



**TOWN OF
BRECKENRIDGE**

Town Council Regular Meeting

Tuesday, June 13, 2023, 7:00 PM

Town Hall Council Chambers

150 Ski Hill Road

Breckenridge, Colorado

THE TOWN OF BRECKENRIDGE IS HOLDING HYBRID MEETINGS. This meeting will be held in person at Breckenridge Town Hall and will also be broadcast live over Zoom. Login information is available in the calendar section of our website: www.townofbreckenridge.com. If you will need special assistance in order to attend any of the Town's public meetings, please notify the Town Clerk's Office at (970) 547-3127, at least 72 hours in advance of the meeting.

I. CALL TO ORDER, ROLL CALL

II. APPROVAL OF MINUTES

A. TOWN COUNCIL MINUTES - MAY 23, 2023

III. APPROVAL OF AGENDA

IV. COMMUNICATIONS TO COUNCIL

A. PUBLIC COMMENT (NON-AGENDA ITEMS ONLY; 3-MINUTE TIME LIMIT PLEASE)

V. CONTINUED BUSINESS

A. SECOND READING OF COUNCIL BILLS, SERIES 2023

1. *COUNCIL BILL NO. 19, SERIES 2023 - A BILL FOR AN ORDINANCE AMENDING THE GENERAL OFFENSES TO PROHIBIT CARRYING CONCEALED FIREARMS IN TOWN BUILDINGS*
2. *COUNCIL BILL NO. 20, SERIES 2023 - A BILL FOR AN ORDINANCE UPDATING THE TOWN BUILDINGS AND AREAS WHERE OPEN CARRYING OF FIREARMS IS PROHIBITED*
3. *COUNCIL BILL NO. 21, SERIES 2023 - AN ORDINANCE AMENDING THE BRECKENRIDGE MUNICIPAL CODE TO ADOPT BY REFERENCE THE NATIONAL ELECTRICAL CODE, 2023 EDITION*

VI. NEW BUSINESS

A. FIRST READING OF COUNCIL BILLS, SERIES 2023

1. *COUNCIL BILL NO. 22, SERIES 2023 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 8 OF THE BRECKENRIDGE TOWN CODE TO CREATE A PROGRAM TO REDUCE OUTDOOR ENERGY USE AND IN CONNECTION THEREWITH ESTABLISH FEES FOR THE ADMINISTRATION OF THE PROGRAM*

2. *COUNCIL BILL NO. 23, SERIES 2023 - A BILL FOR AN ORDINANCE CREATING A NEW ABSOLUTE POLICY FOR ENERGY CONSERVATION AND AMENDING POLICY 33 RELATIVE ACCORDINGLY*

B. RESOLUTIONS, SERIES 2023

1. *RESOLUTION NO. 11, SERIES 2023 - A RESOLUTION ADOPTING THE TOWN OF BRECKENRIDGE POLICY FOR ADVOCACY ON STATE AND FEDERAL POLICY AND LEGISLATION*

2. *RESOLUTION NO. 12, SERIES 2023 - A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT FOR SUMMIT COUNTY CHILD CARE TUITION ASSISTANCE AMONG SUMMIT COUNTY, COLORADO, AND THE TOWNS OF BLUE RIVER, BRECKENRIDGE, DILLON, FRISCO, AND SILVERTHORNE, COLORADO, AND EARLY CHILDHOOD OPTIONS*

3. *RESOLUTION NO. 13, SERIES 2023 - A RESOLUTION APPROVING A GRANT AGREEMENT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION FOR BLUE RIVER RECREATION PATH UNDERPASS AND BRIDGE DESIGN*

C. OTHER

VII. PLANNING MATTERS

A. PLANNING COMMISSION DECISIONS

VIII. REPORT OF TOWN MANAGER AND STAFF

IX. REPORT OF MAYOR AND COUNCIL MEMBERS

A. CAST/MMC (Mayor/Town Manager)

B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (Bergeron)

C. BRECKENRIDGE TOURISM OFFICE (Carleton)

D. BRECKENRIDGE HISTORY (Saade)

E. BRECKENRIDGE CREATIVE ARTS (Rankin)

F. BRECKENRIDGE EVENTS COMMITTEE (Owens)

G. CHILD CARE ADVISORY COMMITTEE (Beckerman)

H. WORKFORCE HOUSING COMMITTEE (Carleton/Rankin)

I. SOCIAL EQUITY ADVISORY COMMISSION (Saade)

X. OTHER MATTERS

XI. SCHEDULED MEETINGS

A. SCHEDULED MEETINGS FOR JUNE, JULY AND AUGUST

XII. ADJOURNMENT

D) CALL TO ORDER, ROLL CALL

Mayor Mamula called the meeting of May 23, 2023, to order at 7:00pm. The following members answered roll call: Todd Rankin, Carol Saade, Jeffrey Bergeron, Dick Carleton, Jay Beckerman, Kelly Owens and Mayor Eric Mamula.

II) APPROVAL OF MINUTES

A) TOWN COUNCIL MINUTES – MAY 9, 2023

With no changes or corrections to the meeting minutes of May 9, 2023, Mayor Mamula declared they would stand approved as presented.

III) APPROVAL OF AGENDA

Town Manager Rick Holman stated there were no changes to the agenda. Mayor Mamula declared the agenda approved as presented.

IV) PRIDE MONTH PROCLAMATION

Mayor Mamula read the proclamation into record.

V) COMMUNICATIONS TO COUNCIL

A) PUBLIC COMMENT (NON-AGENDA ITEMS ONLY; 3-MINUTE TIME LIMIT PLEASE)

Mayor Mamula opened Public Comment.

Alan Bergstein, a homeowner in Breckenridge, stated he was concerned about the Short Term Rentals regulations and wondered where the fees from the program are going. He further stated he rents to high-end renters and the Town benefits from his home rentals. He also stated he is restricted and cannot sell his home and transfer his license. He stated he would like Council to reconsider allowing STR licenses to be passed on with the sale.

There were no additional comments and Mayor Mamula closed Public Comment.

B) BRECKENRIDGE TOURISM OFFICE UPDATE

Lucy Kay, Director of the Breckenridge Tourism Office, stated travel intent is higher now than before the pandemic, and the Federal Government has lifted vaccination requirements for international travelers. She stated as of May 15th we are tracking close to 2021 numbers, and the BTO is now moving to “Plan B” for the marketing plan with a more clear “book now” message. In addition, she stated business education and Spanish classes have been successful, as well as trivia night, which connects the community. Lucy Kay reminded Council about the 10 Mile Pride events, and noted that since 1992 Breckenridge has supported these kinds of initiatives.

VI) CONTINUED BUSINESS

A) SECOND READING OF COUNCIL BILLS, SERIES 2023 - PUBLIC HEARINGS

1) COUNCIL BILL NO. 17, SERIES 2023 – AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE TOWN AND FATHER DYER UNITED METHODIST CHURCH

Mayor Mamula read the title into the minutes. Mark Truckey, Community Development Director, stated this agreement will allow the church to operate a food storage trailer so they can continue with food pantry service during construction. He further stated there are no changes to this ordinance from first reading.

Mayor Mamula opened the public hearing. There were no public comments, and the hearing was closed.

Council Member Bergeron moved to approve COUNCIL BILL NO. 17, SERIES 2023 – AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE TOWN AND FATHER DYER UNITED METHODIST CHURCH. Council Member Owens seconded the motion.

The motion passed 7-0.

2) COUNCIL BILL NO. 18, SERIES 2023 – AN ORDINANCE AUTHORIZING THE GRANTING OF UTILITY EASEMENT TO CERTAIN HIGH POINT PROPERTY OWNERS AND UTILITY PROVIDERS

Mayor Mamula read the title into the minutes. James Phelps, Public Works Director, stated this ordinance would grant an easement on Town property for the connection of new water and sewer lines. He further stated there were no changes to this ordinance from first reading.

Mayor Mamula opened the public hearing. There were no public comments, and the hearing was closed.

Council Member Bergeron moved to approve COUNCIL BILL NO. 18, SERIES 2023 – AN ORDINANCE AUTHORIZING THE GRANTING OF UTILITY EASEMENT TO CERTAIN HIGH POINT PROPERTY OWNERS AND UTILITY PROVIDERS. Council Member Beckerman seconded the motion.

The motion passed 7-0.

VII) NEW BUSINESS

A) FIRST READING OF COUNCIL BILLS, SERIES 2023

1) COUNCIL BILL NO. 19, SERIES 2023 – A BILL FOR AN ORDINANCE AMENDING THE GENERAL OFFENSES TO PROHIBIT CARRYING CONCEALED FIREARMS IN TOWN BUILDINGS

Mayor Mamula read the title into the minutes. Town Attorney Kirsten Crawford stated this ordinance would change the general offenses of the Town to prohibit the carrying of concealed guns in Town buildings.

Mayor Mamula opened the public hearing.

Alan Bergstein, of 76 Cucumber Gulch Road, stated he would support no guns in any Town spaces, including municipal buildings.

There were no additional public comments and the hearing was closed.

Council Member Carleton stated he believes this ordinance is important for us to pass for our buildings and facilities, and although it may be hard to enforce, it may help prevent “crimes of passion” and may make our community safer.

Council member Beckerman stated the idea of this ordinance feels good and feels like a step to prevent mass shootings in our facilities, but it’s not enforceable and doesn’t do much to improve our safety.

Mayor Mamula stated this bill stems from an incident at the hockey rink where someone dropped a concealed weapon. He further stated it’s a good thing and he’ll be voting for it.

Council Member Bergeron stated it’s difficult to enforce and if it was just up to him he might support it, but he doesn’t believe it will do any good and if someone is following the rules and being responsible they aren’t the problem.

Council Member Bergeron moved to approve COUNCIL BILL NO. 19, SERIES 2023 – A BILL FOR AN ORDINANCE AMENDING THE GENERAL OFFENSES TO PROHIBIT CARRYING CONCEALED FIREARMS IN TOWN BUILDINGS. Council Member Saade seconded the motion.

The motion passed 5-2. Council Member Bergeron and Council Member Beckerman voted no.

2) COUNCIL BILL NO. 20, SERIES 2023 – A BILL FOR AN ORDINANCE UPDATING THE TOWN BUILDINGS AND AREAS WHERE OPEN CARRYING OF FIREARMS IS PROHIBITED

Mayor Mamula read the title into the minutes. Town Attorney Kirsten Crawford stated this ordinance is effectively a clean-up ordinance to clarify where open carry is prohibited in the Town.

Mayor Mamula opened the public hearing. There were no public comments, and the hearing was closed.

Council Member Bergeron moved to approve COUNCIL BILL NO. 20, SERIES 2023 – A BILL FOR AN ORDINANCE UPDATING THE TOWN BUILDINGS AND AREAS

WHERE OPEN CARRYING OF FIREARMS IS PROHIBITED. Council Member Owens seconded the motion.

The motion passed 7-0.

- 3) COUNCIL BILL NO. 21, SERIES 2023 – AN ORDINANCE AMENDING THE BRECKENRIDGE MUNICIPAL CODE TO ADOPT BY REFERENCE THE NATIONAL ELECTRICAL CODE, 2023 EDITION
Mayor Mamula read the title into the minutes. Rick Fout, Building Inspector, stated this ordinance would adopt the 2023 National Electric Code.

Mayor Mamula opened the public hearing. There were no public comments, and the hearing was closed.

Council Member Bergeron moved to approve COUNCIL BILL NO. 21, SERIES 2023 – AN ORDINANCE AMENDING THE BRECKENRIDGE MUNICIPAL CODE TO ADOPT BY REFERENCE THE NATIONAL ELECTRICAL CODE, 2023 EDITION. Council Member Carleton seconded the motion.

The motion passed 7-0.

- B) RESOLUTIONS, SERIES 2023
1) RESOLUTION NO. 10, SERIES 2023 – RESOLUTION OF THE MAYOR DECLARING THAT THE COVID-19 EMERGENCY HAS PASSED AND IN CONNECTION THEREWITH ALL PRIOR ACTIONS OR ORDERS ADOPTED BY TOWN COUNCIL AND/OR THE TOWN MANAGER ARE EXPIRED OR OTHERWISE RESCINDED
Mayor Mamula read the title into the minutes. Town Attorney Kirsten Crawford stated this resolution would end the Public Health Emergency for COVID and all orders associated with it are rescinded.

Mayor Mamula opened the public hearing. There were no public comments, and the hearing was closed.

Council Member Bergeron moved to approve RESOLUTION NO. 10, SERIES 2023 – RESOLUTION OF THE MAYOR DECLARING THAT THE COVID-19 EMERGENCY HAS PASSED AND IN CONNECTION THEREWITH ALL PRIOR ACTIONS OR ORDERS ADOPTED BY TOWN COUNCIL AND/OR THE TOWN MANAGER ARE EXPIRED OR OTHERWISE RESCINDED. Council Member Beckerman seconded the motion.

The motion passed 7-0.

- C) OTHER
1) MOTION TO CANCEL SECOND MEETING IN JUNE
Mayor Mamula read the title into the minutes. Town Manager Rick Holman stated this motion to cancel the June 27th Town Council meeting is necessary as required by Council Rules, and because members plan to attend the annual Colorado Municipal League conference that week.

Council Member Bergeron moved to CANCEL THE SECOND TOWN COUNCIL MEETING IN JUNE. Council Member Saade seconded the motion.

The motion passed 7-0.

VIII) PLANNING MATTERS

- A) PLANNING COMMISSION DECISIONS
Mayor Mamula declared the Planning Commission Decisions would stand approved as presented.
- B) STILLSON (STABLES VILLAGE) SUBDIVISION TOWN PROJECT HEARING
Sarah Crump, Planner III, introduced the project and reviewed details as described in the agenda memo.

Mayor Mamula opened the public hearing. There were no public comments, and the hearing was closed.

Council Member Bergeron moved to approve STILLSON (STABLES VILLAGE) SUBDIVISION TOWN PROJECT. Council Member Beckerman seconded the motion.

The motion passed 7-0.

C) SOL CENTER SUBDIVISION TOWN PROJECT HEARING

Chris Kulick, Planning Manager, introduced the project and reviewed details as described in the agenda memo.

Council Member Bergeron moved to approve SOL CENTER SUBDIVISION TOWN PROJECT. Council Member Rankin seconded the motion.

The motion passed 7-0.

IX) REPORT OF TOWN MANAGER AND STAFF

Reports of Town Manager and Staff were covered during the afternoon work session.

X) REPORT OF MAYOR AND COUNCIL MEMBERS

Reports of Mayor and Council Members were covered during the afternoon work session.

A. CAST/MMC

B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE

C. BRECKENRIDGE TOURISM OFFICE

D. BRECKENRIDGE HISTORY

E. BRECKENRIDGE CREATIVE ARTS

F. BRECKENRIDGE EVENTS COMMITTEE

G. CHILD CARE ADVISORY COMMITTEE

H. WORKFORCE HOUSING COMMITTEE

I. SOCIAL EQUITY ADVISORY COMMISSION

XI) OTHER MATTERS

There were no other matters to discuss.

XII) SCHEDULED MEETINGS

A) SCHEDULED MEETINGS FOR MAY, JUNE AND JULY

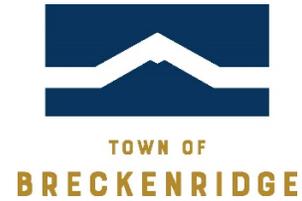
XIII) ADJOURNMENT

With no further business to discuss, the meeting adjourned at 7:38pm. Submitted by Helen Cospolich, CMC, Town Clerk.

ATTEST:

Helen Cospolich, CMC, Town Clerk

Eric S. Mamula, Mayor



Memo

To: Breckenridge Town Council Members
From: Kirsten Crawford, Town Attorney
Date: 6/7/2023
Subject: Second Reading of Bill Prohibiting Firearms In Public Buildings

Summary

Staff seeks Council's approval on second reading of bills to amend the open carrying of firearm restrictions and add a prohibition for carrying of concealed firearms in certain Town buildings and areas. There are no changes since first reading.

Existing code and Discussion About Amendments:

In the current municipal code, the Town has enumerated a list of public buildings and places where the open carrying of firearms is prohibited. At a work session discussion with Town Council on April 11, 2023, staff was directed to prepare ordinances prohibiting the carrying of concealed firearms in enumerated Town buildings. In reviewing the list of buildings and spaces where the open carry prohibition currently applies, staff determined that section of the code also should be amended to remove the Blue River Plaza, the Riverwalk, and the Town of Breckenridge arts district. These spaces will be difficult to attach clear signage and, thus, may put law abiding individuals in the unintended position of doing something illegal.

Legal analysis:

In 2003, state law in SB 03-25 declared the entire field of the regulation of firearms to be a matter of statewide concern, and specifically prohibited certain forms of local regulation. At the time, the legislature deemed the widespread inconsistency in local laws was contributing to subjecting persons to civil and criminal penalties in some jurisdictions in Colorado for conduct wholly lawful in other jurisdictions in Colorado. Despite the state's belief for many years that it was best to tackle firearms regulations at the state level, last year the state legislature passed SB21-256, repealing preemption language. The new law grants authority to local government to enact an ordinance regulating firearms so long as it is as strict or stricter [see SB 21-256 amending CRS § 29-11.7-103(1)], with some exceptions.

Other Jurisdictions:

Post the 2021 adoption of these state laws, a few municipalities within Boulder County adopted broad ordinances covering a number of topics pertaining to use and possession and regulating the sale and transfer of firearms. All of those ordinances were met with immediate lawsuits filed by the Rocky Mountain Gun Owners Association. However, there are a number of jurisdictions who have adopted regulations in public buildings and parks that have not faced similar challenges. While stakeholder engagement can mitigate controversy when introducing new policies, the precedent here is to challenge in a court of law. The federal court entered declaratory judgment orders and the most recent development is that the court is trying to consolidate the cases.

Implementation:

Staff will need to post signage on the enumerated buildings and areas where the new prohibition will apply. We will want to educate both staff and the public as to the new rules.

Fiscal Impact:

There will be a nominal fiscal impact to the proposed new regulation. There will be the cost of signage but unlikely any cost increase for enforcement.

1 COUNCIL BILL NO. ____

2
3 Series 2023

4
5 **A BILL FOR AN ORDINANCE AMENDING THE GENERAL OFFENSES TO**
6 **PROHIBIT CARRYING CONCEALED FIREARMS IN TOWN BUILDINGS.**

7
8 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
9 BRECKENRIDGE, COLORADO:

10
11 **Section 1.** That a new section 6-3E-12 be added to chapter 3, article E, of the code
12 to read as follows:

13
14 **6-3E-12: CONCEALED CARRYING OF FIREARMS PROHIBITED:**

15
16 A. Where signs are posted as required by subsection B of this section, it shall be unlawful
17 for any person to carry a concealed firearm, whether or not with a permit issued pursuant to part
18 2 of article 12 of title 18, Colorado Revised Statutes, in the following municipal buildings:

19 Breckenridge Recreation Center, located at 0880 Airport Road.

20 Breckenridge Tennis Center, located at 0886 Airport Road.

21 Breckenridge Town Hall, located at 150 Ski Hill Road.

22 Riverwalk Center, located at 150 West Adams Avenue.

23 Stephen C. West Ice Arena, located at 0189 Boreas Pass Road.

24 Town of Breckenridge Golf Club/Gold Run Nordic Center, located at 0200 Clubhouse
25 Drive.

26 Town of Breckenridge Intermodal Center, located at 150 Watson Avenue.

27 Town of Breckenridge Public Works Facility, located at 1095 Airport Road.

28 Town of Breckenridge Theatre Facility, located at 121 South Ridge Street.

29 Town of Breckenridge Old Masonic Hall, located at 136 South Main Street.

30 Town of Breckenridge Open Space and Trails building, located at 1760 Airport Road,
31 Unit A.

32 Carter Park Pavilion, located at 500 South High Street

1 Edwin Carter Museum, located at 111 North Ridge Street.

2 Alice Milne Museum, located at 102 North Harris Street.

3 Town of Breckenridge Arts District Buildings (list):

4 Ceramic Studio, located at 125 South Ridge Street.

5 Fuqua Livery Stable, located at 110 East Washington Avenue.

6 Hot Shop, located at 123 South Ridge Street.

7 Quandary Antiques Cabin, located at 133 South Ridge Street.

8 Randall Barn, located at 114 East Washington Avenue.

9 Robert Whyte House, located at 127 South Ridge Street.

10 B. The town shall post signs at the public entrances to each building or specific area described
11 in subsection A of this section informing persons that the concealed carrying of firearms is
12 prohibited in the building or specific area.

