

Greeley City Council Agenda

Regular Meeting
Tuesday, June 4, 2024 at 6:00 PM

City Council Chambers at City Center South, 1001 11th Avenue, Greeley, CO 80631
via Zoom at: <https://greeleygov.zoom.us/j/85706217450>

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 <https://greeleyco.portal.civicclerk.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

Melissa McDonald - At-Large



City Council Regular Meeting Agenda

Tuesday, June 4, 2024 at 6:00 PM

City Council Chambers at City Center South, 1001 11th Avenue, Greeley, CO 80631

via Zoom at: <https://greeleygov.zoom.us/j/85706217450>

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.

Council Members 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. A motion to approve the City Council Work Session Proceedings of May 7, 2024 and City Council Work Session Proceedings of May 14, 2024
10. A resolution of the City Council of the City of Greeley, Colorado, extending the City of Greeley Local Disaster Declaration of May 31, 2024, related to flooding
11. A resolution authorizing the City to enter into an Intergovernmental Agreement with the Colorado Department of Transportation for the 5th Street and 23rd Avenue bridge improvements
12. A resolution authorizing the City to enter into an Intergovernmental Agreement with the Colorado Department of Transportation for the 37th Street bridge improvements

13. Introduction and first reading of an ordinance authorizing a salary and certain benefits for the City Attorney, Stacey Aurzada

End of Consent Agenda

14. Pulled Consent Agenda Items
15. A resolution adopting the 10th Street Area Plan
16. Public hearing and second reading of an ordinance amending Title 24 of the Greeley Municipal Code relating to an affordable housing parking reduction
17. Sign Code Audit Update to City Council
18. 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
19. Scheduling of Meetings, Other Events
20. Adjournment



Council Agenda Summary

Title:

Recognitions and Proclamations

Summary:

Mayor Gates will present a proclamation

- Pride Month

Mayor Pro Tem Hall will present the *What's Great about Greeley* Report.

Attachments:

Pride Month Proclamation

Item 5 – What's Great About Greeley Presentation



Pride Month

WHEREAS, the month of June is recognized as Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) “Pride Month” across the country; and

WHEREAS, all human beings are born free and equal in dignity and rights. LGBTQ individuals have had immeasurable impact to the cultural, civic, and economic successes of our country; and

WHEREAS, the City of Greeley is committed to supporting visibility, dignity and equality for LGBTQ people in our diverse community; and

WHEREAS, this nation was founded on the principle that every individual has infinite dignity and worth, and it is called upon of the people of this community to embrace this principle and work to eliminate prejudice everywhere it exists; and

WHEREAS, celebrating Pride Month influences awareness and provides support for Greeley’s LGBTQ community, and is an opportunity to act and engage in dialogue to strengthen alliances, build acceptance and advance equal rights.

NOW, THEREFORE, I, John Gates, by virtue of the authority vested in me as Mayor of the City of Greeley, Colorado, do hereby proclaim the month of June 2024 as ***Pride Month*** in the City of Greeley in support of the LGBTQ community.

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 June 2024.

John Gates
Mayor



City Council Meeting
June 4, 2024

An aerial photograph of a city, likely Denver, with a large white banner overlaid in the center. The banner has a torn, paper-like edge. The background shows a vast cityscape with green trees, some buildings, and a large parking lot in the foreground. In the distance, a range of mountains with snow-capped peaks is visible under a clear blue sky with some light clouds.

***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

Banner NoCo Earns Platinum-Level 'Helping Our People Elevate Through Tough Times' Certification

- 12-month employee training program
- Banner is first health care organization to be selected for participation and to complete the program.



Greeley Awarded \$7.917 Million Safe Streets and Roads for All Demonstration Grant

- Greeley received the second highest award in the nation.
- Grant will be used for traffic calming, crosswalk enhancements, speed tables, reflective beacons and road safety planning.



UNC Received a \$743,224 Grant from the Historic Preservation Fund for Dearfield Townsite

- Dearfield is a former 20th-century Black townsite located east of Greeley.
- Site is under consideration for inclusion in the national park system.



UNC's Jerome Campbell Named MyGreeley Student-Athlete of the Week and More

- Headed to the NCAA Outdoor Track and Field Championships.
- Qualifying time earned him a tie for 20th-fastest in the world this season in 110-meter hurdles.



Dayspring's Ebioselulu Omofoma Wins Fourth 2A State Track Title in 100 Hurdles, High Jump

- 2A State Track Titles - 100 Hurdles, High Jump, Triple Jump, 4x400
- Mile High Female Athlete of the Year (2021, 2024)
- Colorado Female Athlete of the Year (2021, 2023, 2024)
- Welco Female Athlete MVP (2024)
- 1st Team All Conference 2024 – 100 hurdles, high jump, long jump, triple jump



DAYSPRING
CHRISTIAN ACADEMY







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.

SERVICE ANIMALS



**ROCKY MOUNTAIN
A D A C E N T E R**

C O • M T • N D • S D • U T • W Y

COMMON SERVICE ANIMAL ISSUES

What should a business or other public entity consider when interacting with a person with a service animal?

Keep in mind that service animals are working animals, not pets. Do not pet, feed or distract a service animal. It could interfere with the dog's training or endanger the person with a disability.

Can a business charge extra fees or surcharges for customers with service animals?

No. Neither a deposit nor a surcharge may be imposed on an individual with a disability even if deposits are routinely required for pets.

What if the animal is disruptive, out of control, or damages property?

If the animal is disruptive, threatening, or not housebroken, you may ask the handler to remove the animal. If the animal is removed, businesses should allow the individual with a disability the option of returning to the establishment without the animal. If a business charges all customers for damage they cause, a customer with a disability can be charged for damage caused by his/her service animal.

Are allergies to or fear of dogs valid reasons for denying access to a person with a service animal?

No. If it is possible, separate the person with the allergy or other animal aversions from the person with a service animal.

Is a business or other entity required to provide food or care for a service animal?

No. It is the responsibility of the handler to control, care for, feed, and supervise the service animal.

SERVICE ANIMALS ARE

A service animal is any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability including a physical, sensory, psychiatric, intellectual, or other mental disability. Service animals are working animals, NOT PETS.

SERVICE ANIMALS ARE NOT

Other species of animals, whether wild or domestic, trained or untrained, are not service animals under the ADA. However, reasonable modifications in policies must also be made to allow individuals with disabilities to use miniature horses if they have been individually trained to do work or perform tasks for the individuals.

- An animal that provides:
- emotional support
- crime prevention
- comfort or companionship

is NOT considered a service animal because it does not perform specific tasks associated with a person's disability.

Service animals in-training are NOT protected under the ADA. However, some state laws may afford service animals in-training similar protections as fully trained service animals.

How do I know if the animal is a "service animal" under the ADA?

If the person handling the service animal does not have an obvious disability, businesses or other public entities can ask two questions:

1. Is this a service animal?
2. What task has the animal been trained to perform?

Businesses or other public entities should refrain from:

- Asking about the nature or extent of a person's disability.
- Requesting the handler demonstrate the service animal's tasks.
- Requiring documentation proving the animal has been certified, trained, or licensed.

Service animals must be under the handler's control at all times. Service animals must have a harness, leash, or other tether unless the handler's disability prohibits their use or if the animal's work or tasks would be adversely impacted by their use.

Also note that a vest or any other type of identification is NOT required.

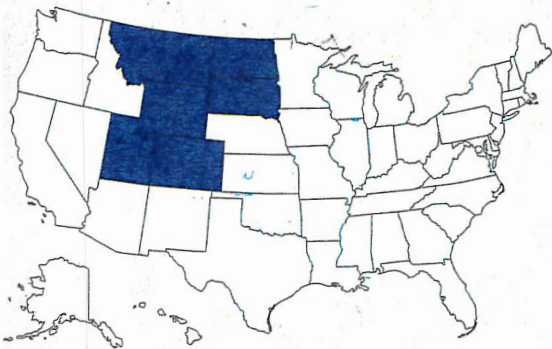


MINIATURE HORSES

Under the ADA definition of a service animal, only dogs are considered service animals, with the exception of miniature horses.

The same ADA regulations that apply to dogs also apply to miniature horses. The regulations require businesses and public entities to make reasonable modifications to permit a miniature horse that has been trained to do work or perform tasks, is housebroken, and is under the handler's control. Businesses can determine whether they can make reasonable modifications to allow a miniature horse by assessing:

- The weight of the miniature horse (ranging from 70 - 100 lbs)
- The height of the miniature horse (ranging from 24 - 34 inches)
- Whether the miniature horse's presence in a facility compromises safety.



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The Rocky Mountain ADA Center
 is a member of the National ADA
 Network, operated by Meeting
 the Challenge.

ada WHAT IS THE ADA?

The Americans with Disabilities Act (ADA) is a civil rights law that provides people with disabilities equal access to employment, state and local government programs, and goods and services.

Businesses that are open to the public, including, but not limited to:

- Restaurants
- Hotels
- Taxis and shuttles
- Grocery and department stores
- Hospitals and medical offices
- Theaters
- and Zoos

must comply with Title III of the ADA, and are prohibited from discriminating against individuals with disabilities. **The ADA requires businesses to allow people with disabilities to bring their service animals into their establishment, even if the establishment has a “no pets” policy.**

Title II of the ADA requires state and local government entities to modify policies and practices to permit the use of a service animal by a person with a disability.



WHAT TASKS CAN A SERVICE ANIMAL PERFORM?

The tasks performed by a service animal must be directly related to the disability of the person handling the animal. These tasks include, but aren't limited to:

- Guiding a person who is blind or has low vision.
- Alerting a person with a hearing loss to certain sounds.
- Picking up or retrieving objects.
- Providing non-violent protection or rescue work.
- Assisting an individual during a seizure.
- Alerting individuals to the presence of allergens.
- Providing physical support or assistance with balance.
- Assisting a person with psychiatric disabilities by interrupting impulsive behaviors

What Is PFLAG?

PFLAG is an organization of LGBTQ+ people, parents, families, and allies who work together to create an equitable and inclusive world. We are hundreds of thousands of people and hundreds of chapters from coast to coast who are leading with love to support families, educate allies, and advocate for just, equitable, and inclusive legislation and policies. Since our founding in 1973, PFLAG works every day to ensure LGBTQ+ people everywhere are safe, celebrated, empowered and loved.



PFLAG Greeley is Here To Support You! Here's How.

Many people don't know where to turn when a child, family member, friend, or other loved one comes out as lesbian, gay, bisexual, transgender, or queer (LGBTQ+). PFLAG Greeley provides support, education, and advocacy to LGBTQ+ people, their parents and families, and allies, including co-workers, teachers, doctors, and others who wish to better understand and support them.

Donate



**There is no cost to
attend our meetings &
membership is optional.**

Get In Touch



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PFLAGGreeleyCO



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PFLAG

GREELEY

LEADING WITH LOVE.

**PFLAG is the nation's largest
organization dedicated to
supporting, educating, and
advocating for LGBTQ+ people
and those who love them.**

Find Community

We know it can take courage to walk into a meeting for the first time, so we work hard to create a welcoming space especially for newcomers. Our meetings are free, anonymous, and confidential - a safe space to ask questions, share fears or concerns, and celebrate your loved one.

You Are Not Alone

At our support meetings you can...

- Share your thoughts and feelings related to having a LGBTQ+ child, relative, or friend-- whether you are struggling, fully affirming, or anywhere in between.
- Join people with similar experiences who relate to one another, share their journeys and offer insight.
- Feel safe in the confidential and non-judgmental environment of people who understand.
- Get to know one another during the social time after meetings and form lasting supportive friendship.
- Obtain publications and resources about LGBTQ+ topics.
- Receive additional support by phone, email, or private one-on-one meetings.

Our Mission

To create a caring, just, and affirming world for LGBTQ+ people and those who love them.

Our Vision

An equitable, inclusive world where every LGBTQ+ person is safe, celebrated, empowered, and loved.

#PFLAGProud

Meetings

3rd Saturdays

Support & Education Meeting

10am

For more information and a current meeting schedule, please visit:
pflaggreeley.org

SUPPORT

PFLAG Greeley hosts both in-person and PFLAG Connects virtual support group meetings across Northern Colorado for LGBTQ+ people, their families, and non-family allies.

EDUCATION

PFLAG Greeley provides education programming to help dispel misinformation and disinformation about LGBTQ+ people and those who love them.

ADVOCACY

PFLAG Greeley advocates for affirming legislation and against harmful policies and laws at the local, state, and federal level.





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	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	•Next grant application expected May 2023	•The RAISE grant was submitted on February 28, 2024. Discussions continue with CDOT for next steps in the process	Paul Trombino
03-2023	Butler	Campaign Contribution Limits	February 7, 2023 Council Meeting	•Presented at Nov 28 Work Session	•Intro/1st Rdg Ordinance scheduled for July 16, 2024. Council Meeting; 2nd Rdg Ordinance scheduled for August 6, 2024.	Stacey Aurzada/ Heidi Leatherwood
04-2023	Hall	Pumpkin Ridge - Bridge	March 7, 2023 Council Meeting	•PW report provided to Council on March 24, 2023. Neighborhood meeting planned on June 29, 2023. •Included Raymond's 9/1/2023 Council Update	•Survey complete, will reach 60% design by end of May. Still on track for construction by end of year.	PW
11-2023	Clark/Butler	Artificial turf and landscape standards	August 1, 2023 Council Meeting	•Come back to Council with a draft ordinance	•Council consensus: Staff to bring back minor updates to the front yard landscaping regulations for consideration •Council work session late 3rd quarter or early 4th quarter	Brian McBroom
1-2020	Hall	Follow-up on the Poudre River Trail- Narrows Project	August 1, 2023 Council Meeting	•The grant application, which will be submitted in October, will complete baseline river modeling in addition to an alternative alignment analysis which will also look at the existing alignment, with high level cost estimates for each alternative. The scope will also include a 30% design of the preferred alignment. Working with existing consultants, we've established an estimated cost for the design process to get to a 30% of roughly \$150,000. •Unless a new alignment comes out of the design process, utilizing the existing alignment or an alternative on the north side of the river identified by past studies will likely exceed \$2 million to completed design/permitting and	•Received a \$45,000 planning grant from the State Trails program in Colorado Parks and Wildlife, and PRTC is contributing \$25,000 toward the design process at this integral section of the trail. Natural Areas and Trails division of CPRD has contracted Otak to conduct geotechnical analysis for the Narrows section of the Poudre River Trail in west Greeley. After completing several test bores in the area in late March, the consultant is completing analysis of the testing and will be hosting a workshop with CPRD and Public Works staff, along with representatives from the Poudre River Trail Corridor, Inc. (PRTC) a non-profit board in May.	Diana Frick
14-2023	Butler	Charter Review	12/19/2023	Asked Staff to start process of Charter review	Will schedule a follow up report/work session to provide council with cost analysis and CAO will provide information on immediate need changes	CAO/CCO
2-2024	Butler	Ballot Language for the Police Sergeant initiative	January 16, 2024 City Council Meeting	Asked CAO staff to create more descriptive language for the police sergeant ballot question for 2024	Pending CAO Scheduling of a Council Meeting	CAO
3-2024	Butler	Requested a Budget Retreat for 2025 Budget	April 2, 2024 City Council Meeting	Requested a Budget Retreat for 2025 Budget	Budget Retreat is scheduled for July 17, 2024	Caleb Weitz

4-2024	Butler	Requested Work Session for information on the Lincoln Park Redesign- to include status of project, timeline of project and overview of the coming outreach Work Session	April 2, 2024 City Council Meeting	Requested Work Session for information on the Lincoln Park Redesign- to include status of project, timeline of project and overview of the coming outreach Work Session	A team of staff in CPRD is working to reimage uses for Lincoln Park which includes activation of the space bringing the community to downtown. RFP submitted, proposals were due April 15th. Once the consultant is selected, we will begin internal and external stakeholder and community outreach work.	CPRD
5-2024	Hall	Impact Fee Study Structure	May 7, 2024 Council Meeting	Requested staff bring a report to a future work session explaining more in depth the Impact Fee Study Structure - how the ratio is calculated, review process, timeline of review, and development fees	Meeting with staff	Brian McBroom/Paul Trombino/Sean Chambers/Tyra Litzau
6-2024	Butler	Sidewalk Funding Projects	May 21, 2024 Council Meeting	Requested staff to come to a work session to report on sidewalk work and plans being done		Paul Trombino



Council Agenda Summary

June 4, 2024

Key Staff Contact: Heidi Leatherwood, City Clerk

Title:

A motion to approve the City Council Work Session Proceedings of May 7, 2024 and City Council Work Session Proceedings of May 14, 2024

Summary:

A meeting of the City Council was held in the City Council's Chambers on May 7, 2024, and a Work Session of the City Council was held in the City Council's Chambers on May 14, 2024.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	No
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Legal Issues:

Legislative

Other issues and Considerations:

None

Strategic Focus Area:



High-Performance Government

Decision Options:

- 1) Approve the motion; or
- 2) Amend the motion and approve as amended; or
- 3) Deny the motion; or
- 4) Continue consideration of the motion to a future date.

Council's Recommended Action:

Approve the motion.

Attachments:

1. City Council Proceedings May 7, 2024 DRAFT
2. Council Work Session Minutes May 14, 2024

City of Greeley, Colorado
CITY COUNCIL PROCEEDINGS
May 7, 2024

1. Call to Order

Mayor Gates called the meeting to order at 6 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.

The following were present:
Councilmember Tommy Butler
Councilmember Deb DeBoutez – via Zoom
Mayor Pro Tem Dale Hall
Councilmember Brett Payton
Councilmember Johnny Olson
Councilmember Melissa McDonald
Mayor John Gates

4. Approval of the Agenda

Mayor Gates announced that Item 12 – Introduction and first reading of an ordinance adding Chapter 8 to Title 18 of the Greeley Municipal Code relating to Museums will be removed from the agenda and come back on a future agenda.

5. Recognitions and Proclamations

Proclamations:

Mayor Gates read the National Public Works Week Proclamation at 6:02 p.m. and members of the City of Greeley Public Works Department and Paul Trombino, Public Works Director were present in Council Chambers to accept.

Mayor Gates read the Historic Preservation Month Proclamation at 6:06 p.m. Christen DePetro, Chair of the Historic Preservation Commission, Vice Chair Sean Jaehn, and Historic Preservation Commission Member Doran Azari, as well as Melissa Martinez and Betsy Kellums, Planner III – Historic Preservation from the City of Greeley were present in Council Chambers to accept.

Mayor Gates read the Mental Health Month Proclamation at 6:09 p.m. Kim Collins, CEO of North Range Behavioral Health, Julia Reinink, Chief Nursing Officer, Paul Hutton, Megan Cain, and Victoria Cordova, Director of Behavioral Health Services, all with

Banner Health, and City of Greeley Fire Chief Brian Kuznik were present in Council Chambers to accept.

Mayor Gates read the National Police Week Proclamation at 6:14 p.m. City of Greeley Police Chief Adam Turk, Commander Kyle Peltz, Sergeant Fidel Sanchez, Officer Tyler Nebelsick, Officer Paul Shannon, and Chairwoman of the Chief's Latino Advisory Committee Sandi Elder were present in Council Chambers to accept.

What's Great About Greeley

Councilmember McDonald presented the *What's Great about Greeley?* presentation at 6:17 p.m.

Mayor Gates introduced Allena Portis as the new Deputy City Manager and Chief Financial Officer at 6:20 p.m.

6. Citizen Input

1. Steve Teets spoke about his concerns for public transportation and homelessness.
2. Todd Loschen voiced his concerns regarding the four-way intersection in Cedar Ridge Subdivision and the posted speed limit. He said he would continue coming to meetings until the situation resolved.

7. Reports from Mayor and Councilmembers

1. Councilmember Olson spoke about attending a Habitat for Humanity Event in coordination with the Team Up Project that was a panel discussion on the refugee and immigrant population. He noted that Habitat for Humanity would be sponsoring a Building Impact breakfast on July 11th at 6:45 a.m., at Christ Community Church.
2. Mayor Pro Tem Hall read the proclamation for National Arbor Day on April 27 at Sanborn Park. Councilmember DeBoutez attended as well.
3. Councilmember McDonald spoke about the Neighborhood Action Team Shoplift Blitz at the end of April and thanked the Greeley Police Department for conducting it. She reported that there were seven shoplifting incidents, six tickets issued, five different warrants and \$642 in merchandise that that was saved.
4. Mayor Gates attended the state capital to celebrate Greeley Day. He thanked City Manager Raymond Lee and his staff.

8. Initiatives from Mayor and Councilmembers

Mayor Pro Tem Hall asked for consensus to review impact fees to determine if planning was generating the needed income. He referred to the April 23 work session, in which they were reviewing revenues. He had asked for a report on the impact fee structure and had received and reviewed it, and now has more questions.

Mayor Gates asked for consensus on staff providing more information on the impact fees. The council reached consensus to move forward with this initiative.

Consent Agenda

9. **A motion to approve the City Council Meeting Proceedings of April 2, 2024, and City Council Work Session Proceedings of April 9, 2024**
10. **A motion for an appointment to the Greeley/Weld Housing Authority**
11. **A resolution authorizing the City of Greeley to enter into an Intergovernmental Agreement with the Weld County RE-5J School District regarding land dedication for schools**
13. **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**

End of Consent Agenda

Councilmember Olson moved to approve Consent Agenda Items 9-11 and 13.
Councilmember Butler seconded the motion. The motion passed 7-0 at 6:37 p.m.

14. **Greeley Municipal Code relating to Museums**
Mayor Gates reminded Council that this item was removed from the agenda.
15. **2024 Ballot Planning Focus Group Summary-** Alex Dunn with Aspect Strategic presented a report on a focus group discussion. The council was asked for their consensus on what ballot items to move forward with for a second focus group. The council reached consensus to move forward on Food Tax, Transportation Debt Issuance, and Public Safety. The council did not reach consensus to move forward on Dedicated Open Space.
16. **Public hearing and second reading of an ordinance authorizing a salary increase for the City Manager**
Chief People Officer Kimberly Southern-Weber introduced the item at 7:24 p.m. She noted that there would be a single presentation for both Items 16 and 17, but separate public hearings.

The presentation covered the process of the annual review and compensation increases for the City Manager and Municipal Judge.

The public hearing opened at 7:27 p.m.

1. Steve Teets noted that the City Manager and Judge had received increases the past three years. He would like to see police officers receive raises instead, and fund transportation and homelessness.

With no further speakers, the public hearing closed at 7:29 p.m.

Councilmember Payton moved to approve the motion. Councilmember Butler seconded the motion. The motion passed 7-0 at 7:29 p.m.

17. Public hearing and second reading of an ordinance authorizing a salary increase for the Municipal Judge

The public hearing opened at 7:30 p.m.

With no speakers, the public hearing closed at 7:31 p.m.

Councilmember Olson moved to approve the motion. Mayor Pro Tem Hall seconded the motion. The motion passed 7-0 at 7:32 p.m.

Mayor Gates announced that Interim City Attorney Stacey Aurzada was the sole finalist for the City Attorney vacancy.

18. 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

Councilmember Payton moved to approve the motion. Councilmember Butler seconded the motion. The motion passed 7-0 at 7:34 p.m.

19. Scheduling of Meetings Other Events

None.

20. Adjournment

With no further business to come before the Council, Mayor Gates adjourned the meeting at 7:34 p.m.

Approved:

John Gates, Mayor

Attest:

Heidi Leatherwood, City Clerk

City of Greeley, Colorado
CITY COUNCIL WORK SESSION REPORT
May 14, 2024

1. Call to Order

Mayor John Gates called the meeting to order at 6 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

City Clerk Heidi Leatherwood called the roll.

The following members of Council were present:

Councilmember Tommy Butler

Councilmember Deb DeBoutez

Mayor Pro Tem Dale Hall

Councilmember Payton

Councilmember Johnny Olson

Councilmember Melissa McDonald

Mayor John Gates

4. Reports from Mayor and Council Members

Councilmember Olson attended the Frontier House Breakfast. It was very well choreographed. He attended the Peckham Groundbreaking which is part of the US 85 improvement project.

Councilmember McDonald received feedback on the Greeley Clean up which was largely attended. Residents reported that helpers were in a great mood, and it was a pleasant experience despite the rainy weather.

Mayor Gates reminded Council that tomorrow is the quarterly breakfast meeting with the Board of County Commissioners at Doug's Diner beginning at 7:30 a.m.

5. Grants Report

Director of Finance Tyra Litzau and Grant and Special Revenue Manager Stacey Swanson presented the "informational only" item at 6:04 p.m.

Grants are received throughout the year for the City of Greeley from federal, state, and local agencies. Grant funds allow the City to complete projects that would not otherwise be possible without these additional funds.

This presentation focused on the grants that have been applied for and awarded in the first quarter of 2024 and the American Rescue Plan Act (ARPA) funding received in 2021 and 2022.

Councilmember Deboutez asked about the frequency of receiving reports on ARPA funding awards. City Manager Lee answered that this list could be added to the weekly updates that Council receives.

Councilmember Olson asked for clarification on the total awards for internal and external. He recalled that 77% of the funds were awarded internally. City Manager Lee explained that 2 million dollars in funding was set aside for external purposes, but they awarded more than that because there were additional projects that provided significant community impact. These external project awards were noted in the materials and presentation at the October 7, 2023 work session for Council.

6. Revision of the City of Greeley Investment Policy

Director of Finance Tyra Litzau and Treasurer Robert Miller presented the item at 6:25 p.m.

The Investment Policy is evaluated annually with the City's investment advisors, Public Trust Advisors (PTA). The City's investment policy objective in priority order are preservation of capital and protection of investment principal, maintenance of sufficient liquidity to meet anticipated cash flows, attainment of a market value rate of return, and diversification to avoid incurring unreasonable market risks.

There are two significant changes to the policy, one being the addition of allocating for the purchase of municipal bonds and second adjusting the long-term portfolio benchmark from 0-3 years to 1-5 years to be consistent with the City's investment strategy.

Mayor Gates asked why changes are needed for the portfolio benchmark. Mr. Miller explained that it is in the best interest of the City of invest over a longer period to reduce risk.

Councilmember Payton asked about the changes from Commercial Paper limited to 50% of the City's investment portfolio in Authorized Securities and Transactions to 20%. Mr. Miller explained that the revised percentage was intended to represent current market opportunities and market diversification objectives. Ms. Litzau added that the 20% is in line with other municipality practices. If it were left at the 50% limit, and a new treasurer was appointed, they could invest up to 50% without seeking the advice of Council.

Council consensus was to bring the changes by resolution at the next council meeting.

7. Waste Diversion Study Update and Next Steps Discussion

Public Works Director Paul Trombino, Deputy Public Works Director Will Jones, presented the item at 6:38 p.m.

The goal of the presentation was to reach consensus on next steps for waste diversion (recycling). Staff noted that 15% of residents in Greeley do not have trash service and as the population grows this number would increase. Staff also explained that less than 8% of waste is currently recycled.

Through the study that was conducted, staff proposed five options for council discussion.

1. Consolidated Recycling Center
2. Pay As You Throw (PAYT)
3. Contracted Hauler and PAYT
4. Hauler Reporting
5. Required Trash and Recycling

Mayor Pro Tem Hall asked about contaminated recycling and how that would work to solve the issue of recycling. (Consultant) Ms. Laurie Batchelder Adams reminded Council that there is no mechanism in place to force residents to recycle properly. Instead, a potential legislative bill forthcoming aims to educate residents in two ways; offering recycling opportunities and subsidizing those opportunities.

Councilmember DeBoutez explained her concern for the residents that do not have a trash service, the cost of maintaining the service and the effect it has on the residents who are paying for waste management. She suggested that maybe there is a way to divide up the city geographically, requiring trash service for all and use grants or other to help subsidize the cost of the service. She wanted a solution for the waste that is left in alleyways. Just this week with the students departing the university for the summer, she saw streets lined with mattresses and unwanted furniture left for residents to deal with. City Manager Lee explained that a challenge right now is those residents who do not have trash collection service. He cautioned that it was important to get a handle on it now before the population grows to 200,000 and the waste issue becomes unmanageable. Mr. Trombino added that often resident complaints about unwanted waste left on streets becomes a task for the Public Works Department and it costs the City to dispose of it. This is an increasing problem and takes a significant amount of time and effort.

Councilmembers discussed the points and issues of single haulers and HOA waste services.

Councilmember Butler commented about the option for Contracted and PAYT and suggested that there needs to be requirements and regulations to ensure that trash is being picked up timely. He asked if grant funding could be used to fund the recycling center option. Mr. Jones answered that this option opens the door for grant funding.

Mayor Gates asked if Option 4 & 5 were enforceable. Mr. Jones answered that they were coupled with a utility billing invoice coming from the municipality. He noted several neighboring jurisdictions that have this in place.

Mayor Gates asked if haulers would be interested in Option 1 due to an attempt at fulfilling this idea 2 years ago that was unsuccessful. Mr. Jones replied that their posture could change if other services were tied to the center in the interest of the haulers. Mayor Gates added that in speaking to another mayor of a similar sized city, he warned not to do it due to the uncontrollable costs of a center. He would be in favor of this option if the costs were accurate as displayed.

Councilmember McDonald asked if recycling just makes its way to the trash and is not truly recycled. The consultant Laurie Batchelder Adams answered that if the recycling is contaminated badly, then at some point it does make it to the landfill because it is cost prohibitive to save it. On the other hand, recycling is worth money and so there is a benefit to sorting and recycling. She noted that single stream recycling is convenient for residents, and it goes to a facility to get sorted.

Councilmember McDonald also asked for the cost of the City of Greeley to do the weekend cleanup project. Mr. Jones estimated that the event cost over \$120,000 and revenue generated was \$50,000. Councilmember McDonald also asked if it were possible to partner with the university to do a similar event for students during the year. Mr. Jones noted that the event was very successful and there is conversation on how they might incorporate options for students and other residents who may not have transportation to deliver items to the event.

Mayor Pro Tem Hall asked for additional information on Option 5 specifically how many HOAs already pay for both services.

Discussion ensued on how the City might incorporate required trash and recycling services into utility billing.

Consensus from Council for staff to gather additional information to bring back at a future date:

Option 4

Option 5

Consultant Laurie Batchelder Adams mentioned that she hoped the City in the future would consider some of the other options as potential solutions to the issue.

8. Scheduling of Meetings, Other Events

None.

9. A motion to go into Executive Session for the purpose of discussing personnel reporting to City Council

Recommended Motion: 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(a)(6): To discuss personnel reporting to the City Council.

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

Mayor Gates noted that the Executive Session is to interview the finalist and internal candidate Stacey Aurzada for the position of City Attorney and added that Council will not return to the meeting after the adjournment of the Executive Session.

10. Adjournment

Mayor Gates adjourned the meeting at 7:25 p.m.

9. A motion to go into Executive Session for the purpose of discussing personnel reporting to City Council

The Executive Session was called to order at 7:34 p.m. for the purpose:

- to discuss personnel who report to Council as provided for under C.R.S. Section 24-6-402(4)(f) and Greeley Municipal Code Section 2-151(a)(6).
- This is an interview of Stacey Aurzada for the City Attorney vacancy.

Mayor Gates noted that Interim City Attorney Stacey Aurzada has been informed of the executive session and has not requested that this discussion be held in open session.

Present for participation in the executive session, which is convened in person in the Executive Session room of Council Chambers were all members of Council, Interim Human Resources Director Martha Lanaghen and Interim City Attorney Stacey Aurzada.

Mayor Gates cautioned each participant to confine discussion to the stated purpose and provided a reminder that no formal action may occur in the 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 8:09 p.m.

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:

Heidi Leatherwood, City Clerk



Council Agenda Summary

June 4, 2024

Key Staff Contact: Brian Kuznik, Fire Chief

Title:

A resolution of the City Council of the City of Greeley, Colorado, extending the City of Greeley Local Disaster Declaration of May 31, 2024, related to flooding

Summary:

On the evening of May 28, 2024, and into the early morning of May 29, 2024, a severe storm struck Greeley, Colorado, bringing strong winds, dangerous lightning, hail, heavy rain, and widespread flooding. On May 31, 2024, City of Greeley, Colorado, Mayor John Gates declared a Local Disaster Emergency due to the widespread and severe damage resulting from the storm.

By declaring a local disaster, the City of Greeley will be able to further expand recovery efforts. Benefits include access to policies and procedures that are not available in day-to-day operations, as well as providing a mechanism for financial support if state or federal assistance is approved.

The Mayor's declaration on May 31, 2024, shall not be continued for a period in excess of seven (7) days except by or with the consent of the City Council. The staff's recommendation is for the Council to continue the declaration for a period of thirty (30) days.

Fiscal Impact:

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

Legal Issues:

Consideration of this matter is a legislative process

Other issues and Considerations:

None

Strategic Focus Area:



Business Growth



Community Vitality



High-Performance Government



Housing For All



Infrastructure and Mobility



Quality of Life



Safe and Secure Communities

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 as presented.

Attachments:

1. Res No. 14, 2024 with Exhibit A

CITY OF GREELEY, COLORADO

RESOLUTION NO. 14, 2024

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GREELEY,
COLORADO, EXTENDING THE CITY OF GREELEY LOCAL DISASTER
DECLARATION OF May 31, 2024 RELATED TO FLOODING**

WHEREAS, on May 31, 2024, pursuant to C.R.S. § 24-33.5-709, and the emergency management and operations plans and resolutions of the City of Greeley, Colorado, Mayor John Gates declared a local disaster emergency due to the occurrence of an imminent threat of widespread or severe damage, injury or loss of life or property resulting from recent flooding within the City of Greeley requiring emergency action to avert danger or damage within the City, and requiring activation of State and Federal assistance programs and

WHEREAS, Pursuant to C.R.S. § 24-33.5-709 (1), the declaration may only be continued or renewed for a period in excess of seven days with the consent of the City Council; and

WHEREAS, the City Council finds that it is appropriate and in the interests of the public health, safety, and welfare; and to further property protection, for the City Council to ratify the action of Mayor Gates and to extend the Local Disaster Declaration until such time as the City Council terminates such declaration.

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

Section 1. That the City Council hereby confirms, determines, and declares that there is a local disaster in Greeley, Colorado, to wit, the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from recent flooding in the City of Greeley, including the presence and likelihood of additional damage, requiring emergency action to avert danger or damage.

Section 2. That the effect of this resolution shall be to continue the Local Disaster Declaration signed by Mayor Gates on May 31, 2024, which is attached hereto as Exhibit A and incorporated herein by this reference. Further, this declaration shall authorize the continued response and recovery aspects of any and all applicable local and interjurisdictional disaster emergency plans and to authorize the furnishing of aid and assistance under such plans.

Section 3. That the City Manager is directed and authorized to continue coordination with internal and external partners and to direct city staff as appropriate and necessary to address the local disaster emergency.

Section 4. That the City Council directs the City Manager to implement steps for long term continuity of government services.

Section 5. That the City Council hereby ratifies and adopts the actions of the City Manager and hereby extends the Local Disaster Declaration for an additional 42 days until July 16, 2024 at which time City Council may resolve to extend the Local Disaster Declaration for an additional period.

Section 6. That the City Clerk is directed to ensure this resolution and declaration is promptly filed with the appropriate authorities.

PASSED, AND ADOPTED, SIGNED AND APPROVED this 4th DAY OF JUNE, 2024.

ATTEST:

THE CITY OF GREELEY, COLORADO

By: _____
City Clerk

By: _____
Mayor

LOCAL DISASTER DECLARATION

WHEREAS, the Greeley Emergency Management Office has advised the Greeley City Council of a disaster (as that term is defined in the Colorado Disaster Emergency Act, 24-33.5-702, et seq.) currently present in the city of Greeley, to wit, the occurrence of imminent threat of widespread or severe damage, injury or loss of life or property resulting from flooding and associated weather conditions, requiring emergency action to avert danger or damage:

WHEREAS, the said office of Emergency Management has recommended that the Council declare a local disaster, and

WHEREAS it would be appropriate and in the interests of the public health and safety, and would further protect property, for the Council to comply with said recommendation, and

WHEREAS pursuant to 24-33.5-709, CRS 2013, and the Emergency Management Resolution of Greeley, Colorado the Council authorized to declare a

Now therefore be it resolved that:

1. There is hereby declared to be a local disaster in the City of Greeley, Colorado, to wit, the occurrence of imminent threat of widespread or severe damage, injury, or loss of life or property, resulting from flooding and associated weather conditions requiring emergency action to avert danger or damage.
2. The effect of this declaration shall be to activate the response and recovery aspects of any and all applicable local and inter-jurisdictional disaster emergency plans and to authorize the furnishing of aid and assistance under such plan.
3. The effect of this declaration hereby provides access to and spending of all emergency funds for response, recovery, aid and assistance for said local disaster held by the City of Greeley in accordance with Article 10, Section 20 of the Colorado Constitution,
4. Be it further resolved that the Principal Executive Officers of all other cities and towns in Weld County affected by said disaster are urged to proclaim similar declarations and to cooperate with the County as necessary to cope with this incident.
5. Be it further resolved that this resolution shall be effective upon the date and time given below and shall remain in effect for a period not to exceed 7 days thereafter except by or with the consent of a majority of the members of the Council. True copies hereof shall be filed promptly with the Colorado Office of Emergency Management and with the City Clerk and shall be promptly distributed to the appropriate representatives of the news media.

SIGNED AND EFFECTIVE THIS 31st DAY OF May, 2024, AT 9:10 P.M. a.m.

THE CITY OF GREELEY, COLORADO

ATTEST:

By:

Mayor



City Clerk



Council Agenda Summary

June 4, 2024

Key Staff Contact: Paul Trombino, Public Works Director

Title:

A resolution authorizing the City to enter into an Intergovernmental Agreement with the Colorado Department of Transportation for the 5th Street and 23rd Avenue bridge improvements

Summary:

The Colorado Department of Transportation has approved a federally funded reimbursable grant of \$800,000 with a \$200,000 City of Greeley match for a total of \$1,000,000 to reconstruct the current dilapidated and obsolete 5th Street Bridge over the Greeley Irrigation Company Ditch No. 3. The project will replace the bridge with a reinforced concrete box culvert. The Intergovernmental Agreement (IGA) will obligate the federal funds for the City to proceed with the design and construction of this improvement.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	Yes
If yes, what is the initial, or, onetime impact?	\$1,000,000 one time
What is the annual impact?	none
What fund of the City will provide Funding?	334 - Road Development
What is the source of revenue within the fund?	Development Fees
Is there grant funding for this item?	Yes, \$800,000
If yes, does this grant require a match?	Yes 20% match, \$200,000
Is this grant onetime or ongoing?	Onetime

Legal Issues:

Consideration of this matter is a legislative process which includes the following steps:

- 1) Council questions of staff
- 2) Council discussion
- 3) Council decision

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 to authorize the City to enter into a intergovernmental agreement with the Colorado Department of Transportation for the 5th Street and 23rd Avenue Bridge Improvements.

Attachments:

1. Res No.15, 2024 with Exhibit A

**THE CITY OF GREELEY, COLORADO
RESOLUTION No. 15, 2024**

**RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN
INTERGOVERNMENTAL AGREEMENT WITH THE COLORADO DEPARTMENT OF
TRANSPORTATION FOR THE 5TH STREET AND 23RD AVENUE BRIDGE
IMPROVEMENTS**

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

WHEREAS, the City desires to enter into an Intergovernmental Agreement (IGA) with the Colorado Department of Transportation (CDOT) to complete the 5th Street and 23rd Avenue Bridge Improvements (the "Project"); and

WHEREAS, the Project, overseen by CDOT, consists of designing and reconstructing the obsolete bridge at the intersection of 5th Street and 23rd Avenue; and

WHEREAS, the Project is 80% federally funded in the amount of \$800,000.00, matched by 20% of City funds in the amount of \$200,000.00, for a total of \$1,000,000.00; and

WHEREAS, the City is adequately staffed and suitably equipped to undertake and satisfactorily complete the City's work on the Project; and

WHEREAS, it is in the best interest of the citizens of the City 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 IGA OLA#: 331003250, 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 of the IGA 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 ON THIS 4TH DAY OF
JUNE 2024.**

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 24-HA4-XC-00273
Local Agency CITY OF GREELEY			Agreement Effective Date The later of the effective date or December 05, 2023
Agreement Description 5th St. & 23rd Ave Bridge			Agreement Expiration Date December 04, 2033
Project # BRO M570-067 (24892)	Region # 4	Contract Writer TCH	Agreement Maximum Amount \$1,000,000.00

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement and to bind the Party authorizing his or her signature.

LOCAL AGENCY CITY OF GREELEY Signature By: (Print Name and Title) Date: _____	STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director Keith Stefanik, P.E., Chief Engineer Date: _____
2nd State or Local Agency Signature if Needed Signature By: (Print Name and Title) Date: _____	LEGAL REVIEW Philip J. Weiser, Attorney General Assistant Attorney General By: (Print Name and Title) Date: _____
In accordance with §24-30-202 C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Department of Transportation Effective Date: _____	

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EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Effective Date

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

B. Initial Term and Extension

The Parties’ respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on December 04, 2033 as shown on the Signature and Cover Page for this Agreement, unless sooner terminated or further extended in accordance with the terms of this Agreement. Upon request of Local Agency, the State may, in its sole discretion, extend the term of this Agreement by Option Letter pursuant **§7.E.iv**. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in **Exhibit C**.

C. Early Termination in the Public Interest

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

i. Method and Content

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

ii. Obligations and Rights

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

iii. Payments

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

D. Local Agency Termination Under Federal Requirements

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

3. AUTHORITY

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

A. Federal Authority

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

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

B. State Authority

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

4. PURPOSE

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

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

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

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

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

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

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

6. SCOPE OF WORK

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

A. Local Agency Commitments

i. Design

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

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

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

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

iii. Construction

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

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

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

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

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

v. Utilities

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

vi. Railroads

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

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

vii. Environmental Obligations

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

viii. Maintenance Obligations

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

ix. Monitoring Obligations

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

B. State's Commitments

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

7. PAYMENTS

A. Maximum Amount

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

B. Payment Procedures

i. Invoices and Payment

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

ii. Interest

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

iii. Payment Disputes

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

iv. Available Funds-Contingency-Termination

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

v. Erroneous Payments

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

vi. Federal Recovery

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

C. Local Agency Funds

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

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

D. Reimbursement of Local Agency Costs

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

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

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

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

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

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

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

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

- fully executed Option Letter to Local Agency within thirty (30) days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.
- iii. Option to Exercise Options i and ii.
- The State may require Local Agency to add a Work phase as detailed in **Exhibit A**, and encumber and transfer Agreement Funds from one Work phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The addition of a Work phase and encumbrance and transfer of Agreement Funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within 30 days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.
- iv. Option to Extend Agreement/Phase Term and/or modify the OMB Uniform Guidance. The State, at its discretion, shall have the option to extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.). In order to exercise this option, the State shall provide written notice to the Local Agency in a form substantially equivalent to **Exhibit B**.

F. Accounting

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

i. Local Agency Performing the Work

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

ii. Local Agency-Checks or Draws

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

iii. State-Administrative Services

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

iv. Local Agency-Invoices

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

v. Invoicing Within 60 Days

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

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

vi. Risk Assessment & Monitoring

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

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

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

G. Close Out

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

8. REPORTING - NOTIFICATION

A. Quarterly Reports

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

B. Litigation Reporting

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

C. Performance and Final Status

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

D. Violations Reporting

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

9. LOCAL AGENCY RECORDS

A. Maintenance

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

B. Inspection

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

C. Monitoring

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

D. Final Audit Report

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

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

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

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

B. Other Entity Access and Nondisclosure Agreements

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

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

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

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

E. Safeguarding Personally Identifying Information "PII"

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

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

12. INSURANCE

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

A. Local Agency Insurance

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

B. Subcontractor Requirements

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

i. Workers' Compensation

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

ii. General Liability

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

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

iii. Automobile Liability

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

iv. Protected Information

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

b. Payments

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

c. Damages and Withholding

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

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

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

c. Deny Payment

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

d. Removal

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

e. Intellectual Property

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

B. Local Agency's Remedies

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

15. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

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

C. Questions of Fact

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

16. NOTICES AND REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) by hand with receipt required, (ii) by certified or registered mail to such Party's principal representative at the address set forth below

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

For the State

Colorado Department of Transportation (CDOT)
Armando Ochoa, E/PST II
CDOT Region 4
10601 10th Street
Greeley, CO 80634
970-652-1668
armando.ochoa@state.co.us

For the Local Agency

City of Greeley
Scott Logan, City Traffic Engineer
2835 10th Street
Greeley, CO 80634
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 any time thereafter, this §19 shall apply. Local Agency agrees to be governed by and comply with the provisions of §24-106-103, §24-102-206, §24-106-106, §24-106-107 C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Local Agency's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

20. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

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

C. Binding Effect

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

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Digital Signatures

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

H. Entire Understanding

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

I. Jurisdiction and Venue

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

J. Modification

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

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

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

L. Order of Precedence

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

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

M. Severability

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

N. Survival of Certain Agreement Terms

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

O. Third Party Beneficiaries

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

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations.

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

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

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

U. Accessibility

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

V. Taxes

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

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

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

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

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(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., applicable Local Agency law, rule or regulation.

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

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

H. SOFTWARE PIRACY PROHIBITION.

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

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

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

22. FEDERAL REQUIREMENTS

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

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

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EXHIBIT A

SCOPE OF WORK

Name of Project: 5th Street & 23rd Avenue Bridge
Project Number: BRO M570-067
SubAccount #: 24892

The Colorado Department of Transportation (“CDOT”) will oversee the City of Greeley when City of Greeley designs the 5th Street & 23rd Avenue Bridge Improvements (hereinafter referred to as “this work”). CDOT and the City of Greeley believe it will be beneficial to perform this work to improve bridge structure.

The design will be completed in accordance with AASHTO design standards, the Americans with Disabilities Act, and all applicable state, federal and local rules and regulations. The design phase of the work is anticipated to begin the first quarter of 2024 and will identify more exact requirements, qualities, and attributes for this work (hereinafter 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 contract is anticipated to begin in 2025.

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

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

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EXHIBIT B

SAMPLE IGA OPTION LETTER

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

Vendor Name:

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

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

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

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

Option A

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

Option B

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

Option C

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

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

Option D

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

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

STATE OF COLORADO
Jared S. Polis
Department of Transportation

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

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

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

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

By: _____
Colorado Department of Transportation

Date: _____

City of Greeley - BRO M570-067 (24892)

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be \$1,000,000.00, which is to be funded as follows:

1. FUNDING		
a.	Federal Funds (80% of BRO Award)	\$800,000.00
b.	Local Agency Funds (20% of BRO Award)	\$200,000.00
TOTAL FUNDS ALL SOURCES		\$1,000,000.00
2. OMB UNIFORM GUIDANCE		
a.	Federal Award Identification Number (FAIN):	TBD
b.	Name of Federal Awarding Agency:	FHWA
c.	Local Agency Unique Entity Identifier	VJG3QJJKZ1X6
d.	Assistance Listing # Highway Planning and Construction	ALN 20.205
e.	Is the Award for R&D?	No
f.	Indirect Cost Rate (if applicable)	N/A
g.	Amount of Federal Funds Obligated by this Action:	\$0.00
h.	Amount of Federal Funds Obligated to Date (including this Action):	\$0.00
3. ESTIMATED PAYMENT TO LOCAL AGENCY		
a.	Federal Funds Budgeted	\$800,000.00
b.	Less Estimated Federal Share of CDOT-Incurred Costs	\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		80% \$800,000.00
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY		20% \$200,000.00
TOTAL PROJECT ESTIMATED FUNDING		100% \$1,000,000.00
4. FOR CDOT ENCUMBRANCE PURPOSES		
a.	Total Encumbrance Amount (Federal funds + Local Agency funds)	\$1,000,000.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$0.00
NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS		\$1,000,000.00

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 24892.10.30	Performance Period Start*/End Date	Design 3020	\$0.00
	TBD-TBD		
WBS Element 24892.20.10	Performance Period Start*/End Date	Const. 3301	\$0.00
	TBD- TBD		

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

B. Funding Ratios

The funding ratio for the federal funds for this Work is 80% federal funds to 20% Local Agency funds, and this ratio applies only to the \$1,000,000.00 that is eligible for federal funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$1,000,000.00, and additional federal funds are not available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than \$1,000,000.00, then the amounts of Local Agency and federal

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$800,000.00. For CDOT accounting purposes, the federal funds of \$800,000.00 and the Local Agency funds of \$200,000.00 will be encumbered for a total encumbrance of \$1,000,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total budget is \$1,000,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work.**

D. Single Audit Act Amendment

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

- i. **Expenditure less than \$750,000**
If the Local Agency expends less than \$750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.
- ii. **Expenditure of \$750,000 or more-Highway Funds Only**
If the Local Agency expends \$750,000 or more, in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.
- iii. **Expenditure of \$750,000 or more-Multiple Funding Sources**
If the Local Agency expends \$750,000 or more in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.
- iv. **Independent CPA**
Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

EXHIBIT D

LOCAL AGENCY RESOLUTION (IF APPLICABLE)

Routing #: 24-HA4-XC-0027

COLORADO DEPARTMENT OF TRANSPORTATION

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

Project No. BRO M570-067	STIP No. SR46601	Project Code 24892	Region 4
Project Location City of Greeley			Date 11-16-2023
Project Description 5th St. & 23rd Ave Bridge Reconstruction			
Local Agency City of Greeley		Local Agency Project Manager Scott Logan	
CDOT Resident Engineer Bryce Reeves		CDOT Project Manager Armando Ochoa	

INSTRUCTIONS:

This checklist shall be used to establish the contractual administrative responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency Agreement. Section numbers (NO.) correspond to the applicable chapters of the *CDOT Local Agency Desk Reference (Local Agency Manual)*. LAWR numbers correspond to the applicable flowchart in the Local Agency Web Resource.

The checklist shall be prepared by placing an X under the responsible party, opposite each of the tasks. The X denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, # will denote that CDOT must concur or approve.

Tasks that will be performed by Headquarters staff are indicated with an X in the CDOT column under Responsible Party. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.

The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.

Note:

Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.

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

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
3	5.7	Conduct Field Inspection Review (FIR)	x	#
4	5.8	Conduct Environmental Processes (may require FHWA concurrence/involvement)	x	#
5	5.9	Acquire Right-of-Way (may require FHWA concurrence/involvement)	x	#
3	5.10	Obtain Utility and Railroad Agreements	x	#
3	5.11	Conduct Final Office Review (FOR)	x	#
3A	5.12	Justify Force Account Work by the Local Agency	x	#
3B	5.13	Justify Proprietary, Sole Source, or Local Agency Furnished Items	x	#
3	5.14	Document Design Exceptions - CDOT Form 464	x	#
	5.15	Seek Permission for use of Guaranty and Warranty Clauses	x	#
3	5.18	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	x	#
	5.19	Comply with Requirements for Off-and On-System Bridges & Other Structural Work	x	#
	5.20	Update Approvals on PS&E Package if Project Schedule Delayed	x	#
	5.21	Ensure Authorization of Funds for Construction	#	x
	5.22	Use Electronic Signatures	x	x
	5.23	File Project Development Records/Documentation in ProjectWise	#	x
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE				
3	6.1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region Civil Rights Office).		x
	6.2	Determine Applicability of Davis-Bacon Act This project ☐ is ☒ is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Bryce Reeves 11-16-23 CDOT Resident Engineer Date		x
	6.3	Set On-the-Job Training Goals (CDOT Region Civil Rights Office) "NA", if Not Applicable		x
	6.4	Enforce Prompt Payment Requirements	x	#
	6.5	Use Electronic Tracking and Submission Systems – B2GNow ☒ LCPtracker ☒	x	#
3	6.6	Prepare/submit Title VI Plan and Incorporate Title VI Assurances	x	#
6,7		Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)	x	#
ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS				
Federal Project (use 7.1 series in Chapter 7) ☒ Non-Federal Project (Use 7.2 series in Chapter 7) ☐				
6,7		Obtain Approval for Advertisement Period of Less Than Three Weeks;	x	#
7		Advertise for Bids	x	#
7		Concurrence to Advertise	#	x
7		Distribute "Advertisement Set" of Plans and Specifications	x	#
7		Review Worksite & Plan Details w/ Prospective Bidders While Project Is Under Ad	x	
7		Open Bids	x	
7		Process Bids for Compliance		
		Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals. (Please write in "NA", if Not Applicable)		x
		Evaluate CDOT Form 1416 - Good Faith Effort Report and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals. "NA", if Not Applicable.		x
		Submit required documentation for CDOT award concurrence	x	
		Concurrence from CDOT to Award		x
		Approve Rejection of Low Bidder		x
7,8		Award Contract (federal)	x	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
8		Provide "Award" and "Record" Sets of Plans and Specifications (federal)	x	
		CONSTRUCTION MANAGEMENT		
8	Intro	File Project Construction Records/Documentation in ProjectWise or as directed	x	
8	8.1	Issue Notice to Proceed to the Contractor	x	#
8	8.2	Project Safety	x	
8	8.3	Conduct Conferences:		
		Pre-construction Conference (Appendix B)	x	#
		• Fabrication Inspection Notifications	x	
		Pre-survey		
		• Construction staking	x	
		• Monumentation	x	
		Partnering (Optional)	x	
		Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>) (If applicable)	x	
		Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>) (If applicable)	x	
		HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>) (If applicable)	x	
8	8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	x	
9	8.5	Supervise Construction		
		A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision."		
		<u>TBD</u>	x	
		Local Agency Professional Engineer or CDOT Resident Engineer Phone number		
		Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	x	
		Construction inspection and documentation (including projects with structures)	x	#
		Fabrication Inspection and documentation (If applicable)	x	
9	8.6	Review and Approve Shop Drawings	x	
9	8.7	Perform Traffic Control Inspections	x	#
9	8.8	Perform Construction Surveying	x	
9	8.9	Monument Right-of-Way	x	#
9,9A	8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent) or use compliance software system.		
		Provide the name and phone number of the person authorized for this task.		
		Scott Logan 970-350-9555	x	
		Local Agency Representative Phone number		
9	8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	x	
9B	8.12	Prepare and Authorize Change Orders	x	#
9B	8.13	Submit Change Order Package to CDOT	x	
9A	8.14	Prepare Local Agency Reimbursement Requests	x	
9	8.15	Monitor Project Financial Status	x	#
9	8.16	Prepare and Submit Monthly Progress Reports	x	
9	8.17	Resolve Contractor Claims and Disputes	x	#
	8.18	Conduct Routine and Random Project Reviews		
		Provide the name and phone number of the person responsible for this task.		
		Bryce Reeves 970-350-2126		x
		CDOT Resident Engineer Phone number		
9	8.19	Ongoing Oversight of DBE Participation	x	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA CDOT	
	MATERIALS			
9,9C	9.1	Discuss Materials at Pre-Construction Meeting Buy America documentation required prior to installation of steel	X	
9,9C	9.2	Complete CDOT Form 250 - Materials Documentation Record - Generate form, which includes determining the minimum numberof required tests and applicable material submittals for all materials placed onthe project - Update the form as work progresses - Complete and distribute form after work is completed	X X	X
9C	9.3	Perform Project Acceptance Samples and Tests	X	
9C	9.4	Perform Laboratory Acceptance Tests	X	
9C	9.6	Accept Manufactured Products Inspection of structural components: - Fabrication of structural steel and pre-stressed concrete structural components - Bridge modular expansion devices (0" to 6" or greater) - Fabrication of bearing devices	X X X X	
9C	9.6	Approve Sources of Materials	X	
9C	9.7	Independent Assurance Testing (IAT) Local Agency Procedures ☐ CDOT Procedures ☒ - Generate IAT schedule - Schedule and provide notification - Conduct IAT	X X	X
9C	9.8	Approve mix designs - Concrete - Hot mix asphalt	X X	# #
9C	9.9	Check Final Materials Documentation	X	#
9C	9.10	Complete and Distribute Final Materials Documentation	X	#
	CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
9	10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
8,9	10.2	Process CDOT Form 205 - Sublet Permit Application and CDOT Form 1425 – Supplier Application Approval Request. Review & sign completed forms, or review/approve in compliance software system, as applicable, & submit to Region Civil Rights Office.	X	#
9	10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
9	10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the “Commercially Useful Function” Requirements	X	
9	10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. - Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements. - Complete CDOT Form 838 – OJT Trainee / Apprentice Record. - Complete CDOT Form 200 - OJT Training Questionnaire	X X X	
9	10.6	Check Certified Payrolls (Contact the Region Civil Rights Office for training reqmts.)	X	#
9	10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
	10.8	Contract Compliance and Project Site Reviews		X
	FINALS			
	11.1	Conduct Final Project Inspection & Final Inspection of Structures, if applicable		X
10	11.2	Write Final Project Acceptance Letter	X	
10	11.3	Advertise for Final Settlement	X	
11	11.4	Prepare and Distribute Final As-Constructed Plans	X	
11	11.5	Prepare EEO Certification and Collect EEO Forms	X	
11	11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	#

LA WK	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
11	11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	x	#
	11.8	Review CDOT Form 1419		x
	11.9	Submit CDOT Professional Services Closeout Report Form	x	
	11.10	Complete and Submit CDOT Form 1212 LA – Final Acceptance Report (by CDOT)		x
11	11.11	Process Final Payment	x	#
	11.12	Close out Local Project	x	
	11.13	Complete and Submit CDOT Form 950 - Project Closure		x
11	11.14	Retain Project Records	x	
11	11.15	Retain Final Version of Local Agency Contract Administration Checklist	x	

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

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

EXHIBIT F
CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

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

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

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

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

EXHIBIT G

DISADVANTAGED BUSINESS ENTERPRISES

SECTION 1. Policy

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

SECTION 2. Subrecipient and Participant Obligation.

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

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

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

SECTION 3. DBE Program.

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

Local Agency requirements can be found at:

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

EXHIBIT H

LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

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

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

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

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

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

- a. Qualifications,

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

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

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

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Assurances Required:

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

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

1. Minimum wages (29 CFR 5.5)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Withholding (29 CFR 5.5)

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

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

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

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

3. Records and certified payrolls (29 CFR 5.5)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

3. Withholding for unpaid wages and liquidated damages

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

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

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

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

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

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

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

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

* * * * *

3. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

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

XII. USE OF UNITED STATES-FLAG VESSELS:

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

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

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

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

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

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS** (23 CFR 633, Subpart B, Appendix B)
This provision is applicable to all Federal-aid projects funded
under the Appalachian Regional Development Act of 1965.

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

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

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

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

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

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

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

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

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

EXHIBIT J

ADDITIONAL FEDERAL REQUIREMENTS

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

Executive Order 11246

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

Copeland "Anti-Kickback" Act

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

Davis-Bacon Act

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

Contract Work Hours and Safety Standards Act

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

Clean Air Act

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

Energy Policy and Conservation Act

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

OMB Circulars

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

Hatch Act

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

Nondiscrimination

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

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

ADA

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

Uniform Relocation Assistance and Real Property Acquisition Policies Act

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

Drug-Free Workplace Act

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

Age Discrimination Act of 1975

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

23 C.F.R. Part 172

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

23 C.F.R Part 633

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

23 C.F.R. Part 635

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

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

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

Nondiscrimination Provisions:

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

i. Compliance with Regulations

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

ii. Nondiscrimination

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

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

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

iv. Information and Reports

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

v. Sanctions for Noncompliance

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

Incorporation of Provisions §22

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

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SAMPLE

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

Assurances for Local Agencies

DOT Order No. 1050.2A

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

Statutory/Regulatory Authorities

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

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

General Assurances

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

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

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

Specific Assurances

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

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

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

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

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

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

(Name of Recipient)

by _____
(Signature of Authorized Official)

DATED _____

APPENDIX A

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

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

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

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

(HABENDUM CLAUSE)

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

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

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

APPENDIX C

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

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

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

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

APPENDIX D

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

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

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

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

APPENDIX E

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

Pertinent Non-Discrimination Authorities:

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

FFATA SUPPLEMENTAL FEDERAL PROVISIONS

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

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

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

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

- 1.1.1.** Grants;
- 1.1.2.** Contracts;
- 1.1.3.** Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 1.1.4.** Loans;
- 1.1.5.** Loan Guarantees;
- 1.1.6.** Subsidies;
- 1.1.7.** Insurance;
- 1.1.8.** Food commodities;
- 1.1.9.** Direct appropriations;
- 1.1.10.** Assessed and voluntary contributions; and
- 1.1.11.** Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

- 1.1.12.** Technical assistance, which provides services in lieu of money;
- 1.1.13.** A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 1.1.14.** Any award classified for security purposes; or
- 1.1.15.** Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

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

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

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

1.5. "Entity" means all of the following as defined at 2 CFR part 25, subpart C;

- 1.5.1.** A governmental organization, which is a State, local government, or Indian Tribe;
- 1.5.2.** A foreign public entity;
- 1.5.3.** A domestic or foreign non-profit organization;

- 1.54. A domestic or foreign for-profit organization; and
- 1.55. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109- 282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17 **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
 - 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
 - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 4.2. In the preceding fiscal year, Contractor received:
 - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 To SAM. A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

- 7.1.1** Subrecipient DUNS Number;
- 7.1.2** Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
- 7.1.3** Subrecipient Parent DUNS Number;
- 7.1.4** Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 7.1.5** Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 7.1.6** Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

- 7.2.1** Subrecipient's DUNS Number as registered in **SAM**.
- 7.2.2** Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

- 8.1** These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 8.2** A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 8.3** Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.
- 8.4** There are no Transparency Act reporting requirements for Vendors.

Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

EXHIBIT L

SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT

CDOT SUBRECIPIENT RISK ASSESSMENT		Date: 	
Name of Entity (Subrecipient):			
Name of Project / Program:			
Estimated Award Period:			
Entity Executive Director or VP:			
Entity Chief Financial Officer:			
Entity Representative for this Self Assessment:			
Instructions: (See "Instructions" tab for more information) 1. Check only one box for each question. All questions are required to be answered. 2. Utilize the "Comment" section below the last question for additional responses. 3. When complete, check the box at the bottom of the form to authorize.		Yes	No
		N/A	
EXPERIENCE ASSESSMENT		Yes	No
		N/A	
1	Is your entity new to operating or managing federal funds (has not done so within the past three years)?	☐	☐
2	Is this funding program new for your entity (managed for less than three years)? <i>Examples of funding programs include CMAQ, TAP, STP-M, etc.</i>	☐	☐
3	Does your staff assigned to the program have at least three full years of experience with this federal program?	☐	☐
MONITORING/AUDIT ASSESSMENT		Yes	No
		N/A	
4	Has your entity had an on-site project or grant review from an external entity (e.g., CDOT, FHWA) within the last three years?	☐	☐
5	a) Were there non-compliance issues in this prior review?	☐	☐
	b) What were the number and extent of issues in prior review?	☐ 1 to 2	☐ > 3
OPERATION ASSESSMENT		Yes	No
		N/A	
6	Does your entity have a time and effort reporting system in place to account for 100% of all employees' time, that can provide a breakdown of the actual time spent on each funded project? <i>If No, in the comment section please explain how you intend to document 100% of hours worked by employees and breakdown of time spent on each funding project.</i>	☐	☐
FINANCIAL ASSESSMENT		Yes	No
		N/A	
7	a) Does your entity have an indirect cost rate that is approved and current?	☐	☐
	b) If Yes, who approved the rate, and what date was it approved?		
8	Is this grant/award 10% or more of your entity's overall funding?	☐ >10%	☐ <10%
9	Has your entity returned lapsed* funds? *Funds "lapse" when they are no longer available for obligation.	☐	☐
10	Has your entity had difficulty meeting local match requirements in the last three years?	☐	☐
11	What is the total federal funding your entity has been awarded for the last federal fiscal year, and what is your entity's fiscal year end?		

INTERNAL CONTROLS ASSESSMENT				Yes	No	N/A
12	Has your entity had any significant changes in key personnel or accounting system(s) in the last year? (e.g., Controller, Exec Director, Program Mgr, Accounting Mgr, etc.) If Yes, in the comment section, please identify the accounting system(s), and / or list personnel positions and identify any that are vacant.	☐	☐	☐		
13	Does your entity have financial procedures and controls in place to accommodate a federal-aid project?	☐	☐			
14	Does your accounting system identify the receipts and expenditures of program funds separately for each award?	☐	☐			
15	Will your accounting system provide for the recording of expenditures for each award by the budget cost categories shown in the approved budget?	☐	☐			
16	Does your agency have a review process for all expenditures that will ensure that all costs are reasonable, allowable and allocated correctly to each funding source? If Yes, in the comment section, please explain your current process for reviewing costs.	☐	☐	☐		
17	How many total FTE perform accounting functions within your organization?	☐ ≥ 6	☐ 2 to 5	☐ < 2		
IMPACT ASSESSMENT				Yes	No	N/A
18	For this upcoming federal award or in the immediate future, does your entity have any potential conflicts of interest* in accordance with applicable Federal awarding agency policy? If Yes, please disclose these conflicts in writing, along with supporting information, and submit with this form. (*Any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Subrecipient's obligations to the State.)	☐	☐			
19	For this award, has your entity disclosed to CDOT, in writing, violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award? Response options: YES = Check if have one or more violation(s) and have either disclosed previously to CDOT or as part of this form. In the comment section, list all violations with names of supporting documentation and submit with this form. NO = Check if have one or more violation(s) and have not disclosed previously or will not disclose as part of this form. Explain in the comment section. N/A = Check if have no violations.	☐	☐	☐		
PROGRAM MANAGEMENT ASSESSMENT				Yes	No	N/A
20	Does your entity have a written process/procedure or certification statement approved by your governing board ensuring critical project personnel are capable of effectively managing Federal-aid projects? If Yes, please submit with this form.	☐	☐	☐		
21	Does your entity have written procurement policies or certification statement for consultant selection approved by your governing board in compliance with 23 CFR 172*? If Yes, please submit with this form. (*The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications, at a fair and reasonable price.)	☐	☐	☐		
22	a) Is your staff familiar with the relevant CDOT manuals and federal program requirements?	☐	☐	☐		
	b) Does your entity have a written policy or a certification statement approved by your governing board assuring federal-aid projects will receive adequate inspections? If Yes, please submit with this form.	☐	☐	☐		
	c) Does your entity have a written process or a certification statement approved by your governing board assuring a contractor's work will be completed in conformance with approved plans and specifications? If Yes, please submit with this form.	☐	☐	☐		

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

EXHIBIT M

OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS

Subject to
The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and
Audit Requirements for Federal Awards (“Uniform Guidance”),
Federal Register, Vol. 78, No. 248, 78590

The agreement to which these Uniform Guidance Supplemental Provisions are attached has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Uniform Guidance Supplemental Provisions shall control. In the event of a conflict between the provisions of these Supplemental Provisions and the FFATA Supplemental Provisions, the FFATA Supplemental Provisions shall control.

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

- 1.1. “Award”** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise. 2 CFR §200.38
- 1.2. “Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 1.3. “Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. 2 CFR §200.37
- 1.4. “FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 1.5. “Grant” or “Grant Agreement”** means an agreement setting forth the terms and conditions of an Award. The term does not include an agreement that provides only direct Federal cash assistance to an individual, a subsidy, a loan, a loan guarantee, insurance, or acquires property or services for the direct benefit of use of the Federal Awarding Agency or Recipient. 2 CFR §200.51.
- 1.6. “OMB”** means the Executive Office of the President, Office of Management and Budget.
- 1.7. “Recipient”** means a Colorado State department, agency or institution of higher education that receives a Federal Award from a Federal Awarding Agency to carry out an activity under a Federal program. The term does not include Subrecipients. 2 CFR §200.86
- 1.8. “State”** means the State of Colorado, acting by and through its departments, agencies and institutions of higher education.
- 1.9. “Subrecipient”** means a non-Federal entity receiving an Award from a Recipient to carry out part of a Federal program. The term does not include an individual who is a beneficiary of such program.
- 1.10. “Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

- 1.11. “Uniform Guidance Supplemental Provisions”** means these Supplemental Provisions for Federal Awards subject to the OMB Uniform Guidance, as may be revised pursuant to ongoing guidance from relevant Federal agencies or the Colorado State Controller.
- 2. Compliance.** Subrecipient shall comply with all applicable provisions of the Uniform Guidance, including but not limited to these Uniform Guidance Supplemental Provisions. Any revisions to such provisions automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3. Procurement Standards.**
- 3.1 Procurement Procedures.** Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation,
§§200.318 through 200.326 thereof.
- 3.2 Procurement of Recovered Materials.** If Subrecipient is a State Agency or an agency of a political subdivision of a state, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 4. Access to Records.** Subrecipient shall permit Recipient and auditors to have access to Subrecipient’s records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).
- 5. Single Audit Requirements.** If Subrecipient expends \$750,000 or more in Federal Awards during Subrecipient’s fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
- 5.1 Election.** Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program’s statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 5.2 Exemption.** If Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government

Accountability Office.

5.3 Subrecipient Compliance Responsibility. Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

6. Contract Provisions for Subrecipient Contracts. Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Grant Agreement.

6.1 Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments

under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled,

terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

6.2 Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40

U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

6.3 Rights to Inventions Made Under a Contract or Agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6.4 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251- 1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection

Agency (EPA).

6.5 Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAMExclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

6.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

7. Certifications. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

7.1 Event of Default. Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute an event of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

8. Effective Date. The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.

9. Performance Measurement. The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes.

The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

Federal Treasury Provisions

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.
- 1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
 - 2.1.1. "Award" means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
 - 2.1.2. "Entity" means:
 - 2.1.2.1. a Non-Federal Entity;
 - 2.1.2.2. a foreign public entity;
 - 2.1.2.3. a foreign organization;
 - 2.1.2.4. a non-profit organization;
 - 2.1.2.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
 - 2.1.2.6. a foreign non-profit organization (only for 2 CFR part 170) only);
 - 2.1.2.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
 - 2.1.2.8. a foreign for-profit organization (for 2 CFR part 170 only).
 - 2.1.3. "Executive" means an officer, managing partner or any other employee in a management position.
 - 2.1.4. "Expenditure Category (EC)" means the category of eligible uses as defined by the US Department of Treasury in "Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

- 2.1.5. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
- 2.1.6. “Grant” means the Grant to which these Federal Provisions are attached.
- 2.1.7. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.8. “Non-Federal Entity means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 2.1.9. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
- 2.1.9.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.9.2. Is not organized primarily for profit; and
 - 2.1.9.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.10. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.11. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.12. “Prime Recipient” means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.13. “Subaward” means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. “Subrecipient” or “Subgrantee” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.15. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
- 2.1.15.1. Salary and bonus;
 - 2.1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the

fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

- 2.1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 2.1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.16. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 2.1.17. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
- 2.1.18. “Unique Entity ID” means the Unique Entity ID established by the federal government for a Grantee at <https://sam.gov/content/home>.

3. COMPLIANCE.

- 3.1. Grantee shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado, at its discretion, may provide written notification to Grantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3.2. Per US Treasury Final Award requirements, grantee programs or services must not include a term or conditions that undermines efforts to stop COVID-19 or discourages compliance with recommendations and CDC guidelines.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND UNIQUE ENTITY ID (UEI) REQUIREMENTS.

- 4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually.
- 4.2. UEI. Grantee shall provide its Unique Entity ID to its Prime Recipient, and shall update Grantee’s information in Sam.gov at least annually.

5. TOTAL COMPENSATION.

- 5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and
 - 5.1.2. In the preceding fiscal year, Grantee received:

- 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.3. 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

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

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

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

8. SUBRECIPIENT REPORTING REQUIREMENTS.

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

EC 1 – Public Health

All Public Health Projects

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

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

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

COVID-19 Small Business Economic Assistance (1.8)

- a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

- a) Number of non-profits served

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

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

EC 2 – Negative Economic Impacts

All Negative Economic Impacts Projects

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

Household Assistance (2.1-2.8)

- a) Number of households served

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

Healthy Childhood Environments (2.11-2.13)

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

Education Assistance (2.14, 2.24-2.27)

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

Housing Support (2.15, 2.16, 2.18)

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

Small Business Economic Assistance (2.29-2.33)

- a) Number of small businesses served

Assistance to Non-Profits (2.34)

- a) Number of non-profits served

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

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

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

Payroll for Public Health and Safety Employees (EC 3.1)

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

Rehiring Public Sector Staff (EC 3.2)

- a) Number of FTEs rehired by governments

EC 4 – Premium Pay

All Premium Pay Projects

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

- e) Number of workers to be served with premium pay in K-12 schools

EC 5 – Infrastructure Projects

All Infrastructure Projects

- a) Projected/actual construction start date (month/year)
- b) Projected/actual initiation of operations date (month/year)
- c) Location (for broadband, geospatial data of locations to be served)
- d) Projects over \$10 million
 - i. Prevailing wage certification or detailed project employment and local impact report
 - ii. Project labor agreement certification or project workforce continuity plan
 - iii. Prioritization of local hires
 - iv. Community benefit agreement description, if applicable

Water and sewer projects (EC 5.1-5.18)

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

Broadband projects (EC 5.19-5.21)

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

lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization, with the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

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

All Expenditure Categories

- a) Program income earned and expended to cover eligible project costs

8.1.2. A Subrecipient shall report the following data elements to Prime Recipient no later than five days after the end of the month following the month in which the Subaward was made.

