

City of Arvada

City Council Agenda

APRIL 15, 2024

CITY COUNCIL CHAMBERS

Regular Business

Councilmembers:

Lauren Simpson, Mayor
Randy Moorman, Mayor Pro-Tem
Shawna Ambrose, District 2
Sharon Davis, At large
Lisa Feret, At large
Bob Fifer, District 4
John Marriott, District 3

Staff Members Usually Present:

Lorie Gillis, City Manager
Linda Haley, Deputy City Manager
Don Wick, Deputy City Manager
Rachel Morris, City Attorney
Jacqueline Rhoades, Director of Public Works
Sharon Israel, Director of Utilities
Jessica Garner, Director of Community & Econ. Dev.
Bryan Archer, Director of Finance
Gabriella Bommer, Director of Human Resources
Rachael Kuroiwa, Director of Communications & Engagement
Kristen Rush, City Clerk

Info: 720-898-7550

THIRD FLOOR CONFERENCE ROOM EXECUTIVE SESSION

5:00-5:30 pm

Personnel Matter, Pursuant to C.R.S. 24-6-402(4)(f) related to appointee evaluations

CITY COUNCIL MEETING – CITY COUNCIL CHAMBERS

6:00 PM

1. Call to Order - 6:00 PM
2. Moment of Reflection and Pledge of Allegiance - Councilmember Davis
3. Roll Call of Councilmembers
4. Approval of Minutes
 - A. April 1, 2024 City Council Meeting
5. Recognitions and Communications
 - A. Proclamation for National Preservation Month - Presented by Councilmember Feret
 - B. Proclamation for World Tai Chi and Qi Gong Day - Presented by Councilmember Moorman
6. Presentations
 - A. 2023 Year End Financial Report
7. Public Comment on Issues not Scheduled on Agenda - Three Minute Limit
8. New Business
 - A. Consent Agenda
 1. R24-039, A Resolution Accepting 2023 Donations of Ballistic Armor to the Arvada Police Department

2. R24-040, A Resolution Authorizing the Submission of an Application for the Outdoor Recreation Legacy Partnership Grant for improvements to Gold Strike Park

B. Resolutions

1. R24-041, A Resolution Authorizing the Jeffco Open Space Trails Partnership Program Grant Agreement
2. R24-042, A Resolution Authorizing an Intergovernmental Agreement between the City of Arvada, City of Aurora, City of Brighton, City of Commerce City, City of Federal Heights, City of Northglenn, City of Westminster, and the County of Adams to Provide Engineering Services to Conduct the Adams County Comprehensive Safety Action Plan Study
3. R24-043, A Resolution Authorizing an Intergovernmental Agreement Between the City of Arvada and Apex Park and Recreation District Relating to the Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems General Permit (Presenter: Jacob Moyer, Stormwater Administrator)
4. R24-044, A Resolution Authorizing an Intergovernmental Agreement between the Colorado Department of Transportation and the City of Arvada Regarding the 64th Parkway MM Improvements

C. Ordinances (First Reading)

1. CB24-007, An Ordinance Authorizing an Additional Appropriation for Fiscal Year 2023 (Public Hearing to be set for May 6, 2024 at 6:15 p.m.)

9. Other

A. Appointments to Boards and Commissions

10. Public Hearings - 6:15 PM

- A. CB24-005, An Ordinance Authorizing an Additional Appropriation for Fiscal Year 2024 (Ordinance No. 4871) (Presenter: Bryan Archer, Director of Finance)
- B. CB24-006, An Ordinance Repealing and Reenacting Certain Sections of Chapter 6 Alcoholic Beverages, of the Arvada City Code (Ordinance No. 4872) (Presenter: Kylie Justus)

11. Workshop

A. Public Safety/Police Department Update

12. Public Comment - Five Minute Limit

13. Reports from City Council

A. Council Committee Reports

14. Reports from City Manager

A. Review of Future Workshops and Presentations

15. Reports from City Attorney

16. Adjournment



SUMMARY OF MINUTES OF THE MEETING OF THE ARVADA CITY COUNCIL HELD APRIL 1, 2024

1. Call to Order - 6:20 p.m.

This Arvada City Council meeting was a hybrid meeting using webinar technology. Mayor Simpson, Mayor Pro Tem Moorman, Councilmember Ambrose, Councilmember Davis, Councilmember Feret, Councilmember Marriott were all present in chambers. Members of the public were given notice with instructions on how to participate with public comment.

2. Moment of Reflection and Pledge of Allegiance

3. Roll Call of Councilmembers

Those Present: Mayor Lauren Simpson, Mayor Pro Tem Randy Moorman, Councilmember Shawna Ambrose, Councilmember Sharon Davis, Councilmember Lisa Feret, Councilmember Bob Fifer, Councilmember John Marriott

Also Present: Lorie Gillis, City Manager; Rachel Morris, City Attorney; Linda Haley, Deputy City Manager; Don Wick, Deputy City Manager; Bryan Archer, Director of Finance; Jessica Garner, Director of Community and Economic Development; Katie Patterson, Communications Manager, Infrastructure, and Kristen Rush, City Clerk.

4. Approval of Minutes – March 18, 2024

The minutes stand approved

5. Recognition and Communication –

A. Proclamation for Child Abuse Prevention Month - Presented by Councilmember Ambrose

Councilmember Ambrose read the proclamation and said that City Council designates April, 2024 as Child Abuse Prevention Month in Arvada by presenting two Proclamations. Lisa Gallegos, Development Manager for CASA (Court Appointed Special Advocates for Children) will be present to accept the Proclamation for CASA Adams/Broomfield. Michele Fisher was be present to accept the Proclamation for CASA Jeffco/Gilpin.

B. Proclamation for National Volunteer Month - Presented by Councilmember Fifer

Councilmember Fifer said that Arvada resident Kendrick Bass and his son Kyle have stepped up this Winter to shovel for many at-risk neighbors through the City's Snow Buddies Program. They regularly remove snow for two houses and during the most recent snowstorm, they were eager to do more as they took on short-term assignments to shovel for an additional list of houses. Kendrick and Kyle represent the essence of the City's Volunteers, a group of caring and dedicated residents committed to making Arvada a better place.

Councilmember Fifer said that City Council proclaims the month of April, 2024 as National Volunteer Month in Arvada. Kendrick and Kyle Bass were present to accept the proclamation.