13 C. The provisions of this section shall not apply to the carrying of a firearm by a peace officer
14 while in the lawful performance of their duties.

15 D. It shall not be a defense to a charge of violating this section that the firearm was unloaded or
16 inoperable when carried.

17 E. It shall not be a defense to a charge of violating this section that the person possessed a
18 permit to carry a concealed weapon issued pursuant to part 2 of article 12 of title 18, Colorado
19 Revised Statutes.

20 **Section 2.** Except as specifically amended hereby, the Breckenridge Town Code, and
21 the various secondary codes adopted by reference therein, shall continue in full force and effect.

22 **Section 3.** The Town Council hereby finds, determines, and declares that this ordinance
23 is necessary and proper to provide for the safety, preserve the health, promote the prosperity,
24 and improve the order, comfort, and convenience of the Town of Breckenridge and the
25 inhabitants thereof.

26 **Section 4.** This ordinance shall be published and become effective as provided by
27 Section 5.9 of the Breckenridge Town Charter.

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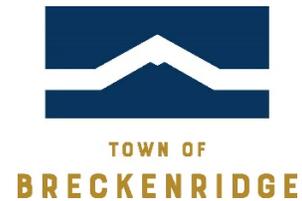
INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
PUBLISHED IN FULL this 23rd day of May, 2023. A Public Hearing shall be held at the regular
meeting of the Town Council of the Town of Breckenridge, Colorado on the 13th day of June,
2023, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____
Eric S. Mamula, Mayor

ATTEST:

Helen Cospolich, CMC,
Town Clerk



Memo

To: Breckenridge Town Council Members
From: Kirsten Crawford, Town Attorney
Date: 6/7/2023
Subject: Second Reading of Bill Prohibiting Firearms In Public Buildings

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Existing code and Discussion About Amendments:

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Legal analysis:

In 2003, state law in SB 03-25 declared the entire field of the regulation of firearms to be a matter of statewide concern, and specifically prohibited certain forms of local regulation. At the time, the legislature deemed the widespread inconsistency in local laws was contributing to subjecting persons to civil and criminal penalties in some jurisdictions in Colorado for conduct wholly lawful in other jurisdictions in Colorado. Despite the state's belief for many years that it was best to tackle firearms regulations at the state level, last year the state legislature passed SB21-256, repealing preemption language. The new law grants authority to local government to enact an ordinance regulating firearms so long as it is as strict or stricter [see SB 21-256 amending CRS § 29-11.7-103(1)], with some exceptions.

Other Jurisdictions:

Post the 2021 adoption of these state laws, a few municipalities within Boulder County adopted broad ordinances covering a number of topics pertaining to use and possession and regulating the sale and transfer of firearms. All of those ordinances were met with immediate lawsuits filed by the Rocky Mountain Gun Owners Association. However, there are a number of jurisdictions who have adopted regulations in public buildings and parks that have not faced similar challenges. While stakeholder engagement can mitigate controversy when introducing new policies, the precedent here is to challenge in a court of law. The federal court entered declaratory judgment orders and the most recent development is that the court is trying to consolidate the cases.

Implementation:

Staff will need to post signage on the enumerated buildings and areas where the new prohibition will apply. We will want to educate both staff and the public as to the new rules.

Fiscal Impact:

There will be a nominal fiscal impact to the proposed new regulation. There will be the cost of signage but unlikely any cost increase for enforcement.

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5 **A BILL FOR AN ORDINANCE UPDATING THE TOWN BUILDINGS AND**
6 **AREAS WHERE OPEN CARRYING OF FIREARMS IS PROHIBITED.**

7
8 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
9 BRECKENRIDGE, COLORADO:

10
11 **Section 1.** That subsection A 1. of section 6-3E-11 be repealed and replaced with
12 the following updated list of Town buildings and Areas where the open carrying of firearms is
13 prohibited:

14 1. Buildings:

15 Breckenridge Recreation Center, located at 0880 Airport Road.

16 Breckenridge Tennis Center, located at 0886 Airport Road.

17 Breckenridge Town Hall, located at 150 Ski Hill Road.

18 Riverwalk Center, located at 150 West Adams Avenue.

19 Stephen C. West Ice Arena, located at 0189 Boreas Pass Road.

20 Town of Breckenridge Golf Club/Gold Run Nordic Center, located at 0200 Clubhouse Drive.

21 Town of Breckenridge Intermodal Center, located at 150 Watson Avenue.

22 Town of Breckenridge Public Works Facility, located at 1095 Airport Road.

23 Town of Breckenridge Theater Facility, located at 121 South Ridge Street.

24 Town of Breckenridge Old Masonic Hall, located at 136 South Main Street.

25 Town of Breckenridge Open Space and Trails building, located at 1760 Airport Road, Unit A.

26 Carter Park Pavilion, located at 500 South High Street.

27 Town of Breckenridge Arts District Buildings:

28 Ceramic Studio, located at 125 South Ridge Street.

29 Fuqua Livery Stable, located at 110 East Washington Avenue.

30 Hot Shop, located at 123 South Ridge Street.

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ATTEST:

Helen Cospolich, CMC,
Town Clerk



Memo

To: Town Council
From: Rick Fout, Chief Building Official
Billy Blevins, Building Inspector II
Date: 6/6/2023 for the Council Meeting on 6/13/2023
Subject: 2nd Reading: Adoption of the 2023 National Electrical Code

This will be the 2nd reading to adopt the new 2023 National Electrical Code (NEC). There are no changes from the 1st reading on 5/23/2023.

A summary of the most important changes to the 2023 NEC (from the 2020 NEC):

- It will adapt dwelling load calculations to include Electric Vehicle Service Equipment (EVSE).
- All receptacle outlets in kitchens will require ground-fault protection regardless of their location.
- It will no longer require receptacle outlets on islands or peninsulas in kitchens or other areas that they appear.
- The servicing and maintenance of equipment must be performed by a qualified person.

Staff will be available to answer any questions at the meeting.



Memo

To: Town Council
From: Jessie Burley, Sustainability + Parking Manager
Mark Truckey, Community Development Director
Date: 6/13/23
Subject: First Reading – Ordinance Amending Chapter 1 of Title 8 of the Breckenridge Town Code to create a program to reduce outdoor energy use and in connection therewith establish fees for the administration of the program.

This item is before Council for First Reading on June 13, 2023. The legislative language was reviewed with Council on May 9, 2023 at which time direction was given to come back with a bill draft for consideration. This language is the result of input from Council, Planning Commission, the REMP Steering Committee, building/contractor community, realtors, architect/designers, and the general public.

Based on Council direction at the May 9 meeting and further analysis, Staff has removed the hardship provisions entirely. Heating of outdoor space is considered an owner's choice and options exist to not heat the space or to mitigate it as required. Public safety issues are addressed elsewhere in the language.

The bill establishes the special REMP fund and shall be used for the following purposes:

1. To reduce fossil-fuel generated energy consumption by supporting community renewable energy and energy efficiency improvements in the community;
2. To administer the IECC and IRC provisions in the Breckenridge Town Code;
3. To educate the development industry and the public at large of the methods of energy efficient construction practices and the benefits of energy conservation; and,
4. To achieve the goals of the SustainableBreck Plan.

Contemporarily with this ordinance is a companion ordinance to adopt a new Absolute Policy 33 limiting fireplaces and amending Relative Policy 33 to disincentivize outdoor energy use and incentivize beneficial electrification.

Council Action: REMP is identified as a policy priority for greenhouse gas reductions in the SustainableBreck Plan and Summit Community Climate Action Plan. It is consistent with other mountain communities that mitigate outdoor energy use. Staff recommends the council approve this ordinance on First Reading.

1 WHEREAS, the Chief Building Official, also referred to herein as the “building official” is
2 authorized by the Town Council to administer and enforce this code; and

3 WHEREAS, the Town Council has determined that it is in the best interest of the
4 residents of Breckenridge to continue to have code compliance reviews performed by the Town;
5 and

6 WHEREAS, as the culmination of input from Town Council, staff expertise, consultant
7 expertise, and the feedback from local design, building, and engineering professionals; the
8 proposed code adoption will result in more efficient and higher performance of energy
9 associated with building use, including outdoor energy; and

10 WHEREAS, contemporaneously with this ordinance, is a companion ordinance to adopt
11 a new Absolute Policy 33 limiting fireplaces and amending Relative Policy 33 to disincentivize
12 outdoor energy use; and

13 WHEREAS, it is in the best interest of the citizens of and visitors to our community for
14 Breckenridge to continue to maintain a leadership role in energy code adoption and
15 administration.

16 NOW THEREFORE, BE IT ORDAINED BY THE BRECKENRIDGE TOWN COUNCIL
17 OF THE TOWN OF BRECKENRIDGE COLORADO THAT:

18 **Section 1.** That a new paragraph 79 of section 8-1-5 A of “Amendments to the
19 International Residential Code” 2018 be added by adopting the language underlined to read as
20 follows:

21 79. Section N1101.4 Above code program is amended by adding new subsections to read
22 as follows:

23 N1101.4.2 Renewable Energy Mitigation Program (REMP). All exterior energy use as
24 defined in N1113.1 shall be designed and comply with the mandatory requirements of the
25 Breckenridge Renewable Energy Mitigation Program.

26 **Section 2.** That a new paragraph 80 of section 8-1-5 A of “Amendments to the
27 International Residential Code” 2018 be added by adopting the language underlined to read as
28 follows:

29 80. N1112.1 Title. Renewable Energy Mitigation Program (REMP)

1 N1112.2 Scope. This section establishes criteria for compliance with the Breckenridge
2 Renewable Energy Mitigation Program (REMP). The scope of this program includes exterior
3 energy uses and energy production to offset exterior energy use.

4 N1112.3 Mandatory Requirements. Compliance with this section requires that the
5 provisions of this section be followed for all exterior energy use as defined in N1113.1.
6 Compliance with this section will be documented via the free Public Domain tool “Breckenridge
7 REMP Calculation Sheet” in the most current version at the time of permit application. Projected
8 energy use, associated energy offset required, fees and credits are defined within this tool.

9
10 Credits for on-site renewable energy. The Renewable Energy Mitigation Payment (REMP)
11 option is voluntary. Applicants interested in exterior energy use systems can alternatively
12 choose to produce on-site renewable energy with renewable energy systems such as solar
13 photovoltaics and/or solar hot water, wind, or micro-hydro. The energy efficient technology of
14 ground source heat pumps is also permitted for supplemental on-site energy.

15
16 N1113.1 Exterior energy uses. Residential exterior energy uses (per list below) may be
17 installed only if the supplemental energy meets the requirements of the Renewable Energy
18 Mitigation Program. This applies to all installation for which an application for a permit is filed or
19 is by law required to be filed. This does not apply to work on existing systems that were
20 permitted prior to this code.

21 1. Snowmelt (i.e. driveways, patios, walkways, etc.)

22 2. Exterior pools

23 3. Exterior hot tubs and spas

24 4. Permanent natural gas or electric systems or appliances for heating or cooking
25 outdoor residential spaces.

26
27 N1113.2 On-site renewable credits. Credits for renewable energy production will be calculated
28 and applied per “Breckenridge REMF Calculation Sheet” for energy generated on-site.
29 Renewable energy methods listed in the calculator include: solar photovoltaic, solar thermal,
30 ground source heat pumps, hydroelectric and wind power. Provision for alternative method
31 calculations is also provided, but it will require specific review and approval by the Building
32 Official.

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34 N1113.3 Snowmelt systems.

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- 1. R-10 insulation shall be installed under all areas to be snowmelted.
- 2. Required snowmelt controls. All systems are required to have automated controls to limit operation to when moisture is present, outdoor air temperature is below 40F and above 20F, and the slab temperature sensing. Idling of residential slabs is not permitted.
- 3. Snowmelt heating appliances will have a minimum efficiency of 92% AFUE. Electric resistance and heat pump heaters will be allowed. Where condensing boilers are used, the boiler supply water temperature shall be a maximum of 130F to allow for efficient boiler operation.
- 4. Up to 100 square feet of snowmelt continuous to a residential building is exempt for safety.

N1113.4 Exterior pools.

- 1. Pool covers are required for all pools, with a minimum R-value of 2.
- 2. Pool heating appliances will have a minimum efficiency of 92% AFUE. Electric resistance and heat pump heaters will be allowed. Where condensing boilers are used, the boiler supply water temperature shall be a maximum of 130F to allow for efficient boiler operation.

N1113.5 Exterior hot tubs and spas.

- 1. Hot tub and spa covers are required for all spas, with a minimum R-value of 12.
- 2. Packaged hot tubs and spas less than 64 square feet are exempt.
- 3. A maximum of (1) hot tub or spa per residential property is exempt. For residential HOAs with individual ownership, 64 square feet of hot tub or spa space is exempt for every 10 residential units.
- 4. Hot tub and spa heating appliances will have a minimum efficiency of 92% AFUE. Electric resistance and heat pump heaters will be allowed. Where condensing boilers are used, the boiler supply water temperature shall be a maximum of 130F to allow for efficient boiler operation.

N1113.6 Other permanent natural gas or electric heating or cooking elements.

- 1. A combined 200,000 BTU budget is allowed for permanent natural gas or electric heating or cooking elements at a reduced renewable offset requirement.

1 N1113.7 Gas fireplace, firepit, firetable controls. Residential outdoor natural gas
2 fireplaces, firepits, or firetables shall include timers required to limit the run time of the system.
3 Controls and switching shall be configured so as not to allow continuous operation.

4 N1113.8 Electric heat tape controls. Electric roof and gutter deicing systems shall
5 include either automatic controls capable of shutting off the system when outdoor temperature is
6 above 40F and below 25F, and which limit the use of the system to daylight hours by means of
7 a programmable timer or automated clock, or moisture detection sensors.

8 N1114.1. A permit shall not be valid until all fees as in effect at the time of permit
9 submittal are paid in full, or the renewable energy system is proposed for on-site credit. Nor
10 shall a change order to the permit be released until the additional fees, if any, have been paid.
11 REMP compliance will be verified at Certificate of Occupancy or Certificate of Completion
12 according to the proposed plans. C.O. can be withheld if the project is non-compliant.

13
14 N1115.1 Pre-existing systems. Pre-existing systems, for which a permit was applied for
15 and granted prior to the effective date of this code, are exempt from this program. Additions or
16 expansions of existing systems that require a permit will require compliance with this above
17 code program.

18
19 Pre-existing systems for which a prior REMF payment was paid and which seek to be
20 replaced shall receive a pro-rated credit calculated by the number of years since prior REMF
21 payment divided by 20 years. For example, a REMF payment made for a system permitted 10
22 years prior to the current replacement being sought will receive credit for ½ of the prior REMF
23 payment and that amount shall be deducted from the REMF payment owed on the replacement.
24 For renewable systems installed on site, full credit will be given for up to 20 years after the date
25 of installation. Credits will only be applied to properly permitted and functioning systems within
26 the scope of the adopted Energy Code and applicable Mechanical and Electrical Codes.
27 Systems installed prior to 20 years before the date of permit application are not eligible for pro-
28 ration of system credits.

29
30 Upgrades to existing mechanical equipment (boilers, heat pumps, HVAC equipment,
31 etc.) or renewable energy systems will not require submittal to the REMF program.

32

1 N1116.1 Solar photovoltaic systems. System designer and installer must be certified by
2 Colorado Solar Energy Industries Association (COSEIA) or North American Board of Certified
3 Energy Practitioners (NABCEP), or a licensed Professional Engineer in the State of Colorado.

4 N1116.2 Solar thermal. The size of solar hot water systems is limited to 500 ft2 of
5 collector area absent approval by the Building Official. Systems larger than this limit will be
6 considered, but will require documentation showing year-round utilization of the system.

7 N1116.3 Ground source heat pumps. In order to use ground source heat pumps for on-
8 site renewable credit, the GSHP system must supply at least 20% of the peak load for heating
9 the exterior energy uses. Each GSHP shall be tested and balanced and the design engineer
10 shall certify in writing that it meets or exceeds a design coefficient of performance of 3.0
11 inclusion of source pump power. Design conditions for determining COP will be 30F ground loop
12 temperature measured at the GSHP inlet, and 110F GSHP load side outlet.

13 **Section 2.** That reserved paragraph 3 of section 8-1-9A of “Amendments to the
14 International Energy Conservation Code” 2018 Edition be amended by adding the language
15 underlined to read as follows:

16 Paragraph 3. C102.1.1 Above code program is amended by adding new subsections to read
17 as follows:

18 C102.1.2 Renewable Energy Mitigation Program (REMP). All exterior energy use as
19 defined in C410 shall be designed and comply with the mandatory requirements of the
20 Breckenridge Renewable Energy Mitigation Program.

21 **Section 3.** That section 8-1-9A of “Amendments to the International Energy
22 Conservation Code” 2018 Edition be amended by adding a new paragraph 14 and renumber the
23 subsequent paragraphs accordingly:

24 Paragraph 14. C409 Title. Renewable Energy Mitigation Program (REMP)

25 C409.1 Scope. This section establishes criteria for compliance with the Breckenridge
26 Renewable Energy Mitigation Program (REMP). The scope of this program includes exterior
27 energy uses and energy production to offset exterior energy use.

28 C409.2 Mandatory Requirements. Mandatory Requirements. Compliance with this
29 section requires that the provisions of this section be followed for all exterior energy use.
30 Compliance with this section will be documented via the free Public Domain tool “Breckenridge
31 REMP Calculation Sheet” in the most current version at the time of permit application. Projected
32 energy use, associated energy offset required, fees and credits are defined within this tool.

33

1 Credits for on-site renewable energy. The Renewable Energy Mitigation Payment (REMP)
2 option is voluntary. Applicants interested in exterior energy use systems can alternatively
3 choose to produce on-site renewable energy with renewable energy systems such as solar
4 photovoltaics and/or solar hot water, wind, or micro-hydro. The energy efficient technology of
5 ground source heat pumps is also permitted for supplemental on-site energy.

6 C410 Exterior energy uses. Commercial exterior energy uses (per list below) may be
7 installed only if the supplemental energy meets the requirements of the Renewable Energy
8 Mitigation Program. This applies to all installation for which an application for a permit is filed or
9 is by law required to be filed with or without an associated Building Permit. This does not apply
10 to work on existing systems that were permitted prior to this code.

11
12 1. Snowmelt (i.e. driveways, patios, walkways, etc.)

13 2. Exterior pools

14 3. Exterior hot tubs and spas

15 4. Permanent natural gas or electric systems for heating outdoor commercial
16 spaces.

17
18 C410.1 On-site renewable credits. Credits for renewable energy production will be
19 calculated and applied per "Breckenridge REMP Calculation Sheet" for energy generated on-
20 site. Renewable energy methods listed in the calculator include: solar photovoltaic, solar
21 thermal, ground source heat pumps, hydroelectric and wind power. Provision for alternative
22 method calculations is also provided, but it will require specific review and approval by the
23 Building Official.

24 C410.2 Snowmelt systems.

25 1. R-10 insulation shall be installed under all areas to be snowmelted.

26 2. Required snowmelt controls. All systems are required to have automated controls to limit
27 operation to when moisture is present, outdoor air temperature is below 40F and above 20F,
28 and the slab temperature sensing. Idling of commercial slabs is allowed where public safety is a
29 factor.