- 8.1.2.1. Subrecipient Unique Entity ID;
- 8.1.2.2. Subrecipient Unique Entity ID if more than one electronic funds transfer (EFT) account;
- 8.1.2.3. Subrecipient parent's organization Unique Entity ID;
- 8.1.2.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

- 8.1.2.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 8.1.2.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.
- 8.1.3. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, the following data elements:
- 8.1.3.1. Subrecipient's Unique Entity ID as registered in SAM.
- 8.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
- 8.1.3.3. Narrative identifying methodology for serving disadvantaged communities. See the "Project Demographic Distribution" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. This requirement is applicable to all projects in Expenditure Categories 1 and 2.
- 8.1.3.4. Narrative identifying funds allocated towards evidenced-based interventions and the evidence base. See the "Use of Evidence" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. See section 8.1.1 for relevant Expenditure Categories.
- 8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the public health and negative economic impacts of COVID-19. This requirement is applicable to Expenditure Categories 1 and 2. For aid to travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12), also provide the sector of employer, purpose of funds, and if not travel, tourism and hospitality a description of the pandemic impact on the industry.
- 8.1.3.6. Narrative identifying the sector served and designated as critical to the health and well-being of residents by the chief executive of the jurisdiction and the number of workers expected to be served. For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county's average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is higher, OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions, include justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19 but should not include personally identifiable information. This requirement applies to EC 4.1, and 4.2.
- 8.1.3.7. For infrastructure projects (EC 5), or capital expenditures in any expenditure category, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and location (for broadband, geospatial location data). For projects over \$10 million:
- 8.1.3.8. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less

than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.

- 8.1.3.8.1. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.
- 8.1.3.8.2. Whether the project prioritizes local hires.
- 8.1.3.8.3. Whether the project has a Community Benefit Agreement, with a description of any such agreement.
- 8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor's Office and Office of the State Controller. The State of Colorado may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Exhibit Q – SLFRF Reporting Modification Form.

9. PROCUREMENT STANDARDS.

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

10. ACCESS TO RECORDS.

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

11. SINGLE AUDIT REQUIREMENTS.

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

- 11.1.1. Election. A Subrecipient shall have a single audit conducted in accordance with the 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 Foundation or a Federal Award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements,” and any implementing regulations issued by the Federal Awarding Agency.
- 12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 12.1.7. Never Contract with the Enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never Contract with the Enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- 12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

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

13. CERTIFICATIONS.

- 13.1. Subrecipient Certification. Subrecipient shall sign a "State of Colorado Agreement with Recipient of Federal Recovery Funds" Certification Form in Exhibit E and submit to State Agency with signed grant agreement.
- 13.2. Unless prohibited by Federal statutes or regulations, Prime Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Grantee with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

15. EVENT OF DEFAULT AND TERMINATION.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.
- 15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
 - 15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
 - 15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

- 15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- 15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or
- 15.2.5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

EXHIBIT O

AGREEMENT WITH SUBSUBRECIPIENT OF FEDERAL RECOVERY FUNDS

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

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

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

Subrecipient Name _____

Authorized Representative: _____

Title: _____

Signature: _____

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
TERMS AND CONDITIONS

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

is applicable to each activity funded under this award. Subrecipient and contractor 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.

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>.

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

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

The United States of America has the right to seek judicial enforcement of the terms of this 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)

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

FEDERAL AWARD(S) APPLICABLE TO THIS GRANT AWARD

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

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

EXHIBIT S
PII Certification

STATE OF COLORADO
LOCAL AGENCY CERTIFICATION FOR ACCESS TO PII THROUGH A
DATABASE OR AUTOMATED NETWORK

Pursuant to § 24-74-105, C.R.S., I, _____, on behalf of _____ (legal name of Local Agency) (the “Local Agency”), hereby certify under the penalty of perjury that the Local Agency has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Local Agency.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Checklist for required exhibits due to funding sources. Required Exhibits are dependent on the source of funding. This is a guide to assist in the incorporation and completion of Exhibits in relation to funding sources.

Exhibit	Funding only from FHWA	Funding only from ARPA	FHWA and ARPA Funding
EXHIBIT A, SCOPE OF WORK	✓	✓	✓
EXHIBIT B, SAMPLE OPTION LETTER	✓	✓	✓
EXHIBIT C, FUNDING PROVISIONS	✓	✓	✓
EXHIBIT D, LOCAL AGENCY RESOLUTION (IF APPLICABLE)	✓	✓	✓
EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST	✓	✓	✓
EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS	✓		✓
EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE	✓		✓
EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES	✓		✓
EXHIBIT I, FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS	✓		✓
EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS	✓		✓
EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS	✓	✓	✓
EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM	✓	✓	✓
EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS	✓		✓

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



Council Agenda Summary

June 4, 2024

Key Staff Contact: Paul Trombino, Public Works Director

Title:

A resolution authorizing the City to enter into an Intergovernmental Agreement with the Colorado Department of Transportation for the 37th Street bridge improvements

Summary:

Colorado Department of Transportation has approved a federally funded reimbursable grant of \$1,384,000 with a \$346,000 City of Greeley match for a total of \$1,730,000 to reconstruct the current dilapidated and obsolete 37th Street Bridge over the Greeley Loveland Irrigation Company Ditch. The project will replace the bridge with a reinforced concrete box culvert. The Intergovernmental Agreement (IGA) will obligate the federal funds for the City to proceed with the design and construction of this improvements.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	Yes
If yes, what is the initial, or, onetime impact?	\$1,734,000, onetime
What is the annual impact?	none
What fund of the City will provide Funding?	334 - Road Development
What is the source of revenue within the fund?	Road Development Fees
Is there grant funding for this item?	Yes, \$1,384,000
If yes, does this grant require a match?	Yes, 20% match, \$346,000
Is this grant onetime or ongoing?	One time

Legal Issues:

Consideration of this matter is a legislative process which includes the following public hearing steps:

- 1) Council questions of staff
- 2) Council discussion
- 3) Council decision

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 authorizing the City to enter into an intergovernmental agreement with the Colorado Department of Transportation for the 37th Street bridge improvements.

Attachments:

1. Res No. 16, 2024 with Exhibit A

**THE CITY OF GREELEY, COLORADO
RESOLUTION No. 16, 2024**

**RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN
INTERGOVERNMENTAL AGREEMENT WITH THE COLORADO DEPARTMENT OF
TRANSPORTATION FOR THE 37th STREET BRIDGE IMPROVEMENTS**

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

WHEREAS, the City desires to enter into an Intergovernmental Agreement (IGA) with the Colorado Department of Transportation (CDOT) to complete the 37th Street Bridge Improvements (the “Project”); and

WHEREAS, the Project, overseen by CDOT, consists of designing and reconstructing the obsolete 37th Street bridge over the Greeley Loveland Irrigation Company Ditch; and

WHEREAS, the Project is 80% federally funded in the amount of \$1,384,000.00, matched by 20% of City funds in the amount of \$346,000.00, for a total of \$1,730,000.00; and

WHEREAS, the City is adequately staffed and suitably equipped to undertake and satisfactorily complete the City’s work on the Project; and

WHEREAS, it is in the best interest of the citizens of the City 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 IGA OLA#: 331003327, 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 of the IGA 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 ON THIS 4TH DAY OF JUNE
2024.**

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 24-HA4-XC-00045	
Local Agency City of Greeley		Agreement Effective Date The later of the effective date or March 21, 2024	
Agreement Description 37th St. Bridge Replacement		Agreement Expiration Date March 20, 2034	
Project # BRO M570-072 (26216)	Region # 4	Contract Writer TCH	Agreement Maximum Amount \$1,730,000.00

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement and to bind the Party authorizing his or her signature.

LOCAL AGENCY CITY OF GREELEY APPROVED AS TO SUBSTANCE: By: _____ Raymond Lee, City Manager Date: _____	STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director _____ Keith Stefanik, P.E., Chief Engineer Date: _____
REVIEWED FOR AVAILABILITY OF FUNDS: By: _____ Tyra Litzau, Director of Finance Date: _____ APPROVED AS TO LEGAL FORM: By: _____ Stacey Aurzada, Interim City Attorney Date: _____	LEGAL REVIEW Philip J. Weiser, Attorney General _____ Assistant Attorney General By: (Print Name and Title) Date: _____
In accordance with §24-30-202 C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Department of Transportation Effective Date: _____	

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1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Effective Date

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

B. Initial Term and Extension

The Parties’ respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on March 20, 2034 as shown on the Signature and Cover Page for this Agreement, unless sooner terminated or further extended in accordance with the terms of this Agreement. Upon request of Local Agency, the State may, in its sole discretion, extend the term of this Agreement by Option Letter pursuant **§7.E.iv**. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in **Exhibit C**.

C. Early Termination in the Public Interest

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

i. Method and Content

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

ii. Obligations and Rights

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

iii. Payments

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

D. Local Agency Termination Under Federal Requirements

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

3. AUTHORITY

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

A. Federal Authority

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

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

B. State Authority

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

4. PURPOSE

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

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

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

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

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

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

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

6. SCOPE OF WORK

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

A. Local Agency Commitments

i. Design

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

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

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

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

iii. Construction

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

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

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

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

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

v. Utilities

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

vi. Railroads

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

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

vii. Environmental Obligations

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

viii. Maintenance Obligations

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

ix. Monitoring Obligations

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

B. State's Commitments

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

7. PAYMENTS

A. Maximum Amount

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

B. Payment Procedures

i. Invoices and Payment

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

ii. Interest

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

iii. Payment Disputes

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

iv. Available Funds-Contingency-Termination

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

v. Erroneous Payments

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

vi. Federal Recovery

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

C. Local Agency Funds

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

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

D. Reimbursement of Local Agency Costs

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

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

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

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

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

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

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

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

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

iii. Option to Exercise Options i and ii.

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

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

F. Accounting

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

i. Local Agency Performing the Work

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

ii. Local Agency-Checks or Draws

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

iii. State-Administrative Services

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

iv. Local Agency-Invoices

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

v. Invoicing Within 60 Days

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

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

vi. Risk Assessment & Monitoring

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

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

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

G. Close Out

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

8. REPORTING - NOTIFICATION

A. Quarterly Reports

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

B. Litigation Reporting

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

C. Performance and Final Status

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

D. Violations Reporting

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

9. LOCAL AGENCY RECORDS

A. Maintenance

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

B. Inspection

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

C. Monitoring

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

D. Final Audit Report

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

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

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

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

B. Other Entity Access and Nondisclosure Agreements

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

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

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

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

E. Safeguarding Personally Identifying Information "PII"

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

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

12. INSURANCE

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

A. Local Agency Insurance

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

B. Subcontractor Requirements

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

i. Workers' Compensation

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

ii. General Liability

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

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

iii. Automobile Liability

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

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

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

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

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

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

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

vi. Crime Insurance

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

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

vii. Cyber/Network Security and Privacy Liability

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

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

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

C. Additional Insured

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

D. Primacy of Coverage

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

E. Cancellation

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

F. Subrogation Waiver

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

G. Certificates

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

13. BREACH

A. Defined

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

B. Notice and Cure Period

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

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

14. REMEDIES

A. State's Remedies

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

i. Termination for Breach

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

a. Obligations and Rights

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

b. Payments

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

c. Damages and Withholding

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

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

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

c. Deny Payment

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

d. Removal

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

e. Intellectual Property

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

B. Local Agency's Remedies

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

15. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

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

C. Questions of Fact

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

16. NOTICES AND REPRESENTATIVES

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

For the State

Colorado Department of Transportation (CDOT)
Armando Ochoa, E/PST II Local Agency Coordinator
CDOT Region 4
10601 West 10th Street
Greeley, CO 80634
970-652-1668
armando.ochoa@state.co.us

For the Local Agency

City of Greeley
Bhooshan Karnik, Deputy Director / Chief Engineer
2835 10th Street
Greeley, CO 80631
970-573-0331
bhooshan.karnik@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 any time thereafter, this §19 shall apply. Local Agency agrees to be governed by and comply with the provisions of §24-106-103, §24-102-206, §24-106-106, §24-106-107 C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Local Agency's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

20. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

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

C. Binding Effect

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

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Digital Signatures

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

H. Entire Understanding

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

I. Jurisdiction and Venue

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

J. Modification

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

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

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

L. Order of Precedence

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

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

M. Severability

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

N. Survival of Certain Agreement Terms

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

O. Third Party Beneficiaries

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

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations.

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

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

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

U. Accessibility

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

V. Taxes

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

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

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

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

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

H. SOFTWARE PIRACY PROHIBITION.

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

If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

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

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

22. FEDERAL REQUIREMENTS

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

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

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EXHIBIT A

SCOPE OF WORK

Name of Project: 37th St. Bridge Replacement
Project Number: BRO M570-072
SubAccount #: 26216

The Colorado Department of Transportation (“CDOT”) will oversee the City of Greeley when the City of Greeley designs the 37th St. Bridge Replacement (hereinafter referred to as “this work”). CDOT and the City of Greeley believe it will be beneficial to perform this work to improve the infrastructure and safety of the traveling public.

The design will be completed in accordance with AASHTO design standards, the Americans with Disabilities Act, and all applicable state, federal and local rules and regulations. The design phase of the work is expected to begin in 2024 and will identify more exact requirements, qualities, and attributes for this work (hereinafter 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 contract is anticipated to begin in 2025.

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

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

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EXHIBIT B

SAMPLE IGA OPTION LETTER

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

Vendor Name:

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

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

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

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

Option A

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

Option B

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

Option C

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

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

Option D

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

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

STATE OF COLORADO
Jared S. Polis
Department of Transportation

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

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

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

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

By: _____
Colorado Department of Transportation

Date: _____

EXHIBIT C - FUNDING PROVISIONS**City of Greeley - BRO M570-072 (26216)****A. Cost of Work Estimate**

The Local Agency has estimated the total cost the Work to be \$1,730,000.00, which is to be funded as follows:

1. FUNDING		
a.	Federal Funds (80% of BRO Award)	\$1,384,000.00
b.	Local Agency Funds (20% of BRO Award)	\$346,000.00
TOTAL FUNDS ALL SOURCES		\$1,730,000.00
2. OMB UNIFORM GUIDANCE		
a.	Federal Award Identification Number (FAIN):	TBD
b.	Name of Federal Awarding Agency:	FHWA
c.	Local Agency Unique Entity Identifier	VJG3QJJKZ1X6
d.	Assistance Listing # Highway Planning and Construction	ALN 20.205
e.	Is the Award for R&D?	No
f.	Indirect Cost Rate (if applicable)	N/A
g.	Amount of Federal Funds Obligated by this Action:	\$0.00
h.	Amount of Federal Funds Obligated to Date (including this Action):	\$0.00
3. ESTIMATED PAYMENT TO LOCAL AGENCY		
a.	Federal Funds Budgeted	\$1,384,000.00
b.	Less Estimated Federal Share of CDOT-Incurred Costs	\$346,000.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		80% \$1,384,000.00
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY		20% \$346,000.00
TOTAL PROJECT ESTIMATED FUNDING		100% \$1,730,000.00
4. FOR CDOT ENCUMBRANCE PURPOSES		
a.	Total Encumbrance Amount (Federal funds + Local Agency funds)	\$1,730,000.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$0.00
NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS		\$1,730,000.00

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 26216.10.30	Performance Period Start*/End Date TBD-TBD	Design 3020	\$0.00
WBS Element 26216.20.10	Performance Period Start*/End Date TBD- TBD	Const. 3301	\$0.00

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

B. Funding Ratios

The funding ratio for the federal funds for this Work is 80% federal funds to 20% Local Agency funds, and this ratio applies only to the \$1,730,000.00 that is eligible for federal funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$1,730,000.00, and additional federal funds are not available, the Local Agency shall pay all such excess costs. If the total

cost of performance of the Work is less than \$1,730,000.00, then the amounts of Local Agency and federal funds will be decreased in accordance with the funding ratio described in **A1. This applies to the entire scope of Work.**

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$1,384,000.00. For CDOT accounting purposes, the federal funds of \$1,384,000.00 and the Local Agency funds of \$346,000.00 will be encumbered for a total encumbrance of \$1,730,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total budget is \$1,730,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work.**

D. Single Audit Act Amendment

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

i. Expenditure less than \$750,000

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

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

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

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

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

iv. Independent CPA

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

EXHIBIT D

LOCAL AGENCY RESOLUTION (IF APPLICABLE)

Local Agency Contract Administration Checklist

Exhibit A
Resolution No. 16, 2024
Resolution No. 16, 2024
OLA #: 331003327
Routing #: 24-HA4-XC-00045

COLORADO DEPARTMENT OF TRANSPORTATION			
LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. BRO M570-072	STIP No. SR46601	Project Code 26216	Region 4
Project Location City of Greeley			Date 3-14-2024
Project Description 37th St. Bridge Replacement			
Local Agency City of Greeley	Local Agency Project Manager Bhooshan Karnik		
CDOT Resident Engineer Bryce Reeves	CDOT Project Manager Armando Ochoa		
INSTRUCTIONS: This checklist shall be used to establish the contractual administrative responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency Agreement. Section numbers (NO.) correspond to the applicable chapters of the <i>CDOT Local Agency Desk Reference (Local Agency Manual)</i>. LAWR numbers correspond to the applicable flowchart in the Local Agency Web Resource. The checklist shall be prepared by placing an X under the responsible party, opposite each of the tasks. The X denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, # will denote that CDOT must concur or approve. Tasks that will be performed by Headquarters staff are indicated with an X in the CDOT column under Responsible Party. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT. The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist. Note: Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.			

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

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
3	5.7	Conduct Field Inspection Review (FIR)	X	#
4	5.8	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	#
5	5.9	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
3	5.10	Obtain Utility and Railroad Agreements	X	#
3	5.11	Conduct Final Office Review (FOR)	X	#
3A	5.12	Justify Force Account Work by the Local Agency	X	#
3B	5.13	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	#
3	5.14	Document Design Exceptions - CDOT Form 464	X	#
	5.15	Seek Permission for use of Guaranty and Warranty Clauses	X	#
3	5.18	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	X	#
	5.19	Comply with Requirements for Off-and On-System Bridges & Other Structural Work	X	#
	5.20	Update Approvals on PS&E Package if Project Schedule Delayed	X	#
	5.21	Ensure Authorization of Funds for Construction	#	X
	5.22	Use Electronic Signatures	X	X
	5.23	File Project Development Records/Documentation in ProjectWise	#	X
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE				
3	6.1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region Civil Rights Office).		X
	6.2	Determine Applicability of Davis-Bacon Act This project ☐ is ☒ is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Bryce Reeves 3/14/2024 CDOT Resident Engineer Date		X
	6.3	Set On-the-Job Training Goals (CDOT Region Civil Rights Office) "NA", if Not Applicable		X
	6.4	Enforce Prompt Payment Requirements	X	#
	6.5	Use Electronic Tracking and Submission Systems – B2GNow ☒ LCPTracker ☒	X	#
3	6.6	Prepare/submit Title VI Plan and Incorporate Title VI Assurances	X	#
6,7		Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)	X	#
ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS				
Federal Project (use 7.1 series in Chapter 7) ☒ Non-Federal Project (Use 7.2 series in Chapter 7) ☐				
6,7		Obtain Approval for Advertisement Period of Less Than Three Weeks;	X	#
7		Advertise for Bids	X	#
7		Concurrence to Advertise	#	X
7		Distribute "Advertisement Set" of Plans and Specifications	X	#
7		Review Worksite & Plan Details w/ Prospective Bidders While Project Is Under Ad	X	
7		Open Bids	X	
7		Process Bids for Compliance		
		Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals. (Please write in "NA", if Not Applicable)		X
		Evaluate CDOT Form 1416 - Good Faith Effort Report and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals. "NA", if Not Applicable.		X
		Submit required documentation for CDOT award concurrence	X	
		Concurrence from CDOT to Award		X
		Approve Rejection of Low Bidder		X
7,8		Award Contract (federal)	X	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
8		Provide "Award" and "Record" Sets of Plans and Specifications (federal)	x	
		CONSTRUCTION MANAGEMENT		
8	Intro	File Project Construction Records/Documentation in ProjectWise or as directed	x	
8	8.1	Issue Notice to Proceed to the Contractor	x	#
8	8.2	Project Safety	x	
8	8.3	Conduct Conferences:		
		Pre-construction Conference (Appendix B)	x	#
		• Fabrication Inspection Notifications	x	
		Pre-survey		
		• Construction staking	x	
		• Monumentation	x	
		Partnering (Optional)	x	
		Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>) (If applicable)	x	
		Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>) (If applicable)	x	
		HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>) (If applicable)	x	
8	8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	x	
9	8.5	Supervise Construction		
		A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision."		
		Bhooshan Karnik 970-573-0331	x	
		Local Agency Professional Engineer or CDOT Resident Engineer Phone number		
		Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	x	
		Construction inspection and documentation (including projects with structures)	x	#
		Fabrication Inspection and documentation (If applicable)	x	
9	8.6	Review and Approve Shop Drawings	x	
9	8.7	Perform Traffic Control Inspections	x	#
9	8.8	Perform Construction Surveying	x	
9	8.9	Monument Right-of-Way	x	#
9,9A	8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent) or use compliance software system.		
		Provide the name and phone number of the person authorized for this task.		
		Bhooshan Karnik 970-573-0331	x	
		Local Agency Representative Phone number		
9	8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	x	
9B	8.12	Prepare and Authorize Change Orders	x	#
9B	8.13	Submit Change Order Package to CDOT	x	
9A	8.14	Prepare Local Agency Reimbursement Requests	x	
9	8.15	Monitor Project Financial Status	x	#
9	8.16	Prepare and Submit Monthly Progress Reports	x	
9	8.17	Resolve Contractor Claims and Disputes	x	#
	8.18	Conduct Routine and Random Project Reviews		
		Provide the name and phone number of the person responsible for this task.		
		Bryce Reeves 970-350-2126		x
		CDOT Resident Engineer Phone number		
9	8.19	Ongoing Oversight of DBE Participation	x	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA CDOT	
	MATERIALS			
9,9C	9.1	Discuss Materials at Pre-Construction Meeting Buy America documentation required prior to installation of steel	x	
9,9C	9.2	Complete CDOT Form 250 - Materials Documentation Record - Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project - Update the form as work progresses - Complete and distribute form after work is completed	x x	x
9C	9.3	Perform Project Acceptance Samples and Tests	x	
9C	9.4	Perform Laboratory Acceptance Tests	x	
9C	9.6	Accept Manufactured Products Inspection of structural components: - Fabrication of structural steel and pre-stressed concrete structural components - Bridge modular expansion devices (0" to 6" or greater) - Fabrication of bearing devices	x x x	
9C	9.6	Approve Sources of Materials	x	
9C	9.7	Independent Assurance Testing (IAT) Local Agency Procedures ☐ CDOT Procedures ☒ - Generate IAT schedule - Schedule and provide notification - Conduct IAT	x x	x
9C	9.8	Approve mix designs - Concrete - Hot mix asphalt	x x	# #
9C	9.9	Check Final Materials Documentation	x	#
9C	9.10	Complete and Distribute Final Materials Documentation	x	#
	CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
9	10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	x	
8,9	10.2	Process CDOT Form 205 - Sublet Permit Application and CDOT Form 1425 – Supplier Application Approval Request. Review & sign completed forms, or review/approve in compliance software system, as applicable, & submit to Region Civil Rights Office.	x	#
9	10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	x	
9	10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	x	
9	10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. - Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements. - Complete CDOT Form 838 – OJT Trainee / Apprentice Record. - Complete CDOT Form 200 - OJT Training Questionnaire	x x x	
9	10.6	Check Certified Payrolls (Contact the Region Civil Rights Office for training reqmts.)	x	#
9	10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	x	
	10.8	Contract Compliance and Project Site Reviews		x
	FINALS			
	11.1	Conduct Final Project Inspection & Final Inspection of Structures, if applicable		x
10	11.2	Write Final Project Acceptance Letter	x	
10	11.3	Advertise for Final Settlement	x	
11	11.4	Prepare and Distribute Final As-Constructed Plans	x	
11	11.5	Prepare EEO Certification and Collect EEO Forms	x	
11	11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	x	#

LA WK	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
11	11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	x	#
	11.8	Review CDOT Form 1419		x
	11.9	Submit CDOT Professional Services Closeout Report Form	x	
	11.10	Complete and Submit CDOT Form 1212 LA – Final Acceptance Report (by CDOT)		x
11	11.11	Process Final Payment	x	#
	11.12	Close out Local Project	x	
	11.13	Complete and Submit CDOT Form 950 - Project Closure		x
11	11.14	Retain Project Records	x	
11	11.15	Retain Final Version of Local Agency Contract Administration Checklist	x	

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

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

EXHIBIT F

CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

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

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

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

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

EXHIBIT G

DISADVANTAGED BUSINESS ENTERPRISES

SECTION 1. Policy

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

SECTION 2. Subrecipient and Participant Obligation.

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

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

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

SECTION 3. DBE Program.

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

Local Agency requirements can be found at:

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

EXHIBIT H

LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

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

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

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

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

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

- a. Qualifications,

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

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

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

EXHIBIT

Exhibit A
 Resolution No. 16, 2024
 Resolution No. 16, 2024
 OLA #: 331003327

Routing #: 24-HA4-XC-00045

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Assurances Required:

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

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

1. Minimum wages (29 CFR 5.5)

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

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

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

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

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

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

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

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

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

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

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

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

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.*

Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901-3907](#).

3. Records and certified payrolls (29 CFR 5.5)

a. Basic record requirements (1) Length of record retention. All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) Information required. Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) Additional records relating to fringe benefits. Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) Additional records relating to apprenticeship. Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. Certified payroll requirements (1) Frequency and method of submission. The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) Information required. The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHDLegacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) Statement of Compliance. Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) Use of Optional Form WH-347. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access (1) Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its repurchase costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

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4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS** (23 CFR 633, Subpart B, Appendix B)
This provision is applicable to all Federal-aid projects funded
under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT J

ADDITIONAL FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

Clean Air Act

Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts more than \$100,000).

Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally assisted programs.

Nondiscrimination

The Local Agency shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color national origin, sex, age or disability. Prior to the receipt of any Federal financial assistance from CDOT, the Local Agency shall execute the attached Standard DOT Title VI assurance. As appropriate, the Local Agency shall include Appendix A, B, or C to the Standard DOT Title VI assurance in any contract utilizing federal funds, land, or other aid. The Local Agency shall also include the following in all contract advertisements:

The [Local Agency], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (79 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, DBEs will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for any award.

ADA

In any contract utilizing federal funds, land, or other federal aid, the Local Agency shall require the federal-aid recipient or contractor to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees, and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions §22

The Contractor will include the provisions of this Exhibit J in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

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SAMPLE

The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination

Assurances for Local Agencies

DOT Order No. 1050.2A

The [Local Agency] (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Colorado Department of Transportation and the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including the FHWA, FTA, or FAA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non- discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FHWA, FTA, and FAA assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated or will be (with regard to a "facility") operated or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all FHWA, FTA and FAA programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
3. "The [Local Agency] in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 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 non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

EXHIBIT K

FFATA SUPPLEMENTAL FEDERAL PROVISIONS

**State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13**

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. “Award” means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

- 1.1.1.** Grants;
- 1.1.2.** Contracts;
- 1.1.3.** Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 1.1.4.** Loans;
- 1.1.5.** Loan Guarantees;
- 1.1.6.** Subsidies;
- 1.1.7.** Insurance;
- 1.1.8.** Food commodities;
- 1.1.9.** Direct appropriations;
- 1.1.10.** Assessed and voluntary contributions; and
- 1.1.11.** Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

- 1.1.12.** Technical assistance, which provides services in lieu of money;
- 1.1.13.** A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 1.1.14.** Any award classified for security purposes; or
- 1.1.15.** Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. “Contract” means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

1.3. “Contractor” means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.

1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpartC;

- 1.5.1.** A governmental organization, which is a State, local government, or Indian Tribe;
- 1.5.2.** A foreign public entity;
- 1.5.3.** A domestic or foreign non-profit organization;

- 1.5.4. A domestic or foreign for-profit organization; and
- 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109- 282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17 **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
 - 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
 - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 4.2. In the preceding fiscal year, Contractor received:
 - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 To SAM. A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

- 7.1.1** Subrecipient DUNS Number;
- 7.1.2** Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
- 7.1.3** Subrecipient Parent DUNS Number;
- 7.1.4** Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 7.1.5** Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 7.1.6** Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

- 7.2.1** Subrecipient's DUNS Number as registered in **SAM**.
- 7.2.2** Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

- 8.1.** These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 8.2** A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 8.3** Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.
- 8.4** There are no Transparency Act reporting requirements for Vendors.

Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

EXHIBIT L

SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT

	CDOT SUBRECIPIENT RISK ASSESSMENT	Date:
Name of Entity (Subrecipient):		
Name of Project / Program:		
Estimated Award Period:		
Entity Executive Director or VP:		
Entity Chief Financial Officer:		
Entity Representative for this Self Assessment:		
Instructions: (See "Instructions" tab for more information) 1. Check only one box for each question. All questions are required to be answered. 2. Utilize the "Comment" section below the last question for additional responses. 3. When complete, check the box at the bottom of the form to authorize.		
	Yes	No
		N/A
EXPERIENCE ASSESSMENT		
	Yes	No
		N/A
1	Is your entity new to operating or managing federal funds (has not done so within the past three years)?	
	☐	☐
2	Is this funding program new for your entity (managed for less than three years)? <i>Examples of funding programs include CMAQ, TAP, STP-M, etc.</i>	
	☐	☐
3	Does your staff assigned to the program have at least three full years of experience with this federal program?	
	☐	☐
MONITORING/AUDIT ASSESSMENT		
	Yes	No
		N/A
4	Has your entity had an on-site project or grant review from an external entity (e.g., CDOT, FHWA) within the last three years?	
	☐	☐
5 a)	Were there non-compliance issues in this prior review?	
	☐	☐
b)	What were the number and extent of issues in prior review?	
	☐ 1 to 2	☐ > 3
OPERATION ASSESSMENT		
	Yes	No
		N/A
6	Does your entity have a time and effort reporting system in place to account for 100% of all employees' time, that can provide a breakdown of the actual time spent on each funded project? <i>If No, in the comment section please explain how you intend to document 100% of hours worked by employees and breakdown of time spent on each funding project.</i>	
	☐	☐
FINANCIAL ASSESSMENT		
	Yes	No
		N/A
7 a)	Does your entity have an indirect cost rate that is approved and current?	
	☐	☐
b)	If Yes, who approved the rate, and what date was it approved?	
8	Is this grant/award 10% or more of your entity's overall funding?	
	☐ >10%	☐ <10%
9	Has your entity returned lapsed* funds? *Funds "lapse" when they are no longer available for obligation.	
	☐	☐
10	Has your entity had difficulty meeting local match requirements in the last three years?	
	☐	☐
11	What is the total federal funding your entity has been awarded for the last federal fiscal year, and what is your entity's fiscal year end?	

INTERNAL CONTROLS ASSESSMENT		Yes	No	N/A
12	Has your entity had any significant changes in key personnel or accounting system(s) in the last year? (e.g., Controller, Exec Director, Program Mgr, Accounting Mgr, etc.) If Yes, in the comment section, please identify the accounting system(s), and / or list personnel positions and identify any that are vacant.	☐	☐	☐
13	Does your entity have financial procedures and controls in place to accommodate a federal-aid project?	☐	☐	
14	Does your accounting system identify the receipts and expenditures of program funds separately for each award?	☐	☐	
15	Will your accounting system provide for the recording of expenditures for each award by the budget cost categories shown in the approved budget?	☐	☐	
16	Does your agency have a review process for all expenditures that will ensure that all costs are reasonable, allowable and allocated correctly to each funding source? If Yes, in the comment section, please explain your current process for reviewing costs.	☐	☐	☐
17	How many total FTE perform accounting functions within your organization?	☐ ≥ 6	☐ 2 to 5	☐ < 2
IMPACT ASSESSMENT		Yes	No	N/A
18	For this upcoming federal award or in the immediate future, does your entity have any potential conflicts of interest* in accordance with applicable Federal awarding agency policy? If Yes, please disclose these conflicts in writing, along with supporting information, and submit with this form. (*Any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Subrecipient's obligations to the State.)	☐	☐	
19	For this award, has your entity disclosed to CDOT, in writing, violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award? Response options: YES = Check if have one or more violation(s) and have either disclosed previously to CDOT or as part of this form. In the comment section, list all violations with names of supporting documentation and submit with this form. NO = Check if have one or more violation(s) and have not disclosed previously or will not disclose as part of this form. Explain in the comment section. N/A = Check if have no violations.	☐	☐	☐
PROGRAM MANAGEMENT ASSESSMENT		Yes	No	N/A
20	Does your entity have a written process/procedure or certification statement approved by your governing board ensuring critical project personnel are capable of effectively managing Federal-aid projects? If Yes, please submit with this form.	☐	☐	☐
21	Does your entity have written procurement policies or certification statement for consultant selection approved by your governing board in compliance with 23 CFR 172*? If Yes, please submit with this form. (*The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications, at a fair and reasonable price.)	☐	☐	☐
22	a) Is your staff familiar with the relevant CDOT manuals and federal program requirements?	☐	☐	☐
	b) Does your entity have a written policy or a certification statement approved by your governing board assuring federal-aid projects will receive adequate inspections? If Yes, please submit with this form.	☐	☐	☐
	c) Does your entity have a written process or a certification statement approved by your governing board assuring a contractor's work will be completed in conformance with approved plans and specifications? If Yes, please submit with this form.	☐	☐	☐

d) Does your entity have a written policy or certification statement approved by your governing board assuring that materials installed on the projects are sampled and tested per approved processes. <i>If Yes, please submit with this form.</i>	☐	☐	☐
e) Does your entity have a written policy or certification statement approved by your governing board assuring that only US manufactured steel will be incorporated into the project (<i>Buy America requirements</i>)? <i>If Yes, please submit with this form.</i>	☐	☐	☐

Comments - As needed, include the question number and provide comments related to the above questions. Insert additional rows as needed.

☐ By checking this box, the Executive Director, VP or Chief Financial Officer of this entity certifies that all information provided on this form is true and correct.



Tool Version:
 v2.0 (081816)

EXHIBIT M

OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS

Subject to
The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and
Audit Requirements for Federal Awards (“Uniform Guidance”),
Federal Register, Vol. 78, No. 248, 78590

The agreement to which these Uniform Guidance Supplemental Provisions are attached has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Uniform Guidance Supplemental Provisions shall control. In the event of a conflict between the provisions of these Supplemental Provisions and the FFATA Supplemental Provisions, the FFATA Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

- 1.1. “Award”** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise. 2 CFR §200.38
- 1.2. “Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 1.3. “Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. 2 CFR §200.37
- 1.4. “FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 1.5. “Grant” or “Grant Agreement”** means an agreement setting forth the terms and conditions of an Award. The term does not include an agreement that provides only direct Federal cash assistance to an individual, a subsidy, a loan, a loan guarantee, insurance, or acquires property or services for the direct benefit of use of the Federal Awarding Agency or Recipient. 2 CFR §200.51.
- 1.6. “OMB”** means the Executive Office of the President, Office of Management and Budget.
- 1.7. “Recipient”** means a Colorado State department, agency or institution of higher education that receives a Federal Award from a Federal Awarding Agency to carry out an activity under a Federal program. The term does not include Subrecipients. 2 CFR §200.86
- 1.8. “State”** means the State of Colorado, acting by and through its departments, agencies and institutions of higher education.
- 1.9. “Subrecipient”** means a non-Federal entity receiving an Award from a Recipient to carry out part of a Federal program. The term does not include an individual who is a beneficiary of such program.
- 1.10. “Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

- 1.11. “Uniform Guidance Supplemental Provisions”** means these Supplemental Provisions for Federal Awards subject to the OMB Uniform Guidance, as may be revised pursuant to ongoing guidance from relevant Federal agencies or the Colorado State Controller.
- 2. Compliance.** Subrecipient shall comply with all applicable provisions of the Uniform Guidance, including but not limited to these Uniform Guidance Supplemental Provisions. Any revisions to such provisions automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3. Procurement Standards.**
- 3.1 Procurement Procedures.** Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation,
§§200.318 through 200.326 thereof.
- 3.2 Procurement of Recovered Materials.** If Subrecipient is a State Agency or an agency of a political subdivision of a state, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 4. Access to Records.** Subrecipient shall permit Recipient and auditors to have access to Subrecipient’s records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).
- 5. Single Audit Requirements.** If Subrecipient expends \$750,000 or more in Federal Awards during Subrecipient’s fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
- 5.1 Election.** Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program’s statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 5.2 Exemption.** If Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government

Accountability Office.

5.3 Subrecipient Compliance Responsibility. Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

6. Contract Provisions for Subrecipient Contracts. Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Grant Agreement.

6.1 Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments

under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled,

terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

6.2 Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40

U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

6.3 Rights to Inventions Made Under a Contract or Agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6.4 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251- 1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection

Agency (EPA).

6.5 Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAMExclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

6.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

7. Certifications. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

7.1 Event of Default. Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute an event of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

8. Effective Date. The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.

9. Performance Measurement. The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes.

The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

Exhibit N

Federal Treasury Provisions

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.
- 1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
 - 2.1.1. "Award" means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
 - 2.1.2. "Entity" means:
 - 2.1.2.1. a Non-Federal Entity;
 - 2.1.2.2. a foreign public entity;
 - 2.1.2.3. a foreign organization;
 - 2.1.2.4. a non-profit organization;
 - 2.1.2.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
 - 2.1.2.6. a foreign non-profit organization (only for 2 CFR part 170) only);
 - 2.1.2.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
 - 2.1.2.8. a foreign for-profit organization (for 2 CFR part 170 only).
 - 2.1.3. "Executive" means an officer, managing partner or any other employee in a management position.
 - 2.1.4. "Expenditure Category (EC)" means the category of eligible uses as defined by the US Department of Treasury in "Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

- 2.1.5. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
- 2.1.6. “Grant” means the Grant to which these Federal Provisions are attached.
- 2.1.7. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.8. “Non-Federal Entity” means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 2.1.9. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
 - 2.1.9.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.9.2. Is not organized primarily for profit; and
 - 2.1.9.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.10. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.11. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.12. “Prime Recipient” means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.13. “Subaward” means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. “Subrecipient” or “Subgrantee” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.15. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
 - 2.1.15.1. Salary and bonus;
 - 2.1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the

fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

- 2.1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 2.1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.16. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 2.1.17. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
- 2.1.18. “Unique Entity ID” means the Unique Entity ID established by the federal government for a Grantee at <https://sam.gov/content/home>.

3. COMPLIANCE.

- 3.1. Grantee shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado, at its discretion, may provide written notification to Grantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3.2. Per US Treasury Final Award requirements, grantee programs or services must not include a term or conditions that undermines efforts to stop COVID-19 or discourages compliance with recommendations and CDC guidelines.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND UNIQUE ENTITY ID (UEI) REQUIREMENTS.

- 4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually.
- 4.2. UEI. Grantee shall provide its Unique Entity ID to its Prime Recipient, and shall update Grantee’s information in Sam.gov at least annually.

5. TOTAL COMPENSATION.

- 5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and
 - 5.1.2. In the preceding fiscal year, Grantee received:

- 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.3. 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

- 6.1. If Grantee is a Subrecipient of the Award pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below \$30,000 no reporting required; if more than \$30,000 and less than \$50,000 then FFATA reporting is required; and, \$50,000 and above SLFRF reporting is required.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. Grantee shall report as set forth below.
 - 8.1.1. Grantee shall use the SLFRF Subrecipient Quarterly Report Workbook as referenced in Exhibit P to report to the State Agency within ten (10) days following each quarter ended September, December, March and June. Additional information on specific requirements are detailed in the SLFRF Subrecipient Quarterly Report Workbooks and "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

EC 1 – Public Health

All Public Health Projects

- a) Description of structure and objectives
- b) Description of relation to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

COVID-19 Interventions and Mental Health (1.4, 1.11, 1.12, 1.13)

- a) Amount of total project used for evidence-based programs
- b) Evaluation plan description

COVID-19 Small Business Economic Assistance (1.8)

- a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

- a) Number of non-profits served

COVID-19 Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (1.10)

- a) Sector of employer
- b) Purpose of funds

EC 2 – Negative Economic Impacts

All Negative Economic Impacts Projects

- a) Description of project structure and objectives
- b) Description of project's response to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Amount of total project used for evidence-based programs and description of evaluation plan (*not required for 2.5, 2.8, 2.21-2.24, 2.27-2.29, 2.31, 2.34-2.36*)
- e) Number of workers enrolled in sectoral job training programs
- f) Number of workers completing sectoral job training programs
- g) Number of people participating in summer youth employment programs
- h) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

Household Assistance (2.1-2.8)

- a) Number of households served

- b) Number of people or households receiving eviction prevention services (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*
- c) Number of affordable housing units preserved or developed (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*

Healthy Childhood Environments (2.11-2.13)

- a) Number of children served by childcare and early learning *(Federal guidance may change this requirement in July 2022)*
- b) Number of families served by home visiting *(Federal guidance may change this requirement in July 2022)*

Education Assistance (2.14, 2.24-2.27)

- a) National Center for Education Statistics (“NCES”) School ID or NCES District ID
- b) Number of students participating in evidence-based programs *(Federal guidance may change this requirement in July 2022)*

Housing Support (2.15, 2.16, 2.18)

- a) Number of people or households receiving eviction prevention services *(Federal guidance may change this requirement in July 2022)*
- b) Number of affordable housing units preserved or developed *(Federal guidance may change this requirement in July 2022)*

Small Business Economic Assistance (2.29-2.33)

- a) Number of small businesses served

Assistance to Non-Profits (2.34)

- a) Number of non-profits served

Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (2.35-2.36)

- a) Sector of employer
- b) Purpose of funds
- c) If other than travel, tourism and hospitality (2.36) – description of hardship

EC 3 – Public Health – Negative Economic Impact: Public Sector Capacity

Payroll for Public Health and Safety Employees (EC 3.1)

- a) Number of government FTEs responding to COVID-19

Rehiring Public Sector Staff (EC 3.2)

- a) Number of FTEs rehired by governments

EC 4 – Premium Pay

All Premium Pay Projects

- a) List of sectors designated as critical by the chief executive of the jurisdiction, if beyond those listed in the final rule
- b) Numbers of workers served
- c) Employer sector for all subawards to third-party employers
- d) Written narrative justification of how premium pay is responsive to essential work during the public health emergency for non-exempt workers or those making over 150 percent of the state/county’s average annual wage

- e) Number of workers to be served with premium pay in K-12 schools

EC 5 – Infrastructure Projects

All Infrastructure Projects

- a) Projected/actual construction start date (month/year)
- b) Projected/actual initiation of operations date (month/year)
- c) Location (for broadband, geospatial data of locations to be served)
- d) Projects over \$10 million
 - i. Prevailing wage certification or detailed project employment and local impact report
 - ii. Project labor agreement certification or project workforce continuity plan
 - iii. Prioritization of local hires
 - iv. Community benefit agreement description, if applicable

Water and sewer projects (EC 5.1-5.18)

- a) National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- b) Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
- c) Median Household Income of service area
- d) Lowest Quintile Income of the service area

Broadband projects (EC 5.19-5.21)

- a) Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
 - i. If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
 - ii. Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- b) Additional programmatic data will be required for broadband projects and will be defined in a subsequent version of the US Treasury Reporting Guidance, including, but not limited to (*Federal guidance may change this requirement in July 2022*):
 - i. Number of households (broken out by households on Tribal lands and those not on Tribal lands) that have gained increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, with the number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download and number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
 - ii. Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) that have projected increased access to broadband meeting the minimum speed standards in areas that previously

lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization, with the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

- iii. Narrative identifying speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering, technology to be deployed, miles of fiber, cost per mile, cost per passing, number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download, number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload, and number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization. Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

All Expenditure Categories

- a) Program income earned and expended to cover eligible project costs
- 8.1.2. A Subrecipient shall report the following data elements to Prime Recipient no later than five days after the end of the month following the month in which the Subaward was made.
- 8.1.2.1. Subrecipient Unique Entity ID;
 - 8.1.2.2. Subrecipient Unique Entity ID if more than one electronic funds transfer (EFT) account;
 - 8.1.2.3. Subrecipient parent's organization Unique Entity ID;
 - 8.1.2.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

- 8.1.2.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 8.1.2.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.
- 8.1.3. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, the following data elements:
 - 8.1.3.1. Subrecipient's Unique Entity ID as registered in SAM.
 - 8.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
 - 8.1.3.3. Narrative identifying methodology for serving disadvantaged communities. See the "Project Demographic Distribution" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. This requirement is applicable to all projects in Expenditure Categories 1 and 2.
 - 8.1.3.4. Narrative identifying funds allocated towards evidenced-based interventions and the evidence base. See the "Use of Evidence" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. See section 8.1.1 for relevant Expenditure Categories.
 - 8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the public health and negative economic impacts of COVID-19. This requirement is applicable to Expenditure Categories 1 and 2. For aid to travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12), also provide the sector of employer, purpose of funds, and if not travel, tourism and hospitality a description of the pandemic impact on the industry.
 - 8.1.3.6. Narrative identifying the sector served and designated as critical to the health and well-being of residents by the chief executive of the jurisdiction and the number of workers expected to be served. For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county's average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is higher, OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions, include justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19 but should not include personally identifiable information. This requirement applies to EC 4.1, and 4.2.
 - 8.1.3.7. For infrastructure projects (EC 5), or capital expenditures in any expenditure category, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and location (for broadband, geospatial location data). For projects over \$10 million:
 - 8.1.3.8. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less

than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.

- 8.1.3.8.1. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.
- 8.1.3.8.2. Whether the project prioritizes local hires.
- 8.1.3.8.3. Whether the project has a Community Benefit Agreement, with a description of any such agreement.
- 8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor's Office and Office of the State Controller. The State of Colorado may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Exhibit Q – SLFRF Reporting Modification Form.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.
- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS.

- 10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

11. SINGLE AUDIT REQUIREMENTS.

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

- 11.1.1. Election. A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. Exemption. If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. Subrecipient Compliance Responsibility. A Subrecipient shall procure or otherwise arrange for the audit required by Subpart F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with 2 CFR 200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Subpart F-Audit Requirements.

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.
 - 12.1.1. [Applicable to federally assisted construction Agreements.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.
 - 12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).

- 12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements,” and any implementing regulations issued by the Federal Awarding Agency.
- 12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 12.1.7. Never Contract with the Enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never Contract with the Enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- 12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

12.1.9. Title VI of the Civil Rights Act. The Subgrantee, Contractor, Subcontractor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made part of this Agreement or agreement.

13. CERTIFICATIONS.

- 13.1. Subrecipient Certification. Subrecipient shall sign a "State of Colorado Agreement with Recipient of Federal Recovery Funds" Certification Form in Exhibit E and submit to State Agency with signed grant agreement.
- 13.2. Unless prohibited by Federal statutes or regulations, Prime Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Grantee with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

15. EVENT OF DEFAULT AND TERMINATION.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.
- 15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
 - 15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
 - 15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

- 15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- 15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or
- 15.2.5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

EXHIBIT O

AGREEMENT WITH SUBSUBRECIPIENT OF FEDERAL RECOVERY FUNDS

Section 602(b) of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021), authorizes the Department of the Treasury (Treasury) to make payments to certain Subrecipients from the Coronavirus State Fiscal Recovery Fund. The State of Colorado has signed and certified a separate agreement with Treasury as a condition of receiving such payments from the Treasury. This agreement is between your organization and the State and your organization is signing and certifying the same terms and conditions included in the State's separate agreement with Treasury. Your organization is referred to as a Subrecipient.

As a condition of your organization receiving federal recovery funds from the State, the authorized representative below hereby (i) certifies that your organization will carry out the activities listed in section 602(c) of the Act and (ii) agrees to the terms attached hereto. Your organization also agrees to use the federal recovery funds as specified in bills passed by the General Assembly and signed by the Governor.

Under penalty of perjury, the undersigned official certifies that the authorized representative has read and understood the organization's obligations in the Assurances of Compliance and Civil Rights Requirements, that any information submitted in conjunction with this assurances document is accurate and complete, and that the organization is in compliance with the nondiscrimination requirements.

Subrecipient Name _____

Authorized Representative: _____

Title: _____

Signature: _____

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
TERMS AND CONDITIONS

1. Use of Funds.
 - a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 602(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.
 - b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Subrecipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award. Subrecipient also agrees to comply with any reporting requirements established by the Governor's Office and Office of the State Controller.
4. Maintenance of and Access to Records
 - a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs. Subrecipient shall follow guidance on administrative costs issued by the Governor's Office and Office of the State Controller.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.
8. Conflicts of Interest. The State of Colorado understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy

is applicable to each activity funded under this award. Subrecipient and Contractors must disclose in writing to the Office of the State Controller or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Office of the State Controller shall disclose such conflict to Treasury.

9. Compliance with Applicable Law and Regulations.

a. Subrecipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

- i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
- ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and Subcontractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - i. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - ii. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - iii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - iv. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

- v. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
 - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. Remedial Actions. In the event of Subrecipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.
11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number SLFRF0126 awarded to the State of Colorado by the U.S. Department of the Treasury.”

14. Debts Owed the Federal Government.

- a. Any funds paid to the Subrecipient (1) in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.
- b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury’s initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

- a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or Subcontractor under this award.
- b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;

- iii. The Government Accountability Office;
- iv. A Treasury employee responsible for Agreement or grant oversight or management;
- v. An authorized official of the Department of Justice or other law enforcement agency;
- vi. A court or grand jury; or
- vii. A management official or other employee of Subrecipient, Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.

c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

1. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees, Subrecipients, and Contractorsto adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance, regulated programs, licenses, procurement Agreements by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.
3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Contractors, Subcontractors, successors, transferees, and assignees:

The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.
7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.
9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of

discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub- Subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

EXHIBIT P

SLFRF SUBRECIPIENT QUARTERLY REPORT

1. SLFRF SUBRECIPIENT QUARTERLY REPORT WORKBOOK

- 1.1 The SLFRF Subrecipient Quarterly Report Workbook must be submitted to the State Agency within ten (10) days following each quarter ended September, December, March and June. The SLFRF Subrecipient Quarterly Report Workbook can be found at:

<https://osc.colorado.gov/american-rescue-plan-act> (see SLFRF Grant Agreement Templates tab)

EXHIBIT Q

SAMPLE SLFRF REPORTING MODIFICATION FORM

Local Agency:			Agreement No:	
Project Title:			Project No:	
Project Duration:	To:		From:	
State Agency:	CDOT			

This form serves as notification that there has been a change to the reporting requirements set forth in the original SLFRF Grant Agreement.

The following reporting requirements have been (add/ remove additional rows as necessary):

Updated Reporting Requirement (Add/Delete/Modify)	Project Number	Reporting Requirement

By signing this form, the Local Agency agrees to and acknowledges the changes to the reporting requirements set forth in the original SLFRF Grant Agreement. All other terms and conditions of the original SLFRF Grant Agreement, with any approved modifications, remain in full force and effect. Grantee shall submit this form to the State Agency within 10 business days of the date sent by that Agency.

Local Agency

Date

CDOT Program Manager

Date

EXHIBIT R
APPLICABLE FEDERAL AWARDS

FEDERAL AWARD(S) APPLICABLE TO THIS GRANT AWARD

Federal Awarding Office	US Department of the Treasury
Grant Program	Coronavirus State and Local Fiscal Recovery Funds
Assistance Listing Number	21.027
Federal Award Number	SLFRP0126
Federal Award Date *	May 18, 2021
Federal Award End Date	December 31, 2024
Federal Statutory Authority	Title VI of the Social Security Act, Section 602
Total Amount of Federal Award (this is <u>not</u> the amount of this grant agreement)	\$3,828,761,790

* Funds may not be available through the Federal Award End Date subject to the provisions in §2 and §5 below.

EXHIBIT S
PII Certification

STATE OF COLORADO

**LOCAL AGENCY CERTIFICATION FOR ACCESS TO PII THROUGH A
DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S., I, _____, on behalf of _____ (legal name of Local Agency) (the “Local Agency”), hereby certify under the penalty of perjury that the Local Agency has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Local Agency.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT T

CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

Checklist for required exhibits due to funding sources. Required Exhibits are dependent on the source of funding. This is a guide to assist in the incorporation and completion of Exhibits in relation to funding sources.

Exhibit	Funding only from FHWA	Funding only from ARPA	FHWA and ARPA Funding
EXHIBIT A, SCOPE OF WORK	✓	✓	✓
EXHIBIT B, SAMPLE OPTION LETTER	✓	✓	✓
EXHIBIT C, FUNDING PROVISIONS	✓	✓	✓
EXHIBIT D, LOCAL AGENCY RESOLUTION (IF APPLICABLE)	✓	✓	✓
EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST	✓	✓	✓
EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS	✓		✓
EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE	✓		✓
EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES	✓		✓
EXHIBIT I, FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS	✓		✓
EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS	✓		✓
EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS	✓	✓	✓
EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM	✓	✓	✓
EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS	✓		✓

EXHIBIT N, FEDERAL TREASURY PROVISIONS		✓	✓
EXHIBIT O, AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS		✓	✓
EXHIBIT P, SLFRF SUBRECIPIENT QUARTERLY REPORT		✓	✓
EXHIBIT Q, SLFRF REPORTING MODIFICATION FORM		✓	✓
EXHIBIT R, APPLICABLE FEDERAL AWARDS		✓	✓
EXHIBIT S, PII CERTIFICATAION	✓	✓	✓
EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE	✓	✓	✓



Council Agenda Summary

June 4, 2024

Key Staff Contact: Kimberly Southern-Weber, Chief Human Capital Officer

Title:

Introduction and first reading of an ordinance authorizing a salary and certain benefits for the City Attorney, Stacey Aurzada

Summary:

The City Council has selected Stacey Aurzada to be appointed as the Greeley City Attorney. The City Council has negotiated a contract with Ms. Aurzada which will be presented to Council for approval on June 4, 2024.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	Yes
If yes, what is the initial, or, onetime impact?	To be determined
Is there grant funding for this item?	No

Legal Issues:

Section 6-1 of the Greeley Municipal Charter requires the fixing of compensation to be by ordinance. Consideration of this matter is a legislative process.

Other issues and Considerations:

None

Strategic Focus Area:



High-Performance Government

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 June 18, 2024

Attachments:

1. Ord No. 15, 2024 with Attachment A

CITY OF GREELEY, COLORADO
ORDINANCE NO. 15, 2024

AN ORDINANCE AUTHORIZING A SALARY AND CERTAIN BENEFITS FOR THE CITY ATTORNEY

WHEREAS, Section 3-15 of the Greeley City Charter requires the fixing of compensation to be by ordinance; and

WHEREAS, effective June 26, 2024, Stacey Aurzada is appointed to the position of City Attorney for the City of Greeley; and

WHEREAS, the City Council has negotiated an amount of compensation with Ms. Aurzada set out in the employment agreement in Attachment A

WHEREAS, the City Council wishes to set the City Attorney's compensation.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF GREELEY, COLORADO:

Section 1. The City Attorney's salary is hereby set at Two Hundred Forty-Six Thousand Two Hundred Seventy-Nine Dollars and Sixty-One Cents (\$246,279.61) annually.

Section 2. Additional terms of employment are provided in a City Attorney Employment Agreement, which is attached hereto as Attachment A.

Section 3. This ordinance shall become effective in accordance with Greeley City Charter Section 3-16.

Section 4. The Mayor is hereby authorized to execute the attached City Attorney Employment Agreement.

PASSED AND ADOPTED, SIGNED AND APPROVED ON THIS ____ DAY OF _____, 2024.

ATTEST

THE CITY OF GREELEY, COLORADO

By: _____
City Clerk

By: _____
Mayor

CITY ATTORNEY EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is entered into by and between the City of Greeley, Colorado (the "City") and _____ (the "Employee") this ____ day of _____, 2024.

WHEREAS, the City desires to employ the services of the Employee as City Attorney of the City as provided in Article VI, Section 6-1 of the City Charter in accordance with the terms and conditions of this Agreement; and

WHEREAS, the Employee desires to accept employment with the City as City Attorney in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the City and the Employee agree as follows:

I. DUTIES

The City agrees to employ the Employee as City Attorney to perform the functions and duties specified in the City Charter and Code of Ordinances as they now exist or as they may hereafter be amended, and to perform such other legally permissible duties and functions as assigned by City Council. The Employee shall comply with all terms, conditions, and requirements of the City Charter and Code of Ordinances as are applicable to her position as City Attorney. Employee acknowledges and agrees that as City Attorney she is an at-will City employee and is classified as an exempt employee under the Fair Labor Standards Act.

II. TERM

A. Commencement of Employment. The Employee shall commence employment as the City Attorney on June 26, 2024 ("Effective Date").

B. As required by Article VI, Section 6-1 of the City Charter, the term of this Agreement shall be an indefinite term.

III. COMPENSATION AND BENEFITS

A. The City shall pay the Employee an annual base salary of Two Hundred Forty-Six Thousand Two Hundred Seventy-Nine Dollars and Sixty-One Cents (\$246,279.61), payable in installments at the same time as the other employees of the City are paid. Consideration shall be given on an annual basis to increase the base salary or make other changes to the benefits offered to the Employee. Any subsequent modifications of Employee's salary will be accomplished by Council ordinance.

B. Disability, Health, and Life Insurance. The City will offer and provide Employee and her qualified dependents the same insurance benefit package and plans provided to all full-time employees of the City, which benefit packages and plans currently include, without limitation,

group life, accidental death and dismemberment insurance, long-term and short-term disability insurance, health and dependent care flexible spending accounts, dental insurance, vision insurance, and major medical insurance.

C. Benefits. Except as otherwise provided in the Agreement, the benefits offered to the Employee shall be consistent with those provided by the City to other benefitted employees. Nothing herein shall be construed as prohibiting the City from changing, at any time, the level of benefits available under its benefit plans to all employee participants in the plan(s), or from changing the employees' share of the cost of the plan premium(s). If any such changes occur during the term of this Agreement, the Employee's level of benefits and/or premium cost shall be adjusted accordingly.

D. Retirement. The City shall contribute 12% of Employee's annual base salary to the City's 401(k) retirement savings plan. The City's contributions shall be contributed in installments corresponding with Employee's usual pay schedule and shall be calculated based on the amount of Employee's salary paid each pay period. As of the Effective Date, the City's contributions shall be fully vested on behalf of Employee.

E. Paid Time Off (PTO). The Employee shall accrue, hold, and utilize paid time off as if Employee has tenure with the City of twenty-one years or more in accordance with City paid time off policy for Executive Employees as described in City policy or in the City's employee handbook. In the event of termination of employment, whether voluntary or involuntary, the Employee shall be paid for all accrued, but unused, PTO.

F. Holidays. The Employee shall be entitled to utilize all paid holidays given to general City employees as outlined in the City's policies, as amended.

IV. GENERAL EXPENSES AND PROFESSIONAL DEVELOPMENT

A. General Expenses. The City shall pay directly or reimburse Employee for non-personal and generally job-related expenses upon receipt of proper documentation as authorized by applicable policies or administrative procedures of the City.

B. Professional Development. The City agrees to budget for and to pay for professional dues and subscriptions for the benefit of Employee necessary for continuation and full participation in International Municipal Lawyers Association, and Colorado Municipal League (CML), which are necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the City. Further, the City agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions necessary and desirable for Employee's professional development and to pursue necessary official functions for the City, including, but not limited to, the IMLA Annual Conference, the IMLA mid-year seminar, the Colorado Municipal League attorney's seminar, and the Colorado Municipal League Annual Conference.

V. TERMINATION AND SEVERANCE

A. Pursuant to Article VI of the City Charter, the Council may remove Employee from her position as City Attorney by a majority vote of the City Council, with or without cause.

B. If Employee is removed from her position as City Attorney by the Council for “cause,” Employee shall only be entitled to such accrued compensation and benefits as are required to be paid or provided to her under this Agreement. As used in this Section V, the word for “cause” shall mean: (1) failure of the Employee to carry out her duties under this Agreement after written notice from the City Council; (2) failure of the Employee to desist from any act or omissions believed by the Council to be contrary to the best interests of the City after written notice to the Employee to desist; (3) conviction of a felony or a crime of moral turpitude; (4) dishonesty towards, fraud upon, or deliberate injury or attempted injury to the City; (5) uncured breach by Employee of a term or condition of this Agreement; (6) disbarment or (7) any physical or mental disability that substantially limits a major life function of the Employee and that results in her inability to carry out any essential function of her job as City Attorney, with or without reasonable accommodations by the City.

C. If Employee voluntarily resigns from her employment with the City under this Agreement, Employee shall not be entitled to receive any further compensation, including, without limitation, severance pay, from the City accruing after the effective date of her resignation. Employee shall, however, be entitled to receive from the City all compensation and benefits that have accrued under this Agreement up to the effective date of her resignation. If Employee voluntarily resigns from her position as City Attorney, Employee shall provide no less than thirty (30) days’ notice to the City.

D. For the purposes of this Section V, termination shall occur if any of the following events occur:

1. If the City materially reduces Employee’s base salary, compensation, or any other benefit, unless such reduction is applied in a proportionally equal manner to all City employees;
2. If Employee resigns following an offer to accept resignation, whether formal or informal, by a member of City Council as representative of the governing body after a majority vote of the Council.
3. Employment is terminated by City Council with cause, but without providing the Employee with advance written notice of the cause and an opportunity to refute the cause at a public meeting of City Council.
4. The Employee resigns following the breach of this Agreement by the City after written notice of the breach to the City Council and not less than 30 days to cure the breach.

E. If Employee is removed from her position as City Attorney by the City Council for any reason other than for "cause" as defined in Section V.B. above, or if a termination event occurs as defined in Section V.D. above, the City shall provide a severance payment equal to:

1. If Employee is removed from her position as provided in Section V.D. in the first year of the Term of this Agreement, the City shall pay Employee one hundred percent (100%) of her annual base salary. If Employee is removed from her position as provided in Section V.D. in the second year of the Term of this Agreement, the City shall pay Employee eighty percent (80%) of her annual base salary. If Employee is removed from her position as provided in Section V.D. in the third year of the Term of this Agreement, the City shall pay Employee sixty percent (60%) of her annual base salary;
2. If Employee is removed from her position as provided in Section V.D. in the fourth year of the Term of this Agreement, or any time thereafter, the City shall pay Employee fifty percent (50%) of her annual base salary.

F. The severance payment payable to Employee shall be paid in a lump sum unless otherwise agreed to by the City and Employee. The payment to be made is intended to compensate employee for release of all legal and equitable claims of Employee and shall be paid only if Employee executes a release of such claims in a form acceptable to the City.

G. If Employee voluntarily resigns from her position as City Attorney under this Agreement or is removed from her position by the Council with or without cause, Employee shall retain all rights and benefits that may have accrued to her under any of the benefit, pension, or deferred compensation plans provided to her under this Agreement and that she is entitled to retain in accordance with the provisions of such plans and applicable law as any City employee who has resigned or been terminated from employment with the City would be entitled to retain.

VI. PERFORMANCE EVALUATION

A. City Council shall review the performance of the Employee no later than March 1 of each year in accordance with the performance review process for all City employees. The review shall focus on Employee's performance of the duties and responsibilities assigned to the City Attorney position by the City Charter, City Code, and this Agreement, as well as the achievement of any goals or performance objectives established by the City Council in consultation with Employee. The review process shall, at a minimum, include the opportunity for the Parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation in a closed or open meeting of the City Council at the option of Employee; and (3) present a written summary of the evaluation results. The final written evaluation shall be completed and delivered to Employee within thirty (30) days of the evaluation meeting.

B. City Council agrees to increase said base salary and/or other benefits of Employee in such amounts and to such extent as City Council may determine that it is desirable to do so on the basis of (1) merit following an annual performance evaluation made at the same time as similar consideration is given other employees general; and (2) an annual analysis of salaries and compensation for similar positions within Colorado and nationally, conducted by the Human Resources Department or a third party consultant, to ensure the Employee's salary and benefits remain market competitive.

VII. RESIDENCY REQUIREMENT

Pursuant to the City Charter, Employee agrees to reside within the boundaries of the City at all times during her employment pursuant to this Agreement.

VIII. OUTSIDE ACTIVITIES

The employment provided by this Agreement shall be Employee's sole employment. Recognizing that certain outside consulting, teaching, or speaking opportunities provide indirect benefits to the City and the community, Employee may accept, with the Council's approval, limited consulting, teaching, and speaking opportunities where such opportunities shall not constitute interference with, nor a conflict of interest with, Employee's responsibilities under this Agreement. Employee shall submit all requests for outside consulting, teaching or speaking opportunities in writing to the Council.

XI. INDEMNIFICATION

To the Extent the City is required and authorized to do so under the Colorado Governmental Immunity Act (C.R.S. § 24-10-101 *et seq.*) and other applicable law, the City shall indemnify and defend Employee for all civil claims brought against Employee which arise out of an alleged act or omission by Employee occurring during the performance of this Agreement, within the scope of her employment as City Attorney, and provided that such act or omission is not willful or wanton.

X. BONDING

City shall bear the full cost of any fidelity or other bond required of Employee under any law or ordinance and which is within the scope of her employment as City Attorney.

XI. ANNUAL APPROPRIATION

All financial obligations of the City under this Agreement shall be subject to the Council's annual appropriation of the funds necessary to satisfy such obligations.

XII. NOTICES

Any notice or other communication required or permitted hereunder shall be in writing and shall be served personally, or via email. Notice to the City shall be sent to the city email address for the current Mayor. Notice to the Employee shall be sent to the city email address for the Employee.

XIII. GENERAL PROVISIONS

A. Integration. This Agreement sets forth the entire understanding between the City and Employee relating to the employment of Employee by the City. Any prior discussions or representations by or between the Parties are merged into and rendered null and void by this Agreement. The terms of this Agreement may only be modified by a writing signed by the Parties.

B. Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado and any judicial action brought by either Party to enforce the terms and conditions of this Agreement and/or to recover damages for a breach of this Agreement, shall be brought in the state courts located in Weld County, Colorado.

C. Assignment. This agreement is personal to the City and to Employee and may not be assigned or delegated by either Party without the prior written consent of the other Party.

D. No Waiver. All rights and remedies, whether conferred hereunder or by any other instrument or law, will be cumulative and may be exercised singularly or concurrently. No failure of either Party to enforce any term of this Agreement shall be deemed a waiver of future enforcement of that or any other term.

E. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect the validity of the remaining provisions of this Agreement.

F. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

G. Counterparts and Electronic Signatures. This Agreement may be executed in any number of counterparts, and each of such counterparts shall, for all purposes, be deemed to be an original, and all such counterparts shall together constitute on and the same agreement. Facsimile and electronic signatures shall constitute original signatures for all purposes of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

CITY OF GREELEY, COLORADO:

EMPLOYEE:

By: _____
Mayor John Gates

Stacey Aurzada

ATTEST:

By: _____
Heidi Leatherwood
City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
Jenny Lopez Filkins
Special Counsel



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

June 4, 2024

Key Staff Contact: Brian McBroom, Community Development Director, Elizabeth Kellums, Planner III, Donald Threewitt, Chief Planner

Title:

A resolution adopting the 10th Street Area Plan

Summary:

The City of Greeley obtained a grant from the Colorado Department of Local Affairs to hire a consultant to complete a Housing Needs Assessment, conceptual area plan, and for the city to adopt a qualifying strategy to facilitate and incentivize affordable housing development.

The city hired Development Strategies, a planning firm from St. Louis, to complete the assessment and conceptual plan. The project was completed in 2023 and the conceptual plan was presented to the Council in a work session in August 2023. It was then tabled.

The grant requires the Council to take action on the area plan. The grant contract with the state expires on June 30, 2024, so action must be taken prior.

The purpose of this plan is to demonstrate the feasibility of redeveloping properties approaching obsolescence in this area of the city into mixed-use developments that incorporate affordable housing. The city will use this plan to attract new private investment in the plan area. At this time, city capital improvements to implement plan elements are not proposed.

Should specific properties be proposed for redevelopment in the future, additional community engagement may be needed to address possible impacts such as traffic, gentrification, impact on downtown, and transitions to existing neighborhoods.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	No
Is there grant funding for this item?	Yes
If yes, does this grant require a match?	Yes (already paid in full)
Is this grant onetime or ongoing?	Onetime
Additional Comments:	All project funds have been spent

Legal Issues:

Consideration of this matter is a legislative process.

Other issues and Considerations:

None

Strategic Focus Area:



Business Growth



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 as presented.

Attachments:

1. Res No. 17 , 2024 with Attachment A
2. Item 15 - 10th Street Area Plan Presentation

**CITY OF GREELEY, COLORADO
RESOLUTION NO. 17, 2024**

A RESOLUTION ADOPTING THE 10TH STREET AREA PLAN

WHEREAS, the City of Greeley received a grant from the Colorado Department of Local Affairs to conduct a Housing Needs Assessment (“Assessment”), create an area plan that would include affordable housing (“Area Plan”), and adopt a qualifying strategy that would incentivize affordable housing development; and

WHEREAS, the City of Greeley hired Development Strategies to complete the Assessment and Area Plan; and

WHEREAS, the Assessment found a shortage of approximately 20,000 housing units at all price points, including a significant need for affordable housing; and

WHEREAS, the City of Greeley completed the Area Plan for the area of 10th Street including the north and south sides between 23rd Avenue and 30th Avenue; and

WHEREAS, the 10th Street Area Plan was completed with significant public outreach, including to the Spanish-speaking community and the area businesses and residents within the area plan vicinity; and

WHEREAS, the 10th Street Area Plan includes development goals, several concept plans, design standards framework, and tools for implementation; and

WHEREAS, the City Council reviewed the Area Plan at a work session in 2023 and authorized staff to move forward with the Area Plan; and

WHEREAS, staff members from the City of Greeley Community Development Department, Housing Department, Public Works Department, and Water & Sewer Department reviewed the Area Plan and have affirmed their support for the Area Plan; and

WHEREAS, the terms of the grant from the Colorado Department of Local Affairs requires City Council to adopt the Area Plan; and

WHEREAS, City Council finds that adoption of the Area Plan is in the best interests of the citizens of Greeley.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF GREELEY, COLORADO:

Section 1. The City Council hereby accepts and adopts the 10th Street Area Plan which is attached hereto as Attachment A.

Section 2. This Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED, SIGNED AND APPROVED ON THIS 4TH DAY OF JUNE, 2024.

ATTEST

THE CITY OF GREELEY, COLORADO

By: _____
City Clerk

By: _____
Mayor

ATTACHMENT A

10TH STREET AREA PLAN



COLORADO
Department of Local Affairs



At Home in Greeley: 10th Street Area Plan

Greeley, Colorado

Prepared for
The City of Greeley
September 2023

DEVELOPMENT STRATEGIES



Steering Committee

Jeff Carlson

Chief Executive Officer, Weld Trust

Christopher Carpio

Engineering Manager, Leprino Foods Company

Olivia Egen

Public Health Initiatives Supervisor and Healthy Eating & Active Living Coordinator, Weld County Department of Public Health & Environment

Michelle Francies

Public Health Communication Specialist II and Housing & Land Use Coordinator, Weld County Department of Public Health & Environment

Jodi Hartmann

Executive Director, High Plains Housing Development Corporation

Jaime Henning

President & CEO, Greeley Area Chamber of Commerce

Nathan Kinney

Senior Director of Strategy & Planning Program, Banner Health

Tonya (TJ) Jenkins

Mortgage Loan Originator, Home Team Lending

Julie Jensen

Chief Executive Officer, Greeley Area Realtor Association

Marilyn Schock

President, UCHealth Greeley Hospital

Kelly Schramm

Executive Officer, The Home Builders Association of Northern Colorado

Shawn Walcott

Director of Household Stability, United Way of Weld County

Melissa Wheeler

Land Project Manager, Baessler Homes

Cheri Witt-Brown

Executive Director, Greeley-Weld County Habitat for Humanity

Tom Teixeira

Executive Director, Greeley-Weld Housing Authority

Project Sponsors

City of Greeley

Colorado Department of Local Affairs



Client Team

CITY OF GREELEY

Elizabeth (Betsy) Kellums

Planner III - Historic Preservation

Becky Safarik

Interim Community Development Director (Retired)

Brian McBroom

Community Development Director

Don Threewitt

Planning Manager

Sherry Albertson-Clark

Planning Consultant

Nelvis Alvarez

Public Engagement Manager

Caleb Jackson

Planner III

Juliana Kitten

Assistant City Manager

Winna MacLaren

Director of Communication and Engagement

Paulina Somosa Avalos

Planner I

Ben Snow

Director of Economic Health and Housing

Consultant Team

DEVELOPMENT STRATEGIES

Matt Wetli

Principal

Andy Pfister

Principal

Richa Singh

Project Manager, Housing Needs Assessment

Anu Samarajiva

Project Manager, Area Plan

Jenny Connelly-Bowen

Project Manager

Anjali Katare

Research & Housing Analyst

Carolyn Flesaker

Research Analyst

Gaargi Kularni

Research Analyst

Megan Hinrichsen

Art Director

CULTURE JOURNEY

Jose (Pepe) Torres

Founder & CEO

Libet Ojeda

Community Outreach Director

Jorge Torres

Translator and Interpreter

Nuria Telles

Translator and Interpreter

WORKSHOP8

C. Joseph Vigil IV, AIA

Founding Partner and Architect

V. Brandy LeMae, LEED AP

CEO and Creative Director

This project is funded in part by a grant from the Colorado Department of Local Affairs.