C. Recognition of State Champion Wrestlers in Arvada - Presented by Councilmember Marriott

Councilmember Marriott said that many student-athletes from Arvada were crowned as state champions during this season's Colorado High School Activities Association state wrestling championships.

Lincoln Gregersen became Ralston Valley High School's first ever individual wrestling state champion this year. Upon graduation, Lincoln will head to Colorado Springs to become a Cadet and will wrestle for the Air Force Academy.

The Pomona High School's Girls Wrestling Team claimed their first ever team state championship this year. The Panthers also won four individual state championships, including Persaeus Gomez becoming the first-ever 4-time state champion in the history of CHSAA Girls Wrestling. The Girls Wrestling Team is led by Head Coach Victor Gomez.

The Pomona High School's Boys Wrestling Team won their 6th consecutive state championship this year. The Panthers have sustained dominance, winning the team state championship in 8 of the past 9 years. This program holds the state record for total points after scoring 278.5 total points during the 2023 CHSAA team state championships. The Boys Wrestling Team is led by Head Coach Sam Federico and all Athletics at Pomona High School are led under the guidance of Athletic Director DJ Yeager.

6. Presentations – None

7. Public Comment –

- A. Karen Gerbash, Arvada resident, addressed council regarding the proposed RV Storage facility in west Arvada.
- B. Mike Rawlick, Golden resident, addressed council regarding the proposed RV Storage facility in west Arvada.
- C. Kevin Hodson, Arvada resident, addressed council regarding Mission Arvada.
- D. Gina Hallisey, Arvada resident, addressed council regarding the proposed RV Storage facility in west Arvada

8. New Business

A. Consent Agenda

- 1. R24-034 A Resolution Authorizing a Non-Exclusive Easement Agreement Between the City and County of Denver, Acting by and Through Its Board of Water Commissioners, and the City of Arvada, for Arvada's Raw Water Line and Appurtenances
- 2. R24-035 A Resolution Authorizing an Agreement By and Between the City of Arvada and T. Lowell Construction, Inc., for Construction Services Relating to Project No. 23-SR-11, Central Ralston Trunk Line Simms to Pierson (CRT7), in an Amount Not to Exceed \$4,522,000.

R24-036 and R24-037 were removed from the consent agenda.

Councilmember Feret moved that R24-034, A Resolution Authorizing a Non-Exclusive Easement Agreement Between the City and County of Denver, Acting by and Through Its Board of Water Commissioners, and the City of Arvada, for Arvada's Raw Water Line and Appurtenances; R24-035, A Resolution Authorizing an Agreement By and Between the City of Arvada and T. Lowell Construction, Inc., for Construction Services Relating to Project No. 23-SR-11, Central Ralston Trunk Line Simms to Pierson (CRT7), in an Amount Not to Exceed \$4,522,000, be approved.

The following votes were cast on the Motion:

Those voting Yes: Simpson, Moorman, Ambrose, Davis, Feret, Fifer, Marriott
The Motion was Approved

B. Resolutions –

1. R24-038 A Resolution Authorizing Acceptance of an Intergovernmental Agreement between the Jefferson Parkway Public Highway Authority (JPPHA) and the City of Arvada for the Secondment of an Arvada Employee to JPPHA

Lorie Gillis, City Manager, reviewed this Resolution with Council

Councilmember Ambrose moved that R24-038, A Resolution Authorizing Acceptance of an Intergovernmental Agreement between the Jefferson Parkway Public Highway Authority (JPPHA) and the City of Arvada for the Secondment of an Arvada Employee to JPPHA, be approved.

The following votes were cast on the Motion:

Those voting Yes: Simpson, Moorman, Ambrose, Davis, Feret, Fifer, Marriott
The Motion was Approved

2. R24-036 A Resolution Authorizing Assignment to the Colorado Housing and Finance Authority of a Private Activity Bond Allocation of the City of Arvada Pursuant to the Colorado Private Activity Bond Ceiling Allocation Act for Marshall Pointe Apartments

Carrie Espinosa, Manager, Housing Preservation and Resources, reviewed this resolution with council.

Councilmember Fifer moved that R24-036, A Resolution Authorizing Assignment to the Colorado Housing and Finance Authority of a Private Activity Bond Allocation of the City of Arvada Pursuant to the Colorado Private Activity Bond Ceiling Allocation Act for Marshall Pointe Apartments, be approved.

The following votes were cast on the Motion:

Those voting Yes: Simpson, Moorman, Ambrose, Davis, Feret, Fifer, Marriott
The Motion was Approved

3. R24-037 A Resolution Authorizing Assignment to the Colorado Housing and Finance Authority of a Private Activity Bond Allocation of the City of Arvada Pursuant to the Colorado Private Activity Bond Ceiling Allocation Act for Ralston Gardens Apartments

Carrie Espinosa, Manager, Housing Preservation and Resources, reviewed this resolution with council.

Councilmember Fifer moved that R24-037, A Resolution Authorizing Assignment to the Colorado Housing and Finance Authority of a Private Activity Bond Allocation of the City of Arvada Pursuant to the Colorado Private Activity Bond Ceiling Allocation Act for Ralston Gardens Apartments, be approved.

The following votes were cast on the Motion:

Those voting Yes: Simpson, Moorman, Ambrose, Davis, Feret, Fifer, Marriott
The Motion was Approved

C. Ordinances (First Reading) –

1. CB24-005 An Ordinance Authorizing an Additional Appropriation for Fiscal Year 2024 (Public Hearing to be set for April 15, 2024 at 6:15 P.M.)
2. CB24-006 An Ordinance Repealing and Reenacting Certain Sections of Chapter 6 Alcoholic Beverages, of the Arvada City Code (Public Hearing to be set for April 15, 2024 at 6:15 p.m.)

Mayor Pro Tem Moorman moved that CB24-005, An Ordinance Authorizing an Additional Appropriation for Fiscal Year 2024; CB24-006, An Ordinance Repealing and Reenacting Certain Sections of Chapter 6 Alcoholic Beverages, of the Arvada City Code (Public Hearing to be set for April 15, 2024 at 6:15 p.m.), be approved on first reading, ordered published in full and a Public Hearing date set for April 15, 2024, at 6:15 p.m.