30 3. Snowmelt heating appliances will have a minimum efficiency of 92% AFUE. Electric
31 resistance and heat pump heaters will be allowed. Where condensing boilers are used, the
32 boiler supply water temperature shall be a maximum of 130F to allow for efficient boiler
33 operation.

1 4. Up to 100 square feet of snowmelt per emergency egress pathway is exempt.

2
3 C410.3 Exterior pools.

4
5 1. Pool covers are required for all pools, with a minimum R-value of 2.

6 2. Pool heating appliances will have a minimum efficiency of 92% AFUE. Electric resistance and
7 heat pump heaters will be allowed. Where condensing boilers are used, the boiler supply water
8 temperature shall be a maximum of 130F to allow for efficient boiler operation.

9
10 C410.4 Exterior hot tubs and spas.

11
12 1. Hot tub and spa covers are required for all hot tubs and spas, with a minimum R-value of 12.

13 2. Hot tub and spa heating appliances will have a minimum efficiency of 92% AFUE. Electric
14 resistance and heat pump heaters will be allowed. Where condensing boilers are used, the
15 boiler supply water temperature shall be a maximum of 130F to allow for efficient boiler
16 operation.

17
18 C410.5 Other permanent natural gas or electric heating and cooking elements.

19
20 1. A combined 350,000 BTU budget is allowed for permanent natural gas or electric heating
21 and cooking elements at a reduced renewable offset requirement.

22
23 C410.6 Gas fireplace, firepit, firetable controls. Commercial outdoor natural gas
24 fireplaces, firepits, and firetables shall include timers required to limit the run time of the
25 system. Controls and switching shall be configured so as not to allow continuous operation.

26 C410.7 Electric heat tape controls. Electric roof and gutter deicing systems shall include
27 either automatic controls capable of shutting off the system when outdoor temperature is above
28 40F and below 25F, and which limit the use of the system to daylight hours by means of a
29 programmable timer or automated clock, or moisture detection sensors.

30 C411 A permit shall not be valid until all fees as in effect at the time of permit submittal
31 are paid in full, or the renewable energy system is proposed for on-site credit. Nor shall a
32 change order to the permit be released until the additional fees, if any, have been paid. REMP
33 compliance will be verified at Certificate of Occupancy or Certificate of Completion according to
34 the proposed plans. C.O. can be withheld if the project is non-compliant.

1 C412 Pre-existing systems. Pre-existing systems, for which a prior permit was applied
2 for and granted prior to the effective date of this code, are exempt from this program. Additions
3 or expansions of existing systems that require a permit will require compliance with this above
4 code program.

5
6 Pre-existing systems for which a prior REMP payment was paid and which seek to be
7 replaced shall receive a pro-rated credit calculated by the number of years since prior REMP
8 payment divided by 20 years. For example, a REMP payment made for a system permitted 10
9 years prior to the current replacement being sought will receive credit for ½ of the prior REMP
10 payment and that amount shall be deducted from the REMP payment owed on the replacement.
11 For renewable systems installed on site, full credit will be given for up to 20 years after the date
12 of installation. Credits will only be applied to properly permitted and functioning systems within
13 the scope of the adopted Energy Code and applicable Mechanical and Electrical Codes.
14 Systems installed prior to 20 years before the date of permit application are not eligible for pro-
15 ration of system credits.

16 Upgrades to existing mechanical equipment (boilers, heat pumps, HVAC equipment,
17 etc.) or renewable energy systems will not require submittal to the REMP program.

18
19 C413 Solar photovoltaic systems. System designer and installer must be certified by
20 Colorado Solar Energy Industries Association (COSEIA) or North American Board of Certified
21 Energy Practitioners (NABCEP), or a licensed Professional Engineer in the State of Colorado.

22 C413.1 Solar thermal. The size of solar hot water systems is limited to 500 square feet
23 of collector area absent approval by the Building Official. Systems larger than this limit will be
24 considered, but will require documentation showing year-round utilization of the system.

25 C413.2 Ground source heat pumps. In order to use ground source heat pumps for on-
26 site renewable credit, the GSHP system must supply at least 20% of the peak load for heating
27 all the exterior energy uses. Each GSHP shall be tested and balanced and the design engineer
28 shall certify in writing that it meets or exceeds a design coefficient of performance of 3.0
29 inclusion of source pump power. Design conditions for determining COP will be 30F ground loop
30 temperature measured at the GSHP inlet, and 110F GSHP load side outlet.

31 **Section 4.** That existing paragraph 16 to section 8-1-9A of “Amendments to the
32 International Energy Conservation Code” 2018 Edition be replaced with the below language to
33 read as follows and that paragraph 16 along with the subsequent paragraphs be renumbered
34 accordingly:

1 16. R102.1.1 Above code program is amended by adding new subsections to read as
2 follows:

3 R102.1.2 Renewable Energy Mitigation Program (REMP). All exterior energy use as
4 defined in R408 shall be designed and comply with the mandatory requirements of the
5 Breckenridge Renewable Energy Mitigation Program.

6 **Section 5.** That existing paragraph 19 of section 8-1-9A of “Amendments to the
7 International Energy Conservation Code” 2018 Edition be replaced with the below underlined
8 language and that paragraph 19 and the subsequent paragraphs be renumbered accordingly:

9 19. R407 Title. Renewable Energy Mitigation Program (REMP)

10 R407.1 Scope. This section establishes criteria for compliance with the Breckenridge
11 Renewable Energy Mitigation Program (REMP). The scope of this program includes exterior
12 energy uses and energy production to offset exterior energy use.

13 R407.2 Mandatory Requirements. Compliance with this section requires that the
14 provisions of this section be followed for all exterior energy use. Compliance with this section
15 will be documented via the free Public Domain tool “Breckenridge REMF Calculation Sheet” in
16 the most current version at the time of permit application. Projected energy use, associated
17 energy offset required, fees and credits are defined within this tool.

18
19 Credits for on-site renewable energy. The Renewable Energy Payment (REP) option is
20 voluntary. Applicants interested in exterior energy use systems can alternatively choose to
21 produce on-site renewable energy (Section R412) with renewable energy sources such as solar
22 photovoltaics and/or solar hot water, wind, or micro-hydro. The energy efficient technology of
23 ground source heat pumps is also permitted for supplemental on-site energy.

24
25 R408 Exterior energy uses. Residential exterior energy uses (per list below) may be
26 installed only if the supplemental energy meets the requirements of the Renewable Energy
27 Mitigation Program. This applies to all installation for which an application for a permit is filed or
28 is by law required to be filed with or without an associated Building Permit. This does not apply
29 to work on existing systems that were permitted prior to this code.

30
31 1. Snowmelt (i.e. driveways, patios, walkways, etc.)

32 2. Exterior pools

33 3. Exterior hot tubs and spas

1 4. Permanent natural gas or electric systems for heating outdoor residential
2 spaces.

3
4 R408.1 On-site renewable credits. Credits for renewable energy production will be
5 calculated and applied per "Breckenridge REMP Calculation Sheet" for energy generated on-
6 site. Renewable energy methods listed in the calculator include: solar photovoltaic, solar
7 thermal, ground source heat pumps, hydroelectric and wind power. Provision for alternative
8 method calculations is also provided, but it will require specific review and approval by the
9 Building Official.

10
11 R408.2 Snowmelt systems.

12
13 1. R-10 insulation shall be installed under all areas to be snowmelted.

14
15 2. Required snowmelt controls. All systems are required to have automated controls to limit
16 operation to when moisture is present, outdoor air temperature is below 40F and above 20F,
17 and the slab temperature sensing. Idling of residential slabs is not permitted.

18
19 3. Snowmelt heating appliances will have a minimum efficiency of 92% AFUE. Electric
20 resistance and heat pump heaters will be allowed. Where condensing boilers are used, the
21 boiler supply water temperature shall be a maximum of 130F to allow for efficient boiler
22 operation.

23
24 4. Up to 100 square feet of snowmelt continuous to a residential building is exempt for safety.

25
26 R408.3 Exterior pools.

27
28 1. Pool covers are required for all pools, with a minimum R-value of 2.

29
30 2. Pool heating appliances will have a minimum efficiency of 92% AFUE. Electric resistance and
31 heat pump heaters will be allowed. Where condensing boilers are used, the boiler supply water
32 temperature shall be a maximum of 130F to allow for efficient boiler operation.

33
34 R408.4 Exterior hot tubs and spas.

- 1
- 2 1. Hot tub and spa covers are required for all spas, with a minimum R-value of 12.
- 3 2. Packaged spas less than 64 square feet are exempt.
- 4 3. A maximum of (1) hot tub or spa per residential property is exempt. For residential HOAs with
- 5 individual ownership, 64 square feet of hot tub or spa space is exempt for every 10 residential
- 6 units.
- 7 4. Hot tubs and spa heating appliances will have a minimum efficiency of 92% AFUE. Electric
- 8 resistance and heat pump heaters will be allowed. Where condensing boilers are used, the
- 9 boiler supply water temperature shall be a maximum of 130F to allow for efficient boiler
- 10 operation.

11

12 R408.5 Other permanent natural gas or electric heating and cooking elements.

13

- 14 1. A combined 200,000 BTU budget is allowed for permanent natural gas or electric heating or
- 15 cooking elements at a reduced renewable offset requirement.

16

17 R409 Gas fireplace, firepit, firetable controls. Residential outdoor natural gas fireplaces,

18 firepits, and firetables shall include timers required to limit the run time of the system. Controls

19 and switching shall be configured so as not to allow continuous operation.

20 R409.1 Electric heat tape controls. Electric roof and gutter deicing systems shall include

21 either automatic controls capable of shutting off the system when outdoor temperature is above

22 40F and below 25F, and which limit the use of the system to daylight hours by means of a

23 programmable timer or automated clock, or moisture detection sensors.

24 R410 Renewable energy mitigation payment. A permit shall not be valid until all fees as

25 in effect at the time of permit submittal are paid in full, or the renewable energy system is

26 proposed for on-site credit. Nor shall a change order to the permit be released until the

27 additional fees, if any, have been paid. REMP compliance will be verified at Certificate of

28 Occupancy or Certificate of Completion according to the proposed plans. C.O. can be withheld if

29 the project is non-compliant.

30

31 R411 Pre-existing systems. Pre-existing systems, for which a prior permit was applied

32 for and granted prior to the effective date of this code are exempt from this program. Additions

33 or expansions of existing systems that require a permit will require compliance with this above

34 code program.

1
2 Pre-existing systems for which a prior REMP payment was paid and which seek to be
3 replaced shall receive a pro-rated credit calculated by the number of years since prior REMP
4 payment divided by 20 years. For example, a REMP payment made for a system permitted 10
5 years prior to the current replacement being sought will receive credit for ½ of the prior REMP
6 payment and that amount shall be deducted from the REMP payment owed on the replacement.
7 For renewable systems installed on site, full credit will be given for up to 20 years after the date
8 of installation. Credits will only be applied to properly permitted and functioning systems within
9 the scope of the adopted Energy Code and applicable Mechanical and Electrical Codes.
10 Systems installed prior to 20 years before the date of permit application are not eligible for pro-
11 ration of system credits.
12

13 Upgrades to existing mechanical equipment (boilers, heat pumps, HVAC equipment,
14 etc.) or renewable energy systems will not require submittal to the REMP program.
15

16 R412 Solar photovoltaic systems. System designer and installer must be certified by
17 Colorado Solar Energy Industries Association (COSEIA) or North American Board of Certified
18 Energy Practitioners (NABCEP), or a licensed Professional Engineer in the State of Colorado.

19 R412.1 Solar thermal. The size of solar hot water systems is limited to 500 square feet
20 of collector area absent approval by the Building Official. Systems larger than this limit will be
21 considered, but will require documentation showing year-round utilization of the system.

22 R412.2 Ground source heat pumps. In order to use ground source heat pumps for on-
23 site renewable credit, the GSHP system must supply at least 20% of the peak load for heating
24 all the exterior energy uses. Each GSHP shall be tested and balanced and the design engineer
25 shall certify in writing that it meets or exceeds a design coefficient of performance of 3.0
26 inclusion of source pump power. Design conditions for determining COP will be 30F ground loop
27 temperature measured at the GSHP inlet, and 110F GSHP load side outlet.
28

29
30 **Section 6.** That a new section 8-1-26, entitled “REMP Fees”, is added to read as
31 follows:

32 8-1-26 REMP Fees.

33 A. Regulatory Fee:

1 1. Commencing with an application for a permit for outdoor energy use, a regulatory
2 fee shall be imposed where an applicant elects not to mitigate outdoor energy use on-site or
3 where the mitigation is not sufficient per the requirements.

4 2. The amount of the regulatory fee is established by calculations set forth in Exhibit
5 A, which calculations may be administratively amended based on the annual energy use
6 assumptions by energy use.

7 3. The regulatory fee bears a reasonable relationship to the direct and indirect costs
8 of implementing the town's comprehensive regulatory program established by this chapter.

9
10 4. The fee established by this section is not designed to raise revenues to defray the
11 general expenses of town government, but rather is a charge imposed for the purpose of
12 defraying some of the costs of the particular town services and programs described in this
13 section.

14 B. Uses: All monies collected under this section shall be recorded in a special fund
15 and shall be used for the following purposes:

16 1. To reduce fossil fuel-generated energy consumption by supporting community
17 renewable energy and energy efficiency improvements in the community;

18 2. To administer the IECC and IRC provisions in the Breckenridge Town Code;

19 3. To educate the development of industry and the public at large of the methods of
20 energy efficient construction practices and the benefits of energy conservation; and,

21 4. To achieve the goals of the SustainableBreck Plan.

22 **Section 7.** That a new section 8-1-27, entitled "Administrative Rules and Regulations"
23 shall be amended by adding the language underlined to reads as follows:

24 8-1-26 Rules and Regulations. The director of community development shall have the
25 authority from time to time to adopt, amend, alter, and repeal administrative rules and
26 regulations as may be necessary for the proper administration of this chapter. Such regulations
27 shall be adopted in accordance with the procedures established by title 1, chapter 18 of this
28 code.

1 **Section 8.** This ordinance shall be effective as provided in Section 5.9 of the
2 Breckenridge Town Charter.

3 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
4 PUBLISHED IN FULL this ____day of ____, 2023. A Public Hearing shall be held at the
5 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___day of
6 ____, 2023, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

Exhibit A -

Background Calculations for CREMP and CREMP submittal pages.

This page is for reference only. Values to be updated per Governing body when required. Click on individual cells to see formulas used.

This color cell is adjustable (by local Governing Body) to fit local jurisdiction choices for amount of offset and local cost of equipment installation.

This color cell is adjustable (by local Governing Body) to probe hypothetical energy use values.

PV Energy Cost Calc

| | | |
|---|---------|------------------------------------|
| Approximate average cost of PV installation in Summit County (2022), per sampling of local installers by HCC. | \$3,500 | \$/kW of array |
| NREL PV Watts estimated output (at optimum conditions for solar access, w/o derate for effects of snow) | 1,500 | kWh/yr per kW of array |
| Assumed system lifespan | 20 | years (anticipated life of system) |
| Minimum allowed GSHP COP | 30,000 | kWh per kW for the life of system |
| Minimum allowed ASHP COP | \$0.117 | \$/kWh for life of system |

| | | |
|----------------------|---------|--------|
| Energy cost used | \$0.117 | \$/kWh |
| Time period used | 20 | years |
| Conversion of Bu/kWh | 3.412 | |
| GSHP COP minimum | 3 | |
| ASHP COP minimum | 1.8 | |

| Residential Exterior Energy | Energy Use | Units | Fee | Exterior Energy Offset % Offset | Adjusted | Units | Notes |
|-----------------------------|------------|------------|----------|---------------------------------|----------|--------|------------------------------------|
| Snowmelt | 82,865.00 | Btu/2yr | \$56.67 | 100% | \$56.67 | \$/ft2 | See calculation description below. |
| Pool | 331,451.00 | Btu/2yr | \$226.67 | 100% | \$226.67 | \$/ft2 | See calculation description below. |
| Spa | 428,937.00 | Btu/2yr | \$283.33 | 100% | \$283.33 | \$/ft2 | See calculation description below. |
| Heat tape | 0.35 | kWh/yr | \$0.82 | 0% | \$0.00 | \$/W | See calculation description below. |
| Electric patio heaters | 350.00 | Btu/Btu/yr | \$0.24 | 0% | \$0.00 | \$/Btu | See calculation description below. |
| Gas patio heaters | 364.00 | Btu/Btu/yr | \$0.25 | 0% | \$0.00 | \$/Btu | See calculation description below. |
| Gas fireplaces | | | | | | | |

| Commercial Exterior Energy | Energy Use | Units | Fee | Exterior Energy Offset % Offset | Adjusted | Units | Notes |
|----------------------------|------------|------------|----------|---------------------------------|----------|--------|------------------------------------|
| Snowmelt | 146,229.00 | Btu/2yr | \$100.00 | 100% | \$100.00 | \$/ft2 | See calculation description below. |
| Pool | 414,314.00 | Btu/2yr | \$283.33 | 100% | \$283.33 | \$/ft2 | See calculation description below. |
| Spa | 428,937.00 | Btu/2yr | \$283.33 | 100% | \$283.33 | \$/ft2 | See calculation description below. |
| Heat tape | 1.56 | kWh/yr | \$3.65 | 0% | \$0.00 | \$/W | See calculation description below. |
| Electric patio heaters | 1.01 | kWh/yr | \$2.36 | 10% | \$0.24 | \$/W | See calculation description below. |
| Gas patio heaters | 1008.00 | Btu/Btu/yr | \$0.69 | 10% | \$0.07 | \$/Btu | See calculation description below. |
| Gas fireplaces | 2016.00 | Btu/Btu/yr | \$1.38 | 10% | \$0.14 | \$/Btu | See calculation description below. |

| Offset rates | Equipment Cost | % Credit | Adjusted | Units | Notes |
|-----------------|----------------|----------|------------|----------------------------------|---|
| GSHP | \$7,500 | 25% | \$1,875.00 | \$/10,000 Btu installed capacity | Average installed system upgrade cost of \$9,000 per ton of system capacity. |
| ASHP | \$2,500 | 25% | \$625.00 | \$/10,000 Btu installed capacity | Average cost of SHW installation in Summit County (2021), per sampling of local installers. |
| Residential SHW | \$112.25 | 100% | \$112.25 | \$/ft2 of array | Average cost of SHW installation in Summit County (2021), per sampling of local installers. |
| Commercial SHW | \$3,500 | 100% | \$3,500.00 | \$/kw of array | Average cost of PV installation in Summit County (2021), per sampling of local installers. |
| PV | | | | | |

| Exterior Energy Use Exemptions | Residential | Units | Commercial | Units | Notes |
|--------------------------------|-------------|-------|------------|-------|----------------------|
| Snowmelt | 100 | ft2 | 100 | ft2 | per egress pathway |
| Pool | n/a | | n/a | | |
| Spa | 64 | ft2 | 64 | ft2 | per 10 private units |
| Heat tape | FULL | | FULL | | |
| Electric patio heaters | FULL | | n/a | | |
| Gas patio heaters | FULL | | n/a | | |
| Gas fireplaces | FULL | | n/a | | |

| Exterior Energy Use Annual Calculations: | Parameter | Value | Units | Notes |
|--|-----------|-------------------|-------|--|
| Operational Load | 125 | BTU/ft2-Hr | | Based on ASHRAE loads for Class 1: Residential & Light Commercial |
| Cleanup Load | 45 | BTU/ft2-Hr | | Wrisbo design manual load for 22-25°F and 5MPH wind speed. |
| Run Time | 560 | [hrs] | | Based on data collected by the Colorado Climate Center from 1960-1996. |
| Clean Up Time | 260 | [hrs] | | Based on data collected by the Colorado Climate Center from 1960-1996. |
| Total Annual Load | 82 | BTU/ft2-yr | | Energy consumed per year per square foot. |

| Commercial Snowmelt: | Parameter | Value | Units | Notes |
|--------------------------|------------|-------------------|-------|--|
| Operational Load | 175 | BTU/ft2-Hr | | Based on ASHRAE loads for Class 2: Heavy Commercial |
| Cleanup Load | 45 | BTU/ft2-Hr | | Wrisbo design manual load for 22-25°F and 5MPH wind speed. |
| Idle Load | 16 | BTU/ft2-Hr | | Median hourly idle load; calculation performed with Gypsum - Eagle County Airport weather data. |
| Run Time | 560 | [hrs] | | Based on data collected by the Colorado Climate Center from 1960-1996. |
| Clean Up Time | 260 | [hrs] | | Based on data collected by the Colorado Climate Center from 1960-1996. |
| Idle Time | 2404 | [hrs] | | Number of hours the Gypsum - Eagle County Airport weather file is below a 35°F slab idle temperature set point less clean up and run time. |
| Total Annual Load | 143 | BTU/ft2-yr | | Energy consumed per year per square foot. |

| Residential Pool: | Parameter | Value | Units | Notes |
|-------------------|-----------|-------|-------|---------------------------------|
| Day Use | 4 | [hrs] | | Hours of use during day time. |
| Night Use | 4 | [hrs] | | Hours of use during night time. |