Every plan is an opportunity for a city to identify its needs and how they have changed to determine a collective path forward. The changes occurring in Greeley consist of incredible growth in demand to live, work, and recreate in Northern Colorado; a decades-long trend—largely driven by younger generations—to live in more urban and walkable places; and local, national, and global forces that have put upward pressure on the cost of housing. Over the past half-decade, the City has accelerated its efforts to plan for the future of the community and determine how to **meet this moment** of unprecedented growth.

Honor the Past; Prepare for the Future

The best path forward is the one that takes the best of what has historically made the community special, while not being so rooted in the past that it fails to seize the opportunity to adapt, adjust, and meet the realities of the day. In the case of Greeley, the reality is that more and more people are going to seek to live here, and this will require a range of approaches and types of housing to meet the diverse needs of the community's people—present and future.

A Necessary and Impactful Key to a Broader Housing Strategy

The context of this plan is that it immediately follows the completion of the At Home In Greeley Housing Needs Assessment in 2023—a citywide study that evaluates the whole of Greeley and

the breadth of needs for housing—which points to a variety of approaches to housing policy, funding, and diversification of housing types (including single-family, tiny homes, microhousing, duplexes, fourplexes, and multi-family). This plan—and **this cannot be overstated**—picks up on **one major component** of what will need to be a far-reaching, holistic, and decades-long effort to diversify housing in Greeley: multi-family housing. This component that was chosen for detailed focus precisely because it is hard but necessary, the most ambitious and challenging undertaking, also holds the promise to be among the most rewarding and impactful.

Placing People Closer to Jobs and Services

While a holistic and citywide strategy for housing seeks to align all housing types with the full breadth of community demographics, **the most challenging efforts are almost always those that seek to place large amounts of housing close to jobs, transit, and services**—especially housing that serves a diversity of workforce and affordable levels (i.e., “missing middle”) that are not adequately present in the market. Such efforts place the least burden on city infrastructure because they use existing systems, provide great value to working households by reducing the cost and time of transportation, and provide an incredible opportunity to create livable districts that

are beloved by residents and catalyze value for the community.

Opportunity Hidden in Plain Sight

The challenge is finding existing sites within the community that will not involve displacing existing residents or reinventing a part of the city that has an established development pattern that is cherished by the community. Fortunately for Greeley, several of these **crucially important areas that hold the promise of providing quality mixed-income housing** in new livable, walkable, and transit-supporting communities are “hidden in plain sight”.

Community Through Reinvention

The 10th Street Area Plan, which focuses on the commercial parcels along 10th Street between 23rd Avenue and 30th Avenue, illustrates a realistic opportunity to create such a community and serve a key role within the citywide housing ecosystem by reinventing an area that today consists of older strip malls. These strip malls, which were never designed to last beyond 20 or 30 years, **offer the best opportunity to reinvent without displacement** and strategically solve a number of city problems in the process. It is important to underscore that while the buildings themselves are deteriorating, the businesses within them are strong, healthy, vibrant, and worthy of celebrating.

The Essence of this Plan

This Area Plan places existing businesses in new, higher quality buildings over time, with housing located on upper floors that is attainable to moderate- and middle-income households, in a walkable environment that is functional, transit-supporting, and rich in public space. It seeks to, as one area resident put it, *"Make the area better without pushing people out"*.



10th Street Area Focus: Commercial parcels along on 10th Street between 23rd Avenue and 30th Avenue

The Elements of this Plan

In the following chapters, this Area Plan demonstrates:

Why this area was selected, including:

- Current building conditions and underutilized land
- An opportunity to provide increased community services and housing to an area of need
- Availability of City tools with which to partner with the private sector on a reinvestment strategy
- An extraordinary opportunity to place people close to transit, jobs, and services

- Sufficient land area to create a true, authentic, and walkable community

How the community was engaged, including public workshops, surveys, stakeholder interviews, business canvassing, steering committee workshops, and multilingual presentations. The engagement philosophy is also described, in which the planners and community had a dialogue about goals, objectives, and the economic underpinnings of realistic development to create a plan that bridges community aspirations with practical realities.

What people said, including:

- Expressions of what the area could be in the future, including walkable, vibrant, safe, clean, open, inviting, and activated
- Summaries of how the place is perceived today, including busy, outdated, auto-oriented, old, and confusing

In any long-range plan, development concepts need to be adjusted to meet changing circumstances. This plan offers **goals and guiding principles that cannot change if the original intent of the plan is to be met**, including

- Expanding high-quality and inclusive housing options in Greeley
- Supporting small business, entrepreneurship, and access to employment

- Ensuring that residents live healthy lives and are cared for
- Prioritizing the movement of people first, by a diversity of transportation options, while still accommodating the automobile
- Encouraging high-quality and lasting development
- Creating beautiful and comfortable places for people

This Area Plan offers **realistic and practical design concepts for how development could be achieved**, creating whole blocks of walkable streets; ground floor spaces for storefronts and businesses; upper-floor units for market rate, workforce, and affordable housing; meaningful public space; transit access; and adequate parking for cars. Crucially, this plan includes different variations of these concepts, demonstrating that the guiding principles of this plan can be achieved in more than one way.

Because guiding principles and detailed concepts alone are not enough to ensure the successful execution of a great development—let alone meet the needs of an attainable spectrum of housing for the entire community—this plan offers a **breadth of infill housing types** that range from single unit to multi-family, as well as a **design standards framework**.

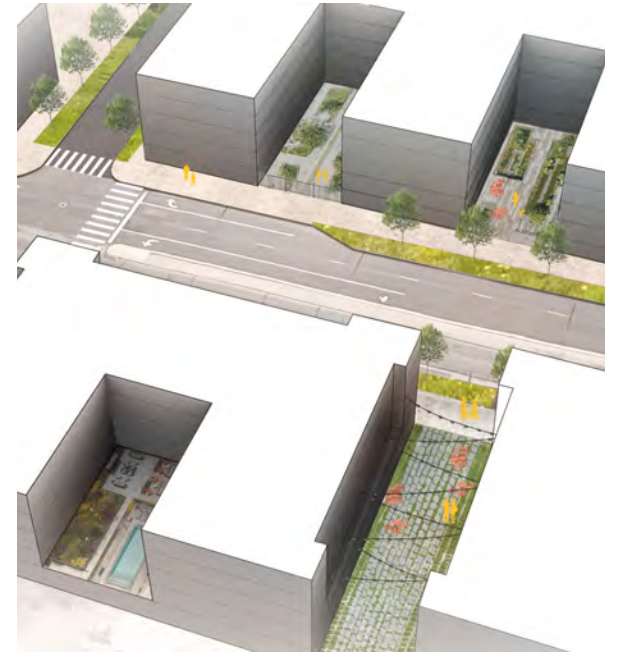
Finally, true community change that rises to and meets the moment of need takes courage, common goals, partnerships, and—above all—commitment and

hard work. The final chapter lays out a **framework for implementation** that will need to be further developed as part of a master development plan, and includes:

- Alignment of **funding** sources, including private funds, capture of future revenue increases, state and federal programs, capital improvements, and the creation/identification of new funding tools
- Establishment of a **governance** structure that identifies lead actor(s), partners, and future roles for the public sector that include regulation, coordination, and detailed planning
- Creation of a holistic **investment** strategy that includes public spaces, parking management, business district creation, retail activation, and small business support

This Area Plan provides workable development concepts that demonstrate how underutilized land can be re-purposed and reinvented to better meet current and future needs and play important roles in broader, citywide efforts in the areas of housing, economic development, community development, placemaking, transportation, and quality of life. It will require true partnerships between the public and private sectors and coordination among business owners, landowners, and the community. It will require a commitment of hard work and resources over the course of a decade, and the result will be a new district that is beloved by current and future generations.









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APPENDIX

The 10th Street Area Plan provides a vision for reinvention that would deliver needed housing while addressing a variety of additional community goals in the process. By seizing the opportunity in this area, the community can advance key priorities both for this site and Greeley as a whole.

A Two-Part Project

The City of Greeley received a grant from the Colorado Department of Local Affairs (DOLA) in 2022 to conduct a Housing Needs Assessment and Area Plan, with a focus on affordable housing. The City pursued the grant because it recognized that housing was becoming less attainable in the community for a wide range of residents and wanted to identify policies, strategies, and opportunity areas with which to bring much-needed affordable housing to the market.

The project has two parts:

- A citywide Housing Needs Assessment (HNA) to understand demand for all housing types in Greeley, with a focus on affordable housing.
- This Area Plan, which shows how different types of housing could be designed to fit within the community, with a priority on affordable housing.

Officially called the 10th Street Area Plan, this plan illustrates a development vision for the area that seeks to maximize community benefits within a realistic framework of economic viability.

Why this Area?

In partnership with the Client Team and the Steering Committee, the Consultant Team reviewed several proposed sites using the following selection criteria:

- **Demographic and social considerations:** A site in an area of need that could be reintegrated into a neighborhood and where redevelopment would not cause significant displacement of residents.
- **Site requirements:** A site that is sufficiently large (with or without assembly), underutilized, and capable of having an impact (near transit and jobs and well-located to provide services).
- **Fiscal considerations:** An area where gap financing tools are most eligible, where private investment can be attracted to support public investment, and in locations with City-owned parcels or where land can be procured at fair market value.

The Steering Committee, Client Team, and Consultant Team focused in on the east side of the city, particularly the northeast quadrant. Compared to the rest of Greeley, this area has a high share of households below the poverty line and higher unemployment levels, as well as lower median household incomes and median home values.

It is also in an area of the city that is close to transit access and job centers, and offers a rare opportunity in Greeley to provide infill development without

displacing existing residents and businesses.

This area of the city has a handful of undeveloped lots that are appropriate for the development of smaller, context-appropriate, infill housing types (e.g. rowhouses, multi-unit houses, etc.). As this Area Plan demonstrates, the 10th Street Area also has a series of underutilized commercial sites that could be assembled and developed into a true mixed-use district that provides better buildings and visibility for existing businesses and a diversity of housing to meet community needs.

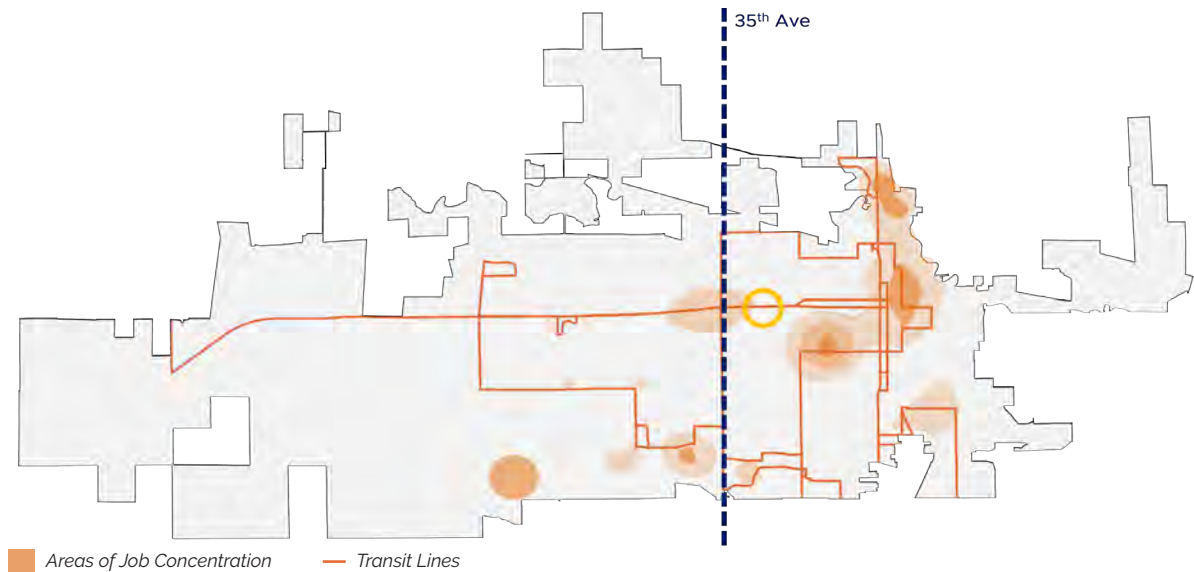
The 10th Street Area represents a high-need, but also high-potential area of the city for a catalytic mixed-use housing development.

What is the Goal of this Document?

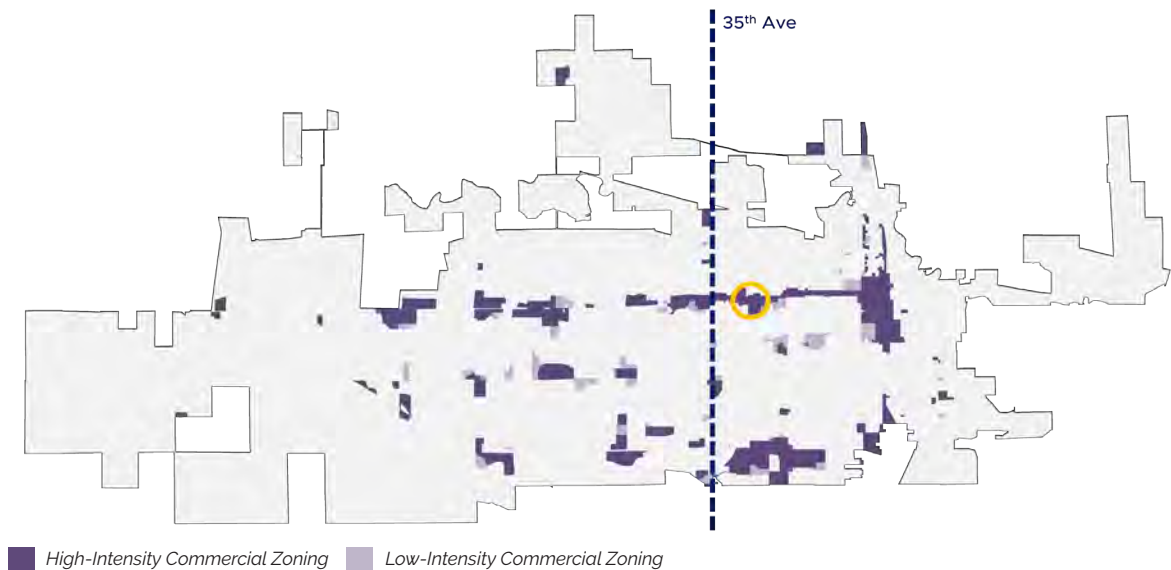
Future development proposals and development plans will likely differ somewhat from what is illustrated in this document because circumstances affecting development in the 10th Street Area are certain to change. However, this Area Plan document communicates the goals and priorities that future development must substantially achieve, sends a clear message to development partners about community priorities, and demonstrates what can be accomplished through coordinated development.



Key Greeley Demographics (Source: Esri 2022)



Jobs and Transit Proximity (Source: GIS data provided by City of Greeley, U.S. Census 2022)



Non-Residential Commercially Zoned Areas (Source: GIS parcel data provided by City of Greeley)

Existing Conditions

The 10th Street Area today is a familiar landscape seen in many American cities: a commercially-zoned area along a busy road composed primarily of 1960s- and 1970s-era low-rise shopping centers with large, often underutilized street-facing surface parking lots.

The area is dominated by auto-focused uses like fast food drive-throughs and streetscape conditions like narrow sidewalks directly adjacent to the street, curb cuts interrupting the pedestrian walking experience, and several long blocks (particularly south of 10th Street) that inhibit internal access.

The area's commercial properties are generally well-occupied, including by small and local businesses, and many provide valuable services to the immediate neighborhood that can continue to be accommodated as a part of future development. However, the buildings themselves are dated and generally show minimal signs of renovation.

The area is also well-situated, with transit access to Downtown and Greeley's job centers and proximity to existing parks and gardens. It is also an area that is eligible for multiple funding sources and has already been a focus for investment for the City. As a result, the 10th Street Area has a great deal of potential to be a catalytic redevelopment area.

Within a 1/2 mile radius:

6 parks or gardens
2 schools

#1

bus line running every 30 minutes, Monday-Friday

Between 8th and 35th Avenues, within a 1/2 mile of 10th Street:

850 businesses
8,800 jobs

Source: Esri 2022

3 EXISTING FUNDING SOURCES

10th Street TIF District
Urban Renewal Facade Grant Program
Greeley Homeownership Program for Employees

\$1.2 mil
in public investment

Source: City of Greeley Neighborhood Report Card 2017



Underutilized Parking Lots



Strip Mall Shopping Centers



Auto-Oriented Uses



Diverse Small Businesses



Transit Access



Narrow Sidewalks

About the Process

Process & Involvement

Development of the Area Plan followed a **five-phase process** that allowed for an iterative dialogue with the community. Each phase helped to inform the end target: an area plan that focuses on catalytic sites for redevelopment in a way that achieves the community's goals.

While some aspects of area plans are more technical, it is just as important to understand and capture the experiences of the people and organizations who live in,

work in, and visit the area. It is impossible to identify strategies best-suited to meet an area's needs without input from community members about their values, capacities, pain points, and priorities.

The Consultant Team employed the following methods to access the diversity of perspectives and experience present in the area community.

Steering Committee Work Sessions

The Consultant Team worked closely with a City of Greeley-appointed Steering Committee. This 15-member committee represented a broad cross-section of the Greeley community and brought expertise

in housing development, real estate, advocacy, human services, education, finance, and economic development. The group provided critical feedback throughout the process and is well-positioned to identify opportunities for collaboration as next steps unfold.

Stakeholder Conversations

The Client and Consultant Teams reached out to businesses and residents in the area to learn more about their experiences in the area and their hopes for the future. Conversations were held one-on-one and in small groups both virtually and in-person, and some on-site at local businesses.

Project Steps: A Five-Phase Process

Step 1: Project Kickoff

The project kicked off with a work session among the Client Team, Steering Committee, and Consultant Team and a tour of the Greeley area. It also included focused community outreach with older persons, people with disabilities, representatives of the local business community, and leaders in the Spanish-speaking and immigrant communities.

Step 2: Listen

During the Listen phase, the consultant team shared the goals of the Area Plan and gathered feedback from the community to

better understand how the plan can align with what the community needs. Given the project timeline, an area had to be selected early in the project process.

Step 3: Envision

This phase studied land use approaches in the context of the selected area. The Consultant Team crafted two scenarios for the selected development site that reflected feedback around land use, open space, height, density, and pedestrian and bike connectivity. They then invited community feedback again to identify elements of a preferred approach.

Step 4: Refine

Using the preferred approach selected during Step 3, the Consultant Team considered technical elements of implementation and a framework for updated land use regulations.

Step 5: Finalize

During this final phase, the Consultant Team shared a project summary that incorporated stakeholder conversations and outlined a community-driven plan.

Spanish-Speaking and Immigrant Community Outreach

Through the work of Culture Journey, an expert community engagement firm specializing in outreach among Spanish-speaking communities, the Consultant Team talked with Hispanic/Latino/Latinx and immigrant residents and business owners within the area to better understand their experiences in the area and perspectives on potential future plans. These insights were incorporated into the Area Plan's solutions.

Public Workshops

Three in-person public workshops were held throughout the project process:

- **Public Workshop #1** (held April 2023) shared an introduction to the project and gathered feedback about participants' housing experiences in Greeley.
- **Public Workshop #2** (held June 2023) presented land use and urban design concepts for the area alongside the pros, cons, and the limitations of each approach.
- **Public Meeting #3** (held September 2023) was a public meeting to present the Area Plan and allow for input.

Community Survey

The Consultant Team created two surveys. The first invited community input on their housing experiences and priorities and provided insight into the housing preferences and challenges of Greeley's population; it received more than 290 responses. The second survey received over 80 responses and invited community members that live in, work in, or visit the 10th Street Area to share input on what they wanted the future of the area to look like. Respondents provided feedback on the types of housing, businesses, and community amenities they believe the area needs. Both surveys were available online in English and Spanish.



Community Feedback

The 10th Street Area Plan used an online public survey to complement other community engagement. The purpose of the survey was to capture public input regarding key issues related to the 10th Street corridor. The online survey received 84 responses, while 34 residents shared their thoughts in person.

Respondents most commonly visit the corridor to patronize local retailers, eateries, and service providers. Preferred retailers in the corridor are discount, convenience, and auto-repair shops. Only 14 percent of respondents reported living in the corridor and many reported only venturing to the corridor out of necessity.

Respondents described the corridor as congested and oriented for automotive use, with dated buildings. Concerns regarding pedestrian and bicyclist safety were frequently echoed and the corridor was seen as unattractive for walking due to its lack of shade and narrow sidewalks.

Altogether, these factors contributed to a negative perception of the area. However, many reflected on the area's potential, valuing the diversity of locally-owned businesses in the corridor and wanting to see them thrive, confirming that future revitalization should preserve and strengthen existing small businesses.

When asked how they would like the corridor to change, respondents supported increasing the corridor's walkability, density, and cleanliness. They indicated the need for traffic calming measures coupled with wider sidewalks and more shade to make walking more pleasant. As part of this strategy, residents voiced a need for new multi-family housing, particularly that serves low-income residents.

When surveyed on potential future uses, consistent support was voiced for implementing placemaking strategies like planting trees and installing public art pieces. Respondents desired increased green space, ideally to replace parking lots that line the corridor. Many indicated a need for higher density while preserving Greeley's character and existing locally-owned businesses. Among potential uses, residents desired to see the development of sit-down restaurants, grocery stores, and public gathering spots. New affordable housing was seen as paramount to successful revitalization, with the greatest support for developing tiny homes and small-scale apartment communities.

Overall, residents voiced a consistent desire to restore vibrancy to the area—respondents wanted a thriving commercial corridor that would become an asset and destination of choice, rather than of necessity, for Greeley's residents and visitors.



Crosswalks and Safety Islands¹



Street and Sidewalk Lighting²



Streetscape Landscaping³



Improved Bus Stop Features⁴

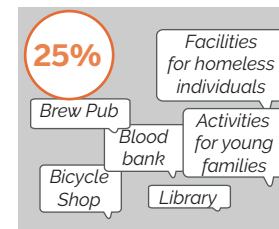
Preferred Public Spaces
Top 4 choices (of 8 choices total)



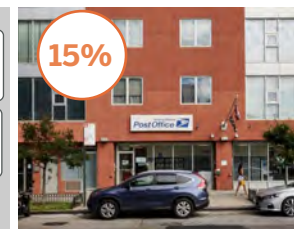
Daycare/School⁵



Health Clinic⁶



Other



Post Office⁷

Preferred Community Resources
Top 4 choices (of 4 choices total)



44%

Sit-Down Restaurant⁸



40%

Outdoor Seating Next to Businesses⁹



38%

Grocery Store¹⁰



37%

Gathering Space¹¹

Preferred Commercial and Shared Spaces
Top 4 choices (of 9 choices total)



40%

Liked tiny homes like this¹²



36%

Liked single family homes like this¹³



42%

Liked small apartments with 10 units like this¹⁴



31%

Liked large apartments with 30-60 units like this¹⁵

Preferred Housing Types
Top 4 choices (of 4 choices total)



How Would You Describe 10th Street Now?



How Would You Like it to be in the Future?

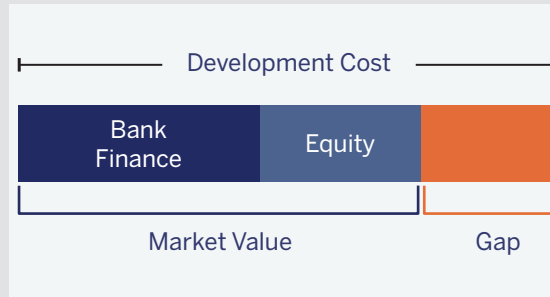
Feasibility Overview

In addition to engaging with the Greeley community to understand priorities for placemaking and policy, this Area Plan is based on a foundation of market and economic analysis that ensures the vision being presented can be realized. This Plan reflects the careful balancing act that is necessary to maximize community benefits within the constraints of what is economically possible for a project.

A critical component of a concept plan is to vet the design through a number of different lenses, such as economic viability and political support. Reviewing the potential project through these different criteria is often referred to as feasibility testing, and covers these four major components:

- **Economic Feasibility:** Compares revenues (typically rents or sale prices) with construction and operation costs to determine whether a project is economically viable.
- **Site Feasibility:** Tests how much development product (usually expressed in terms of housing units or commercial square footage) can reasonably fit onto a site.
- **Market Feasibility:** Determines the likely revenues from the different products (e.g. rents and lease rates) and the amount of demand that exists for different types of products.

Economic Feasibility

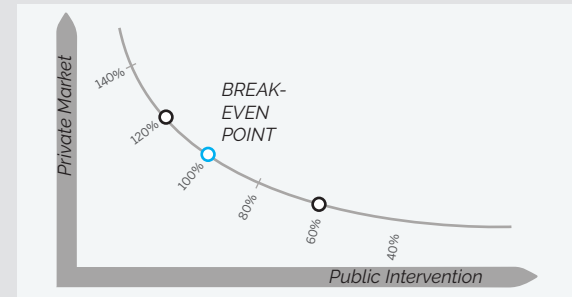


Economic (or financial) feasibility analysis evaluates and tests the financial viability of potential development options by determining their prospective development value (e.g. potential sale price) and comparing that to their development and operational costs (e.g. construction, acquisition, maintenance, etc).

Where development value is equal to or exceeds development costs, a project is likely to be viable and attractive to private investment. Where development value is less than development cost, a financial “gap” will exist and additional investment from public or institutional sectors will be needed to secure the necessary capital to make a project feasible.

- **Community Feasibility:** Gauges level of public support and assesses whether it accomplishes good policy goals.

A development concept evaluated through each of these four lenses has the potential to actually be realized rather than remain as a plan document on the shelf.



Break-Even Analysis

Break-even analysis is another way to visualize the relationship between development costs (construction and operation) and value (as determined by rents).

The break-even point is where costs and value are equal (value/costs = 100%). At that point, or anywhere above it (e.g. value/costs = 120%), a project can be undertaken by the private market. If the development costs are below the break-even point (e.g. value/costs = 60%), then public intervention is needed.

A discussion of community feasibility came from the feedback results discussed on the previous pages. Concepts from the other feasibility components are highlighted on this and the following page.

Site Feasibility

Current Site Capacity

- Area: 47 acres
- Retail: 247,000 SF
- 5,225 SF of retail/acre

Regional Comparison

Belmar in Lakewood, Colorado is a mixed-use retail district that was developed on the site of a former mall.

- 22 city blocks on 103 acres
- 777,000 square feet of retail space
- 5,000 parking spaces (garage, surface and street)
- 7,450 SF of retail/acre



Belmar District, Lakewood CO¹⁶

Market Feasibility

Current Market Metrics (CoStar Q3 2023)

Average Rent/Square Foot for Retail: \$13

Retail Vacancy Rate: 10%

Housing Demand

The Housing Needs Assessment (HNA) completed concurrently as a part of this project determined that in Greeley:

- There is demand for approximately **19,400 units of housing over the next 20 years** across the entire spectrum of affordability, including housing needs for low-income, middle-income, and high-income households.
- Housing is needed in Greeley across the affordability spectrum and

adding housing units of any type or affordability level will help the overall market.

- **Nearly half of the housing demand is for units at or below 80 percent of Area Median Income (AMI), or households earning at or below \$69,250, which are very difficult to develop without gap funding or incentives.**
- Greeley captured a significant share of the county's population growth over the past decade and has the potential to continue to do so in the future. **The city needs a broader diversity of housing to support this growth in an equitable way.**



Belmar District, Lakewood CO¹⁷



Greeley Plaza, 2700 W 10th Street - Average \$11/SF¹⁸

The first and most important rule in city planning is that everything is connected. When reinventing an area, careful attention to the different systems that make up a city is imperative. While this approach takes more work and coordination, the result can be the creation of a community that is beloved by its residents and is passed down and further enhanced by future generations.

The second rule of planning is to always avoid trying to accomplish every community goal on a single site or project. In the case of the 10th Street Area, through the assemblage and coordinated development of a larger area, a true district can be created, which means solutions at the intersection of economic viability and good policy can be explored in ways that no single project or piecemeal development ever could.

Based on community feedback, the 10th Street Area Plan establishes guiding principles in six key areas and, in doing so, addresses strategic policy objectives within the context of the broader citywide ecosystem. These elements are:

- **Livable and Inclusive:** expand high-quality and inclusive housing options in Greeley
- **Vibrant:** support small businesses, entrepreneurship, and access to employment
- **Healthy and Caring:** ensure that residents live healthy lives and are cared for

- **Comfortable and Connected:** prioritize the movement of people over car-centrism
- **Dynamic and Lasting:** encourage high-quality and lasting development
- **Walkable and Activated:** create beautiful and comfortable places for people

It is important to underscore that this Area Plan made every effort to arrive at truly workable solutions that accomplish the greatest public good within a practical and realistic economic and legal framework. A project that maximizes public support but has no economic reality isn't realistic, nor is one that maximizes private returns without putting forth an approvable concept to the community. This plan seeks to accomplish a variety of policy objectives while acknowledging that economic considerations must also be valued.

As a result, development is envisioned at a height and density that is realistic, but also accomplishes a variety of community goals, including: placing more people near transit; increasing foot traffic for businesses; adding beautiful public space for the community; providing opportunities for affordable and workforce housing; providing for improved walkability and safety by reducing vehicle conflicts; and ensuring ample parking is present to support business and residents. The following pages explore each goal and principle in greater detail.

Area Plan Goals



Expand High-Quality and Inclusive Housing Options in Greeley



Support Small Business, Entrepreneurship & Access to Employment



Ensure that Residents Live Healthy Lives and are Cared for



Prioritize the Movement of People Over Car-Centrism



Encourage High-Quality and Lasting Development



Create Beautiful and Comfortable Places for People

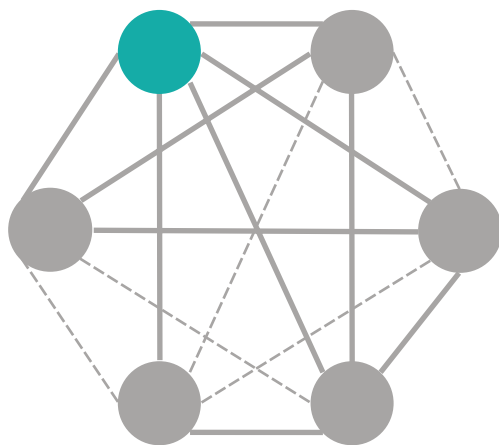




Livable and Inclusive Housing and Neighborhoods

The vision for a livable, inclusive 10th Street is one that adds a significant amount of housing as part of a truly mixed-use, mixed-income, walkable, transit-supporting community.

The 10th Street Area will have diverse and appealing architecture with lasting materials, and residents will enjoy pedestrian-scale architecture and design with walkable streets, storefront businesses, street trees and plantings, and greatly reduced pedestrian conflict with vehicles. Residents will have the



Multi-family Housing

opportunity to be part of a rich and socioeconomically diverse place, and most of the housing will be affordable to Greeley's workforce. A portion of the housing should be permanently affordable.

There are many reasons for focusing on mixed-use development in the 10th Street Area—not the least of which being that healthy citywide housing ecosystems offer a diversity of quality single-family and multi-family housing. Locating the latter near a city's center where access to jobs and transit are more plentiful accomplishes more community goals than almost any other land use decision the City can make.

- **Workforce:** The Housing Needs Assessment demonstrated that a market-rate apartment is attainable to a household making \$55,000 to \$65,000 annually, whereas the nearby single-family housing stock is affordable to a much smaller segment of Greeley's households—those who earn over \$100,000 annually.
- **Scale:** Site capacity analysis shows that mixed-use development could add roughly 10 percent of the projected 20,000 housing units that Greeley will need to add over the next 20 years. If 10



Mixed-Use Development

to 20 percent of the Area's housing units are set aside at below-market rents, this would translate into an additional 200 to 400 attainable units.

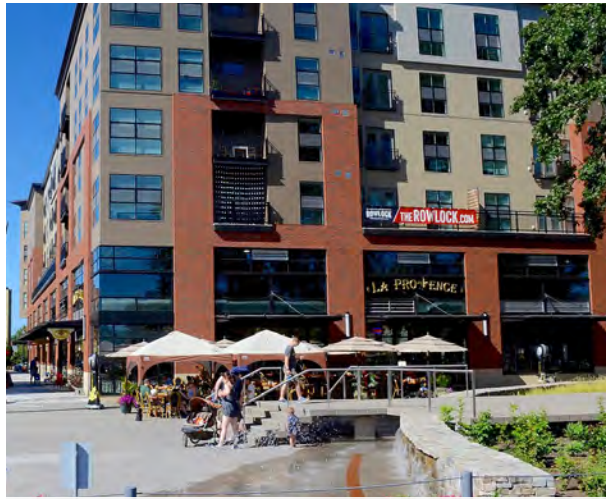
- **Demographics:** 36 percent of households in Greeley have children under the age of 18, while 64 percent of the housing stock is single-family. This means many singles and couples rent or own single-family housing rather than freeing it up for larger families (as they could if more quality multi-family options were provided).
- **Transit-Oriented:** Studies show most transit riders need to live within a five- to ten-minute walk from transit. Placing more housing near transit stations increases ridership, decreases car usage (and thus traffic), and frees up more household income.
- **Supports Business:** Mixed-income development provides more people, rooftops, and expendable income within walking distance of businesses, increasing customers and revenue for businesses.
- **Reinvention:** mixed-use development provides the economic conditions for private dollars to fund most of the effort to remake the Area into a district that



Mixed-Use next to Transit

serves more of the community in a greater diversity of ways.

- **Non-Displacement:** the 10th Street Area presents a rare opportunity to add housing without displacing any existing residents, while maintaining or even adding retail/storefront square footage.
- **Traffic Mitigation:** While all new housing adds traffic, multi-family housing—especially when it is situated near jobs and transit—adds far less than traditional single-family development does. With growth projected to continue in Greeley, devoting some areas to housing that has less traffic/environmental impact is prudent.



Mixed-Use with Plaza



Mixed-Use with Retail

Implementation

Avoiding displacement:

Intentionally select sites for redevelopment that currently do not have housing.

Including affordable housing:

Explore partnerships with the Weld County Housing Authority and others to use federal assistance and tax credits to provide permanently affordable housing.

Incentivizing affordability:

Offer developer incentives in exchange for additional workforce/affordable housing units.

Supporting transit:

Locate next to transit and jobs to reduce car reliance and household expenses.

Using new tools:

Explore new tools, such as a citywide housing fund, to ensure permanent affordability of a percentage of units.

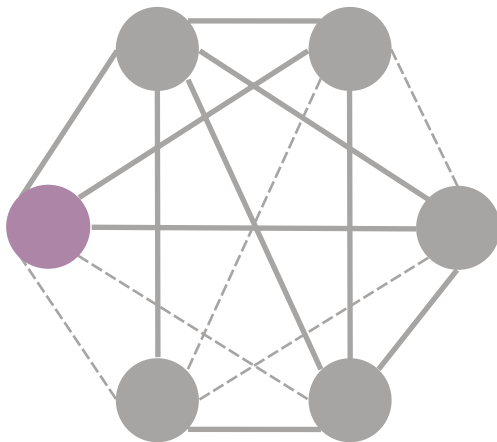


Vibrant Jobs and the Economy

Redevelopment and improved retail spaces are possible without displacing existing and beloved businesses.

The small businesses in the 10th Street Area, many of them local, are appreciated and used by Greeley's residents. However, many residents and even some business owners agree that the buildings themselves need to be upgraded or replaced.

Given the number of authentically local businesses in the Area, a great opportunity exists to collectively market the area



El Mero Mero

under a single brand that celebrates its unique character. Over time, intentional and phased development of the district could further enhance and nurture a small business ecosystem and create greater success and prosperity.

These enhancements could include:

- **Brand:** establish a name and brand that celebrates and unifies the 10th Street Area as one of Greeley's finest commercial districts.
- **Place:** develop a sense of place and foot traffic by creating a comfortable main street environment that encourages walking, promotes experience, and increases the volume and duration of visitation.
- **Upgrade:** through a phased approach, gradually move existing businesses into newer buildings.
- **Afford:** structure commercial storefront set-asides to ensure a portion of retail spaces remain affordable to local small businesses.
- **Curate and celebrate:** recruit and attract anchor tenants and complementary national brand storefronts to boost traffic and district



The Human Bean

revenue. Potential anchors could include a supermarket, brewery, or a food hall/mercado with a collection of smaller businesses. Existing anchors, such as El Mero Mero, should be retained and celebrated.

- **Parking:** plan for parking management and shared surface/garage parking. Over time and through redevelopment, establish areas with shared parking and a comfortable pedestrian environment so people only have to park once, and so surface parking lots can be put into productive use as development.
- **Incubate:** assist employers with employee skill development through incubation by partnering with local agencies to establish storefront opportunities in the district for on-the-job training.
- **Multilingual wayfinding:** ensure that new and frequent visitors can easily find their way to businesses, places, and transportation in multiple languages.
- **Uniform signage:** reinforce a brand through consistent banners and signage in the public realm; encourage uniform signage standards among businesses for a clean and clear look throughout the Area.



Murals and Art: Celebrate Local Culture

- **Murals and art:** celebrate local culture through public murals and art, while beautifying the area and reinforcing its authenticity and distinctiveness.

The concept of getting existing local businesses into upgraded spaces without displacing them from the Area emerged as a key theme during the process of public and business owner engagement. This will require financial structuring so that new, quality spaces are made available at below-market rents, which is imperative because small businesses often locate in older shopping centers precisely because they can afford their lower rents (relative to new space). Without intentional set-asides of space for local businesses, rents could be prohibitively expensive. This is why any master development plan should include some combination of grants, tax credits, tax incentives, and/or private financial structuring (i.e., balancing below-market space with higher-revenue tenants as part of an overall mix).



Retail Anchor: Grocery Store



Osage Cafe, Denver, CO: Social Enterprise Cafe



Multilingual Signage

Implementation

Improving without displacement:

Structure the economics of new development so spaces for existing small businesses are affordable.

Phasing development:

Develop new buildings in the corridor in phases so existing businesses can migrate into new buildings once they're completed.

Increasing customers:

Developing housing and investing in place will increase the number of residents and visitors to the business district.

Creating anchors:

Creating and activating public spaces with activities and recruiting retail anchors further increases the customer base for existing businesses.

Implementing a "Park it & Market it" strategy:

Providing clear wayfinding signage, easy-to-find parking, and a consistent brand supports business.

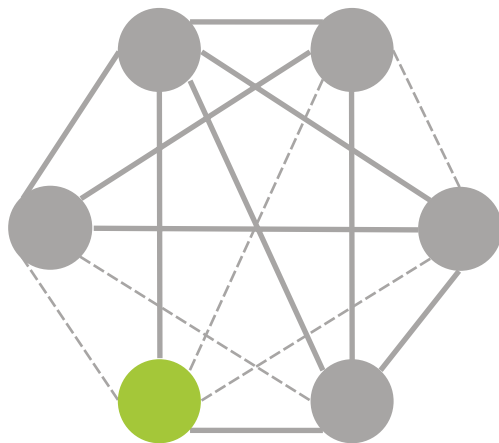


Healthy and Caring Wellness and Quality of Life

Healthy and caring communities provide a variety of forms of exercise and access to care so that all residents may live full and active lives.

Reinventing the 10th Street Area presents a number of opportunities to link recreational assets, while also adding care services that may not be available in the area.

With five city parks located within a half-mile of the 10th Street Area, a number of excellent opportunities exist to link the site



Safe Pedestrian Walkways

to existing city recreational assets, while adding new experiences within the Area itself. These could include:

- **Internal circulation:** by replacing asphalt parking lots and single-use auto-oriented destinations (i.e., strip malls) with walkable city blocks and human-scaled architecture, the Area can be re-stitched into the fabric of the community, making walkability to recreation more natural and intuitive.
- **Greenways and connectivity:** through the creation of usable greenways and protected bikeways and walkways, better connections can extend beyond the site in ways that make nearby parks more accessible and better connect surrounding neighborhoods to the amenities within the area.
- **Removal of barriers:** The inclusion of a city block system with shared parking would enable cars to park with far fewer driveways and curb cuts that conflict with bike/pedestrian mobility.
- **Trailheads:** trailheads and wayfinding typically help orient people to a city's non-motorized transportation system (i.e., greenways, sidewalks, protected bike lanes). Where greenways are



Internal Green Space

integrated with commercial districts, trailheads present an opportunity for commerce, while also creating valuable destinations for people enjoying a bike ride, long walk, run, or scooter.

- **Internal green space:** civic parks, squares, and public plazas can be beautiful expressions of public space, value-adding for community and the economics of a project, and serve as anchors that help increase visibility for nearby businesses.
- While recreation is a powerful contributor to health and wellness, other forms of care can be integrated with recreation infrastructure, or included in a real estate program in ways that create truly healthy communities:
- **Exercise programs:** increasingly, both city recreation programs and private organizations are making use of urban public space to offer group fitness programs such as yoga, Zumba, aerobics, and boot camps.
 - **Childcare:** frequently at or near the top of the list of desired community services, quality childcare enables households to increase their earning potential while also providing employers



Exercise Programs

access to a valuable segment of the workforce.

- **Healthcare:** increasingly, healthcare providers are seeking the visibility that traditional storefronts offer, and in doing so often make preventative health care services more accessible. Inclusion of healthcare services should be welcomed and encouraged in a redevelopment effort at the 10th Street Area.
- **Community Development Finance:** many credit unions and community development financial institutions (CDFIs) provide valuable lending services to small businesses, important non-predatory loans to households, and personal finance consulting. They also often seek centrally-located storefronts that serve a broader neighborhood.
- **Community Programs:** affordable space for local businesses should also be offered to important providers of human services, including non-profits aimed at providing care to community members.



Trail Wayfinding



Childcare



Community Development Financial Institution

Implementation

Creating safe bike and pedestrian paths:

Develop active paths and trails that encourage exercise and sociability.

Providing safe and appealing linkages:

Make connections to parks, schools, and other neighborhood assets.

Providing discounted space:

Allow for important human service and care providers to be a part of the neighborhood.

Curating and recruiting care providers:

Develop connections with childcare, daycare, after-school programs, etc.

Expanding partnerships with health care providers:

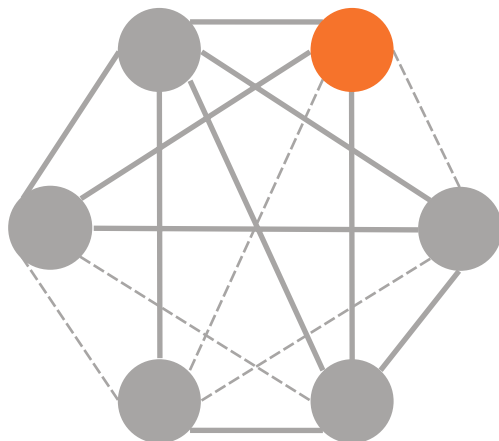
Provide more community-based health options.



Comfortable and Connected Transportation and Mobility

A comfortable and connected community is one that focuses on making amenities safe and accessible for people.

Focusing only on the most efficient way to move cars results in corridors that are good at only one thing: moving cars from point A to point B. However, facilitating multiple, comfortable ways to move around the 10th Street Area not only connects residents to resources, but also supports local businesses and quality of life within the neighborhood itself.



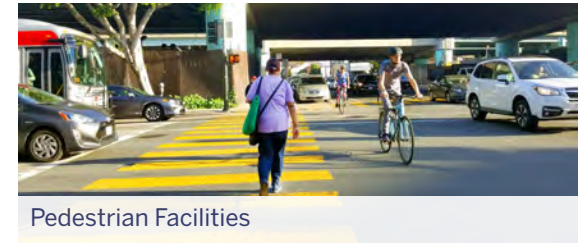
Easy-to-Find Parking

The Greeley on the Go Transportation Master Plan, released in March 2023, reiterates this point, noting the importance of “urban design geared towards vibrant and inviting neighborhoods with great **public spaces to go to and not just spaces to pass through**”.

The 10th Street Area Plan focuses on improving transportation and mobility in the 10th Street Area by reducing the number of curb cuts and drives along 10th Street and adjacent roads, introducing smaller, more manageable block sizes for visitors, and incorporating consolidated parking garages with easy access to nearby amenities.

Of course, improving transportation and mobility is a larger effort that goes beyond the scope of an area plan. Several existing or in-progress plans in Greeley impact the area and help further the goals of this plan:

- **The Greeley on the Go Transportation Master Plan** includes a long-term vision for 10th Street from CO-257 (west of Greeley) to 23rd Avenue to provide streetscape enhancements to reduce traffic speeds and add bike facilities.

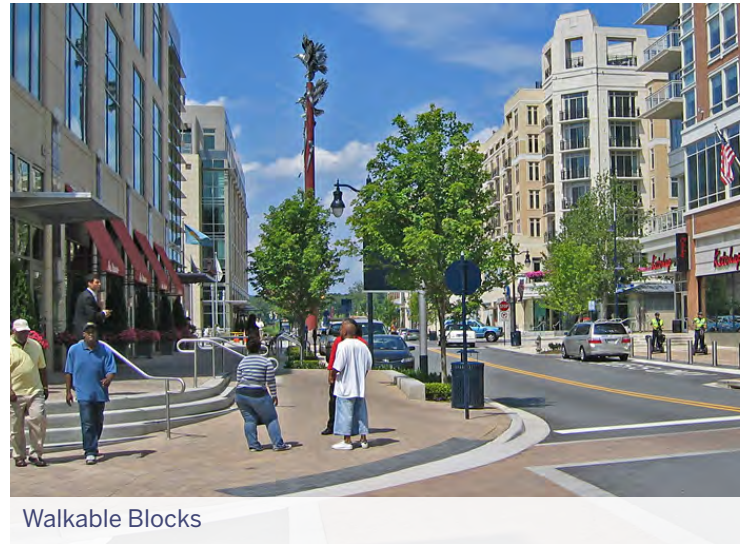


Pedestrian Facilities

- **The 9th & 10th Streets Corridor Project** focuses on 9th and 10th Street east of 23rd Avenue (just past the boundaries of this plan) and is looking at changing the configuration from one-way streets to two-way. All of the proposed alternatives look at improving the connection from 10th Street to Luther Park east of 23rd Avenue.



Bicycle Amenities



Walkable Blocks



Transit Access



Structured Parking with Liner Buildings



Bike and Ped Facilities

Implementation

Locating housing close to multimodal access:

Place people near transit, bike, and pedestrian links to reduce car dependence.

Consolidating parking and driveways:

Design reduced access points for cars to improve walkability.

Creating real, walkable blocks:

Encourage walking and take some traffic off of 10th Street.

Using a park once approach:

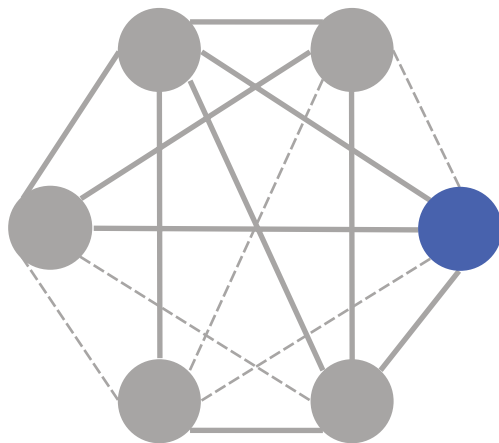
Provide easy-to-find parking and walkable streets so people only need to park once during their visit.



Dynamic and Lasting Development

A dynamic and lasting community is one that is built not just for people today, but with future generations in mind, using timeless urban design qualities and adaptive street grids that ensure a sense of permanence and community, while allowing for adaptation by the people who inhabit it.

This means creating the economic conditions that support investment in quality permanent materials, designing for humans first (automobiles second) with timeless characteristics of walkability and



Highlighting Storefronts

livability, and creating an authentic city block structure that encourages context-sensitive reinvestment as preferences and needs change over decades and generations.

While technological advances change our economies and sometimes disrupt community life, a number of elements of good community design never get old and, in fact, often grow in value over time. These key design elements include:

- generous street trees, plantings, and sidewalk environments;
- well-lit and safe spaces;
- architectural detail and interest, and storefronts/commerce at the pedestrian level;
- permanent materials such as glass, stone, and brick;
- interconnected city blocks offering endless variations of walking paths;
- spaces and places for interaction with neighbors;
- convenient places for cars to park that are out of view from daily life and activity; and



Shared neighborhood Spaces

- residential streets that are free from the excessive noise of fast-moving vehicles.

These characteristics, which are woven into this Area Plan for 10th Street, contrasts with the auto-oriented suburban strip malls that were constructed primarily in the 1960s, 70s, and 80s and were not intended by their builders to last more than a generation. The opportunity now is to reinvent the area, harnessing time-honored city building techniques with some learned approaches to accommodating cars in ways that don't deter from placemaking or community-building.

The engine that makes this reinvention possible is the convergence of renewed demand for living in mixed-use and walkable communities and a scale of development that creates the economic conditions for quality redevelopment. This means that development at a scale of four to five stories, with ground floor retail in places, is likely necessary to:

- motivate current property owners to sell;
- provide sufficient private returns to allow for use of quality permanent building materials; and



Generous Sidewalk with Trees

- create sufficient fiscal impact to allow for a public-private partnership for the investment in an authentic street grid, structured parking, and quality streetscape necessary to create something truly sustainable.

Mixed-use development in the 10th Street Area not only provides an opportunity for improved design, economic conditions, and community building—it is also good policy. Given the presence of transit and other nearby employment centers, mixed-use development presents an opportunity to provide mixed-income housing next to transit, improving affordability and access to community members who have few attainable housing choices today.



Human-Scaled Positive Experiences



Pedestrian-Centric Streets



Storefronts and Commercial: Pedestrian Level

Implementation

Developing at a height (four to five story) and density:

Encourage high-quality development over time.

Creating city blocks for pedestrians:

Develop great human-scaled positive experiences at the ground level.

Implementing shared parking in strategic locations:

Choose sites that serve housing and storefronts/retail.

Expanding and promoting facade renovation program(s):

Focus on areas where redevelopment isn't possible/needed.

Identifying sites with underutilized parking:

Explore candidates with potential for near-term redevelopment.

Developing a conceptual master plan:

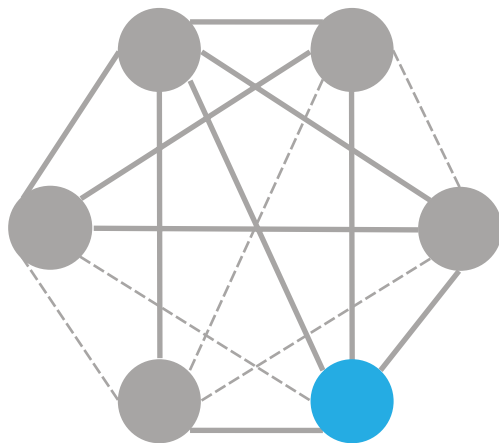
Guide development in a planned, cohesive manner.



Walkable and Activated Place

Walkable and activated spaces are, in many ways, the element that physically unites all of the important systems that contribute to a great community or district.

Streets that have generous space devoted to walkability are livable and therefore marketable for housing (unlike, for example, housing located too close to a busy thoroughfare designed for speeding cars). They benefit businesses by increasing foot traffic, contributing to health and wellness by promoting walking,



Wide Sidewalks

are the very backbone (and often missing link) of a successful transit system, and are the focal element of a dynamic and lasting community in which many people freely trade the comfort and space of a large home in exchange for the walkability of a mixed-use environment.

On a busy arterial like 10th Street, this means as many as 30 feet of streetside zone is needed to successfully provide a comfortable walking and biking environment that is buffered by trees and plantings. Streets that are internal to a new development could have sidewalk environments that are 12 to 16 feet in width—enough for pedestrians, plantings, and sidewalk cafes. Deciduous street trees are crucial for providing canopy shade on hot summer days and for shedding their leaves to allow for maximum sunlight on winter days in Northern Colorado.

Public spaces—plazas, courtyards, and lawns—can serve a variety of purposes, including passive recreation, commerce, programmed events, food truck and street vendor features, or simply a nice place to sit or meet friends.



Streets for Everyone

In summary, walkable, activated spaces should be incorporated throughout, to soften the harsh edge of 10th Street as a traffic corridor, and to enhance the livability and economic potential of interior streets.



Public Plaza



Community Recreation Space



Street Furniture



Sidewalk with Canopy



Urban Streetscape

Implementation

Building wide, buffered sidewalks:

Creating spaces that are safe and comfortable for pedestrians.

Providing multiple public gathering spaces:

Design areas that are easily accessed and enjoyable to be in.

Planting street trees and vegetation:

Provide shade, cooling, and native plant and animal habitat.

Integrating comfortable ways to walk, sit, and gather:

Utilize urban furniture like benches, lighting, and trash cans.

Denver Area Case Studies

In addition to much-needed housing, affordable projects can serve the community through engaging programming and resident services. The following examples from the Denver Housing Authority (DHA) engage multiple systems, from early learning and creative arts programming (healthy and caring) to job training and markets (vibrancy). These resources can transform developments from purely residential areas to vibrant neighborhood spaces.

One of DHA's recent programs is the **Decatur Fresh Market**, located at Gateway in Sun Valley. As a grocery market and community space, it offers local residents affordable, nutritious, and culturally relevant options and “serves almost 5,000 Sun Valley residents, local nonprofits, and the broader Denver community” (DHA). Decatur Fresh Market incorporates a workforce training program for young adults interested in the culinary and customer service industry as part of the Youth Employment Academy. They similarly operate **Osage Cafe** (Mariposa), which serves walk-in breakfast, lunch, and catering, and **Arts Streets** (Mariposa), which gives youth real-world opportunities to engage their creative talents through graphic design and art.

DHA also works closely with independent non-profits to provide programmed space

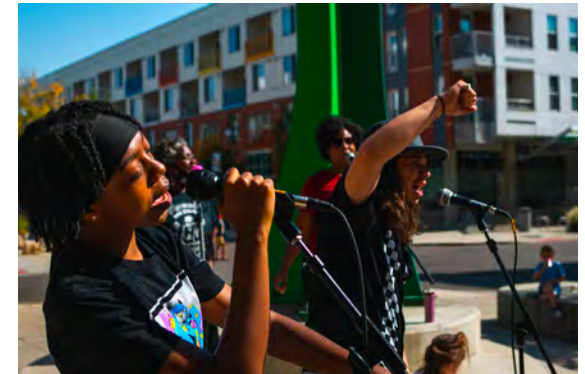


Arts Street



within new and existing developments. **Youth on Record (YoR)** offers music-centered opportunities to help young people thrive in their communities and develop skills. Following a needs assessment, DHA asked YoR to become an anchor tenant in their seven-phase mixed-use development of the Mariposa neighborhood, which entailed the construction of a new studio and educational space.

Bikes Together is another non-profit program occupying a storefront in the



Youth on Record



Mariposa neighborhood. It provides space for the community to purchase used bikes at reduced costs and to learn about bikes and the logistics of owning one.

For childhood education, DHA partners with and provides space for Catholic charities to operate **Head Start** in several of their neighborhoods. This incentivizes high-quality childcare to remain accessible and centrally located for residents and provides an especially valuable service for working and single parents.



Decatur Fresh



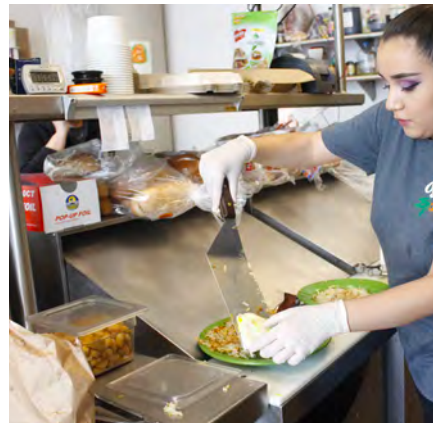
Osage Cafe



Bikes Together



Catholic Charities' Head Start



This chapter provides a concept plan that illustrates how good urban form can be achieved in the 10th Street Area, while aligning economic considerations, community and policy goals, and design.

These three elements should be viewed as “legs of a stool”—ignore one or take it away and the plan falls apart. Address all three and these images become much more than beautiful illustrations; they are the foundation for an attractive, functional, and community-enhancing development that can be practically and realistically achieved.

At various points, one or more variations or alternatives are presented to demonstrate how more than one approach could be taken while still adhering to the guiding principles of the previous chapter.

Two alternatives were shared with the community, each with unique merits. Alternative A, the **New 10th Street Town Center** concept, concentrates retail energy along a new main street just south of the existing 10th Street Corridor.

Alternative B, **Expanded 10th Street Retail**, continues to focus retail along 10th Street and also demonstrates how interim solutions like facade improvement and development on underutilized parking lots could mark the path for new development in the future.

In each alternative, additional multi-family housing provides an important consumer base for both supporting existing retail and attracting new tenants. Other key Development Goals are met through both plans, as highlighted below.

The following pages show these two plan alternatives in greater detail, with selected views and moments used to illustrate key ideas. These include:

- New Town Center internal street network with opportunities for public space
- Enhanced streetscape and public space opportunities along 10th Street
- Multiple options for shopping mall redevelopment
- Parking and signage opportunities
- Additional opportunities for public space

Avoiding Displacement



New development is concentrated on land zoned for commercial use, avoiding displacing existing residents.

Inclusion of Affordable Housing



If 10 to 20 percent of the Area’s housing units are set aside at below market rents, this would translate into an additional 200 to 400 attainable units.

District Branding



Context-specific and inclusive neighborhood branding designates the 10th Street Area as a distinct and welcoming area.

Small Business and Services Support



Space for local businesses and important community services is reserved in subsidized spaces within new development projects.

Thoughtful Parking Solutions



Sufficient parking for proposed residents as well as businesses is incorporated through a mix of structured, surface, and street parking.

Transit Support



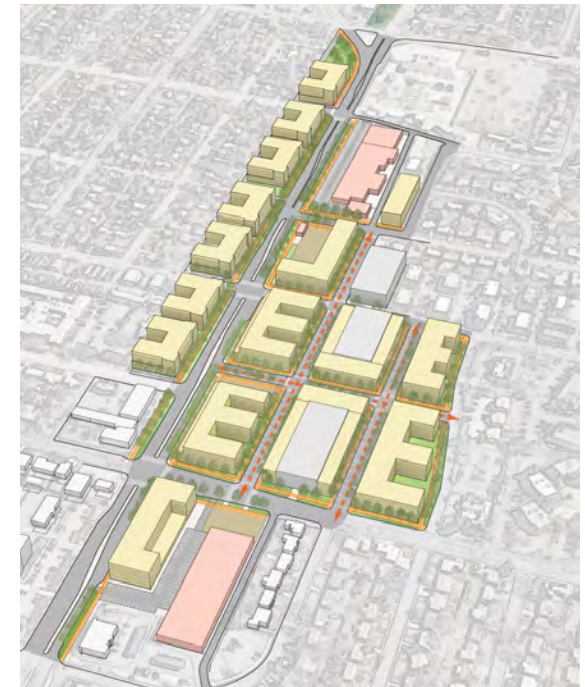
Housing and amenities are built along the 10th Street Corridor, home to the #1 bus line. Existing transit stops are enhanced with additional shade and seating.



10th Street Today



Alternative A: New 10th Street Town Center



Alternative B: Expanded 10th Street Retail

Real, Walkable Blocks



Interconnected city blocks offer endless varieties of walking paths.

Developing at a Height and Density



Development at four to five stories, with ground floor retail in places, is likely necessary to make the project economically viable.

Street Trees and Plantings



New development is fronted on the street by new street trees and planting beds with native and adapted species to provide shade, habitat and other ecological benefits.

Safe Bike and Pedestrian Paths



Generous sidewalks along 10th Street provide room for both cyclists and pedestrians, and reconnected street grids provide safer crossing linkages.

Comfortable Ways to Walk, Sit, & Gather



Elements like shade trees, comfortable seating, and street lighting enhance the user experience in public spaces.

Multiple Public Gathering Spaces



A range of public spaces at different sizes and with different types of programming provide amenities for many different users.

Creating Anchors



Recruit and attract anchor tenants and complementary national brand storefronts to boost traffic and district revenue.

By the Numbers: Alternative A

156,000 SF of retail

2.5 acres of public plaza and green space

1 mile of new high-quality streetscape

2,700 parking spaces

2,000 housing units

200 - 400 units are targeted as affordable/attainable



Alternative A: New 10th Street Town Center

Expanding Facade Renovation Programs



Where redevelopment is not possible or needed, facade renovation can help existing businesses upgrade their spaces.

By the Numbers: Alternative B

173,000 SF of retail

2.5 acres of public plaza and green space

1 mile of new high quality streetscape

2,800 parking spaces

1,900 housing units

200 - 400 units are targeted as affordable/ attainable



Alternative B: Expanded 10th Street Retail

New Town Center (Alternative A)

Current Conditions

The two shopping centers to the south of 10th Street, Wilshire Plaza and Greeley Plaza, are currently dominated by surface parking. They represent the largest and deepest development footprints in this area.

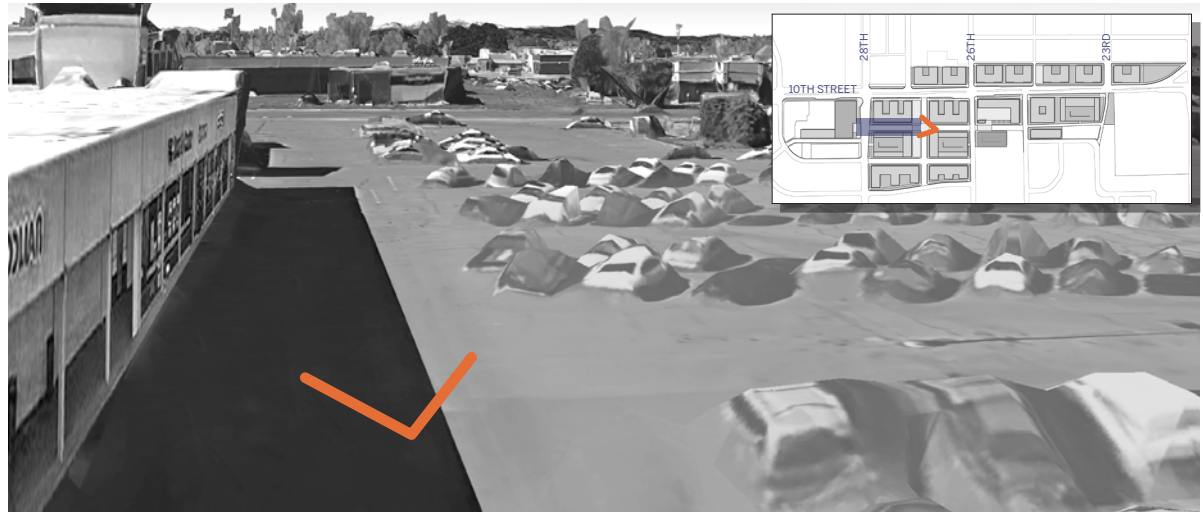
The Vision

Coordinating development on these parcels would allow for the creation of a walkable and inviting internal street network that reconnects the existing neighborhood street grid and provides meaningful public space.

Land Use

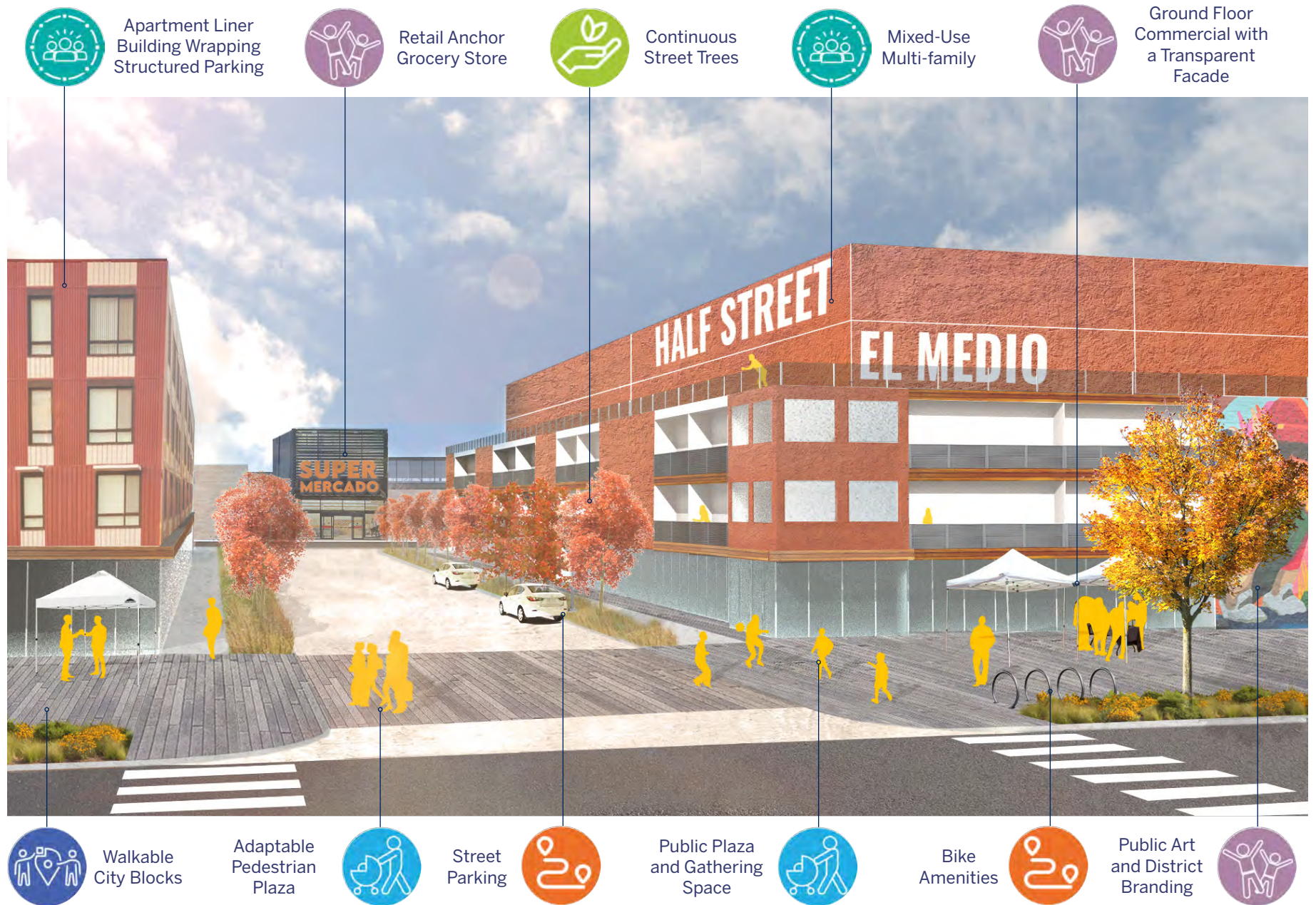
What is currently a surface parking lot in Greeley Plaza is envisioned as a new retail street with accessible street parking, shade from street trees, active and interesting stores on the ground level, beautiful plazas with public art, and homes with balconies and rooftop amenities above.

The street is bookended to the west by a new major retail anchor grocery store, which provides support for the whole ecosystem of small businesses in the area. Intentionally affordable spaces are reserved within the new retail ground floors for local and existing businesses to relocate and continue to thrive.



Current Conditions: Greeley Plaza Parking Lot, Looking West toward Wilshire Plaza





Shopping Mall Redevelopment (Alternative A)

Current Conditions

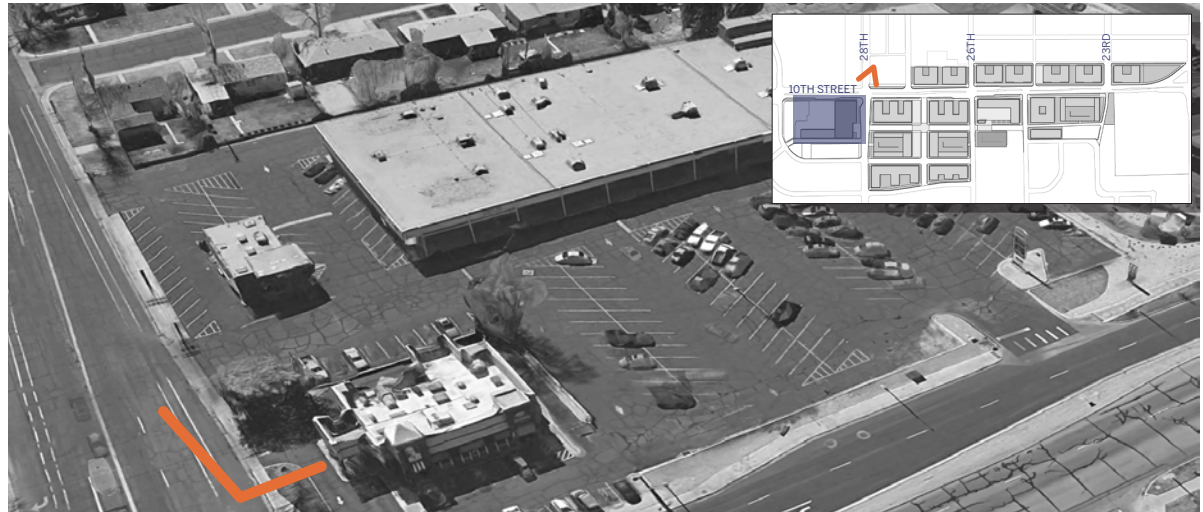
10th Street today is home to multiple strip mall retail centers fronted by large swathes of parking. This parking often sits empty, and could be re-purposed for new development.

The Vision

Wilshire Plaza is re-imagined as an important shopping node in the 10th Street Area, supported by a new anchor tenant that is a visible presence along 10th Street and that serves as a visual focus for the New Town Center Concept.

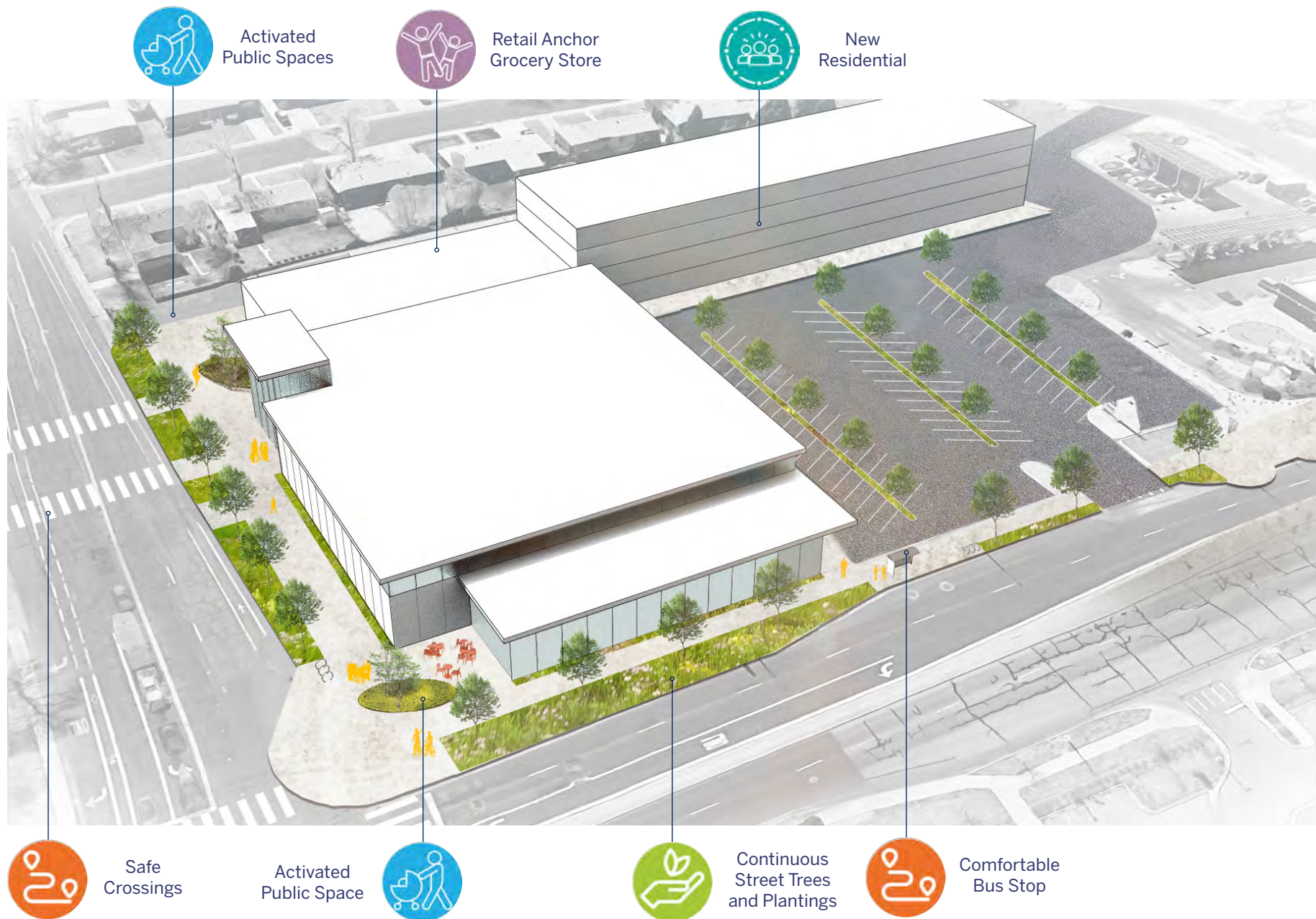
Land Use

In this first option for development, the east side of the parcel could be dedicated to a major retail anchor, like a grocery store. This tenant acts as a draw to the area, attracting a larger regional pool of customers to the 10th Street Area. The building itself acts as a gateway marker that frames the edge of new development while also providing space for gathering and activities.



