such as with stepped back floors and rooftop features;
- D. Use of high quality building materials;
- E. Balconies extending out from the building as well as recessed bays to create interesting building wall articulation;
- F. Use of warm, brick reds, and red and blond brick to blend with existing structures in the area;
- G. Pedestrian-oriented building features, such as with generous first floor fenestration;
- H. Gabled roof elements to match existing pitch and design elements.

EXHIBIT C

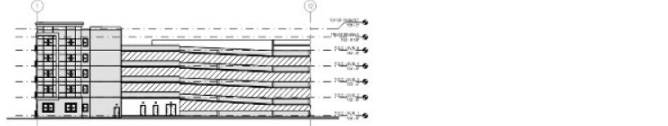
CONCEPTUAL ELEVATIONS AND RENDERINGS

EXTERIOR ELEVATIONS

Massing & Materiality



2 COOL EXTERIOR ELEVATION AT 11TH ST.
DATE: 08/11/17

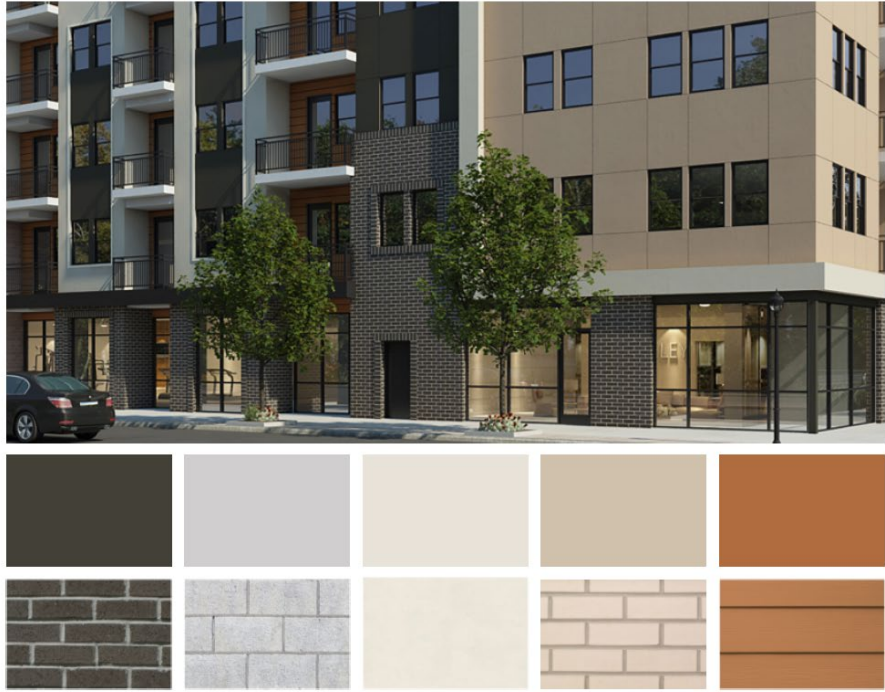


3 COOL EXTERIOR ELEVATION AT 7TH AVE.
DATE: 08/11/17



4 COOL EXTERIOR ELEVATION AT ALLEY
DATE: 08/11/17

EXTERIOR DESIGN
Material & Color Palette



EXTERIOR RENDER
Corner of 8th Ave & 11th St



EXHIBIT D

ELIGIBLE DDA IMPROVEMENTS

1024 8th Avenue Apartments Eligible Costs			
1	Sitework	\$	2,754,452
2	Building Concrete	\$	7,886,364
3	Masonry/Siding/Roofing	\$	3,581,722
4	Metals	\$	963,210
5	Carpentry & Millwork	\$	5,311,455
6	Doors/Windows/Framing & Drywall	\$	5,790,183
7	Casework/Finishes & Fire Protection	\$	3,106,489
8	Specialties, Appliances & Furnishings	\$	1,290,346
9	Elevator	\$	382,500
10	Mechanical, Electrical & Plumbing	\$	10,495,539
11	Demolition & Abatement	\$	619,257
12	Architectural & Engineering	\$	2,031,608
TOTAL		\$	44,213,125