The following votes were cast on the Motion:

Those voting Yes: Simpson, Moorman, Ambrose, Davis, Feret, Fifer, Marriott
The Motion was Approved

9. Other – None

10. Public Hearings –

- A. CB24-004 An Ordinance Amending the Cable Television Franchise Agreement between the City of Arvada and TDS BAJA Broadband Service LLC to Extend the Term of the Franchise Until July 31, 2025 (Ordinance No. 4870)

Mayor Simpson opened the public hearing on CB24-004.

Jenny Wolfschlag, City Engineer, reviewed this ordinance with council.

No one wishing to speak for or against, the public hearing was closed.

Councilmember Fifer moved that CB24-004, An Ordinance Amending the Cable Television Franchise Agreement between the City of Arvada and TDS BAJA Broadband Service LLC to Extend the Term of the Franchise Until July 31, 2025, be approved on final reading, numbered 4870 and ordered published by title only.

The following votes were cast on the Motion:

Those voting Yes: Simpson, Moorman, Ambrose, Davis, Feret, Fifer, Marriott

The Motion was Approved

12. Public Comment - Five Minute Limit - None
13. City Council Reports –
 - A. Mayor Simpson discussed the north Jeffco Town Hall Meeting that was held on March 23.
 - B. Mayor Simpson discussed the Annual Arvada Center Gala that will be held on April 13.
 - C. Mayor Simpson invited everyone to watch the State of the City, hosted by the Arvada Chamber of Commerce on April 19.
 - D. Councilmember Ambrose shared that she attended the Family Tree groundbreaking ceremony as well as the ribbon cutting for the new AEDA office.
 - E. Mayor Pro Tem Moorman discussed the Rocky Flats Stewardship council and said that public meetings will be held soon to determine the future of this group.
 - F. Councilmember Feret discussed a meeting held with the new pastor at the Rising.
14. City Manager Reports –
 - A. Lorie Gillis, City Manager, reviewed the upcoming workshop schedule as well as the new Strategic Plan that will be presented to council.
15. City Attorney Reports – None
16. Adjournment at 7:10 p.m.

Lauren Simpson, Mayor

SEAL:

Kristen R. Rush, City Clerk



REPORT TO CITY COUNCIL

AGENDA ITEM
5.A.

TO: THE HONORABLE CITY COUNCIL

DATE: April 15, 2024

SUBJECT: Proclamation for National Preservation Month - Presented by Councilmember Feret

Report in Brief

City Council will proclaim May, 2024 as National Preservation Month. Judith Denham will be present to accept the Proclamation.

Prepared by:
Chris Koch, CCO Admin

Reviewed by:
Toni Riebschlager, Law Office Administrator 3/26/2024
Laura Hemler, Assistant City Attorney 3/26/2024

Approved by:

Linda Haley, Deputy City Manager 3/26/2024
Rachel Morris, City Attorney 4/1/2024
Lorie Gillis, City Manager 4/2/2024

Enclosure, exhibits & attachments required to support the report

WHEREAS, The National Trust for Historic Preservation declared the month of May as National Preservation Month; and

WHEREAS, Arvada is a community rich in history, both physical assets and events that have shaped our lives today; and

WHEREAS, Preserving this history informs the community about our foundation, enriching current and future residents; and

WHEREAS, the City of Arvada is committed to preserving our history, as documented in official Plans and Ordinances.

NOW, THEREFORE, BE IT PROCLAIMED by the Mayor and City Council of the City of Arvada, Colorado, that May 2024 be designated National Preservation Month to acknowledge the importance of preserving our historic legacy and we encourage all Arvada citizens to learn about our historic legacy.

Dated this 15th day of April, 2024

	Lauren Simpson, Mayor
Randy Moorman, Mayor Pro Tem	Shawna Ambrose, Councilmember
Sharon Davis, Councilmember	Lisa Feret, Councilmember
Bob Fifer, Councilmember	John Marriott, Councilmember



REPORT TO CITY COUNCIL

AGENDA ITEM
5.B.

TO: THE HONORABLE CITY COUNCIL

DATE: April 15, 2024

SUBJECT: Proclamation for World Tai Chi and Qi Gong Day - Presented by Councilmember Moorman

Report in Brief

City Council will proclaim April 27, 2024 as World Tai Chi and Qi Gong Day. Tom Fletcher will be present to accept the Proclamation.

Prepared by:
Chris Koch, CCO Admin

Reviewed by:
Toni Riebschlager, Law Office Administrator 3/29/2024
Laura Hemler, Assistant City Attorney 3/29/2024

Approved by:

Linda Haley, Deputy City Manager 4/1/2024
Rachel Morris, City Attorney 4/1/2024
Lorie Gillis, City Manager 4/2/2024

Enclosure, exhibits & attachments required to support the report

WHEREAS, World Tai Chi and Qi Gong Day is now celebrated in hundreds of cities in over 60 nations annually; and

WHEREAS, Tai Chi and Qi Gong, both traditional Chinese exercises, involve a series of mindful relaxed movements and/or mind-body meditations increasingly found to benefit many health issues for people of many fitness levels; and

WHEREAS, Tai Chi has been called “medication in motion” by Harvard Health Publication for the myriad health benefits it offers and numerous studies have pointed to the benefits of Tai Chi for stress relief, improved balance and coordination; and

WHEREAS, World Tai Chi and Qi Gong Day is meant to bring practitioners together and allow people to learn more about Tai Chi and Qi Gong through this day of celebration and practice taking place around the world at 10:00 AM in each and every time zone on April 27, 2024.

NOW, THEREFORE, BE IT PROCLAIMED by the Mayor and City Council of the City of Arvada, Colorado, that April 27, 2024 be designated World Tai Chi and Qi Gong Day.

Dated this 15th day of April, 2024

Lauren Simpson, Mayor

Randy Moorman, Mayor Pro Tem

Shawna Ambrose, Councilmember

Sharon Davis, Councilmember

Lisa Feret, Councilmember

Bob Fifer, Councilmember

John Marriott, Councilmember



REPORT TO CITY COUNCIL PRESENTATION

AGENDA ITEM
6.A.