Current Conditions: Wilshire Plaza, Looking South from 10th Street





Shopping Mall Redevelopment (Alternative B)

Current Conditions

10th Street today is home to multiple strip mall retail centers fronted by large swathes of parking. This parking often sits empty and could be re-purposed.

The Vision

Older strip malls are incorporated into new development and are revitalized with new housing, facade upgrades, and new public space.

Land Use

Under-used parking spaces and a car-oriented drive-through business are re-imagined as multi-family housing. The apartments have ground floor community amenities and a storefront design to respond to the urban environment of 10th Street and are served by parking on the ground floor.

The existing Wilshire Plaza shopping mall is retained with a facade upgrade that ties into the overall district branding. An inviting plaza creates a comfortable environment where visitors can relax, play, and enjoy various small business offerings, including outdoor dining.



Current Conditions: Wilshire Plaza, looking South from 10th Street





Enhanced Streetscape/Plaza (Alternative B)

Current Conditions

10th Street today feels unsafe for pedestrians and bicyclists. In some areas, such as this portion of the road near 25th Avenue, the narrow sidewalk is directly adjacent to the street, producing a very uncomfortable walking experience.

The Vision

Pedestrians and non-motorized users feel safe and comfortable walking along 10th Street and are able to enjoy opportunities for shade and seating.

Land Use

A high-quality, generous planted streetscape along 10th Street encourages walkability and contributes to creating a comfortable and human-scaled environment. Wherever the building frontages are set back is an opportunity for public space. In this envisioning of a plaza, a small retail kiosk grounds the corner, and a rain garden with native plantings provides access to the natural environment while also helping to manage stormwater.



Current Conditions: Looking East on 10th Street near 26th Avenue



Buffering Street Trees
and Planting Beds



Plaza Kiosk



Facade
Improvement
Program



First Floor
Commercial
Space



Comfortable
Seating



Park
Connections



Generous
Sidewalks



Rain Gardens
and Access
to Nature

Parking Options (Alternatives A and B)

Current Conditions

The 10th Street Area today as seen from the road is dominated by large expanses of surface parking.

The Vision

Structured parking with a shared parking strategy uses clear signage and wayfinding to guide visitors to where they want to go in the 10th Street Area. People will only have to park once and will feel comfortable going on foot to multiple destinations. The consolidation of parking allows surface parking lots to be put into productive use as developable parcels.

Land Use

Multiple options for successful parking garages exist. Garages lined with apartments are less obtrusive in the built environment and are also well-located for residents and area businesses. Models exist for parking structures built above an active first floor—a potential food hall with parking above it, for example. These models accommodate parking while also creating a more dynamic street presence.



Current Conditions: Looking Southwest on 26th Avenue





Public Art



Ground Floor Food Hall with Parking Above

Clearly Marked Shared Parking



Safe Crossings



Bike Amenities



Area Lighting



Street Trees and Planting Beds



Support for Micro-Entrepreneurs

Shared Public Spaces (Alternatives A and B)

Current Conditions

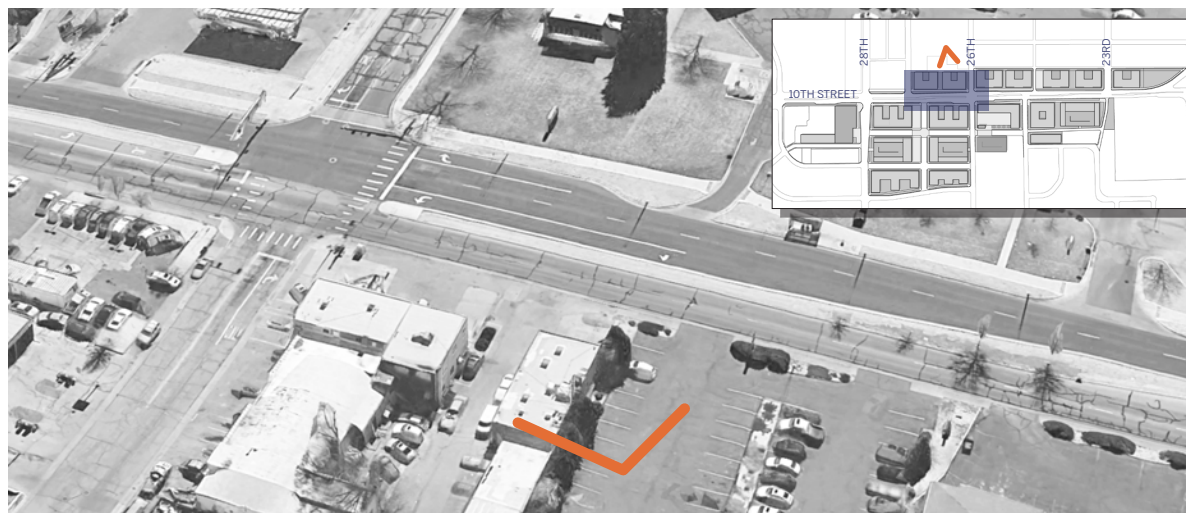
With a dearth of public space and placemaking elements in the 10th Street Area, there are limited opportunities for visitors and residents to truly relax and enjoy spending time in the area.

The Vision

By developing at a sufficient height and density, space can be set aside at different scales for meaningful public space that improves the pedestrian and visitor experience in the 10th Street Area.

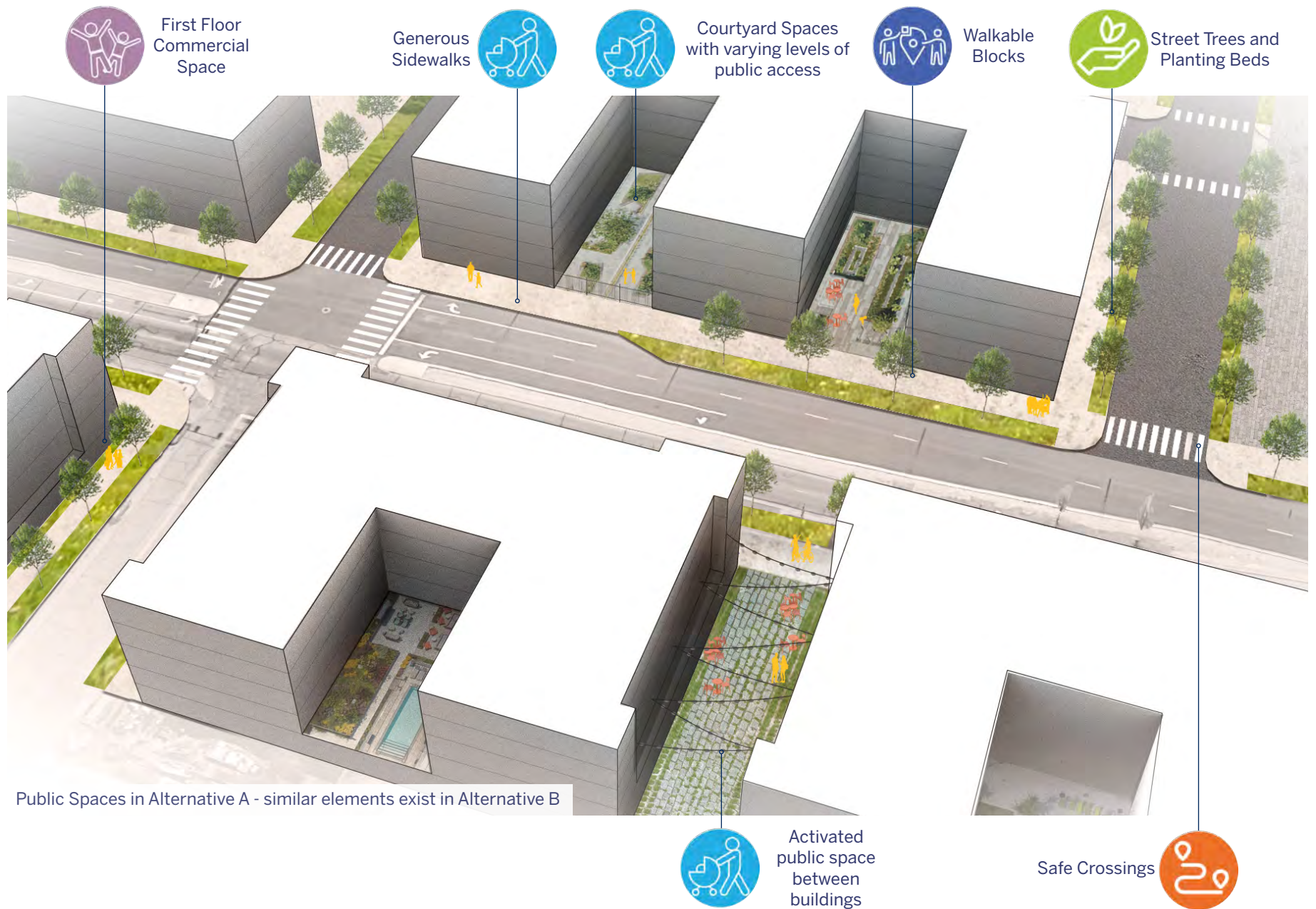
Land Use

A range of public spaces—from strategic larger plazas that are enclosed by buildings and activated with planting, furniture, and lighting to smaller spaces scattered more frequently throughout the development—provide multiple opportunities for respite and delight. These spaces may come in the form of building courtyards, which could have varying degrees of permeability to the public, serving as open building entrances or having a more secured entrance to allow for resident use. Spaces between buildings can also be activated as green alleys.



Current Conditions: Looking South on 10th Street near 26th Avenue





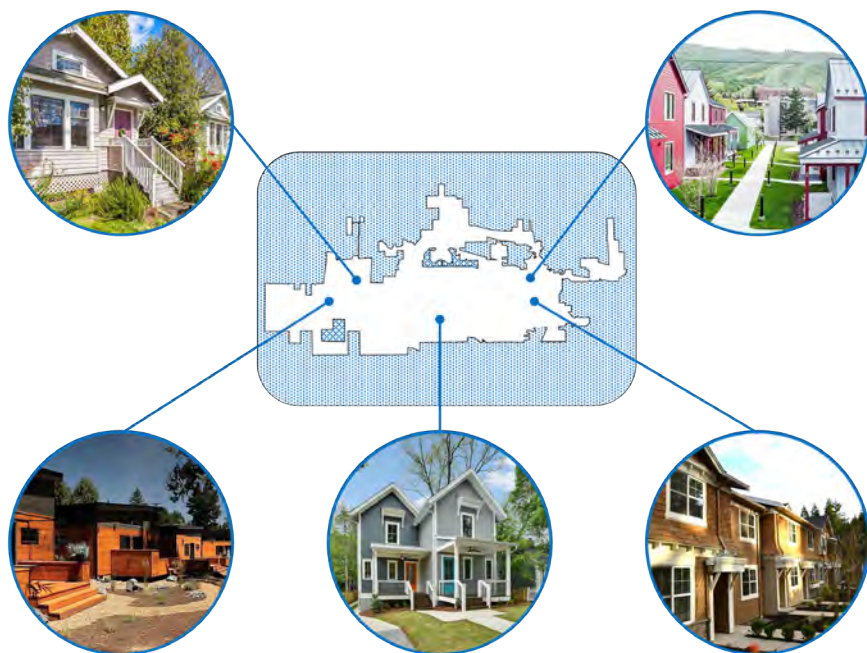
Effective design standards play an essential role in the implementation of urban infill and redevelopment and can assist in ensuring that both community and developer needs are met.

Such standards are created by directly engaging with a community to establish publicly-supported architectural styles that can be practically built (and are context sensitive) and documenting the results in a book of standards. Such a book can then be shared with developers, enabling them to move forward with approvable plans to build on vacant, obsolete, and underutilized land with the confidence that they are acting in the public interest.

When successfully done, design standards remove the “guesswork” from development; increase transparency; reduce risk, time, and cost for developers during the development approvals process; and empower the community to proactively indicate architectural styles that they prefer. Studies show that regulations like changes to the building code can impact overall development costs by over 10% (National Association of Home Builders and National Multifamily Housing Council, 2022). Design standards could streamline the approvals process and reduce some of this cost, which can translate into overall savings for the homebuyer or renter—

thereby playing a role in increasing housing affordability, while encouraging investment on urban land that can be made more productive.

The Client and Consultant Teams engaged with the public to understand design preferences on two broad kinds of infill types: small site infill on a residential lot (with a spectrum of housing that includes single-family housing, multi-unit dwellings, tiny homes, etc.) and architectural styles to inform larger-scale, mixed-use development in the 10th Street Area.



Citywide Housing Strategy: A Spectrum of Housing



10th Street Area: Larger-Scale, Mixed-Use Development

10th Street Area Design Standards Framework

Establishing a design language for the 10th Street Area Plan will guide the transition of existing buildings and future development into a more desirable and activated community. The 10th Street Area Design Standards will provide a distinct character while also providing a creative palette from which developers and architects can draw to create unique designs.

The existing character in the 10th Street Area is dominated by low-lying strip malls in conservative color palettes, modern national-chain remodels, and an eclectic mix of local businesses with a variety of architectural references from Colonial to Puebloan. This urban fabric is an auto-centric commercial corridor that favors vehicles. The 10th Street Area Plan seeks to redevelop this area into an inviting, walkable, safe mixed-use district.

As a transformative process, 10th Street Area Design Standards will differ from other guides such as Greeley's Mercado District or Downtown Design Guidelines. This document begins to explore necessary components for successful 10th Street Area Design Standards and what they might look like to set up future comprehensive standards for developers, architects, and the community. Finally, given that this is a redevelopment area, the 10th Street Design Standards should consider exceptions and recommendations for remodels of existing facades.

Site Design and Organization

Site design and organization sets the arrangement of buildings along vehicular circulation, pedestrian ways, and open space. It can define which street fronts should be active social promenades, quiet residential streets, or primary circulation routes.

Some of this layout is already defined within the area and more would likely be determined by a future development plan. When implemented, it should facilitate the development of the area into a walkable center that is comfortable and accessible as well as integrated with the surrounding neighborhoods and existing establishments.

Site design and organization standards can include setbacks, building footprints, and lot standards, which are also controlled by the Development Code (Code). Plans for future parking needs should also be considered with alternatives to the surface parking that currently encourages unwanted vehicle use.

Parking

In an urban context, traditional surface parking disrupts the rhythm of an active streetscape, uses up valuable land for development and public space, and negatively impacts the local ecology.

Structured parking—such as underground, podium, wrapped with a liner building, or a freestanding garage—is an attractive

solution; however, it adds significant cost to a project. Financial structuring will be critical during pre-development to ensure that shared garages are viable and financial gaps are accounted for. This is especially true for deeply affordable housing projects.

The 10th Street Area should prioritize alternative transportation and pursue parking reductions (or parking maximums) for Transit Oriented Development (TOD) and affordable housing to reduce these necessary costs. Guidelines can also improve surface lots through landscaping, permeable pavers, and alternative groundscape patterning and design.

Building Massing

“Massing” describes the three-dimensional blocks formed subconsciously by a building and is significant to both the human experience of the area and the programming of a building.

In tandem with a building's footprint and setbacks, massing is primarily controlled through building height and upper-level step-backs (see “Building Massing and Facade Diagram” on page 54). The building's mass can be controlled by defining a target height-width ratio. Step-backs help to create architectural interest, introduce more light into the street and building, and provide opportunities for rooftop decks. Special attention should also be paid to the perimeter of the 10th Street Area in order to taper out the more



Building Massing and Facade Diagram

dense urban core and blend into the surrounding single-story neighborhoods.

Roof Design

Additional considerations for massing include the roof design. Flat roofs may indicate a contemporary urban character while sloped roofs evoke a residential feel. Regardless of stylistic preference, design standards should support roofs to be solar-ready.

Street Level Considerations

Special attention should also be made to the street level. Design standards must accommodate priority differences among active commercial frontages (intriguing architectural elements and visibility), street-level residential units (privacy and safety), and back-of-house alleyways (function and cost-efficiency) to facilitate appropriate levels of animation and safety.

Building Height

While a maximum building height for the 10th Street Area can be set through the Code, it is also controlled by construction

type and cost. Building code regulates the maximum number of stories for different construction types, and where it triggers a new type, it makes the cost of adding just one more story more complicated. Affordable apartment construction is typically driven by costs and is typically limited to three to four stories of wood-framed construction. Massing guidelines should keep these nuances in consideration when defining maximum or minimum heights or future changes to the Code, such as for timber construction.

Facade Design and Materiality

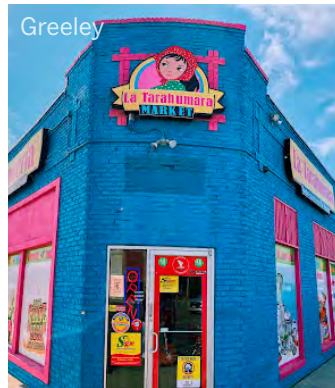
The facade and materiality is the outward identity of the building and is one of its most impactful and identifiable components. Cohesive design standards create an overall neighborhood feel but must be flexible enough to enable street-front variety while not being cost-inhibitive.

A common material palette for the 10th Street Area could provide the starting point for more prescriptive facade standards. At present, the 10th Street



Modern Western Masonry

Area lacks a common palette, so one could be defined using cues from the greater Greeley landscape. Appropriate building articulation breaks up facades and creates a human-scaled experience. Changes to building plane, window composition, balconies, projections, etc. could be required to facilitate this. These changes can add cost and thermal inefficiency in buildings, so they should be defined carefully.



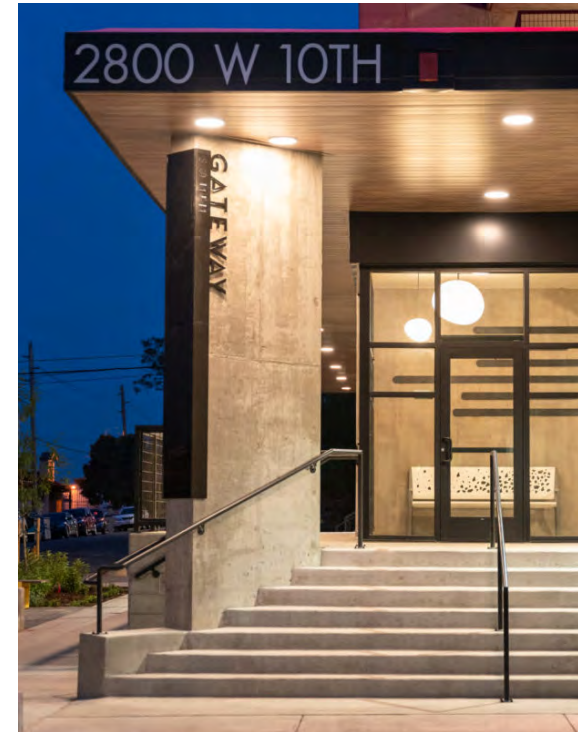
Greeley



Viva Greeley



Weld County Industrial



Building Signage at Gateway South, Denver (Workshop8)

Referencing its western heritage, brick has historically been a common material in Greeley, and its associative values of durability and stability are valuable for affordable housing projects. The Greeley Police Station on 10th Street provides a local precedent of the material. Another reference could be Greeley's rich Hispanic culture expressed architecturally through lively local mercados and restaurants, like the bright El Pueblito on 10th Street. It could be developed in the 10th Street Area through vibrant stucco and Southwest details. Or a nod to Weld County's

agricultural and industrial culture might include attractive metal siding and shed roofs.

Placemaking, Signage, and Branding

A final component to a well-planned district is signage and branding. Depending on the intent, it can be minimal and subordinate, or impactful and distinctive. Depending on execution, it can create a memorable brand or be distracting and confusing. Branding design standards should be set to complement the architectural palette and form a narrative of the 10th Street Area.

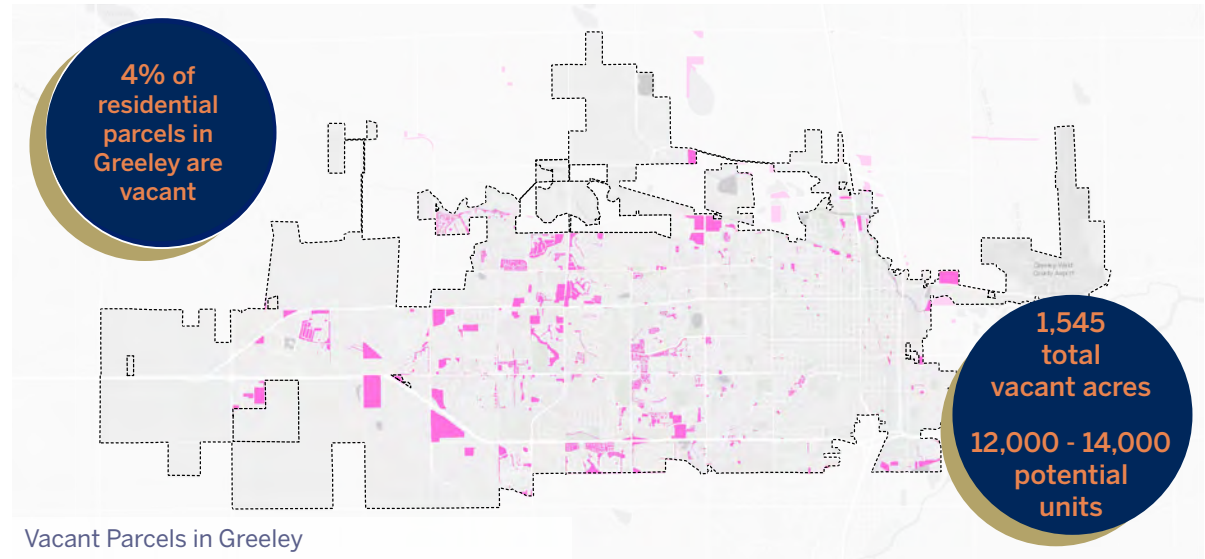
Graphics can be implemented on signage, wayfinding, and banners, while an overall aesthetic can be applied to site furnishings like benches and lighting, public spaces, or even architectural details. Prioritizing public art introduces variety and a local spirit (see Arts Street as an example on page 34). Signage is typically approved via separate permitting, which gives municipalities more control on a case-by-case basis.

Infill Types

Affordable infill housing comes in many sizes and forms, which in turn can contribute to a variety of neighborhood characters and scale. The 10th Street Area Plan contains primarily apartment (small and large) housing types, though other smaller types (detached houses, multi-unit houses, and row houses) may be applicable in limited locations or in adjacent neighborhoods.

On the whole, only four percent of parcels in Greeley are currently vacant, and most of them are in the western half of the city. Nevertheless, they represent an opportunity to explore a broader range of housing types to diversify Greeley's housing stock.

The following descriptions include both City of Greeley Code housing types as well as other commonly used terms.



Detached House Small Format

Tiny home/Accessory Dwelling Unit (ADU)

A special type of detached house, ranging in size from about 200 to 400 square feet, is a plausible option for affordable housing. Though limited in application, they are a contemporary variation on mobile homes and can be prefabricated or built on site.

Given the proposed density in the 10th Street Area, tiny homes have limited applicability, but could be implemented in the surrounding neighborhoods. Used in multiples within a planned community with shared amenities, tiny homes require project-specific zoning (Residential - Micro-Housing [R-MH]). Alternatively, tiny homes could be used on an individual basis as ADUs associated with an existing lot/owner.

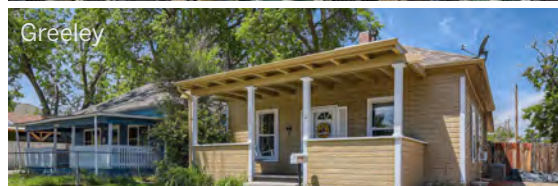


Detached House Small Format (tiny home/ADU)

Detached House or Single-Family Dwelling

Small Lot Single Family

The detached house is the most widely accepted residential housing type both culturally and by zoning. It is the prevailing housing type in Greeley, including in the neighborhoods surrounding 10th Street. However, for the 10th Street Area, detached homes are not conducive to the proposed density and character, nor are they permitted by current zoning.



Detached House | Single-Family Dwelling
(Small Lot Single Family)

Multi-Unit House or Multiplex - Two-Family Homes

A multi-unit house can include two to four units within one freestanding building and provide a slightly more efficient layout than a detached home, while maintaining a comfortable neighborhood scale. Multi-unit houses are considered attainable for “missing middle” or “gentle density” housing. The urban feel of the 10th Street core limits smaller-scale infill, but this housing type is applicable to the surrounding neighborhoods. Multi-unit houses provide an especially valuable transition from dense mixed-use to detached homes by providing incremental density increases while minimally impacting current lots.



Multi-Unit House | Multiplex

Row House Townhome

Row houses, also known as townhomes, share walls on either side, making them an efficient and orderly arrangement for affordable housing. Front porches and rear garages contribute to an attractive urban streetscape while providing independent living and ownership options for residents.

Row houses lend themselves to infill between existing buildings, either as a new cohesive residential block or in the transition area from the 10th Street area to the surrounding neighborhoods. Row houses are permitted within Mixed-Use and Residential Medium/High zoning, though they would require special review in the current commercial designation.



Row House | Townhome

Apartment - Small Lot and Medium Lot or Multi-Family Dwellings Smaller Apartments

Small (3 to 12 units) and medium (13 to 24 units) apartments provide efficiencies of scale compared to multi-unit and detached home types. These types of apartments include shared amenities and outdoor spaces for residents while fitting into a smaller-scale residential neighborhood. In the 10th Street Area, small and medium apartments could be dispersed on infill sites and in the transition toward the surrounding neighborhoods.



Apartment - Small Lot and Medium Lot | Multi-Family Dwelling (Smaller Apartment)

Apartment - Large Lot, Complex Medium, Complex Large, or Dwelling Mixed-Use / Dwelling Multi-Family

Large lot (25+ units) apartments are categorized as Complex Medium (29 dwelling units (DU/acre) or Complex Large (45 DU/acre) and permit the highest residential density as well as provide the opportunity for mixed-use commercial on the ground floor. Large apartments allow for a variety of building footprints, including blocks, L-shape wings, and U-shapes around central courtyards, to name a few. Parking can be provided on-grade (least costly), tuck under, or below-grade (most costly).

Apartments will be the primary housing type for the 10th Street Area Plan and are permitted by the current zoning. Partnering with an anchor tenant can create a transformative project that leads the redevelopment and has lasting impacts on the area.



Apartment - Large Lot, Complex Medium, and Complex Large | Dwelling Mixed-Use, Multi-Family

Zoning Recommendations

The current zoning around the 10th Street Area is **Commercial High Intensity (C-H)**, a classification that supports a range of retail, service, and employment uses at a high level of intensity and vehicular access.

While this zoning supports the current commercial and auto-oriented businesses located on 10th Street, it is considerably restrictive to a mixed-use and multimodal plan as envisioned thus far.

Under C-H, all applicable residential uses other than mixed-use dwellings require special review. Rezoning to a **Mixed Use District (MU-H)** would still permit many of the existing commercial uses while also allowing for residential uses, including multi-family and row house dwellings. MU-H also has different development standards that better support an urban environment.

Just off of 10th Street, the zoning abruptly changes to residential. While not technically

located within the 10th Street Area, these neighborhoods are closely tied to the plan as key user demographics, and zoning impacts the ability to integrate with and remain distinct from the 10th Street Area.

Currently, the neighborhood to the north is zoned as **Residential Low (R-L), Medium (R-M), and High Density (R-H)** and hosts primarily single-family dwellings with small multi-family. The neighborhood to the south is entirely R-L, which permits only single-family dwellings.

Upzoning to at least R-M a portion of these neighborhoods that are immediately adjacent to the commercially zoned area along 10th Street could help with achieving the objectives identified within the Greeley Comprehensive Plan, including “complete neighborhoods” (GC-6.1) and a more diverse housing stock (HO-1). R-M is intended to “transition to complimentary

and supporting non-residential uses” (Greeley Development Code, Table 24-4-1) and would allow for more “missing middle” housing like two-family and row house dwellings while maintaining the existing residential character of the neighborhood.

Another zoning district more applicable to the surrounding neighborhoods is **Residential Micro-Housing (R-MH)**, which are project-specific zoning applications intended for small-format housing (manufactured/mobile homes, tiny homes) in a planned community with shared amenities. There is currently a small mobile-home park just north of 10th Street that is grandfathered in under the previous Code as Residential-Mobile Home. Any new proposal for an affordable or market-rate tiny home village would need to meet current Code requirements for rezoning. Individual tiny homes are permitted as ADUs under R-M/H, C-L/H, and MU-L/H.



This Plan represents a true intersection of what is practically viable, fundable, and implementable, with genuine community benefits. These goals are within reach through public-private partnerships.

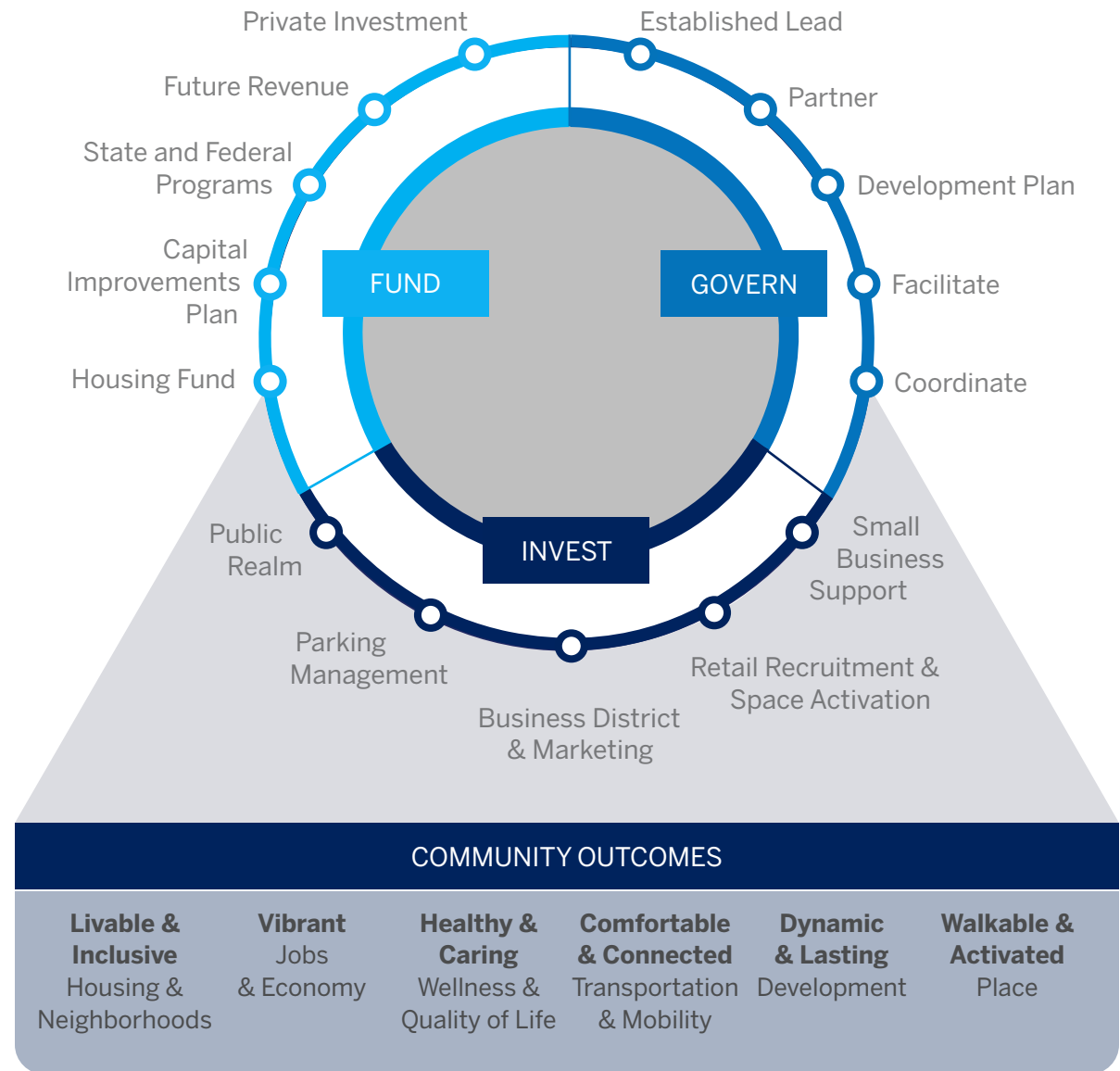
Development decisions such as height, unit mix, density, parking, and circulation have been envisioned in a way that would make them privately financeable. This, in turn, opens the door for public participation and contribution to ensure that policy goals such as housing attainability, transit access, small business development, and meaningful public space are integrated into the development, creating a vibrant and inclusive district near the heart of Greeley. Given the complexity of such an undertaking, implementation will require a healthy balance of funding, governance, and investments from a number of public, private, non-profit, and institutional entities.

An effective implementation strategy can help overcome barriers to development, resulting in a project that is viable, attracts private investment, and provides public benefits that are consistent with community goals. Such an undertaking will require more than the mere implementation of piecemeal projects—it will require a framework that incorporates three key actions: 1) Fund, 2) Govern, and 3) Invest. This implementation framework is intended to support investments in the public realm, real estate, small business,

and people in order to generate net positive community outcomes. It is critical that continual and consistent evaluation of community outcomes is undertaken and that systems are in place to ensure accountability and community feedback.

Setting up a framework of financial support, effective governance, and an investment in the future of Greeley is essential to the success of the 10th Street Area. These three elements are interdependent and not necessarily linear in their application. For example, in most cases, specific interventions such as the implementation of programs, policies, and projects cannot occur without funding or creating new organizational structures or partnerships. In other cases, funding sources may already be available (such as Low-Income Housing Tax Credits), but a specific project is needed to secure funding, such as a mixed-use development with affordable housing units.

Given the scale of the project, which includes many different commercial property owners, a number of incremental implementation steps will be necessary. Because this will require many years—likely a decade—of dedicated effort on the parts of both the public and private sectors, the strategic goals and objectives laid out in this report should be seen as adaptable to changing circumstances and periodically reevaluated.

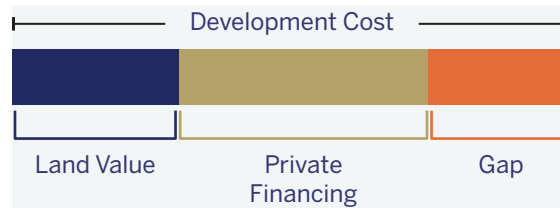


Fund

This development concept and vision is able to be developed primarily through private investment. It may be tailored to accommodate a variety of incentives and policies that accomplish affordable rental and ownership goals.

Such a combination of economic and policy goals requires true partnerships between the public and private sectors, as well as a variety of funding sources and strategies. Real estate market and economic feasibility analyses conducted to inform the concept plan yielded the incredibly positive conclusion that the area could receive significant amounts of private investment to improve the quality and functionality of the built environment. However, inclusion of affordable and attainable housing, accommodating existing businesses in higher-quality spaces, and ensuring a high-quality public realm that can be enjoyed by the entire community will also require gap financing and policy interventions.

There are a number of funding tools available that could help facilitate the redevelopment of the 10th Street Area into a vibrant, authentic, and inclusive district that would be among Greeley's greatest assets and points of pride. Such funding sources need to be planned for at the earliest stages of development implementation for the 10th Street Area.



Attract Private Investment

At the top of any list of contributors to development is private finance, which typically provides the majority of total dollars in even the most complex public/private partnerships. In many instances, a development initiated by the public sector seeks to provide public benefits that cannot be provided through private finance alone, so the public sector provides “gap” financing to fill any void that exists in a privately financed deal in order to maximize community benefit.

Generally, public dollars are limited, so the more economically viable a project is—that is, the less gap funding required—the further public dollars can be stretched to add to public benefit. The conceptual plan provided in this document has made every effort to provide development at a height and density that will optimize opportunities for public-private partnerships that maximize public dollars. As the development plan gets refined, close attention will need to be paid to how public-private financial gaps are impacted.



Estimate Future Revenue

The City has tools available to capture the future fiscal revenues driven by redevelopment, which can be used to serve the construction of infrastructure and other items that are necessary to facilitate real estate development. In certain instances, future taxes generated by real estate investments can be used to finance current costs of facilitating those improvements. This mechanism is referred to as Tax Increment Financing (TIF). The 10th Street Area is currently part of the existing 10th Street TIF District.

With TIF, the capture of taxes resulting from increased assessed value (the increment) is used to pay debt service on bonds issued to fund selected costs of development. Similarly, Public Infrastructure Financing (PIF) can be levied to provide additional sales tax revenue, which can be borrowed against to fund infrastructure. A logical early step for the City would be to complete a fiscal impact study to estimate future revenue streams that could be created by development in order to understand the scale of additional funding that could be contributed to actualize a development vision.



Leverage State and Federal Programs

While state and federal programs to facilitate urban redevelopment are in short supply, there are programs that, if focused on a small number of development areas within a city, can have an outsized impact. In most cases, tax credits represent the best available up-front funding resource to bridge the real estate development feasibility gap, particularly for affordable housing through the Low Income Housing Tax Credits (LIHTC) program.

In addition, New Markets Tax Credits (NMTC) is a federal program designed to create incentive and investment programs to support businesses in low-income communities. If leveraged properly, NMTC could contribute to a capital stack that helps underwrite ground floor retail spaces that are affordable to local businesses. Funds from the HOME Investment Partnerships Program (HOME) may also be used for affordable housing, although this program is extremely limited. Brownfield tax credits and grants may be sought to defray costs where land has been contaminated by previous uses.



Establish a Capital Improvements Plan

Every city allocates revenue to the development and maintenance of key infrastructure, including roads, utilities, and parks. The City should create a plan for the 10th Street Area that contemplates the development concept provided in this plan, identifying realistic contributions that it could make to city systems and infrastructure that would positively impact this site. In some instances, improvements may already be planned as replacements of dated infrastructure, or improvements—for example, to the stormwater system. Other agencies should be included to broaden the coordination of investment.

Capital improvements could facilitate the creation of new internal roads and circulation, greenway connections, infrastructure upgrades, and park development, programming and/or maintenance. Such contributions could be made as part of a public/private partnership in exchange for public benefits.



Initiate a Housing Fund

Given the intense need for affordable/attainable housing, and the shortage of state and federal tools to address the problem at scale, many cities and regions are creating new tools aimed at addressing affordable housing. One of the most common is a housing fund, which provides grants and/or low interest loans in exchange for the provision of permanent affordable housing.

While such programs have existed in the past, they have only recently attracted interest from residents, philanthropy, and business as an important tool to capitalize. Efforts are underway to seed a new housing fund in the City and partners will have to be identified to provide meaningful dollars (likely tens of millions) to have a large-scale impact. With its transit and job accessibility, the 10th Street Area would make a great pilot project for use of housing fund dollars as part of a capital stack to improve affordability.

Govern

The implementation of the strategic framework presented in this report will rely on strong leadership, strategic partnerships, and dedicated capacity to ensure that incremental investments are best positioned for long-term growth. In addition, policy and regulatory tools need to be put in place, existing businesses need coordination for new facilities or relocation, landowners need communication for timing and phasing, and more detailed development planning is required to ensure success.



Establish the Lead

It is critical that there is not only a steward of this plan, but that all interested parties are aligned. Without a central voice or entity that speaks for the collective interests of the community, there is a risk that individual efforts will have less of an impact or even conflicting outcomes. This leadership could take on a few different forms, two of which are listed here:

- **City of Greeley:** The Department of Housing and Homeless Solutions would coordinate development partnerships. This department includes dedicated, full-time staff with the ability to coordinate and communicate among developers, property owners, businesses, and residents, and works closely with other related City departments.
- **Community Development Corporation (CDC):** A dedicated CDC, a 501(c)3 organization, can often balance housing, economic development, and human service needs in a community, and also act as a conduit for public, private, and philanthropic funds. The CDC could pursue housing subsidy sources for new construction, rehabilitation, and homeowner assistance. The challenge is that CDCs take time to develop capacity.



Partner

Given the nature and ambition of the Area Plan presented in this document, numerous partnerships will be required to achieve community goals, including the community itself in the form of neighbors and resident groups. Within the City, it will also require strong interdepartmental alignment among several related departments. Potential partners include:

- **Housing Authority:** A key partner with whom strategic alignment is critical
- **Local Affordable Housing Developers:** Including for-profit, non-profit, and faith-based entities, such as Habitat for Humanity, High Plains HDC, and other valued contributors
- **Philanthropy/Institutions:** Identification of funding partners with whom affordable housing and small business development are aligned interests
- **State and Federal Agencies:** Through whom to seek grants and tax credits, in exchange for program compliance
- **Private Developers:** Developers with access to private capital to align these partners and optimize the mix of affordable and market rate development



Create a Master Redevelopment Plan

The Concept Plan alternatives in this document provide an economically realistic and community-supported vision for mixed-use and mixed-income redevelopment of the 10th Street Area. A more detailed effort is needed that aligns sources and uses; revises the development concept in ways that maintain the vision, guiding principles, and economic viability; and explores funding, design, partners, and regulatory policy in greater detail.

Such an effort, one that reconciles detailed economics with design, can be referred to as a Master Redevelopment Plan or, in its most detailed form, pre-development.

This type of effort would involve sufficient detail to increase the likelihood that the community-supported vision is realized, as opposed to a set of piecemeal development transactions that do not meet Greeley's goals.



Facilitate

In order to ensure quality development that achieves policy goals established by the community, the following facilitation and regulatory tools can be considered:

- **Overlay District:** A zoning category could be created to ensure development that is done with quality building materials, appropriately scaled, and linked by an excellent connectivity network of streets, sidewalks, and bike facilities. Such a zoning designation could also offer benefits, such as a relaxation of height requirements in exchange for a minimum assembly acreage.
- **Design Standards Framework:** While a formal part of a housing infill strategy, design regulations could be included as part of a zoning overlay to ensure that architecture reflects community values.
- **Set-Asides:** To ensure a truly mixed-income community, a developer of market-rate housing could be required to "set aside" between 10 and 20 percent of all housing units as permanently affordable. The amount and level of affordability could be further increased in a development agreement based on the City's contribution to infrastructure improvements.



Coordinate

Undertaking urban redevelopment over a period of years will span different phases and numerous property owners, business operators, political administrations, intergovernmental alignments, and public-private partnerships, as well as engaged residents. Full-time capacity will be required to stay in close communication with all of these entities.

Great energy will be required in the early phases of the project to share the intent and benefits of the plan with current businesses and land owners while simultaneously aligning the funding, expertise, and support that is necessary for such an undertaking. This requires multiple skill sets and almost certainly more than one dedicated and experienced full-time person employed with the City, or as part of a community development corporation.

Invest

Through a phased approach, this concept enables redevelopment opportunities without displacing a single business or resident. Improving the economic conditions for the 10th Street commercial corridor requires a blend of place-based investments, catalytic real estate development, and community-wide policies and programs to ensure that future growth is equitable and sustainable for current and future businesses and residents.

After decades of slow decline in the condition of older suburban strip malls in the area, changing the trajectory of 10th Street will require incremental and long-term interventions and involvement. At the same time, interest and investment in core urban neighborhoods that are close to jobs and transit have surged nationally in recent years, which offers renewed opportunity for the Area.

The common threads in urban redevelopment are investments in the public realm, real estate, small business, and people, including community-based services related to education, health, safety and quality of life. These investments will require alignment in funding and governance, as described previously. Using these approaches, there is a series of actions or projects over the short, medium, and long terms that are needed to implement the Area Plan.



Support the Public Realm

Whether it is streetscape, parks and plazas, greenways, or streets and utilities, the City must create a realistic plan for what it can contribute to the development and maintenance of newly created public spaces and infrastructure. Money could be budgeted as part of a capital improvements plan, or the City may pursue a public finance strategy that leverages anticipated increases in future revenue and/or anticipated increases in economic activity.

Sources and uses should consider what costs and financial gaps exist on the private side of the development, and how other requirements (such as heightened architectural quality or affordable housing set-asides) impact project viability. Because funding is finite and development is certain to be phased, a plan for phasing and prioritizing investments that is closely tied to the development concept and plan is essential.



Focus on Parking Management

Though key strategies include enhancing the pedestrian environment and investing in areas around transit, the development of new retail space and success of local businesses will be dependent on drawing from a broader customer base with the vast majority of customers arriving by automobile. Parking needs to be available, visible, and accessible, but appropriately placed to not create conflict with pedestrian activity.

A successful parking management plan would identify areas for shared parking and a limited number of high-turnover, on-street spaces for fast consumer activity. A successful phased approach would likely involve the creation of shared surface lots that are near businesses but not in full view, which would be converted into structured parking with liner buildings in the future. While market rate and workforce housing development can often fund the majority of needed parking through private finance, the portion of a garage that is intended to serve business will almost certainly require public finance for construction and ongoing management.



Implement a Business District and Marketing

Vibrant retail districts and corridors are most successful when they serve local residents while also drawing a customer base from outside of the community. A marketing and branding strategy that promotes locally-owned businesses and authentic culinary offerings could increase revenues for existing businesses and provide greater revenue for improvements.

A seamless integration of branding and wayfinding further helps businesses in welcoming new visitors by making it easy to find parking, park once, and find/identify the experiences they seek. The creation of a business district would help businesses communicate with a single voice, work toward a shared vision, and make collective contributions to the marketability of the public realm/common area.



Prioritize Retail Recruitment and Space Activation

Successful retail districts must maintain a healthy balance of organic small business growth and targeted recruitment of national retailers to diversify service offerings. Smaller-scale local businesses will need financing, resources, and technical assistance, while larger-scale retail development with anchors and in-line tenants can bring more customers and provide economic activity that can be captured and used to fund improvements to an area or district. Some anchors, such as a food hall or grocery store, can serve local residents and small businesses while also bringing in customers from a broader market area.

Programming and space activation can have a profound impact on the perceptions of a community and create a sense of vibrancy. Some of these interventions can include public markets, performance, public art, and other community gatherings that can occur in public spaces, serving as authentic expressions of culture while also benefiting businesses by increasing visibility and pedestrian traffic.



Provide Small Business Support

Development and placemaking alone are not sufficient to support local businesses. There is also a need to better harness local talent and ensure that existing local businesses and aspiring entrepreneurs have the resources to flourish. Programs that are necessary for upward economic mobility include workforce development, capacity building, and neighborhood-wide community development efforts:

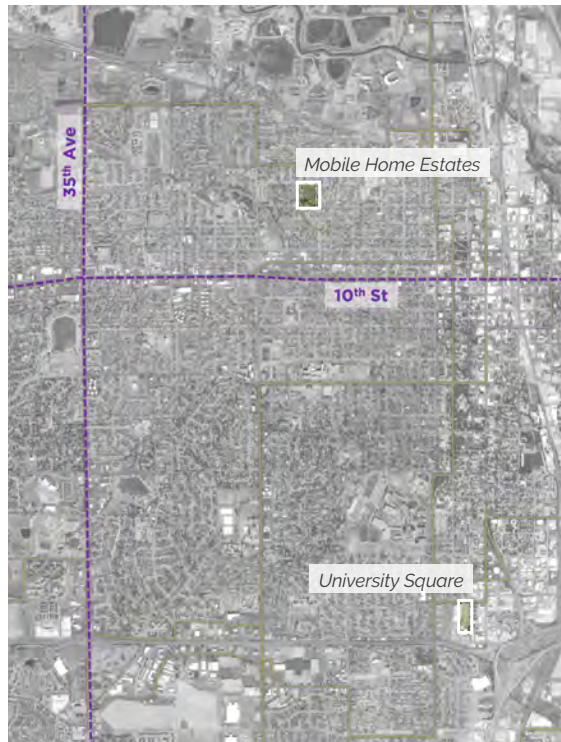
- **A business incubator/small business assistance center** supports a local entrepreneurial ecosystem and has a significant impact on the community's long-term economic growth.
- **A small business development liaison** can help link businesses to citywide resources or continue implementation of a broader district strategy.
- **Workforce development resources** ensure that area residents have the education and training necessary to fill emerging employment opportunities.
- **Resources for facade and signage upgrades** help businesses further integrate into a cohesive district brand to increase overall business activity in the district.

Infill Site Housing Types

The Steering Committee, Client Team, and Consultant Team focused in on the east side of the city, particularly the northeast quadrant.

This area of the city has a handful of undeveloped lots that are more appropriate for the development of smaller, context-appropriate, infill housing types (e.g. row houses, multi-unit houses, etc.) than for a catalytic area plan.

Two of the sites that were reviewed during the site selection process are highlighted here.



University Square

3.0 acres

Zoned Commercial High Intensity (C-H)

Recommended Housing Types

- Apartment - Small Lot and Medium Lot or Multi-Family Dwellings

Additional Recommended Uses

- Live-work units
- Townhomes (for ownership)
- Mixed-use (multiple sizes)



Mobile Home Estates

2.9 acres

Zoned Residential High Density (R-H)

Recommended Housing Types

- Detached House Small Format
- Detached House or Single-Family Dwelling
- Multi-Unit House or Multiplex
- Apartment - Small Lot & Medium Lot or Multi-Family Dwellings

Additional Recommended Uses

- Townhomes (for ownership)



Design Standards Examples

Downtown Urban Design Standards and Guidelines (Denver, CO 2021)

The urban design standards and guidelines for Downtown Denver were developed to bring forward the vision established previously by a number of neighborhood plans and to set expectations for the design quality of new development.

Topic areas include: Site Organization, Building Mass and Scale, Facade Design and Site Details, Private Streetscape Design, Neighborhood Specific Design, and Building Signs.

Each topic area follows a similar format that includes:

- **Intent Statements** that define the objectives for each topic
- **Design Standards**, which are criteria to meet the intent statements that use the term “shall” to indicate that compliance is expected
- **Design Guidelines**, which are additional suggestions on ways to meet the intent statements

Photographs and illustrations visually depict the topic, but are not intended to depict the only option(s). Early chapters focus on standards and guidelines that are applicable to the Downtown District as a whole, while additional chapters address specific neighborhoods.

How to Use This Document

Overview
Policy & Regulatory Foundation
How to Use This Document
Design Review Process
Submittal Requirements

Sample DSG Format

To increase clarity and ease-of-use, the individual design standards and guidelines pages in Chapters 1-6 use a typical format. Below is a sample page to indicate elements of the typical format.

Facade Articulation Windows & Transparency

Articulation and transparency of all faces of a building are important, but those facing streets, Public, and Open Space are most critical. Transparency in the building facade adds visual interest, contributes to a sense of liveliness on the street, and improves safety through natural surveillance. At a building's Lower Street, a series of clear and unobstructed views both into and out of buildings enriches the urban experience for pedestrians and building occupants alike.

Intent Statements

3.E To provide a minimum level of transparency on all facades

3.F To ensure that building activities are visible from the Public Realm and vice versa

3.G To ensure that building facades do not cause glare or negative impacts to the Public Realm

3.H To encourage well-detailed fenestration and curtain wall designs

Design Standards

3.20 Street Level transparent facade areas shall be located to provide visibility into the Street Level Active Uses required by the Denver Zoning Code.

3.21 Street Level windows shall use transparent glass with a maximum visible light reflectance of approximately 0.15 to allow pedestrians to view the activity within the building.

a. Clear glass for wall openings, i.e., doors and windows, shall be used along all Street Level facades for maximum transparency, especially in conjunction with retail uses

b. Dark tinted, reflective or opaque glazing is not permitted for any required wall opening along Street Level facades

c. Required transparency at the Primary Street Facing Facades shall not be blocked by signage, landscaping, or displays

d. Highly Reflective or mirrored glazing shall not be allowed

DENVER ZONING CODE TRANSPARENCY REQUIREMENTS

The Denver Zoning Code requires a minimum percentage of Street Level transparency (the total area of all windows or permitted openings along the Street Level facade) to provide visual interest, and activate the street and sidewalk. The design standards and guidelines in this section are intended to build on Denver Zoning Code Street Level transparency requirements.

Legend:

- A** Topic or Subtopic is also identified in the heading.
- B** Location of topic or subtopic within the chapter.
- C** Narrative of the design goals for each topic or subtopic.
- D** Intent Statements establish the objectives to be achieved for each topic or subtopic and may also be used to determine the appropriateness of alternative or innovative approaches that do not meet specific design standards.
- E** Design Standards set prescriptive criteria for achieving the intent statements. They are numbered by chapter for reference and use the term “shall” to indicate that compliance is expected.
- F** Additional Information is provided as a bulleted list beneath some standards and guidelines to describe more detailed concepts or appropriate approaches and strategies, but is not intended to be an exhaustive list or set of requirements.
- G** Sidebars provide background information on the design topic or relationship to the Denver Zoning Code.
- H** Photographs and Diagrams visually describe the standards and guidelines.
- I** Underlined Text indicates cross references to related document topics and website hyperlinks (in PDF version). Capitalized Text indicates defined terms in the glossary..

DOWNTOWN URBAN DESIGN STANDARDS AND GUIDELINES

Introduction 11

Sample page: typical structure for a design standards and guidelines page

Facade Articulation

Thoughtful articulation that is coordinated with overall massing helps divide a large building into smaller modules that promote an engaging Human Scale pedestrian environment. Facades that incorporate changes in plane, materials, and rhythm add interest and texture, as opposed to long, repetitive or blank facades. Coordinating architectural details and articulation with interior uses further reinforces the clarity of the urban environment.

Intent Statements

- 3.A** To further refine building form, massing and proportions through facade articulation
- 3.B** To promote well-detailed Facade designs with texture and depth that provide a sense of Human Scale
- 3.C** To ensure a cohesive Facade design
- 3.D** To minimize blank or unarticulated Facades

Design Standards

- 3.01** All Primary Street-Facing Facades, Visible Facades, and Tower Facades shall incorporate articulation techniques that reinforce building massing techniques.
Appropriate articulation techniques include:
 - a. Vertical and horizontal projections/banding
 - b. Vertical and horizontal recesses
 - c. Window composition/design
 - d. Balconies or terraces
 - e. Continuing articulation techniques used on the Lower Story Facade onto the Upper Story Facade/Tower Facade that express a sense of depth
- 3.02** Articulation techniques used on a Lower Story Facade shall continue around the corner of an Alley or Private Access Drive for approximately 50 feet.

Facade Articulation
Windows & Transparency
Exterior Building Materials
Balconies
Design Details for Infill Development
Adaptive Reuse and Building Additions

Street Level Facade Design & Uses
Building Entries
Setback & Open Space Design
Awnings & Canopies
Structured Parking Facades
Building Rooftops
Fences, Walls, & Screens



56. Vertical projections, pilasters, columns, and other elements can create a rhythm on the facade.



57. Horizontal projections, material banding, color changes and other elements can create a rhythm on the facade.

Golden Triangle Pedestrian Lighting

The Golden Triangle uses consistent pedestrian lighting elements to establish a unifying streetscape appearance. While the original fixtures are no longer manufactured, the following standards and guidelines describe how contemporary approaches can maintain a similar design theme and visual characteristics.

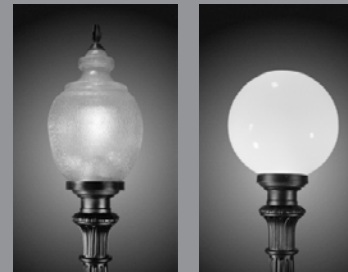
Intent Statements

- 5.AH** To establish uniform pedestrian lighting character
- 5.AI** To highlight specific areas with distinct features.

GLOBE AND ACORN FIXTURES

In lieu of a direct specification, acorn-style and globe-style pedestrian lighting should meet these general criteria:

- White or clear globe/acorn shape luminaire (note, luminaire shall incorporate internal refractors for Dark Sky compliance)
- A decorative luminaire base with an integral holder/ballast housing
- All hardware should be stainless steel and tamper resistant.
- The ballast and socket assembly should be furnished with a quick disconnect plug and mounted on a removable ballast plate.
- UL listed and labeled as suitable for exterior use and wet locations.



Golden Triangle Introduction
Acoma Street
Broadway & Lincoln Street
12th Avenue
11th Avenue & Bannock Street
Pedestrian Lighting

Design Standards

- 5.84** Acorn-style fixtures shall be used in most locations throughout the Golden Triangle, except as otherwise noted below.
- 5.85** Globe-style fixtures shall be used in the following locations:
 - a. Speer Boulevard
 - b. Acoma Street north of 9th Avenue
 - c. 14th Avenue
 - d. Denver Parks
- 5.86** Pedestrian light fixtures shall be Dark Sky compliant and designed to minimize light pollution.

Design Guidelines

- 5.87** Pedestrian lighting should be installed at least fifty feet (50') apart. Note, sixty to one hundred fifteen feet (60'-115') separation is recommended.
- 5.88** Post height for pedestrian light fixtures should be consistent with existing posts within one block. In the absence of other reference lighting, post height should reflect the width of the Right of Way and be taller as the Right of Way increases.
- 5.89** Post color should be consistent with existing posts within one block. In the absence of other reference lighting, post color should be black.

Design Guidelines for Retail and Other Ground-Floor Uses in Mixed-Use Affordable Housing Developments (New York, NY 2021)

This project is a codified set of guidelines for developers and design professionals that captures best practices for ground floor retail in mixed-use affordable housing developments.

While this document outlines guidelines and not standards, they are still envisioned to inform the criteria for requests for proposals, the evaluation of development proposals, and the review of architectural plans.

The document outlines a set of nine “critical success factors” (e.g. a well-defined retail presence, separate from residential entry). These factors are addressed by six key components of ground-floor design (e.g. Facade and Signage).

Each section focuses on a ground-floor component and outlines the key objectives for the topic area, the elements that contribute to effective high-quality design, and related references to explore further.

Laying the Groundwork

Design Guidelines for Retail and Other Ground-Floor Uses in Mixed-Use Affordable Housing Developments

ELEMENTS

1.1 Glazing/Fenestration

Making the facade as transparent as possible allows for a two-way visual exchange between the exterior and interior. Occupants in the retail space see what is happening on the street and pedestrians outside see the activity and offerings in the retail spaces. This symbiotic relationship benefits both patrons and retailers.

>
p 80-81 Appendices
When privacy is needed for specific uses, refer to the PRIVACY STRATEGY DIAGRAM in the TENANT LEASE CHECKLIST.

- 1 Provide continuous ground-to-ceiling glazing, with integral doors. Where ground-to-ceiling glazing is not possible, meet a target of 70% transparency between 2 feet and 10 feet above the sidewalk.
- 2 Coordinate glazing zones with the building's structure, louvers, and other base elements.
- 3 Design glazing to meet NYC code regulations as well as any State and Federal rules that apply. For projects located within Federal Emergency Management Agency (FEMA) flood zones, alternative approaches should be considered to maximize transparency while following building regulations.



MINIMUM 70% CLEAR GLAZING BETWEEN 2 AND 10 FEET

CASE STUDY

CRITICAL SUCCESS FACTOR 1 MAXIMUM FACADE TRANSPARENCY



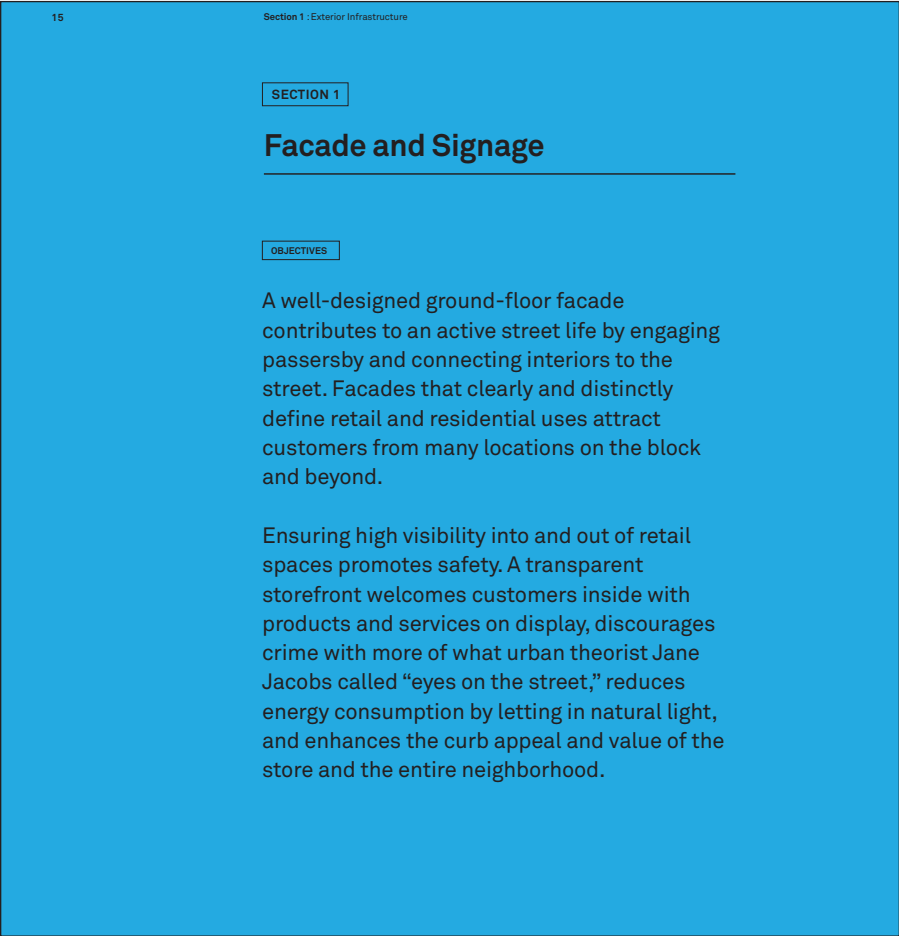
501 W. 51ST STREET
501 W. 51st Street provides 31 affordable units to long-term residents of New York's Clinton/Hell's Kitchen neighborhood. The project comprises two parts: a historic renovation and a new addition. The six-story building includes two small retail spaces, each occupied by a local business. The commercial spaces are glazed to the maximum extent allowed by the historic structure. To achieve transparency, the facade features two sets of windows above a 2-foot baseboard. The first set of windows is aligned with the top of the doorway. The second set of glazing is inserted between the door and cornice. Signage pasted onto the windows, while not ideal, is minimal and discreet. The result is two cheerful and modern retail spaces that blend old and new.

DEVELOPER
Clinton Housing Development Company (CHDC)
DESIGN ARCHITECT
Edelman, Sultan, Knox, Wood / Architects
LOCATION
New York, NY

Sample page: guidelines for glazing and fenestration with a case study example



Sample Page: Section Introduction visualizing key elements



Sample Page: Section Objectives

SUCCESS FACTORS																				
	FACADE AND SIGNAGE			EXTERIOR ACCESS AND STREETSCAPE			INTERIOR ARCHITECTURE		MECHANICAL	ELECTRICAL				PLUMBING AND FIRE PROTECTION						
SUCCESS FACTORS	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4	FACTOR 5	FACTOR 6	FACTOR 7	FACTOR 8	FACTOR 9	FACTOR 9				FACTOR 9						
Elements	Clear glazing: 2' to 10' above sidewalk	Separate, well-defined retail entry	Blade signage in addition to signage band	Exterior building down-lighting	Slab at lowest access point for future on-grade entries	Peripheral amenities (bike racks, benches)	Ceiling height: floor to slab	Organized column grid for flexible layout	Ventilation System	Cooling	Heating	Normal Electrical Service	Tenant Disconnect Switch	Emergency Power	Fire Alarm	Domestic Water	Domestic Hot Water	Sanitary Waste and Ventilation	Grease Waste	Gas
Base Retail Space (un-programmed)	70%	✓	✓	✓	✓	✓	14'- 4"	✓	Minimum code fresh air, WC exhaust	✓	✓	✓	✓	Lighting only	✓	✓	Instantaneous	Tenant WC, equipment	✗	✗
Clothing & Accessories Store	70%	✓	✓	✓	✓	✓	14'- 4"	✓	Minimum code fresh air, WC exhaust	✓	✓	✓	✓	Lighting only	✓	✓	Instantaneous	Tenant WC, equipment	✗	✗

Sample page: matrix of design guidelines associated with critical success factors applied to different types of retail spaces

Glossary of Terms

Accessory Dwelling Unit (ADU)

A dwelling unit that is secondary and accessory to a principal dwelling unit and on the same lot. Accessory dwelling units may be in the same building as the principal dwelling unit (basement or attic apartments) or in a detached accessory structure (Greeley Development Code, Section 24-402.b).

Affordable Housing

According to the federal government, housing is affordable when rent or mortgage payments (principal, interest, taxes, and insurance) plus utilities are no more than 30 percent of the occupant's monthly income. For instance, an apartment unit for a retail sales worker earning an annual wage of \$32,000 needs to cost less than \$800/month for it to be considered affordable to them.

Area Median Income (AMI)

A metric calculated by the U.S. Department of Housing and Urban Development (HUD) to determine the income eligibility requirements of federal housing programs. Greeley's AMI is \$89,580 (adjusted for the city's average household size of 2.74 persons). This number differs from median household income, which is reported by the Census and related data sources. The current median household income in Greeley is \$65,000 (Esri 2022).

Attainable Housing

Attainable Housing is an umbrella term that reflects the many aspects of a home that make it suitable for a household. Attainable Housing is appropriate in:

- Size (bedroom count, square footage)
- Type (detached home, townhome, apartment)
- Quality (healthy, safe, in good repair)
- Affordability (within the price range for the household income)
- Tenure (rental, for-sale)
- Location (near jobs, school, services)

Generally, it is a more inclusive term to describe affordability at a range of different area median incomes.

Brownfield

A property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant (U.S. EPA).

Building Articulation

The detailing of the building facade to emphasize different architectural elements (like windows, balconies, entries, etc.) and help divide large buildings into smaller identifiable pieces. When employed on building levels closer to the ground floor, building articulation contributes to a more varied and human-scaled streetscape.

Building Step-Back

A design element that is typically applied to the upper story of a building where any portion of a building above a certain height is required to be pushed in toward the center of the property. This design element helps to reduce the overall mass of the building, emphasize the ground floor and lower story elements, and connects the building to smaller structures in the surrounding context.

Community Development Financial Institution (CDFI)

Lenders with a mission to provide fair, responsible financing to rural, urban, Native, and other communities that mainstream finance doesn't traditionally reach (Opportunity Finance Network).

Gentle Density

A gradual or slight increase in the number and variety of homes in existing single-family detached-home neighborhoods. Housing options like multiplexes and row houses can offer additional housing options without significantly changing the character of the neighborhood.

HOME Investment Partnerships Program (HOME)

A federal block grant to states and local governments to create affordable housing for low-income households. Funds can be used for a range of activities, including building, buying, or rehabilitating affordable housing for rent or

homeownership or providing direct rental assistance to low-income households (U.S. Dept. of Housing & Urban Development).

Liner Buildings

Residential or retail structures, generally narrow in depth, that are used to shield a more unsightly building or building use, such as a parking garage or building service area.

Low Income Housing Tax Credit (LIHTC)

The LIHTC program subsidizes the acquisition, construction, and rehabilitation of affordable rental housing for low- and moderate-income tenants. Since the mid-1990s, the LIHTC program has supported the construction or rehabilitation of about 110,000 affordable rental units each year—over 2 million units in all since its inception (Tax Policy Center Briefing Book).

Missing Middle

Missing middle refers to the range of housing types that fit between single-family detached homes and mid-to-high-rise apartment buildings. Examples include duplexes, triplexes, townhomes, and more. Used in this context, “middle” references the size and type of a home, relative to its location—in the middle—on a housing scale spectrum.

Live-Work Units

Properties that combine residential and non-residential uses in either commercial or residentially-zoned areas. Typically

the business owner is required to live in the property and vice versa (Sustainable Development Code).

New Markets Tax Credits (NMTC)

NMTCs incentivize investment in communities qualifying as low-income. The U.S. Department of the Treasury competitively allocates tax credit authority to community development entities that select investment projects. Investors get a tax credit against their federal income tax (Tax Policy Center Briefing Book).

Tax Increment Financing (TIF)

TIF calls for local taxing bodies to make a joint investment in the development or redevelopment of an area, with the intent that any short-term gains be reinvested and leveraged so that all taxing bodies will receive larger financial gains in the future. The funds for this investment come from future tax revenues that would not otherwise be expected to occur, unless generated by increased public and private investment in an identified underperforming area.

Transit Oriented Development (TOD)

Dense, walkable, and mixed-use spaces near transit that support vibrant, sustainable, and equitable communities. TOD projects include a mix of commercial, residential, office, and entertainment land uses (U.S. Department of Transportation).

Tuck Under Parking

Parking spaces on the ground floor of a structure, covered by the upper floor of the building, but otherwise open to the elements.

Upzoning

Changing the zoning to allow for higher-value (for example, from industrial to residential) or more dense uses, such as increasing building height restrictions (The World Bank).

Workforce Housing

Workforce housing is for the occupations needed in every community, including teachers, nurses, police officers, fire fighters, and many other critical workers. The families in need of workforce housing do not fall neatly into a single narrow income category. Employees in some industries (e.g. retail sales, food service, tourism) are likely to be in the lower income ranges. Seasoned workforce jobs with education or training requirements, such as teachers, police officers, nurses, etc., may fall into the middle income brackets but still find it difficult to afford homes in the community where they work.

Additional Glossary Sources:

1. www.charleston-sc.gov/DocumentCenter/View/25791/Housing-for-a-Fairer-Charleston-Report
2. <https://affordablehousingonline.com/glossaryHousehold>



At Home in Greeley- 10th Street Area Plan

Brian McBroom, Community Development Director
Brian.McBroom@greeleygov.com
City Council Meeting – June 4, 2024



Business Growth



Housing for All

Agenda

What is this Project?

Why this Site?

How will this plan be used?

Purpose: Adopt the resolution as presented

Overview

What is this Project?

- **Housing Needs Assessment:** understand housing gaps, citywide
- **Area Plan:** demonstrate an infill/mixed-use housing opportunity concept

Why this Site?

- Development without displacement
- Existing conditions
- Underutilized land
- Increased community services
- City tools available
- Place people close to transit, jobs, and services
- Sufficient land area

How will the plan be used?

- Promote redevelopment opportunities in the area
- Demonstrate feasibility of affordable housing in the area

How Was the Community Engaged?

- **32** points of engagement
- Including businesses, public, technical experts
- Multilingual

What Did They Say?

- **What they want:** walkable, vibrant, safe, clean, open, inviting, and activated
- **Current perceptions:** busy, outdated, auto-oriented, old, and confusing

The Essence of the Plan

“Make the area better without pushing people out.”

Plan Components



Development Goals

Concept Plan

Design Standards Framework

Implementation

Concept Plan Alternative A



Alternative A: New 10th Street Town Center

Concept Plan Alternative B



Alternative B: Expanded 10th Street Retail

**Recommended Action:
Adopt the resolution as presented**



Questions





Council Agenda Summary

June 4, 2024

Key Staff Contact: Brian McBroom, Community Development Director, Donald Threewitt, Chief Planner, Caleb Jackson, Interim Chief Planner

Title:

Public hearing and second reading of an ordinance amending Title 24 of the Greeley Municipal Code relating to an affordable housing parking reduction

Summary:

The City of Greeley received a grant from the Department of Local Affairs (DOLA) to conduct a citywide Housing Needs Assessment, complete the 10th Street Redevelopment Plan, and adopt an incentive for affordable housing by June 2024. The Planning Commission recommended approval of a parking reduction on July 25, 2023. City Council considered a parking reduction at the work session on November 14, 2023. The proposed ordinance incorporates feedback received and satisfies the grant condition for the City to adopt an incentive for affordable housing.

A motion to introduce the ordinance and schedule a public hearing and second reading for June 4, 2024, was approved with a 7-0 vote on May 21, 2024.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	No
Is there grant funding for this item?	No

Legal Issues:

Consideration of this matter is a legislative process which includes the following public hearing steps:

- 1) City staff presentation (if requested)
- 2) Council questions of staff
- 3) Public input (hearing opened, testimony - up to three minutes per person, hearing closed)
- 4) Council discussion
- 5) Council decision

Other issues and Considerations:

None

Strategic Focus Area:



Community Vitality

Decision Options:

- 1) Adopt the ordinance as presented; or
- 2) Amend the ordinance and adopt 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 adopt the ordinance and publish with reference to title only.

Attachments:

1. Ord No.14, 2023 with Appendix A
2. Item 18 - Affordable Housing Parking Reduction Presentation
3. Ord No.14, 2023 with Appendix A affordable housing parking reduction

**CITY OF GREELEY, COLORADO ORDINANCE
NO. 14, 2024**

**AN ORDINANCE AMENDING TITLE 24, CHAPTER 4, CHAPTER 7, AND
CHAPTER 13 OF THE GREELEY MUNICIPAL CODE RELATING TO AN
AFFORDABLE HOUSING PARKING REDUCTION**

WHEREAS, the City of Greeley requires the provision of adequate parking for land uses to support the health, safety, and welfare of residents; and,

WHEREAS, the City of Greeley allows parking requirements to be reduced based on standards with a rational nexus to lower parking demand; and,

WHEREAS, dedicated affordable housing projects typically have a lower parking demand; and,

WHEREAS, the City of Greeley received a grant from the Colorado Department of Local Affairs that includes a provision for the City of Greeley to adopt and codify an incentive for dedicated affordable housing; and,

WHEREAS, the recommended amendments to the Greeley Municipal Code would provide an incentive for dedicated affordable housing by allowing applicants to reduce the amount of parking required.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF GREELEY, COLORADO:

Section 1. Sections 24-402 and 24-404 of Chapter 4, Zoning Districts and Uses of Title 24, Development Code, shall be amended as shown in Appendix A.