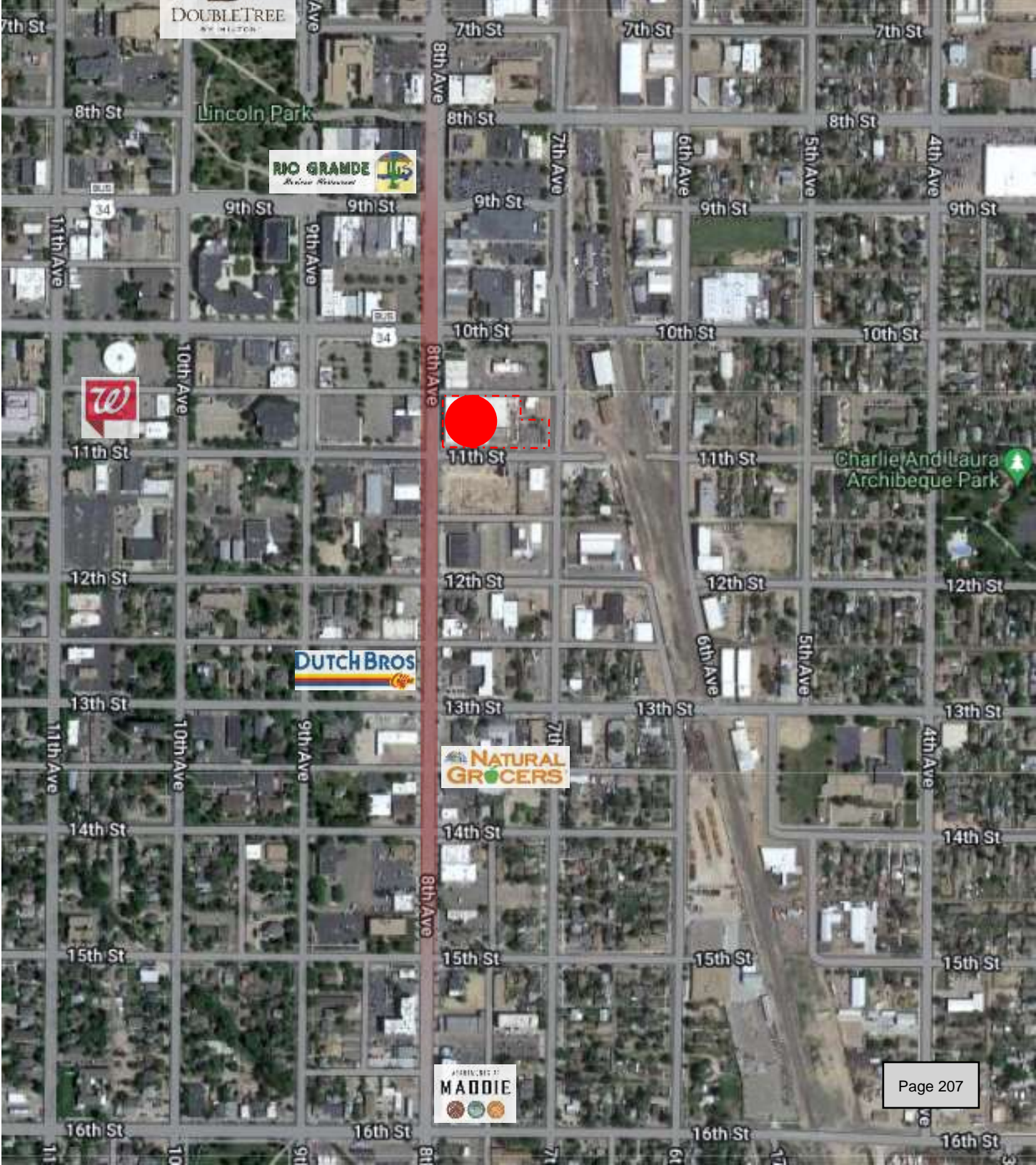
1024 8th Avenue Apartments

Milhaus & Richmark Companies

1024 8th AVE APARTMENTS

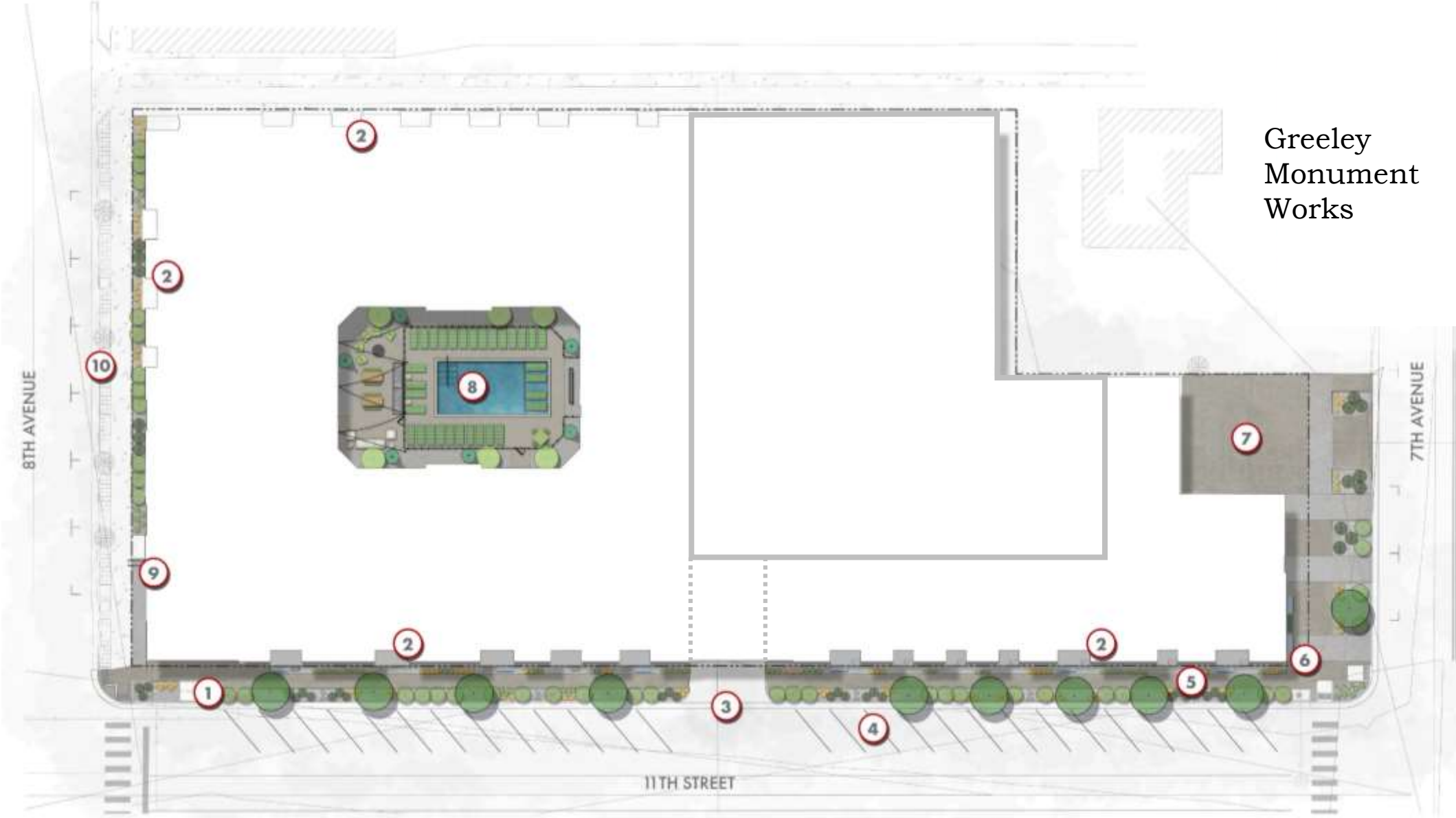
Downtown Multi-family

- Location: 8th Avenue and 11th Street
- Existing: Vacant story and a half structure, formerly a furniture store, that will be removed
- Proposed: 5-story multi-family structure with 194 units and a 5-story precast parking garage, tucked back from the street off 11th
- Mission: Activate the intersection of 8th Ave and 11th Street. Beautify and enhance streetscape. Bring more density and life to Greeley's Downtown