Calculations were performed with the DOE the Energy Smart Pools software using weather data from Dillon, CO.

| | |
|--------------------------|-------------------------|
| Pool Set Point | 85 [F] |
| Cover Insulation | 1.5 [R value] |
| Wind Speed | 5 [MPH] |
| Total Annual Load | 332 [kBtu/sf-yr] |

| Parameter | Value | [units] | Notes |
|--------------------------|------------|--------------|---|
| Day Use | 4 | [hrs] | Hours of use during day time. |
| Seasonal Use | 10 | [months] | Months per year. |
| Pool Set Point | 82 [F] | | Pool temperature set point. |
| Pool Insulation | 68 [F] | | Pool temperature set back. |
| Transmittance | 0.1 | [R value] | Thermal insulation value of vinyl cover |
| Visible Transmittance | 75% | [%] | Visible transmittance of water. |
| Solar Exposure Factor | 60% | [%] | Assumed solar exposure. |
| Wind Speed | 0 | [MPH] | Assumed emissivity of pool. |
| Wind Susceptibility | 5 | [MBH] | Assumed emissivity of pool. |
| Total Annual Load | 414 | [kBtu/sf-yr] | Energy consumed per year per square foot. |

Calculations were performed with the DOE the Energy Smart Pools software using weather data from Dillon, CO.

| Parameter | Value | [units] | Notes |
|--------------------------|--------------|--------------|---|
| Day Use | 10 | [hrs] | Hours of use during day time. |
| Night Use | 4 | [hrs] | Hours of use during night time. |
| Pool Set Point | 104 [F] | | Spa temperature set point. |
| Cover Insulation | 12 [R value] | | Thermal insulation value of spa cover |
| Wind Speed | 5 | [MPH] | Assumed wind speed. |
| Total Annual Load | 423 | [kBtu/sf-yr] | Energy consumed per year per square foot. |

Calculations were performed with the DOE the Energy Smart Pools software using weather data from Dillon, CO.

| Parameter | Fireplaces | | Patio Heaters | | Notes |
|--------------------------------------|-------------|-------------|---------------|-------------------------|--|
| | Residential | Commercial | Residential | Commercial | |
| Number of heaters (input) | 1 | 1 | 1 | 1 | For example purposes only. |
| MBH (rated input) | 20 | 250 | 20 | 20 [MBH] | For example purposes only. |
| MBH (total installed) | 20 | 250 | 20 | 20 [MBH] | For example purposes only. |
| Day Use | 1 | 48 | 2 | 4 [hrs] | Assumed hours per day, per committee meeting. |
| Weeks/Yr | 52 | 2016 | 25 | 38 [weeks] | Assumed weeks per year, per committee meeting. |
| hrs/yr | 364 | 2016 | 350 | 1008 [hrs] | Run hours per year. |
| Annual energy consumption | 7280 | 504000 | 7000 | 20160 [kW/yr] | Energy consumed per year. |
| Normalized annual energy consumption | 364 | 2016 | 350 | 1008 [kW/yr/MBH] | Energy consumed per year per installed MBH. |

Outdoor Gas Appliances:

| Parameter | Electric Patio Heaters | | [units] | Notes |
|--------------------------------------|------------------------|-------------|-----------|--|
| | Residential | Commercial | | |
| Number of heaters (input) | 1 | 1 | | For example purposes only. |
| W (rated input) | 6000 | 6000 | [Watts] | For example purposes only. |
| W (total installed) | 6000 | 6000 | [Watts] | For example purposes only. |
| Day Use | 2 | 4 | [hrs] | Assumed hours per day, per committee meeting. |
| Weeks/Yr | 25 | 38 | [weeks] | Assumed weeks per year, per committee meeting. |
| hrs/yr | 350 | 1008 | [hrs] | Run hours per year. |
| Annual energy consumption | 21000 | 60480 | [kW/yr] | Energy consumed per year. |
| Normalized annual energy consumption | 9.33 | 1.01 | [kW/yr/W] | Energy consumed per year per installed Watt. |

Electric Patio Heaters:

| Self Regulating Heat Tape Annual Energy Model (Pitkin County) | |
|---|--|
| Model Assumptions | |
| Weather Data Location: | Gypsum - Eagle County Airport |
| Basis Product: | Chromalox SRF-RG |
| Wait-Hour=m*H | |
| Max Output (Watt/F): | 8.0 W |
| Max Output Temperature (Degrees F): | 32.0 F |
| Reduced Output (Watt/F): | 5.0 W |
| Reduced Output Temperature (Degrees F): | 40.0 F |
| Adjustment Variable (m): | - 3/8 |
| Adjustment Variable (b): | 20.0 |
| Seasonal and Nightly Shut-Off | |
| Control #1: | Self Regulating |
| Control #2: | Manual System Shut-off (April-1 thru November-1) |
| Control #3: | Timer Switch Shut-off (1800-0600) |
| Control #4: | None |

Heat tape:

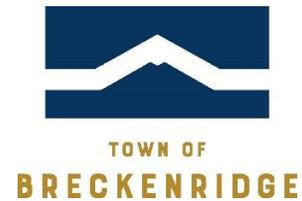
Notes

These assumptions were used to run an hourly annual calculation in which, each Watt-Hour/foot of energy consumption was calculated and summed. Per discussions with manufacturer's regarding the operation of "self-regulating" heat tape, the tape is modeled as consuming full rated output when the outside air temperature was below 32 F, and if the outside air temperature is above 32 F, the rate of energy consumption decreased linearly to the reduced output temperature listed by the manufacturer. Calculation accounts for seasonal and nightly shutdowns per required controls.

| | | |
|---|-------|-------------|
| Modeled Annual Energy Consumption per Linear Ft of Cable (kWh): | 32.58 | [kWh/yr/ft] |
| Energy consumed per year per installed Watt: | 1.973 | |

Available Gas Combustion Thermal Efficiencies:

| |
|------|
| 92% |
| 94% |
| 95% |
| 96% |
| 97% |
| 98% |
| 99% |
| 100% |



Memo

To: Town Council
From: Mark Truckey, Community Development Director
Date: 6/7/2023 for June 13, 2023 Meeting
Subject: Policy 33 Revisions: Renewable Energy Mitigation Program

In addition to the amendments to the Building Code to implement the Renewable Energy Mitigation Program (REMP), there are also changes necessary to the Development Code Policy 33. Staff reviewed these changes at the Council's last work session on REMP on May 9. Council feedback was generally focused on a need to assign negative points at an earlier threshold of outdoor heated area and to use smaller increments for point assignments. Other Council suggestions included incentivizing electrification of homes with positive points. Additional revisions since the May 9 meeting are discussed below.

Policy 33A Revisions

The Planning Commission reviewed the amendments on June 6 and made a suggestion regarding gas fireplaces. The suggestion was to rephrase the limitation on gas fireplaces. The revised language still sets a limit of three fireplaces maximum for a residential unit, but allows the applicant to decide if they use all three gas fireplaces inside or decide to use one of the three outside. The demand for fireplaces, particularly in the high end homes, may result in an applicant choosing to place all three fireplaces inside the home. This is seen as a good option to provide because indoor fireplaces are typically used for shorter duration and generally result in less energy use than outdoor fireplaces.

Policy 33R Revisions

The existing point assignments for outdoor snowmelt have been revised. The May 9 version showed negative points being assigned when 1,500 square feet of outdoor heated space or greater was proposed, and that negative points would be assigned in 500 square foot increments. Based on Council feedback, we are now proposing the threshold for negative points be lowered to 1,000 square feet and that negative points are assigned for each 250 square foot increment beyond that. These revisions are attached for Council's review.

A new section E. has been added to Policy 33R that is intended to incentivize the electrification of homes. The proposed language awards four positive points for new construction that does not bring gas to the property. Four points are also offered up for additions and existing residences that remove their gas connections. Staff feels the four point incentive is generous, but appropriate as a measure to move the Town towards its aggressive carbon reduction goals.

Staff recommends the Council approve the proposed Policy 33 changes on First Reading.

A BILL FOR AN ORDINANCE CREATING A NEW ABSOLUTE POLICY FOR ENERGY CONSERVATION AND AMENDING POLICY 33 RELATIVE ACCORDINGLY.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. That a new Absolute policy be added to section 9-1-19-33A., entitled “Policy 33 (Absolute) Energy Conservation” by adding the language underlined to read as follows:

Policy 33 (Absolute) Energy Conservation:

A. All new snowmelt, outdoor gas appliances, and outdoor heated pools/hot tubs are further regulated by the Renewable Energy Mitigation Program provisions of the Building Code.

B. Each residential units may install a maximum of three gas fireplaces, and a maximum of one of the three fireplaces may be outdoors. Anything over and above shall be prohibited, with the exception of fireplaces for common areas of multi-family residences or lodging properties.

Section 2. That subsection B of section 9-1-19-33R, entitled “Policy 33 (Relative) Energy Conservation” be amended by deleting the language stricken and adding the language underlined to read as follows:

B. Excessive Energy Usage: Developments with excessive energy components are discouraged. To encourage energy conservation, the following point schedule shall be utilized to evaluate how well a proposal meets this policy. Energy use from snowmelt, outdoor gas fireplaces, and outdoor heated pools/hot tubs is also regulated by the Renewable Energy Mitigation Program provisions of the Building Code.

| Point Range | Design Feature |
|-------------|---|
| 0 | If the Planning Commission determines that any of the following design features are required for the health, safety and welfare of the general public (e.g., heated sidewalk in a high traffic pedestrian area), then no negative points shall be assessed. |
| -1 | 1– 500 square feet heated driveway, sidewalk, plaza, etc. |
| -2 | 501– 999 square feet heated driveway, sidewalk, plaza, etc. |
| -3 | 1,000– 2,499 square feet heated driveway, sidewalk, plaza, etc. |

| | |
|--|--|
| -4 | 2,500 – 5,000 square feet heated driveway, sidewalk, plaza, etc. |
| -4 | For each additional 5,000 square feet, or portion thereof, of heated driveway, sidewalk, plaza, etc. over 5,000 square feet |
| Snowmelt: Residential Less Than Ten Units | |
| <u>0</u> | <u>Up to 1,000 square feet of heated driveway, patio/deck, and walkway etc.</u> |
| <u>1 x (-1/0)</u> | <u>For each additional 250 square feet over 1,000 of heated driveway, patio/deck, and walkway etc.</u> |
| Snowmelt: Commercial and Residential Ten Units or Greater | |
| <u>0</u> | <u>Up to 5,000 square feet of heated driveway, sidewalk, plaza etc</u> |
| <u>1 x (-1/0)</u> | <u>For each additional 500 square feet over 5,000 square feet of heated driveway, sidewalk, plaza etc</u> |
| Gas Fireplaces | |
| <u>1x(-1/0)</u> | <u>Outdoor commercial or common space residential gas fireplace (per gas fireplace).</u> |
| <u>0</u> | <u>Outdoor commercial or common space residential gas fireplaces up to 350,000 BTU</u> |
| <u>1 x (-1/0)</u> | <u>For each additional 50,000 BTU over 350,000 BTU used for outdoor commercial or common space residential gas fireplaces</u> |
| Outdoor Heated Pools/Hot Tubs | |
| -1 | 101-500 square feet of outdoor heated pool and/or hot tub in a commercial or multifamily development |
| -1 | For each additional 500 square feet, or portion thereof, of outdoor heated pool and/or hot tub in a commercial or multifamily development over the first 500 square feet |
| Water Features | |
| 0 | Water features powered completely by a renewable energy source (e.g., solar, wind). |
| -1 | Water features powered by conventional energy sources utilizing less than 4,000 watts or less than 5 horsepower. |
| -2 | Large outdoor water features (per feature) powered by conventional energy sources utilizing over 4,000 watts or 5 horsepower motor or greater. |

1
2

1 **Section 3.** That a new subsection E be added to 9-1-19-33R entitled “Policy 33
2 (Relative) Energy Conservation” and that existing entitled “E General Provisions” be
3 renumbered as F accordingly to read as follows:

4 E. Electrification:

5 +4 points may be awarded for new residential or commercial development that does not provide
6 gas to the property and provides all of its energy and heating demands through electric or
7 renewable energy sources, with a covenant recorded against the property in a form approved by
8 the Town attorney.

9 +4 points may also be awarded to existing residential or commercial development that fully and
10 permanently disconnect gas service to the property, with a covenant recorded against the
11 property in a form approved by the Town attorney.

12 +4 points may be awarded where an addition to a residential or commercial property is
13 proposed, where gas service is fully and permanently disconnected from any existing structures
14 on the property and gas is not provided to the addition, with a covenant recorded against the
15 property in a form approved by the Town attorney.

16 E. General Provisions:

17 1. A projected analysis shall be submitted at the time of development permit application if
18 positive points are requested as well as submittal of a confirmed analysis prior to the issuance
19 of a certificate of occupancy or certificate of completion. A HERS/ERI analysis shall be
20 performed by a certified HERS/ERI rater. An analysis of energy saved beyond the IECC or the
21 SSBC, whichever code is the most restrictive, shall be performed by the licensed Colorado
22 engineer of record for the project.

23 2. No development approved with required positive points under this policy shall be modified to
24 reduce the HERS/ERI index, percentage of improvement, or percentage of energy savings
25 above the IECC standards in connection with the issuance of such development permit.
26 ("Required positive points" means those points that were necessary for the project to be
27 approved with a passing point analysis.)

1 3. Prior to the issuance of a certificate of occupancy each development for which positive points
2 are awarded under this policy shall submit a letter of certification showing compliance with the
3 projected energy rating or percentage of energy savings in comparison to the IECC or the
4 SSBC, whichever code is the most restrictive. The required confirmed certification for a
5 residential development three (3) stories or less in height shall be submitted by a certified
6 HERS/ERI rater. The required confirmed certification for a residential development taller than
7 three (3) stories, and for all commercial development, shall be submitted by a licensed Colorado
8 engineer and accompanied by balance and commissioning reports.

9 **Section 4.** This ordinance shall be published and become effective as provided by
10 Section 5.9 of the Breckenridge Town Charter.

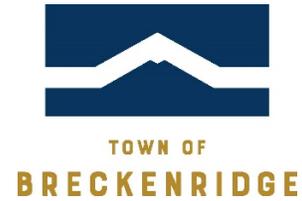
11
12 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
13 PUBLISHED IN FULL this ____ day of _____, 2023. A Public Hearing shall be held at the
14 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
15 _____, 2023, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the
16 Town.

17
18 TOWN OF BRECKENRIDGE, a Colorado
19 municipal corporation
20

21
22
23 By: _____
24 Eric S. Mamula, Mayor
25

26 ATTEST:

27
28
29
30 _____
31 Helen Cospolich, CMC,
32 Town Clerk
33



Memo

To: Breckenridge Town Council Members
From: Kirsten Crawford, Town Attorney
Date: 6/6/2023
Subject: Resolution Adopting Legislative Advocacy Policy

Summary

Staff seeks Council's approval on a policy to guide Town representatives, including elected/appointed officials and employees on advocacy strategy with state and federal officials. The Town did not have an existing legislative advocacy policy in place and staff recommends that the Town Council adopt by resolution the proposed new policy. If Council approves this policy, staff will work to ensure that the policy is distributed and explained to covered Town representatives.

Existing code and Discussion About Amendments:

In order to be effective in furthering the best interests of the community, the Town must have a coordinated and cohesive approach to working with lobbyists, legislators and government agencies at all levels of government. When Town elected/appointed officials or individual employees engage with state or federal officials, lobbyists, special interest groups or undertake advocacy activities directly and without coordination, there is a risk of inconsistent positions that will dilute the effectiveness of the Town's advocacy efforts. Advocacy means activities and services carried out for the purpose of advancing the Town's position on proposed policies or legislation through contacts with federal or state legislative or executive branch officials, staff or agency representatives. The final decision as to whether and how to advocate on the Town's behalf lies solely with the Town Council and its appointed Legislative Policy Review Committee, described below. This policy governs both direct contact with state and federal officials but also with engaging the services of lobbyists and advocacy firms, including consultants and contractors whose activities on behalf of the Town may overlap in these areas.

RESOLUTION NO. ____

Series 2023

A RESOLUTION ADOPTING THE TOWN OF BRECKENRIDGE POLICY FOR ADVOCACY ON
STATE AND FEDERAL POLICY AND LEGISLATION

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
BRECKENRIDGE, COLORADO:

Section 1. That the Town Council hereby adopts the Town Policy for Advocacy on
state and/or federal policy and legislation, a copy of which is attached hereto as **Exhibit A**.

Section 2. All resolutions, or parts thereof, inconsistent herewith are hereby repealed to
the extent only of such inconsistency. This repealer shall not be construed to revive any such
resolution, or part thereof, heretofore repealed.

Section 3. This resolution is effective upon adoption.

RESOLUTION APPROVED AND ADOPTED this ____ day of ____, 2023.

TOWN OF BRECKENRIDGE

By: _____

Eric S. Mamula, Mayor

ATTEST:

Helen Cospolich, CMC,

Town Clerk

APPROVED IN FORM

Town Attorney Date



Town Of Breckenridge Policy Pertaining to Advocacy On State and/or Federal Legislation

Policy Statement

In order to further the best interests of the community, the Town must have a coordinated and cohesive approach to working with lobbyists, legislators and government agencies at all levels of government. When Town elected/appointed officials or individual employees engage with state or federal officials, lobbyists, special interest groups or undertake advocacy activities directly and without coordination, there is a risk of inconsistent positions that will dilute the effectiveness of the Town's advocacy efforts.

Advocacy means activities and services carried out for the purpose of advancing the Town's position on proposed policies or legislation through contacts with federal or state legislative or executive branch officials, staff or agency representatives.

The final decision as to whether and how to advocate on the Town's behalf lies solely with the Town Council and its appointed Legislative Policy Review Committee, described below. This policy governs both direct contact with state and federal officials but also with engaging the services of lobbyists and advocacy firms, including consultants and contractors whose activities on behalf of the Town may overlap in these areas.

Applicability

The Town's legislative policy governs all Town officials, including elected and appointed officials, staff and boards and commissions (hereinafter "Town representatives"). The policy applies to both state and federal policies. Because state legislation and policies more frequently impact the Town, references hereinafter are to state, but are equally applicable to federal policies.

Legislative Policy Review Committee

The Legislative Policy Review Committee ("LPRC") will be comprised of a member of Town Council approved by the Mayor, the Town Attorney, and a member of the Town

administration. The purpose of the LPRC is to gather input from internal and external stakeholders and make recommendations on policies in a rapidly moving environment.