Section 2. Section 24-703 of Chapter 7, Access and Parking of Title 24, Development Code, shall be amended as shown in Appendix A.

Section 3. Section 24-130, of Chapter 13, Definitions and Terms of Title 24, Development Code, shall be amended as shown in Appendix A.

Section 4. This ordinance shall take effect on the fifth day following its final publication, as provided by Section 3-16 of the Greeley City Charter.

PASSED AND ADOPTED, SIGNED AND APPROVED ON THIS _____ DAY OF _____, 2024.

ATTEST

THE CITY OF GREELEY, COLORADO

By: _____
City Clerk

By: _____
Mayor

APPENDIX A

AN ORDINANCE AMENDING TITLE 24, CHAPTER 4, CHAPTER 7, AND CHAPTER 13 OF THE GREELEY MUNICIPAL CODE RELATING TO AN AFFORDABLE HOUSING PARKING REDUCTION

Section 1. Sections 24-402 and 24-404 of Chapter 4, Zoning Districts and Uses of Title 24, Development Code, shall be amended to read as follows:

Sec. 24-402. Allowed uses.

- a. *Use table.* Table 24-4-2 establishes permitted uses for each zoning districts. These uses and development standards are established to implement the intent of these district, permit a compatible range of uses within each district, and facilitate complimentary transitions between districts.
 1. The table identifies uses as:
 - (a) Permitted uses (P) subject to staff review and/or site plan approval to confirm compliance with general district and building standards applicable throughout this code.
 - (b) Use by special review (S) subject to the review process and criteria in section 24-206.
 - (c) Uses not permitted in the district (blank).
 - (d) Uses not specifically listed in the table shall be presumed to be prohibited, except if the director determines that a use is similar to and has similar impacts as a use listed in the table, then the director may make a written determination as to the category and review required for the use.
 2. Other accessory or temporary uses may be permitted according to the standards of section 24-403.
 3. Uses listed in the table, or more specific types of uses generally enabled in the table, may be subject to specific standards or limits in section 24-404.
 4. Uses in the table are more specifically described in section 24-402.b.
 5. Uses distinguished by scale are based on gross leasable area (GLA) of the uses space within buildings, size of the lot (acre), or other specified building or site features.

Table 24-4-2: Zoning Districts and Uses														
P = Permitted Use					S = Use by special review					Blank = prohibited				
Districts	R-E	R-L	R-M	R-H	R-MH	C-L	C-H	MU-L	MU-H	I-L	I-M	I-H	H-A	C-D
Use														
Residential Uses														
<u>Affordable Housing</u>	<u>See Section 24-404.k</u>													
Single-family dwelling	P	P	P	P		S	S	P	P				P	
Two-family dwellings			P	P		S	S	P	P					

Row house dwellings			P	P		S	S	P	P					
Multifamily dwellings			P	P		S	S	P	P					
Mixed-use dwelling				S		P	P	P	P					
Established residential (all types)						P	P			P	P	P	P	
Accessory dwelling unit (see section 24-403.b)			P	P		P	P	P	P					
Mobile/manufactured home & parks					P									
Boarding house & single room occupancies				P		S	S	S	S					
Farming	P	P	P	P		P	P			P	P	P	P	P
Residential care — Group home	P	P	P	P		P	P	P	P					
Residential care — Assisted living			S	S		P	P	P	P	P				
Residential care — General				S		S	P	S	P	P				
Residential care — Institutional				S		S	P	S	P	P				
Public & Civic Uses														
Assembly — Limited (up to 499 occupancy)	P	P	P	P	P	P	P	P	P	P	P	P		
Assembly — General (500—1,500 occupancy)		S	S	S	S	S	P	S	P	P	P	P		
Assembly — Large (1,501+ occupancy; or outside)							P		P	P	P			
Cemeteries, columbarium							P	P	P	P	P	P		
Golf course & country clubs (no lights)	P	P	P	P	P	P	P	P	P	P				
Libraries, museums, public or quasi-public	S	S	S	S		P	P	P	P	P	P			
Police, fire stations, ambulance dispatch & storage	S	S	S	S		P	P	P	P	P	P			
Parks, open spaces & common areas	See sections 24-302 and 24-504 for standards applicable to all districts.													

Schools	P	P	P	P	P	P	P	P	P	P				
Schools — Adult (business, trade)						S	P	S	P	P	P	P		
Schools — Universities/colleges	P	P	P	P	P	P	P	P	P	P				
Transportation — Bus, taxi, or transit station							S		S	P	P	P		
Transportation — Freight & maintenance yard											P	P		
Transportation — Airport, heliport/helipad											S	S		
Transportation — Public parking	S	S	S	S	S	S	P	S	S	P	P	P		
Transportation — Towing services							S			P	P	P		
Utilities — Limited (towers under heights permitted by zoned and accessory structures and cabinets)	P	P	P	P	P	P	P	P	P	P	P	P		
Utilities — General (towers over heights permitted by zone or large structures and cabinets)	S	S	S	S	S	S	S	S	S	S	S	S		
Utilities — Lines over 33 KVA, overhead	S	S	S	S	S	S	S	S	S	S	S	S	S	S
Utilities — Co- generation or power plants											P	P		
Commercial Uses														
Adult businesses (<i>see also section 24-1103</i>)											P	P	P	
Animal care — Limited (indoor, < 5K GLA, no boarding)						P	P	P	P	P	P			
Animal care — General (indoor,						S	P	S	P	P	P			

5K—20K GLA or boarding)														
Animal care — Large (outdoor or > 20K GLA)										P	P			
Animal care — Stables (> 5 boarded animals)										S	S		S	
Auction houses (excludes livestock)										P	P	P		
Automobile — Gas station limited (up to 8 pumps)						S	P	S	P	P	P	P		
Automobile — Gas station general (9—20 pumps)							P		S	P	P	P		
Automobile — Gas station large (21+ pumps)							S			P	P	P		
Automobile — Repair/service limited (up to 3 service bays; < 0.5 acre)						S	P	S	P	P	P			
Automobile — Repair/service general (4—6 service bays; 0.5—1.0 acre)							P		P	P	P			
Automobile — Repair/service large (7+ service bays; > 1 acre)							S			P	P			
Automobile — Repair/service for heavy vehicle and equipment											P	P		
Automobile — Sales/rental limited (< 0.5 acre)						S	P			P	P			
Automobile — Sales/rental general (0.5—1.0 acre)							P			P	P			
Automobile — Sales/rental large (> 1.0 acre)							S			P	P	P		

Child care home (accessory/home occupation — See section 24-403.c)	P	P	P	P	P	P	P	P	P	P	P	P		
Child care center/pre-school	S	S	S	P		P	P	P	P	S	S	S		
Drive-through services — Accessory							See section 24-403.e							
Entertainment/event establishments							P		P	P	P			
Food & beverage — Bar limited (< 3K GLA; < 100 seats)							P	P	P	P	P			
Food & beverage — Brewery/winery; bar general							P		P	P	P			
Food & beverage — Restaurant limited (< 5K GLA; < 100 seats)						P	P	P	P	P	P			
Food & beverage — Restaurant quick serve							P	S	S	P	P			
Food & beverage — Restaurant general (5K+ GLA)							P		P	P	P			
Home occupation — Accessory	See section 24-403.c													
Lodging — Short-term rental	P	P	P	P	P	P	P	P	P	P	P			P
Lodging — Bed & breakfast (up to 5 rooms)				S		P	P	P	P	P				
Lodging — Inn (6 to 40 rooms)							P	S	P	P				
Lodging — Hotel/motel small (41+ rooms)							P		S	P				
Medical — Limited (< 5K GLA; no emergency service)						P	P	P	P	P				
Medical — General (5K—20K GLA; no emergency service)						S	P	S	P	P				

Medical — Large (> 20K GLA; or emergency service)							P		P					
Medical — Hospitals						S	P		P	P				
Mortuaries and funeral homes						P	P	P	P	P	P			
Office — General (< 20K GLA)						P	P	P	P	P	P	P		
Office — Large (20K+ GLA)							P	S	P	P	P			
Pawn shops							P			P	P			
Personal service — Limited (< 5K GLA, < 1.0 acre)						P	P	P	P	P	P			
Personal service — General (5K+ GLA; 1.0+ acre)							P		P	P	P			
Recreation — Indoor limited (< 5K GLA; < 0.5 acre)						P	P	P	P	P	P			
Recreation — Indoor general (5K—20K GLA; 0.5—1.0 acre)							P	S	P	P	P			
Recreation — Indoor large (> 20K GLA; > 1.0 acre)							P		S	P	P			
Recreation — Outdoor limited (no lights; < 0.5 acre)						P	P	P	P	P	P			
Recreation — Outdoor general (no lights; 0.5—1.0 acre)							P			P	P			
Recreation — Outdoor large (lights or > 1.0 acre)							S			S	S	S		
Recreation — RV and travel trailer park							S			S	S			
Recreation — Outdoor racetrack											S	S		
Retail — Limited (< 3K GLA)						P	P	P	P	P	P			
Retail — General (3K—20K GLA)							P	S	P	S	S			
Retail — Large (20K—100K GLA)							P		S	S	S			

Retail — Warehouse (> 100K GLA)							S		S	S	S			
Retail — Outdoor limited (> 25%; > 0.5 acre)							P	S	P	P				
Retail — Outdoor general (25%—50%; 0.5—1.0 acre)							P		S	P				
Retail — Outdoor large (> 50%; > 1.0 acre)							S			P	P			
Retail — Outdoor nurseries and greenhouse							P		P	P	P			
Retail — Outdoor flea market or swap shop											P	P		
Industrial Uses														
Auto dismantling, junk & salvage yards												S		
Commercial services — Limited (up to 9 vehicle fleet)							P			P	P	P		
Commercial services — General (11—20 vehicle fleet)							S			P	P	P		
Commercial services — Large (21+ vehicle fleet)										S	P	P		
Concrete and asphalt batch plants											P	P		
Crematoriums										P	P	P		
Foundries												S		
Gravel & mineral extraction, batch plants														S
Grain & feed elevators & supply												S		
Livestock auctions												S		
Manufacturing — Limited/artisan (< 5K GLA)						S	P	P	P	P	P	P		
Manufacturing — General (5K—100K GLA)										P	P	P		

Manufacturing — Large (> 100K GLA)											P	P		
Manufacturing — Food & beverage minor (up to 3 acres)							P		P	P	P	P		
Manufacturing — Food & beverage major (3+ acres)											S	S		
Manufacturing — Chemical plant											S	S		
Manufacturing — Rendering, slaughter & packaging												S		
Oil & gas operations	See section 24-1102 for standards and procedures applicable in all districts													
Private smoking club							S		S	S	S	S		
Research & testing labs							P		P	P	P	P		
Warehousing/storage — Indoor limited (< 50K GLA; < 1.0 acre							P		S	P	P	P		
Warehousing/storage — Indoor general (50K—200K GLA; 1.0—5.0 acre)							P			P	P	P		
Warehousing/storage — Indoor large (> 200K GLA; > 5.0 acres)							S			S	P	P		
Warehouse/storage — Distribution center										S	P	P		
Warehouse/storage — Outdoor limited (< 1.0 acre)							S			S	P	P		
Warehouse/storage — Outdoor general (1.0 + acre)										S	P	P		
Warehouse/storage — Bulk storage of flammable liquids and gases											P	P		
Waste management — Recycling collection small						S	P	S	P	P	P	P		

Waste management — Recycling processing & collection							P			P	P	P		
Waste management — Refuse & transfer station											S	S		
Water & waste water treatment plants											P	P		
Well drilling companies											P	P		
Wireless communication facilities	See section 24-1101 for standards and procedures applicable in all districts													

- b. *Description of uses.* This section provides descriptions of uses of land and buildings associated with table 24-4-2. It is organized by categories and types of uses. Where a proposed use is not generally listed or appears to meet the description of more than one use type, the director shall make an interpretation on the most equivalent described use considering:

- (1) The similarity of the use in terms of scale, impact, and operations to other described uses;
- (2) The typical building format and site design associated with the use based on relevant and established examples; and
- (3) The compatibility of the use with other allowed uses in the zoning district, and the potential for the use to contribute to the intent of the zoning district.

Any uses that may not be interpreted as equivalent to a use in table 24-4-2 is not anticipated by these regulations and may only be allowed by a text amendment.

1. *Residential dwelling.* The residential dwelling category is the principal use of land and buildings for dwelling units. A dwelling unit is one or more connected rooms, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease as a single unit on a monthly basis or longer, physically separated from any other room or dwelling units which may be in the same structure and served by no more than one gas meter and one electric meter. The arrangement and extent of dwelling units depends on the zoning district uses and building types:

Dwelling, single-family. A residential building designed and used as a single detached dwelling unit by one family, other than a mobile home. Typical building types are detached houses, with variants based on lot sizes. The term single-family residence shall include a manufactured home which:

- (a) Is partially or entirely manufactured in a factory;
- (b) Is installed on an engineered permanent foundation; and

- (c) Is certified pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., as amended, and all regulations enacted pursuant thereto, including any local modifications as are expressly allowed by federal law, or which has been certified by the State of Colorado as being in compliance with the requirements of the Uniform Building code, as adopted by the State of Colorado and as is enforced and administered by the Colorado Division of Housing.

Dwelling, two-family. Residential building designed to accommodate two primary dwelling units in a building designed and scaled to be compatible with detached houses, and which may commonly be referred to as a duplex or multi-unit house (with two units). Two-family buildings that share a single common wall may be on a single lot, or may be platted as separate lots along the common wall line subject to the building code and platting restrictions. All other two-family dwellings shall be on a single lot. Duplex/multi-unit houses shall have a scale, design, orientation, access, and entrance features that maintains the appearance and form similar to a detached house.

Dwelling, row house. A multi-unit residential building designed for three to eight dwelling units each sharing a common wall with the abutting units. Each unit has its own private entry presenting an outward appearance on the frontage as distinct units in a single building. Units may be on a single lot subject to common ownership restrictions or platted on separate lots along the common wall subject to building code and platting restrictions.

Dwelling, multifamily. A residential building that contains three or more dwelling units, or group of similar buildings in a complex. Typical building and lot types include multi-unit houses (provided they maintain the scale, design, orientation, access and entrance features similar to a detached house), small apartments, medium apartments, large apartments, apartment complexes, and mixed-use buildings with residential uses.

Dwelling, mixed-use (apartment over commercial/service). A residential use in a building designed for street level retail, service or employment uses, and where dwelling units are accommodated on upper stories, or otherwise separated from the principal commercial function of the building.

Dwelling, established residential (all types). Any residential building and use, legally established at when it originated but where new development of the same use or similar building type is no longer permitted in the zoning district. These uses shall be permitted so that continued use and further investment in the building and use is not discouraged.

Dwelling, accessory unit. A dwelling unit that is secondary and accessory to a principal dwelling unit and on the same lot. Accessory dwelling units may be in the same building as the principal dwelling unit (basement or attic apartments) or in a detached accessory structure (garage apartment or "granny flat".)

Mobile/manufactured home park. A parcel of land planned and designed for multiple home sites for the placement of manufactured, mobile or other small homes, and used for the principal dwelling of households for long-term residency. These communities

include internal common areas, circulation systems and accessory uses and facilities to support the community. Dwellings may either be located on home sites designated within a larger project or on single lots owned through appropriate condominium procedures or platted under certain conditions.

Boarding house and single room occupancy. A residential building is used to accommodate boarders or roomers as the primary residential dwelling, and whose occupants shall have common access to facilities such as kitchen, bathroom, dining areas, or community areas. Boarding and single-room occupancy houses shall be rented or leased on a monthly basis or longer, and not include hotels, motels and lodges.

Farming. The production of crops such as vegetables, fruit trees or grain; the growing of trees and shrubs for landscape purposes; and the raising of farm animals such as poultry or swine, as limited by the standards for accessory keeping of livestock. Farming shall not include the commercial raising of animals, commercial production of milk, commercial pen feeding (feed lots) or the commercial feeding of garbage or offal to swine or other animals.

Residential care — Group home. A residential building operated as a single primary dwelling which provides residency, supervision, and other services for up to eight persons who are in need of special care due to being developmentally disabled, mentally ill, 60 years of age or older, or due to physical condition, illness, or social or behavioral problems. Group homes require up to two residential caregivers, and shall be licensed by, operated by, or owned by a governmental agency or nonprofit qualified to provide care and supervision. Group homes shall not include alcoholism or drug treatment centers, work release facilities or other housing facilities serving as an alternative to incarceration and shall not house more than one individual per dwelling who is required to register as a sex offender under the provisions of C.R.S. § 18-3-412.5.

Residential care — Assisted living. A residential building or planned community operated as the primary residence for persons who do not have an illness, injury or condition that requires 24-hour care or supervisions, but who need social, physical, and therapeutic and recreation support for daily living. Support services are accessory to the residential use and character of the buildings and area, and do not require 24-hour staffing, other than security. Typical examples include assisted living, group homes larger than eight individuals, and retirement communities.

Residential care — General. A residential or institutional building, or group of buildings, designed to provide a primary or interim residence and health care for persons who require care on a full-time basis. Medical support, rehabilitative services, and counseling is provided by professional, nursing and medical staff on site. Accessory support uses include meals, therapeutic services, transportation and recreation. Typical examples include nursing homes, long-term care facility, continuing care facility, congregate care communities, or hospices.

Residential care — Institutional. A residential or institutional building operated by a government, nonprofit, charitable or religious organization providing temporary housing, food, counseling and other support services to persons at risk, on an interim

basis and with transitional, protective, or rehabilitative goals. Security and supervisory services are required on site. Typical examples include emergency shelters, missions, rehabilitation residence, halfway houses.

2. *Public/civic.* The public/civic use category is the use of land and buildings to serve public or community interest by enhancing the daily cultural, social, or recreation needs for residents and neighborhoods. It can include uses generally available to the public at large, community uses structured by voluntary affiliation, or private uses limited by property ownership or membership. It includes the following types:

Assembly. A civic use designed to serve the community for regular or periodic events, including worship, social, cultural, recreation, and accessory uses associated with organized civic or institutional activities.

Assembly — Limited (up to 499 occupancy). A place of assembly designed and located to serve nearby neighborhoods, typically designed for up to 499 people. Examples include small neighborhood association clubhouse, meeting hall, or small religious facility.

Assembly — General (500—1,500 occupancy). A place of assembly designed and located to serve the broad community at large, typically designed for 500—1,500 people. Examples include a community/recreation center, small event hall, or large religious facility.

Assembly — Large (1,501+ occupancy, or outside). A place of assembly designed and located to serve as a destination for the city or region, typically designed for more than 1,500 people, or where any facility is designed for outside assembly. Examples include an auditorium, large event hall, major worship hall, convention and conference center, or any assembly use with a small outside amphitheater.

Cemeteries and columbarium. A public or civic use where land or buildings are used for the burial of the deceased and dedicated for interment purposes, including gravesites or buildings used for the interment of ashes of cremated dead.

Golf courses and country clubs (no lights). A public or civic use and designed and dedicated for playing the game of golf, run by a public agency or a private club operated on a membership basis. This includes accessory facilities and structures related to playing golf, but shall not include any lights, activities, or associated events not compatible with outdoor recreation in a residential setting. (See Recreation — Outdoor for commercial recreation activities).

Libraries, museums, public or quasi-public. A public or civic use which provides resources and exhibits to support education, culture, and information exchange open to the public at large.

Police, fire stations, ambulance dispatch and storage. A public use that supports the community at large by through public health and safety, protective or related services. Examples include police and fire stations, dispatch, and related facilities, or similar government and quasi-government buildings and grounds.

Parks, open spaces and common areas. Any parcel or area of land or water permanently reserved for public and/or private use and enjoyment, which is generally

open, undeveloped, and characterized by natural features and landscape enhancements, except for facilities to serve the social, recreational, aesthetic, or environmental function of the space. (See sections 24-302 and 24-504 for standards applicable to all districts.)

School. A public or civic building designed, constructed, or used for education or instruction in any branch of knowledge.

School, adult (business, trade). A public or private school primarily teaching useable skills to adults, including, but not limited to, business, vocational, driving and trade courses.

School, compulsory. A public or private elementary, junior high or high school licensed by the state and which meets state requirements for providing compulsory education.

Schools — University/college. A public or private institution dedicated to post-secondary education.

Transportation — Bus, taxi, or transit station. A public transportation facility designed for the transfer, pick-up and drop-off of passengers traveling by bus, taxi, trolley, or similar low-impact means, including with buildings or associated passenger convenience facilities, distinguished from public stops accommodated in the design of the right-of-way.

Transportation — Freight and maintenance yard. An area and/or building where storage, maintenance, or dispatch of vehicles used for public transportation occurs, or any other similar high-intensity activities associated with public transportation.

Transportation — Airport, heliport, or helipad. Any area of land or water designed for the landing and take-off of aircraft for business or commercial purposes, including all necessary facilities for passenger and cargo loading, maintenance and fueling facilities and housing of aircraft. This includes any area used by helicopters for landing and take-off, passenger and cargo loading.

Transportation — Public parking. A parcel of land where the principle use is to park vehicles whether on a fee basis operated by a public or private entity or whether to support an adjacent use or business located on a different lot. Parking may be on a surface lot or in a structure.

Transportation — Towing service. A parcel of land used for the storage, impoundment, and retrieval of vehicles that have been towed.

Utilities — Limited. Any above-ground structure or facility, excluding buildings, which is owned by a governmental entity or any entity defined as a public utility for any purpose by the state public utilities commission, and used in connection with delivery of utility services to nearby lots and other areas, with maximum heights of towers and accessory structures under those permitted by the zoning district. Examples include accessory utility structures that served customary needs of the uses in the zoning district.

Utilities — General. Any above-ground structure or facility, which is owned by a governmental entity or any entity defined as a public utility for any purpose by the

state public utilities commission, and used in connection with delivery of utility services to nearby lots and other areas, with maximum heights of towers and accessory structures above those permitted by the zoning district. Examples include substations or other facilities that support the storage and generation of facilities.

Utilities — Lines over 33 KVA, overhead. Any utility that utilizes overhead lines that transmit above 33 kilo volt amperes.

Utilities — Co-generation or power plants. A facility which is owned by a governmental entity or any entity defined as a public utility for any purpose by the state public utilities commission, and used for generating of power for distribution to sub-stations or other general accessory distribution facilities.

3. *Commercial.* The commercial use category is the use of land and buildings for entities engaged in sale of products or services, the limited production and distribution of products, or other administrative or support services to help businesses. It includes the following types of uses:

Adult business. Any store, establishment, tavern, club or theater having a substantial portion of its stock in trade, books, magazines or other periodicals; video movies, films, slides or photographs; instruments, devices or paraphernalia; or live performances, which are characterized by their emphasis on matters depicting, describing, or related to specified anatomical areas or specified sexual activities. For the purposes of this definition, a business shall not be considered an adult business if it carries less than 20 percent of its stock in adult materials and it prevents the public from viewing or observing merchandise or products that depict specified anatomical areas or specific sexual activities, as may be displayed by the products or on the packaging.

(a) Specified anatomical areas.

- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks and female breast above or below a point which would expose any portion of the areola; and
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(b) Specified sexual activities.

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breast;
- (2) Human genitals in a state of sexual stimulation or arousal;
- (3) Sex acts, actual or simulated, including intercourse, oral copulation or sodomy;
- (4) Masturbation, actual or simulated; or
- (5) Excretory functions as part of or in connection with any of the activities set forth in subsections (2)a through d of this definition.

Animal care. A commercial use that provides care and medical or non-medical services for domesticated animals, including boarding, training, breeding, showing, treatment, grooming, or sale. Animal care is further refined by the scale and intensity of the operations, as follows (for non-domesticated animals and livestock, see *Farming, and limits on the accessory keeping of Livestock*):

Animal care — Limited. A small office or facility providing animal care that involves less than 5,000 square feet of commercial area, all activities occur indoors (except routine daily pet care), and any overnight boarding is limited to that necessary for medical care or observation. Examples include a veterinary office, pet grooming or training, and small animal day cares.

Animal care — General. A moderate sized office or facility providing animal care that is between 5,000 to 20,000 square feet of commercial space, or that involves animal boarding. Examples include a veterinary clinic, animal shelters, and indoor commercial kennels.

Animal care — Large. A large office or facility providing animal care that is more than 20,000 square feet of commercial space, or has significant outdoor activity including boarding kennels or play areas where animals may ordinarily be kept. Examples include domestic animal hospitals, large facilities for pet day care, and large commercial/outdoor kennels.

Animal care — Stable (>5 boarded animals). A commercial use for the keeping, boarding and/or training of horses, ponies, llamas, mules or other animals which may be used for riding purposes, for compensation and which may include an arena.

Auction house. A business that facilitates the buying and selling of assets, such as works of art, collectibles, household estate items, and other personal property. Auction house excludes selling of livestock.

Automobile gas station. A specific retail use engaged in the sale of fuel to the general public, and may involve limited accessory sales of convenience goods. This use may be combined with accessory vehicle service and repair uses, subject to the service bay limitations stated below. Vehicle — Gas station uses are further refined by the scale, format and intensity as follows:

Automobile gas station, limited (up to 8 pumps). A vehicle gas station limited to no more than eight fueling stations, no more than two service islands, no more than two accessory vehicle service bays and no more than 1,500 square feet of accessory retail or service areas. Examples include small, neighborhood service stations.

Automobile gas station, general (9—20 pumps). A vehicle gas station limited to between nine and 20 fueling stations, no more than five service islands, no more than three accessory vehicle service bays and no more than 5,000 square feet of accessory retail or service areas. Examples include general stores and gas stations.

Automobile gas station, large (21+ pumps). A vehicle gas station that contains more than 20 fueling stations, more than five islands, and up to four accessory vehicle service bays and no more than 5,000 square feet of accessory retail or

service areas. Examples include a large convenience center and gas station, or truck stops and travel centers.

Automobile repair/service. A specific service use engaged in motor vehicle and mechanical equipment maintenance and repair services, and accessory retail sale of supplies and accessories. Automobile repair/service is further refined by scale, format and intensity as follows:

Automobile repair/service — Limited (up to 3 service bays; 0.5 acre max.). An automobile service and repair use limited to no more than three vehicle service bays, all vehicles are under 1½ tons G.V.W., where all work and storage of equipment and supplies occurs indoors, and where on-site or overnight storage of vehicles is limited and requires no special site accommodations other than ordinary parking areas. Sites are limited to no more than one-half acre. Examples include a small machine shop, mechanic, lubricant center, tire store, auto glass installation or audio or alarm installation.

Automobile repair/service — General (4—6 service bays; 1.0 acre max). An automobile service and repair use that involves four to six service bays, all vehicles are under 1½ tons G.V.W., where all work and storage of equipment and supplies occurs indoors, but where on-site or overnight storage of vehicles may be stored outdoors on the lot. Sites are limited to no more than one acre. Examples include large mechanic shop, lubricant center, tire store, non-accessory car wash, or an auto body shop.

Automobile repair/service — Large (7+ service bays; 1.0+ acres). An automobile service and repair use that involves seven or more service bays, all vehicles are under 1½ tons G.V.W., where all work and storage may occur outdoors and where on-site or overnight storage of vehicles and outdoor storage is typical. Sites are more than one acres. Examples include large service center, auto body and frame repair facilities, transmission and engine overhaul yards, or automobile painting facilities.

Automobile repair/service for heavy vehicles and equipment. An automobile service and repair use engaged in the maintenance and repair of motor vehicles, recreational vehicles or boats, commercial vehicles, heavy equipment and other vehicles over 1½ tons G.V.W., and other similar uses where services typically involve outside storage or work. Examples large vehicle maintenance, large truck or boat wash, and equipment yards.

Automobile sales/rental. A commercial business engaged in the sale, lease, or rental of automobiles. Automobile — Sales/rental is further refined by scale, format and intensity as follows:

Automobile sales/rental — Limited (< 0.5 acres). An automobile sales/rental facility on less than one-half acre that uses outdoor vehicle storage at a similar scale to a small-site commercial parking area. Examples include an automobile broker that may have little or only temporary on-site storage, or a small car rental office.

Automobile sales/rental — General (0.5—1.0 acres). An automobile sales/rental facility on between one-half and one acre, where outdoor vehicle storage occupies

a large portion of the site. Examples include a small car dealership, or a larger rental car facility.

Automobile sales/retail — Large (> 1 acre). An automobile sales/rental facility on more than one acre that includes significant amounts of outdoor vehicle storage. Examples include a large car dealership or car or truck rental facility.

Child care home. A residential dwelling licensed by the Colorado Department of Human Services to provide child care services as a home occupation and an accessory use to the operator's principal residence. The facility may provide care for up to 12 children, and subject to greater restrictions based on Colorado Department of Human Services licensing rules as an accessory use to the operator's principal residence.

Child care center. A commercial use that provides care for children outside of the home, or any care for more than 12 children.

Entertainment/event establishment. A commercial use that rents facilities and grounds for special events, concerts, social functions, or other large gatherings. This use does not include any events that are accessory to an otherwise permitted civic, institutional, or commercial use.

Food and beverage. A specific service and retail use engaged in the business of serving prepared food and/or beverages to the public for immediate consumption. Food and beverage uses are further refined by scale, format and intensity based on the following:

Food and beverage — Bar limited (under 3K; under 100 seats). A food and beverage use where a significant portion of the business, in sales and in hours of operation, involves the sale of alcoholic liquors by the drink for consumption on premises, and food services is secondary or accessory. The limited use requires under 3,000 square feet and under 100 seats to ensure compatibility with other neighborhood-serving or small-scale uses in terms of intensity of activity and hours of operation.

Food and beverage — Brewery/winery; bar general. A food and beverage use where a significant portion of the business, in sales and in hours of operation, involves the sale of alcoholic liquors by the drink for consumption on premises, and may include accessory craft manufacturing of alcoholic beverages. This general use is of a scale and intensity that frequently has accessory live entertainment or events and where the scale and intensity of the use is more compatible with general commercial uses.

Food and beverage — Restaurant limited (under 5K; under 100 seats). A small scale restaurant under 5,000 square feet and under 100 seats at full capacity.

Food and beverage — Restaurant quick serve. A food and beverage use where the food is served from a counter ready to eat with no significant table service, and where the customer turnover will be high due to any combination of accessory drive-through services, carry out orders, or quick sit-down services

Food and beverage — Restaurant general (5K+). A large scale restaurant with over 5,000 square feet of commercial area or over 100 seats.

(For accessory drive-through facilities see section 24-403.e.)

Home occupation accessory. A business or employment use accessory to an allowed residential dwelling. (See section 24-503.c.)

Lodging. A commercial use providing accommodations for temporary, short-term overnight occupancy on at least a 24-hour basis, and accessory uses associated with typical guest services such as food service, recreation or similar accommodations to support overnight-guests. Lodging is refined to the following scales based on building type, format and intensity of use.

Lodging short-term rental. The rental of a dwelling unit, or portion thereof, for less than one month.

Lodging bed and breakfast (up to 5 rooms). A small residential building used for lodging, meals, and shared living space between the primary occupants and patrons and includes at least two but no more than five rooms.

Lodging hotel/motel small (6 to 40 rooms). A small commercial or large residential building providing lodging and includes at least six but no more than 40 rooms.

Lodging hotel/motel general (40+ rooms). A large commercial building providing lodging and includes 41 or more rooms.

Medical care. A commercial service use providing medical, dental, or physical health or wellness care to the public. This use type is further categorized by the following formats:

Medical care limited (under 5K). A medical care use offering routine outpatient services, that occupies less than 5,000 square feet of diagnostic or treatment area, includes no surgical or in-patient facilities, and operates in normal business hours. Examples include a small doctor or dentist office, eye-care center, or urgent care center that is accessory to a larger retail or pharmacy use.

Medical care general (5K—20K). A medical care use offering routine outpatient services, that occupies between 5,000 and 20,000 square feet for diagnostic or treatment areas, includes no inpatient facilities, and operates in normal business hours. Examples include a larger doctor or dentist group practice, small clinic or analytical lab, or small outpatient urgent care or surgical center.

Medical care large (>20K). A medical care use offering a full range of services that occupies over 20,000 square feet for diagnostic or treatment areas, and may include emergency care, surgical services or other inpatient treatment. The use may include accessory retail, food service, pharmacy or wellness/fitness uses. Examples include small hospital, remote surgical centers, or large clinic or analytical labs.

Medical care hospitals. A medical care use with a full range of diagnostic, surgical, and emergency services, and occupies a large commercial building or multiple buildings arranged around a campus that serves a greater region. It includes a wide range of accessory office, lab, and retail uses related to patron, patient, and visitor needs. Examples include a large hospital or regional medical center campus.

Mortuaries and funeral homes. A building used for human funeral services, which may contain space and facilities for services used in preparation of the dead for burial; the

storage of caskets, urns, and other related funeral supplies; and the storage of funeral vehicles. Funeral homes shall not include crematoriums as accessory uses.

Office. A commercial use focused on employment and engaged in the administrative, professional, clerical or management aspect of business or professional services that typically do not have frequent or unscheduled on-premises interaction with the public or clients. Office uses are further refined by the scale and format of buildings based on the following:

Office general (under 20K). An office use in a small commercial building with under 20,000 square feet, typically within one moderate-sized building.

Office large (20K+). An office use in a large commercial building or multiple buildings in a complex or campus, with over 20,000 square feet.

Pawn shops. A commercial use engaged in the loaning of money on the security of property pledged in the keeping of the pawnbroker, and the incidental sale of such property.

Personal service. A commercial use engaged in the business of providing personal or professional services to the public that may include frequent or unscheduled interaction with clients or customers on the premises. Examples include barbershop or beauty salon, travel agency, small equipment repair, tailor, bank or personal financial services. Service uses are further refined by scale, intensity and format based on the following:

Personal service limited (under 5K; under 1 acre). A service use under 5,000 square feet, typically in line with other small-scale uses in a multi-tenant commercial building or in mixed-use building on a site of less than one acre.

Personal service general (5K+; 1+ acre). A service use between of 5,000 square feet, in a small freestanding building or part of a large mixed-use building.

Recreation. A commercial service use engaged in the business of providing daily or regularly scheduled activities for entertainment, leisure activities, training and instruction, or exercise, offered to the public through individual, membership, or group arrangements. This use type is further refined by the scale, format and intensity as follows:

Recreation indoor, limited (< 5K; < 1.0 acre). An indoor recreation/entertainment use that involves a building less than 10,000 square feet. Examples include a small bowling alley, fitness club, billiard hall, or dance or yoga studio.

Recreation indoor, general (5K—20K; 0.5—1.0 acre). An indoor recreation/entertainment use that involves a building between 10,001 and 40,000 square feet. Examples include a large bowling alley, a small sports and recreation center, a small theater, large health club or fitness center, or small shooting range.

Recreation indoor, large (> 20K; > 1.0 acre). An indoor recreation/entertainment use that involves a building more than 40,000 square feet. Examples include a large sports and recreation center, skating ring, or theater complex.

Recreation outdoor, limited (no lights; < 0.5 acre). An outdoor recreation use that involves less than two acres of active outdoor recreation grounds. Examples include a small pickle ball center, batting cages, or small community center.

Recreation/entertainment outdoor, general (no lights; 0.5—1.0 acre). An outdoor recreation use that involves less than two and five acres of active outdoor recreation grounds. Examples include miniature golf, swimming pool, tennis center, small band shell or amphitheater.

Recreation/entertainment outdoor, large (lights or > 1.0 acre). An outdoor recreation use that involves more than five acres of active outdoor recreation grounds. Examples include waterpark, drive-in theater, shooting range, driving range, sports and athletic complex.

Recreation RV and travel trailer park. An outdoor recreation use providing overnight accommodations within a large open area for recreational purposes and may involve associated accessory buildings or facilities for parking RVs on a temporary basis for recreation or vacation purposes.

Recreation outdoor racetrack. An outdoor recreation use for racing of any motorized vehicles.

Retail. A commercial use primarily engaged in the sale of products for final use to the general public with frequent interaction of patrons or consumers on premises. Retail uses are further refined by scale, intensity and format based on the following:

Retail limited (< 3k). A small-scale retail use contained in a building with under 3,000 square feet of gross leasable area.

Retail general (3K—20K). A retail use contained in a building with at least 3,000 but less than 20,000 square feet of gross leasable area.

Retail large (20K—100K). A large-scale retail use contained in a building with at least 20,000 but less than 100,000 square feet of gross leasable area.

Retail warehouse (100K+). A large-scale retail use contained in a building with at least 100,000 square feet of gross leasable area.

Retail outdoor limited (less than 25 percent; up to 0.5 acres). A retail use where a small portion of the merchandise is displayed permanently outside, limited to no more than 25 percent of the merchandise area being outside and limited to sites no more than one-half acre. Examples include a garden center, statuary store, or small equipment dealer. This does not include accessory outdoor sales and display areas that may be permitted as an accessory use to an otherwise permitted use or seasonal events that may be permitted through a temporary use permit.

Retail outdoor general (less than 50 percent; up to 1.0 acre). A retail use where a significant portion of the merchandise is displayed permanently outside, limited to no more than 50 percent of the merchandise area being outside and limited to sites no more than one acre. Examples include a lumber yard, large equipment rental or dealer, or small landscape supply store.

Retail outdoor large (over 50 percent or more than 1.0 acre). A retail use where a substantial portion of the merchandise is displayed permanently outside, including more than 50 percent of the merchandise area being outside or sites more than one acre. Examples include an equipment sales lot, boat or recreational vehicle sales lot, large machine or farm implement sales yard.

Retail outdoor nurseries and greenhouses. A retail use engaged in the sale of plants and other living vegetation, and where substantial portions of the merchandise is displayed outside.

Retail outdoor flea market or swap shop. A retail use where a large number of vendors will display merchandise indoors or outdoors on a short term or interim basis.

4. *Industrial.* The industrial use category involves the use of land and buildings for businesses engaged in the production, processing, storage or distribution of goods, which may have potential impacts beyond the site due to the types of activities, the physical needs of the site or facility, the types of materials used, or the delivery and access operations. Depending on the scale, intensity, and operations of these uses they may not be compatible with other uses or buildings, and may need special districts, more careful location criteria, and/or increased site design or operational limitations in order to be more generally applicable in the city.

Auto dismantling, junk and salvage yards. An industrial use for collecting, storing or selling scrap metal or discarded material or for collecting, dismantling, storing, salvaging or demolishing vehicles, machinery or other material and including the sale of such material or parts.

Commercial services. A business engaged in service to other businesses and industries, or engaged in services to the general public but where industrial uses support the service, or where services dispatched from a central location for storage of vehicles, equipment, or merchandise. Examples include plumbing, exterminators, HVAC repair, janitorial services, commercial laundry services, or other similar uses.

Commercial services limited (< 10 vehicle fleet). A small-scale commercial service use with limited outdoor storage needs and with a vehicle fleet less than ten vehicles, where surface parking and vehicle storage needs are similar to other general commercial uses.

Commercial services general (10—20 vehicle fleet). A commercial service use where outdoor storage is necessary or with a vehicle fleet between ten and 20 vehicles, requiring dedicated areas for storage of vehicles during down times or off hours.

Commercial services large (21+ vehicle fleet). A large-scale commercial service use that may have substantial outdoor storage needs or with vehicle fleet is more than 20 vehicles, requiring large areas for storage of vehicles or equipment.

Concrete and asphalt batch plant. A facility or equipment used in mixing the dry warm aggregate, padding and asphalt for homogeneous mixture at the required temperature, typically in association with a street, large parking area or other large-scale construction project, sometimes on a temporary or interim basis.

Crematoriums. A place for the cremation of human or animal remains.

Foundries. An industrial use for producing castings in molten metal.

Gravel and mineral extraction, batch plant. The process of extracting metallic or nonmetallic mineral deposits from the earth and crushing, separating or otherwise processing the extracted mineral deposits into a useable form.

Grain and feed elevators and supply. An industrial use that stores grain and similar agriculture and feed products in bulk for storage, processing, or distribution to other locations.

Livestock auction. A business that facilitates the buying and selling of livestock, including showing, housing, and otherwise caring for livestock to facilitate the purchase.

Manufacturing limited/artisan (under 5K). A small-scale manufacturing use converting prepared materials into finished products. The activities produce little or no byproducts such as smoke, odor, dust, or noise discernable from outside of the building where deliveries and distribution are made by general consumer delivery services requiring no special large truck access, and where products are made available to the general public. Uses occupy buildings or spaces under 5,000 square feet of gross leasable area. Examples include artists' studios, small wood or metal shops, craft manufacturing, small bakery, or other similar small-scale assembly of finished products.

Manufacturing general (5K—100K). A manufacturing use converting prepared materials into finished products or parts. The activities produce little or no byproducts such as smoke, odor, dust or noise are discernable from outside of the building, and where distribution and delivery needs occur through light to moderate commercial truck access. Examples include small equipment or commodity assembly, production of consumer products, or similar businesses.

Manufacturing large (100K+). A large-scale manufacturing use converting raw or previously prepared materials into other materials or finished products. The activities may produce byproducts such as noise, dust, smoke or odor, but are mitigated to limit impacts beyond the property boundary. Outside storage and activities may be necessary, and distribution and delivery needs involve frequent or large truck access. Examples include large-scale manufacturing or fabrication plants, large equipment assembly, metal fabrication plants, chemical laboratories or other similar high-intensity manufacturing or distribution operations.

Manufacturing food and beverage minor (up to 3 acres). A manufacturing establishment primarily for packaging, producing or processing foods for human consumption that meets the definition of *food and beverage processing (major)* but which also dedicates a portion of the building footprint's square footage (a minimum of ten percent, up to 50 percent) to sales of food, beverages and/or other retail for on-premises purchase and/or consumption; and which occupies a site of three acres or less; and which cannot generate offensive odors, emissions, traffic or other off-site impacts or shall otherwise be considered a major food processing facility.

Manufacturing food and beverage major (3+ acres). A manufacturing establishment packaging, producing or processing foods for human consumption and certain related products and includes, but is not limited to the following: (1) bakery products, sugar, and confectionary products (except facilities that produce goods only for on-site sales

and not wider distribution); (2) dairy products processing; (3) fats and oil products (not including rendering plants); (4) fruit and vegetable canning, preserving and related processing; (5) grain mill products and by-products; (6) meat, poultry, and fish canning, curing and byproduct processing (not including facilities that also slaughter animals); and (7) miscellaneous food preparation from raw products, including catering services that are independent from food stores or restaurants.

Manufacturing chemical plant. An industrial use primarily engaged in the storage, processing, production, and distribution of chemicals on a large scale, where chemical reactions are used to transform materials for use in other industrial or business applications.

Manufacturing rendering, slaughter and packaging. An industrial use where waste products and livestock carcasses are converted into industrial fats.

Oil and gas operations. Exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, recompletion, reworking or abandonment of an oil and gas well, underground injection well or gas storage well; production operations related to any such well including the installation of flowlines and gathering systems; the generation, transportation, storage, treatment or disposal of exploration and production wastes; and any construction, site preparation or reclamation activities associated with such operations. See section 24-1102 for specific definitions, standards, and procedures related to oil and gas uses.

Private smoking club. A noncommercial, private facility, not open to the general public, whose bona fide members' primary association relates to the smoking of legal tobacco products subject to all of the following:

1. Club membership criteria must be such that the general public cannot access the club with a day pass, limited membership or similar exception.
2. The smoking club is limited to occupancy of a freestanding building or that is in an area within an establishment accessed exclusively with a separate entrance and is in an area enclosed by solid walls or windows, a ceiling and a solid door and equipped with a ventilation system which is separately exhausted from the nonsmoking areas of the establishment so that air from the smoking area is not recirculated to the nonsmoking areas and smoke is not back streamed into the nonsmoking areas.
3. The club may have an outdoor patio if not located immediately adjacent to another business or residence, public right-of way, sidewalk or trail, other patio space, playground or similar outdoor recreational space.
4. Building signage is limited to that allowed for C-L (commercial low-intensity) uses.
5. Any product sales or rentals will require a business license, are limited to members only, and any sale of alcoholic beverages must be permitted by a city liquor license and not exceed 20 percent of gross revenue.
6. Such facilities are specifically prohibited from any electronic arcade or gaming machines or allowing members to engage in games of chance.

Research and testing labs. A building or group of buildings in which are located facilities for scientific research, investigation, testing or experimentation, but not facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory.

Warehouse/storage. An industrial use engaged in the business of keeping goods and products for interim or long-term periods for personal or business uses, or for the distribution to other businesses and industries, including any logistic services related to this business such as labeling, bulk packaging, inventory control, or light assembly. Warehouse and storage uses are refined further based on the scale, format and intensity as follows:

Warehouse/storage — Indoor limited (< 50K; up to 1 acre). A warehouse/storage use where individuals store personal property in units or space leased or rented on a periodic basis and where all storage are accessed from within the principal building. Examples include small indoor self-storage mini-warehouses, or small commercial warehouse.

Warehouse/storage — Indoor/general (50K—200K; 1—5 acres). A warehouse/storage use for businesses or larger personal products where all items are stored indoors. Examples include large indoor self-storage mini-warehouse, large commercial warehouses, and long-term garages.

Warehouse/Storage — Large (200K+; 5+ acres). A large-scale warehouse/storage use for long-term storage of products or supplies, and where access and truck traffic is not frequent.

Warehouse/storage — Distribution center. A large-scale facility where goods or products are stored on site temporarily for the purpose of delivery to a retailer or final destination, and where the nature of the operation has frequent daily truck traffic. Such facilities may include automated systems, office space and a pick and pack area to be used by employees for sorting and packaging goods and products for delivery from available, on-site inventory.

Warehousing/storage — Outdoor limited (up to 1 acre). A storage use for the public where individuals store personal property in units leased or rented on a periodic basis and where all storage is inside but individual units may be accessed directly from the outside. Examples include small outdoor self-storage mini warehouses or small equipment storage yard.

Warehouse/storage — Outdoor general (1+ acre). A storage use for the public or other businesses where large-scale household items or machinery, commercial products, raw materials, or supplies are stored on an outdoor lot. Examples include large outdoor self-storage mini warehouse, boat or RV storage, building supply lots or similar industrial supply storage yards.

Warehouse/storage — Bulk storage of flammable liquids and gases. The use of grounds for storing tanks used for gases or liquefied petroleum, often as a distribution point for further shipment or processing or re-use at other locations.

Waste management recycling collection small. A small-scale disposal point for recyclable or reusable materials, where items are dropped in bins that protect them from the elements, eliminate them from view of surrounding areas, and otherwise

mitigate any noise or odor. These facilities are solely for temporary drop off and storage, until weekly or daily pick up of the materials, can bring them to a separate location for further procession or disposition.

Waste management recycling processing and collection. A large-scale disposal point for recyclable or reusable material, where longer-term storage or processing of materials may occur on site.

Waste management refuse and transfer station. A facility for the purposes of separation, aggregation and/or compaction of solid waste prior to delivery to a landfill.

Water and waste water treatment plant. An industrial use used to treat and process water and wastewater for further distribution or disposal.

Well drilling companies. A business that stores, supplies, operates or distributes machinery and equipment used for drilling wells.

Wireless communication facilities. A pole, tower, or antenna for the purposes of transmitting and receiving communication signals, other than that accessory to a principal use of the property. Wireless communication facilities include monopoles and towers with attached appurtenances such as microwave dishes and antennae, rooftop, wall- and ground-mounted microwave dishes and antennas. See section 24-1101 for specific definitions, standards, and procedures applicable in all districts.

Sec. 24-404. Specific use standards.

- a. *Mixed-use dwelling.* In districts where mixed-use dwellings are allowed uses, the following standards shall apply to a building or structure with two or more different uses, one of which shall be residential:
 1. In the commercial zoning districts, at least 50 percent of the ground floor of a mixed-use building shall be in a nonresidential land use. In the R-H zoning district, no more than 50 percent of the total gross floor area of a structure containing a mixed-use, including basement area, shall be devoted to nonresidential uses.
 2. In the R-H zone, only commercial uses permitted in the C-L district are allowed, and they may be further conditioned, limited or prohibited through the use by special review process in section 24-206. Mixed-use dwellings in commercial and mixed-use zones may include any commercial use permitted within that zoning district.
 3. The design and character of all buildings and sites shall be compatible with the predominant character of the surrounding neighborhood. The operating characteristics of a nonresidential land use in a predominantly residential neighborhood shall be compatible with the residential uses. For the purposes of this section, operating characteristics shall include, but not be limited to, hours of operation, lighting, noise and traffic.
- b. *Residential care.* When residential care is a permitted or use by special review, they shall meet the following conditions to ensure they are integrated into neighborhoods, have a non-institutional nature, and maintain the residential character.
 1. *Residential care — Group home.*
 - (a) Group homes shall meet all of the residential design standards applicable in the particular district, and any alterations to support the group living shall be done in a discreet way in accordance with the design standards.
 - (b) In the R-L and R-M districts, no group home shall be located less than 750 from another existing group home.
 - (c) Group homes shall be supervised at all times, and may include up to two resident caregivers.
 - (d) Group homes shall be licensed by, operated by, or owned by a governmental agency or nonprofit qualified to provide care and supervision.
 - (e) Group homes shall not include alcoholism or drug treatment centers, work release facilities or other housing facilities qualifying as residential care — institutional.
 2. *Residential care — Assisted living, general, and institutional:*
 - (a) The use shall be located on a collector street or higher, or otherwise located as a transition between the neighborhoods and other nonresidential or mixed-use areas.

- (b) In residential districts, the building and site shall meet all residential design standards so that the use, building and site is compatible with the neighborhood in terms of scale and intensity of activity.
 - (c) Any facilities necessary to serve the residents, guests or support the staff, that are nonresidential in nature shall be located on the most discrete portions of the site and building, and otherwise designed and screened to mitigate impacts on adjacent property according to section 24-803.
- c. *Animal care.* All animal care facilities shall comply with the following:
- 1. All animal care businesses shall provide proof of compliance with all standards and licenses required by local or state animal care and control laws.
 - 2. Any facility that provides boarding shall provide the following:
 - (a) Adequate shelter from the elements for the animals.
 - (b) Adequate facilities for preventing the escape of animals from the premises.
 - (c) Adequate facilities for keeping the animal environment clean and free of filth.
 - (d) Confinement and treatment of animals shall be in a manner that is humane and appropriate, which enclosures where the animal spends the majority of the day or where there is otherwise not access to an outside animal run, shall meet the requirements of table 24-4-4: Animal boarding standards, which do not include required exercise areas:

Table 24-4-4: Animal Boarding Standards		
Animal Size	Minimum Kennel Area Floor Space*	Height
Extra-small dogs up to 10" high	4.5 s.f.	• Min. 18 inches. • At least 1.5 times height of animal at shoulder. • Max. required: 48 inches.
Small dogs up to 16" high	6.0 s.f.	
Medium dogs up to 22" high	9.0 s.f.	
Large dogs up to 26" high	12.0 s.f.	
Extra-large dogs up to 30" high	16.0 s.f.	
Giant breeds over 30" high	18.0 s.f.	
* Calculated as: (length of dog in inches + six) (squared) divided by 144 times two equals required floor space in feet		

- 3. Dog runs and exercise areas shall meet the following minimum space requirements:
 - (a) The length of the runs and exercise areas shall be a minimum of three times the length of the dog from the tip of its nose to the base of its tail; the width shall allow the dog to turn around easily; and the height shall be 1½ times the height of the dog at the shoulders, with the maximum height required of 48 inches, the minimum of 18 inches.
 - (b) Indoor/outdoor runs that have the primary enclosure and the exercise area in combination shall for measuring purposes be considered an exercise run and shall

- be measured from the extreme inside to the extreme outside for length determination.
- (c) Outdoor or indoor runs used as a combined primary enclosure and exercise area shall be measured from one extreme end to the other extreme end for length. The same criteria will apply to freestanding runs used for exercise areas only.
 - (d) Each dog housed in the specified primary enclosure must be provided the opportunity to exercise for a minimum of 60 minutes over a 24-hour period.
4. Adequate supervision of the animals in the kennel facility must be present to the following standards:
- (a) There must be a minimum of one human supervisor (at least 16 years of age), present at all times and able to directly view each enclosure or common area where dogs from different owners are commingled.
 - (b) If more than 15 dogs are housed in a common area or enclosure, there must be at least one adult supervisor present for each 15 dogs housed within each enclosure or common area, with a maximum of 60 dogs housed in any enclosure or common area at a single time.
 - (c) Where after-business hours or overnight boarding care is provided, the applicant must provide an animal care and supervision plan if human supervision is not provided during this period. Such plan must address how animal care and emergency needs will be managed in the absence of human supervision.
5. Commercial businesses for which the principal use is either a pet shop or grooming operation, a pet management plan may be submitted in lieu of compliance with the confinement and exercise standards within this section. The plan must demonstrate compliance with local and state animal care and welfare standards, and include a description of the alternate accommodations related to area, location, duration of enclosure periods, and access to food, water and shelter.
- d. *Automobile gas stations.* All automobile gas station uses shall comply with the following:
- 1. No more than one access drive shall be permitted for each street frontage.
 - 2. All light sources, including canopy, perimeter and flood lights and lenses, shall be shielded or fully recessed within the roof canopy so that light is contained on site.
 - 3. If on-site convenience store or other retail or service component is provided, the design, location and operation of these facilities shall be compatible with the design, location and operation of the gas station.
 - 4. The maximum height of a canopy shall be 20 feet for flat roofs and 24 feet for pitched roofs. Canopies shall be architecturally compatible with the principal building and all other accessory structures on the site with the same or complementary materials, architectural style and colors. The material used on the underside of the canopy shall not be highly reflective. Setbacks for the canopy shall be measured from the outside edge of the canopy.
 - 5. Adequate stacking space shall be provided on site without using any portion of the adjacent street or alley for stacking. Stacking shall not occur in required setbacks.

6. Dispensing pumps and adjacent parking, fueling or service areas shall not be located within the property setbacks.
 7. If the convenience store, gas station or auto repair use is immediately adjacent to residential zoned property or existing residential uses on at least two sides, the hours of operation shall be limited to between 6:00 a.m. and 11:00 p.m. daily.
- e. *Automobile repair/service.* All automobile repair/service uses shall comply with the following:
1. Areas for overnight vehicular storage shall be enclosed or screened from the view of adjacent properties and the public right-of-way except when located in the Industrial-Medium Intensity (I-M) or Industrial-High Intensity (I-H) zones.
 2. Where a automobile repair/service use abuts residential uses or residential zones, a minimum 20-foot side yard setback and a minimum 25-foot rear yard setback shall be provided.
 3. No used or discarded automotive parts or equipment, or disabled, junked or wrecked vehicles shall be located outside any structure.
 4. Landscaping, screen walls, berms, placement of the use or other site design techniques shall be used to screen cars being serviced or waiting for service and to screen overhead doors from view from the public right-of-way.
 5. Auto repair uses within an integrated shopping center shall have an architectural style consistent with the theme established in the center. The architecture of any auto repair use shall be compatible with surrounding uses in form, materials, color and scale. The location, size and design of the auto repair use shall be compatible with and have minimal adverse impact on the use of surrounding properties. Overhead doors shall be constructed of non-reflective materials.
- f. *Automobile repair/service — Car and truck washes.* Uses that include car or truck washes as an accessory or principal use shall comply with the following:
1. Bays shall be located so that they are perpendicular to the public right-of-way or screened from view if on a corner site.
 2. No auto repair shall be conducted within a car or truck wash bay.
 3. All-over spray shall be contained on site.
 4. Operating characteristics of car and truck washes, such as hours of operation and the use of lighting, shall be conducted in such a manner that is compatible with surrounding land uses.
 5. Other applicable requirements for car and truck washes may be found in the city's storm drainage and water department standards and criteria.
- g. *Bed and breakfasts.* All bed and breakfast uses shall comply with the following:
1. Cooking facilities, including stoves, hot plates or microwave ovens, shall not be permitted in guest rooms.
 2. Meals or food served in the bed and breakfast shall be prepared in a central kitchen on site and served solely for bed and breakfast occupants.

3. Individual rooms in a bed and breakfast shall not be rented more than twice during a 24-hour period.
- h. *Manufacturing food and beverage minor.* All minor food and beverage manufacturing uses shall comply with the following:
1. Commercial elements of the use shall be visually and physically accessible to the public realm and designed as the most prominent aspect of the site. Commercial elements include the sale of food, beverages or other retail for on-premises purchase or consumption. The use of architecture, sidewalks, landscaping and parking shall be to define and emphasize these commercial components while de-emphasizing the manufacturing and other aspects of the facility.
 2. Loading and storage areas, where otherwise allowed by this development code, shall be separated from public entrances and areas associated with the commercial elements of a minor food and beverage processing facility and shall be located at the rear of the facility and screened from rights-of-way and off-site uses, to the extent feasible.
 3. Traffic by heavy trucks or rail shall be separated from public entrances and areas to avoid regular conflicts with the public and commercial aspects of the use.
 4. Environmental impacts, such as odor, heat, glare, noise, vibration and other such emissions or impacts shall be reasonably contained on site and not discernable at or beyond the property line. The inability to confine such impacts to the site would qualify this use as a major food processing use.
 5. The applicant for a minor food and beverage processing facility shall demonstrate that a portion of the building footprint's square footage, equal to or greater than ten percent and no more than 50 percent, is dedicated to sales of food, beverages or other retail or services for on-premises purchase or consumption.
 6. All other applicable site and building design standards applicable in the particular district or location shall be met.
- i. *Waste management — Recycling collection small.* All small recycling collection uses shall comply with the following:
1. The facility shall be installed as an accessory use to an existing multifamily development, commercial or industrial land use.
 2. Facilities shall not be located within 100 feet (excluding right-of-way) of any residential zoning district.
 3. The facility shall be no larger than 300 square feet and occupy no more than five parking spaces, excluding space that will be periodically needed for removal of materials or exchange of containers, and one parking space for an attendant, which shall be located outside setbacks.
 4. All permanent or temporary structures shall be set back at least ten feet from any public right-of-way, shall be located so that pedestrian or vehicular circulation is not obstructed, and otherwise located in a manner to limit adverse impacts on adjacent property and the public streetscape.

5. The facility shall accept only glass, metals, plastic containers, papers and similar items; or may be a collection point for donation of reusable, non-perishable household items such as books or clothing.
 6. No power-driven processing equipment shall be used except for reverse vending machines.
 7. Containers shall be constructed and maintained with durable waterproof and rustproof material, covered when the site is not attended, and shall be of a capacity sufficient to accommodate materials collected and collection schedule. All material shall be stored in the unit and shall not be left outside of the unit when unattended. The facility shall be placed on asphalt or concrete and shall not impact any landscaping or landscaped areas.
 8. The facility shall be maintained in a clean and sanitary manner, free of litter and any other undesirable materials.
 9. Containers shall be clearly marked to identify the type of material that may be deposited. The facility shall be clearly marked to identify the name and telephone number of the facility operator and the hours of operation, and display a notice stating that no material shall be left outside the recycling containers.
- j. *Waste management — Recycling processing and collection.* Recycling collection facilities that do not meet the small facility limits, or all recycling processing and collection uses shall be limited to industrial districts and comply with the following:
1. The facility shall not be adjacent to a parcel designated or planned for residential use.
 2. Structure setbacks shall be those provided for the zoning district in which the facility is located.
 3. All exterior storage of material shall be in sturdy containers that are covered, secured and maintained in good condition. Outdoor storage shall be screened by a six-foot solid fence or wall. No storage, excluding truck trailers, shall be visible above the height of the wall or fence. No outdoor storage shall be permitted in zoning districts that do not permit outdoor storage.
 4. The site shall be maintained clean, sanitary and free of litter and any other undesirable materials and shall be cleaned regularly of loose debris. Containers shall be clearly marked to identify the type of material that may be deposited, and the facility shall display a notice stating that no material shall be left outside the recycling containers.
 5. Space shall be provided on site for a minimum of five vehicles to circulate and to deposit recyclable materials and for employee and commercial vehicle parking.
 6. All containers provided for after-hours donation of recyclable materials shall be at least 100 feet from any residential use or zoning district and constructed of sturdy rustproof construction with sufficient capacity to accommodate materials collected, and shall be secure from unauthorized entry or removal of materials.
 7. The facility shall be clearly marked with the name and telephone number of the facility operator and the hours of operation. Identification, informational and directional signs shall meet the sign standards of the zoning district.

8. Power-driven processing shall be permitted, provided all noise level requirements are met. Light processing facilities are limited to baling, briquetting, crushing, compacting, grinding, shredding and sorting of source-separated recyclable materials and repairing of reusable materials.
 9. The site shall be secured from unauthorized entry and removal of materials when attendants are not present.
 10. Hazardous materials, dead animals or yard waste shall not be considered recyclable material, except as otherwise provided in this development code.
- k. *Affordable Housing.* Affordable housing, as defined in Section 24-1301, is permitted within any approved dwelling unit and is primarily designated as affordable housing for the purpose of qualifying for the affordable housing parking reduction. Projects that include affordable housing units should follow the approval process for the equivalent residential use shown in Table 24-4-2 including, but not limited to, single-family dwelling, two-family dwellings, row house dwellings, and multi-family dwellings. Affordable housing should also follow the residential development standards for the equivalent building type including, but not limited to, detached house, multi-unit house, row house, and apartment. Transitioning an affordable housing unit to a regular dwelling unit is considered a change of use requiring an amendment to the approved plans and the provision of adequate parking by the applicant.

Section 2. Section 24-703 of Chapter 7, Access and Parking of Title 24, Development Code, shall be amended to read as follows:Sec. 24-703. Required parking.

- a. *Vehicle parking rates.* Table 24-7-3 provides minimum parking requirements, and general categories apply to all similar uses not specifically listed. Where a use is not similar to a general use in the table or could meet more than one category, the director shall determine the appropriate classification based on industry guides and the most similar use in terms of scale, format, and operation. The following criteria shall be used in interpreting the table:
1. Employee rates shall consider the maximum number of employees likely to be on site at one time.
 2. Square footage rates shall consider leasable floor area or active area dedicated to the particular use. Where this number is not easily or readily determined, 85 percent of gross floor area may be used.
 3. A seating or capacity rate shall consider the total number of seats based on industry standards for typical layouts of buildings or building codes, where actual seating is not yet known.
 4. Where uses or sites have components of different uses (i.e., hotel with a restaurant), each component shall be calculated and apportioned under the most applicable rate.

Table 24-7-3: Required Parking	
Use Category/ Specific Use	Minimum Parking Rate
Residential	
<i>Secondary dwelling</i>	1/per bedroom
<i>Dwellings (detached, manufactured)</i>	2/unit Blocks without on-street parking may require guest parking within 250' of units.
<i>Dwellings (attached, multiple, or mixed)</i>	1.25/unit (studio/efficiency) 1.5/unit (1 bedroom) 1.75/unit (2 bedroom) 2/unit (3 bedroom) 3/unit (4+ bedrooms) + 1 additional space per 10 required spaces for guest parking
<i>Senior living (independent)</i>	Same as dwellings (attached, multiple or mixed)
<i>Senior living (assisted or nursing)</i>	1 / 4 beds + 2 per 3 employees
<i>Group home (up to 8 units)</i>	Same as dwellings (detached, manufactured) + 2 per 3 employees
<i>Group home (more than 8 units)</i>	1 / 2 beds + 2 per 3 employees
Public/Civic	
<i>Assembly</i>	1 / 3 seats
<i>Public safety/services</i>	1 per employee + 1 per company vehicle

<i>Hospital</i>	1 / 2 beds + 2 per 3 employees
<i>Library</i>	1 / 300 s.f.
<i>Museum</i>	1 / 1,000 s.f.
<i>School</i>	2/class (elementary or junior) + 1 per 10 students 1 / 4 students + 1/employee (senior or higher education) OR 1 / 4 seats of all auditorium or event space, whichever is greater
Commercial	
<i>Retail — Small (under 3K)</i>	1 / 500 s.f.
<i>Retail — General (3K +)</i>	1 / 250 s.f.
<i>Retail — Outdoor display area (generally)</i>	1 / 300 s.f.
<i>Retail — Outdoor display area (large equipment)</i>	1 / 1,000 s.f.
<i>Drive-through (restaurant)</i>	100' of stacking (5 cars) per service areas, but subject to use-specific performance criteria
<i>Drive-up services (service bays or non-food services)</i>	30' of stacking space (3 cars) per service area
<i>Lodging — B&B</i>	2 spaces + 1/guest room
<i>Lodging — Hotel/motel</i>	1/guest room + 1 / 200 s.f. of restaurant
<i>Medical care</i>	1 / 300 for all general office and service areas + 1 / 2 beds (admittance permitted)
<i>Office & services</i>	1 / 300 s.f. generally 1 / 200 s.f. or 1 per patron station, whichever is greater, for any uses with frequent customer visits (i.e., salon, barber, etc.)
<i>Restaurant, general</i>	1 / 100 s.f.
<i>Restaurant — quick-serve, or bar or nightclub</i>	1 / 75 s.f.
<i>Health and fitness center</i>	1 / 200 s.f.
<i>Recreation and entertainment</i>	1 / 200 s.f. generally — indoor) 1 / 500 s.f.(large-scale — indoor (i.e., skating ring, dance hall) 1 / 4 seats for uses with fixed seating areas 1 / 2 active patron station (i.e., 2 per lane bowling; 2 per hole golf course; etc.) 1 / 100 s.f. for food and beverage service areas with seating
Industrial	
<i>Manufacturing</i>	1 / 400 s.f. (artisan/limited or light) 1 / 1,000 or 2 / 3 employees, whichever is greater (all others)
Agriculture	
<i>All uses</i>	Use combination of residential, public/civic commercial and industrial rates based on type and general nature of agriculture activities.

- b. *Maximum parking.* Nonresidential uses shall not provide more than 125 percent of the minimum required vehicle parking without documented evidence of actual parking demand based on studies of similar uses in similar contexts. In addition, any parking permitted over 125 percent of the minimum shall require mitigating potential impacts of additional parking through one or more of the following strategies, based on the director's discretion:
 - 1. Utilize all eligible parking reductions permitted by section 24-703.c.
 - 2. Provide shared parking for other uses on the block or adjacent blocks according to this chapter.
 - 3. Utilize alternative surfaces designed to infiltrate stormwater, approved by the director, and subject to installation, maintenance, and performance assurances.
 - 4. Provide additional landscape to screen parking with at least a ten percent increase in the required parking landscape area and at least a 25 percent increase in the amount of landscape material required for the parking.
 - 6. Increase the lot open space required for the building and site in section 24-503 or section 24-603 by an amount equal to the area of parking that exceeds the 100 percent minimum parking requirement, and locate this open space to limit the impact and visibility of parking.
- c. *Parking reductions.* The parking required by table 24-7-3 may be reduced depending on context and according to the following strategies. Reductions beyond those provided in this subsection may only be approved according to an alternative parking and access plan in [section 24-707]:
 - 1. *GID exempt.* No parking is required in the general improvement (GID) overlay district, except that any residential uses shall meet the parking requirements for that building type, and the required spaces shall be located with 400 feet of the residential building. The director may require parking for any nonresidential use over 10,000 square feet provided the location, accessibility, and design of the parking is consistent with the overall planning and urban design objectives of the downtown area.
 - 2. *Administrative reduction.* The director may reduce the required parking for any use that requires more than ten spaces by up to 15 percent of the required spaces due to the nature of a particular use or any unique circumstances on the site.
 - 3. *On-street parking credit.* All on-street parking within 300 feet of any lot frontage shall count towards the parking requirement at a rate of 0.25 spaces for every on-street space not on the lot boundary and 0.75 spaces for every space on the lot boundary.
 - 4. *Bicycle parking credit.* All bicycle parking designed and located according to section 24-703.d may reduce the required vehicle parking at a rate of one space for every four bicycle parking spaces up to a maximum of 15 percent of the required vehicle parking spaces. To be eligible for this credit, the applicant must demonstrate that it is practical to expect significant bicycle access to the site based on the location and proximity to the city-wide bicycle transportation network, the design of the site, and the nature of the use and anticipated patrons.
 - 5. *Public parking credit.* Any site within 1,320 feet of a public parking area may reduce the required vehicle parking at a rate of one space for every two parking spaces, except

that if the public parking is part of a managed district, the district policies and management may establish a different allocation of spaces.

6. *Transit credit.* The director may reduce the parking requirement up to 25 percent for any development within 1,320 feet of a transit stop. In making a determination on the eligibility for and amount of the credit, the director may consider the nature of the use, the likelihood that it generates transit trip origins and destinations, and the level of transit service at the stop.
7. *Shared parking.* Required parking may be reduced for any site containing multiple uses or for adjacent sites with different uses according to table 24-7-4. Any shared parking arrangement shall require an agreement among all landowners participating in the agreement to ensure access, joint use, maintenance, and other operational issues. The agreement shall be recorded for each participating property with the office of the applicable county clerk and recorder. The agreement shall state that it cannot be changed or modified without the approval and signature of the director. A shared agreement that differs from this table may also be approved based on a joint parking study for the sites and uses demonstrating adequate parking during peak hours for all parties to the agreement.
8. *Affordable Housing.* When an applicant provides an executed and recorded deed restriction that a proposed dwelling unit will be reserved for affordable housing for no less than 15 years, the applicant may reduce the required parking for the affordable dwelling unit. All other uses on the site, including market rate dwelling units, do not qualify for this parking reduction. The applicant must provide evidence that the property will adhere to income limits and maximum rents published annually by the Department of Housing and Urban Development. The applicant must list each dwelling unit subject to the deed restriction, the number of bedrooms in the dwelling unit, and the area median income for which the dwelling unit is reserved. Upon fulfilling the above-mentioned requirements, the applicant may reduce the required parking as follows:
 - a. Up to a 75 percent reduction for dwelling units that are affordable to households that earn up to 30 percent of area median income.

Table 24-7-4: Shared Parking					
Use	Percentage of Required Parking by Time Period				
	Weekday		Weekend		All
	6:00 a.m. to 5:00 p.m.	5:00 p.m. to 1:00 a.m.	6:00 a.m. to 5:00 p.m.	5:00 p.m. to 1:00 a.m.	1:00 a.m. to 6:00 a.m.
Employment	100%	10%	5%	5%	5%
Retail or service	75%	75%	100%	90%	5%
Restaurant	50%	100%	75%	100%	10%
Entertainment & recreation	30%	100%	75%	100%	5%
Place of worship	5%	25%	100%	50%	5%
School	100%	10%	10%	10%	5%
Dwellings	25%	75%	50%	75%	90%

Lodging	50%	90%	75%	100%	100%
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- d. *Bicycle parking.* All nonresidential or multifamily development shall provide bicycle parking spaces according to table 24-7-5.

Table 24-7-5: Bicycle Parking	
Activity	Required Spaces
Primary or secondary school	10% of the student capacity + 3% of employees
Retail or office uses	10% of the required vehicle spaces
Recreation and community facilities	15% of the required vehicle spaces
Other institutional, employment, industrial or entertainment uses	5% of the required vehicle spaces
Multi-unit residential buildings	0.5 per 1 bedroom dwelling unit; 1.5 per dwelling unit with 2 or more bedrooms

Bicycle parking shall be designed according to the following standards:

1. A structure shall be securely anchored to the ground and usable for both U-locks and cable locks, support a bike at two points of contact to prevent damage to wheels or frames, and have two feet by six feet clearance for each bicycle.
 2. Structures that serve another primary function but are designed to meet these standards may count toward this requirement.
 3. Bicycle parking shall be located in a well-lit area with convenient and safe pedestrian access and be on pavement or all-weather, dust-free, stabilized surface.
 4. Bicycle parking for nonresidential uses shall be located within 100 feet of and visible from the primary entrance.
 5. At least 50 percent of required bicycle parking for residential uses, employment uses, or other similar uses where bicycles are likely to be parked for longer than four hours, shall be located within the building or other all-weather and secure enclosure.
 6. Short-term bicycle parking facilities may be located in the right-of-way subject to streetscape design plans and the director's approval. Structures shall be designed for some other primary purpose meeting the streetscape standards or be designed with artistic or ornamentation enhancements compatible with the streetscape character at the specific location.
 7. Alternative standards and specifications based on recognized industry guidance or best practices for bicycle parking may be approved by the director through site plan review.
- e *Accessible parking.* Accessible vehicle parking spaces shall be provided in accordance with the applicable building codes and the Americans with Disabilities Act (ADA) standards and guidelines for quantity, design, and location.

- f. *Alternative compliance.* Alternative compliance to the required parking standards in this section may be authorized according to the process and criteria in section 24-208, and as provided in section 24-707.

Section 3. Section 24-130, of Chapter 13, Definitions and Terms of Title 24, Development Code, shall be amended to read as follows:

Sec. 24-1301. Definitions.

All terms used in this code shall have their plain and commonly accepted meaning, based upon the context of their use in the code. The following terms shall have the meaning given below, unless more specifically described, limited or qualified within the standards of this code. Some chapters have specific definitions where the terms have the given meaning for interpretation of that chapter.

100-year flood. A flood having a recurrence interval that has a one percent chance of being equaled or exceeded during any given year (one-percent-annual-chance flood). The terms "100-year flood" and "one-percent-chance flood" are synonymous with the term "100-year flood."

100-year floodplain. The area of land susceptible to being inundated as a result of the occurrence of a 100-year flood.