TO: THE HONORABLE CITY COUNCIL

DATE: April 15, 2024

SUBJECT: 2023 Year End Financial Report

Report in Brief

The Finance team will present the 2023 year-end financial report. This will include updates on specific performance measures, an overview of the major revenue categories in the General Fund, a high level look at the other Major Funds including: Parks, Tax Increment, Water, Wastewater, Stormwater, Solid Waste and Golf, a review of the City's investment portfolio and an overview of Grants.

Background

The purpose of the City Council Budget and Fiscal Policy is to guide City budget and financial management decisions based on strategic planning, performance measures, long-term financial stability, delivery of basic City services and protection of past and future financial update is presented quarterly to help support this policy.

Strategic Alignment

This presentation aligns with the Organizational and Service Effectiveness Priority Area of the City Council Strategic Plan. Specifically, presentation of this information aligns with the following principle:

Provides a well-managed, fiscally responsible government that operates effectively and efficiently while identifying revenue requirements to sustain current service levels and achieve future requested levels of service.

This also supports the Council's Budget and Fiscal Policy:

To guide City budget and financial management decisions based on strategic planning, performance measures, long-term financial stability and future investments in the City's infrastructure and facilities.

Next Steps

FOR WORKSHOPS ONLY

Prepared by:

Debra Nielson, Deputy Director of Finance

Reviewed by:

Approved by:

Bryan Archer, Director of Finance 3/26/2024

Gail Walker, Legal Specialist-Contracts 3/26/2024

Laura Hemler, Assistant City Attorney 3/27/2024

Rachel Morris, City Attorney 4/1/2024

Linda Haley, Deputy City Manager 4/1/2024

Lorie Gillis, City Manager 4/2/2024

Enclosure, exhibits & attachments required to support the report



2023 Fourth Quarter Financial Report (Unaudited)



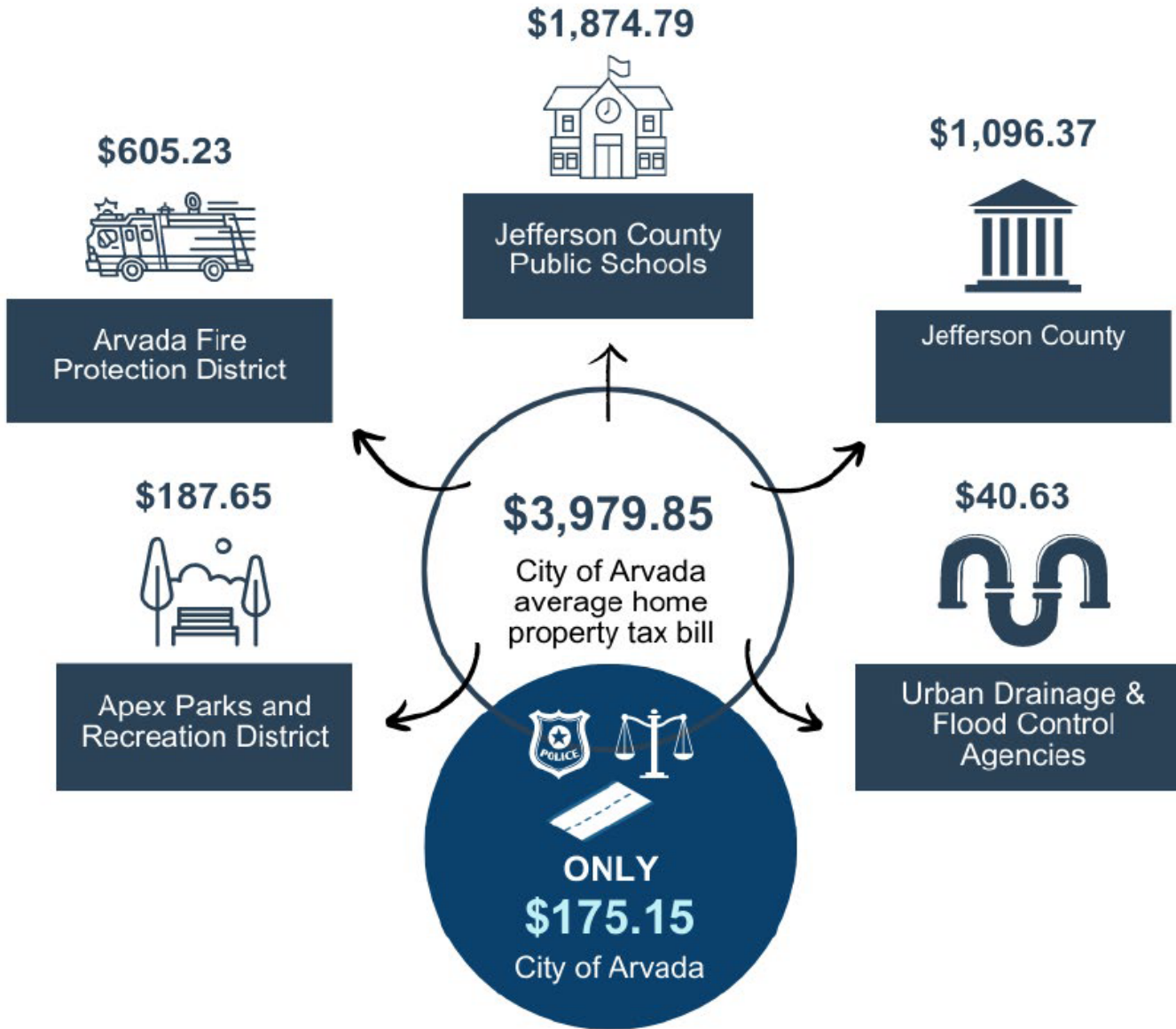
City Council
April 15, 2024

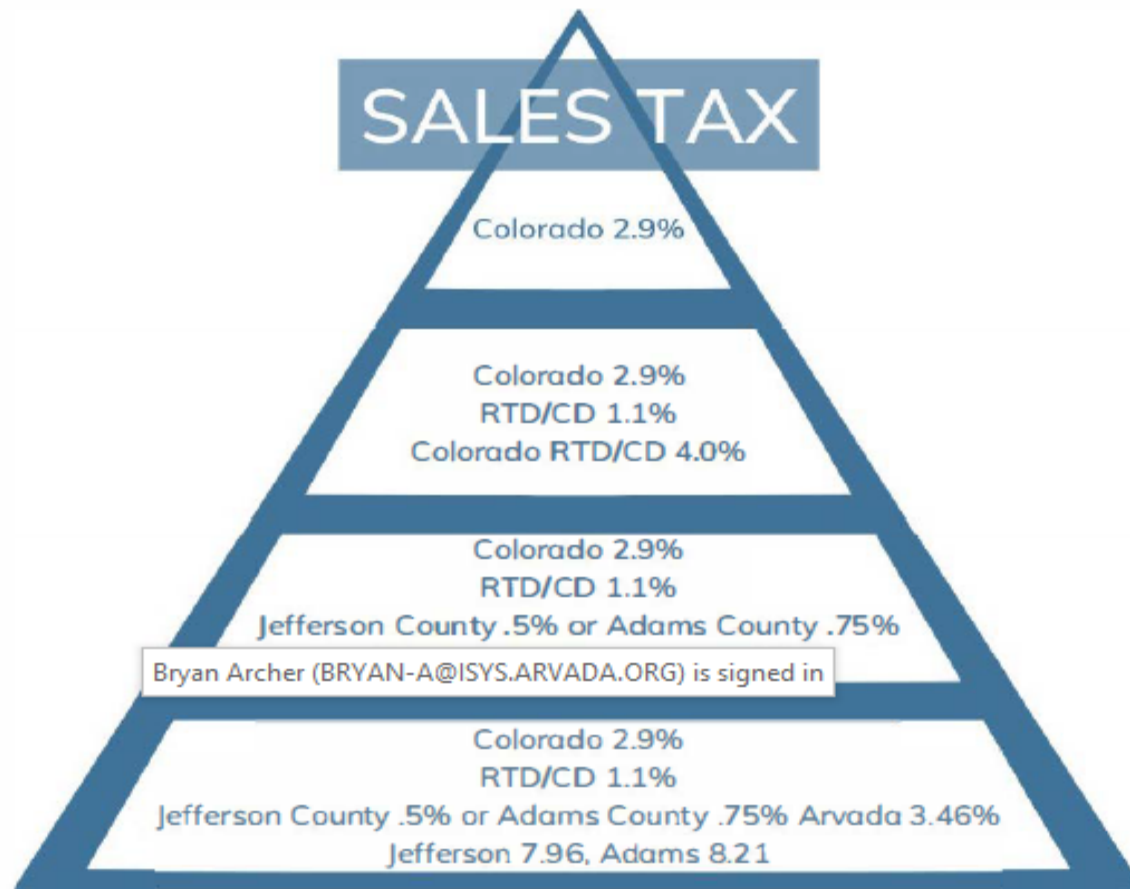


OVERVIEW

- Revenue ended the year positive
- Operating expenditures remain in-line with budgets
- CIP expense growth is slowing
- Soft landing?