The LPRC will meet each week during the Colorado General Assembly's Regular Session. The LPRC will make recommendations to Town Council as to whether there is cause to take a position on Bills and present those recommendations to Town Council at its regular business meeting. The LPRC is authorized to make decisions about positions on Bills without seeking input from Council in circumstances where a Bill is being heard between Council meetings. The LPRC will make recommendations and decisions as the case may be as to whether there should be resources and time spent on taking action on a policy or bill. Such action may include drafting position letters, adopting Council proclamations, providing hearing testimony, or making contact with state legislators, etc.

Rules Governing Advocacy

1. *Bill Proposals or Drafts Prior to Introduction:* The Town will not offer an official position on draft legislation until it is introduced. While nothing precludes providing input and thoughts on draft bills, this policy discourages the Town from offering any official position on a policy, concept or even draft legislation before it is introduced.
2. *Bill Tracking Dossier:* Once a bill is introduced and assigned a bill number, if the Bill has an operational impact on the Town, the Bill will be added to the Town's tracking sheet. In order to preserve the strength of the Town's advocacy efforts, the Town will not expend resources on Bills that do not impact the Town operationally, unless there are other circumstances warranting otherwise as determined by Town Council. By way of example, the Governor has signed into law SB23-190 which makes it a deceptive trade practice for a health care provider to advertise or perform a practice known as abortion reversal. While this may be a law that the Town may support, it has no operational impact on the Town and, thus, under this policy, the Town would not advocate or take a position otherwise on this law.
3. *Stakeholder Input:* The Town has numerous constituents that are interested in state and federal policies both internal within the governmental organization and external groups and Town partners. By way of example:
 - *Internal stakeholders* may include Town Council, Town Administration, Town Boards and Commissions, Municipal Court, and internal Town agencies. It is common that different Town agencies will have different perspectives on the pros and cons of a proposal.
 - *Special Circumstances with Board and Commissions.* Appointed members of a Town board or commission may be asked by Council or may desire to weigh in on a particular policy for other reasons. Appointed boards may not engage in advocacy without authorization from Town Council or the LPRC. Unless a

request is made by Town Council, a board or commission must contact the LPRC before adding a discussion of state policies to a public agenda. LPRC will work with the board and Town Council to determine the appropriate next steps.

- *External stakeholders* may include special interest groups we communicate with regularly about state and federal policies and may include officials of Summit County, municipalities within Summit County, CAST, CUA, Municipal Clerk's Association, Colorado Association of Chiefs of Police, IACP, etc.

The Town may request that stakeholders fill out a position request form (copy of Request Form attached) to better inform the Town's position. When receiving requests from external stakeholders, the Town will initially determine whether the Bill has an operational impact to the Town. Any feedback that Town representatives receive from internal and/or external stakeholders on state bills that have an operational impact to the Town will be forward to the Town Attorney to include in the Tracking Dossier (sample Dossier attached).

4. *Authorized Advocacy Representatives:*

The Colorado Municipal League: The Town along with 269 other cities and towns is a member of the Colorado Municipal League, a nonprofit, nonpartisan organization which provides lobbying services to us. Major policies of CML are established by the membership at the annual business meeting and by the CML Executive Board and various committees. The Town Attorney currently serves as the Town's representative on the CML policy committee and is the point of contact during the state legislative session. The Town will look first to CML for lobbying on our behalf as they will identify any bills that may undermine the Town's home rule authority or "local control." Historically, state legislators seek input from CML early and often when proposing policies that may impact local authority.

Contract Lobbyists and Use of Town Resources for Lobbying and Advocacy. The Town may contract for lobbying services as determined needed by Town Council in consultation with LPRC.

5. *Communication Loop*

Most commonly, CML will be the lead entity advocating on Bills that impact the Town. When Town Council or the LPRC determine there is a need to augment those efforts, the Town will determine the appropriate strategy. Examples of when and how this might occur are as follows:

- CML may contact the Town if there is a Bill unique to certain municipalities and request the Town assistance which can be provided in a number of forms such as:

- Opposition Letters
 - Calls and Contacts to State Representatives and Senators
 - Staff Testimony
 - Attorney Assistance with Review, Analyzing, or Proposing Draft Bill Language.
- Town has a different position than CML. Because CML represents all municipalities in the state, it must take positions on Bills that consider a variety of local government interests from urban, rural, and mountain resort communities. There are times when CML may take a position on a Bill that is different from what the Town deems appropriate. In those circumstances, LPRC will make recommendations to Council to formulate the Town’s position and strategy.
 - SB23-213 example: In the 2023 session, we saw an unprecedented attempt by the Governor and his appointees to work directly with local elected officials in lieu of working through CML. Where CML is not in a lead advocacy position, like the situation presented in 213, there will be an extraordinary demand on Town resources to engage in independent advocacy.
6. *Town Representatives Speaking in their Individual Capacities.* Nothing prohibits a Town representative from communicating with state or federal officials about policies that impact them in their personal capacity. Nevertheless, it is important to keep in mind, especially with respect to an elected official, that the lines can easily blur as to whether an individual is speaking on behalf of the Town or from their personal views. Therefore, whenever a Town representative is involved in policymaking outside the scope of their employment and in their personal capacity, it is critical to preface your position, testimony or communication by explicitly stating that you are “*representing your individual interests, not authorized to speak on behalf of the Town or Town Council, and state any official position of the Town to the extent the Town has taken an official position.*”



Memo

To: Town Council
From: Rick G. Holman, Town Manager
Date: 06/06/2023
Subject: Resolution to Approve IGA for Summit County Child Care Tuition Assistance

Over the past year, partner agencies in Summit County including all of the Towns and County have been working to create a single childcare tuition assistance program that services the entire county. That process has been completed and will be rolled out this fall. Attached is a resolution to allow the Mayor to sign an Intergovernmental Agreement (IGA) that creates the countywide tuition assistance program to be known as “Summit First Steps”.

The cost for the first year of Summit First Steps is estimated at \$1,226,000, and will be divided amongst the Towns/County as follows:

| | |
|----------------|----------------------|
| Blue River: | 2% |
| Breckenridge: | 36% |
| Dillon: | 10% |
| Frisco: | 20% |
| Silverthorne: | 22% |
| Summit County: | 10% (Administration) |

In addition to this cost, Summit County Government will pay the cost of the Summit Pre-Kindergarten cost which is not covered by the IGA. The percentage for the sharing of the costs were determined for the first year by looking at some historical data for how costs are calculated for the shared 911 communications center. The IGA creates a Childcare Tuition Board made up of Town/County Managers (or designees). This board can revise the budget and percentages for future years if they feel it is not equitable.

Staff will be available at the work session if you have any questions.

1 RESOLUTION NO. ____

2
3 Series 2023

4
5 **A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT**
6 **FOR SUMMIT COUNTY CHILD CARE TUITION ASSISTANCE AMONG**
7 **SUMMIT COUNTY, COLORADO, AND**
8 **THE TOWNS OF BLUE RIVER, BRECKENRIDGE, DILLON, FRISCO, AND**
9 **SILVERTHORNE, COLORADO, AND EARLY CHILDHOOD OPTIONS.**

10
11 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
12 BRECKENRIDGE, COLORADO:

13
14 **Section 1.** The Intergovernmental Agreement among Summit County, Colorado, and the
15 Towns of Blue River, Breckenridge, Dillon, Frisco, And Silverthorne, Colorado, and Early
16 Childhood Options is approved and the Mayor is hereby authorized, empowered, and directed
17 to execute such contract on behalf of the Town of Breckenridge.

18 **Section 2.** Minor changes to or amendments of the approved agreement may be made
19 by the Town Attorney in consultation with the Town Manager if the proposed changes or
20 amendments do not substantially affect the consideration to be received or paid by the Town
21 pursuant to the approved agreement, or the essential elements of the approved agreement.

22 **Section 3.** All resolutions, or parts thereof, inconsistent herewith are hereby repealed to
23 the extent only of such inconsistency. This repealer shall not be construed to revive any such
24 resolution, or part thereof, heretofore repealed.

25 **Section 4.** This resolution is effective upon adoption.

26
27 RESOLUTION APPROVED AND ADOPTED this ____ day of ____, 2023.

28 TOWN OF BRECKENRIDGE

29
30
31
32
33 By: _____
34 Eric S. Mamula, Mayor

35
36 ATTEST:

37
38
39
40 _____
41 Helen Cospolich, CMC,
42 Town Clerk

1 APPROVED IN FORM

2

3

4

5

6 _____
Town Attorney Date

7

8

9

10

11

INTERGOVERNMENTAL AGREEMENT FOR SUMMIT COUNTY CHILD CARE
TUITION ASSISTANCE

Among

SUMMIT COUNTY, COLORADO, And

THE TOWNS OF BLUE RIVER, BRECKENRIDGE, DILLON, FRISCO, AND
SILVERTHORNE, COLORADO, And

EARLY CHILDHOOD OPTIONS

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is made and entered into this ____ of June 2023, among SUMMIT COUNTY, COLORADO (the "County"), a body corporate and politic and political subdivision of the State of Colorado (the "State"), and THE TOWNS OF BLUE RIVER, BRECKENRIDGE, DILLON, FRISCO, AND SILVERTHORNE, COLORADO (the "Towns" or individually as a "Town"), home rule or statutory municipalities and political subdivisions of the State, and EARLY CHILDHOOD OPTIONS ("ECO") a Colorado Non-Profit Corporation. The County the Towns and ECO are referred to collectively herein as "the Parties" or individually as "a Party."

WHEREAS, pursuant to title 29, article 1, part 2, Colorado Revised Statutes, as amended (the "Intergovernmental Relations Statute"), and Article XIV, Section 18 of the State Constitution, governments may contract with one another to provide any function, service or facility lawfully authorized to each of the contracting units and any such contract may provide for the joint exercise of the function, service or facility; and

WHEREAS, according to an April 2022 Summit County Childcare & After School Care Needs Assessment ("2022 Needs Assessment"), Summit County is home to 4,367 total children, and 1,485 children are under age 6, and 2,882 are between 6 and 12; and

WHEREAS, seventy three percent of children in Summit County have all parents in the labor force and are therefore likely to need some type of childcare; and

WHEREAS, the Parties to this Agreement have all determined that public support of childcare is an important investment in the community and that quality early childcare benefits families, children, employers, and the community at large; and

WHEREAS, among parents not using regular childcare, one of the most common reasons cited in the 2022 Needs Assessment survey was "can't afford it"; and

WHEREAS, the Parties are committed to assisting to provide access to affordable, quality childcare for local working-families; and

WHEREAS, the 2022 Needs Assessment specifically recommended that the County and Towns explore options for extending tuition assistance countywide for all age groups; and

WHEREAS, a Countywide Tuition Assistance Workgroup ("Workgroup"), comprised of representatives from the County, Summit Municipalities, private industry, and several non-profit sector representatives was established in 2021 to study and discuss the concept of a countywide assistance tuition program; and

WHEREAS, the Workgroup made recommendations to, and received support from,

Summit County, Silverthorne, Breckenridge, Frisco, Dillon, and Blue River, regarding a proposed framework for a countywide tuition assistance program; and

WHEREAS, this IGA for countywide Child Care Tuition Assistance will establish the general guidelines of the program and define the roles and responsibilities of the IGA’s participants; and

WHEREAS, the tuition assistance program will provide a ‘needs based’ approach that can potentially provide tuition assistance when a family’s childcare expenditures exceed 10-20% of their income. The amount of potential assistance is determined based on a variety of factors, including but not limited to: gross income, child care cost, parents’ work schedule, the number of children in care, etc. The assistance is paid directly to the participating Child Care Center, or licensed in-home childcare location, on behalf of approved families; and

WHEREAS, the Summit County Pre-K Program (“SPK”) currently funds tuition assistance for all 3- and 4-year-olds in Summit County and is funded through Strong Future, a voter-approved ballot initiative; and

WHEREAS, this Agreement establishes the Summit First Steps Program (“First Steps”) to fund tuition assistance for children ages 6 weeks to 3 years who do not qualify for SPK; and

WHEREAS, Early Childhood Options (“ECO”) is a Colorado non-profit corporation with a mission to improve the quality, affordability and availability of early childhood education in Summit County and ECO has been identified by the Parties as the appropriate local entity to administer this program, and ECO has hired an Enrollment and Eligibility Specialist specifically for this purpose.

NOW, THEREFORE, the Parties agree as follows:

Section 1. Childcare Tuition Board and Plan.

- a. Tuition Board:
 - i. To promote the purposes of this Agreement and cooperation among the parties, the Parties agree to form a Childcare Tuition Board (The “Board”). The Board shall consist of the Town/County managers of each Party or their designees. The Board will: (i) develop the Childcare Tuition Assistance Plan (the “Plan”) described below; and (ii) collaborate on the implementation of the Plan. The Plan shall be evaluated at least annually by the Board and reports regarding the Plan will be reported to each Party’s governing board.
 - ii. The Plan adopted by the Board shall include a statement of goals that are to be accomplished through funding provided by each of the Parties.
 - iii. The Plan adopted by the Board shall include specifics regarding the percentage of funding that is to be provided by each of the Parties. The necessary funding amount will be updated annually based on need.

- iv. The Board shall make an annual budgetary recommendation to the governing bodies of the Parties.
 - v. Meetings of the Board shall occur at least annually during each calendar year as established by the Board.
- b. The Plan:
- i. The tuition assistance program will provide a ‘needs based’ approach that can potentially provide tuition assistance when a family’s childcare expenditures exceed 10-20% of their income. The amount of potential assistance is determined based on a variety of factors, including but not limited to: gross income, child care cost, parents’ work schedule, the number of children in care, etc. The tuition assistance is paid directly to the participating Child Care Center, or licensed in-home childcare location, on behalf of approved families. The Plan will include tuition assistance for Summit First Steps (“First Steps”) for children ages 6 weeks to three years.
 - ii. A draft Plan, for review by the Parties and the Board, upon the Board’s establishment, is attached as Exhibit A. The draft Plan includes the following elements: Tuition Credit Standards/Eligibility, Qualified Childcare Providers, and Budget/Program Expenditures.

Section 2. Funding

a. The Summit First Steps program shall be funded from contributions from each of the Parties, from revenue sources of their choosing, including but not limited to, Nicotine tax revenues.

b. The Parties agree to the following percentages for the funding of the Summit First Steps program in year one:

| | |
|----------------|----------------------|
| Blue River: | 2% |
| Breckenridge: | 36% |
| Dillon: | 10% |
| Frisco: | 20% |
| Silverthorne: | 22% |
| Summit County: | 10% (Administration) |

c. An estimate of the funding requirements for the first year of First Steps and the associated costs for the parties, based upon the funding percentages, is as follows:

Estimated 2023/2024 Funding Need: \$1,226,000

Estimated Funding Contributions for each Party:

Blue River: \$24,520

Breckenridge: \$441,360

Dillon: \$122,600

Frisco: \$245,200

Silverthorne: \$269,720

Summit County: \$122,600

Future budgets, agreed to by all Parties, will be incorporated into this Agreement.

Section 3. ECO’S Responsibilities.

For the Term of this Agreement, in addition to any and all obligations required by law or stated elsewhere in this Agreement or any attachments hereto, ECO shall comply with the following requirements:

a. ECO, through the work of their Program Director and Enrollment and Eligibility Specialist, shall administer the Summit First Steps program on behalf of the parties.

b. ECO shall present to the Board a proposed budget for the Administration of the Tuition Assistance Program pursuant to this Agreement by August 30th of every year. The budget shall include a comparison of actual expenses to budget and adequate notice of any projected budget overruns that need to be addressed.

c. No less than once annually ECO shall report to the Parties and the public the following information:

- i. The number of children and families receiving tuition credits in Summit County.
- ii. Complete financial statements for First Steps, including full reports on expenditures for the prior fiscal year and anticipated budgets and work plans for the ensuing fiscal year.
- iii. An assessment of the performance of First Steps, including but not limited to program design and implementation, fiscal accountability, and responsiveness to preschool providers and the public, parents and children served by First Steps.

d. Tuition assistance funded pursuant to First Steps shall comply with the following standards and requirements:

- i. Eligible children must be at least 6 weeks of age and three years. If the child turns three years of age on or before October 1 of the program year, they are no longer age eligible for Frist Steps.
 - ii. Eligible children must be enrolled or eligible for enrollment in a participating, licensed childcare center, family childcare home or preschool program in Summit County.
 - iii. At least one parent or legal guardian must work 30+ hours for a Summit County business.
 - iv. Tuition credits shall be administered on a sliding scale with the amount of the credit being inversely related to the family income of the recipient, and with the sliding scale to be more specifically determined by the Parties.
 - v. Tuition credits shall be administered on a sling scale, with the amount of the credit being related to the rated quality of the preschool provider with whom the credit is used, and with the sliding scale to be more specifically determined by the Parties.
 - vi. Other specific criteria and procedures for the disbursement of tuition credits shall be determined by the Parties.
- e. In order to be qualified for the use of tuition assistance and for receipt of technical assistance or direct grants, a childcare provider shall meet the following minimum requirements:
- i. The childcare provider shall be a duly licensed childcare center, family childcare home or preschool program under the Colorado Child Care Licensing Act, §§ 26-6-101, et seq., C.R.S., as amended.
 - ii. The childcare provider shall agree to participate in the Colorado Shines Quality Rating System and maintain a minimum of a Level 2 Colorado Shines Quality Rating.
 - iii. The preschool shall meet such other specific criteria and standards as shall be determined by the Parties.
- f. ECO in administering the First Steps Program will ensure any childcare provider participating in the First Steps, shall not use tuition assistance derived from First Steps funds to engage in inherently religious activities, such as worship, religion education or instruction or proselytization. If any childcare provider participating in First Steps engages in such inherently religious activities, the inherently religious activities must be offered separately, in time and location, from the programs, activities, or services supported by First Steps, unless offering such inherently religious activities in separate place would not be practicable due to the physical limitations of the facility in which First Steps activities are held. Nothing in this Agreement shall be construed to affect a childcare provider's right to engage in privately funded, inherently religious activities or affect the independence of childcare providers, including any rights protected by the Colorado and U.S. Constitutions and applicable law.

Section 4. Payment

- a. ECO shall submit invoices, at least quarterly to the Parties for budgeted First Steps expenses. All documentation required hereunder and such additional documentation as may be

reasonably required by the Parties to document ECO invoices must be accompanied by billing invoices to support the expenditure of funds.

b. Payments will be issued by a Party within thirty (30) days of receipt of the invoice, or as soon as possible in accordance with a Party's normal financial administration procedures for paying invoices, whichever is longer. An authorized obligation hereunder is a cost supported by the applicable documentation that is approved by a party in accordance with the Party's approved First Step budget, as amended.

Section 5. Status of ECO. The status of ECO shall be that of an independent, tax-exempt, non-profit corporation. It is not intended, nor shall it be construed, that ECO or its personnel are employees or officers of any Party for any purpose whatsoever. ECO is a corporation and as such is responsible for the operational management, errors and omissions of its employees.

Section 6. Examination of Records. ECO agrees that any duly authorized representative of a Party, shall have access to and the right to examine any directly pertinent books, bank statements, records, returns, cost accounting records, files, and any other records or documents (whether prepared or maintained in hardcopy or electronic format) ("ECO's Records") prepared or maintained by ECO involving matters or transactions in any way, directly or indirectly, related to this Agreement, except those matters required to be kept confidential by law. Further, the Parties shall have the right at any time, and from time to time, to audit ECO's Records and ECO, upon request, shall make all such matters available for such examination. If ECO's Records exist in electronic form, ECO shall maintain a means of transferring said records to hardcopy form. Unless a Party has reason to believe there are special circumstances requiring a different schedule or procedure, and the Party shall have given written notice to ECO of such special circumstances, (i) the Party shall not make such monitoring or inspection more often than annually, and (ii) such monitoring or inspection shall be conducted at a mutually agreeable time and so as to prevent unnecessary interference with the work of ECO. Attendance at public meetings shall not constitute monitoring or inspection for purposes of this section.