Abandoned sign.

- (1) A sign or sign structure and components, for which no legal owner can be found; and/or
- (2) A sign and structure which are used to identify or advertise a business, tenant, owner, product, service, use, event or activity that has not been located on the premises for a period of 90 consecutive days or longer.

Accessory building or structure. A detached building or structure located upon the same lot as the principal building or structure to which it is related, which is incidental to and customarily found in connection with such principal building or structure.

Accessory use. A use customarily incidental, related and subordinate to the main use of the lot, building or structure which does not alter the principal use.

Adjacent. Close, contiguous, and related to by proximity, sharing a common boundary or otherwise nearby to have a relationship without intervening dissimilar elements. When referring to land, separation caused by a street, alley, sidewalk, railroad right-of-way, utility line, trail, or irrigation ditch, or similarly related land can be considered adjacent.

Abutting. Directly touching elements that share a common edge or boundary.

Affordable Housing. Any dwelling unit with an executed and recorded deed restriction stating that the dwelling unit will be reserved for affordable housing by adhering to the income limits and maximum rents published annually by the Department of Housing and Urban Development for no less than 15 years.

Alley. A minor way used primarily for vehicular access or service to the back of properties adjacent to a street. An alley shall not be considered a street.

Alteration. Any act or process requiring a building permit, moving permit, demolition permit or sign permit for the reconstruction, moving, improvement or demolition of any designated property or district; or any other action in which a review by either the historic preservation commission or the city's historic preservation specialist is necessary under this article and/or the district designation plan and in accordance with the definitions of major and minor alterations, for the purposes of this article.

American National Standards Institute (ANSI). The standards by said organization that helps development in the use have an equitable and open process that serves industry and the public good, having a consensus in standards development; ANSI's essential requirements.

Animal unit. A unit of measurement used to determine the animal capacity of a particular site or parcel of land and to establish an equivalency for various species of livestock.

Animated sign. (See *Flashing or animated or imitating sign.*)

Antenna. A device used to transmit and/or receive radio, television or any other transmitted signal and which may be rooftop, wall or ground-mounted.

Appeal. A review of a final decision by a higher authority.

Applicant. The owners or lessees of property, the agent of such owners or lessees, or persons who have contracted to purchase property, or the city or other quasi-governmental entity that is proposing an action requiring review and approval by one or more of the sections in this title. An applicant may subsequently become the developer once approval is granted and, in this case, the terms shall be interchangeable.

Appurtenances. The visible, functional objects accessory to and part of buildings or structures and which may extend above the height of the roof.

Art. All forms of original creations of visual art, including, but not limited to, sculpture; mosaics; painting, whether portable or permanently fixed, as in the case of murals; photographs; crafts made from clay; fiber and textiles; wood; glass; metal; plastics; or any other material or any combination thereof; calligraphy; mixed media composed of any combination of forms or media; unique architectural styling or embellishment, including architectural crafts, environmental landscaping; or restoration or renovation of existing works of art of historical significance. Works of art are not intended to be used for commercial advertising purposes.

Arterial street. (See *Street.*)

Artificial turf. Any of the various synthetic fibers made to resemble natural grass.

Awning, internally illuminated. Any transparent backlit awning or awning lettering which transmits light from within the awning to the outside surface of the awning.

Awning sign. A sign that is mounted or painted on or attached to an awning.

Backing. The background area of a sign, which differentiates the total sign display from the background against which it is placed.

Basement. Any level of a building where more than one-half of the vertical distance between floor and ceiling is below the grade of the site.

Beacon. (See *Searchlight, strobe light or beacon.*)

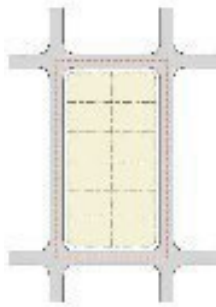
Bedroom. Any room intended and used principally for sleeping purposes.

Berm. (See *Earthen berm.*)

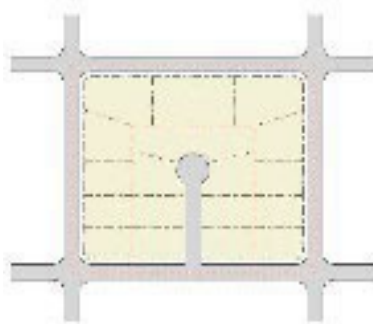
Bioretention facility. A landscaped stormwater element designed to concentrate or remove debris and pollution from surface water runoff by moving water slowly and horizontally at the surface through vegetation using gently sloped sides that cleanse water from pollutants and soil erosion before it enters the city's stormwater system.

Bioswale. A channeled depression or trench that receives rainwater runoff (as from a parking lot) and has vegetation (such as grasses, flowering herbs, and shrubs) and organic matter (such as mulch) to slow water infiltration and filter out pollutants.

Block. A group of platted lots and outlots surrounded by streets or by other features that interrupt the street network such as parks, railroad rights-of-way, or municipal boundary lines; or the perimeter of all lots fronting on the street in the case of a cul-de-sac.



Standard Block

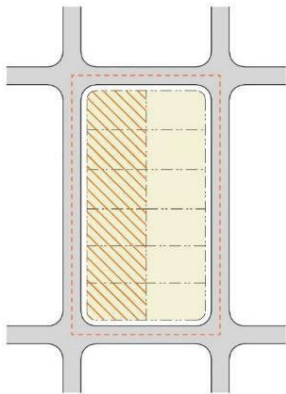


Cul-de-Sac Block



Exception

Block face. All lots on one side of a block.



Block Face

Buffer. To promote separation and enhance compatibility between land uses of different intensities.

Building. Any structure built for the shelter or enclosure of persons, animals or property of any kind, excluding fences or walls.

Building appurtenance. The visible, functional or ornamental object accessory to and part of a building.

Building code. Any law, ordinance or code which is in force in the city and which pertains to the design and construction of buildings and other structures, or to any components thereof, such as cooling and heating, plumbing, electricity and the like.

Building envelope. The area in which a building or structure is constructed or placed in a development and in which the land area beyond the envelope is under the single ownership or common ownership of all property owners within the development.

Building footprint. The outline of the total area which is covered by a building's perimeter at the ground level.

Building frontage. The area of the lot along the front building line, and when referring to design standards it may include relationship of this area and the primary façade of the building.

Building frontage, principal. The horizontal linear dimension which is designated as the primary façade of that portion of a building occupied by a single use or occupancy for the purposes of allocating signs and other design requirements.

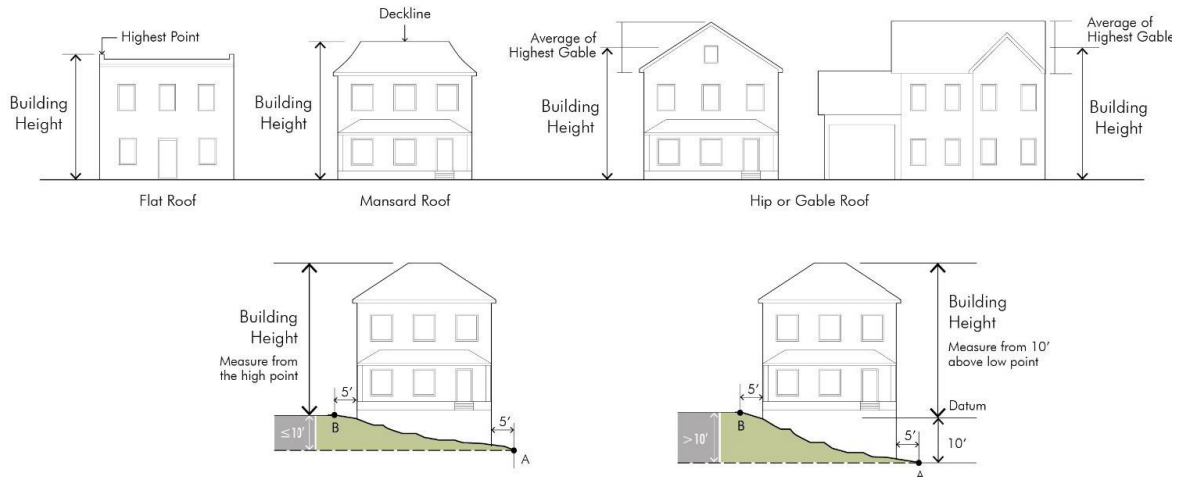
Building frontage, secondary. That dimension of a building abutting a public right-of-way other than the principal building frontage for the purposes of allocating signs and other design requirements.

Building or structure height. The vertical distance from grade at an exterior wall of a building or structure to the highest point of the coping of a flat roof, to the average height of the highest gable of a hipped roof, or a monitor roof, or to the highest point of a curved roof. This measurement shall be exclusive of church spires, cupulas, chimneys, ventilators, pipes, and similar appurtenances. For the purposes of this definition, grade applies as follows:

- (1) When there is less than a ten-foot difference between the highest and lowest ground surface within a five-foot horizontal distance from the wall, use the highest elevation.
- (2) When there is greater than a ten-foot difference between the highest and lowest ground surface within a five-foot horizontal distance from the wall, use ten-feet higher than the lowest elevation in this area.

The height of the building is the vertical distance above a reference datum measured to:

- (a) The highest point on a flat roof;
- (b) The deck line of a mansard roof;
- (c) The average of the highest gable on a hip or gabled roof.



Building, principal. The primary building on a lot or a building that houses the principal use.

Building line. The actual line at which a building is constructed, and the location of other elements on the lot or adjacent lots may refer to this line extended outward from the building.

Building line, required front. The portion of the lot frontage required to be occupied by the front façade of a principal structure, or other permitted accessory structures or landscape associated with the frontage design.

Caliper. The diameter or circumference of a tree.

Candela. A unit of luminous intensity, defined as the luminous intensity of a source that emits monochromatic radiation of frequency 540×10^{12} Hertz and that has a radiant intensity of 1/683 watt/steradian and adopted in 1979 as the international standard of luminous intensity.

Centerline (of public right-of-way). A line running midway between the bounding right-of-way lines of a street or alley. For the purposes of calculating signage, the centerline means the apparent centerline of the road determined by finding the point midway between the outer edges of the road surface.

Certificate of approval. A certificate issued by the city authorizing the construction, alteration or demolition of property and improvements designated under this chapter.

Certificate of occupancy (C.O.). A written certificate provided by the city signifying the subject building/structure (property) has complied with city standards allowing for use and occupancy.

Change of use. A use that substantially differs from the previous use of a building or land and which may affect such things as parking, drainage, circulation, landscaping, building configuration, noise, or lighting. A change of ownership which does not include any of the factors listed above shall not be considered a change of use.

Changeable copy sign (also known as a *marquee sign*). A sign designed to allow the changing of copy as with individual letters through manual means, without altering the sign backing or structure in any such way.

Channel. A natural or artificial watercourse of perceptible extent, with definite bed and banks to confine and conduct continuous or periodic flowing water.

Channel letters, individual letters, raceway and channel sign. Individual letters, flat cutout letters or symbols constructed to be applied singly in the formation of a wall sign or freestanding sign.

Channelization. The artificial creation, enlargement, or realignment of a stream channel.

Circumference. The perimeter measurement of a building or structure, measured as a continuous line.

Clear vision zone or area. That area which the city requires maintenance of in order to preserve the sight distance and safety of motorists, pedestrians, and bicyclists by requiring an unobstructed line of sight necessary for most drivers stopped at an intersection to see an approaching vehicle, pedestrian or bicyclist to avoid a collision.

Collector street. (See *Street*.)

Commercial mineral deposit. A natural mineral deposit of limestone used for construction purposes, coal, sand, gravel, and quarry aggregate, for which extraction is or will be commercially feasible and regarding which it can be demonstrated by geologic, mineralogic, or other scientific data that such deposit has significant economic or strategic value to the area, state, or nation.

Common consumption area. An area designed as a common area located within a designated entertainment district and approved by the local licensing authority that uses physical barriers to close the areas to motor vehicle traffic and limit pedestrian access.

Comprehensive plan. The comprehensive plan of the city, as provided for in the city Charter and which provides for the future growth and improvement of the community, for the preservation of historic and natural resources, and for the general location and coordination of streets and highways, recreation areas, public building sites and other physical development. Comprehensive plan may also include any specific plans, policies, or programs adopted under the guidance of that plan for the purposes of interpreting and applying this code.

Condominium. A form of ownership in which the interior floor space of a unit or area is owned individually, and the structure, common areas and facilities are owned by all of the owners on a proportional, undivided basis.

Coverage. Land area which is covered with impervious surfaces, such as buildings, patios, or decks with roofs, carports, swimming pools, tennis courts, or land area covered by any other type of structure, including parking lots.

Cul-de-sac. A local street with one open end and the other end terminating in a vehicular turnaround.

Deciduous. A plant with foliage that is shed annually.

Decision point distance. Where the clear vision sight distance triangle begins.

Deck. A floored outdoor area, typically elevated above grade and adjoining a residential dwelling.

Dedication. Setting aside property for a specific purpose, including, but not limited to, streets, utilities, parks, and trails.

Demolition. Any act or process which destroys, in part or in whole, any designated property or property located within a designated historic district.

Density. The number of dwelling units per gross acre of land area.

Detention area. An area which is designed to capture specific quantities of stormwater and to gradually release the same at a sufficiently slow rate to reduce the risk of flooding.

Developer. Any person, partnership, joint venture, association, or corporation or other legal entity who or which shall participate as owner, promoter, designer, builder, or sales agent in the planning, platting, development, promotion, sale, or lease of a subdivision.

Developing. A lot, or grouping of lots or tracts of land, with less than 60 percent of their perimeter boundary adjacent to existing development. For the purposes of this definition, public parks, natural areas and other such areas which are not eligible for further development shall be considered developed. Areas which were originally platted prior to 1978 and which have at least 75 percent of the lots in the development built on within this 20-year period shall also be considered developed. A replat of the original plat shall not affect the commencement of this 20-year period.

Development. Any construction or activity which changes the basic character or use of land on which construction or activity occurs, including, but not limited to, any non-natural change to improved or unimproved real estate, substantial improvements to buildings or other structures, mining, dredging, filling, grading, paving, extraction, or drilling operations.

Development or subdivision improvement agreement. A written instrument for the purposes of specifying all improvements to be constructed by the developer, as well as the timetable for construction of such improvements, any special conditions of construction, and construction cost estimates.

Direct lighting. Spot or floodlighting used to illuminate a sign surface.

Directional on-site. Signs that direct the movement or placement of pedestrian or vehicular traffic on a lot without reference to, or inclusion of, the name or logo of a product sold or services performed on the lot or in a building, structure or business enterprise occupying property, such as "welcome," "entrance," "exit," "restrooms," "parking," "loading area," and "drive-thru."

Dissolve. A mode of message transition on an electronic message display accomplished by varying the light intensity or pattern, where the first message gradually appears to dissipate and lose legibility simultaneously with the gradual appearance and legibility of the second message.

District. A portion of the community within which uniform regulations apply.

Downtown entertainment district. That area contained within the south curb flow line of 7th Street, the west curb flow line of 8th Avenue, the north curb flow line of 10th Street and the east curb flow line of 9th Avenue.

Drive-in or Drive-through. Accessory site and building features that encourage or permit customers to order and receive food or beverages while remaining in a motor vehicle for consumption on or off the site and which includes a menu board and audio or video speakers.

Drive-up. Accessory site or building features that encourage or permit customers to receive services or obtain or drop off products while remaining in a motor vehicle and which excludes a menu board and/or audio or video speakers.

Driveway. An improved concrete or asphalt path leading directly to one or more city-approved parking spaces constructed with a concrete, asphalt, or similar all-weather surface.

Dry wash channel. Natural passageways or depressions of perceptible extent, containing intermittent or low-base flow.

Dust abatement plan. A plan intended and designed to control dust during the construction or development of property.

Dwelling unit. One room, or connected rooms, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease as a single unit, on a monthly basis or longer, physically separated from any other room or dwelling units which may be in the same structure and served by no more than one gas meter and one electric meter.

Earthen berm. A mound of earth, higher than grade, used for screening or buffering, the definition of space, noise attenuation, and decoration in landscaping.

Easement. A right granted by a property owner permitting a designated part of interest in the owner's property to be used by others for a specific use or purpose.

Ecological character. The natural features and attributes of an area or landscape that, combined, give the area its character.

Electronic message display. A sign capable of displaying words, symbols, figures, or images that can be electronically or mechanically changed by remote or automatic means.

Emergency. An unexpected and sudden event that must be dealt with urgently in order to stabilize or protect a structure.

Entertainment district. An area within the city that is designated as an entertainment district of a size no more than 100 acres and containing at least 20,000 square feet of premises licensed as a tavern, hotel and restaurant, brew pub, retail gaming tavern, or vintner's restaurant at the time the district is created.

Evergreen. A plant with foliage that persists and remains green year-round.

Existing development. Any development in the city once all public improvements, including water, sewer, streets, curb, gutter, streetlights, fire hydrants, and storm drainage facilities, are installed and completed.

Exposed incandescent or high intensity discharge lighting. Any sign or portion of a sign that utilizes an exposed incandescent or high intensity lamp, with the exception of neon.

Exterior or perimeter wall. A wall, elements of a wall, parapet wall or any elements or groups of elements which define the exterior boundaries or courts of a building.

Façade. The exterior face of a building.

Fade. A mode of message transition on an electronic message display accomplished by varying the light intensity, where the first message gradually reduces intensity to the point of not being legible and the subsequent message gradually increases intensity to the point of legibility.

Family. An individual living alone, or any number of persons living together as a single household who are interrelated by blood, marriage, adoption or other legal custodial relationship; or not more than two unrelated adults and any number of persons related to those unrelated adults by blood, adoption, guardianship or other legal custodial relationship. In multifamily units, the number of unrelated adults shall be determined based on the provisions of the city's housing code. For the purposes of this definition, a bona fide employee of the family who resides in the dwelling unit and whose live-in status is required by the nature of such person's employment shall be considered a member of the family.

Federal Register. The official daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents.

Fence. Any artificially constructed barrier of an approved material or combination of materials erected vertically to enclose or screen areas of land.

Figures. An outline, shape or pattern of numbers, letters or abstract images.

Financial security or guarantee. A financial obligation, in a form acceptable to the city, which assures completion and payment for all improvements related to development of property.

Flag. Material attached to or designed to be flown from a flagpole or similar device and which may display the name, insignia, emblem or logo of any nation, state, municipality, or commercial or noncommercial organization (see *Pennants*).

Flashing or animated. Signs or lighting with flashing, blinking, moving or other animation effects or that give the visual impression of such movement by use of lighting, or intermittent exhibits or sequential flashing of natural or appearance of artificial light or colors, including those signs that rotate, revolve, spin, swing, flap, wave, shimmer, or make any other motion, or illusion of motion, or which imitate official governmental protective or warning devices (see *Imitating sign*).

Flood or flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from the unusual and rapid accumulation or runoff of surface waters from any source.

Floodplain. An area which is adjacent to a stream or watercourse and which is subject to flooding as a result of the occurrence of an intermediate regional flood and which is so adverse to past, current or foreseeable construction or land use as to constitute a significant hazard to public health and safety or to property. The term "floodplain" includes, but is not limited to, mainstream floodplains, debris fan floodplains, and dry wash channels and floodplains.

Floor area, gross. The total area of a building measured by taking the outside dimensions of the building at each floor level, or from the centerlines of walls separating two buildings and excluding areas used exclusively for the service of the building such as mechanical equipment spaces and shafts, elevators, stairways, escalators, ramps, loading docks, cellars, unenclosed porches, attics not used for human occupancy, any floor space in accessory buildings, or areas within the building which are intended for the parking of motor vehicles.

Flow line. The low point within a street section wherein water is intended to collect and flow, typically the gutters along each edge of pavement.

Foundation plantings. Live plantings located immediately around the base of the foundation of a building façade that reflects the formal geometry of the structure.

Frame. A complete, static display screen on an electronic message display.

Frame effect. A visual effect on an electronic message display applied to a single frame to attract the attention of viewers.

Freestanding sign. A sign which is not attached to any building. A freestanding sign shall include, but is not limited to, a pole, monument, a canopy, and freestanding wall sign. A sign that extends more than four feet from a wall but is attached and/or is part of a canopy or an awning shall be considered a freestanding sign.

Freestanding wall or fence. Either a wall that is not attached to a building or a wall attached to a building that projects more than four feet beyond the exterior wall of the habitable portion of the building.

Frontage. The area of a lot between the front building line and the front lot line.

Garage or yard sale. The occasional sale of new or used goods at a residence, which may be held outside and/or within a garage or accessory building.

Gas. All natural gases and all hydrocarbons not defined as oil.

General Improvement District #1. That 19-block district bounded by 11th Street to the south, 6th Street to the north, 7th Avenue to the east and 11th Avenue to the west, excluding City Block 35.

Geologic hazard. A geologic condition which is adverse to current or foreseeable future construction or land use associated therewith, constituting a hazard to public health and safety or property, including, but not limited to, landslide, rock fall, subsidence, expansive soils, slope failure, mudflow, or other unstable surface or subsurface conditions.

Ghost sign. Old hand-painted signage that has been preserved on a building for an extended period of time, whether by actively keeping it or choosing not to destroy it.

Glare. A sensation of brightness within the visual field that causes annoyance, discomfort, or loss in visual performance and visibility.

Grade. The average elevation of the finished surface of the ground, paving, or sidewalk with a radius of five feet from the base of the structure.

Graphics. Drawings, decals, paint, or illustrations.

Gravel. Inert materials such as loose fragments of rock larger than "pea" size and commonly used as parking surface material.

Gross floor area. (See *Floor area*.)

Gross leasable area (GLA). The area of a building that can be leased to tenants, including storage areas and common areas apportioned to the number of tenants sharing the area. Gross leasable area shall be measured in the same manner of gross floor area, but is apportioned to specific uses or tenants in the building.

Gross land area. The total land area of a site or property, including land to be dedicated for streets and other public purposes.

Ground cover. Materials that typically do not exceed one foot in height used to provide cover of the soil in landscaped areas, which may include a combination of, but is not limited to,

river rock, cobble, boulders, concrete pavers, grasses, flowers, low-growing shrubs and vines, and those materials derived from once-living things, such as wood mulch. In no event shall weeds be considered ground cover.

Ground kites. Freestanding frames usually covered with flexible fabric and designed to be animated by the wind to attract attention.

Guest. A person who is visiting at the principal or primary home of another person for up to 30 days, and which home is not the principal or primary home of the guest.

Habitat. Areas that contain adequate food, water and cover to enable one or more species of wildlife to live in or use the area for part of all of the year and which typically consists of natural or planted vegetation, along with one or more sources of water available in the area or adjacent areas.

Hazard. Any structure or use of land which endangers or obstructs the airspace required for aircraft in landing, take-off and maneuvering at the airport.

Hazardous material. Any substance or materials that, by reason of their toxic, caustic, corrosive, abrasive or otherwise injurious properties, may be detrimental or deleterious to the health of any person handling or otherwise coming into contact with such material or substance, or which may be detrimental to the natural environment and/or wildlife inhabiting the natural environment.

Height. (See *Building height*.)

Highest adjacent grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Hillside development. Development in areas which contain existing, natural slopes in excess of 15 percent.

Historic district. A geographically definable area with a concentration of buildings, structures, sites, spaces or objects unified by past events, physical development, design, setting, materials, quality, sense of cohesiveness or related historical and aesthetic associations, that is recognized through listing in a local, state or national landmarks register.

Historic preservation. The protection, rehabilitation and/or restoration of districts, buildings, structures, and artifacts which are considered significant in history, architecture, archaeology, or culture.

Historic sign. A sign that has been officially designated as an historic landmark.

Historic structure. Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior; or
 - b. Directly by the Secretary of the Interior in states without approved programs.

Holiday decorations. Temporary decorations, lighting or displays which are clearly incidental and customary and commonly associated with any national, state, local, religious or commonly celebrated holiday and which contain no commercial message.

Home occupation. An occupation, profession, activity, or use conducted within a residential dwelling unit that is incidental and secondary to the use of a residential dwelling unit, which does not alter the exterior of the property or affect the residential character of the environment and which meets the provisions of this article.

Home occupation, rural. An accessory use to a farming operation or a non-farm household located in a rural area, designed for gainful employment involving the sale of agricultural produce grown on the site, conducted either from within the dwelling and/or from accessory buildings located within 500 feet of the dwelling occupied by those conducting the rural home occupation.

Homeowners' association. An association of homeowners or property owners within a development, typically organized for the purpose of enforcement of private covenants and/or carrying out the maintenance of common areas, landscaping, parks, building exteriors and streets.

Household pet. Any nonvenomous species of reptile and any domestic dog, cat, rodent, primate or bird over the age of four months, which is typically kept indoors. For the purposes of this definition, guide or assistance animals shall not be considered household pets.

Illumination. The use of artificial or reflective means for the purpose of lighting a sign.

Imitating sign. Signs which purport to be, are an imitation of, or resemble an official traffic sign, signal or equipment which attempt to direct the movement of pedestrian or vehicular traffic using such words as "stop," "danger" or "caution" to imply a need or requirement to stop, or a caution for the existence of danger, such as flashing red, yellow and green. (See *Flashing or animated*.)

Impervious. Any hard-surfaced, man-made area that does not readily absorb or retain water, including, but not limited to, building roofs, paved parking and driveway areas, compacted areas, sidewalks, and paved recreation areas.

Incidental sign. Nondescript signs, emblems or decals attached to a permanent structure informing the public only of those facilities or services available on the premises, such as a credit card sign or a sign indicating hours of business.

Indirect lighting. Reflected light or lighting directed toward or across a surface.

Individual letters. (See *Channel letters*.)

Infill. A lot, or grouping of lots or tracts of land, with at least 60 percent of their perimeter boundary adjacent to existing development. If a right-of-way at least 120 feet in width or streets designated on the comprehensive transportation plan, as major collectors or arterial streets are

adjacent to the subject lot, lots across such a street shall be excluded for the purposes of determining infill and at least 60 percent of the remaining boundaries of the site shall be adjacent to existing development for the lot to be determined to be infill.

Inflatable sign or inflatable object. Any object filled with air or other gas, including balloons, which characterize a commercial symbol or contain a message.

Intensity. An expression of the level or nature of development in nonresidential developments, or zones or specific land uses based on combinations of building coverage and height, impervious surfaces, expected traffic, hours of operation, noise, or similar impacts on surrounding areas.

Internal illumination. A light source that is contained within the sign itself, or where light is visible through a translucent surface.

Irrigation system. An underground, automatic sprinkler system or above-ground drip system explicitly designed for watering vegetation.

Kiosk. A freestanding structure upon which temporary information and/or posters, notices, and announcements are posted.

Landscape plan. A scaled graphic plan showing the treatment of all open space areas, parking lots, parking areas, areas adjacent to the public right-of-way, perimeter treatment, and other landscaped areas.

Landscaping. Any combination of living plants, such as trees, shrubs, vines, ground covers, flowers, or grass; natural features, such as rock, stone, bark chips, or shavings; and structural features, including, but not limited to, fountains, reflecting pools, screening walls, solid fences, and benches.

Lawn. A stretch of open, turf-grass covered land; artificial turf shall not be considered lawn or turf-grass.

Leading edge. The point of a sign, including its support structure, nearest to the public right-of-way.

Legal description. A land description recognized by law, including the measurements and boundaries.

Legible. A sign capable of being read with certainty without visual aid by a pedestrian of normal visual acuity.

Live plantings. Trees, shrubs and organic ground cover which are in healthy condition.

Livestock. Animals typically related to agricultural or farming uses, including, but not limited to, chickens, swine, sheep, goats, horses, cattle, yaks, alpacas, and emus.

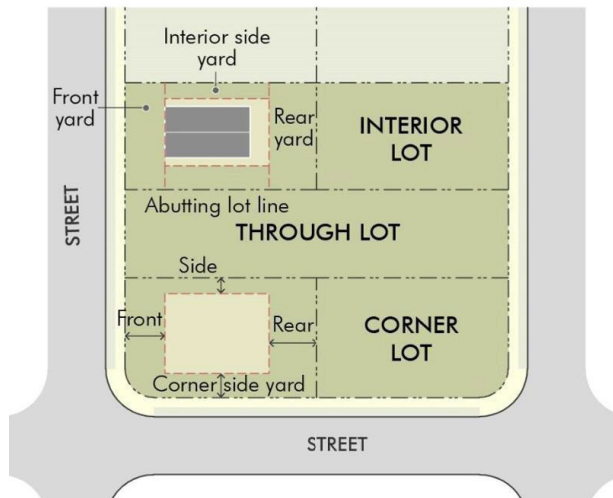
Living fence. A permanent hedge tight enough and strong enough to serve almost any of the functions of a manufactured fence, but it offers agricultural and biological services.

Living unit. Any habitable room or group of rooms forming a single habitable unit, used or intended to be used for living and sleeping, but not for cooking or eating.

Loading space or zone. An off-street space or berth used for the loading or unloading of cargo, products, or materials from vehicles.

Local street. (See *Street*.)

Lot. A parcel of land, established by a subdivision plat, having the required minimum dimensions, which shall be located on either a public right-of-way or on a legal and perpetual access and which is occupied or designed to be occupied by one or more principal buildings, structures, or uses.



Types of Lots

Lot area. The total square footage or acreage contained within lot lines.

Lot, corner. A lot abutting on and at the intersection of two or more streets.

Lot coverage. (See *Coverage*.)

Lot depth. The average distance between the front and rear lot lines.

Lot, double frontage or through. A lot that fronts upon two parallel streets or that fronts upon two streets that do not intersect at the boundaries of the lot. The lot line abutting the street which provides primary access shall be considered the front lot line.

Lot, interior. A lot other than a corner lot, with frontage on only one street.

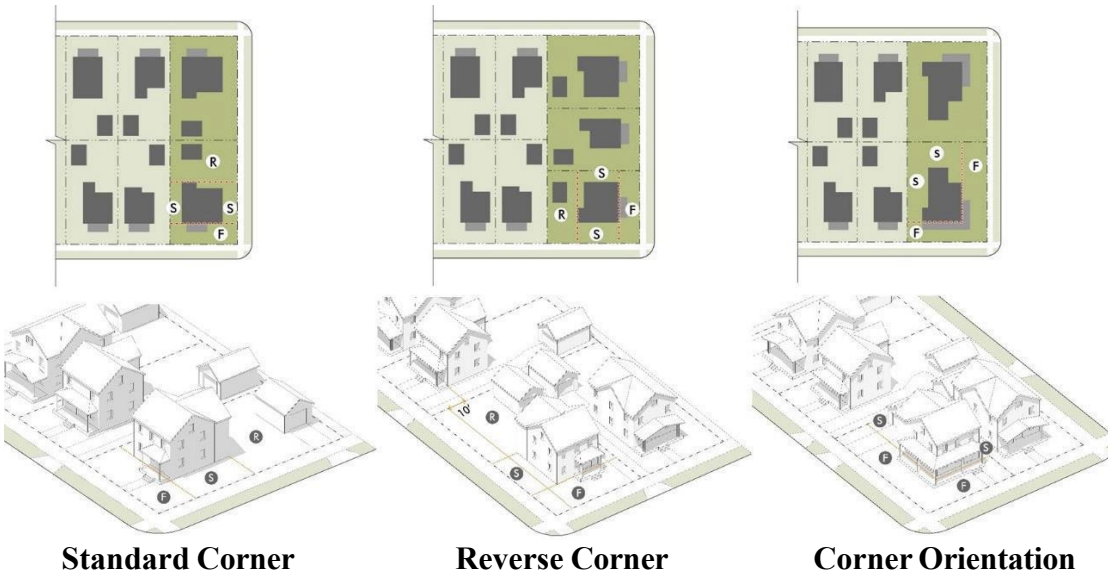
Lot line. A line dividing one lot from another lot or parcel, or from a street or alley.

Lot line, front. The property line dividing a lot from a street or public or common space on which the building and lot orients. On a corner lot, generally the shorter street frontage shall be considered as a front lot line, except that the context of the block and abutting lots may allow the following arrangements:

- (1) **Standard corner.** The building orients to the same front as all other buildings on the same street, and an expanded side setback applies on the other street side of the lot. Side and rear setbacks apply to the remaining sides.
- (2) **Reverse corner.** The building orients to the end-grain of the block (not the same as other buildings on the interior of the block), and the front setback and frontage design applies to that street. The other street-side setback is the greater of (a) the stated street-

side setback for that building type or (b) ten feet in front of the forward-most point of the front building line of the abutting lot. Side and rear setbacks apply to the remaining sides.

- (3) *Corner orientation.* The building orients to both streets, with the front setback and frontage design applying on both street sides. The two remaining lot lines are treated as side setbacks and there is no rear setback.

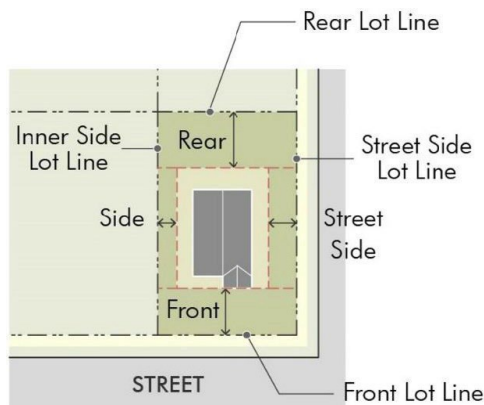


Lot line, interior side. A side lot line which is adjacent to a side lot line of another lot.

Lot line, rear. The line opposite the front lot line. Where the side lot lines meet in a point, the rear lot line shall be assumed to be a line not less than ten feet long, lying within the lot and parallel to the front lot line.

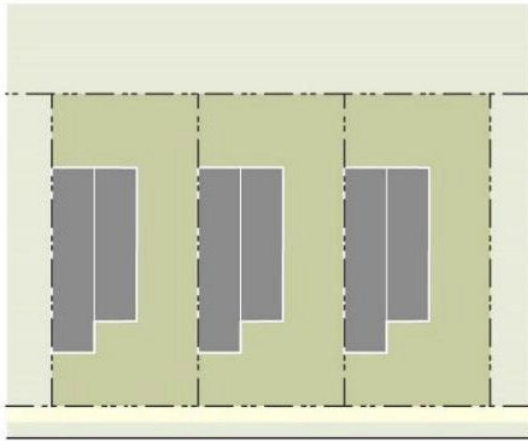
Lot line, side. Any lot lines other than the front or rear lot line.

Lot line, street side. A side lot line which separates the lot from a street.



Lot and Building Lines

Lot line, zero. The location of a building on a lot in such a manner that one or more of the building's sides rests directly on a lot line, provided that separations or setbacks between buildings meet all applicable building and fire code provisions.



Zero Lot Line Development

Low-water adaptive plants. Plants which have or can adapt to low levels of irrigation water.

Maintenance of landscaping. Regular watering, mowing, pruning, fertilizing, clearing of debris and weeds, removing and replacing of dead plants, and the repair and replacement of irrigation systems.

Maintenance of a sign. Cleaning, repairing, painting, or replacement of defective parts in a manner that does not alter the dimension, material or structure.

Manufactured home. (See *Dwelling or residence, single-family* in the description of uses.)

Mechanical equipment. Any and all equipment ancillary to the use or function of a building and/or structure, including, but not limited to, heating or cooling equipment, pool pumps and filters, electrical equipment, transformers, exhaust stacks, and roof vents.

Menu board. A permanently mounted sign which lists the products or services available at a drive-in or drive-thru facility and not legible from the right-of-way.

Mid-range expected service area. The growth area capable of accommodating the estimated increase in development in the city in the next five years.

Mineral owner. Any person having title or right of ownership in subsurface oil and gas or leasehold interest therein.

Mobile home. A detached, single-family housing unit that does not meet the definition of single-family dwelling or residence set forth in these definitions and which has all of the following characteristics:

- (1) Designed for a long-term occupancy and containing sleeping accommodations, a flush toilet, a tub or shower bath and kitchen facilities and has plumbing and electrical connections provided for attachment to outside systems;

- (2) Designed to be transported after fabrication on its own wheels, on a flatbed or other trailers or on detachable wheels;
- (3) Arrives at the site where it is to be occupied as a complete unit and is ready for occupancy except for minor and incidental unpacking and assembly operations, location on foundation supports or jacks, underpinned, connections to utilities and the like;
- (4) Exceeding eight feet in width and 32 feet in length, excluding towing gear and bumpers; and
- (5) Is without motive power.

Mobile home accessory building or structure. A building or structure that is an addition to or supplements the facilities provided in a mobile home. It is not a self-contained, separate, habitable building or structure. Examples are awnings, cabanas, garages, storage structures, carports, fences, windbreaks, or porches and patios that are open on at least three sides.

Mobile home park or community. A site or tract of land held under one ownership, which is suited for the placement of mobile homes.

Mobile home park or community, existing. A mobile home park or community for which the construction of facilities for servicing the lots on which the mobile homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) are completed before the effective date of the ordinance codified in this development code.

Mobile home park or community, expansion to. The preparation of additional sites by the construction of facilities for servicing the lots on which the mobile homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).

Mobile or micro home site. A plot of ground within a mobile home community, or other small format housing project, designed for the accommodation of one mobile home or similar small-format dwelling unit and its accessory structures.

Model home. An unoccupied dwelling unit built on a site in a development for display and/or sales purposes and which may include an office solely for the development in which it is located, and which typifies the units that will be constructed in the development.

Monument sign. A freestanding sign supported primarily by an internal structural framework or other solid structure features where the base of the sign is in contact with the ground.

Mulch. A natural planting material such as pine straw, coconut fiber, ground pine post peeling, or tree bark used to control weed growth, reduce soil erosion and water loss.

Multiple use. A site, tract of land or development that contains more than one type of land use, including, but not limited to, residential, office, retail, or industrial uses.

Native grass. A native Colorado grass.

Natural area. Aquatic or terrestrial habitats or areas which exist in their natural condition and which have not been significantly altered by human activity.

Natural area corridor. An aquatic or terrestrial corridor that connects one or more natural areas or habitats together.

Natural feature. Features which give an area its general appearance and ecological character and which attract or support the wildlife species that use or inhabit the area.

Neighborhood. The land area which is in the vicinity of the lot, tract, outlot, or parcel of land in question and which will be affected to a greater extent than other land areas in the city by uses which exist on the lot or are proposed for it. A neighborhood also includes lots which are adjacent to one another and have a community of shared interest.

Neon. A sign illuminated by a light source consisting of a neon or gas tube that is bent to form letters, symbols or other shapes.

New construction. Structures for which the start of construction commenced on or after the effective date of the ordinance codified in this article.

Nits. A unit of measurement of luminance, or the intensity of visible light, where one nit is equal to one candela per square meter.

Nonconforming. Any building, structure, site, or use that does not conform to the regulations of this development code, but which was lawfully constructed, established and/or occupied under the regulations in force at the time of construction or initial operation.

Nonconforming mobile home communities. Mobile home communities lawfully established and properly licensed by the city under the 1976 Code, or which were developed and used prior to and as of September 5, 1972, as a place where mobile homes were located for residential occupancy and, as of that date, the area must have been in compliance with any and all applicable city or county ordinances and regulations related to mobile home use of land.

Non-deciduous. Shrubs or trees, also called evergreens that keep their foliage year-round.

Official map. The map establishing the zoning classifications of all land in the city and showing all amendments to zoning classifications as they may be adopted.

Off-premises sign. A sign or device that advertises a business establishment, good, facility, service, or product which is not sold or conducted on the premises on which the sign or device is located and which may be designed to change copy on a periodic basis.

Off-street parking areas. (See *Parking*.)

Oil. Crude petroleum oil and any other hydrocarbons, regardless of gravities, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

Opacity. The degree or extent that light is obscured.

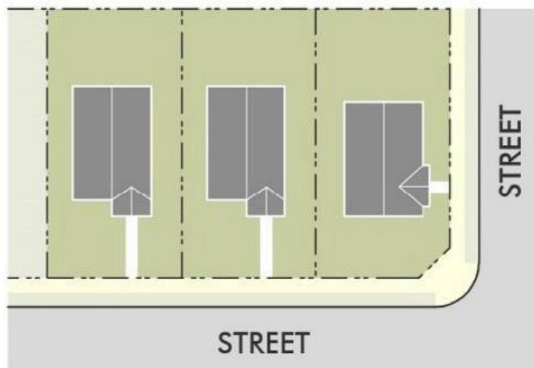
Open space, common. A common area permanently set aside for the common use and enjoyment of residents or occupants of a development or members of a homeowners' association, which open area may be landscaped and/or left with natural vegetation cover and which may include swimming pools and other recreational leisure facilities; areas of scenic or natural beauty and habitat areas; hiking, riding, or off-street bicycle trails; and landscape areas adjacent to roads which are in excess of minimum required rights-of-way.

Open space, private or on-lot. An outdoor area not intended for habitation, directly adjoining a dwelling unit or building, which is intended for the private enjoyment of the residents or occupants of the adjacent dwelling unit or building and which is defined in such a manner that its boundaries are evident. Private or on-lot open space may include lawn area, decks, balconies, and/or patios.

Open space, required. That portion or percentage defined by the zoning standards of a lot required to be open and unobstructed. The area must not be covered by any structure or impervious surface, such as sidewalks or driveways, with the exception of required amenities, identity features, or useable open space required pursuant to this code.

Open space, usable. That portion of a lot or site available to all occupants of the building or site for recreational and other leisure activities that are customarily carried on outdoors.

Oriented. To locate or place a building or structure in a particular direction on a lot or site which shall generally be parallel to the adjacent street.



Buildings Oriented to the Street

Ornamental tree. A deciduous tree planted primarily for its ornamental value or for screening and which will typically be smaller than a shade tree approximately 15 to 25 feet in height.

Outdoor display. The display of products for sale outside a building or structure in areas to which customers have access.

Outdoor storage. The keeping, outside a building, of any goods, material, merchandise, or vehicles in the same place for more than 24 hours. Outdoor storage shall not include the storing of junk or the parking of inoperable motor vehicles. Storage of commercial recreational vehicles/equipment, boat, and personal vehicles are excluded from this definition.

Outlot. A tract of land platted in a subdivision for a specific purpose, which shall be shown on the face of the plat. Specific purposes may include, but are not limited to, drainage areas, stormwater detention or retention areas, parks, open space, or land areas reserved for other public facilities.

Overlay district. A zoning district classification which encompasses a defined geographic area and imposes additional requirements above that required by the underlying zoning. Overlay districts may be combining, where they join property included in two or more adjoining districts based on common attributes or policies; or overlay districts may be separating, where they

distinguish property in a single district based on a specific attribute or context that requires different regulations.

Parcel. A unit or contiguous units of land in the possession of, or recorded as the property of one person, partnership, joint venture, association or corporation, or other legal entity.

Park. Any dedicated and accepted public or private land available for recreational or scenic purposes.

Parking. The parking or leaving of an operable, licensed vehicle, current in its registration, for a temporary period.

Parking areas or lots. Areas designed, used, required, or intended to be used for the parking of motor vehicles, including driveways or access ways in and to such areas but excluding public streets and rights-of-way.

Parking bay. A group of parking stalls or vehicle parking spaces to accommodate 15 or more vehicles.

Parking block. A group of parking bays surrounded by landscape edges, internal access streets, public streets or buildings and sidewalks, typically used to break larger parking areas into smaller distinct components. Parking blocks are used to minimize the visual impact of parking, improve organization of the development and circulation within the site, and/or preserve opportunities for the site to accept infill or redevelopment in a more logical pattern without disruption of streets and utilities.

Parking, shared. The development and use of parking areas on two or more separate properties for joint use by those properties.

Parking slab. A paved parking space located off-street and designed to accommodate standard-sized motor vehicles as provided in the off-street parking and loading requirements chapter of this development code.

Parking space. A space or stall within a parking area established in conformance with this development code.

Parking space, storage. A space for the storage of operable, licensed vehicles, current in registration, including recreational vehicles or equipment, for a period of 30 days or longer.

Parkway. The strip of land typically located between the sidewalk and the curb, also referred to as a *tree lawn*.

Path or pathway. A designated route or path for non-motorized use such as for walking or bicycling. Paths may include both sidewalks and trails.

Pennants. Any long, narrow, usually triangular flag typically made of lightweight plastic, fabric, or other material, and not containing a message, image or representative symbol, usually found in a series on a line and designed to move in the wind.

Perennials. Non-woody plants, which may die back to the ground each year but continue to grow on an annual basis. Perennials shall also include cold weather bulbs and tubers and ornamental grasses that grow each year and shall count toward ground cover requirements.

Perimeter treatment plan. A plan intended to provide visual and noise protection for the outer edges of developments, which border arterial streets, major collector streets, or other

sensitive borders. Perimeter treatment also provides an attractive and varied streetscape for people traveling along thoroughfares.

Permanent sign. A sign attached to a building, structure or the ground in a manner that precludes ready removal or relocation of the sign.

Permeable. A material that allows liquids or gases to pass through it.

Permitted sign. A sign having a legal permit issued in accordance with the provisions of this title.

Permitted use. A use allowed in a zoning district and subject to the restrictions and review procedures which apply to that district.

Person. Any person, firm, association, organization, partnership, business, trust, corporation, company, contractor, supplier, installer, user, or owner or any representative, officer or employee thereof.

Pervious. A surface that allows water to pass through; a surface that presents an opportunity for precipitation to infiltrate into the ground.

Planned unit development (PUD). A development planned, designed, and constructed with specific standards as an integral unit and which typically consists of a combination of uses district, and provides for an equivalent level of standards, and broader community benefits in exchange for flexibility in the standards.

Planting median. An area in the approximate center of a city street, road, or state highway that is used to separate the directional flow of traffic or the center of two parking bays that provide vegetation and pedestrian accessibility to the principal building or structure by way of a paved sidewalk.

Plat. A subdivision map or plan of property.

Plat, final. A completed map of a subdivision setting forth fully and accurately all legal and engineering information, survey certification and any accompanying materials as required by this title.

Plat, preliminary. A proposed subdivision map and any accompanying materials as required by this title, which provide sufficiently detailed information so that preliminary agreement as to the form and content of the plat, coordinating the planning, design, and engineering standards of this title, may be reached between the developer and the city.

Pole sign. A sign that is affixed, attached, or mounted on a freestanding pole or structure that is not itself an integral part of or attached to a building or structure.

Pollinator gardens. Gardens designed for the purpose of providing habitat for or attracting bees, butterflies, moths, hummingbirds, or other beneficial creatures that transfer pollen from flower to flower, or in some cases, within flowers.

Portable sign. A sign that is not permanently affixed to a building, structure or the ground and that is easily moved, such as a sandwich board sign.

Practicable. Capable of being done within existing constraints including environmental, economic, technological, or other pertinent considerations.

Premises. The land, site or lot at which, or from which, a principal land use and activity is conducted.

Primary entrance. The entrance to a building or structure which is intended to be the main pedestrian or public entrance and which shall typically be located on the front of the building or structure, and therefore includes enhancements and human-scale details to show the priority and importance of the space to the public.

Principal building or structure. (See *Building*.)

Private smoking club means a not-for-profit organization, that maintains selective members, is operated by the membership, and has as its primary purpose the legal consumption or use of tobacco smoking products as an aspect of its recreational, fraternal or social purpose for its members, but not for pecuniary gain, and which only sells or distributes alcoholic beverages to its members incidental to its operation.

Prohibited activities sign. Signs located on a property posting said property for warning or prohibition, such as "no hunting," "no swimming," or "no parking."

Projecting wall sign. Any sign attached to a building and that extends more than 20 inches from the surface to which it is attached, but no more than four feet from the wall of the building. Signs projecting more than four feet from the building shall be considered freestanding signs.

Promotional association. An association that is incorporated within the state that organizes and promotes entertainment activities within a common consumption area and is organized or authorized by two or more people who own or lease property within an entertainment district.

Public. A person, structure, activity, or purpose owned or operated by a governmental agency or by a public nonprofit corporation with tax-exempt status under the federal Internal Revenue Code.

Public hearing. A hearing held to allow interested persons to present such persons' views before the zoning board of appeals, planning commission or city council. A public hearing is different from an open meeting which does not allow participation by the public.

Public improvement. Any improvement required by title for which the city or a quasi-public agency agrees to assume responsibility for maintenance and operation, or which may affect an improvement for which the city or a quasi-public agency is already responsible. Such facilities include, but are not limited to, streets, parks, trails, drainage facilities, water and sewer facilities, gas, electricity, telephone, cable television, and other utility facilities.

Public sign. Signs required or specifically authorized for a public purpose by any law, statute, or ordinance, including public directional signs on the right-of-way; signs which identify the city by name; signs that direct travelers to public buildings, parks or attractions; interpretative signs; way-finding signs, municipal uniform traffic control devices; and the like.

Rain garden. A soil absorption or filter system designed to be depression storage or a planted hole that allows water filtration and absorption of rainwater runoff from impervious urban areas, such as roofs, driveways, walkways, parking lots, and turf-grass or sod areas. It is a type of bioretention facility designed to provide stormwater infrastructure improvements with vegetation. Typically shallow vegetative depressions with gentle slide slopes designed as individual stormwater receiving areas or linked to conveyance systems. Soils may or may not be amended in these facilities.

Recreational equipment. Equipment intended for outdoor recreational use, including, but not limited to, snowmobiles, jet skis, all-terrain vehicles (ATVs), canoes and boats, and including the trailers for transporting such equipment.

Recreational vehicle. A vehicle which is designed, intended and used for the purposes of temporary living accommodation for recreation, camping and travel use, including, but not limited to, travel trailers, truck campers, camping trailers and self-propelled motor homes, horse trailers and bus campers. For the purposes of this definition, neither a pop-up trailer nor a truck topper accessory (also known as a camper shell) which is not higher than eight inches above the truck cab when installed shall be considered a recreational vehicle. A horse trailer used primarily for transport of horses and/or livestock to or from the site it is stored upon shall not be considered a recreational vehicle under this definition.

Recyclable material. Reusable material, including, but not limited to, metals, glass, plastic, and paper, which are intended for reuse or reconstitution for the purpose of using the altered form. The term "recyclable material" shall not include refuse or hazardous materials or the processing of recyclable materials.

Redevelopment district. All land located within the boundaries of the urban renewal area of the city, as it may be amended from time to time by the city council.

Residential complex, subdivision or multifamily entry sign. An on-site sign that identifies a specific residential complex or subdivision.

Right-of-way. A right granted by a property owner and which is intended to be occupied by a street, sidewalk, railroad, utilities, and other similar uses.

Right-of-way landscaping. Landscaping located within the public or private rights-of-way adjacent to a privately owned lot, outlot, or tract, including parkways.

Riparian zone. An area where the presence of a surface and/or high subsurface water level permits the existence of increased vegetative diversity and abundance as contrasted to surrounding areas.

Roof sign. A sign that is mounted on the roof of a building or structure such as a portico which is wholly dependent upon a building for support and which projects above the parapet of a building with a flat roof, or above the peak of the roof on that portion of the roof on which the sign is placed.

Satellite and communication equipment. A reflective surface configured in the shape of a shallow dish, cone, horn, or cornucopia which shall be used to transmit and/or receive radio or electromagnetic waves between terrestrially and/or orbitally based uses, including, but not limited to, satellite earth stations, television reception only satellite dish antennas, and satellite microwave antennas.

Screening. A method of reducing the impact of visual and/or noise intrusions through the use of plant materials, earthen berms, solid fences, and/or walls, or any combination thereof, intended to block that which is unsightly or offensive with a more harmonious element.

Searchlight, strobe light or beacon. A stationary or revolving light that flashes or projects illumination, single color or multicolored, in any manner that is intended to attract or divert attention; excluding any device required or necessary under the safety regulations described by the Federal Aviation Administration or similar agencies.

Seasonal use. A use intended for a period of limited duration, including, but not limited to, the sale of seasonal goods and products such as pumpkins, Christmas trees, produce and living plants.

Setback. The minimum distance a building, structure or use may be erected from a street, alley, or property line. Setbacks are also called required yards.

Setback, front. The area extending across the full width of the lot, between the front lot line and the nearest line or point of the area allowed for construction or establishment of the building, structure, or use. Where expressed as a range, the front setback shall be interpreted as a "build to range," within which distance the front building line of the principal building shall be established.

Setback, interior side. The area extending from the front yard to the rear yard, between the side lot line adjacent to another lot and the nearest line or point of the area allowed for construction or establishment of the building, structure, or use.

Setback, oil and gas. (See section 24-1102.)

Setback, rear. The area extending across the full width of the lot between the rear lot line and the nearest line or point of the area allowed for construction or establishment of the building, structure, or use.

Setback, side. The area extending from the front yard to the rear yard, between the side lot line and the nearest line or point of the area allowed for construction or establishment of the building, structure or use.

Setback, street side. The area extending from the front yard to the rear yard, which separates the lot from an adjacent street.

Shade tree. A large woody plant, usually deciduous, that normally grows with one main trunk and has a mature height at least 30 feet, a canopy height above 12 feet, and screens and filters the sun.

Shrub. A woody plant which consists of a number of small stems from the ground or small branches near the ground and which may be deciduous or evergreen.

Sidewalk. A paved, surfaced or leveled area, paralleling and usually separated from the street, used as a pedestrian path.

Sign. Any device, surface, object, structure, building architecture or part thereof using graphics, symbols or written copy for the purpose of advertising, identifying or announcing or drawing attention to any establishment, product, goods, facilities, services or idea, whether of a commercial or noncommercial nature.

Sign allowance. The amount of signage that is allowable under the provisions of this chapter.

Sign alteration. Any change of copy (excluding changeable copy signs), sign face, color, size, shape, illumination, position, location, construction, or supporting structure of any sign.

Sign area. The entire face of a sign and any backing, frame, trim or molding and which may include the supportive structure.

Sign backing. The surface, pattern or color of which any sign is displayed upon, against or through and that forms an integral part of such display and differentiates the total display from the background against which it is placed.

Sign, exposed incandescent or high intensity discharge lighting. Any sign or portion of a sign that utilizes an exposed incandescent or high intensity lamp, with the exception of neon, in such a fashion as to project light directly onto adjoining property or right-of-way.

Sign face. The area of a sign on which the copy is placed, or, for individual cutout letters, painted letters, channel letters or symbols, the perimeter of the individual elements shall be considered the area of the sign.

Sign frame. A sign cabinet or that portion of the sign that holds the sign face in place.

Sign height. The vertical distance measured from the grade, as defined herein, to the highest point of the sign or sign structure.

Sign, interior to a building. Signs inside buildings that are not legible from the public right-of-way or other publicly accessible exterior areas of the building.

Sign, interior to development. Any sign that is located so that it is not legible from any adjoining property or the public right-of-way and not oriented in such a way as to attract the attention of those traveling along the right-of-way.

Sign permit. A permit issued by a building official and which is required for any sign specified by this code.

Sign setback. The minimum distance required from the apparent centerline of the right-of-way, to any portion of a sign or sign structure.

Sign structure. The supports, uprights, bracing or framework of any structure for the purposes of displaying a sign.

Sign, wall. A sign attached parallel to and extending less than 20 inches from the wall of a building. The definition of the term "wall sign" includes painted, individual letter, cabinet signs and those signs located on the roof of a building which are not roof signs as defined herein.

Sign, window. Any type of sign that is painted or attached to or within 12 inches of any exterior window.

Site plan. A set of drawings that the property owner, builder, or contractor uses to make improvements to a property through graphic representation, whether computer-generated or hand-drawn, of the arrangement of buildings, parking, drives, landscaping, and any other structure that is part of a development project.

Sky dancers. Freestanding tubes which often simulate the shape of a person into which air is forced to inflate and animate and which do not characterize a commercial message or contain a message.

Slope. The ratio between elevation change to horizontal distance, expressed as a percentage.

Soil amendments. Elements added to the soil, such as compost, natural fertilizer, manure, or chemical fertilizer, to improve its capacity to support plant life.

Solid fence. A fence that is opaque and provided the fence is composed of solid wood, composite, vinyl, or masonry.

Species of special concern. Species of wildlife and plants which the state division of wildlife has identified and listed as state species of special concern.

Stacking space. An area for motor vehicles to line up in while waiting to go through a drive-thru facility, a designated passenger drop-off/pick-up area or a parking lot or area.

Stormwater management plan. A plan for the management of stormwater drainage and control prepared in conformance with the regulations for stormwater management, adopted by the state department of public health and environment; and further, including a plan for erosion and sediment control pursuant to the requirements of chapter 12 of title 3 of this Code, including its references.

Story. That portion of a building included between the surface of any floor and the surface of the floor next above it or, if there is no floor above it, the space between the floor and the ceiling above it.

Street. A way for vehicular, pedestrian or bicycle traffic whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place or however otherwise designated.

Street, arterial. Streets that permit relatively unimpeded traffic movement throughout the city and connecting to outside communities.

Street, arterial major. Arterial streets which generally carry traffic volumes greater than 20,000 vehicles per day when the property which the arterial street serves is fully developed and which permit rapid and relatively unimpeded traffic movement throughout the city, connecting major land use elements as well as connecting to outside communities.

Street, arterial minor. Arterial streets which generally carry traffic volumes greater than 10,000 vehicles per day when the property which the arterial street serves is fully developed and which permit relatively unimpeded traffic movement and are intended for use on routes where four moving lanes and one turn lane are required but where a major arterial cross section is not warranted.

Street, collector. Streets that collect and distribute traffic between arterial and local streets and serve as main connectors within the city, linking one neighborhood with another and which carry traffic with an origin or destination within the community.

Street, collector major. Collector streets which generally carry traffic volumes greater than 7,000 vehicles per day when the property which the collector serves is fully developed and which permit relatively unimpeded traffic movement and are intended for use on those routes where four moving lanes are required but where a larger classified street is not warranted.

Street, collector minor. Collector streets which generally carry traffic volumes up to 7,000 vehicles per day and collect and distribute traffic between arterial and local streets and which serve as main connectors within communities, linking one neighborhood with another.

Street, design type. A reference to the design attributes of a specific segment of the street, regardless of the functional class, and including lane widths, number of lanes, parking, streetscape, and sidewalks. Street design types allow the design of segments of streets to transition and relate better to the context and anticipated abutting land uses, without disrupting the overall role of the street in the functional classification system.

Street, functional classification. A system of categorizing streets based on their role in the overall street network, considering traffic volumes, traffic speeds, and continuity of the street.

Street, local. Streets that provide direct access to adjacent property and which carry traffic with an origin or destination within the immediate neighborhood.

Street, local low volume. Local streets which carry traffic volumes of up to 500 vehicles per day and which provide direct access to adjacent property.

Street, private. A private roadway used to provide vehicular and emergency access.

Street tree. A tree planted in close proximity to a street in order to provide shade over the street and to soften the street environment.

Streetscape. The scene that may be observed along a street, including both natural and non-natural components, including vegetation, buildings, paving, plantings, lighting fixtures and miscellaneous structures.

Structure. Anything constructed or erected on or in the ground, the use of which requires a more or less permanent location on or in the ground, and, including, but not limited to, walls, retaining walls, fences, parking lots, parking slabs and oil and gas production facilities.

Subdivision. The division of a lot, tract or parcel of land into two or more lots, tracts or parcels, or other division of land in compliance with the requirements of this title.

Symbol. A graphic device which stands for a concept or object.

Temporary sign. Any sign, not intended for permanent installation such as, but not limited to, a banner, balloon, pennant, searchlight or beacon. Generally, these signs are intended to be used for a limited period of time or for a purpose announcing a special event or presenting other miscellaneous or incidental information or instructions.

Temporary structure. A structure without any foundation or footings and which is intended to be removed at some point in the future.

Temporary use. A use which shall generally be permitted to exist and be operated for no longer than 90 days in 12 consecutive months and which may occur as an accessory or principal use.

Time or temperature sign. A sign or portion thereof on which the only copy that is capable of being changed is an electronic or mechanical indication of time and/or temperature.

Tract. A parcel or parcels of land designated on a plat and intended to be further subdivided before development at some point in the future, but which may be initially created under single ownership through a subdivision process.

Travel trailer or recreational vehicle. A portable structure, mounted on wheels and designed to be towed by a motor vehicle, or propelled by its own motive power, that may contain cooking or sleeping facilities and is intended to provide temporary living quarters for recreational camping or travel. A travel trailer also does not comply with either the National Manufactured Housing Construction and Safety Standards Act of 1974 or the uniform building code standards. Travel trailers are not permitted in residential zones as living quarters except as guest quarters for no longer than seven consecutive days.

Tree. A large woody plant with one or several self-supporting stems or trunks and numerous branches and may be deciduous or evergreen.

Turf-grass. A blend or mix of grasses most tolerant to the Colorado climate, whether in sod or seed form when planted, intended to be regularly maintained as a lawn in urbanized areas. Artificial turf shall not be considered lawn or turf-grass.

Universal design. The design of buildings, products, or environments, to make them accessible to all people, regardless of age, disability, or other factors. The term "universal design" was coined by the architect Ronald Mace to describe the concept of designing all products and the built environment to be aesthetic and usable to the greatest extent possible by everyone, regardless of age, ability, or status in life.

Urban heat island. An urban area that is significantly warmer than its surrounding rural areas due to modifications of land surfaces such as development and other human activities. The temperature difference is usually more significant at night than during the day.

Use. The type of activity for which land or a building or structure is designated, arranged or intended and also means the activity which regularly takes place upon the land or in a building or structure on the land. Not all uses shall be considered legal or permitted uses.

Use, principal. The primary use of a building, structure or lot.

Utility box or pedestal. Devices designed and intended to house equipment necessary for the delivery of utility services to commercial and/or industrial customers, including, but not limited to, electric transformers, switch boxes, telephone pedestals and boxes, cable television boxes, traffic control boxes and similar devices.

Utility line clearance zones. The minimum clearance horizontal or vertical standard determined by the utility holder. Obstructions and encroachments are prohibited.

Utility stand. Part of a mobile home space which is used for the placement of the utility connections.

Vacant means a site or area that is not put to any use other than gardening.

Vacation. The legal abandonment of a right granted by a property owner, which was intended for a particular purpose, such as for streets or utility lines.

Variance. A modification of the strict terms of this development code as provided in this title.

Vehicle signs. Signs which are attached to or located on licensed vehicles, trailers or semi-trailers and contain or display signage for the primary purpose of advertisement, excluding bumper stickers on the bumper and similar-sized adhesive decals.

Vested property right. The right to undertake and complete a development and use of property under the terms and conditions of an approved site specific development plan.

Weed. Any plant not typically propagated by the horticultural trades and not typically installed for the purposes of landscaping; or which presents a particularly noxious allergenic or growth characteristic. Weed does not include native and naturalized plants, other than designated noxious weeds, grown in areas managed primarily for ecological services.

Wildlife. Wild, native vertebrates (including fish), mollusks and crustaceans and any species introduced or released by the division of wildlife, whether alive or dead, including any part, egg or offspring thereof.

Wind sign. (See *Pennants*, *ground kites* and *sky dancers*.)

Work vehicle. A vehicle outfitted with equipment such as, but not limited to, storage racks, hoists, cranes, vises, heavy equipment or other business and construction equipment, whether attached or removable, or which may have attached trailers carrying such work equipment. A horse trailer used primarily for transport of horses and/or livestock shall not be considered a work vehicle under this definition.

Xeric landscaping or xeriscape. A landscape design strategy coined by Denver Water in 1981 to help make water-efficient landscaping an easily recognized concept. Xeriscape is a combination of the word "landscape" and the Greek word "xeros," which means dry. For the purposes this code, the term "xeric landscaping" or "xeriscape" shall mean the use of low-water or very low-water plants in place of plants that typically require more water to survive. Xeric landscaping does not mean the same as hardscaping or the use of rocks or rock mulch.

Yard. The area of a lot between the property line and the foundation of a building, structure or use. The term "required yard" means that area also described as a required setback area where construction of buildings, structures and uses is limited in placement.

Yard, front. The portion of a lot between the front façade of a primary structure and the right-of-way. A yard may contain more land area than a setback area.

Yard, interior side. An open-space area between the interior side property line and the building setback line, extending between the front building setback line and the rear building setback line.

Yard, rear. The space or area of a lot between the rear property line and the principal building, extending the lot's full width, and measured perpendicular to the building at the closest point to the rear property line.

Yard, street-side. The area extending between the front yard and the rear yard or rear street yard and situated between the side street property line and the face of the principal building which is parallel to, or most nearly parallel to, the side street property line.



Development Code Update: Affordable Housing Parking Reduction (CU2023-0003)

Brian McBroom | Community Development Director

brian.mcbroom@greeleygov.com | 970-350-9786

City Council Meeting – June 4, 2024



Community Vitality

Agenda



- Background
- Proposal
- Considerations
- Purpose: Adoption of the ordinance

Background

Department of Local Affairs (DOLA) Grant:

- Housing Needs Assessment
- 10th Street Redevelopment Plan

Grant requirements due June 2024:

- Propose new incentives (parking reduction)
- Council approval of redevelopment concept plan

Background

- Planning Commission recommended approval of a reduction for up to 80% Average Monthly Income (AMI) on July 25, 2023
- City Council discussed parking reductions on November 14, 2023
Directed staff to move forward, working with a soon-to-be-hired Housing Director to calibrate the proposal
- Staff drafted a tailored parking reduction to fulfill DOLA grant requirements

Proposal

- 75% parking reduction option for deed-restricted affordable housing for 0-30% AMI
 - 1-person household max income \$24,050 (2024)
 - 4-person household max income \$34,350 (2024)
- Further work on comprehensive affordable housing standards will be done in 2024-2025

Considerations

Council Priorities



Housing For All



High Performance
Government

Planning Commission

Planning Commission
recommended approval of a
reduction up to 80% AMI on
July 25, 2023

Assuring Adequate Parking

- Parking studies from other communities suggest that fewer spaces are needed for affordable housing
- Once implemented, staff would monitor approved sites and recommend adjustments if needed

Considerations

Avoid Parking Oversupply

- Requiring too much parking wastes money for building and maintaining affordable housing units
- Unused parking lots contribute to urban heat islands and are perceived safety risks

Peer Communities

Fort Collins, Longmont, and Loveland have more generous reductions available

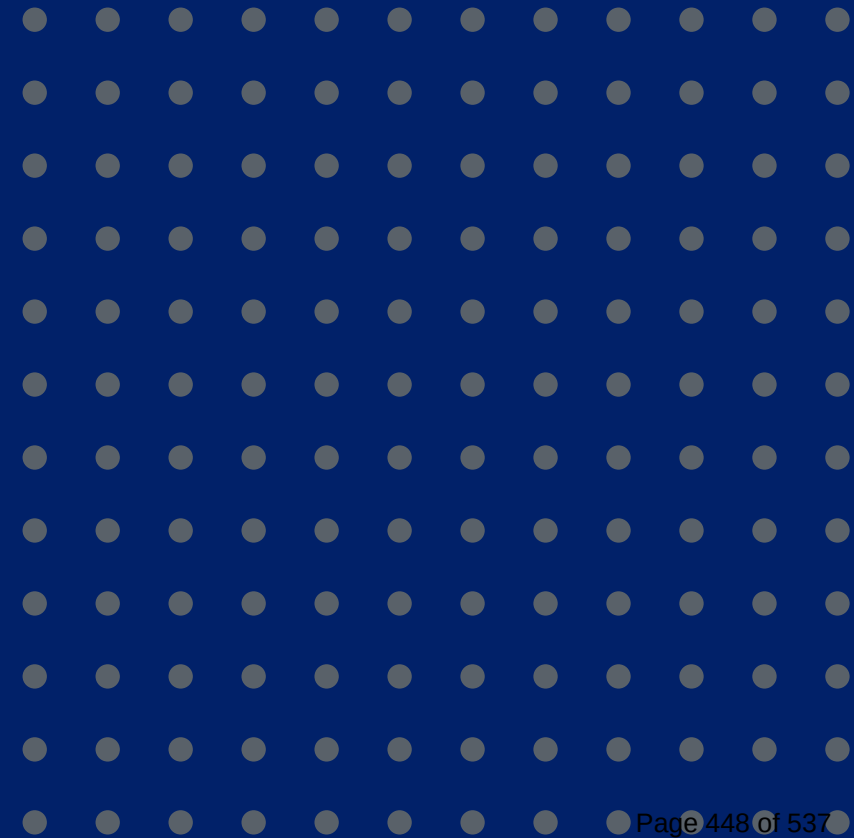
Streamlined Processing

Provide certainty and expedited approvals for applicants by reducing the need for variances

Considerations

- Adoption of this incentive would provide real benefit to affordable housing projects
- Adoption would satisfy DOLA grant requirements due June 2024

Questions



**CITY OF GREELEY, COLORADO ORDINANCE
NO. 14, 2024**

**AN ORDINANCE AMENDING TITLE 24, CHAPTER 4, CHAPTER 7, AND
CHAPTER 13 OF THE GREELEY MUNICIPAL CODE RELATING TO AN
AFFORDABLE HOUSING PARKING REDUCTION**

WHEREAS, the City of Greeley requires the provision of adequate parking for land uses to support the health, safety, and welfare of residents; and,

WHEREAS, the City of Greeley allows parking requirements to be reduced based on standards with a rational nexus to lower parking demand; and,

WHEREAS, dedicated affordable housing projects typically have a lower parking demand; and,

WHEREAS, the City of Greeley received a grant from the Colorado Department of Local Affairs that includes a provision for the City of Greeley to adopt and codify an incentive for dedicated affordable housing; and,

WHEREAS, the recommended amendments to the Greeley Municipal Code would provide an incentive for dedicated affordable housing by allowing applicants to reduce the amount of parking required.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF GREELEY, COLORADO:

Section 1. Sections 24-402 and 24-404 of Chapter 4, Zoning Districts and Uses of Title 24, Development Code, shall be amended as shown in Appendix A.

Section 2. Section 24-703 of Chapter 7, Access and Parking of Title 24, Development Code, shall be amended as shown in Appendix A.

Section 3. Section 24-130, of Chapter 13, Definitions and Terms of Title 24, Development Code, shall be amended as shown in Appendix A.

Section 4. This ordinance shall take effect on the fifth day following its final publication, as provided by Section 3-16 of the Greeley City Charter.

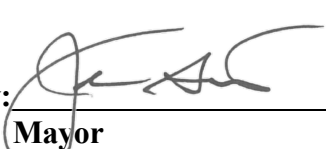
PASSED AND ADOPTED, SIGNED AND APPROVED ON THIS 4TH DAY OF JUNE, 2024.

ATTEST



THE CITY OF GREELEY, COLORADO

By: 
City Clerk

By: 
Mayor

APPENDIX A

AN ORDINANCE AMENDING TITLE 24, CHAPTER 4, CHAPTER 7, AND CHAPTER 13 OF THE GREELEY MUNICIPAL CODE RELATING TO AN AFFORDABLE HOUSING PARKING REDUCTION

Section 1. Sections 24-402 and 24-404 of Chapter 4, Zoning Districts and Uses of Title 24, Development Code, shall be amended to read as follows:

Sec. 24-402. Allowed uses.

- a. *Use table.* Table 24-4-2 establishes permitted uses for each zoning districts. These uses and development standards are established to implement the intent of these district, permit a compatible range of uses within each district, and facilitate complimentary transitions between districts.
 1. The table identifies uses as:
 - (a) Permitted uses (P) subject to staff review and/or site plan approval to confirm compliance with general district and building standards applicable throughout this code.
 - (b) Use by special review (S) subject to the review process and criteria in section 24-206.
 - (c) Uses not permitted in the district (blank).
 - (d) Uses not specifically listed in the table shall be presumed to be prohibited, except if the director determines that a use is similar to and has similar impacts as a use listed in the table, then the director may make a written determination as to the category and review required for the use.
 2. Other accessory or temporary uses may be permitted according to the standards of section 24-403.
 3. Uses listed in the table, or more specific types of uses generally enabled in the table, may be subject to specific standards or limits in section 24-404.
 4. Uses in the table are more specifically described in section 24-402.b.
 5. Uses distinguished by scale are based on gross leasable area (GLA) of the uses space within buildings, size of the lot (acre), or other specified building or site features.

Table 24-4-2: Zoning Districts and Uses														
P = Permitted Use					S = Use by special review					Blank = prohibited				
Districts	R-E	R-L	R-M	R-H	R-MH	C-L	C-H	MU-L	MU-H	I-L	I-M	I-H	H-A	C-D
Use														
Residential Uses														
<u>Affordable Housing</u>	<u>See Section 24-404.k</u>													
Single-family dwelling	P	P	P	P		S	S	P	P				P	
Two-family dwellings			P	P		S	S	P	P					

Row house dwellings			P	P		S	S	P	P					
Multifamily dwellings			P	P		S	S	P	P					
Mixed-use dwelling				S		P	P	P	P					
Established residential (all types)						P	P			P	P	P	P	
Accessory dwelling unit (see section 24-403.b)			P	P		P	P	P	P					
Mobile/manufactured home & parks					P									
Boarding house & single room occupancies				P		S	S	S	S					
Farming	P	P	P	P		P	P			P	P	P	P	P
Residential care — Group home	P	P	P	P		P	P	P	P					
Residential care — Assisted living			S	S		P	P	P	P	P				
Residential care — General				S		S	P	S	P	P				
Residential care — Institutional				S		S	P	S	P	P				
Public & Civic Uses														
Assembly — Limited (up to 499 occupancy)	P	P	P	P	P	P	P	P	P	P	P	P		
Assembly — General (500—1,500 occupancy)		S	S	S	S	S	P	S	P	P	P	P		
Assembly — Large (1,501+ occupancy; or outside)							P		P	P	P			
Cemeteries, columbarium							P	P	P	P	P	P		
Golf course & country clubs (no lights)	P	P	P	P	P	P	P	P	P	P				
Libraries, museums, public or quasi-public	S	S	S	S		P	P	P	P	P	P			
Police, fire stations, ambulance dispatch & storage	S	S	S	S		P	P	P	P	P	P			
Parks, open spaces & common areas	See sections 24-302 and 24-504 for standards applicable to all districts.													