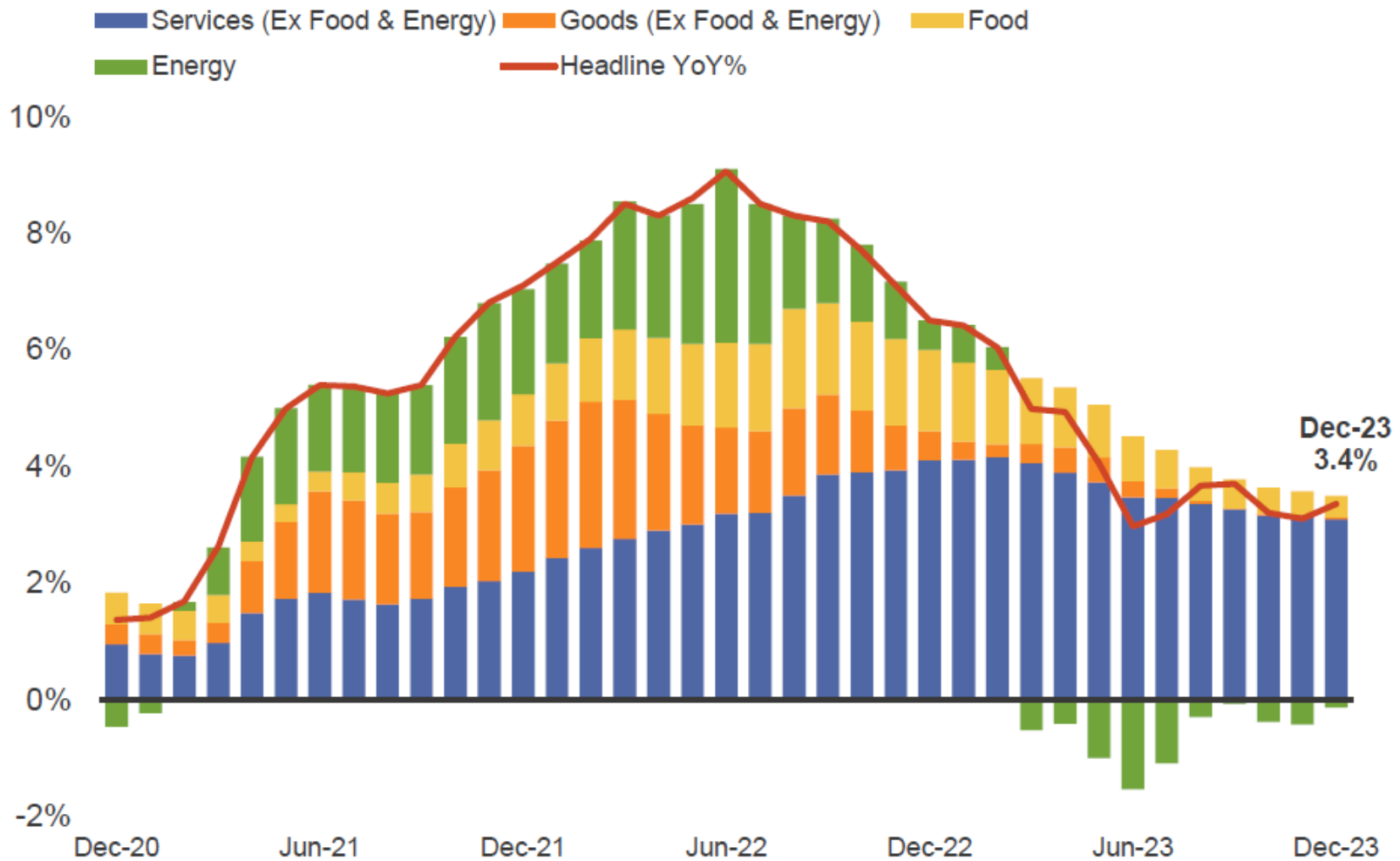




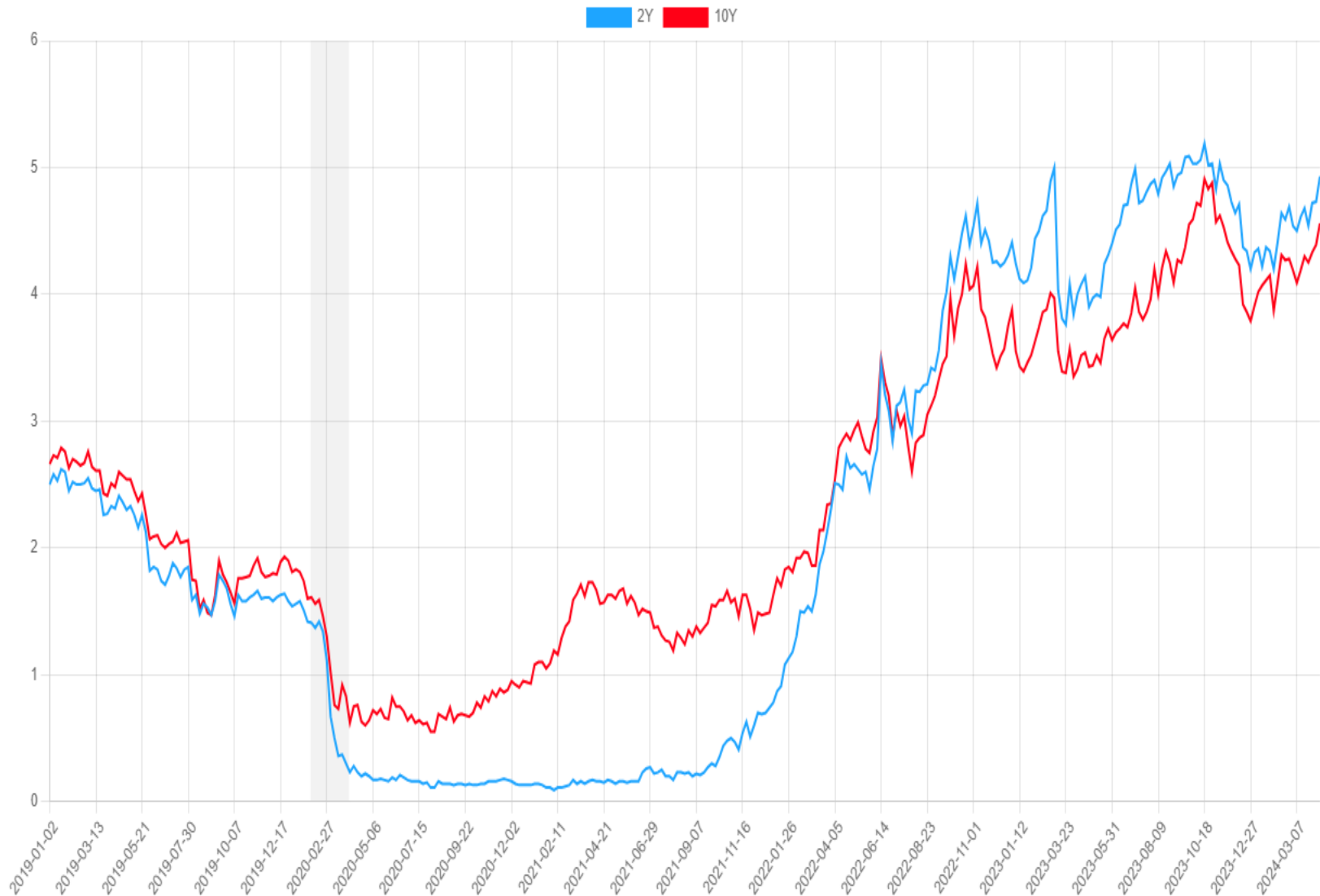


The Sales Tax chart listed above is a graphical representation of the total sales tax charged in Arvada depending on what County the purchase is located. If the purchase is in Jefferson County, the total sales tax charged is 7.96% and if in Adams County, 8.21%. The City receives 3.46% of the total sales tax collected, of which, 3% goes to support general operations and .46% is dedicated to police.