Section 7. Performance Monitoring/Inspection. ECO shall permit the Parties or authorized designees, to monitor all activities conducted by ECO pursuant to the terms of this Agreement and inspect any and all records, whether in hardcopy or electronic format, relating to any matter covered by this Agreement, except those matters required to be kept confidential by law. Such monitoring may consist of reviewing methods, procedures and practices, examining internal evaluation procedures, examining program data, on-site observation, on-site verification, attending all meetings, hearings, or proceedings held by ECO, its board of directors or advisors, orbits employees or any other reasonable procedures relating to the performance of services under this Agreement. All such monitoring and inspection shall be performed in a manner that will not unduly interfere with the services to be provided under this Agreement. Unless the Party has reason to believe there are special circumstances requiring a different schedule or procedure, and the Party shall have given written notice to ECO of such special circumstances, (i) the Party shall not make such monitoring or inspection more often than annually, and (ii) such monitoring or inspection shall be conducted at a mutually agreeable time and so as to prevent unnecessary interference with the work of ECO. Attendance at public meetings shall not constitute monitoring or inspection for purposes of this section.

Section 8. Amendment of Agreement; Additional Parties.

a. Except as otherwise provided in this Section, this Agreement may be modified or amended only by a duly executed written agreement with the express approval of the governing bodies of all Parties.

b. The Parties may agree to amend this Agreement pursuant to subsection (a) to add one or more additional incorporated Town Parties upon passage of an ordinance or resolution of the additional Party's governing body approving of this Agreement.

Section 9. Term and Termination of Agreement.

a. Effective Date. The effective date of this Agreement is June 1, 2023 and shall continue until terminated by mutual agreement of the parties.

b. Termination. Any party may withdraw from this Agreement upon written notice provided to the other Parties at least sixty (60) days prior to the end of the then-current calendar year.

c. Non-Appropriation. Nothing in this Agreement is intended or shall be deemed or construed as creating any multiple-fiscal year direct or indirect debt or financial obligation on the part of the Town within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision. All financial obligations of the Parties under this Agreement are subject to annual budgeting and appropriation by their respective governing boards, in their discretion. Notwithstanding anything in this Agreement to the contrary, in the event of non-appropriation, this Agreement shall terminate as to the non-appropriating party or parties effective December 31 of the then-current fiscal year.

Section 10. Execution and Performance of Agreement in Accordance with Law. Each Party hereby represents to each other Party that it has adopted and executed this Agreement in accordance with applicable law. Each Party shall perform their respective obligations and expend any revenues derived hereunder in accordance with all applicable laws, rules and regulations, including but not limited to the Act, this Agreement, and a voter-approved ballot measure.

Section 11. Indemnification. All actions or omissions by any Party, including their respective representatives, employees, officers, agents, contractors, designees, volunteers, or officials, shall be the sole responsibility of the respective Party. Accordingly, each Party shall fully indemnify, to the extent permissible under Colorado law, all other Parties for any damages, claims, costs, expenses, cause of action or liability of any manner, including without limit reasonable attorney's fees, arising out of or relating to the acts or omissions of such Party, its representatives, employees, officers, agents, contractors, designees, volunteers, or officials. The Parties understand and agree that liability for claims for injuries to persons or property arising out of the actions or omissions of any Party is controlled and limited by the provisions of the Colorado Governmental Immunity Act ("Immunity Act") title 24, article 10, Colorado Revised Statutes, as now or hereafter amended and that the Parties do not intend to waive by any provision of this Agreement the liability limitations or any other right, immunity or protection afforded by the

Immunity Act or as may otherwise be afforded by law. The indemnity obligations of this Section shall survive the termination of this Agreement.

Section 12. Insurance.

a. General Conditions: ECO agrees to secure, prior to the disbursement of funding hereunder, the following insurance covering all operations, goods or services provided pursuant to this Agreement. ECO shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for any claims-made policy, three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as "A" VIII or better, or other insurer acceptable to the County. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or should any coverage be reduced before the expiration date thereof, the issuing company shall send written notice to the County by certified mail, return receipt requested. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." If any policy is in excess of a deductible or self-insured retention, the Parties must be notified by ECO. ECO shall be responsible for the payment of any deductible or self-insured retention. The Parties reserve the right to require the ECO to provide a bond, at no cost to the Parties, in the amount of the deductible or self-insured retention to guarantee payment of claims. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the ECO. The ECO shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

b. Third Party Providers: All sub-consultants, independent contractors, suppliers or other entities providing goods or services to or on behalf of ECO as contemplated by this Agreement shall be subject to all of the requirements herein and shall procure and maintain to the extent applicable the same coverages required of ECO. ECO shall include all such consultants, independent contractors, suppliers or other entities as insureds under its policies or shall ensure that such third parties maintain the required coverages. ECO agrees to provide proof of insurance for all such third parties upon request by the Parties. ECO shall also obtain from, and provide copies to the Parties of, proof of insurance of each preschool/childcare provider participating in the First Steps Program, evidencing the same insurance coverages required of ECO.

c. Workers' Compensation/Employer's Liability. ECO shall maintain the coverage as required by statute for each of its business locations and shall maintain Employer's Liability insurance with limits of \$1.2 million for each bodily injury occurrence claim, \$1.2 million for each bodily injury caused by disease claim, and \$1.2 million aggregate for all bodily injuries caused by disease claims. ECO expressly represents to the Parties, as a material condition and requirement of this Agreement, that none of ECO's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall affect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date ECO executes this Agreement.

d. General Liability: ECO shall maintain limits of \$1.2 million for each occurrence claim, \$1.2 million for each personal and advertising injury claim, \$2,000,000 products and completed operation for each occurrence, and \$2,000,000 policy aggregate.

Section 13. Dispute Resolution.

a. The Parties shall attempt to informally resolve all disputes and claims arising from or related to this Agreement, beginning first with discussions among affected Town(s) and County staff, and if not resolved, escalating to discussions between the applicable Town Manager(s) and County Manager, and ultimately to the Town Council(s) and Board of County Commissioners.

b. Any and all disputes and claims arising from or related to this Agreement that are not resolved pursuant to Section (a), above shall thereafter be submitted to mediation. The affected Parties shall share equally the mediator's fees and costs associated with the mediation, and each Party shall pay its own fees, costs, and expenses related to the mediation. If the dispute is not resolved by mediation, any affected Party may commence a Court proceeding, with jurisdiction and venue residing exclusively in the Summit County District Court. Each Party waives its right to have such dispute decided by jury trial. The prevailing Party(s) shall be awarded its reasonable attorneys' fees, costs, and expenses, including any attorneys' fees, costs, and expenses incurred in collecting or executing upon any judgment, order, or award.

c. In the event that the County or a Town defaults in the performance of any of the duties and responsibilities under this Agreement, the non-defaulting Party shall be limited to the remedies of specific performance and mandamus. Prior to exercising such remedies, the non-defaulting Party shall give written notice to the other party of the nature of the claimed default and declare that such default must be cured within thirty (30) days from the date notice is given.

Section 14. Parties in Interest. Nothing expressed or implied herein is intended or shall be construed to confer upon any person other than the Parties any right, remedy or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the Parties.

Section 15. No Personal Liability. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of an elected or appointed official, officer, agent, servant or employee of any Party in his or her individual capacity.

Section 16. Notices. Except as otherwise provided in this Agreement, all notices or other communications by any Party shall be in writing, shall be given in a reasonable time and shall be deemed given upon receipt. Notice to the Parties shall be given to the address listed on Exhibit B, attached and incorporated herein, and may also be delivered in electronic form by electronic mail to the addresses listed on Exhibit B.

Section 17. Severability. If any clause, provision, subsection, or Section of this Agreement shall be held to be invalid, illegal or unenforceable for any reason, the Agreement shall be reformed to the extent necessary to reflect the intent and purpose of the original agreement

or the Parties may terminate this Agreement.

Section 18. Interpretation. Because this Agreement is the result of mutual negotiation and drafting, in the event this Agreement is deemed to be ambiguous or vague, the Parties agree that the rule of construction that "ambiguities shall be construed against the drafter" shall not apply. In the event of any conflict between the Act, the Intergovernmental Relations Statute or any other law with respect to the exercise of any such power, the provision that permits the broadest exercise of the power consistent with the limitations set forth in this Agreement shall control. The laws of the State shall govern the construction and enforcement of this Agreement.

Section 19. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement. Electronic or scanned signatures shall be valid and acceptable for all purposes.

Section 20. Contract Documents; Order of Precedence. This Agreement consists of Paragraphs 1 through 20, which precede the signature page, and the following attachments which are incorporated herein and made a part by reference:

- Exhibit A Guidelines - Summit First Steps 2023-2024 Program Year ("The Rules")
- Exhibit B Contacts for Notices

In the event of an irreconcilable conflict between a provision of Paragraphs 1 through 20, and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

- Paragraphs 1 through 20 hereof
- Exhibit A Guidelines - Summit First Steps 2023-2024 Program Year ("The Rules")
- Exhibit B Contacts for Notices

IN WITNESS WHEREOF, this Agreement has been executed by the Parties effective as of the date set forth above.

**BOARD OF COUNTY COMMISSIONERS
OF SUMMIT COUNTY**

By: _____
Joshua Blanchard, Chair

ATTEST:

By: _____
Clerk and Recorder

TOWN OF BLUE RIVER

By: _____
Toby Babich, Mayor

ATTEST:

By: _____
Town Clerk

TOWN OF BRECKENRIDGE

By: _____
Eric Mamula, Mayor

ATTEST:

By: _____
Town Clerk

TOWN OF DILLON

By: _____
Carolyn Skowyra, Mayor

ATTEST:

By: _____
Town Clerk

TOWN OF FRISCO

By: _____
Hunter Mortensen, Mayor

ATTEST:

By: _____
Town Clerk

TOWN OF SILVERTHORNE

By: _____
Ann-Marie Sandquist, Mayor

ATTEST:

By: _____
Town Clerk

EARLY CHILDHOOD OPTIONS

By: _____
Kelly Renoux, Vice-Chair

ATTEST:

By: _____
Town Clerk

Exhibit A

Guidelines - Summit First Steps

(“The Rules”)

OVERVIEW

Summit First Steps offers financial tuition assistance to families living, working and utilizing childcare in Summit County. The purpose of First Steps is to assist families with the cost of childcare so that parents can remain in the local workforce while their children attend childcare. First Steps is governed by a Child Care Tuition Assistance Board and administered by a local non-profit, Early Childhood Options (ECO).

Financial assistance is available for children between the ages of 6 weeks and 3 years attending a participating, licensed childcare center or family childcare home. The amount of assistance is determined based on gross income, childcare cost, parents' work schedule, the number of children in care, and other criteria as described below. Assistance is paid, in the form of tuition credits, directly to the participating childcare center on behalf of qualified families and is intended only for the Centers' use to cover the true cost of care.

The following policies have been established to ensure that the available funds are used in the fairest and most effective way possible. The Child Care Tuition Assistance Board reserves the right to amend the eligibility criteria or to request additional information at any time. Any fraud or misrepresentation made by applicants, participants, or recipients may result in immediate termination of funding, required repayment of funds, and additional penalties. Program funding is limited, and all tuition assistance is subject to the availability of funds. It is the responsibility of the Centers and families to inform ECO if they feel that the policies and procedures herein are being violated.

ELIGIBILITY CRITERIA FOR FIRST STEPS TUITION ASSISTANCE

- Age Eligibility: For the 2023/2024 school year, participating child's birthday must be on or after October 2, 2020
- Child must be enrolled in a qualified childcare program. A qualified childcare program can be a childcare center or family childcare home. Program qualifications are:
 - Childcare program must have a childcare license in good standing from the Colorado Department of Human Services, and
 - Childcare program must have a Colorado Shines Quality rating of 2 or above ([Current SCTA Provider List](#)).
- Household income must be at or below 180% of the Area Median Income ([AMI](#)).
- At least one member of the household is required to work 30+ hours per week, for a business located in and serving Summit County.
- To access assistance for a full time childcare schedule (4 or 5 days/ week), both parents must work 30 + hours / week and have a combined household income under 180% [AMI](#).
- Self-employed applicants must maintain an average income that exceeds their business expenses and must show that his/her taxable gross income divided by the number of hours

of care used for the employment activity equals at least the current Federal Minimum Wage.

DETERMINATION OF TUITION CREDIT AMOUNT

The amount of tuition credit is based on a sliding scale and will be determined using the following factors: gross household income, childcare center tuition rates, number of children in care, Colorado Shines quality rating of program, parent/legal guardian work schedule, enrollment in other programs such as CCCAP or Early Head Start.

APPLICATION PROCESS

All families, including currently participating families, are required to apply during the annual enrollment/application period. With the exception of Qualified Permitted Changes described below, no applications will be considered until the next annual enrollment deadline.

Applicants will be required to complete the application at <https://eco1.smapply.org/>. For a detailed list of documents required to apply click [here](#).

APPLICATION TIMELINES

| | |
|-------------------------|---|
| Applications Available: | On or around May 1 of the program year |
| Applications Due: | On or around May 31 of the program year |
| Assistance Cycle: | September 1– August 31 |

The application will be available online through Early Childhood Options website at: <http://www.earlychildhoodoptions.org/>

COMPLETE applications will be processed in the order they are received. Late applications will not be accepted or considered.

ADDITIONAL GENERAL POLICIES

ASSET TESTING

ECO may require a comprehensive list of household assets and liabilities. A child may be ineligible or disqualified from the program if assets of the parent(s)/legal guardian exceed \$250,000. Some assets will be exempt, such as primary residence equity, retirement accounts, health savings and college savings accounts.

OUT OF COUNTY APPLICANTS

If a parent or legal guardian works in Summit County but the child does not reside in Summit County, at least one parent/legal guardian must be working a minimum average of 30+ hours per week annually in Summit County, for a Summit County business. If, during the program year, the family member's employment in Summit County upon which tuition credit was based is terminated for any reason, the child may remain in the program for up to eight (8) weeks without disruption to the tuition credits. If within eight weeks the family becomes compliant with the eligibility requirements, they may remain in the program for the duration of the program year. If after eight weeks the family is not in compliance with the eligibility requirements, tuition credits will be terminated immediately. It is the family's responsibility to report these changes within 30 days.

QUALIFIED PERMITTED CHANGES/OUT OF CYCLE APPLICATIONS

CURRENTLY ENROLLED FAMILIES: If a current tuition assistance recipient is experiencing an emergency including but not limited to birth, adoption, loss of job, or other situation that significantly impacts family income, they may be eligible for amended tuition credits. The parent(s)/legal guardian will need to contact the Enrollment and Eligibility Specialist at 970-406-3060 directly to discuss options.

NEW FAMILIES: If a family becomes eligible because of residency or new employment in Summit County, and/or they receive an enrollment offer from a qualified childcare provider, they may be eligible to apply for tuition credits outside of the application window. The parent(s)/legal guardian will need to contact the Enrollment and Eligibility Specialist at 970-406-3060 directly to discuss options.

COLORADO CHILD CARE ASSISTANCE PROGRAM (CCCAP)

In some instances, children may be eligible for both the [Colorado Child Care Assistance Program \(CCCAP\)](#) and First Steps tuition credits. In such instances, all the eligibility criteria mentioned above are applicable, as well as:

- Families must be in good standing with their local CCCAP office and must comply with all CCCAP rules and regulations.
- If during the award cycle a family becomes ineligible for CCCAP, they may submit a complete application with all the required documentation to be considered for an adjustment to their tuition credit.

An application will only be considered when the application is completed and submitted in full. Any approved credit may be prorated back to the date of the completed application.

Please note, the CCCAP Program is considered the payer of first resort. The First Steps tuition credit can be used to cover a portion or all of the difference between the CCCAP reimbursement and the actual rate of tuition. If parent(s)/legal guardian(s) apply for tuition credits and appear to be potentially eligible for CCCAP, they will be referred to the CCCAP office before the application can be further processed.

For more information about Summit County CCCAP, please call 970-668-9160.

ATTENDANCE

It is the expectation that children participating in Summit First Steps will regularly attend based on their approved enrollment days. Parent(s)/legal guardian(s) are required to notify the childcare program if the child is going to be absent and provide the reason for the absence when appropriate.

Consistent excused absences may result in a loss or deduction of your child's tuition credit. Childcare programs are required to notify ECO anytime a child's attendance falls below 75% of his/her regular schedule.

EVALUATION AND DATA TRACKING

ECO will be using a variety of strategies to evaluate the overall success of the program. Short and long-term program data may be gathered through early childhood assessments, interviews, surveys, observations, and small groups. Parent(s)/legal guardian will be asked to sign an information sharing release, within the guidelines of the stated confidentiality agreement.

PARENT RESPONSIBILITY

1. Parent/s or legal guardians are responsible for reporting to the Enrollment and Eligibility Specialist, in writing or by email, any changes in their child's preschool or childcare schedule, or any changes of program.

2. Every parent(s) or legal guardian applying for tuition credit will be required to sign a statement acknowledging that they do not have any outstanding debt to any licensed preschool program, childcare center, and/or family childcare provider or have made agreeable arrangements to pay their debt. If it is brought to ECO' attention by any means that a participating family has an outstanding debt, an investigation will take place. If the allegations are founded, the tuition credit will be placed on-hold for a probationary period of 30 calendar days.

During the 30 days, the family must pay the balance of their debt or make acceptable arrangements for payment. If these conditions have not been met after 30 days, there will be immediate termination of funding and additional penalties adopted by ECO may occur.

A family may re-apply at the next annual deadline if they have an age-eligible child and only after the balance is paid in full to the preschool program, childcare center or family childcare provider.

3. Loss of Employment must be reported immediately to the Enrollment and Eligibility Specialist at ECO.

4. If, during the program year, household income either increases by 10% or decreases by 10% the family must notify the Enrollment & Eligibility Specialist within 20 days of the date of such change to my income. The amount of household income includes wages, assets or other property obtained during such a school year.

5. Applicants must sign a complete "Participant Responsibility Agreement" as well as a Verification and Acknowledgement form to attest that all the information that has been provided as part of their application is true and complete.

6. It is the responsibility of the parent(s)/legal guardian to comply with the rules and regulations of the childcare provider and the Frist Steps program, including but not limited to those relating to absences. The parent must agree to notify the childcare program if the child is going to be absent, and the reason for the absence when appropriate.

CONFIDENTIALITY

Early Childhood Options (ECO) respects the importance of maintaining the confidentiality of personal or sensitive information disclosed in the First Steps program and takes reasonable measures to protect the unauthorized disclosure of such information.

ECO may disclose certain anonymous, aggregated data and provide it to early childhood programs, funding sources and governmental agencies either for market research and statistical purposes or to ensure compliance with the agreements between ECO and early childhood programs, funding sources, governmental agencies, and similar organizations.

Exhibit B
Contacts for Notices

Blue River

Town Manager's Office
0110 Whispering Pines Circle
PO Box 1784, Breckenridge, CO 80424

e-mail: info@townofblueriver.org

Breckenridge

Town Manager's Office
150 Ski Hill Road
PO Box 168
Breckenridge, CO 80424

e-mail: shannonh@townofbreckenridge.com

Dillon

Town Manager's Office
275 Lake Dillon Drive
PO BOX 8
Dillon, CO 80435

e-mail: info@townofdillon.com

Early Childhood Options

ECO Executive Director
PO BOX 3355
330 Fiedler Avenue
Suite 100
Dillon, CO 80435

e-mail: program@earlychildhoodoptions.org

Frisco

Town Manager's Office
PO Box 4100
1 East Main Street
Frisco, CO 80443

e-mail: TomF@townoffrisco.com

Silverthorne

Town Manager's Office
PO Box 1309
601 Center Circle
Silverthorne, CO 80498

e-mail: info@silverthorne.org

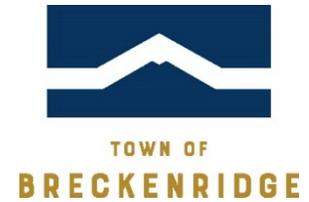
Summit County

County Manager's Office
P.O. Box 68
208 Lincoln Ave., 3rd Floor
Breckenridge, CO 80424

e-mail: Philip.Gonshak@summitcountyco.gov

Memo

To: Breckenridge Town Council Members
From: Shannon Smith, Town Engineer
Date: 6/7/2023
Subject: Resolution for CDOT Grant Contract



The Town of Breckenridge Engineering Division was awarded a \$675,000 matching grant from Colorado Department of Transportation (CDOT) Multimodal Transportation & Mitigation Options Fund (MMOF) for feasibility and design of underpasses and bridges for the Blue River Rec Path. The grant is a 50/50 reimbursement model and is a pass-through of Federal American Rescue Plan Act (ARPA) funds. The Town previously obligated the matching \$675,000 in the 2023 budget under the Capital Improvement Plan.