PROPOSED SITE PLAN

194 Units
20% Studio
60% 1BR
20% 2BR
742SF Avg
Unit



DEVELOPMENT SUMMARY



Existing at 8th Ave and 11th St Intersection



Proposed 5-story multi-family development

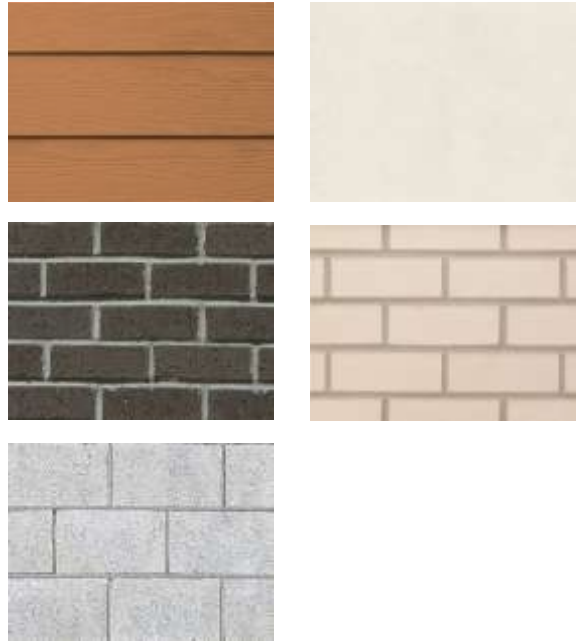
- 194 units: 39 studios, 116 one-bedroom, 39 two- bedroom
- Average unit size will be 745sf
- Average rents for the project will be \$2.54/sf or \$1,885/unit. Offerings will start at \$1,525 for a 510sf dark one-bedroom

including a 24-hr fitness center, heated pool for year-round use, outdoor courtyard with fire-pits and grill stations, resident lounges

- The project will also feature ground-floor walk-up units at 8th Ave and 11th Street to engage the street and provide tenants a townhome feel