Consumer Prices (CPI) Top-Line Contributions, Year-over-Year Changes

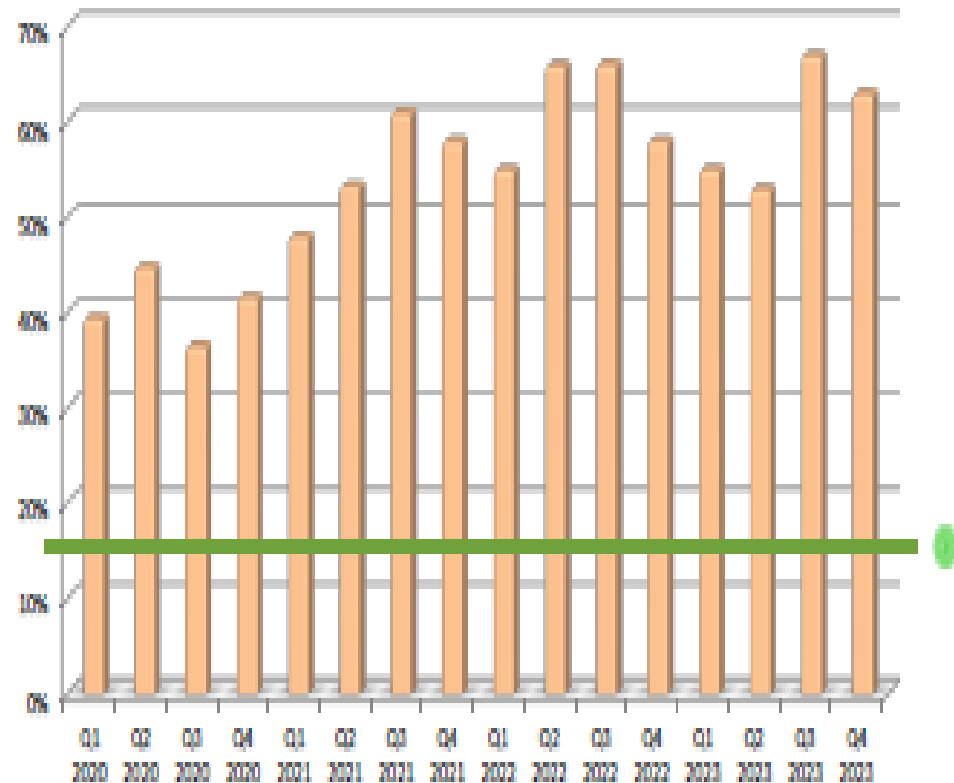


2-year and 10-year US Treasury yield curves





General Fund Ending Fund
Balance by Quarter
Compared to Fund Balance
Goal of 17% of Budgeted
Expenditures



GENERAL FUND OVERVIEW



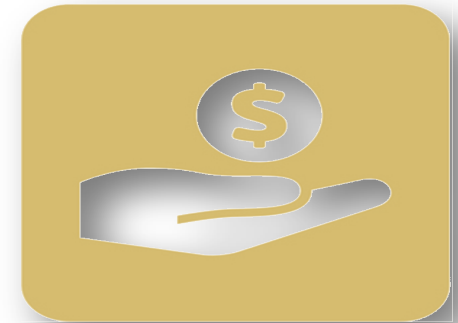
GENERAL FUND	YEAR TO DATE
Property Tax	POSITIVE
Sales Tax	POSITIVE
Auto Use Tax	NEGATIVE
General Use Tax	POSITIVE
Court Revenues	NEGATIVE
Building Revenues	POSITIVE
Interest Revenue	POSITIVE
Personnel Expenditures	POSITIVE
Other Expenditures	MONITOR

PERFORMANCE - ACTUALS VS. BUDGET

SALES TAX

SALES TAX	YEAR TO DATE
Overall	POSITIVE

Supermarket	POSITIVE
Wholesale	POSITIVE
Electronic Shopping	POSITIVE
Full-Service Restaurants	NEGATIVE
Utilities - Electric	MONITOR
Hardware Stores	NEGATIVE
Limited-Service Restaurants	POSITIVE
Utilities - Cable	POSITIVE
Liquor Store	NEGATIVE