Schools	P	P	P	P	P	P	P	P	P	P				
Schools — Adult (business, trade)						S	P	S	P	P	P	P		
Schools — Universities/colleges	P	P	P	P	P	P	P	P	P	P				
Transportation — Bus, taxi, or transit station							S		S	P	P	P		
Transportation — Freight & maintenance yard											P	P		
Transportation — Airport, heliport/helipad											S	S		
Transportation — Public parking	S	S	S	S	S	S	P	S	S	P	P	P		
Transportation — Towing services							S			P	P	P		
Utilities — Limited (towers under heights permitted by zoned and accessory structures and cabinets)	P	P	P	P	P	P	P	P	P	P	P	P		
Utilities — General (towers over heights permitted by zone or large structures and cabinets)	S	S	S	S	S	S	S	S	S	S	S	S		
Utilities — Lines over 33 KVA, overhead	S	S	S	S	S	S	S	S	S	S	S	S	S	S
Utilities — Co- generation or power plants											P	P		
Commercial Uses														
Adult businesses (<i>see also section 24-1103</i>)										P	P	P		
Animal care — Limited (indoor, < 5K GLA, no boarding)						P	P	P	P	P	P			
Animal care — General (indoor,						S	P	S	P	P	P			

5K—20K GLA or boarding)														
Animal care — Large (outdoor or > 20K GLA)										P	P			
Animal care — Stables (> 5 boarded animals)										S	S		S	
Auction houses (excludes livestock)										P	P	P		
Automobile — Gas station limited (up to 8 pumps)						S	P	S	P	P	P	P		
Automobile — Gas station general (9—20 pumps)							P		S	P	P	P		
Automobile — Gas station large (21+ pumps)							S			P	P	P		
Automobile — Repair/service limited (up to 3 service bays; < 0.5 acre)						S	P	S	P	P	P			
Automobile — Repair/service general (4—6 service bays; 0.5—1.0 acre)							P		P	P	P			
Automobile — Repair/service large (7+ service bays; > 1 acre)							S			P	P			
Automobile — Repair/service for heavy vehicle and equipment											P	P		
Automobile — Sales/rental limited (< 0.5 acre)						S	P			P	P			
Automobile — Sales/rental general (0.5—1.0 acre)							P			P	P			
Automobile — Sales/rental large (> 1.0 acre)							S			P	P	P		

Child care home (accessory/home occupation — See section 24-403.c)	P	P	P	P	P	P	P	P	P	P	P	P		
Child care center/pre-school	S	S	S	P		P	P	P	P	S	S	S		
Drive-through services — Accessory							See section 24-403.e							
Entertainment/event establishments							P		P	P	P			
Food & beverage — Bar limited (< 3K GLA; < 100 seats)							P	P	P	P	P			
Food & beverage — Brewery/winery; bar general							P		P	P	P			
Food & beverage — Restaurant limited (< 5K GLA; < 100 seats)						P	P	P	P	P	P			
Food & beverage — Restaurant quick serve							P	S	S	P	P			
Food & beverage — Restaurant general (5K+ GLA)							P		P	P	P			
Home occupation — Accessory	See section 24-403.c													
Lodging — Short-term rental	P	P	P	P	P	P	P	P	P	P	P			P
Lodging — Bed & breakfast (up to 5 rooms)				S		P	P	P	P	P				
Lodging — Inn (6 to 40 rooms)							P	S	P	P				
Lodging — Hotel/motel small (41+ rooms)							P		S	P				
Medical — Limited (< 5K GLA; no emergency service)						P	P	P	P	P				
Medical — General (5K—20K GLA; no emergency service)						S	P	S	P	P				

Medical — Large (> 20K GLA; or emergency service)							P		P					
Medical — Hospitals						S	P		P	P				
Mortuaries and funeral homes						P	P	P	P	P	P			
Office — General (< 20K GLA)						P	P	P	P	P	P	P		
Office — Large (20K+ GLA)							P	S	P	P	P			
Pawn shops							P			P	P			
Personal service — Limited (< 5K GLA, < 1.0 acre)						P	P	P	P	P	P			
Personal service — General (5K+ GLA; 1.0+ acre)							P		P	P	P			
Recreation — Indoor limited (< 5K GLA; < 0.5 acre)						P	P	P	P	P	P			
Recreation — Indoor general (5K—20K GLA; 0.5—1.0 acre)							P	S	P	P	P			
Recreation — Indoor large (> 20K GLA; > 1.0 acre)							P		S	P	P			
Recreation — Outdoor limited (no lights; < 0.5 acre)						P	P	P	P	P	P			
Recreation — Outdoor general (no lights; 0.5—1.0 acre)							P			P	P			
Recreation — Outdoor large (lights or > 1.0 acre)							S			S	S	S		
Recreation — RV and travel trailer park							S			S	S			
Recreation — Outdoor racetrack											S	S		
Retail — Limited (< 3K GLA)						P	P	P	P	P	P			
Retail — General (3K—20K GLA)							P	S	P	S	S			
Retail — Large (20K—100K GLA)							P		S	S	S			

Retail — Warehouse (> 100K GLA)							S		S	S	S			
Retail — Outdoor limited (> 25%; > 0.5 acre)							P	S	P	P				
Retail — Outdoor general (25%—50%; 0.5—1.0 acre)							P		S	P				
Retail — Outdoor large (> 50%; > 1.0 acre)							S			P	P			
Retail — Outdoor nurseries and greenhouse							P		P	P	P			
Retail — Outdoor flea market or swap shop											P	P		
Industrial Uses														
Auto dismantling, junk & salvage yards												S		
Commercial services — Limited (up to 9 vehicle fleet)							P			P	P	P		
Commercial services — General (11—20 vehicle fleet)							S			P	P	P		
Commercial services — Large (21+ vehicle fleet)										S	P	P		
Concrete and asphalt batch plants											P	P		
Crematoriums										P	P	P		
Foundries												S		
Gravel & mineral extraction, batch plants														S
Grain & feed elevators & supply												S		
Livestock auctions												S		
Manufacturing — Limited/artisan (< 5K GLA)						S	P	P	P	P	P	P		
Manufacturing — General (5K—100K GLA)										P	P	P		

Manufacturing — Large (> 100K GLA)											P	P		
Manufacturing — Food & beverage minor (up to 3 acres)							P		P	P	P	P		
Manufacturing — Food & beverage major (3+ acres)											S	S		
Manufacturing — Chemical plant											S	S		
Manufacturing — Rendering, slaughter & packaging												S		
Oil & gas operations	See section 24-1102 for standards and procedures applicable in all districts													
Private smoking club							S		S	S	S	S		
Research & testing labs							P		P	P	P	P		
Warehousing/storage — Indoor limited (< 50K GLA; < 1.0 acre							P		S	P	P	P		
Warehousing/storage — Indoor general (50K—200K GLA; 1.0—5.0 acre)							P			P	P	P		
Warehousing/storage — Indoor large (> 200K GLA; > 5.0 acres)							S			S	P	P		
Warehouse/storage — Distribution center										S	P	P		
Warehouse/storage — Outdoor limited (< 1.0 acre)							S			S	P	P		
Warehouse/storage — Outdoor general (1.0 + acre)										S	P	P		
Warehouse/storage — Bulk storage of flammable liquids and gases											P	P		
Waste management — Recycling collection small						S	P	S	P	P	P	P		

Waste management — Recycling processing & collection							P			P	P	P		
Waste management — Refuse & transfer station											S	S		
Water & waste water treatment plants											P	P		
Well drilling companies											P	P		
Wireless communication facilities	See section 24-1101 for standards and procedures applicable in all districts													

- b. *Description of uses.* This section provides descriptions of uses of land and buildings associated with table 24-4-2. It is organized by categories and types of uses. Where a proposed use is not generally listed or appears to meet the description of more than one use type, the director shall make an interpretation on the most equivalent described use considering:

- (1) The similarity of the use in terms of scale, impact, and operations to other described uses;
- (2) The typical building format and site design associated with the use based on relevant and established examples; and
- (3) The compatibility of the use with other allowed uses in the zoning district, and the potential for the use to contribute to the intent of the zoning district.

Any uses that may not be interpreted as equivalent to a use in table 24-4-2 is not anticipated by these regulations and may only be allowed by a text amendment.

1. *Residential dwelling.* The residential dwelling category is the principal use of land and buildings for dwelling units. A dwelling unit is one or more connected rooms, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease as a single unit on a monthly basis or longer, physically separated from any other room or dwelling units which may be in the same structure and served by no more than one gas meter and one electric meter. The arrangement and extent of dwelling units depends on the zoning district uses and building types:

Dwelling, single-family. A residential building designed and used as a single detached dwelling unit by one family, other than a mobile home. Typical building types are detached houses, with variants based on lot sizes. The term single-family residence shall include a manufactured home which:

- (a) Is partially or entirely manufactured in a factory;
- (b) Is installed on an engineered permanent foundation; and

- (c) Is certified pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., as amended, and all regulations enacted pursuant thereto, including any local modifications as are expressly allowed by federal law, or which has been certified by the State of Colorado as being in compliance with the requirements of the Uniform Building code, as adopted by the State of Colorado and as is enforced and administered by the Colorado Division of Housing.

Dwelling, two-family. Residential building designed to accommodate two primary dwelling units in a building designed and scaled to be compatible with detached houses, and which may commonly be referred to as a duplex or multi-unit house (with two units). Two-family buildings that share a single common wall may be on a single lot, or may be platted as separate lots along the common wall line subject to the building code and platting restrictions. All other two-family dwellings shall be on a single lot. Duplex/multi-unit houses shall have a scale, design, orientation, access, and entrance features that maintains the appearance and form similar to a detached house.

Dwelling, row house. A multi-unit residential building designed for three to eight dwelling units each sharing a common wall with the abutting units. Each unit has its own private entry presenting an outward appearance on the frontage as distinct units in a single building. Units may be on a single lot subject to common ownership restrictions or platted on separate lots along the common wall subject to building code and platting restrictions.

Dwelling, multifamily. A residential building that contains three or more dwelling units, or group of similar buildings in a complex. Typical building and lot types include multi-unit houses (provided they maintain the scale, design, orientation, access and entrance features similar to a detached house), small apartments, medium apartments, large apartments, apartment complexes, and mixed-use buildings with residential uses.

Dwelling, mixed-use (apartment over commercial/service). A residential use in a building designed for street level retail, service or employment uses, and where dwelling units are accommodated on upper stories, or otherwise separated from the principal commercial function of the building.

Dwelling, established residential (all types). Any residential building and use, legally established at when it originated but where new development of the same use or similar building type is no longer permitted in the zoning district. These uses shall be permitted so that continued use and further investment in the building and use is not discouraged.

Dwelling, accessory unit. A dwelling unit that is secondary and accessory to a principal dwelling unit and on the same lot. Accessory dwelling units may be in the same building as the principal dwelling unit (basement or attic apartments) or in a detached accessory structure (garage apartment or "granny flat".)

Mobile/manufactured home park. A parcel of land planned and designed for multiple home sites for the placement of manufactured, mobile or other small homes, and used for the principal dwelling of households for long-term residency. These communities

include internal common areas, circulation systems and accessory uses and facilities to support the community. Dwellings may either be located on home sites designated within a larger project or on single lots owned through appropriate condominium procedures or platted under certain conditions.

Boarding house and single room occupancy. A residential building is used to accommodate boarders or roomers as the primary residential dwelling, and whose occupants shall have common access to facilities such as kitchen, bathroom, dining areas, or community areas. Boarding and single-room occupancy houses shall be rented or leased on a monthly basis or longer, and not include hotels, motels and lodges.

Farming. The production of crops such as vegetables, fruit trees or grain; the growing of trees and shrubs for landscape purposes; and the raising of farm animals such as poultry or swine, as limited by the standards for accessory keeping of livestock. Farming shall not include the commercial raising of animals, commercial production of milk, commercial pen feeding (feed lots) or the commercial feeding of garbage or offal to swine or other animals.

Residential care — Group home. A residential building operated as a single primary dwelling which provides residency, supervision, and other services for up to eight persons who are in need of special care due to being developmentally disabled, mentally ill, 60 years of age or older, or due to physical condition, illness, or social or behavioral problems. Group homes require up to two residential caregivers, and shall be licensed by, operated by, or owned by a governmental agency or nonprofit qualified to provide care and supervision. Group homes shall not include alcoholism or drug treatment centers, work release facilities or other housing facilities serving as an alternative to incarceration and shall not house more than one individual per dwelling who is required to register as a sex offender under the provisions of C.R.S. § 18-3-412.5.

Residential care — Assisted living. A residential building or planned community operated as the primary residence for persons who do not have an illness, injury or condition that requires 24-hour care or supervisions, but who need social, physical, and therapeutic and recreation support for daily living. Support services are accessory to the residential use and character of the buildings and area, and do not require 24-hour staffing, other than security. Typical examples include assisted living, group homes larger than eight individuals, and retirement communities.

Residential care — General. A residential or institutional building, or group of buildings, designed to provide a primary or interim residence and health care for persons who require care on a full-time basis. Medical support, rehabilitative services, and counseling is provided by professional, nursing and medical staff on site. Accessory support uses include meals, therapeutic services, transportation and recreation. Typical examples include nursing homes, long-term care facility, continuing care facility, congregate care communities, or hospices.

Residential care — Institutional. A residential or institutional building operated by a government, nonprofit, charitable or religious organization providing temporary housing, food, counseling and other support services to persons at risk, on an interim

basis and with transitional, protective, or rehabilitative goals. Security and supervisory services are required on site. Typical examples include emergency shelters, missions, rehabilitation residence, halfway houses.

2. *Public/civic.* The public/civic use category is the use of land and buildings to serve public or community interest by enhancing the daily cultural, social, or recreation needs for residents and neighborhoods. It can include uses generally available to the public at large, community uses structured by voluntary affiliation, or private uses limited by property ownership or membership. It includes the following types:

Assembly. A civic use designed to serve the community for regular or periodic events, including worship, social, cultural, recreation, and accessory uses associated with organized civic or institutional activities.

Assembly — Limited (up to 499 occupancy). A place of assembly designed and located to serve nearby neighborhoods, typically designed for up to 499 people. Examples include small neighborhood association clubhouse, meeting hall, or small religious facility.

Assembly — General (500—1,500 occupancy). A place of assembly designed and located to serve the broad community at large, typically designed for 500—1,500 people. Examples include a community/recreation center, small event hall, or large religious facility.

Assembly — Large (1,501+ occupancy, or outside). A place of assembly designed and located to serve as a destination for the city or region, typically designed for more than 1,500 people, or where any facility is designed for outside assembly. Examples include an auditorium, large event hall, major worship hall, convention and conference center, or any assembly use with a small outside amphitheater.

Cemeteries and columbarium. A public or civic use where land or buildings are used for the burial of the deceased and dedicated for interment purposes, including gravesites or buildings used for the interment of ashes of cremated dead.

Golf courses and country clubs (no lights). A public or civic use and designed and dedicated for playing the game of golf, run by a public agency or a private club operated on a membership basis. This includes accessory facilities and structures related to playing golf, but shall not include any lights, activities, or associated events not compatible with outdoor recreation in a residential setting. (See Recreation — Outdoor for commercial recreation activities).

Libraries, museums, public or quasi-public. A public or civic use which provides resources and exhibits to support education, culture, and information exchange open to the public at large.

Police, fire stations, ambulance dispatch and storage. A public use that supports the community at large by through public health and safety, protective or related services. Examples include police and fire stations, dispatch, and related facilities, or similar government and quasi-government buildings and grounds.

Parks, open spaces and common areas. Any parcel or area of land or water permanently reserved for public and/or private use and enjoyment, which is generally

open, undeveloped, and characterized by natural features and landscape enhancements, except for facilities to serve the social, recreational, aesthetic, or environmental function of the space. (See sections 24-302 and 24-504 for standards applicable to all districts.)

School. A public or civic building designed, constructed, or used for education or instruction in any branch of knowledge.

School, adult (business, trade). A public or private school primarily teaching useable skills to adults, including, but not limited to, business, vocational, driving and trade courses.

School, compulsory. A public or private elementary, junior high or high school licensed by the state and which meets state requirements for providing compulsory education.

Schools — University/college. A public or private institution dedicated to post-secondary education.

Transportation — Bus, taxi, or transit station. A public transportation facility designed for the transfer, pick-up and drop-off of passengers traveling by bus, taxi, trolley, or similar low-impact means, including with buildings or associated passenger convenience facilities, distinguished from public stops accommodated in the design of the right-of-way.

Transportation — Freight and maintenance yard. An area and/or building where storage, maintenance, or dispatch of vehicles used for public transportation occurs, or any other similar high-intensity activities associated with public transportation.

Transportation — Airport, heliport, or helipad. Any area of land or water designed for the landing and take-off of aircraft for business or commercial purposes, including all necessary facilities for passenger and cargo loading, maintenance and fueling facilities and housing of aircraft. This includes any area used by helicopters for landing and take-off, passenger and cargo loading.

Transportation — Public parking. A parcel of land where the principle use is to park vehicles whether on a fee basis operated by a public or private entity or whether to support an adjacent use or business located on a different lot. Parking may be on a surface lot or in a structure.

Transportation — Towing service. A parcel of land used for the storage, impoundment, and retrieval of vehicles that have been towed.

Utilities — Limited. Any above-ground structure or facility, excluding buildings, which is owned by a governmental entity or any entity defined as a public utility for any purpose by the state public utilities commission, and used in connection with delivery of utility services to nearby lots and other areas, with maximum heights of towers and accessory structures under those permitted by the zoning district. Examples include accessory utility structures that served customary needs of the uses in the zoning district.

Utilities — General. Any above-ground structure or facility, which is owned by a governmental entity or any entity defined as a public utility for any purpose by the

state public utilities commission, and used in connection with delivery of utility services to nearby lots and other areas, with maximum heights of towers and accessory structures above those permitted by the zoning district. Examples include substations or other facilities that support the storage and generation of facilities.

Utilities — Lines over 33 KVA, overhead. Any utility that utilizes overhead lines that transmit above 33 kilo volt amperes.

Utilities — Co-generation or power plants. A facility which is owned by a governmental entity or any entity defined as a public utility for any purpose by the state public utilities commission, and used for generating of power for distribution to sub-stations or other general accessory distribution facilities.

3. *Commercial.* The commercial use category is the use of land and buildings for entities engaged in sale of products or services, the limited production and distribution of products, or other administrative or support services to help businesses. It includes the following types of uses:

Adult business. Any store, establishment, tavern, club or theater having a substantial portion of its stock in trade, books, magazines or other periodicals; video movies, films, slides or photographs; instruments, devices or paraphernalia; or live performances, which are characterized by their emphasis on matters depicting, describing, or related to specified anatomical areas or specified sexual activities. For the purposes of this definition, a business shall not be considered an adult business if it carries less than 20 percent of its stock in adult materials and it prevents the public from viewing or observing merchandise or products that depict specified anatomical areas or specific sexual activities, as may be displayed by the products or on the packaging.

(a) Specified anatomical areas.

- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks and female breast above or below a point which would expose any portion of the areola; and
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(b) Specified sexual activities.

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breast;
- (2) Human genitals in a state of sexual stimulation or arousal;
- (3) Sex acts, actual or simulated, including intercourse, oral copulation or sodomy;
- (4) Masturbation, actual or simulated; or
- (5) Excretory functions as part of or in connection with any of the activities set forth in subsections (2)a through d of this definition.

Animal care. A commercial use that provides care and medical or non-medical services for domesticated animals, including boarding, training, breeding, showing, treatment, grooming, or sale. Animal care is further refined by the scale and intensity of the operations, as follows (for non-domesticated animals and livestock, see *Farming, and limits on the accessory keeping of Livestock*):

Animal care — Limited. A small office or facility providing animal care that involves less than 5,000 square feet of commercial area, all activities occur indoors (except routine daily pet care), and any overnight boarding is limited to that necessary for medical care or observation. Examples include a veterinary office, pet grooming or training, and small animal day cares.

Animal care — General. A moderate sized office or facility providing animal care that is between 5,000 to 20,000 square feet of commercial space, or that involves animal boarding. Examples include a veterinary clinic, animal shelters, and indoor commercial kennels.

Animal care — Large. A large office or facility providing animal care that is more than 20,000 square feet of commercial space, or has significant outdoor activity including boarding kennels or play areas where animals may ordinarily be kept. Examples include domestic animal hospitals, large facilities for pet day care, and large commercial/outdoor kennels.

Animal care — Stable (>5 boarded animals). A commercial use for the keeping, boarding and/or training of horses, ponies, llamas, mules or other animals which may be used for riding purposes, for compensation and which may include an arena.

Auction house. A business that facilitates the buying and selling of assets, such as works of art, collectibles, household estate items, and other personal property. Auction house excludes selling of livestock.

Automobile gas station. A specific retail use engaged in the sale of fuel to the general public, and may involve limited accessory sales of convenience goods. This use may be combined with accessory vehicle service and repair uses, subject to the service bay limitations stated below. Vehicle — Gas station uses are further refined by the scale, format and intensity as follows:

Automobile gas station, limited (up to 8 pumps). A vehicle gas station limited to no more than eight fueling stations, no more than two service islands, no more than two accessory vehicle service bays and no more than 1,500 square feet of accessory retail or service areas. Examples include small, neighborhood service stations.

Automobile gas station, general (9—20 pumps). A vehicle gas station limited to between nine and 20 fueling stations, no more than five service islands, no more than three accessory vehicle service bays and no more than 5,000 square feet of accessory retail or service areas. Examples include general stores and gas stations.

Automobile gas station, large (21+ pumps). A vehicle gas station that contains more than 20 fueling stations, more than five islands, and up to four accessory vehicle service bays and no more than 5,000 square feet of accessory retail or

service areas. Examples include a large convenience center and gas station, or truck stops and travel centers.

Automobile repair/service. A specific service use engaged in motor vehicle and mechanical equipment maintenance and repair services, and accessory retail sale of supplies and accessories. Automobile repair/service is further refined by scale, format and intensity as follows:

Automobile repair/service — Limited (up to 3 service bays; 0.5 acre max.). An automobile service and repair use limited to no more than three vehicle service bays, all vehicles are under 1½ tons G.V.W., where all work and storage of equipment and supplies occurs indoors, and where on-site or overnight storage of vehicles is limited and requires no special site accommodations other than ordinary parking areas. Sites are limited to no more than one-half acre. Examples include a small machine shop, mechanic, lubricant center, tire store, auto glass installation or audio or alarm installation.

Automobile repair/service — General (4—6 service bays; 1.0 acre max). An automobile service and repair use that involves four to six service bays, all vehicles are under 1½ tons G.V.W., where all work and storage of equipment and supplies occurs indoors, but where on-site or overnight storage of vehicles may be stored outdoors on the lot. Sites are limited to no more than one acre. Examples include large mechanic shop, lubricant center, tire store, non-accessory car wash, or an auto body shop.

Automobile repair/service — Large (7+ service bays; 1.0+ acres). An automobile service and repair use that involves seven or more service bays, all vehicles are under 1½ tons G.V.W., where all work and storage may occur outdoors and where on-site or overnight storage of vehicles and outdoor storage is typical. Sites are more than one acres. Examples include large service center, auto body and frame repair facilities, transmission and engine overhaul yards, or automobile painting facilities.

Automobile repair/service for heavy vehicles and equipment. An automobile service and repair use engaged in the maintenance and repair of motor vehicles, recreational vehicles or boats, commercial vehicles, heavy equipment and other vehicles over 1½ tons G.V.W., and other similar uses where services typically involve outside storage or work. Examples large vehicle maintenance, large truck or boat wash, and equipment yards.

Automobile sales/rental. A commercial business engaged in the sale, lease, or rental of automobiles. Automobile — Sales/rental is further refined by scale, format and intensity as follows:

Automobile sales/rental — Limited (< 0.5 acres). An automobile sales/rental facility on less than one-half acre that uses outdoor vehicle storage at a similar scale to a small-site commercial parking area. Examples include an automobile broker that may have little or only temporary on-site storage, or a small car rental office.

Automobile sales/rental — General (0.5—1.0 acres). An automobile sales/rental facility on between one-half and one acre, where outdoor vehicle storage occupies

a large portion of the site. Examples include a small car dealership, or a larger rental car facility.

Automobile sales/retail — Large (> 1 acre). An automobile sales/rental facility on more than one acre that includes significant amounts of outdoor vehicle storage. Examples include a large car dealership or car or truck rental facility.

Child care home. A residential dwelling licensed by the Colorado Department of Human Services to provide child care services as a home occupation and an accessory use to the operator's principal residence. The facility may provide care for up to 12 children, and subject to greater restrictions based on Colorado Department of Human Services licensing rules as an accessory use to the operator's principal residence.

Child care center. A commercial use that provides care for children outside of the home, or any care for more than 12 children.

Entertainment/event establishment. A commercial use that rents facilities and grounds for special events, concerts, social functions, or other large gatherings. This use does not include any events that are accessory to an otherwise permitted civic, institutional, or commercial use.

Food and beverage. A specific service and retail use engaged in the business of serving prepared food and/or beverages to the public for immediate consumption. Food and beverage uses are further refined by scale, format and intensity based on the following:

Food and beverage — Bar limited (under 3K; under 100 seats). A food and beverage use where a significant portion of the business, in sales and in hours of operation, involves the sale of alcoholic liquors by the drink for consumption on premises, and food services is secondary or accessory. The limited use requires under 3,000 square feet and under 100 seats to ensure compatibility with other neighborhood-serving or small-scale uses in terms of intensity of activity and hours of operation.

Food and beverage — Brewery/winery; bar general. A food and beverage use where a significant portion of the business, in sales and in hours of operation, involves the sale of alcoholic liquors by the drink for consumption on premises, and may include accessory craft manufacturing of alcoholic beverages. This general use is of a scale and intensity that frequently has accessory live entertainment or events and where the scale and intensity of the use is more compatible with general commercial uses.

Food and beverage — Restaurant limited (under 5K; under 100 seats). A small scale restaurant under 5,000 square feet and under 100 seats at full capacity.

Food and beverage — Restaurant quick serve. A food and beverage use where the food is served from a counter ready to eat with no significant table service, and where the customer turnover will be high due to any combination of accessory drive-through services, carry out orders, or quick sit-down services

Food and beverage — Restaurant general (5K+). A large scale restaurant with over 5,000 square feet of commercial area or over 100 seats.

(For accessory drive-through facilities see section 24-403.e.)

Home occupation accessory. A business or employment use accessory to an allowed residential dwelling. (See section 24-503.c.)

Lodging. A commercial use providing accommodations for temporary, short-term overnight occupancy on at least a 24-hour basis, and accessory uses associated with typical guest services such as food service, recreation or similar accommodations to support overnight-guests. Lodging is refined to the following scales based on building type, format and intensity of use.

Lodging short-term rental. The rental of a dwelling unit, or portion thereof, for less than one month.

Lodging bed and breakfast (up to 5 rooms). A small residential building used for lodging, meals, and shared living space between the primary occupants and patrons and includes at least two but no more than five rooms.

Lodging hotel/motel small (6 to 40 rooms). A small commercial or large residential building providing lodging and includes at least six but no more than 40 rooms.

Lodging hotel/motel general (40+ rooms). A large commercial building providing lodging and includes 41 or more rooms.

Medical care. A commercial service use providing medical, dental, or physical health or wellness care to the public. This use type is further categorized by the following formats:

Medical care limited (under 5K). A medical care use offering routine outpatient services, that occupies less than 5,000 square feet of diagnostic or treatment area, includes no surgical or in-patient facilities, and operates in normal business hours. Examples include a small doctor or dentist office, eye-care center, or urgent care center that is accessory to a larger retail or pharmacy use.

Medical care general (5K—20K). A medical care use offering routine outpatient services, that occupies between 5,000 and 20,000 square feet for diagnostic or treatment areas, includes no inpatient facilities, and operates in normal business hours. Examples include a larger doctor or dentist group practice, small clinic or analytical lab, or small outpatient urgent care or surgical center.

Medical care large (>20K). A medical care use offering a full range of services that occupies over 20,000 square feet for diagnostic or treatment areas, and may include emergency care, surgical services or other inpatient treatment. The use may include accessory retail, food service, pharmacy or wellness/fitness uses. Examples include small hospital, remote surgical centers, or large clinic or analytical labs.

Medical care hospitals. A medical care use with a full range of diagnostic, surgical, and emergency services, and occupies a large commercial building or multiple buildings arranged around a campus that serves a greater region. It includes a wide range of accessory office, lab, and retail uses related to patron, patient, and visitor needs. Examples include a large hospital or regional medical center campus.

Mortuaries and funeral homes. A building used for human funeral services, which may contain space and facilities for services used in preparation of the dead for burial; the

storage of caskets, urns, and other related funeral supplies; and the storage of funeral vehicles. Funeral homes shall not include crematoriums as accessory uses.

Office. A commercial use focused on employment and engaged in the administrative, professional, clerical or management aspect of business or professional services that typically do not have frequent or unscheduled on-premises interaction with the public or clients. Office uses are further refined by the scale and format of buildings based on the following:

Office general (under 20K). An office use in a small commercial building with under 20,000 square feet, typically within one moderate-sized building.

Office large (20K+). An office use in a large commercial building or multiple buildings in a complex or campus, with over 20,000 square feet.

Pawn shops. A commercial use engaged in the loaning of money on the security of property pledged in the keeping of the pawnbroker, and the incidental sale of such property.

Personal service. A commercial use engaged in the business of providing personal or professional services to the public that may include frequent or unscheduled interaction with clients or customers on the premises. Examples include barbershop or beauty salon, travel agency, small equipment repair, tailor, bank or personal financial services. Service uses are further refined by scale, intensity and format based on the following:

Personal service limited (under 5K; under 1 acre). A service use under 5,000 square feet, typically in line with other small-scale uses in a multi-tenant commercial building or in mixed-use building on a site of less than one acre.

Personal service general (5K+; 1+ acre). A service use between of 5,000 square feet, in a small freestanding building or part of a large mixed-use building.

Recreation. A commercial service use engaged in the business of providing daily or regularly scheduled activities for entertainment, leisure activities, training and instruction, or exercise, offered to the public through individual, membership, or group arrangements. This use type is further refined by the scale, format and intensity as follows:

Recreation indoor, limited (< 5K; < 1.0 acre). An indoor recreation/entertainment use that involves a building less than 10,000 square feet. Examples include a small bowling alley, fitness club, billiard hall, or dance or yoga studio.

Recreation indoor, general (5K—20K; 0.5—1.0 acre). An indoor recreation/entertainment use that involves a building between 10,001 and 40,000 square feet. Examples include a large bowling alley, a small sports and recreation center, a small theater, large health club or fitness center, or small shooting range.

Recreation indoor, large (> 20K; > 1.0 acre). An indoor recreation/entertainment use that involves a building more than 40,000 square feet. Examples include a large sports and recreation center, skating ring, or theater complex.

Recreation outdoor, limited (no lights; < 0.5 acre). An outdoor recreation use that involves less than two acres of active outdoor recreation grounds. Examples include a small pickle ball center, batting cages, or small community center.

Recreation/entertainment outdoor, general (no lights; 0.5—1.0 acre). An outdoor recreation use that involves less than two and five acres of active outdoor recreation grounds. Examples include miniature golf, swimming pool, tennis center, small band shell or amphitheater.

Recreation/entertainment outdoor, large (lights or > 1.0 acre). An outdoor recreation use that involves more than five acres of active outdoor recreation grounds. Examples include waterpark, drive-in theater, shooting range, driving range, sports and athletic complex.

Recreation RV and travel trailer park. An outdoor recreation use providing overnight accommodations within a large open area for recreational purposes and may involve associated accessory buildings or facilities for parking RVs on a temporary basis for recreation or vacation purposes.

Recreation outdoor racetrack. An outdoor recreation use for racing of any motorized vehicles.

Retail. A commercial use primarily engaged in the sale of products for final use to the general public with frequent interaction of patrons or consumers on premises. Retail uses are further refined by scale, intensity and format based on the following:

Retail limited (< 3k). A small-scale retail use contained in a building with under 3,000 square feet of gross leasable area.

Retail general (3K—20K). A retail use contained in a building with at least 3,000 but less than 20,000 square feet of gross leasable area.

Retail large (20K—100K). A large-scale retail use contained in a building with at least 20,000 but less than 100,000 square feet of gross leasable area.

Retail warehouse (100K+). A large-scale retail use contained in a building with at least 100,000 square feet of gross leasable area.

Retail outdoor limited (less than 25 percent; up to 0.5 acres). A retail use where a small portion of the merchandise is displayed permanently outside, limited to no more than 25 percent of the merchandise area being outside and limited to sites no more than one-half acre. Examples include a garden center, statuary store, or small equipment dealer. This does not include accessory outdoor sales and display areas that may be permitted as an accessory use to an otherwise permitted use or seasonal events that may be permitted through a temporary use permit.

Retail outdoor general (less than 50 percent; up to 1.0 acre). A retail use where a significant portion of the merchandise is displayed permanently outside, limited to no more than 50 percent of the merchandise area being outside and limited to sites no more than one acre. Examples include a lumber yard, large equipment rental or dealer, or small landscape supply store.

Retail outdoor large (over 50 percent or more than 1.0 acre). A retail use where a substantial portion of the merchandise is displayed permanently outside, including more than 50 percent of the merchandise area being outside or sites more than one acre. Examples include an equipment sales lot, boat or recreational vehicle sales lot, large machine or farm implement sales yard.

Retail outdoor nurseries and greenhouses. A retail use engaged in the sale of plants and other living vegetation, and where substantial portions of the merchandise is displayed outside.

Retail outdoor flea market or swap shop. A retail use where a large number of vendors will display merchandise indoors or outdoors on a short term or interim basis.

4. *Industrial.* The industrial use category involves the use of land and buildings for businesses engaged in the production, processing, storage or distribution of goods, which may have potential impacts beyond the site due to the types of activities, the physical needs of the site or facility, the types of materials used, or the delivery and access operations. Depending on the scale, intensity, and operations of these uses they may not be compatible with other uses or buildings, and may need special districts, more careful location criteria, and/or increased site design or operational limitations in order to be more generally applicable in the city.

Auto dismantling, junk and salvage yards. An industrial use for collecting, storing or selling scrap metal or discarded material or for collecting, dismantling, storing, salvaging or demolishing vehicles, machinery or other material and including the sale of such material or parts.

Commercial services. A business engaged in service to other businesses and industries, or engaged in services to the general public but where industrial uses support the service, or where services dispatched from a central location for storage of vehicles, equipment, or merchandise. Examples include plumbing, exterminators, HVAC repair, janitorial services, commercial laundry services, or other similar uses.

Commercial services limited (< 10 vehicle fleet). A small-scale commercial service use with limited outdoor storage needs and with a vehicle fleet less than ten vehicles, where surface parking and vehicle storage needs are similar to other general commercial uses.

Commercial services general (10—20 vehicle fleet). A commercial service use where outdoor storage is necessary or with a vehicle fleet between ten and 20 vehicles, requiring dedicated areas for storage of vehicles during down times or off hours.

Commercial services large (21+ vehicle fleet). A large-scale commercial service use that may have substantial outdoor storage needs or with vehicle fleet is more than 20 vehicles, requiring large areas for storage of vehicles or equipment.

Concrete and asphalt batch plant. A facility or equipment used in mixing the dry warm aggregate, padding and asphalt for homogeneous mixture at the required temperature, typically in association with a street, large parking area or other large-scale construction project, sometimes on a temporary or interim basis.

Crematoriums. A place for the cremation of human or animal remains.

Foundries. An industrial use for producing castings in molten metal.

Gravel and mineral extraction, batch plant. The process of extracting metallic or nonmetallic mineral deposits from the earth and crushing, separating or otherwise processing the extracted mineral deposits into a useable form.

Grain and feed elevators and supply. An industrial use that stores grain and similar agriculture and feed products in bulk for storage, processing, or distribution to other locations.

Livestock auction. A business that facilitates the buying and selling of livestock, including showing, housing, and otherwise caring for livestock to facilitate the purchase.

Manufacturing limited/artisan (under 5K). A small-scale manufacturing use converting prepared materials into finished products. The activities produce little or no byproducts such as smoke, odor, dust, or noise discernable from outside of the building where deliveries and distribution are made by general consumer delivery services requiring no special large truck access, and where products are made available to the general public. Uses occupy buildings or spaces under 5,000 square feet of gross leasable area. Examples include artists' studios, small wood or metal shops, craft manufacturing, small bakery, or other similar small-scale assembly of finished products.

Manufacturing general (5K—100K). A manufacturing use converting prepared materials into finished products or parts. The activities produce little or no byproducts such as smoke, odor, dust or noise are discernable from outside of the building, and where distribution and delivery needs occur through light to moderate commercial truck access. Examples include small equipment or commodity assembly, production of consumer products, or similar businesses.

Manufacturing large (100K+). A large-scale manufacturing use converting raw or previously prepared materials into other materials or finished products. The activities may produce byproducts such as noise, dust, smoke or odor, but are mitigated to limit impacts beyond the property boundary. Outside storage and activities may be necessary, and distribution and delivery needs involve frequent or large truck access. Examples include large-scale manufacturing or fabrication plants, large equipment assembly, metal fabrication plants, chemical laboratories or other similar high-intensity manufacturing or distribution operations.

Manufacturing food and beverage minor (up to 3 acres). A manufacturing establishment primarily for packaging, producing or processing foods for human consumption that meets the definition of *food and beverage processing (major)* but which also dedicates a portion of the building footprint's square footage (a minimum of ten percent, up to 50 percent) to sales of food, beverages and/or other retail for on-premises purchase and/or consumption; and which occupies a site of three acres or less; and which cannot generate offensive odors, emissions, traffic or other off-site impacts or shall otherwise be considered a major food processing facility.

Manufacturing food and beverage major (3+ acres). A manufacturing establishment packaging, producing or processing foods for human consumption and certain related products and includes, but is not limited to the following: (1) bakery products, sugar, and confectionary products (except facilities that produce goods only for on-site sales

and not wider distribution); (2) dairy products processing; (3) fats and oil products (not including rendering plants); (4) fruit and vegetable canning, preserving and related processing; (5) grain mill products and by-products; (6) meat, poultry, and fish canning, curing and byproduct processing (not including facilities that also slaughter animals); and (7) miscellaneous food preparation from raw products, including catering services that are independent from food stores or restaurants.

Manufacturing chemical plant. An industrial use primarily engaged in the storage, processing, production, and distribution of chemicals on a large scale, where chemical reactions are used to transform materials for use in other industrial or business applications.

Manufacturing rendering, slaughter and packaging. An industrial use where waste products and livestock carcasses are converted into industrial fats.

Oil and gas operations. Exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, recompletion, reworking or abandonment of an oil and gas well, underground injection well or gas storage well; production operations related to any such well including the installation of flowlines and gathering systems; the generation, transportation, storage, treatment or disposal of exploration and production wastes; and any construction, site preparation or reclamation activities associated with such operations. See section 24-1102 for specific definitions, standards, and procedures related to oil and gas uses.

Private smoking club. A noncommercial, private facility, not open to the general public, whose bona fide members' primary association relates to the smoking of legal tobacco products subject to all of the following:

1. Club membership criteria must be such that the general public cannot access the club with a day pass, limited membership or similar exception.
2. The smoking club is limited to occupancy of a freestanding building or that is in an area within an establishment accessed exclusively with a separate entrance and is in an area enclosed by solid walls or windows, a ceiling and a solid door and equipped with a ventilation system which is separately exhausted from the nonsmoking areas of the establishment so that air from the smoking area is not recirculated to the nonsmoking areas and smoke is not back streamed into the nonsmoking areas.
3. The club may have an outdoor patio if not located immediately adjacent to another business or residence, public right-of way, sidewalk or trail, other patio space, playground or similar outdoor recreational space.
4. Building signage is limited to that allowed for C-L (commercial low-intensity) uses.
5. Any product sales or rentals will require a business license, are limited to members only, and any sale of alcoholic beverages must be permitted by a city liquor license and not exceed 20 percent of gross revenue.
6. Such facilities are specifically prohibited from any electronic arcade or gaming machines or allowing members to engage in games of chance.

Research and testing labs. A building or group of buildings in which are located facilities for scientific research, investigation, testing or experimentation, but not facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory.

Warehouse/storage. An industrial use engaged in the business of keeping goods and products for interim or long-term periods for personal or business uses, or for the distribution to other businesses and industries, including any logistic services related to this business such as labeling, bulk packaging, inventory control, or light assembly. Warehouse and storage uses are refined further based on the scale, format and intensity as follows:

Warehouse/storage — Indoor limited (< 50K; up to 1 acre). A warehouse/storage use where individuals store personal property in units or space leased or rented on a periodic basis and where all storage are accessed from within the principal building. Examples include small indoor self-storage mini-warehouses, or small commercial warehouse.

Warehouse/storage — Indoor/general (50K—200K; 1—5 acres). A warehouse/storage use for businesses or larger personal products where all items are stored indoors. Examples include large indoor self-storage mini-warehouse, large commercial warehouses, and long-term garages.

Warehouse/Storage — Large (200K+; 5+ acres). A large-scale warehouse/storage use for long-term storage of products or supplies, and where access and truck traffic is not frequent.

Warehouse/storage — Distribution center. A large-scale facility where goods or products are stored on site temporarily for the purpose of delivery to a retailer or final destination, and where the nature of the operation has frequent daily truck traffic. Such facilities may include automated systems, office space and a pick and pack area to be used by employees for sorting and packaging goods and products for delivery from available, on-site inventory.

Warehousing/storage — Outdoor limited (up to 1 acre). A storage use for the public where individuals store personal property in units leased or rented on a periodic basis and where all storage is inside but individual units may be accessed directly from the outside. Examples include small outdoor self-storage mini warehouses or small equipment storage yard.

Warehouse/storage — Outdoor general (1+ acre). A storage use for the public or other businesses where large-scale household items or machinery, commercial products, raw materials, or supplies are stored on an outdoor lot. Examples include large outdoor self-storage mini warehouse, boat or RV storage, building supply lots or similar industrial supply storage yards.

Warehouse/storage — Bulk storage of flammable liquids and gases. The use of grounds for storing tanks used for gases or liquefied petroleum, often as a distribution point for further shipment or processing or re-use at other locations.

Waste management recycling collection small. A small-scale disposal point for recyclable or reusable materials, where items are dropped in bins that protect them from the elements, eliminate them from view of surrounding areas, and otherwise

mitigate any noise or odor. These facilities are solely for temporary drop off and storage, until weekly or daily pick up of the materials, can bring them to a separate location for further procession or disposition.

Waste management recycling processing and collection. A large-scale disposal point for recyclable or reusable material, where longer-term storage or processing of materials may occur on site.

Waste management refuse and transfer station. A facility for the purposes of separation, aggregation and/or compaction of solid waste prior to delivery to a landfill.

Water and waste water treatment plant. An industrial use used to treat and process water and wastewater for further distribution or disposal.

Well drilling companies. A business that stores, supplies, operates or distributes machinery and equipment used for drilling wells.

Wireless communication facilities. A pole, tower, or antenna for the purposes of transmitting and receiving communication signals, other than that accessory to a principal use of the property. Wireless communication facilities include monopoles and towers with attached appurtenances such as microwave dishes and antennae, rooftop, wall- and ground-mounted microwave dishes and antennas. See section 24-1101 for specific definitions, standards, and procedures applicable in all districts.

Sec. 24-404. Specific use standards.

- a. *Mixed-use dwelling.* In districts where mixed-use dwellings are allowed uses, the following standards shall apply to a building or structure with two or more different uses, one of which shall be residential:
 1. In the commercial zoning districts, at least 50 percent of the ground floor of a mixed-use building shall be in a nonresidential land use. In the R-H zoning district, no more than 50 percent of the total gross floor area of a structure containing a mixed-use, including basement area, shall be devoted to nonresidential uses.
 2. In the R-H zone, only commercial uses permitted in the C-L district are allowed, and they may be further conditioned, limited or prohibited through the use by special review process in section 24-206. Mixed-use dwellings in commercial and mixed-use zones may include any commercial use permitted within that zoning district.
 3. The design and character of all buildings and sites shall be compatible with the predominant character of the surrounding neighborhood. The operating characteristics of a nonresidential land use in a predominantly residential neighborhood shall be compatible with the residential uses. For the purposes of this section, operating characteristics shall include, but not be limited to, hours of operation, lighting, noise and traffic.
- b. *Residential care.* When residential care is a permitted or use by special review, they shall meet the following conditions to ensure they are integrated into neighborhoods, have a non-institutional nature, and maintain the residential character.
 1. *Residential care — Group home.*
 - (a) Group homes shall meet all of the residential design standards applicable in the particular district, and any alterations to support the group living shall be done in a discreet way in accordance with the design standards.
 - (b) In the R-L and R-M districts, no group home shall be located less than 750 from another existing group home.
 - (c) Group homes shall be supervised at all times, and may include up to two resident caregivers.
 - (d) Group homes shall be licensed by, operated by, or owned by a governmental agency or nonprofit qualified to provide care and supervision.
 - (e) Group homes shall not include alcoholism or drug treatment centers, work release facilities or other housing facilities qualifying as residential care — institutional.
 2. *Residential care — Assisted living, general, and institutional:*
 - (a) The use shall be located on a collector street or higher, or otherwise located as a transition between the neighborhoods and other nonresidential or mixed-use areas.

- (b) In residential districts, the building and site shall meet all residential design standards so that the use, building and site is compatible with the neighborhood in terms of scale and intensity of activity.
 - (c) Any facilities necessary to serve the residents, guests or support the staff, that are nonresidential in nature shall be located on the most discrete portions of the site and building, and otherwise designed and screened to mitigate impacts on adjacent property according to section 24-803.
- c. *Animal care.* All animal care facilities shall comply with the following:
- 1. All animal care businesses shall provide proof of compliance with all standards and licenses required by local or state animal care and control laws.
 - 2. Any facility that provides boarding shall provide the following:
 - (a) Adequate shelter from the elements for the animals.
 - (b) Adequate facilities for preventing the escape of animals from the premises.
 - (c) Adequate facilities for keeping the animal environment clean and free of filth.
 - (d) Confinement and treatment of animals shall be in a manner that is humane and appropriate, which enclosures where the animal spends the majority of the day or where there is otherwise not access to an outside animal run, shall meet the requirements of table 24-4-4: Animal boarding standards, which do not include required exercise areas:

Table 24-4-4: Animal Boarding Standards		
Animal Size	Minimum Kennel Area Floor Space*	Height
Extra-small dogs up to 10" high	4.5 s.f.	• Min. 18 inches. • At least 1.5 times height of animal at shoulder. • Max. required: 48 inches.
Small dogs up to 16" high	6.0 s.f.	
Medium dogs up to 22" high	9.0 s.f.	
Large dogs up to 26" high	12.0 s.f.	
Extra-large dogs up to 30" high	16.0 s.f.	
Giant breeds over 30" high	18.0 s.f.	
* Calculated as: (length of dog in inches + six) (squared) divided by 144 times two equals required floor space in feet		

- 3. Dog runs and exercise areas shall meet the following minimum space requirements:
 - (a) The length of the runs and exercise areas shall be a minimum of three times the length of the dog from the tip of its nose to the base of its tail; the width shall allow the dog to turn around easily; and the height shall be 1½ times the height of the dog at the shoulders, with the maximum height required of 48 inches, the minimum of 18 inches.
 - (b) Indoor/outdoor runs that have the primary enclosure and the exercise area in combination shall for measuring purposes be considered an exercise run and shall

- be measured from the extreme inside to the extreme outside for length determination.
- (c) Outdoor or indoor runs used as a combined primary enclosure and exercise area shall be measured from one extreme end to the other extreme end for length. The same criteria will apply to freestanding runs used for exercise areas only.
 - (d) Each dog housed in the specified primary enclosure must be provided the opportunity to exercise for a minimum of 60 minutes over a 24-hour period.
4. Adequate supervision of the animals in the kennel facility must be present to the following standards:
- (a) There must be a minimum of one human supervisor (at least 16 years of age), present at all times and able to directly view each enclosure or common area where dogs from different owners are commingled.
 - (b) If more than 15 dogs are housed in a common area or enclosure, there must be at least one adult supervisor present for each 15 dogs housed within each enclosure or common area, with a maximum of 60 dogs housed in any enclosure or common area at a single time.
 - (c) Where after-business hours or overnight boarding care is provided, the applicant must provide an animal care and supervision plan if human supervision is not provided during this period. Such plan must address how animal care and emergency needs will be managed in the absence of human supervision.
5. Commercial businesses for which the principal use is either a pet shop or grooming operation, a pet management plan may be submitted in lieu of compliance with the confinement and exercise standards within this section. The plan must demonstrate compliance with local and state animal care and welfare standards, and include a description of the alternate accommodations related to area, location, duration of enclosure periods, and access to food, water and shelter.
- d. *Automobile gas stations.* All automobile gas station uses shall comply with the following:
- 1. No more than one access drive shall be permitted for each street frontage.
 - 2. All light sources, including canopy, perimeter and flood lights and lenses, shall be shielded or fully recessed within the roof canopy so that light is contained on site.
 - 3. If on-site convenience store or other retail or service component is provided, the design, location and operation of these facilities shall be compatible with the design, location and operation of the gas station.
 - 4. The maximum height of a canopy shall be 20 feet for flat roofs and 24 feet for pitched roofs. Canopies shall be architecturally compatible with the principal building and all other accessory structures on the site with the same or complementary materials, architectural style and colors. The material used on the underside of the canopy shall not be highly reflective. Setbacks for the canopy shall be measured from the outside edge of the canopy.
 - 5. Adequate stacking space shall be provided on site without using any portion of the adjacent street or alley for stacking. Stacking shall not occur in required setbacks.

6. Dispensing pumps and adjacent parking, fueling or service areas shall not be located within the property setbacks.
 7. If the convenience store, gas station or auto repair use is immediately adjacent to residential zoned property or existing residential uses on at least two sides, the hours of operation shall be limited to between 6:00 a.m. and 11:00 p.m. daily.
- e. *Automobile repair/service.* All automobile repair/service uses shall comply with the following:
1. Areas for overnight vehicular storage shall be enclosed or screened from the view of adjacent properties and the public right-of-way except when located in the Industrial-Medium Intensity (I-M) or Industrial-High Intensity (I-H) zones.
 2. Where a automobile repair/service use abuts residential uses or residential zones, a minimum 20-foot side yard setback and a minimum 25-foot rear yard setback shall be provided.
 3. No used or discarded automotive parts or equipment, or disabled, junked or wrecked vehicles shall be located outside any structure.
 4. Landscaping, screen walls, berms, placement of the use or other site design techniques shall be used to screen cars being serviced or waiting for service and to screen overhead doors from view from the public right-of-way.
 5. Auto repair uses within an integrated shopping center shall have an architectural style consistent with the theme established in the center. The architecture of any auto repair use shall be compatible with surrounding uses in form, materials, color and scale. The location, size and design of the auto repair use shall be compatible with and have minimal adverse impact on the use of surrounding properties. Overhead doors shall be constructed of non-reflective materials.
- f. *Automobile repair/service — Car and truck washes.* Uses that include car or truck washes as an accessory or principal use shall comply with the following:
1. Bays shall be located so that they are perpendicular to the public right-of-way or screened from view if on a corner site.
 2. No auto repair shall be conducted within a car or truck wash bay.
 3. All-over spray shall be contained on site.
 4. Operating characteristics of car and truck washes, such as hours of operation and the use of lighting, shall be conducted in such a manner that is compatible with surrounding land uses.
 5. Other applicable requirements for car and truck washes may be found in the city's storm drainage and water department standards and criteria.
- g. *Bed and breakfasts.* All bed and breakfast uses shall comply with the following:
1. Cooking facilities, including stoves, hot plates or microwave ovens, shall not be permitted in guest rooms.
 2. Meals or food served in the bed and breakfast shall be prepared in a central kitchen on site and served solely for bed and breakfast occupants.

3. Individual rooms in a bed and breakfast shall not be rented more than twice during a 24-hour period.
- h. *Manufacturing food and beverage minor.* All minor food and beverage manufacturing uses shall comply with the following:
1. Commercial elements of the use shall be visually and physically accessible to the public realm and designed as the most prominent aspect of the site. Commercial elements include the sale of food, beverages or other retail for on-premises purchase or consumption. The use of architecture, sidewalks, landscaping and parking shall be to define and emphasize these commercial components while de-emphasizing the manufacturing and other aspects of the facility.
 2. Loading and storage areas, where otherwise allowed by this development code, shall be separated from public entrances and areas associated with the commercial elements of a minor food and beverage processing facility and shall be located at the rear of the facility and screened from rights-of-way and off-site uses, to the extent feasible.
 3. Traffic by heavy trucks or rail shall be separated from public entrances and areas to avoid regular conflicts with the public and commercial aspects of the use.
 4. Environmental impacts, such as odor, heat, glare, noise, vibration and other such emissions or impacts shall be reasonably contained on site and not discernable at or beyond the property line. The inability to confine such impacts to the site would qualify this use as a major food processing use.
 5. The applicant for a minor food and beverage processing facility shall demonstrate that a portion of the building footprint's square footage, equal to or greater than ten percent and no more than 50 percent, is dedicated to sales of food, beverages or other retail or services for on-premises purchase or consumption.
 6. All other applicable site and building design standards applicable in the particular district or location shall be met.
- i. *Waste management — Recycling collection small.* All small recycling collection uses shall comply with the following:
1. The facility shall be installed as an accessory use to an existing multifamily development, commercial or industrial land use.
 2. Facilities shall not be located within 100 feet (excluding right-of-way) of any residential zoning district.
 3. The facility shall be no larger than 300 square feet and occupy no more than five parking spaces, excluding space that will be periodically needed for removal of materials or exchange of containers, and one parking space for an attendant, which shall be located outside setbacks.
 4. All permanent or temporary structures shall be set back at least ten feet from any public right-of-way, shall be located so that pedestrian or vehicular circulation is not obstructed, and otherwise located in a manner to limit adverse impacts on adjacent property and the public streetscape.

5. The facility shall accept only glass, metals, plastic containers, papers and similar items; or may be a collection point for donation of reusable, non-perishable household items such as books or clothing.
 6. No power-driven processing equipment shall be used except for reverse vending machines.
 7. Containers shall be constructed and maintained with durable waterproof and rustproof material, covered when the site is not attended, and shall be of a capacity sufficient to accommodate materials collected and collection schedule. All material shall be stored in the unit and shall not be left outside of the unit when unattended. The facility shall be placed on asphalt or concrete and shall not impact any landscaping or landscaped areas.
 8. The facility shall be maintained in a clean and sanitary manner, free of litter and any other undesirable materials.
 9. Containers shall be clearly marked to identify the type of material that may be deposited. The facility shall be clearly marked to identify the name and telephone number of the facility operator and the hours of operation, and display a notice stating that no material shall be left outside the recycling containers.
- j. *Waste management — Recycling processing and collection.* Recycling collection facilities that do not meet the small facility limits, or all recycling processing and collection uses shall be limited to industrial districts and comply with the following:
1. The facility shall not be adjacent to a parcel designated or planned for residential use.
 2. Structure setbacks shall be those provided for the zoning district in which the facility is located.
 3. All exterior storage of material shall be in sturdy containers that are covered, secured and maintained in good condition. Outdoor storage shall be screened by a six-foot solid fence or wall. No storage, excluding truck trailers, shall be visible above the height of the wall or fence. No outdoor storage shall be permitted in zoning districts that do not permit outdoor storage.
 4. The site shall be maintained clean, sanitary and free of litter and any other undesirable materials and shall be cleaned regularly of loose debris. Containers shall be clearly marked to identify the type of material that may be deposited, and the facility shall display a notice stating that no material shall be left outside the recycling containers.
 5. Space shall be provided on site for a minimum of five vehicles to circulate and to deposit recyclable materials and for employee and commercial vehicle parking.
 6. All containers provided for after-hours donation of recyclable materials shall be at least 100 feet from any residential use or zoning district and constructed of sturdy rustproof construction with sufficient capacity to accommodate materials collected, and shall be secure from unauthorized entry or removal of materials.
 7. The facility shall be clearly marked with the name and telephone number of the facility operator and the hours of operation. Identification, informational and directional signs shall meet the sign standards of the zoning district.

8. Power-driven processing shall be permitted, provided all noise level requirements are met. Light processing facilities are limited to baling, briquetting, crushing, compacting, grinding, shredding and sorting of source-separated recyclable materials and repairing of reusable materials.
 9. The site shall be secured from unauthorized entry and removal of materials when attendants are not present.
 10. Hazardous materials, dead animals or yard waste shall not be considered recyclable material, except as otherwise provided in this development code.
- k. *Affordable Housing.* Affordable housing, as defined in Section 24-1301, is permitted within any approved dwelling unit and is primarily designated as affordable housing for the purpose of qualifying for the affordable housing parking reduction. Projects that include affordable housing units should follow the approval process for the equivalent residential use shown in Table 24-4-2 including, but not limited to, single-family dwelling, two-family dwellings, row house dwellings, and multi-family dwellings. Affordable housing should also follow the residential development standards for the equivalent building type including, but not limited to, detached house, multi-unit house, row house, and apartment. Transitioning an affordable housing unit to a regular dwelling unit is considered a change of use requiring an amendment to the approved plans and the provision of adequate parking by the applicant.

Section 2. Section 24-703 of Chapter 7, Access and Parking of Title 24, Development Code, shall be amended to read as follows:Sec. 24-703. Required parking.

- a. *Vehicle parking rates.* Table 24-7-3 provides minimum parking requirements, and general categories apply to all similar uses not specifically listed. Where a use is not similar to a general use in the table or could meet more than one category, the director shall determine the appropriate classification based on industry guides and the most similar use in terms of scale, format, and operation. The following criteria shall be used in interpreting the table:
1. Employee rates shall consider the maximum number of employees likely to be on site at one time.
 2. Square footage rates shall consider leasable floor area or active area dedicated to the particular use. Where this number is not easily or readily determined, 85 percent of gross floor area may be used.
 3. A seating or capacity rate shall consider the total number of seats based on industry standards for typical layouts of buildings or building codes, where actual seating is not yet known.
 4. Where uses or sites have components of different uses (i.e., hotel with a restaurant), each component shall be calculated and apportioned under the most applicable rate.

Table 24-7-3: Required Parking	
Use Category/ Specific Use	Minimum Parking Rate
Residential	
<i>Secondary dwelling</i>	1/per bedroom
<i>Dwellings (detached, manufactured)</i>	2/unit Blocks without on-street parking may require guest parking within 250' of units.
<i>Dwellings (attached, multiple, or mixed)</i>	1.25/unit (studio/efficiency) 1.5/unit (1 bedroom) 1.75/unit (2 bedroom) 2/unit (3 bedroom) 3/unit (4+ bedrooms) + 1 additional space per 10 required spaces for guest parking
<i>Senior living (independent)</i>	Same as dwellings (attached, multiple or mixed)
<i>Senior living (assisted or nursing)</i>	1 / 4 beds + 2 per 3 employees
<i>Group home (up to 8 units)</i>	Same as dwellings (detached, manufactured) + 2 per 3 employees
<i>Group home (more than 8 units)</i>	1 / 2 beds + 2 per 3 employees
Public/Civic	
<i>Assembly</i>	1 / 3 seats
<i>Public safety/services</i>	1 per employee + 1 per company vehicle

<i>Hospital</i>	1 / 2 beds + 2 per 3 employees
<i>Library</i>	1 / 300 s.f.
<i>Museum</i>	1 / 1,000 s.f.
<i>School</i>	2/class (elementary or junior) + 1 per 10 students 1 / 4 students + 1/employee (senior or higher education) OR 1 / 4 seats of all auditorium or event space, whichever is greater
Commercial	
<i>Retail — Small (under 3K)</i>	1 / 500 s.f.
<i>Retail — General (3K +)</i>	1 / 250 s.f.
<i>Retail — Outdoor display area (generally)</i>	1 / 300 s.f.
<i>Retail — Outdoor display area (large equipment)</i>	1 / 1,000 s.f.
<i>Drive-through (restaurant)</i>	100' of stacking (5 cars) per service areas, but subject to use-specific performance criteria
<i>Drive-up services (service bays or non-food services)</i>	30' of stacking space (3 cars) per service area
<i>Lodging — B&B</i>	2 spaces + 1/guest room
<i>Lodging — Hotel/motel</i>	1/guest room + 1 / 200 s.f. of restaurant
<i>Medical care</i>	1 / 300 for all general office and service areas + 1 / 2 beds (admittance permitted)
<i>Office & services</i>	1 / 300 s.f. generally 1 / 200 s.f. or 1 per patron station, whichever is greater, for any uses with frequent customer visits (i.e., salon, barber, etc.)
<i>Restaurant, general</i>	1 / 100 s.f.
<i>Restaurant — quick-serve, or bar or nightclub</i>	1 / 75 s.f.
<i>Health and fitness center</i>	1 / 200 s.f.
<i>Recreation and entertainment</i>	1 / 200 s.f. generally — indoor) 1 / 500 s.f.(large-scale — indoor (i.e., skating ring, dance hall) 1 / 4 seats for uses with fixed seating areas 1 / 2 active patron station (i.e., 2 per lane bowling; 2 per hole golf course; etc.) 1 / 100 s.f. for food and beverage service areas with seating
Industrial	
<i>Manufacturing</i>	1 / 400 s.f. (artisan/limited or light) 1 / 1,000 or 2 / 3 employees, whichever is greater (all others)
Agriculture	
<i>All uses</i>	Use combination of residential, public/civic commercial and industrial rates based on type and general nature of agriculture activities.

- b. *Maximum parking.* Nonresidential uses shall not provide more than 125 percent of the minimum required vehicle parking without documented evidence of actual parking demand based on studies of similar uses in similar contexts. In addition, any parking permitted over 125 percent of the minimum shall require mitigating potential impacts of additional parking through one or more of the following strategies, based on the director's discretion:
 1. Utilize all eligible parking reductions permitted by section 24-703.c.
 2. Provide shared parking for other uses on the block or adjacent blocks according to this chapter.
 3. Utilize alternative surfaces designed to infiltrate stormwater, approved by the director, and subject to installation, maintenance, and performance assurances.
 4. Provide additional landscape to screen parking with at least a ten percent increase in the required parking landscape area and at least a 25 percent increase in the amount of landscape material required for the parking.
 6. Increase the lot open space required for the building and site in section 24-503 or section 24-603 by an amount equal to the area of parking that exceeds the 100 percent minimum parking requirement, and locate this open space to limit the impact and visibility of parking.
- c. *Parking reductions.* The parking required by table 24-7-3 may be reduced depending on context and according to the following strategies. Reductions beyond those provided in this subsection may only be approved according to an alternative parking and access plan in [section 24-707]:
 1. *GID exempt.* No parking is required in the general improvement (GID) overlay district, except that any residential uses shall meet the parking requirements for that building type, and the required spaces shall be located with 400 feet of the residential building. The director may require parking for any nonresidential use over 10,000 square feet provided the location, accessibility, and design of the parking is consistent with the overall planning and urban design objectives of the downtown area.
 2. *Administrative reduction.* The director may reduce the required parking for any use that requires more than ten spaces by up to 15 percent of the required spaces due to the nature of a particular use or any unique circumstances on the site.
 3. *On-street parking credit.* All on-street parking within 300 feet of any lot frontage shall count towards the parking requirement at a rate of 0.25 spaces for every on-street space not on the lot boundary and 0.75 spaces for every space on the lot boundary.
 4. *Bicycle parking credit.* All bicycle parking designed and located according to section 24-703.d may reduce the required vehicle parking at a rate of one space for every four bicycle parking spaces up to a maximum of 15 percent of the required vehicle parking spaces. To be eligible for this credit, the applicant must demonstrate that it is practical to expect significant bicycle access to the site based on the location and proximity to the city-wide bicycle transportation network, the design of the site, and the nature of the use and anticipated patrons.
 5. *Public parking credit.* Any site within 1,320 feet of a public parking area may reduce the required vehicle parking at a rate of one space for every two parking spaces, except

that if the public parking is part of a managed district, the district policies and management may establish a different allocation of spaces.

6. *Transit credit.* The director may reduce the parking requirement up to 25 percent for any development within 1,320 feet of a transit stop. In making a determination on the eligibility for and amount of the credit, the director may consider the nature of the use, the likelihood that it generates transit trip origins and destinations, and the level of transit service at the stop.
7. *Shared parking.* Required parking may be reduced for any site containing multiple uses or for adjacent sites with different uses according to table 24-7-4. Any shared parking arrangement shall require an agreement among all landowners participating in the agreement to ensure access, joint use, maintenance, and other operational issues. The agreement shall be recorded for each participating property with the office of the applicable county clerk and recorder. The agreement shall state that it cannot be changed or modified without the approval and signature of the director. A shared agreement that differs from this table may also be approved based on a joint parking study for the sites and uses demonstrating adequate parking during peak hours for all parties to the agreement.
8. *Affordable Housing.* When an applicant provides an executed and recorded deed restriction that a proposed dwelling unit will be reserved for affordable housing for no less than 15 years, the applicant may reduce the required parking for the affordable dwelling unit. All other uses on the site, including market rate dwelling units, do not qualify for this parking reduction. The applicant must provide evidence that the property will adhere to income limits and maximum rents published annually by the Department of Housing and Urban Development. The applicant must list each dwelling unit subject to the deed restriction, the number of bedrooms in the dwelling unit, and the area median income for which the dwelling unit is reserved. Upon fulfilling the above-mentioned requirements, the applicant may reduce the required parking as follows:
 - a. Up to a 75 percent reduction for dwelling units that are affordable to households that earn up to 30 percent of area median income.

Table 24-7-4: Shared Parking					
Use	Percentage of Required Parking by Time Period				
	Weekday		Weekend		All
	6:00 a.m. to 5:00 p.m.	5:00 p.m. to 1:00 a.m.	6:00 a.m. to 5:00 p.m.	5:00 p.m. to 1:00 a.m.	1:00 a.m. to 6:00 a.m.
Employment	100%	10%	5%	5%	5%
Retail or service	75%	75%	100%	90%	5%
Restaurant	50%	100%	75%	100%	10%
Entertainment & recreation	30%	100%	75%	100%	5%
Place of worship	5%	25%	100%	50%	5%
School	100%	10%	10%	10%	5%
Dwellings	25%	75%	50%	75%	90%

Lodging	50%	90%	75%	100%	100%
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- d. *Bicycle parking.* All nonresidential or multifamily development shall provide bicycle parking spaces according to table 24-7-5.

Table 24-7-5: Bicycle Parking	
Activity	Required Spaces
Primary or secondary school	10% of the student capacity + 3% of employees
Retail or office uses	10% of the required vehicle spaces
Recreation and community facilities	15% of the required vehicle spaces
Other institutional, employment, industrial or entertainment uses	5% of the required vehicle spaces
Multi-unit residential buildings	0.5 per 1 bedroom dwelling unit; 1.5 per dwelling unit with 2 or more bedrooms

Bicycle parking shall be designed according to the following standards:

1. A structure shall be securely anchored to the ground and usable for both U-locks and cable locks, support a bike at two points of contact to prevent damage to wheels or frames, and have two feet by six feet clearance for each bicycle.
 2. Structures that serve another primary function but are designed to meet these standards may count toward this requirement.
 3. Bicycle parking shall be located in a well-lit area with convenient and safe pedestrian access and be on pavement or all-weather, dust-free, stabilized surface.
 4. Bicycle parking for nonresidential uses shall be located within 100 feet of and visible from the primary entrance.
 5. At least 50 percent of required bicycle parking for residential uses, employment uses, or other similar uses where bicycles are likely to be parked for longer than four hours, shall be located within the building or other all-weather and secure enclosure.
 6. Short-term bicycle parking facilities may be located in the right-of-way subject to streetscape design plans and the director's approval. Structures shall be designed for some other primary purpose meeting the streetscape standards or be designed with artistic or ornamentation enhancements compatible with the streetscape character at the specific location.
 7. Alternative standards and specifications based on recognized industry guidance or best practices for bicycle parking may be approved by the director through site plan review.
- e *Accessible parking.* Accessible vehicle parking spaces shall be provided in accordance with the applicable building codes and the Americans with Disabilities Act (ADA) standards and guidelines for quantity, design, and location.

- f. *Alternative compliance.* Alternative compliance to the required parking standards in this section may be authorized according to the process and criteria in section 24-208, and as provided in section 24-707.

Section 3. Section 24-130, of Chapter 13, Definitions and Terms of Title 24, Development Code, shall be amended to read as follows:

Sec. 24-1301. Definitions.

All terms used in this code shall have their plain and commonly accepted meaning, based upon the context of their use in the code. The following terms shall have the meaning given below, unless more specifically described, limited or qualified within the standards of this code. Some chapters have specific definitions where the terms have the given meaning for interpretation of that chapter.

100-year flood. A flood having a recurrence interval that has a one percent chance of being equaled or exceeded during any given year (one-percent-annual-chance flood). The terms "100-year flood" and "one-percent-chance flood" are synonymous with the term "100-year flood."

100-year floodplain. The area of land susceptible to being inundated as a result of the occurrence of a 100-year flood.

Abandoned sign.

- (1) A sign or sign structure and components, for which no legal owner can be found; and/or
- (2) A sign and structure which are used to identify or advertise a business, tenant, owner, product, service, use, event or activity that has not been located on the premises for a period of 90 consecutive days or longer.

Accessory building or structure. A detached building or structure located upon the same lot as the principal building or structure to which it is related, which is incidental to and customarily found in connection with such principal building or structure.

Accessory use. A use customarily incidental, related and subordinate to the main use of the lot, building or structure which does not alter the principal use.

Adjacent. Close, contiguous, and related to by proximity, sharing a common boundary or otherwise nearby to have a relationship without intervening dissimilar elements. When referring to land, separation caused by a street, alley, sidewalk, railroad right-of-way, utility line, trail, or irrigation ditch, or similarly related land can be considered adjacent.

Abutting. Directly touching elements that share a common edge or boundary.

Affordable Housing. Any dwelling unit with an executed and recorded deed restriction stating that the dwelling unit will be reserved for affordable housing by adhering to the income limits and maximum rents published annually by the Department of Housing and Urban Development for no less than 15 years.

Alley. A minor way used primarily for vehicular access or service to the back of properties adjacent to a street. An alley shall not be considered a street.

Alteration. Any act or process requiring a building permit, moving permit, demolition permit or sign permit for the reconstruction, moving, improvement or demolition of any designated property or district; or any other action in which a review by either the historic preservation commission or the city's historic preservation specialist is necessary under this article and/or the district designation plan and in accordance with the definitions of major and minor alterations, for the purposes of this article.

American National Standards Institute (ANSI). The standards by said organization that helps development in the use have an equitable and open process that serves industry and the public good, having a consensus in standards development; ANSI's essential requirements.

Animal unit. A unit of measurement used to determine the animal capacity of a particular site or parcel of land and to establish an equivalency for various species of livestock.

Animated sign. (See *Flashing or animated* or *imitating sign*.)

Antenna. A device used to transmit and/or receive radio, television or any other transmitted signal and which may be rooftop, wall or ground-mounted.

Appeal. A review of a final decision by a higher authority.

Applicant. The owners or lessees of property, the agent of such owners or lessees, or persons who have contracted to purchase property, or the city or other quasi-governmental entity that is proposing an action requiring review and approval by one or more of the sections in this title. An applicant may subsequently become the developer once approval is granted and, in this case, the terms shall be interchangeable.

Appurtenances. The visible, functional objects accessory to and part of buildings or structures and which may extend above the height of the roof.

Art. All forms of original creations of visual art, including, but not limited to, sculpture; mosaics; painting, whether portable or permanently fixed, as in the case of murals; photographs; crafts made from clay; fiber and textiles; wood; glass; metal; plastics; or any other material or any combination thereof; calligraphy; mixed media composed of any combination of forms or media; unique architectural styling or embellishment, including architectural crafts, environmental landscaping; or restoration or renovation of existing works of art of historical significance. Works of art are not intended to be used for commercial advertising purposes.

Arterial street. (See *Street*.)

Artificial turf. Any of the various synthetic fibers made to resemble natural grass.

Awning, internally illuminated. Any transparent backlit awning or awning lettering which transmits light from within the awning to the outside surface of the awning.

Awning sign. A sign that is mounted or painted on or attached to an awning.

Backing. The background area of a sign, which differentiates the total sign display from the background against which it is placed.

Basement. Any level of a building where more than one-half of the vertical distance between floor and ceiling is below the grade of the site.

Beacon. (See *Searchlight, strobe light* or *beacon*.)

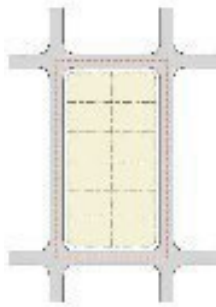
Bedroom. Any room intended and used principally for sleeping purposes.

Berm. (See *Earthen berm*.)