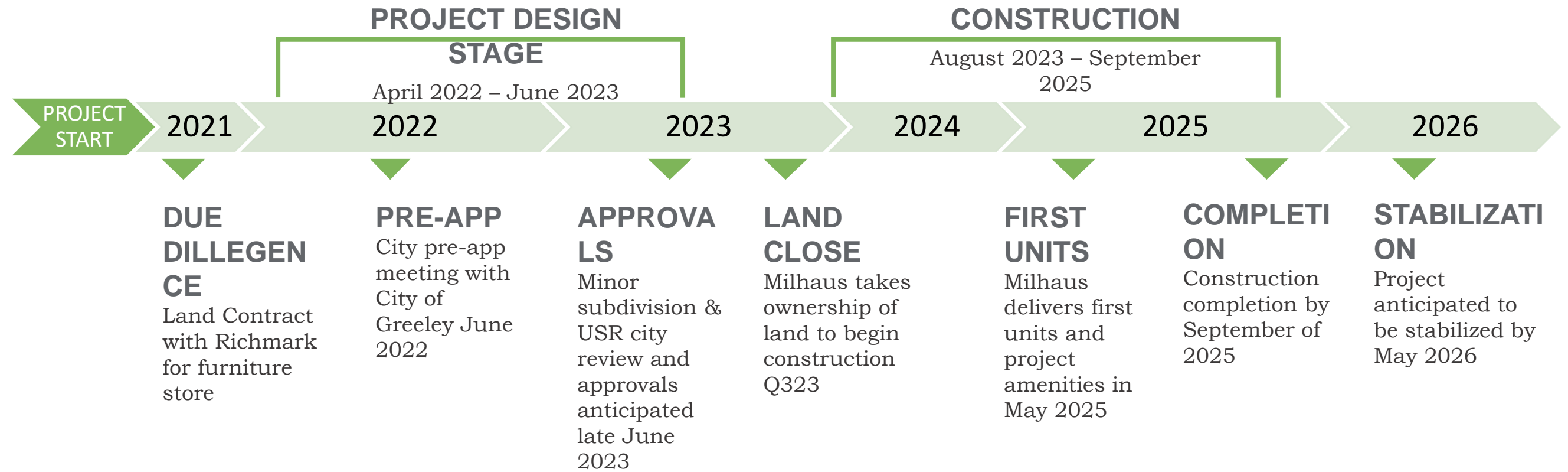
EXTERIOR DESIGN

Material & Elevation



SOUTH ELEVATION ALONG 11TH STREET

DEVELOPMENT TIMELINE



BIRD'S EYE PERSPECTIVE

Corner of 8th Ave & 11th St





PROJECTED PROJECT COSTS

Hard & Soft Project Costs

Hard Costs			
Product		<u>Units</u>	<u>SF</u>
Apartments		194	143,880
Commercial		-	0
Total		194	143,880
Land Purchase Price	<u>bulk price</u>	<u>per unit</u>	<u>per sf</u>
Apartment Allocation	\$3,246,500	\$16,735	\$22.56
Total Land Purchase	\$3,246,500	\$16,735	\$22.56
Construction Costs			
Apartment Total	\$54,831,575	\$282,637	\$381.09
Site & Demolition	\$200,000	\$1,031	\$1.39
Total Construction Costs	\$55,031,575	\$283,668	\$382.48
Total Land & Hard Costs	\$58,278,075	\$300,402	\$405.05

Soft Costs			
	<u>bulk price</u>	<u>per unit</u>	<u>per sf</u>
Construction Management	\$956,747	\$4,932	\$6.65
Furniture, Fixtures & Equipment	\$465,000	\$2,397	\$3.23
Due Diligence	\$96,000	\$495	\$0.67
Applications & Permits	\$876,769	\$4,519	\$6.09
Legal	\$305,500	\$1,575	\$2.12
Engineering	\$201,500	\$1,039	\$1.40
Architectural	\$1,790,233	\$9,228	\$12.44
Accounting	\$13,845	\$71	\$0.10
Finance	\$1,326,668	\$6,838	\$9.22
Tax, Insurance & Utilities	\$740,838	\$3,819	\$5.15
Marketing	\$160,230	\$826	\$1.11
Other Development Costs	\$62,500	\$322	\$0.43
General Overhead	\$2,889,158	\$14,893	\$20.08
Contingency - Hard Costs	\$2,751,579	\$14,183	\$19.12
Contingency - Soft Costs	\$463,787	\$2,391	\$3.22
Total Soft Costs	\$13,100,354	\$67,528	\$91.05
Subtotal Land, Hard & Soft Costs	\$71,378,429	\$367,930	\$496.10





Council Agenda Summary

Title:

Scheduling of Meetings, Other Events

Summary:

During this portion of the meeting the City Manager or City Council may review the attached Council Calendar or Planning Calendar and Schedule for City Council Meetings and Work Sessions and make any necessary changes regarding any upcoming meetings or events.

Attachments:

Council Meetings and Other Events Calendars

Council Meeting and Work Session Schedule/Planning Calendar

April 3, 2023 - April 9, 2023

April 2023							May 2023						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
						1		1	2	3	4	5	6
2	3	4	5	6	7	8	7	8	9	10	11	12	13
9	10	11	12	13	14	15	14	15	16	17	18	19	20
16	17	18	19	20	21	22	21	22	23	24	25	26	27
23	24	25	26	27	28	29	28	29	30	31			
30													

Monday, April 3

Tuesday, April 4

6:00pm - 6:30pm City Council Meeting (R_CCS_Council Chambers - WiFi Ready; R_CCS_Council Chambers Overflow Room 103) - Council Master Calendar ↻



Wednesday, April 5

Thursday, April 6

- 7:30am - Poudre River Trail (Hall)** ↻
- 3:30pm - IG Adv. Board (Butler)** ↻
- 6:00pm - 8:30pm North Front Range MPO Meeting (Olson/Payton)** ↻