The attached resolution will authorize the Town to enter into an agreement with CDOT for the grant funding. Staff will be present to answer any questions.

1 RESOLUTION NO. ____

2
3 Series 2023

4
5 **A RESOLUTION APPROVING A GRANT AGREEMENT WITH THE COLORADO**
6 **DEPARTMENT OF TRANSPORTATION FOR BLUE RIVER RECREATION**
7 **PATH UNDERPASS AND BRIDGE DESIGN.**

8 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
9 BRECKENRIDGE, COLORADO:

10 WHEREAS, the Colorado Department of Transportation (“CDOT”) requires that the
11 Town enter into a Grant Contract, a copy of which is marked Exhibit “A”, attached hereto, and
12 incorporated herein by reference (“Grant Contract”); and

13 WHEREAS, the requirements of the Grant Contract include a Local Match in the amount
14 of 50% of the Cost of Work estimate; and

15 WHEREAS, the Town has appropriated the Local Match in the amount of \$675,000.00
16 in the approved budget adopted for 2023; and

17 WHEREAS, the Town Council has reviewed the proposed Grant Contract, and finds and
18 determines that it would be in the best interest of the Town and its residents for Grant Contract
19 to be approved.

20 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
21 BRECKENRIDGE, COLORADO, as follows:

22 **Section 1.** The grant contract between the Town and the Colorado Department of
23 Transportation (Exhibit “A” hereto) is approved, and the Town Manager is hereby
24 authorized, empowered, and directed to execute such contract on behalf of the Town of
25 Breckenridge.

26 **Section 2.** This resolution shall become effective upon its adoption.

27
28 RESOLUTION APPROVED AND ADOPTED this ____ day of ____, 2023.

29
30 TOWN OF BRECKENRIDGE

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By: _____
Eric S. Mamula, Mayor

ATTEST:

Helen Cospolich, CMC,
Town Clerk

APPROVED IN FORM

Town Attorney Date

STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT
Signature and Cover Page

| | | | |
|--|----------------------|------------------------------|---|
| State Agency Department of Transportation | | | Agreement Routing Number 23-HA3-XC-00103 |
| Local Agency TOWN OF BRECKENRIDGE | | | Agreement Effective Date The later of the effective date or April 26, 2023 |
| Agreement Description Blue River Rec Path – Underpass and Bridge Design | | | Agreement Expiration Date April 25, 2033 |
| Project # MTF M125- 002 (25372) | Region # 3 | Contract Writer BH | Agreement Maximum Amount \$1,350,000.00 |

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

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

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- EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS
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- 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 CERTIFICATION
- EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Effective Date

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

B. Initial Term and Extension

The Parties’ respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on April 25, 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/designsupport/bulletins_manuals/2006-local-agency-manual).
 - 2) For the construction Services, advertising the call for bids, following its approval by the State, and awarding the construction contract(s) to the lowest responsible bidder(s).
 - (a) All Local Agency's advertising and bid awards pursuant to this Agreement shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that Local Agency and its Contractor(s) incorporate Form 1273 (Exhibit I) in its entirety, verbatim, into any subcontract(s) for Services as terms and conditions thereof, as required by 23 C.F.R. 633.102(e).
 - (b) Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. Local Agency must accept or reject such bids within three (3) working days after they are publicly opened.
 - (c) If Local Agency accepts bids and makes awards that exceed the amount of available Agreement Funds, Local Agency shall provide the additional funds necessary to complete the Work or not award such bids.
 - (d) The requirements of **§6.A.iii.b.2** also apply to any advertising and bid awards made by the State.

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

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

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

v. Utilities

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

vi. Railroads

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

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

vii. Environmental Obligations

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

viii. Maintenance Obligations

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

ix. Monitoring Obligations

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

B. State's Commitments

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

7. PAYMENTS

A. Maximum Amount

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

B. Payment Procedures

i. Invoices and Payment

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

ii. Interest

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

iii. Payment Disputes

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

iv. Available Funds-Contingency-Termination

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

v. Erroneous Payments

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

vi. Federal Recovery

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

C. Local Agency Funds

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

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

D. Reimbursement of Local Agency Costs

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

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

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

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

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

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

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

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

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

F. Accounting

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

i. Local Agency Performing the Work

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

ii. Local Agency-Checks or Draws

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

iii. State-Administrative Services

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

iv. Local Agency-Invoices

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

v. Invoicing Within 60 Days

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

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

vi. Risk Assessment & Monitoring

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

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

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

G. Close Out

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

8. REPORTING - NOTIFICATION

A. Quarterly Reports

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

B. Litigation Reporting

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

C. Performance and Final Status

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

D. Violations Reporting

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

9. LOCAL AGENCY RECORDS

A. Maintenance

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

B. Inspection

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

C. Monitoring

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

D. Final Audit Report

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

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

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

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

B. Other Entity Access and Nondisclosure Agreements

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

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

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

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

E. Safeguarding Personally Identifying Information “PII”

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

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

12. INSURANCE

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

A. Local Agency Insurance

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

B. Subcontractor Requirements

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

i. Workers' Compensation

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

ii. General Liability

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

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

iii. Automobile Liability

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

iv. Protected Information

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

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| Colorado Department of Transportation (CDOT) |
| Mike Konn, Local Agency Program Manager |
| R3 |
| 222 S. 6th Street |
| Grand Junction, CO 81501 |
| 970-549-6608 |
| michael.konn@state.co.us |

For the Local Agency

| |
|---------------------------------|
| Town Of Breckenridge |
| Shannon Smith, Town Engineer |
| PO BOX 168 |
| Breckenridge, CO 80424 |
| 970-547-3193 |
| shannons@townofbreckenridge.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.

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

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

H. SOFTWARE PIRACY PROHIBITION.

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

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

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

22. FEDERAL REQUIREMENTS

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

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

EXHIBIT A
SCOPE OF WORK

Name of Project: - Town of Breckenridge – Blue River Rec Path – Underpass and Bridge Design
Project Number: MTF M125-002
SubAccount #: 25372

This project is the scoping and design of new underpasses and bridges for the Blue River Rec Path in Breckenridge.

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

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

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

EXHIBIT B

SAMPLE IGA OPTION LETTER

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

Vendor Name:

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

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

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

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

Option A

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

Option B

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

Option C

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

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

Option D

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

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

STATE OF COLORADO
Jared S. Polis
Department of Transportation

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

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

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

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

By: _____
Colorado Department of Transportation

Date: _____

EXHIBIT C- FUNDING PROVISIONS

Town of Breckenridge MTF M125-002 (25372)

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be \$1,350,000.00, which is to be funded as follows:

| | | | |
|---|---|----------------|------------------------|
| 1. FUNDING | | | |
| a. | Federal Funds ARPA US Treasury Expenditure Category EC6 (50% of ARPA) | | \$675,000.00 |
| b. | Local Agency Funds (50% of ARPA) | | \$675,000.00 |
| TOTAL FUNDS ALL SOURCES | | | \$ 1,350,000.00 |
| 2. OMB UNIFORM GUIDANCE | | | |
| a. | Federal Award Identification Number (FAIN): | | TBD |
| b. | Name of Federal Awarding Agency: | | USDT |
| c. | Local Agency Unique Entity Identifier | | EJL7BVKHCG87 |
| d. | Assistance Listing # Coronavirus State and Local Fiscal Recovery Funds | | ALN 21.027 |
| 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. | ARPA Funds Budgeted | | \$675,000.00 |
| b. | Less Estimated Federal Share of CDOT-Incurred Costs | | \$ 0.00 |
| TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY | | 50% | \$ 675,000.00 |
| TOTAL ESTIMATED FUNDING BY LOCAL AGENCY | | 50% | \$ 675,000.00 |
| TOTAL PROJECT ESTIMATED FUNDING | | 100.00% | \$ 1,350,000.00 |
| 4. FOR CDOT ENCUMBRANCE PURPOSES | | | |
| MTF M125-002 (25372) | | | |
| a. | Total Encumbrance Amount (Only ARPA funds are encumbered) | | \$ 675,000.00 |
| b. | Less ROW Acquisition 3111 and/or ROW Relocation 3109 | | \$ 0.00 |
| NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS | | | \$ 675,000.00 |

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

MTF M125-002 (25372)

| | | | |
|-------------|--|-------------|--------|
| 25372.10.30 | Performance Period Start**/End Date TBD-TBD | Design 3020 | \$0.00 |
| 25372.20.10 | Performance Period Start**/End Date TBD-TBD | Const. 3301 | \$0.00 |

* ARPA the Local Agency should not begin work until both of the following are in place: 1) the execution of the document encumbering funds for the respective phase and 2) Local Agency receipt of the official Notice to Proceed. Any work performed before these two (2) milestones are achieved will not be reimbursable.

B. Funding Ratios

The funding ratio for the federal funds for this Work is 50% federal funds to 50% Local Agency funds, and this ratio applies only to the \$1,350,000.00 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 \$1,350,000.00, 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 \$1,350,000.00, 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 \$675,000.00. For CDOT accounting purposes, the federal funds of \$675,000.00, will be encumbered, but the Local Agency funds of \$675,000.00 will NOT be encumbered. The total budget of this project is \$1,350,000.00, 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. ARPA Funds can only originate from and after May 18, 2021.**

D. Single Audit Act Amendment

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

i. Expenditure less than \$750,000

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

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

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

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

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

iv. Independent CPA

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

EXHIBIT D

LOCAL AGENCY RESOLUTION (IF APPLICABLE)

Exhibit E
Local Agency Contract Administration Checklist

| | | | |
|---|--------------------------------|--|--------------------------|
| COLORADO DEPARTMENT OF TRANSPORTATION | | | |
| LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST - STATE | | | |
| Project No. MTF M125-002 | STIP No. SR37015.021 | Project Code 25372 | Region R3 |
| Project Name Blue River Rec Path – Underpass and Bridge Design | | | Date 2/27/2023 |
| Project Description Project is scoping & design of new underpasses and bridges for the Blue River Rec Path in Breckenridge. | | | |
| Local Agency Town of Breckenridge | | Local Agency Project Manager Shannon Smith | |
| CDOT Resident Engineer Grant Anderson / 720-505-1793 | | CDOT Project Manager Mike Konn / 970-549-6608 (cell) | |
| <p>INSTRUCTIONS:</p> <p>This checklist shall be used to establish the contractual administrative responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency Agreement. Section numbers (NO.) correspond to the applicable chapters of the <i>CDOT Local Agency Desk Reference (Local Agency Manual)</i>. LAWR numbers correspond to the applicable flowchart in the Local Agency Web Resource.</p> <p>The checklist shall be prepared by placing an X under the responsible party, opposite each of the tasks. The X denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, # will denote that CDOT must concur or approve.</p> <p>Tasks that will be performed by Headquarters staff are indicated with an X in the CDOT column under Responsible Party. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.</p> <p>The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.</p> <p>Note: Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.</p> | | | |

| LA WR | NO. | DESCRIPTION OF TASK | RESPONSIBLE PARTY | |
|---|-----|---|-------------------|----------|
| | | | LA | CDOT |
| TIP / STIP AND LONG-RANGE PLANS | | | | |
| | 2.1 | Review Project to ensure it is consistent with 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 | x |
| | 5.2 | Determine Delivery Method | x | x |
| | 5.3 | Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3) | | x |
| 2 | 5.4 | Conduct Consultant Selection/Execute Consultant Agreement <ul style="list-style-type: none"> • Project Development • Construction Contract Administration (including Fabrication Inspection Services) | x | |
| 3,3A | 5.5 | Conduct Design Scoping Review Meeting | x | |
| 3,6 | 5.6 | Conduct Public Involvement | 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 | 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). | | N/A |
| | 6.2 | Determine Applicability of Davis-Bacon Act This project <input checked="" type="checkbox"/> is <input type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Grant Anderson 2/27/2023 _____ CDOT Resident Engineer Date | | N/A |
| | 6.3 | Set On-the-Job Training Goals (CDOT Region Civil Rights Office) "NA", if Not Applicable | | N/A |
| | 6.4 | Enforce Prompt Payment Requirements | X | |
| | 6.5 | Use Electronic Tracking and Submission Systems – B2GNow <input checked="" type="checkbox"/> LCPtracker <input type="checkbox"/> | X | |
| 3 | 6.6 | Prepare/submit Title VI Plan and Incorporate Title VI Assurances | X | |
| 6,7 | 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) | N/A | N/A |
| ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS | | | | |
| Federal Project (use 7.1 series in Chapter 7) <input type="checkbox"/> Non-Federal Project (Use 7.2 series in Chapter 7) <input checked="" type="checkbox"/> | | | | |
| 6,7 | 7.1 | Obtain Approval for Advertisement Period of Less Than Three Weeks; | X | |
| 7 | 7.2 | Advertise for Bids | X | |
| 7 | 7.3 | Concurrence to Advertise | X | X |
| 7 | 7.4 | Distribute "Advertisement Set" of Plans and Specifications | X | |
| 7 | 7.5 | Review Worksite & Plan Details w/ Prospective Bidders While Project Is Under Ad | X | |
| 7 | 7.6 | Open Bids | X | |
| 7 | 7.7 | Process Bids for Compliance | X | |
| | 7.8 | Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals. (Please write in "NA", if Not Applicable) | | N/A |
| | 7.9 | 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. | | N/A |
| | 7.10 | Submit required documentation for CDOT award concurrence | | X |
| | 7.11 | Concurrence from CDOT to Award | | X |
| | 7.12 | Approve Rejection of Low Bidder | | X |
| 7,8 | 7.13 | Award Contract (Federal & State funded projects) | X | |

| LA WR | NO. | DESCRIPTION OF TASK | RESPONSIBLE PARTY | |
|---|------|---|-------------------|----------|
| | | | LA | CDOT |
| MATERIALS | | | | |
| 9,9C | 9.1 | Discuss Materials at Pre-Construction Meeting <ul style="list-style-type: none"> Buy America documentation required prior to installation of steel | x | x |
| 9,9C | 9.2 | Complete CDOT Form 250 - Materials Documentation Record <ul style="list-style-type: none"> 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 |
| 9C | 9.3 | Perform Project Acceptance Samples and Tests | x | |
| 9C | 9.4 | Perform Laboratory Acceptance Tests | x | |
| 9C | 9.6 | Accept Manufactured Products <p>Inspection of structural components:</p> <ul style="list-style-type: none"> Fabrication of structural steel and pre-stressed concrete structural components Bridge modular expansion devices (0" to 6" or greater) Fabrication of bearing devices | x | |
| 9C | 9.6 | Approve Sources of Materials | x | |
| 9C | 9.7 | Independent Assurance Testing (IAT) <p>Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/></p> <ul style="list-style-type: none"> Generate IAT schedule Schedule and provide notification Conduct IAT | | x |
| 9C | 9.8 | Approve mix designs <ul style="list-style-type: none"> Concrete Hot mix asphalt | x | x |
| 9C | 9.9 | Check Final Materials Documentation | x | 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. | N/A | |
| 9 | 10.3 | Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280 | N/A | |
| 9 | 10.4 | Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements | N/A | |
| 9 | 10.5 | Conduct Interviews When Project Utilizes On-the-Job Trainees. <ul style="list-style-type: none"> Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements. Complete CDOT Form 838 – OJT Trainee / Apprentice Record. Complete CDOT Form 200 - OJT Training Questionnaire | N/A | |
| 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 | N/A | |
| | 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 - DBE Participation Report | | 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 ENTERPRISE

SECTION 1. Policy.

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

SECTION 2. DBE Obligation.

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

SECTION 3 DBE Program.

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

A copy of the DBE Program is available from and will be mailed to the Local Agency

upon request: Business Programs Office

Colorado Department of Transportation

2829 West Howard Place Denver,

Colorado 80204

Phone: (303) 757-9007

REQUIRED BY 49 CFR
PART 26

EXHIBIT H

LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

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

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

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

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

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

- a. Qualifications,

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

- a. Abilities of their personnel,
- b. Past performance,
- c. Willingness to meet the time and budget requirement,
- d. Location,
- e. Current and projected work load,
- f. Volume of previously awarded contracts, and
- g. Involvement of minority consultants.

8. Once a consultant is selected, the Local Agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.

9. A qualified Local Agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the Local Agency prepares a performance evaluation (a CDOT form is available) on the consultant.

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

EXHIBIT I

FEDERAL-AID CONTRACT PROVISIONS FOR CONSTRUCTION CONTRACTS

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

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

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

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

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

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

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

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the 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.

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

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

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

2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics,

including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records (29 CFR 5.5)

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

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

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

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

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

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

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

4. Apprentices and trainees (29 CFR 5.5)

a. Apprentices (programs of the USDOL).

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

Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

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

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

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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 watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 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. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum 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. 29 CFR 5.5.

* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) 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.

The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

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 200.326.

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 200.326.

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Instructions for Certification - Lower Tier Participants:

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

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

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

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

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is

submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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

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

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

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

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

(a) 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;

(b) 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

(c) 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)

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

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

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

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

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.
2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT J
ADDITIONAL FEDERAL REQUIREMENTS

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

Executive Order 11246

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

Copeland "Anti-Kickback" Act

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

Davis-Bacon Act

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

Contract Work Hours and Safety Standards Act

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

Clean Air Act

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

Energy Policy and Conservation Act

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

OMB Circulars

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

Hatch Act

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

Nondiscrimination

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

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

ADA

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

Uniform Relocation Assistance and Real Property Acquisition Policies Act

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

Drug-Free Workplace Act

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

Age Discrimination Act of 1975

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

23 C.F.R. Part 172

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

23 C.F.R Part 633

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

23 C.F.R. Part 635

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

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

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

Nondiscrimination Provisions:

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

i. Compliance with Regulations

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

ii. Nondiscrimination

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

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

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

iv. Information and Reports

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

v. Sanctions for Noncompliance

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

Incorporation of Provisions §22

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

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SAMPLE

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

Assurances for Local Agencies

DOT Order No. 1050.2A

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

Statutory/Regulatory Authorities

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

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

General Assurances

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

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

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

Specific Assurances

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

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

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

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

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

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

(Name of Recipient)

by _____
(Signature of Authorized Official)

DATED _____

APPENDIX A

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

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

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

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

(HABENDUM CLAUSE)

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

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

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

APPENDIX C

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

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

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

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

APPENDIX D

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

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

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

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

APPENDIX E

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

Pertinent Non-Discrimination Authorities:

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

EXHIBIT K

FFATA SUPPLEMENTAL FEDERAL PROVISIONS

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

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

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

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

1.1.1. Grants;

1.1.2. Contracts;

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

1.1.4. Loans;

1.1.5. Loan Guarantees;

1.1.6. Subsidies;

1.1.7. Insurance;

1.1.8. Food commodities;

1.1.9. Direct appropriations;

1.1.10. Assessed and voluntary contributions; and

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

Award *does not* include:

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

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

1.1.14. Any award classified for security purposes; or

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

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

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

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

1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpartC;

1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;

1.5.2. A foreign public entity;

1.5.3. A domestic or foreign non-profit organization;

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

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

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

7.1.1 Subrecipient DUNS Number;

7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

7.1.3 Subrecipient Parent DUNS Number;

7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

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

7.2.1 Subrecipient's DUNS Number as registered in **SAM**.

7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

8.2 A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

8.3 Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

8.4 There are no Transparency Act reporting requirements for Vendors.

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

EXHIBIT L

SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT

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

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

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



Tool Version:
v2.0 (081816)

EXHIBIT M

OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS

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

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

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

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

Accountability Office.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Agency (EPA).