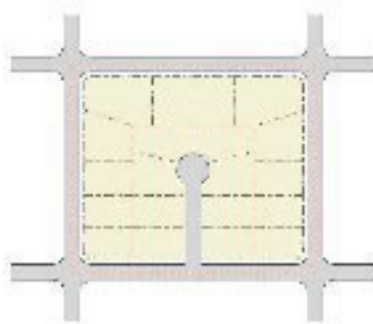
Bioretention facility. A landscaped stormwater element designed to concentrate or remove debris and pollution from surface water runoff by moving water slowly and horizontally at the surface through vegetation using gently sloped sides that cleanse water from pollutants and soil erosion before it enters the city's stormwater system.

Bioswale. A channeled depression or trench that receives rainwater runoff (as from a parking lot) and has vegetation (such as grasses, flowering herbs, and shrubs) and organic matter (such as mulch) to slow water infiltration and filter out pollutants.

Block. A group of platted lots and outlots surrounded by streets or by other features that interrupt the street network such as parks, railroad rights-of-way, or municipal boundary lines; or the perimeter of all lots fronting on the street in the case of a cul-de-sac.



Standard Block

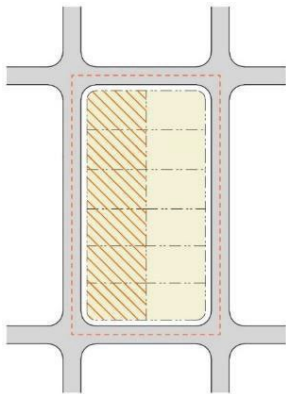


Cul-de-Sac Block



Exception

Block face. All lots on one side of a block.



Block Face

Buffer. To promote separation and enhance compatibility between land uses of different intensities.

Building. Any structure built for the shelter or enclosure of persons, animals or property of any kind, excluding fences or walls.

Building appurtenance. The visible, functional or ornamental object accessory to and part of a building.

Building code. Any law, ordinance or code which is in force in the city and which pertains to the design and construction of buildings and other structures, or to any components thereof, such as cooling and heating, plumbing, electricity and the like.

Building envelope. The area in which a building or structure is constructed or placed in a development and in which the land area beyond the envelope is under the single ownership or common ownership of all property owners within the development.

Building footprint. The outline of the total area which is covered by a building's perimeter at the ground level.

Building frontage. The area of the lot along the front building line, and when referring to design standards it may include relationship of this area and the primary façade of the building.

Building frontage, principal. The horizontal linear dimension which is designated as the primary façade of that portion of a building occupied by a single use or occupancy for the purposes of allocating signs and other design requirements.

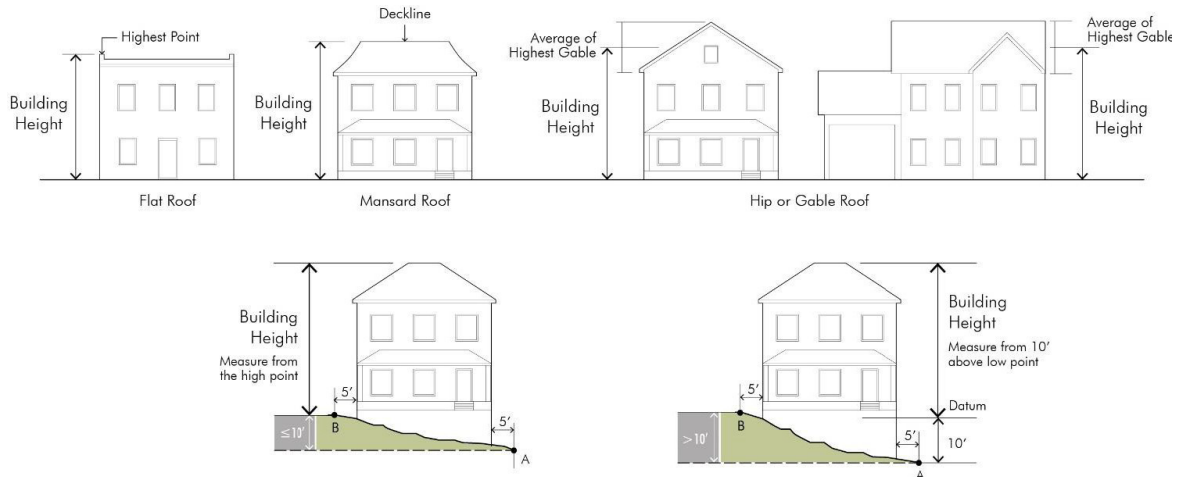
Building frontage, secondary. That dimension of a building abutting a public right-of-way other than the principal building frontage for the purposes of allocating signs and other design requirements.

Building or structure height. The vertical distance from grade at an exterior wall of a building or structure to the highest point of the coping of a flat roof, to the average height of the highest gable of a hipped roof, or a monitor roof, or to the highest point of a curved roof. This measurement shall be exclusive of church spires, cupulas, chimneys, ventilators, pipes, and similar appurtenances. For the purposes of this definition, grade applies as follows:

- (1) When there is less than a ten-foot difference between the highest and lowest ground surface within a five-foot horizontal distance from the wall, use the highest elevation.
- (2) When there is greater than a ten-foot difference between the highest and lowest ground surface within a five-foot horizontal distance from the wall, use ten-feet higher than the lowest elevation in this area.

The height of the building is the vertical distance above a reference datum measured to:

- (a) The highest point on a flat roof;
- (b) The deck line of a mansard roof;
- (c) The average of the highest gable on a hip or gabled roof.



Building, principal. The primary building on a lot or a building that houses the principal use.

Building line. The actual line at which a building is constructed, and the location of other elements on the lot or adjacent lots may refer to this line extended outward from the building.

Building line, required front. The portion of the lot frontage required to be occupied by the front façade of a principal structure, or other permitted accessory structures or landscape associated with the frontage design.

Caliper. The diameter or circumference of a tree.

Candela. A unit of luminous intensity, defined as the luminous intensity of a source that emits monochromatic radiation of frequency 540×10^{12} Hertz and that has a radiant intensity of 1/683 watt/steradian and adopted in 1979 as the international standard of luminous intensity.

Centerline (of public right-of-way). A line running midway between the bounding right-of-way lines of a street or alley. For the purposes of calculating signage, the centerline means the apparent centerline of the road determined by finding the point midway between the outer edges of the road surface.

Certificate of approval. A certificate issued by the city authorizing the construction, alteration or demolition of property and improvements designated under this chapter.

Certificate of occupancy (C.O.). A written certificate provided by the city signifying the subject building/structure (property) has complied with city standards allowing for use and occupancy.

Change of use. A use that substantially differs from the previous use of a building or land and which may affect such things as parking, drainage, circulation, landscaping, building configuration, noise, or lighting. A change of ownership which does not include any of the factors listed above shall not be considered a change of use.

Changeable copy sign (also known as a *marquee sign*). A sign designed to allow the changing of copy as with individual letters through manual means, without altering the sign backing or structure in any such way.

Channel. A natural or artificial watercourse of perceptible extent, with definite bed and banks to confine and conduct continuous or periodic flowing water.

Channel letters, individual letters, raceway and channel sign. Individual letters, flat cutout letters or symbols constructed to be applied singly in the formation of a wall sign or freestanding sign.

Channelization. The artificial creation, enlargement, or realignment of a stream channel.

Circumference. The perimeter measurement of a building or structure, measured as a continuous line.

Clear vision zone or area. That area which the city requires maintenance of in order to preserve the sight distance and safety of motorists, pedestrians, and bicyclists by requiring an unobstructed line of sight necessary for most drivers stopped at an intersection to see an approaching vehicle, pedestrian or bicyclist to avoid a collision.

Collector street. (See *Street*.)

Commercial mineral deposit. A natural mineral deposit of limestone used for construction purposes, coal, sand, gravel, and quarry aggregate, for which extraction is or will be commercially feasible and regarding which it can be demonstrated by geologic, mineralogic, or other scientific data that such deposit has significant economic or strategic value to the area, state, or nation.

Common consumption area. An area designed as a common area located within a designated entertainment district and approved by the local licensing authority that uses physical barriers to close the areas to motor vehicle traffic and limit pedestrian access.

Comprehensive plan. The comprehensive plan of the city, as provided for in the city Charter and which provides for the future growth and improvement of the community, for the preservation of historic and natural resources, and for the general location and coordination of streets and highways, recreation areas, public building sites and other physical development. Comprehensive plan may also include any specific plans, policies, or programs adopted under the guidance of that plan for the purposes of interpreting and applying this code.

Condominium. A form of ownership in which the interior floor space of a unit or area is owned individually, and the structure, common areas and facilities are owned by all of the owners on a proportional, undivided basis.

Coverage. Land area which is covered with impervious surfaces, such as buildings, patios, or decks with roofs, carports, swimming pools, tennis courts, or land area covered by any other type of structure, including parking lots.

Cul-de-sac. A local street with one open end and the other end terminating in a vehicular turnaround.

Deciduous. A plant with foliage that is shed annually.

Decision point distance. Where the clear vision sight distance triangle begins.

Deck. A floored outdoor area, typically elevated above grade and adjoining a residential dwelling.

Dedication. Setting aside property for a specific purpose, including, but not limited to, streets, utilities, parks, and trails.

Demolition. Any act or process which destroys, in part or in whole, any designated property or property located within a designated historic district.

Density. The number of dwelling units per gross acre of land area.

Detention area. An area which is designed to capture specific quantities of stormwater and to gradually release the same at a sufficiently slow rate to reduce the risk of flooding.

Developer. Any person, partnership, joint venture, association, or corporation or other legal entity who or which shall participate as owner, promoter, designer, builder, or sales agent in the planning, platting, development, promotion, sale, or lease of a subdivision.

Developing. A lot, or grouping of lots or tracts of land, with less than 60 percent of their perimeter boundary adjacent to existing development. For the purposes of this definition, public parks, natural areas and other such areas which are not eligible for further development shall be considered developed. Areas which were originally platted prior to 1978 and which have at least 75 percent of the lots in the development built on within this 20-year period shall also be considered developed. A replat of the original plat shall not affect the commencement of this 20-year period.

Development. Any construction or activity which changes the basic character or use of land on which construction or activity occurs, including, but not limited to, any non-natural change to improved or unimproved real estate, substantial improvements to buildings or other structures, mining, dredging, filling, grading, paving, extraction, or drilling operations.

Development or subdivision improvement agreement. A written instrument for the purposes of specifying all improvements to be constructed by the developer, as well as the timetable for construction of such improvements, any special conditions of construction, and construction cost estimates.

Direct lighting. Spot or floodlighting used to illuminate a sign surface.

Directional on-site. Signs that direct the movement or placement of pedestrian or vehicular traffic on a lot without reference to, or inclusion of, the name or logo of a product sold or services performed on the lot or in a building, structure or business enterprise occupying property, such as "welcome," "entrance," "exit," "restrooms," "parking," "loading area," and "drive-thru."

Dissolve. A mode of message transition on an electronic message display accomplished by varying the light intensity or pattern, where the first message gradually appears to dissipate and lose legibility simultaneously with the gradual appearance and legibility of the second message.

District. A portion of the community within which uniform regulations apply.

Downtown entertainment district. That area contained within the south curb flow line of 7th Street, the west curb flow line of 8th Avenue, the north curb flow line of 10th Street and the east curb flow line of 9th Avenue.

Drive-in or Drive-through. Accessory site and building features that encourage or permit customers to order and receive food or beverages while remaining in a motor vehicle for consumption on or off the site and which includes a menu board and audio or video speakers.

Drive-up. Accessory site or building features that encourage or permit customers to receive services or obtain or drop off products while remaining in a motor vehicle and which excludes a menu board and/or audio or video speakers.

Driveway. An improved concrete or asphalt path leading directly to one or more city-approved parking spaces constructed with a concrete, asphalt, or similar all-weather surface.

Dry wash channel. Natural passageways or depressions of perceptible extent, containing intermittent or low-base flow.

Dust abatement plan. A plan intended and designed to control dust during the construction or development of property.

Dwelling unit. One room, or connected rooms, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease as a single unit, on a monthly basis or longer, physically separated from any other room or dwelling units which may be in the same structure and served by no more than one gas meter and one electric meter.

Earthen berm. A mound of earth, higher than grade, used for screening or buffering, the definition of space, noise attenuation, and decoration in landscaping.

Easement. A right granted by a property owner permitting a designated part of interest in the owner's property to be used by others for a specific use or purpose.

Ecological character. The natural features and attributes of an area or landscape that, combined, give the area its character.

Electronic message display. A sign capable of displaying words, symbols, figures, or images that can be electronically or mechanically changed by remote or automatic means.

Emergency. An unexpected and sudden event that must be dealt with urgently in order to stabilize or protect a structure.

Entertainment district. An area within the city that is designated as an entertainment district of a size no more than 100 acres and containing at least 20,000 square feet of premises licensed as a tavern, hotel and restaurant, brew pub, retail gaming tavern, or vintner's restaurant at the time the district is created.

Evergreen. A plant with foliage that persists and remains green year-round.

Existing development. Any development in the city once all public improvements, including water, sewer, streets, curb, gutter, streetlights, fire hydrants, and storm drainage facilities, are installed and completed.

Exposed incandescent or high intensity discharge lighting. Any sign or portion of a sign that utilizes an exposed incandescent or high intensity lamp, with the exception of neon.

Exterior or perimeter wall. A wall, elements of a wall, parapet wall or any elements or groups of elements which define the exterior boundaries or courts of a building.

Façade. The exterior face of a building.

Fade. A mode of message transition on an electronic message display accomplished by varying the light intensity, where the first message gradually reduces intensity to the point of not being legible and the subsequent message gradually increases intensity to the point of legibility.

Family. An individual living alone, or any number of persons living together as a single household who are interrelated by blood, marriage, adoption or other legal custodial relationship; or not more than two unrelated adults and any number of persons related to those unrelated adults by blood, adoption, guardianship or other legal custodial relationship. In multifamily units, the number of unrelated adults shall be determined based on the provisions of the city's housing code. For the purposes of this definition, a bona fide employee of the family who resides in the dwelling unit and whose live-in status is required by the nature of such person's employment shall be considered a member of the family.

Federal Register. The official daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents.

Fence. Any artificially constructed barrier of an approved material or combination of materials erected vertically to enclose or screen areas of land.

Figures. An outline, shape or pattern of numbers, letters or abstract images.

Financial security or guarantee. A financial obligation, in a form acceptable to the city, which assures completion and payment for all improvements related to development of property.

Flag. Material attached to or designed to be flown from a flagpole or similar device and which may display the name, insignia, emblem or logo of any nation, state, municipality, or commercial or noncommercial organization (see *Pennants*).

Flashing or animated. Signs or lighting with flashing, blinking, moving or other animation effects or that give the visual impression of such movement by use of lighting, or intermittent exhibits or sequential flashing of natural or appearance of artificial light or colors, including those signs that rotate, revolve, spin, swing, flap, wave, shimmer, or make any other motion, or illusion of motion, or which imitate official governmental protective or warning devices (see *Imitating sign*).

Flood or flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from the unusual and rapid accumulation or runoff of surface waters from any source.

Floodplain. An area which is adjacent to a stream or watercourse and which is subject to flooding as a result of the occurrence of an intermediate regional flood and which is so adverse to past, current or foreseeable construction or land use as to constitute a significant hazard to public health and safety or to property. The term "floodplain" includes, but is not limited to, mainstream floodplains, debris fan floodplains, and dry wash channels and floodplains.

Floor area, gross. The total area of a building measured by taking the outside dimensions of the building at each floor level, or from the centerlines of walls separating two buildings and excluding areas used exclusively for the service of the building such as mechanical equipment spaces and shafts, elevators, stairways, escalators, ramps, loading docks, cellars, unenclosed porches, attics not used for human occupancy, any floor space in accessory buildings, or areas within the building which are intended for the parking of motor vehicles.

Flow line. The low point within a street section wherein water is intended to collect and flow, typically the gutters along each edge of pavement.

Foundation plantings. Live plantings located immediately around the base of the foundation of a building façade that reflects the formal geometry of the structure.

Frame. A complete, static display screen on an electronic message display.

Frame effect. A visual effect on an electronic message display applied to a single frame to attract the attention of viewers.

Freestanding sign. A sign which is not attached to any building. A freestanding sign shall include, but is not limited to, a pole, monument, a canopy, and freestanding wall sign. A sign that extends more than four feet from a wall but is attached and/or is part of a canopy or an awning shall be considered a freestanding sign.

Freestanding wall or fence. Either a wall that is not attached to a building or a wall attached to a building that projects more than four feet beyond the exterior wall of the habitable portion of the building.

Frontage. The area of a lot between the front building line and the front lot line.

Garage or yard sale. The occasional sale of new or used goods at a residence, which may be held outside and/or within a garage or accessory building.

Gas. All natural gases and all hydrocarbons not defined as oil.

General Improvement District #1. That 19-block district bounded by 11th Street to the south, 6th Street to the north, 7th Avenue to the east and 11th Avenue to the west, excluding City Block 35.

Geologic hazard. A geologic condition which is adverse to current or foreseeable future construction or land use associated therewith, constituting a hazard to public health and safety or property, including, but not limited to, landslide, rock fall, subsidence, expansive soils, slope failure, mudflow, or other unstable surface or subsurface conditions.

Ghost sign. Old hand-painted signage that has been preserved on a building for an extended period of time, whether by actively keeping it or choosing not to destroy it.

Glare. A sensation of brightness within the visual field that causes annoyance, discomfort, or loss in visual performance and visibility.

Grade. The average elevation of the finished surface of the ground, paving, or sidewalk with a radius of five feet from the base of the structure.

Graphics. Drawings, decals, paint, or illustrations.

Gravel. Inert materials such as loose fragments of rock larger than "pea" size and commonly used as parking surface material.

Gross floor area. (See *Floor area*.)

Gross leasable area (GLA). The area of a building that can be leased to tenants, including storage areas and common areas apportioned to the number of tenants sharing the area. Gross leasable area shall be measured in the same manner of gross floor area, but is apportioned to specific uses or tenants in the building.

Gross land area. The total land area of a site or property, including land to be dedicated for streets and other public purposes.

Ground cover. Materials that typically do not exceed one foot in height used to provide cover of the soil in landscaped areas, which may include a combination of, but is not limited to,

river rock, cobble, boulders, concrete pavers, grasses, flowers, low-growing shrubs and vines, and those materials derived from once-living things, such as wood mulch. In no event shall weeds be considered ground cover.

Ground kites. Freestanding frames usually covered with flexible fabric and designed to be animated by the wind to attract attention.

Guest. A person who is visiting at the principal or primary home of another person for up to 30 days, and which home is not the principal or primary home of the guest.

Habitat. Areas that contain adequate food, water and cover to enable one or more species of wildlife to live in or use the area for part of all of the year and which typically consists of natural or planted vegetation, along with one or more sources of water available in the area or adjacent areas.

Hazard. Any structure or use of land which endangers or obstructs the airspace required for aircraft in landing, take-off and maneuvering at the airport.

Hazardous material. Any substance or materials that, by reason of their toxic, caustic, corrosive, abrasive or otherwise injurious properties, may be detrimental or deleterious to the health of any person handling or otherwise coming into contact with such material or substance, or which may be detrimental to the natural environment and/or wildlife inhabiting the natural environment.

Height. (See *Building height*.)

Highest adjacent grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Hillside development. Development in areas which contain existing, natural slopes in excess of 15 percent.

Historic district. A geographically definable area with a concentration of buildings, structures, sites, spaces or objects unified by past events, physical development, design, setting, materials, quality, sense of cohesiveness or related historical and aesthetic associations, that is recognized through listing in a local, state or national landmarks register.

Historic preservation. The protection, rehabilitation and/or restoration of districts, buildings, structures, and artifacts which are considered significant in history, architecture, archaeology, or culture.

Historic sign. A sign that has been officially designated as an historic landmark.

Historic structure. Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior; or
 - b. Directly by the Secretary of the Interior in states without approved programs.

Holiday decorations. Temporary decorations, lighting or displays which are clearly incidental and customary and commonly associated with any national, state, local, religious or commonly celebrated holiday and which contain no commercial message.

Home occupation. An occupation, profession, activity, or use conducted within a residential dwelling unit that is incidental and secondary to the use of a residential dwelling unit, which does not alter the exterior of the property or affect the residential character of the environment and which meets the provisions of this article.

Home occupation, rural. An accessory use to a farming operation or a non-farm household located in a rural area, designed for gainful employment involving the sale of agricultural produce grown on the site, conducted either from within the dwelling and/or from accessory buildings located within 500 feet of the dwelling occupied by those conducting the rural home occupation.

Homeowners' association. An association of homeowners or property owners within a development, typically organized for the purpose of enforcement of private covenants and/or carrying out the maintenance of common areas, landscaping, parks, building exteriors and streets.

Household pet. Any nonvenomous species of reptile and any domestic dog, cat, rodent, primate or bird over the age of four months, which is typically kept indoors. For the purposes of this definition, guide or assistance animals shall not be considered household pets.

Illumination. The use of artificial or reflective means for the purpose of lighting a sign.

Imitating sign. Signs which purport to be, are an imitation of, or resemble an official traffic sign, signal or equipment which attempt to direct the movement of pedestrian or vehicular traffic using such words as "stop," "danger" or "caution" to imply a need or requirement to stop, or a caution for the existence of danger, such as flashing red, yellow and green. (See *Flashing or animated*.)

Impervious. Any hard-surfaced, man-made area that does not readily absorb or retain water, including, but not limited to, building roofs, paved parking and driveway areas, compacted areas, sidewalks, and paved recreation areas.

Incidental sign. Nondescript signs, emblems or decals attached to a permanent structure informing the public only of those facilities or services available on the premises, such as a credit card sign or a sign indicating hours of business.

Indirect lighting. Reflected light or lighting directed toward or across a surface.

Individual letters. (See *Channel letters*.)

Infill. A lot, or grouping of lots or tracts of land, with at least 60 percent of their perimeter boundary adjacent to existing development. If a right-of-way at least 120 feet in width or streets designated on the comprehensive transportation plan, as major collectors or arterial streets are

adjacent to the subject lot, lots across such a street shall be excluded for the purposes of determining infill and at least 60 percent of the remaining boundaries of the site shall be adjacent to existing development for the lot to be determined to be infill.

Inflatable sign or inflatable object. Any object filled with air or other gas, including balloons, which characterize a commercial symbol or contain a message.

Intensity. An expression of the level or nature of development in nonresidential developments, or zones or specific land uses based on combinations of building coverage and height, impervious surfaces, expected traffic, hours of operation, noise, or similar impacts on surrounding areas.

Internal illumination. A light source that is contained within the sign itself, or where light is visible through a translucent surface.

Irrigation system. An underground, automatic sprinkler system or above-ground drip system explicitly designed for watering vegetation.

Kiosk. A freestanding structure upon which temporary information and/or posters, notices, and announcements are posted.

Landscape plan. A scaled graphic plan showing the treatment of all open space areas, parking lots, parking areas, areas adjacent to the public right-of-way, perimeter treatment, and other landscaped areas.

Landscaping. Any combination of living plants, such as trees, shrubs, vines, ground covers, flowers, or grass; natural features, such as rock, stone, bark chips, or shavings; and structural features, including, but not limited to, fountains, reflecting pools, screening walls, solid fences, and benches.

Lawn. A stretch of open, turf-grass covered land; artificial turf shall not be considered lawn or turf-grass.

Leading edge. The point of a sign, including its support structure, nearest to the public right-of-way.

Legal description. A land description recognized by law, including the measurements and boundaries.

Legible. A sign capable of being read with certainty without visual aid by a pedestrian of normal visual acuity.

Live plantings. Trees, shrubs and organic ground cover which are in healthy condition.

Livestock. Animals typically related to agricultural or farming uses, including, but not limited to, chickens, swine, sheep, goats, horses, cattle, yaks, alpacas, and emus.

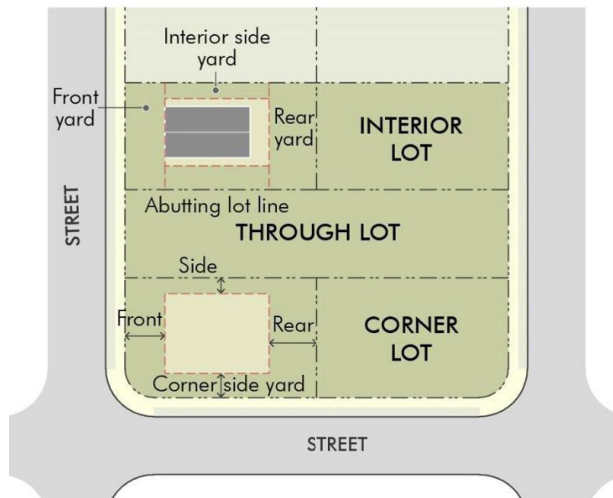
Living fence. A permanent hedge tight enough and strong enough to serve almost any of the functions of a manufactured fence, but it offers agricultural and biological services.

Living unit. Any habitable room or group of rooms forming a single habitable unit, used or intended to be used for living and sleeping, but not for cooking or eating.

Loading space or zone. An off-street space or berth used for the loading or unloading of cargo, products, or materials from vehicles.

Local street. (See *Street*.)

Lot. A parcel of land, established by a subdivision plat, having the required minimum dimensions, which shall be located on either a public right-of-way or on a legal and perpetual access and which is occupied or designed to be occupied by one or more principal buildings, structures, or uses.



Types of Lots

Lot area. The total square footage or acreage contained within lot lines.

Lot, corner. A lot abutting on and at the intersection of two or more streets.

Lot coverage. (See *Coverage*.)

Lot depth. The average distance between the front and rear lot lines.

Lot, double frontage or through. A lot that fronts upon two parallel streets or that fronts upon two streets that do not intersect at the boundaries of the lot. The lot line abutting the street which provides primary access shall be considered the front lot line.

Lot, interior. A lot other than a corner lot, with frontage on only one street.

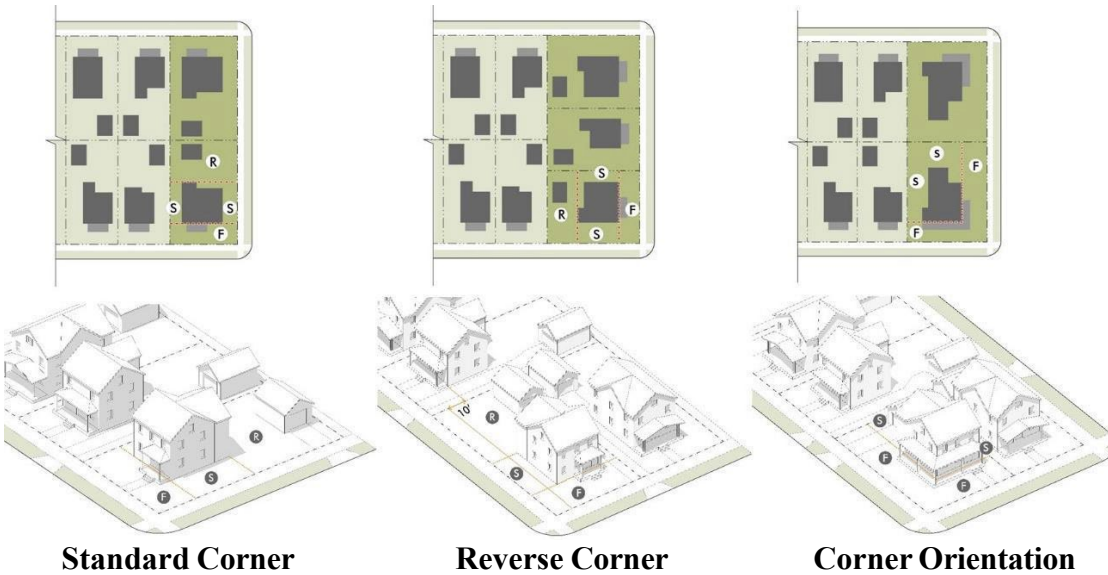
Lot line. A line dividing one lot from another lot or parcel, or from a street or alley.

Lot line, front. The property line dividing a lot from a street or public or common space on which the building and lot orients. On a corner lot, generally the shorter street frontage shall be considered as a front lot line, except that the context of the block and abutting lots may allow the following arrangements:

- (1) **Standard corner.** The building orients to the same front as all other buildings on the same street, and an expanded side setback applies on the other street side of the lot. Side and rear setbacks apply to the remaining sides.
- (2) **Reverse corner.** The building orients to the end-grain of the block (not the same as other buildings on the interior of the block), and the front setback and frontage design applies to that street. The other street-side setback is the greater of (a) the stated street-

side setback for that building type or (b) ten feet in front of the forward-most point of the front building line of the abutting lot. Side and rear setbacks apply to the remaining sides.

- (3) *Corner orientation.* The building orients to both streets, with the front setback and frontage design applying on both street sides. The two remaining lot lines are treated as side setbacks and there is no rear setback.

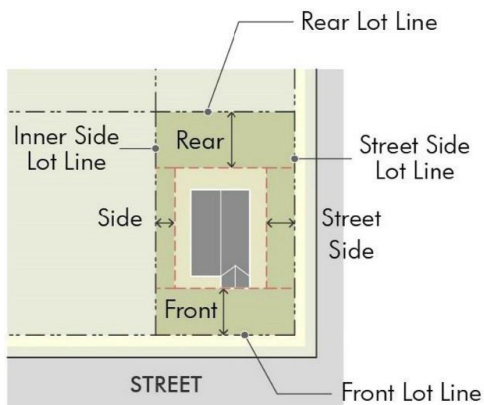


Lot line, interior side. A side lot line which is adjacent to a side lot line of another lot.

Lot line, rear. The line opposite the front lot line. Where the side lot lines meet in a point, the rear lot line shall be assumed to be a line not less than ten feet long, lying within the lot and parallel to the front lot line.

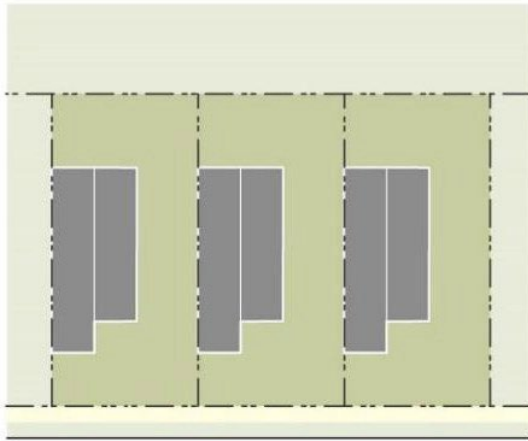
Lot line, side. Any lot lines other than the front or rear lot line.

Lot line, street side. A side lot line which separates the lot from a street.



Lot and Building Lines

Lot line, zero. The location of a building on a lot in such a manner that one or more of the building's sides rests directly on a lot line, provided that separations or setbacks between buildings meet all applicable building and fire code provisions.



Zero Lot Line Development

Low-water adaptive plants. Plants which have or can adapt to low levels of irrigation water.

Maintenance of landscaping. Regular watering, mowing, pruning, fertilizing, clearing of debris and weeds, removing and replacing of dead plants, and the repair and replacement of irrigation systems.

Maintenance of a sign. Cleaning, repairing, painting, or replacement of defective parts in a manner that does not alter the dimension, material or structure.

Manufactured home. (See *Dwelling or residence, single-family* in the description of uses.)

Mechanical equipment. Any and all equipment ancillary to the use or function of a building and/or structure, including, but not limited to, heating or cooling equipment, pool pumps and filters, electrical equipment, transformers, exhaust stacks, and roof vents.

Menu board. A permanently mounted sign which lists the products or services available at a drive-in or drive-thru facility and not legible from the right-of-way.

Mid-range expected service area. The growth area capable of accommodating the estimated increase in development in the city in the next five years.

Mineral owner. Any person having title or right of ownership in subsurface oil and gas or leasehold interest therein.

Mobile home. A detached, single-family housing unit that does not meet the definition of single-family dwelling or residence set forth in these definitions and which has all of the following characteristics:

- (1) Designed for a long-term occupancy and containing sleeping accommodations, a flush toilet, a tub or shower bath and kitchen facilities and has plumbing and electrical connections provided for attachment to outside systems;

- (2) Designed to be transported after fabrication on its own wheels, on a flatbed or other trailers or on detachable wheels;
- (3) Arrives at the site where it is to be occupied as a complete unit and is ready for occupancy except for minor and incidental unpacking and assembly operations, location on foundation supports or jacks, underpinned, connections to utilities and the like;
- (4) Exceeding eight feet in width and 32 feet in length, excluding towing gear and bumpers; and
- (5) Is without motive power.

Mobile home accessory building or structure. A building or structure that is an addition to or supplements the facilities provided in a mobile home. It is not a self-contained, separate, habitable building or structure. Examples are awnings, cabanas, garages, storage structures, carports, fences, windbreaks, or porches and patios that are open on at least three sides.

Mobile home park or community. A site or tract of land held under one ownership, which is suited for the placement of mobile homes.

Mobile home park or community, existing. A mobile home park or community for which the construction of facilities for servicing the lots on which the mobile homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) are completed before the effective date of the ordinance codified in this development code.

Mobile home park or community, expansion to. The preparation of additional sites by the construction of facilities for servicing the lots on which the mobile homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).

Mobile or micro home site. A plot of ground within a mobile home community, or other small format housing project, designed for the accommodation of one mobile home or similar small-format dwelling unit and its accessory structures.

Model home. An unoccupied dwelling unit built on a site in a development for display and/or sales purposes and which may include an office solely for the development in which it is located, and which typifies the units that will be constructed in the development.

Monument sign. A freestanding sign supported primarily by an internal structural framework or other solid structure features where the base of the sign is in contact with the ground.

Mulch. A natural planting material such as pine straw, coconut fiber, ground pine post peeling, or tree bark used to control weed growth, reduce soil erosion and water loss.

Multiple use. A site, tract of land or development that contains more than one type of land use, including, but not limited to, residential, office, retail, or industrial uses.

Native grass. A native Colorado grass.

Natural area. Aquatic or terrestrial habitats or areas which exist in their natural condition and which have not been significantly altered by human activity.

Natural area corridor. An aquatic or terrestrial corridor that connects one or more natural areas or habitats together.

Natural feature. Features which give an area its general appearance and ecological character and which attract or support the wildlife species that use or inhabit the area.

Neighborhood. The land area which is in the vicinity of the lot, tract, outlot, or parcel of land in question and which will be affected to a greater extent than other land areas in the city by uses which exist on the lot or are proposed for it. A neighborhood also includes lots which are adjacent to one another and have a community of shared interest.

Neon. A sign illuminated by a light source consisting of a neon or gas tube that is bent to form letters, symbols or other shapes.

New construction. Structures for which the start of construction commenced on or after the effective date of the ordinance codified in this article.

Nits. A unit of measurement of luminance, or the intensity of visible light, where one nit is equal to one candela per square meter.

Nonconforming. Any building, structure, site, or use that does not conform to the regulations of this development code, but which was lawfully constructed, established and/or occupied under the regulations in force at the time of construction or initial operation.

Nonconforming mobile home communities. Mobile home communities lawfully established and properly licensed by the city under the 1976 Code, or which were developed and used prior to and as of September 5, 1972, as a place where mobile homes were located for residential occupancy and, as of that date, the area must have been in compliance with any and all applicable city or county ordinances and regulations related to mobile home use of land.

Non-deciduous. Shrubs or trees, also called evergreens that keep their foliage year-round.

Official map. The map establishing the zoning classifications of all land in the city and showing all amendments to zoning classifications as they may be adopted.

Off-premises sign. A sign or device that advertises a business establishment, good, facility, service, or product which is not sold or conducted on the premises on which the sign or device is located and which may be designed to change copy on a periodic basis.

Off-street parking areas. (See *Parking*.)

Oil. Crude petroleum oil and any other hydrocarbons, regardless of gravities, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

Opacity. The degree or extent that light is obscured.

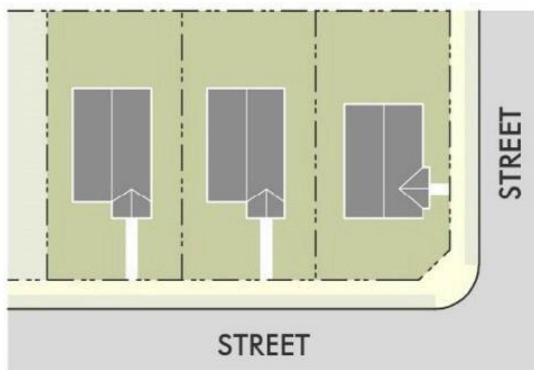
Open space, common. A common area permanently set aside for the common use and enjoyment of residents or occupants of a development or members of a homeowners' association, which open area may be landscaped and/or left with natural vegetation cover and which may include swimming pools and other recreational leisure facilities; areas of scenic or natural beauty and habitat areas; hiking, riding, or off-street bicycle trails; and landscape areas adjacent to roads which are in excess of minimum required rights-of-way.

Open space, private or on-lot. An outdoor area not intended for habitation, directly adjoining a dwelling unit or building, which is intended for the private enjoyment of the residents or occupants of the adjacent dwelling unit or building and which is defined in such a manner that its boundaries are evident. Private or on-lot open space may include lawn area, decks, balconies, and/or patios.

Open space, required. That portion or percentage defined by the zoning standards of a lot required to be open and unobstructed. The area must not be covered by any structure or impervious surface, such as sidewalks or driveways, with the exception of required amenities, identity features, or useable open space required pursuant to this code.

Open space, usable. That portion of a lot or site available to all occupants of the building or site for recreational and other leisure activities that are customarily carried on outdoors.

Oriented. To locate or place a building or structure in a particular direction on a lot or site which shall generally be parallel to the adjacent street.



Buildings Oriented to the Street

Ornamental tree. A deciduous tree planted primarily for its ornamental value or for screening and which will typically be smaller than a shade tree approximately 15 to 25 feet in height.

Outdoor display. The display of products for sale outside a building or structure in areas to which customers have access.

Outdoor storage. The keeping, outside a building, of any goods, material, merchandise, or vehicles in the same place for more than 24 hours. Outdoor storage shall not include the storing of junk or the parking of inoperable motor vehicles. Storage of commercial recreational vehicles/equipment, boat, and personal vehicles are excluded from this definition.

Outlot. A tract of land platted in a subdivision for a specific purpose, which shall be shown on the face of the plat. Specific purposes may include, but are not limited to, drainage areas, stormwater detention or retention areas, parks, open space, or land areas reserved for other public facilities.

Overlay district. A zoning district classification which encompasses a defined geographic area and imposes additional requirements above that required by the underlying zoning. Overlay districts may be combining, where they join property included in two or more adjoining districts based on common attributes or policies; or overlay districts may be separating, where they

distinguish property in a single district based on a specific attribute or context that requires different regulations.

Parcel. A unit or contiguous units of land in the possession of, or recorded as the property of one person, partnership, joint venture, association or corporation, or other legal entity.

Park. Any dedicated and accepted public or private land available for recreational or scenic purposes.

Parking. The parking or leaving of an operable, licensed vehicle, current in its registration, for a temporary period.

Parking areas or lots. Areas designed, used, required, or intended to be used for the parking of motor vehicles, including driveways or access ways in and to such areas but excluding public streets and rights-of-way.

Parking bay. A group of parking stalls or vehicle parking spaces to accommodate 15 or more vehicles.

Parking block. A group of parking bays surrounded by landscape edges, internal access streets, public streets or buildings and sidewalks, typically used to break larger parking areas into smaller distinct components. Parking blocks are used to minimize the visual impact of parking, improve organization of the development and circulation within the site, and/or preserve opportunities for the site to accept infill or redevelopment in a more logical pattern without disruption of streets and utilities.

Parking, shared. The development and use of parking areas on two or more separate properties for joint use by those properties.

Parking slab. A paved parking space located off-street and designed to accommodate standard-sized motor vehicles as provided in the off-street parking and loading requirements chapter of this development code.

Parking space. A space or stall within a parking area established in conformance with this development code.

Parking space, storage. A space for the storage of operable, licensed vehicles, current in registration, including recreational vehicles or equipment, for a period of 30 days or longer.

Parkway. The strip of land typically located between the sidewalk and the curb, also referred to as a *tree lawn*.

Path or pathway. A designated route or path for non-motorized use such as for walking or bicycling. Paths may include both sidewalks and trails.

Pennants. Any long, narrow, usually triangular flag typically made of lightweight plastic, fabric, or other material, and not containing a message, image or representative symbol, usually found in a series on a line and designed to move in the wind.

Perennials. Non-woody plants, which may die back to the ground each year but continue to grow on an annual basis. Perennials shall also include cold weather bulbs and tubers and ornamental grasses that grow each year and shall count toward ground cover requirements.

Perimeter treatment plan. A plan intended to provide visual and noise protection for the outer edges of developments, which border arterial streets, major collector streets, or other

sensitive borders. Perimeter treatment also provides an attractive and varied streetscape for people traveling along thoroughfares.

Permanent sign. A sign attached to a building, structure or the ground in a manner that precludes ready removal or relocation of the sign.

Permeable. A material that allows liquids or gases to pass through it.

Permitted sign. A sign having a legal permit issued in accordance with the provisions of this title.

Permitted use. A use allowed in a zoning district and subject to the restrictions and review procedures which apply to that district.

Person. Any person, firm, association, organization, partnership, business, trust, corporation, company, contractor, supplier, installer, user, or owner or any representative, officer or employee thereof.

Pervious. A surface that allows water to pass through; a surface that presents an opportunity for precipitation to infiltrate into the ground.

Planned unit development (PUD). A development planned, designed, and constructed with specific standards as an integral unit and which typically consists of a combination of uses district, and provides for an equivalent level of standards, and broader community benefits in exchange for flexibility in the standards.

Planting median. An area in the approximate center of a city street, road, or state highway that is used to separate the directional flow of traffic or the center of two parking bays that provide vegetation and pedestrian accessibility to the principal building or structure by way of a paved sidewalk.

Plat. A subdivision map or plan of property.

Plat, final. A completed map of a subdivision setting forth fully and accurately all legal and engineering information, survey certification and any accompanying materials as required by this title.

Plat, preliminary. A proposed subdivision map and any accompanying materials as required by this title, which provide sufficiently detailed information so that preliminary agreement as to the form and content of the plat, coordinating the planning, design, and engineering standards of this title, may be reached between the developer and the city.

Pole sign. A sign that is affixed, attached, or mounted on a freestanding pole or structure that is not itself an integral part of or attached to a building or structure.

Pollinator gardens. Gardens designed for the purpose of providing habitat for or attracting bees, butterflies, moths, hummingbirds, or other beneficial creatures that transfer pollen from flower to flower, or in some cases, within flowers.

Portable sign. A sign that is not permanently affixed to a building, structure or the ground and that is easily moved, such as a sandwich board sign.

Practicable. Capable of being done within existing constraints including environmental, economic, technological, or other pertinent considerations.

Premises. The land, site or lot at which, or from which, a principal land use and activity is conducted.

Primary entrance. The entrance to a building or structure which is intended to be the main pedestrian or public entrance and which shall typically be located on the front of the building or structure, and therefore includes enhancements and human-scale details to show the priority and importance of the space to the public.

Principal building or structure. (See *Building*.)

Private smoking club means a not-for-profit organization, that maintains selective members, is operated by the membership, and has as its primary purpose the legal consumption or use of tobacco smoking products as an aspect of its recreational, fraternal or social purpose for its members, but not for pecuniary gain, and which only sells or distributes alcoholic beverages to its members incidental to its operation.

Prohibited activities sign. Signs located on a property posting said property for warning or prohibition, such as "no hunting," "no swimming," or "no parking."

Projecting wall sign. Any sign attached to a building and that extends more than 20 inches from the surface to which it is attached, but no more than four feet from the wall of the building. Signs projecting more than four feet from the building shall be considered freestanding signs.

Promotional association. An association that is incorporated within the state that organizes and promotes entertainment activities within a common consumption area and is organized or authorized by two or more people who own or lease property within an entertainment district.

Public. A person, structure, activity, or purpose owned or operated by a governmental agency or by a public nonprofit corporation with tax-exempt status under the federal Internal Revenue Code.

Public hearing. A hearing held to allow interested persons to present such persons' views before the zoning board of appeals, planning commission or city council. A public hearing is different from an open meeting which does not allow participation by the public.

Public improvement. Any improvement required by title for which the city or a quasi-public agency agrees to assume responsibility for maintenance and operation, or which may affect an improvement for which the city or a quasi-public agency is already responsible. Such facilities include, but are not limited to, streets, parks, trails, drainage facilities, water and sewer facilities, gas, electricity, telephone, cable television, and other utility facilities.

Public sign. Signs required or specifically authorized for a public purpose by any law, statute, or ordinance, including public directional signs on the right-of-way; signs which identify the city by name; signs that direct travelers to public buildings, parks or attractions; interpretative signs; way-finding signs, municipal uniform traffic control devices; and the like.

Rain garden. A soil absorption or filter system designed to be depression storage or a planted hole that allows water filtration and absorption of rainwater runoff from impervious urban areas, such as roofs, driveways, walkways, parking lots, and turf-grass or sod areas. It is a type of bioretention facility designed to provide stormwater infrastructure improvements with vegetation. Typically shallow vegetative depressions with gentle slide slopes designed as individual stormwater receiving areas or linked to conveyance systems. Soils may or may not be amended in these facilities.

Recreational equipment. Equipment intended for outdoor recreational use, including, but not limited to, snowmobiles, jet skis, all-terrain vehicles (ATVs), canoes and boats, and including the trailers for transporting such equipment.

Recreational vehicle. A vehicle which is designed, intended and used for the purposes of temporary living accommodation for recreation, camping and travel use, including, but not limited to, travel trailers, truck campers, camping trailers and self-propelled motor homes, horse trailers and bus campers. For the purposes of this definition, neither a pop-up trailer nor a truck topper accessory (also known as a camper shell) which is not higher than eight inches above the truck cab when installed shall be considered a recreational vehicle. A horse trailer used primarily for transport of horses and/or livestock to or from the site it is stored upon shall not be considered a recreational vehicle under this definition.

Recyclable material. Reusable material, including, but not limited to, metals, glass, plastic, and paper, which are intended for reuse or reconstitution for the purpose of using the altered form. The term "recyclable material" shall not include refuse or hazardous materials or the processing of recyclable materials.

Redevelopment district. All land located within the boundaries of the urban renewal area of the city, as it may be amended from time to time by the city council.

Residential complex, subdivision or multifamily entry sign. An on-site sign that identifies a specific residential complex or subdivision.

Right-of-way. A right granted by a property owner and which is intended to be occupied by a street, sidewalk, railroad, utilities, and other similar uses.

Right-of-way landscaping. Landscaping located within the public or private rights-of-way adjacent to a privately owned lot, outlot, or tract, including parkways.

Riparian zone. An area where the presence of a surface and/or high subsurface water level permits the existence of increased vegetative diversity and abundance as contrasted to surrounding areas.

Roof sign. A sign that is mounted on the roof of a building or structure such as a portico which is wholly dependent upon a building for support and which projects above the parapet of a building with a flat roof, or above the peak of the roof on that portion of the roof on which the sign is placed.

Satellite and communication equipment. A reflective surface configured in the shape of a shallow dish, cone, horn, or cornucopia which shall be used to transmit and/or receive radio or electromagnetic waves between terrestrially and/or orbitally based uses, including, but not limited to, satellite earth stations, television reception only satellite dish antennas, and satellite microwave antennas.

Screening. A method of reducing the impact of visual and/or noise intrusions through the use of plant materials, earthen berms, solid fences, and/or walls, or any combination thereof, intended to block that which is unsightly or offensive with a more harmonious element.

Searchlight, strobe light or beacon. A stationary or revolving light that flashes or projects illumination, single color or multicolored, in any manner that is intended to attract or divert attention; excluding any device required or necessary under the safety regulations described by the Federal Aviation Administration or similar agencies.

Seasonal use. A use intended for a period of limited duration, including, but not limited to, the sale of seasonal goods and products such as pumpkins, Christmas trees, produce and living plants.

Setback. The minimum distance a building, structure or use may be erected from a street, alley, or property line. Setbacks are also called required yards.

Setback, front. The area extending across the full width of the lot, between the front lot line and the nearest line or point of the area allowed for construction or establishment of the building, structure, or use. Where expressed as a range, the front setback shall be interpreted as a "build to range," within which distance the front building line of the principal building shall be established.

Setback, interior side. The area extending from the front yard to the rear yard, between the side lot line adjacent to another lot and the nearest line or point of the area allowed for construction or establishment of the building, structure, or use.

Setback, oil and gas. (See section 24-1102.)

Setback, rear. The area extending across the full width of the lot between the rear lot line and the nearest line or point of the area allowed for construction or establishment of the building, structure, or use.

Setback, side. The area extending from the front yard to the rear yard, between the side lot line and the nearest line or point of the area allowed for construction or establishment of the building, structure or use.

Setback, street side. The area extending from the front yard to the rear yard, which separates the lot from an adjacent street.

Shade tree. A large woody plant, usually deciduous, that normally grows with one main trunk and has a mature height at least 30 feet, a canopy height above 12 feet, and screens and filters the sun.

Shrub. A woody plant which consists of a number of small stems from the ground or small branches near the ground and which may be deciduous or evergreen.

Sidewalk. A paved, surfaced or leveled area, paralleling and usually separated from the street, used as a pedestrian path.

Sign. Any device, surface, object, structure, building architecture or part thereof using graphics, symbols or written copy for the purpose of advertising, identifying or announcing or drawing attention to any establishment, product, goods, facilities, services or idea, whether of a commercial or noncommercial nature.

Sign allowance. The amount of signage that is allowable under the provisions of this chapter.

Sign alteration. Any change of copy (excluding changeable copy signs), sign face, color, size, shape, illumination, position, location, construction, or supporting structure of any sign.

Sign area. The entire face of a sign and any backing, frame, trim or molding and which may include the supportive structure.

Sign backing. The surface, pattern or color of which any sign is displayed upon, against or through and that forms an integral part of such display and differentiates the total display from the background against which it is placed.

Sign, exposed incandescent or high intensity discharge lighting. Any sign or portion of a sign that utilizes an exposed incandescent or high intensity lamp, with the exception of neon, in such a fashion as to project light directly onto adjoining property or right-of-way.

Sign face. The area of a sign on which the copy is placed, or, for individual cutout letters, painted letters, channel letters or symbols, the perimeter of the individual elements shall be considered the area of the sign.

Sign frame. A sign cabinet or that portion of the sign that holds the sign face in place.

Sign height. The vertical distance measured from the grade, as defined herein, to the highest point of the sign or sign structure.

Sign, interior to a building. Signs inside buildings that are not legible from the public right-of-way or other publicly accessible exterior areas of the building.

Sign, interior to development. Any sign that is located so that it is not legible from any adjoining property or the public right-of-way and not oriented in such a way as to attract the attention of those traveling along the right-of-way.

Sign permit. A permit issued by a building official and which is required for any sign specified by this code.

Sign setback. The minimum distance required from the apparent centerline of the right-of-way, to any portion of a sign or sign structure.

Sign structure. The supports, uprights, bracing or framework of any structure for the purposes of displaying a sign.

Sign, wall. A sign attached parallel to and extending less than 20 inches from the wall of a building. The definition of the term "wall sign" includes painted, individual letter, cabinet signs and those signs located on the roof of a building which are not roof signs as defined herein.

Sign, window. Any type of sign that is painted or attached to or within 12 inches of any exterior window.

Site plan. A set of drawings that the property owner, builder, or contractor uses to make improvements to a property through graphic representation, whether computer-generated or hand-drawn, of the arrangement of buildings, parking, drives, landscaping, and any other structure that is part of a development project.

Sky dancers. Freestanding tubes which often simulate the shape of a person into which air is forced to inflate and animate and which do not characterize a commercial message or contain a message.

Slope. The ratio between elevation change to horizontal distance, expressed as a percentage.

Soil amendments. Elements added to the soil, such as compost, natural fertilizer, manure, or chemical fertilizer, to improve its capacity to support plant life.

Solid fence. A fence that is opaque and provided the fence is composed of solid wood, composite, vinyl, or masonry.

Species of special concern. Species of wildlife and plants which the state division of wildlife has identified and listed as state species of special concern.

Stacking space. An area for motor vehicles to line up in while waiting to go through a drive-thru facility, a designated passenger drop-off/pick-up area or a parking lot or area.

Stormwater management plan. A plan for the management of stormwater drainage and control prepared in conformance with the regulations for stormwater management, adopted by the state department of public health and environment; and further, including a plan for erosion and sediment control pursuant to the requirements of chapter 12 of title 3 of this Code, including its references.

Story. That portion of a building included between the surface of any floor and the surface of the floor next above it or, if there is no floor above it, the space between the floor and the ceiling above it.

Street. A way for vehicular, pedestrian or bicycle traffic whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place or however otherwise designated.

Street, arterial. Streets that permit relatively unimpeded traffic movement throughout the city and connecting to outside communities.

Street, arterial major. Arterial streets which generally carry traffic volumes greater than 20,000 vehicles per day when the property which the arterial street serves is fully developed and which permit rapid and relatively unimpeded traffic movement throughout the city, connecting major land use elements as well as connecting to outside communities.

Street, arterial minor. Arterial streets which generally carry traffic volumes greater than 10,000 vehicles per day when the property which the arterial street serves is fully developed and which permit relatively unimpeded traffic movement and are intended for use on routes where four moving lanes and one turn lane are required but where a major arterial cross section is not warranted.

Street, collector. Streets that collect and distribute traffic between arterial and local streets and serve as main connectors within the city, linking one neighborhood with another and which carry traffic with an origin or destination within the community.

Street, collector major. Collector streets which generally carry traffic volumes greater than 7,000 vehicles per day when the property which the collector serves is fully developed and which permit relatively unimpeded traffic movement and are intended for use on those routes where four moving lanes are required but where a larger classified street is not warranted.

Street, collector minor. Collector streets which generally carry traffic volumes up to 7,000 vehicles per day and collect and distribute traffic between arterial and local streets and which serve as main connectors within communities, linking one neighborhood with another.

Street, design type. A reference to the design attributes of a specific segment of the street, regardless of the functional class, and including lane widths, number of lanes, parking, streetscape, and sidewalks. Street design types allow the design of segments of streets to transition and relate better to the context and anticipated abutting land uses, without disrupting the overall role of the street in the functional classification system.

Street, functional classification. A system of categorizing streets based on their role in the overall street network, considering traffic volumes, traffic speeds, and continuity of the street.

Street, local. Streets that provide direct access to adjacent property and which carry traffic with an origin or destination within the immediate neighborhood.

Street, local low volume. Local streets which carry traffic volumes of up to 500 vehicles per day and which provide direct access to adjacent property.

Street, private. A private roadway used to provide vehicular and emergency access.

Street tree. A tree planted in close proximity to a street in order to provide shade over the street and to soften the street environment.

Streetscape. The scene that may be observed along a street, including both natural and non-natural components, including vegetation, buildings, paving, plantings, lighting fixtures and miscellaneous structures.

Structure. Anything constructed or erected on or in the ground, the use of which requires a more or less permanent location on or in the ground, and, including, but not limited to, walls, retaining walls, fences, parking lots, parking slabs and oil and gas production facilities.

Subdivision. The division of a lot, tract or parcel of land into two or more lots, tracts or parcels, or other division of land in compliance with the requirements of this title.

Symbol. A graphic device which stands for a concept or object.

Temporary sign. Any sign, not intended for permanent installation such as, but not limited to, a banner, balloon, pennant, searchlight or beacon. Generally, these signs are intended to be used for a limited period of time or for a purpose announcing a special event or presenting other miscellaneous or incidental information or instructions.

Temporary structure. A structure without any foundation or footings and which is intended to be removed at some point in the future.

Temporary use. A use which shall generally be permitted to exist and be operated for no longer than 90 days in 12 consecutive months and which may occur as an accessory or principal use.

Time or temperature sign. A sign or portion thereof on which the only copy that is capable of being changed is an electronic or mechanical indication of time and/or temperature.

Tract. A parcel or parcels of land designated on a plat and intended to be further subdivided before development at some point in the future, but which may be initially created under single ownership through a subdivision process.

Travel trailer or recreational vehicle. A portable structure, mounted on wheels and designed to be towed by a motor vehicle, or propelled by its own motive power, that may contain cooking or sleeping facilities and is intended to provide temporary living quarters for recreational camping or travel. A travel trailer also does not comply with either the National Manufactured Housing Construction and Safety Standards Act of 1974 or the uniform building code standards. Travel trailers are not permitted in residential zones as living quarters except as guest quarters for no longer than seven consecutive days.

Tree. A large woody plant with one or several self-supporting stems or trunks and numerous branches and may be deciduous or evergreen.

Turf-grass. A blend or mix of grasses most tolerant to the Colorado climate, whether in sod or seed form when planted, intended to be regularly maintained as a lawn in urbanized areas. Artificial turf shall not be considered lawn or turf-grass.

Universal design. The design of buildings, products, or environments, to make them accessible to all people, regardless of age, disability, or other factors. The term "universal design" was coined by the architect Ronald Mace to describe the concept of designing all products and the built environment to be aesthetic and usable to the greatest extent possible by everyone, regardless of age, ability, or status in life.

Urban heat island. An urban area that is significantly warmer than its surrounding rural areas due to modifications of land surfaces such as development and other human activities. The temperature difference is usually more significant at night than during the day.

Use. The type of activity for which land or a building or structure is designated, arranged or intended and also means the activity which regularly takes place upon the land or in a building or structure on the land. Not all uses shall be considered legal or permitted uses.

Use, principal. The primary use of a building, structure or lot.

Utility box or pedestal. Devices designed and intended to house equipment necessary for the delivery of utility services to commercial and/or industrial customers, including, but not limited to, electric transformers, switch boxes, telephone pedestals and boxes, cable television boxes, traffic control boxes and similar devices.

Utility line clearance zones. The minimum clearance horizontal or vertical standard determined by the utility holder. Obstructions and encroachments are prohibited.

Utility stand. Part of a mobile home space which is used for the placement of the utility connections.

Vacant means a site or area that is not put to any use other than gardening.

Vacation. The legal abandonment of a right granted by a property owner, which was intended for a particular purpose, such as for streets or utility lines.

Variance. A modification of the strict terms of this development code as provided in this title.

Vehicle signs. Signs which are attached to or located on licensed vehicles, trailers or semi-trailers and contain or display signage for the primary purpose of advertisement, excluding bumper stickers on the bumper and similar-sized adhesive decals.

Vested property right. The right to undertake and complete a development and use of property under the terms and conditions of an approved site specific development plan.

Weed. Any plant not typically propagated by the horticultural trades and not typically installed for the purposes of landscaping; or which presents a particularly noxious allergenic or growth characteristic. Weed does not include native and naturalized plants, other than designated noxious weeds, grown in areas managed primarily for ecological services.

Wildlife. Wild, native vertebrates (including fish), mollusks and crustaceans and any species introduced or released by the division of wildlife, whether alive or dead, including any part, egg or offspring thereof.

Wind sign. (See *Pennants*, *ground kites* and *sky dancers*.)

Work vehicle. A vehicle outfitted with equipment such as, but not limited to, storage racks, hoists, cranes, vises, heavy equipment or other business and construction equipment, whether attached or removable, or which may have attached trailers carrying such work equipment. A horse trailer used primarily for transport of horses and/or livestock shall not be considered a work vehicle under this definition.

Xeric landscaping or xeriscape. A landscape design strategy coined by Denver Water in 1981 to help make water-efficient landscaping an easily recognized concept. Xeriscape is a combination of the word "landscape" and the Greek word "xeros," which means dry. For the purposes this code, the term "xeric landscaping" or "xeriscape" shall mean the use of low-water or very low-water plants in place of plants that typically require more water to survive. Xeric landscaping does not mean the same as hardscaping or the use of rocks or rock mulch.

Yard. The area of a lot between the property line and the foundation of a building, structure or use. The term "required yard" means that area also described as a required setback area where construction of buildings, structures and uses is limited in placement.

Yard, front. The portion of a lot between the front façade of a primary structure and the right-of-way. A yard may contain more land area than a setback area.

Yard, interior side. An open-space area between the interior side property line and the building setback line, extending between the front building setback line and the rear building setback line.

Yard, rear. The space or area of a lot between the rear property line and the principal building, extending the lot's full width, and measured perpendicular to the building at the closest point to the rear property line.

Yard, street-side. The area extending between the front yard and the rear yard or rear street yard and situated between the side street property line and the face of the principal building which is parallel to, or most nearly parallel to, the side street property line.



Council Agenda Summary

June 4, 2024

Key Staff Contact: Donald Threewitt, Chief Planner

Title:

Sign Code Audit Update to City Council

Summary:

This item is informational only. Based on City Council direction, staff began a review of the Chapter 8 Sign Code in August 2023. The original work plan intended to provide rapid updates in Q2 2024 followed by a comprehensive audit and code update in Q3 and Q4 2024. Once started, staff realized that a quick-fix approach may leave contradictory and incomplete provisions, and elected to complete the full audit at the outset. Today's workshop intends to provide a progress update and next steps. To date, two revision drafts have been evaluated by staff, and a public draft is in development. Staff intends to release the public draft for review and feedback in June, followed by a final round of revisions based on that feedback, and ultimately pursue adoption in or before September 2024.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	No
Is there grant funding for this item?	NA

Legal Issues:

This item is informational only.

Other issues and Considerations:

None

Strategic Focus Area:



Community Vitality



High-Performance Government

Decision Options:

No decision is requested.

Council's Recommended Action:

Informational Only

Attachments:

1. Item 17 - Sign Code May Audit Update to City Council Presentation



Sign Code Revisions Update

Don Threewitt, Deputy Director of Community Development
Don.Threewitt@Greeleygov.com | 970-350-9802
City Council Meeting – June 4, 2024



Community Vitality



High-Performance Government

Agenda

- Progress Update
- Key Provisions
- Next Steps
- Questions and Considerations
- Purpose: Informational Only, no decision requested

Sign Regulation Goals



Clarify. Streamline. Calibrate.

- Clear, simple language and graphics
- Concise regulations & sign types
- Updated size requirements, distances, and quantities

Progress to Date

August 2023 Work Session-

- Phase 1: Audit and Quick fixes, Q2 2024
- Phase 2: Comprehensive Overhaul, Q4 2024

Current Schedule –

- Comprehensive Overhaul adoption anticipated Q3 2024
- Internal draft nearing completion
- **Next step: Public Outreach and feedback**

Example Changes - Clarify

Existing

Unclear whether a wind-driven device is a sign or not

Draft Update

- Regulates Signs (permanent and temporary) and Attention-Getting Devices (AGDs)
- An AGD is exempt from the sign definition and distinguished from traditional signs by movement; **AGDs can either have sign copy or not**, they are still regulated as AGDs

Example Changes - Streamline

Existing

"Vehicle Signs. It shall not be a violation of this chapter if the vehicle to which a sign is mounted, painted, or otherwise affixed is used for travel between home and work or is temporarily parked away from the business premises while being used to provide the business' services or products, or as personal transportation for the vehicle operator. A parked vehicle that contains or displays signs is allowed when:"

Draft Update

"Vehicle Signs. Allowed when..."

Example Changes – Calibrate

Existing

- *Signs are regulated based on Content:* Political signs, real estate signs, and other content-based regulations are embedded within the code.
- All flags regulated identically

Draft Update

- Temporary Signs are regulated by Activity Type (real estate, construction, election)
- Real Estate Activity: 1/street frontage
- Sidewalk Sign: 1/business
- Temporary Event: Any number
- Election Event: Any number
- Garage Sale: 1/street frontage
- American flags are exempt

Next Steps

- Public draft to be posted on **Speak Up Greeley** when received
- Brief update at the **June 13, 2024** Home Owners Association (HOA) Workshop
- Virtual Open House: **2:00 PM June 17, 2024**
MS Teams: Meeting ID: 261 673 625 669 Passcode: fXvuzw
- In-person Open House: **6:00-7:30 PM June 17, 2024**
Council Chambers Overflow room

Other Changes

- Multiple street frontages may be combined to increase sign size on primary street
- Multi-tenant signs –When maximum size is reached, tenants are still allowed one (1) sign
- New sign types are incorporated, and vague types are clarified
- Overall Sign Plan (campus, institution, commercial) added
- Measurements, maintenance, and abandonment updated

Questions/Input/Direction

- Elaboration on key provisions?
- Anything we should focus more on?
- Other Next steps?



Don Threewitt, AICP

Deputy Director of Community Development

Don.Threewitt@Greeleygov.com



Thank you





Council Agenda Summary

Title:

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

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

June 3, 2024 - June 9, 2024

June 2024							July 2024						
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, June 3

Tuesday, June 4

6:00pm City Council Meeting (R_CCS_Council Chambers Overflow Room 103; R_CCS_Council Chambers - WiFi Ready) - Council Master Calendar 

Wednesday, June 5

Thursday, June 6

7:30am - 9:00am Regional Leadership Initiative 2024 Planning (Gates, Hall) Mayor and Mayor Pro Tem only (Windsor Public Services Facility (922 15th St, Windsor, CO 80550)) - Council Master Calendar 

7:30am - Poudre River Trail (Hall) 

3:30pm - IG Adv. Board (Butler) 

6:00pm - 8:30pm North Front Range MPO Meeting (Olson/Payton) 

Friday, June 7

8:00am - 3:30pm W&S Annual bus tour for Council and W&S Board members (City Center South 1001 11th Ave., 2nd Floor) - Council Master Calendar

Saturday, June 8

Sunday, June 9

June 10, 2024 - June 16, 2024

June 2024							July 2024						
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, June 10

5:30pm - 7:00pm Meet Greeley’s Homeless Solutions Outreach Team and Housing Department Staff (LINC Library Innovation Center (501 8th Ave, Greeley, CO 80631)) - Council Master Calendar

Tuesday, June 11

6:00pm 6:30pm City Council Work Session Meeting (R_CCS_Council Chambers Overflow Room 103; R_CCS_Council Chambers - WiFi Ready) - Council Master Calendar

Wednesday, June 12

Thursday, June 13

5:30pm - 6:30pm SAVE THE DATE: Boards & Commissions Orientation (zoom) - Council Master Calendar

Friday, June 14

Saturday, June 15

Sunday, June 16

June 17, 2024 - June 23, 2024

June 2024							July 2024						
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, June 17

Tuesday, June 18

- 8:00am - 8:30am 2024 CML Annual Conference** (Embassy Suites (4705 Clydesdale Pkwy, Loveland, CO 80538)) - 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, June 19

- 7:30am - Visit Greeley (Butler)** (902 7th Ave Greeley)
- Juneteenth Holiday - Administrative Buildings Closed**
- 8:00am - 8:30am 2024 CML Annual Conference** (Embassy Suites (4705 Clydesdale Pkwy, Loveland, CO 80538)) - Council Master Calendar
- 2:00pm - 5:00pm Water & Sewer Board (Gates)**

Thursday, June 20

- 7:30am - 8:30am Downtown Development Authority (DeBoutez/Butler)** (802 9th St #100, Greeley, CO 80631)
- 8:00am - 8:30am 2024 CML Annual Conference** (Embassy Suites (4705 Clydesdale Pkwy, Loveland, CO 80538)) - Council Master Calendar
- 3:30pm - 4:30pm Airport Authority (Gates/Payton)** (Greeley-Weld Airport, 600 Airport Road)

Friday, June 21

Saturday, June 22

- 6:00pm - 7:00pm Big Buckle Ball (Gates, McDonald, Butler)** (TBD) - Council Master Calendar

Sunday, June 23

June 24, 2024 - June 30, 2024

June 2024							July 2024						
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, June 24

11:30am - 12:30pm Greeley Chamber of Commerce (Hall) 🗓️

Tuesday, June 25

6:00pm City Council Work Session Meeting
(R_CCS_Council Chambers - WiFi Ready; R_CCS_Council Chambers
Overflow Room 103) - Council Master Calendar 🗓️

Wednesday, June 26

- 7:00am - 8:00am Upstate Colorado Economic Development (Hall)
(Upstate Colorado Conference Room) - Council Master Calendar 🗓️
- 1:30pm - 3:00pm Hold: Delta Park Groundbreaking Celebration
(2191 1st Ave (2191 1st Ave, Greeley, Colorado 80631)) - Council
Master Calendar
- 5:00pm - 9:00pm Greeley Stampede Bull Riding and Dinner (600 N
14th Ave (600 N 14th Ave, Greeley, Colorado 80631)) - Council Master
Calendar

Thursday, June 27

Friday, June 28

Saturday, June 29

Sunday, June 30

City Council Meeting Scheduling 2024			
	5/28/2024		
	This schedule is subject to change		
Date/Type	Description	Sponsor Presenter/Director or Project Manager	Placement/Time
June 04, 2024 Council Meeting	Proclamation - Pride Month	Mayor	Intro
	Minutes - May 7 CC; May 14 WS	Heidi Leatherwood	Consent
	Resolution - At Home in Greeley 10th Steet Area Plan	Brian McBroom	Consent
	Resolution - CDOT IGA Funding for New Culvert #3 Ditch at 23rd Avenue and 5th Street	Paul Trombino	Consent
	Resolution - IGA with CDOT 37th Street Bridge Improvements	Bhooshan Karnik/ Paul Trombino	Consent
	Intro & 1st Rdg Ord - Request for Eminent Domain Authority for Poudre River Ranch Stormwater Improvements	Bhooshan Karnik/ Paul Trombino	Consent
	Intro & 1st Rdg Ord - City Attorney Appointment	Kimberly Southern-Weber	Consent
	Sign Code Amendments Overview	Don Threewitt	Regular Informational
	PH & 2nd Rdg Ord - Affordable Housing Parking Reduction	Caleb Jackson	Regular
June 11, 2024 Council Work Session	Water & Sewer Board Interviews	Heidi Leatherwood/Jennifer Middleton	Work Session
	Facilities Update	Paul Trombino	Work Session
	Greeley Fire Department Organizational Assesment Overview	Brian Kuznik	Work Session
June 18, 2024 Council Meeting	Proclamations - Greeley Stampede (Tentative)	Mayor	Intro
	Proclamations - Juneteenth (Tentative)	Mayor	Intro
	Proclamation - World Refugee Day	Mayor	Intro
	Proclamation - Parks and Recreation	Mayor	Intro
	Minutes - May 21 CC; May 28 WS	Heidi Leatherwood	Consent
	Intro & 1st Rdg Ord - Westgate Non - Pot Local Improvement District	Ryan Duve/ Adam Prior/ Sean Chambers	Consent
	Intro & 1st Rdg Ord - Eminent Domain 37th Street Bridge Project	Bhooshan Karnik/ Paul Trombino	Consent
	Intro & 1st Rdg Ord - Request for Eminent Domain Authority for 83rd avenue 4th Street Project	Bhooshan Karnik/ Paul Trombino	Consent
	Intro & 1st Rdg Ord - Request for Eminent Domain Authority for 23rd Avenue and 4th/5th Street Project	Bhooshan Karnik/ Paul Trombino	Consent
	Open Space Update (Tentative)	Diana Frick	Regular Informational
	PH & 2nd Rdg Ord - Request for Eminent Domain Authority for Poudre River Ranch Stormwater Improvements	Bhooshan Karnik/ Paul Trombino	Regular
	PH & 2nd Rdg Ord - City Attorney Appointment	Kimberly Southern-Weber	Regular
	Boards & Commissions Appointments	Heidi Leatherwood	Regular
June 25, 2024 Council Work Session	Metropolitan District Standards – Options and Recommendations	Don Threewitt	Worksession
	Public Finance Tools and Incentives for Economic Development	John Hall	Work Session
	Executive Session - West Greeley (Tentative)	John Hall	Executive Session
July 09, 2024 Council Work Session	Budget Preview	Caleb Weitz	WS

City Council Meeting Scheduling 2024			
	5/28/2024		
	This schedule is subject to change		
Date/Type	Description	Sponsor Presenter/Director or Project Manager	Placement/Time
	Council Policies and Protocol	Heidi Leatherwood	WS
July 16, 2024 Council Meeting	Introduction - Mandy Shreve, Director of Homeless Solutions	Mayor	Intro
	Minutes - June 4 & June 18 CC; June 11 & June 25 WS	Heidi Leatherwood	Consent
	Intro & 1st Rdg Ord - Campaign Contributions Limits and Election Amendments	Heidi Leatherwood/Stacey Aurzada	Consent
	Intro & 1st Rdg Ord - Private Activity Bonds Retention	Ashley Weesner	Consent
	Resolution - Council Policies and Protocol	Heidi Leatherwood	Consent
	PH & 2nd Rdg Ord - Westgate Non-Pot Local Improvement District	Ryan Duve/ Adam Prior/ Sean Chambers	Regular
	PH & 2nd Rdg Ord - Eminent Domain 37th Street Bridge Project	Bhooshan Karnik/ Paul Trombino	Regular
	PH & 2nd Rdg Ord - Request for Eminent Domain Authority for 83rd avenue and 4th Street Project	Bhooshan Karnik/ Paul Trombino	Regular
	PH & 2nd Rdg Ord - Request for Eminent Domain Authority for 23rd Avenue and 4th/5th Street Project	Bhooshan Karnik/ Paul Trombino	Regular
	Boards & Commissions Appointments	Heidi Leatherwood	Regular
	Executive Session - West Greeley	John Hall	Executive Session
July 23, 2024 Council Work Session	Council Compensation Review	Heidi Leatherwood/CAO	WS
	June Polling Results	Kalen Myers	WS
	Ballot Measure Decisions	Kalen Myers	WS