Friday, April 7

Saturday, April 8

Sunday, April 9

April 10, 2023 - April 16, 2023

April 2023							May 2023						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
						1		1	2	3	4	5	6
2	3	4	5	6	7	8	7	8	9	10	11	12	13
9	10	11	12	13	14	15	14	15	16	17	18	19	20
16	17	18	19	20	21	22	21	22	23	24	25	26	27
23	24	25	26	27	28	29	28	29	30	31			
30													

Monday, April 10

Tuesday, April 11

6:00pm - City Council Work Session Meeting (R_CCS_Council Chambers - WiFi Ready) - Council Master Calendar ↻

Wednesday, April 12

Thursday, April 13

6:30pm - 8:00pm Highway 85 Coalition/Mayors Bullseye Meeting (Changes with each meeting) - Council Master Calendar ↻

Friday, April 14

Saturday, April 15

Sunday, April 16

April 17, 2023 - April 23, 2023

April 2023							May 2023						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
						1		1	2	3	4	5	6
2	3	4	5	6	7	8	7	8	9	10	11	12	13
9	10	11	12	13	14	15	14	15	16	17	18	19	20
16	17	18	19	20	21	22	21	22	23	24	25	26	27
23	24	25	26	27	28	29	28	29	30	31			
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Monday, April 17

Tuesday, April 18

- 5:15pm - 6:00pm **2023 National Youth Service Day Awards Ceremony** (City Center South 1001 11th Ave Greeley, CO Room 227 2nd Floor) - Council Master Calendar
- 6:00pm - **City Council Meeting** (R_CCS_Council Chambers - WiFi Ready; R_CCS_Council Chambers Overflow Room 103) - Council Master Calendar ↻



Wednesday, April 19

- 7:30am - Visit Greeley (Butler) ↻
- 2:00pm - 5:00pm **Water & Sewer Board (Gates)** ↻

Thursday, April 20

- 7:30am - 8:30am **DDA (DeBoutez/Butler)** ↻
- 3:30pm - 4:30pm **Airport Authority (Clark/Payton)** ↻

Friday, April 21

Saturday, April 22

Sunday, April 23

April 24, 2023 - April 30, 2023

April 2023							May 2023						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
						1		1	2	3	4	5	6
2	3	4	5	6	7	8	7	8	9	10	11	12	13
9	10	11	12	13	14	15	14	15	16	17	18	19	20
16	17	18	19	20	21	22	21	22	23	24	25	26	27
23	24	25	26	27	28	29	28	29	30	31			
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Monday, April 24

- 11:30am - 12:30pm Greeley Chamber of Commerce (Hall) ↻
- 6:00pm - 7:00pm Youth Commission (Clark) ↻

Tuesday, April 25

- 6:00pm - City Council Work Session Meeting (R_CCS_Council Chambers - WiFi Ready) - Council Master Calendar ↻

Wednesday, April 26

- 7:00am - 8:00am Upstate Colorado Economic Development (Gates/Hall) (Upstate Colorado Conference Room) - Council Master Calendar ↻
- 5:00pm - Holocaust Memorial Observances Annual Dinner ***RSVP by April 5, 2023*** (Aims Community College 4901 West 20th Street Greeley, CO (Welcome Center Third Floor Ballroom A)) - Council Master Calendar

Thursday, April 27

- 6:00pm - 7:00pm BOCC & Weld Municipalities Quarterly Conference Call (Microsoft Teams Meeting) - Council Master Calendar