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

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

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

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

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

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

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

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

Exhibit N
Federal Treasury Provisions

1. APPLICABILITY OF PROVISIONS.

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

2. DEFINITIONS.

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

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

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

2.1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;

2.1.15.4. Change in present value of defined benefit and actuarial pension plans;

2.1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;

2.1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.

2.1.16. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.

2.1.17. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

2.1.18. “Unique Entity ID” means the Unique Entity ID established by the federal government for a Grantee at <https://sam.gov/content/home>.

3. COMPLIANCE.

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

3.2. Per US Treasury Final Award requirements, grantee programs or services must not include a term or conditions that undermines efforts to stop COVID-19 or discourages compliance with recommendations and CDC guidelines.

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

4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually.

4.2. UEI. Grantee shall provide its Unique Entity ID to its Prime Recipient, and shall update Grantee’s information in Sam.gov at least annually.

5. TOTAL COMPENSATION.

5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and

5.1.2. In the preceding fiscal year, Grantee received:

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

6. REPORTING.

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

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

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

8. SUBRECIPIENT REPORTING REQUIREMENTS.

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

EC 1 – Public Health

All Public Health Projects

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

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

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

COVID-19 Small Business Economic Assistance (1.8)

- a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

- a) Number of non-profits served

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

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

EC 2 – Negative Economic Impacts

All Negative Economic Impacts Projects

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

Household Assistance (2.1-2.8)

- a) Number of households served

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

Healthy Childhood Environments (2.11-2.13)

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

Education Assistance (2.14, 2.24-2.27)

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

Housing Support (2.15, 2.16, 2.18)

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

Small Business Economic Assistance (2.29-2.33)

- a) Number of small businesses served

Assistance to Non-Profits (2.34)

- a) Number of non-profits served

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

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

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

Payroll for Public Health and Safety Employees (EC 3.1)

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

Rehiring Public Sector Staff (EC 3.2)

- a) Number of FTEs rehired by governments

EC 4 – Premium Pay

All Premium Pay Projects

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

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

EC 5 – Infrastructure Projects

All Infrastructure Projects

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

Water and sewer projects (EC 5.1-5.18)

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

Broadband projects (EC 5.19-5.21)

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

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

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

All Expenditure Categories

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

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

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

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

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

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

9. PROCUREMENT STANDARDS.

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

10. ACCESS TO RECORDS.

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

11. SINGLE AUDIT REQUIREMENTS.

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

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

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

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

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

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

13. CERTIFICATIONS.

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

14. EXEMPTIONS.

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

15. EVENT OF DEFAULT AND TERMINATION.

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

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

EXHIBIT O

AGREEMENT WITH SUBSUBRECIPIENT OF FEDERAL RECOVERY FUNDS

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

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

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

Subrecipient Name _____

Authorized Representative: _____

Title: _____

Signature: _____

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
TERMS AND CONDITIONS

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

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

9. Compliance with Applicable Law and Regulations.

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

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

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

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

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

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

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

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

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: _____

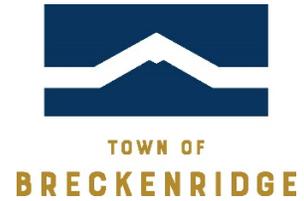
EXHIBIT T

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 | ✓ | ✓ | ✓ |



Memo

To: Breckenridge Town Council Members
From: Mark Truckey, Director of Community Development
Date: June 7, 2023
Subject: Planning Commission Decisions of the June 6, 2023 Meeting

DECISIONS FROM THE PLANNING COMMISSION MEETING, June 6, 2023:

CLASS A APPLICATIONS: None.

CLASS B APPLICATIONS: None.

CLASS C APPLICATIONS: None.

TOWN PROJECT HEARINGS: None.

OTHER: None.

PLANNING COMMISSION MEETING

The meeting was called to order at 5:30 pm by Vice Chair Leas.

ROLL CALL

| | | | |
|---------------------------|--------------|------------------------------|---------------|
| Mike Giller absent | Mark Leas | Allen Frechter absent | Susan Propper |
| Ethan Guerra | Steve Gerard | Elaine Gort remote | |

APPROVAL OF MINUTES

With the below changes, the May 16, 2023, Planning Commission Minutes were approved.

Mr. Gerard suggested changes on pages 4 and 5 of the packet. Mr. Ratzan, property owner of 114 S Main Street, speaks. There was a question about whether there was a planned wall opening between the buildings of 112 S Main Street and 114 S Main Street and the owner was emphatic there was not a planned opening between the two buildings. The notes should reflect this statement.

Mr. Leas indicated “the solar system that I spoke of for eight to twelve minutes was reflected in three sentences.”

Mr. Leas quote should state, “stair element for the building to the north, was the stair element proposed in the front or the back?”

APPROVAL OF AGENDA

With no changes, the June 6, 2023, Planning Commission Agenda was approved.

PUBLIC COMMENT ON HISTORIC PRESERVATION ISSUES:

- None

WORK SESSIONS:

1. Open Space Master Plan

Ms. Anne Lowe, Open Space & Trails Manager, gave an overview of the newly adopted 2023 Open Space & Trails Master Plan.

Commissioner Questions / Comments:

Mr. Guerra: As an avid trail user for almost 40 years, what OST has done has been incredible. We have world class trails here. The signage from last year was a great addition. Marking some loops would be an excellent way to enhance the system. You talked about trail interactions; wilderness areas have volunteer programs to mitigate user conflict. Have you considered something similar? (Ms. Lowe: We do have a couple trail ambassadors, but 68 miles of trails is a lot for two people to cover. We are looking at Pitkin County Open Space who recently hired trail enforcement officials with badges who are education focused but can give citations if needed. We would consider going a route that is education focused.)

Mr. Truckey: The BOSAC has been discussing these issues for a while and there has been a resistance to having directional uses or other user conflict mitigation with the understanding that we may eventually have to institute some of the measures that other places like Aspen and the Front Range have already done. Construction of trails in Aspen requires first going through an extensive public review process, which significantly affects the speed at which new trails can be implemented.

Ms. Gort: I love all the trails in Breckenridge. Have you considered doing something like trails in Europe where posts have a way post number? Technology on the trail isn't always

reliable so wayfinding that you can follow without your phone is important. I also want to thank you for adding the ADA trails. This is important for those aging in our community. You're not currently allowing e-Bikes on the nonpaved system trails, what if you considered only a few specific trails that would allow mountain e-Bikes? (Ms. Lowe: The Council and other Summit County Governments have been holding strong so far on not allowing them on trails other than the recreation path.)

Mr. Gerard: In the plan under habitat protection, I personally have an interest in habitat protection in areas where you have a historic wildlife crossings in a developed area. I have been trying for several years to implement dark sky practices in the wetlands area of the Golf Course. You could add dark sky protections to your habitat protection practices. Some outreach to the Highlands community about the trail easements across properties that are part of the Town's Open Space and strategic outreach to some neighborhoods about the benefits of these easements and what they provide to the community is important. (Ms. Lowe: I agree this type of outreach is something we should conduct.) I agree with Ethan about the increased number of conflicts. I don't think there is a consistent understanding of right-of-way. Signage at the beginning of trails and at portals to educate could help.

Mr. Guerra: There is conflict because there is inconsistency among the biking community about who has the right-of-way. Some users, wrongly, argue that faster downhill bikers should have the right-of-way.

Mr. Gerard: The loop identification is a great addition.

Ms. Propper: I have also had conflicts with bikers. I appreciate the signage that Nikki LaRochelle did but it is limited and only in a few locations. I am not sure that there is identification on some trails that they are multi-use. I appreciate the use separation on Barney Ford. If there are more opportunities on trails to further separate uses, I would support that. I am supportive of the trails workplan and the focus on signage. I like the idea of color-coding the loops for wayfinding. I am an FDRD volunteer ranger, and I do frequently run into folks out there. We don't have enforcement authority; we can call someone who does if there is a larger issue. I don't know if we need enforcement authority; my uniform and hat identification usually encourage compliance. I was wondering whether you accept conservation easements into the Open Space system? (Ms. Lowe: The town hasn't added a conservation easement in a long time; we currently hold one. In the Lower Blue Basin there are several easements. We are open to the idea, but we just don't have the same opportunities at this time in the Upper Blue Basin for conservation easements).

Mr. Truckey: There are not a lot of large pieces of land left to have a conservation easement. But it is a good tool if we can make it happen.

Ms. Gort: I noticed some of the etiquette signs, the Strava ones, are not up anymore? (Ms. Lowe: We do try to rotate that signage to keep it fresh for users. Seeing the same signs over and over cause people to ignore them. It could be that those signs were simply moved to a new location, or they could have been removed.)

Mr. Kulick: I would like to point out that in most cases, related to speed conflicts, it is not the out-of-Town visitor that is speeding on trails. It is usually the familiar local who is speeding.

Ms. Gort: I am curious if it is possible to eliminate the daily awards on apps like Strava locally for online apps to avoid speeding in conflict areas? (Ms. Lowe: I will have to look at whether it is possible to work with private apps to limit these in conflict areas.) (Mr. Kulick: It might be possible to petition the apps in certain high-conflict areas to remove routes or awards in those specific locations, but I doubt it is possible to eliminate them from the jurisdiction entirely.)

- Mr. Leas: It is amazing to live in Breckenridge and enjoy the trail system. Thank you. Do you know if wildlife use the same trails? (Ms. Lowe: They do! Using trails is often easier for wildlife. We are setting up additional wildlife cameras to gather more data and have a better understanding of wildlife movements.) I was thinking about the historic wildlife movement patterns and moose in the wetland areas near the Gondola. We need to be sensitive about the wildlife that is within the Town corridor not just the backcountry. (Ms. Lowe: We don't allow the Gondola to run from mid-May to June 15th to support the calving season in Cucumber Gulch Preserve.) We do notice that during ski season the moose are fewer and when the mountain is closed the moose return. I want to make a point about unintended consequences. I know that there has been hard work on the Upper Blue River Basin Master Plan to restrict the density. Those manifest themselves in the lack of housing for our workforce. Basic economics indicate that if we limit something we increase the cost of it. We do have ourselves to blame for increasing the value and cost of land. There is not a lot of land left for Breckenridge to try to solve the housing crisis. Many Commissions and Councils that have governed Breckenridge for many years have not planned long-term for the housing that will be required in the future. The Town had an opportunity to add pockets of more dense housing in areas like the Highlands at one time and chose not to do so. I just want to point out the long-term consequences of our actions.
- Mr. Truckey: The Open Space sales tax has been a huge legacy over the past 26 years in enabling the Town to purchase and support this program. (Ms. Lowe: The Open Space program has grown over the years from one full-time planner to now four full-time and nine seasonal.)
- Mr. Leas: I remember the rock tailings from years ago along the Blue River which are removed now. How did that plan come together? (Ms. Lowe: I can't speak to how it came about throughout Town. On the McCain property we recently redesigned the River so that it has wide meandering curves and more sinuosity. This helps with flood mitigation.)
- Mr. Kulick: The rock tailings are actually the precursor and legacy of Landscape Policy 22R. We might question points assigned for landscaping now but prior to a lot of development in Town it was not so picturesque with all the mine tailings. The landscape policy tried to incentivize installation of substantial landscaping to mitigate the undesired effects of dredge mining.
- Mr. Guerra: Build it and they will come. We do have world class biking in this area.

OTHER MATTERS:

1. REMP / Policy 33A & 33R Update

Mr. Truckey reviewed the revisions to Policy 33 Energy Conservation that are included in the upcoming Renewable Energy Mitigation Program (REMP) Council Bill scheduled for first reading at the June 13 Council Meeting. Commissioners were asked if they had any comments on the Policy 33A & 33R language.

Commissioner Questions / Comments:

Residential fireplaces:

- Mr. Guerra: Regarding limiting gas fireplaces to two inside, in my experience with high-end homes, usually owners want at least one in the living room, one in the recreation room, and one in the master bedroom. This is at a minimum.
- Mr. Leas: People are not going to use these fireplaces all at once. I don't think limiting the number of fireplaces makes a difference in the amount of gas being used at all. Limiting the number arbitrarily is an optics only and feel-good move. What about

- having the option of making the third fireplace indoors if owners would prefer it to be indoors and not outdoors?
- Mr. Guerra: Maybe there is a way to attach the number to square footage? In a high-end home that is 8,000-9,000 square feet having only two indoor fireplaces is limiting.
- Mr. Leas: The use of the home is something to consider as well. A second home will have less fireplace use than a full-time residence.
- Mr. Guerra: I think the number two might be too low.
- Ms. Gort: I agree, this is more of an optics situation. Two might be too few.
- Ms. Propper: I could go along with Mr. Leas' suggestion. If they want to forego the outdoor fireplace, they could have a third one on the interior.
- Mr. Gerard: I think this is a good idea and a way to encourage less outdoor use. You could have the language that states three fireplaces are allowed and only one of the three can be outdoors.
- Mr. Guerra: I think we should mandate timers on the outdoor fireplaces. (Mr. Truckey: I need to confirm but believe this is already in the ordinance.)

Outdoor heated paving:

- Mr. Leas: Suppose someone has solar thermal to heat their outdoor paving. Does this count toward the required offset? (Mr. Truckey: Yes, this would count toward the offset.)
- Mr. Guerra: Specifically on heated driveways, the problem started with areas like Timber Trail when Planning and past Commissions approved lots with small building envelopes. The issue should be considered at the start of the development so that we are allowing for the house and the snow stack that people are going to be required with the programming that they want to have. With more programming they have to heat their driveway because there is no room for snow stack on the lot. If we were to have another Timber Trail type subdivision, we should anticipate this.
- Mr. Gerard: To play Devil's Advocate, that is their choice to have a large home and no room for snow storage that necessitates heating the driveway.
- Mr. Guerra: I would argue let's not do that in the future and instead plan for the programming that is to be expected on an expensive lot.

Positive points for not installing gas to the property:

- Ms. Gort: Would you include a provision that a house can't install a propane tank? What about the propane heaters outdoors? (Mr. Kulick: I believe there is already a provision against large propane tanks in Town limits.) Are there considerations to encourage commercial kitchens that could go electric? What about the propane heaters used outside? (Mr. Truckey: Commercial kitchen electrification is something that could come in the future. Education with restaurants about the use of induction cooktops would be helpful—they work great. Regarding outdoor propane heaters, we will not be regulating those at this time. That would open up a whole new set of issues.)
- Mr. Gerard: I think these positive points are a great way to encourage electrification. I think the Town should also come up with a way to monetarily incentivize it for people who want to make the transition to all-electric, but the costs are too high.
- Mr. Guerra: The monetary incentive could be a huge driver. Retrofitting a house from gas to electric is very expensive. Also, we should incentivize houses to install larger electric panels at the time of construction that can handle greater electric loads and anticipated electric needs in the future. The Town should incentivize electrification on any remodel or addition as well.

2. Town Council Summary

ADJOURNMENT:

The meeting was adjourned at 7:34 pm.

Mark Leas, Vice Chair



TOWN OF BRECKENRIDGE
TOWN COUNCIL

Scheduled Meetings

Shading indicates Council required attendance – others are optional

The Council has been invited to the following meetings and events. A quorum may be in attendance at any or all of them.

May 2023

| | | | |
|--------------------------------|-------------------------|------------------------------------|--------------------------|
| May 20th, 2023 | Riverwalk Center | County / Town Clean Up Day | 9:00am - 2:00pm |
| May 22nd, 2023 | Carter Park | Open Space & Trails Open House | 5:30pm - 7:30pm |
| Tuesday, May 23rd, 2023 | Council Chambers | Second Meeting of the Month | 3:00 pm / 7:00 pm |
| May 25th, 2023 | Main Street | Summit County HS Seniors Parade | 5:00pm - 6:00pm |

June 2023

| | | | |
|---------------------------------|-------------------------|------------------------------------|--------------------------|
| June 9th & 10th, 2023 | Riverwalk Center | 10 Mile Pride | All Day |
| Tuesday, June 13th, 2023 | Council Chambers | First Meeting of the Month | 3:00 pm / 7:00 pm |
| June 15th, 2023 | Riverwalk Center | Town Party | 4:00pm - 8:00pm |
| June 25th - June 28th, 2023 | Gaylord Rockies | CML Annual Conference | All Day |
| Tuesday, June 27th, 2023 | Council Chambers | Second Meeting of the Month | 3:00 pm / 7:00 pm |
| June 28th, 2023 | Blue River Plaza | Bike to Work Day | 7:30am - 10:30am |

Other Meetings

| | | |
|-----------------|--|-----------------|
| May 22nd, 2023 | Open Space & Trails Meeting | 5:30pm |
| May 23rd, 2023 | Board of County Commissioners Meeting | 9:00am / 1:30pm |
| May 25th, 2023 | Transit Advisory Council Meeting | 8:10am |
| | Summit Stage Transit Board Meeting | 8:15am |
| | Breckenridge Tourism Office Board Meeting | 8:30am |
| | QQ - Quality and Quantity - Water District | 10:00am |
| | RW&B Board Meeting | 3:00pm |
| June 6th, 2023 | Board of County Commissioners Meeting | 9:00am |
| | Planning Commission Meeting | 5:30pm |
| June 7th, 2023 | Breckenridge Events Committee | 9:00am |
| | Childcare Advisory Committee | 3:00pm |
| June 8th, 2023 | I-70 Coalition | 3:30pm |
| | Upper Blue Sanitation District | 5:30pm |
| June 13th, 2023 | Board of County Commissioners Meeting | 9:00am / 1:30pm |
| | Workforce Housing Committee | 10:30am |
| June 14th, 2023 | Breckenridge Heritage Alliance | Noon |
| June 19th, 2023 | Social Equity Advisory Commission | 7:30am |
| June 20th, 2023 | Board of County Commissioners Meeting | 9:00am |
| | Liquor & Marijuana Licensing Authority | 9:00am |
| | Planning Commission Meeting | 5:30pm |
| June 21st, 2023 | Summit Combined Housing Authority | 9:00am |



Scheduled Meetings

Shading indicates Council required attendance – others are optional

The Council has been invited to the following meetings and events. A quorum may be in attendance at any or all of them.

| | | |
|-----------------|---|-----------------|
| June 22nd, 2023 | Summit Stage Transit Board Meeting | 8:15am |
| | Breckenridge Tourism Office Board Meeting | 8:30am |
| | RW&B Board Meeting | 3:00pm |
| June 26th, 2023 | Open Space & Trails Meeting | 5:30pm |
| June 27th, 2023 | Board of County Commissioners Meeting | 9:00am / 1:30pm |
| June 30th, 2023 | Breckenridge Creative Arts | Noon |
| July 4th, 2023 | Board of County Commissioners Meeting | 9:00am |
| | Planning Commission Meeting | 5:30pm |
| July 5th, 2023 | Police Advisory Committee | 7:30am |
| | Breckenridge Events Committee | 9:00am |
| | Childcare Advisory Committee | 10:00am |
| July 11th, 2023 | Board of County Commissioners Meeting | 9:00am / 1:30pm |
| | Workforce Housing Committee | 10:30am |
| July 12th, 2023 | Breckenridge Heritage Alliance | Noon |
| July 13th, 2023 | I-70 Coalition | 11:30am |
| | Upper Blue Sanitation District | 5:30pm |
| July 17th, 2023 | Social Equity Advisory Commission | 7:30am |
| July 18th, 2023 | Board of County Commissioners Meeting | 9:00am |
| | Liquor & Marijuana Licensing Authority | 9:00am |
| | Planning Commission Meeting | 5:30pm |
| TBD | Tourism Overlay District Advisory Committee Meeting | 10:30am |
| | Transit Advisory Council Meeting | 8:00am |
| | Water Task Force Meeting | 9:30am |