Friday, April 28

Saturday, April 29

- 9:00am - Annual Arbor Day Celebration (TBD) - Council Master Calendar

Sunday, April 30

City Council Meeting Scheduling 2023

3/30/2023			
This schedule is subject to change			
Date/Type	Description	Sponsor	Placement/Time
April 11, 2023 Council Work Session	DDA TIF Extension	Becky Safarik	
	ARPA Update	John Karner	
	Legislative Review	Stacy Coons	
	Executive Session - City Attorney Performance Review	Noel Mink	
April 18, 2023 Council Meeting	Proclamation - National Library Week (Matt Hortt - High Plains Library District)	Mayor	Intro
	Proclamation - Holocaust Memorial Observances (Laura Manuel and Tracey Adams)	Mayor	Intro
	Proclamation - Youth Service Day (Maddie Zeller, Youth Commission Chair)	Mayor	Intro
	Proclamation - National Crime Victims' Rights Week (GPD - Victim Advocate Group)	Mayor	Intro
	Minutes Approval (3/28/23 Work Session; 4/4/23 Council Meeting)	Heidi Leatherwood	Consent
	Consideration of a Resolution Ratifying Appointment - Clearview Library District	Heidi Leatherwood	Consent
	Consideration of a Change Order - 59th Avenue & O Street Design	Paul Trombino	Consent
	Intro & 1st Rdg Ord - Set City Manager Salary (PH on 5/2/23)	Noel Mink	Consent
	Intro & 1st Rdg Ord - Set City Attorney Salary (PH on 5/2/23)	Noel Mink	Consent
	Intro & 1st Rdg Ord - Set Municipal Court Judge Salary (PH on 5/2/23)	Noel Mink	Consent
	PH & 2nd Rdg Ord - Cisneros Rezoning	Becky Safarik	Regular
	PH & 2nd Rdg Ord - DDA TIF Extension	Becky Safarik	Regular
April 25, 2023 Council Work Session	Boards & Commissions Appointments	Heidi Leatherwood	Regular
	W&S Dept. Update on Integrated Water Resources Strategic Plan (IWRP)	Sean Chambers	
	2021 Certified Annual Financial Report	John Karner	
	Shopping Cart Code Amendment Review	Becky Safarik	
May 02, 2023 Council Meeting	Legislative Review	Stacy Coons	
	Proclamations - Historic Preservation Month (Planning Dept.)	Mayor	Intro
	Additional Proclamations? (National Travel & Tourism Week; Small Business Week)	Mayor	Intro
	Minutes Approval (4/11/23 Work Session; 4/18/23 Council Meeting)	Heidi Leatherwood	Consent
	Consideration of a Resolution Appointing Primary Liquor License Officer	Heidi Leatherwood	Consent
	Intro & 1st Rdg Ord - Code Amendment to Designate Posting Sites for B&C Meeting Notices (PH on 5/16/23)	Heidi Leatherwood	Consent
	Intro & 1st Rdg Ord - Grant Approval limits (PH on 5/16/23)	John Karner	Consent
	Intro & 1st Rdg Ord - Shopping Cart Code Amendments (PH on 5/16/23)	Don Threewitt	Consent
	Intro & 1st Rdg Ord - Cigar Bar (PH on 5/16/23)	Don Threewitt	Consent
	Intro & 1st Rdg Ord - Stoneybrook Rezone (PH on 5/16/23)	Don Threewitt	Consent
	PH & 2nd Rdg Ord - Set City Manager Salary	Noel Mink	Regular
	PH & 2nd Rdg Ord - Set City Attorney Salary	Noel Mink	Regular
PH & 2nd Rdg Ord - Set Municipal Court Judge Salary	Noel Mink	Regular	



Council Agenda Summary

Title:

Consideration of a motion authorizing the City Attorney to prepare any required resolutions, agreements, and ordinances to reflect action taken by the City Council at this meeting and any previous meetings, and authorizing the Mayor and City Clerk to sign all such resolutions, agreements, and ordinances

Council's Recommended Action:

A motion to approve the above authorizations.



Council Agenda Summary

April 4, 2023

Key Staff Contact: Noel Mink, Human Resources Director

Title:

Consideration of a motion to go into Executive Session for the purpose of reviewing feedback and the process of completing the annual performance review of the City Attorney.

Summary:

An executive session is needed to enable the City Council to review feedback and complete the annual performance review of the City Attorney. If Council concurs, a motion to adjourn into Executive Session is needed

Strategic Focus Area:



High-Performance Government

Council's Recommended Action:

A motion to go into an Executive Session to discuss the following matter as provided under C.R.S. Section 24-6-402(4)(f) and Greeley Municipal Code Section 2.151(6)(a):

To discuss personnel reporting to the City Council.

Attachments:

None