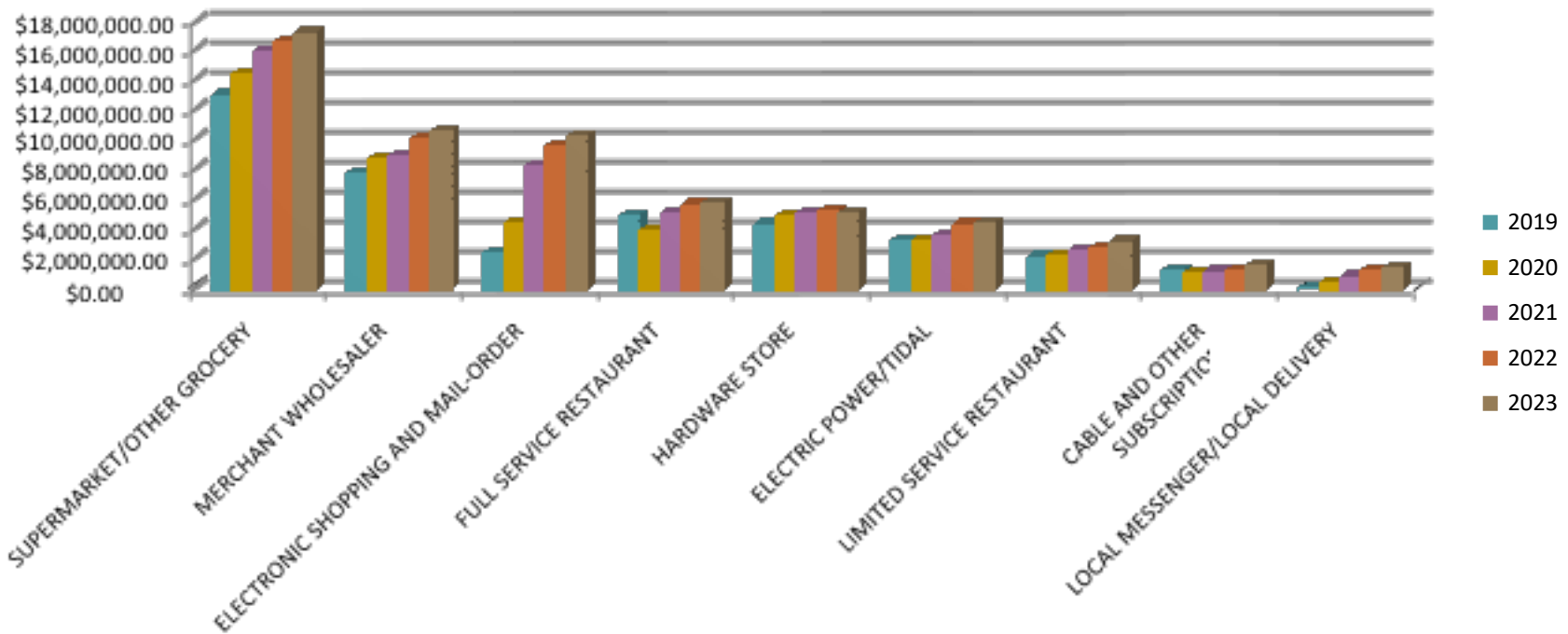
4.0% Increase



PERFORMANCE - ACTUALS VS. BUDGET

Top 70% Sales Tax Generating NAICS Categories

NAICS Code Name	2023	Percentage Change	2022	Percentage Change	2021
SUPERMARKET/OTHER GROCERY	\$17,250,387	3.23%	\$16,710,044	4.80%	\$15,944,550
GENERAL LINE GROCERY MERCH WHOLESA	\$10,653,154	4.56%	\$10,188,669	13.07%	\$9,010,805
ELECTRONIC SHOPPING AND MAIL-ORDER	\$10,273,334	7.09%	\$9,593,063	16.40%	\$8,241,148
FULL SERVICE RESTAURANT	\$5,710,788	0.51%	\$5,681,914	11.06%	\$5,115,923
HARDWARE STORE	\$5,159,799	-1.08%	\$5,216,183	1.59%	\$5,134,642
ELECTRIC POWER/TIDAL	\$4,380,961	0.45%	\$4,361,373	19.91%	\$3,637,305
LIMITED SERVICE RESTAURANT	\$3,176,317	18.07%	\$2,690,311	5.01%	\$2,561,860
CABLE AND OTHER SUBSCRIPTION PROGRA	\$1,546,504	26.28%	\$1,224,673	4.09%	\$1,176,574
LOCAL MESSENGERS/LOCAL DELIVERY	\$1,481,124	21.57%	\$1,218,368	44.04%	\$845,876
BEER/WINE/LIQUOR STORE	\$1,392,278	-15.16%	\$1,641,043	-0.57%	\$1,650,507
FLOOR COVERING STORE	\$1,159,430	-6.53%	\$1,240,371	8.22%	\$1,146,187
FURNITURE STORE	\$962,571	-14.71%	\$1,128,639	2.59%	\$1,100,196

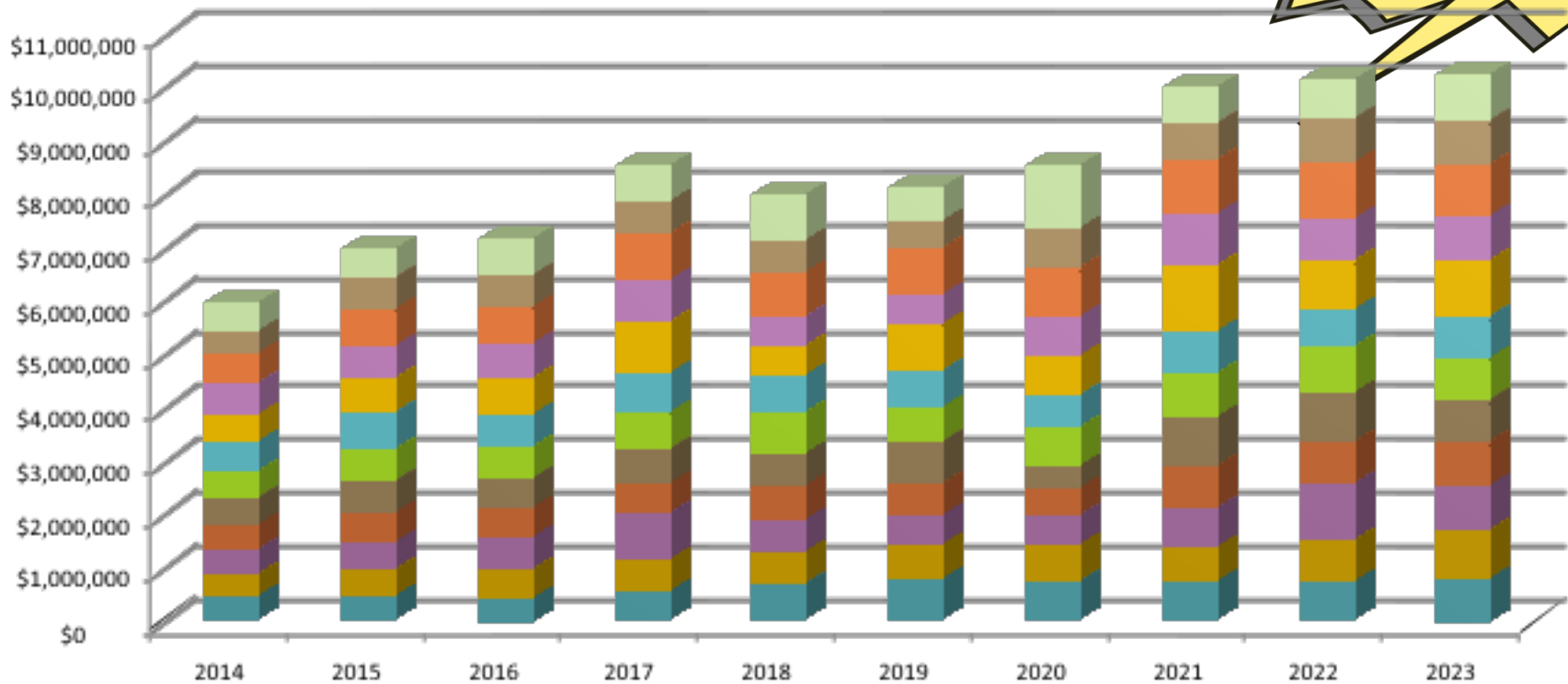


NAICS Code Name	2019	2020	2021	2022	2023
SUPERMARKET/OTHER GROCERY	\$13,058,164.40	\$14,474,847.12	\$15,944,550.00	\$16,710,044.16	\$17,250,386.97
MERCHANT WHOLESALER	\$7,820,834.68	\$8,793,800.45	\$9,010,805.10	\$10,188,668.78	\$10,653,153.55
ELECTRONIC SHOPPING AND MAIL-ORDER	\$2,382,958.65	\$4,423,371.43	\$8,241,147.87	\$9,593,062.63	\$10,273,334.27
FULL SERVICE RESTAURANT	\$4,879,650.40	\$3,896,745.89	\$5,115,923.03	\$5,681,914.14	\$5,710,787.64
HARDWARE STORE	\$4,342,929.74	\$4,903,565.41	\$5,134,642.05	\$5,216,182.65	\$5,159,798.79
ELECTRIC POWER/TIDAL	\$3,272,243.34	\$3,207,671.92	\$3,637,305.00	\$4,361,372.68	\$4,380,961.21
LIMITED SERVICE RESTAURANT	\$2,176,567.41	\$2,315,785.09	\$2,561,860.09	\$2,690,310.87	\$3,176,317.40
CABLE AND OTHER SUBSCRIPTION	\$1,198,976.59	\$1,146,368.78	\$1,176,573.90	\$1,224,672.60	\$1,546,503.94
LOCAL MESSENGER/LOCAL DELIVERY	\$101,865.68	\$358,482.75	\$845,876.49	\$1,218,367.59	\$1,481,124.47



AUTO USE

**.8%
decrease**

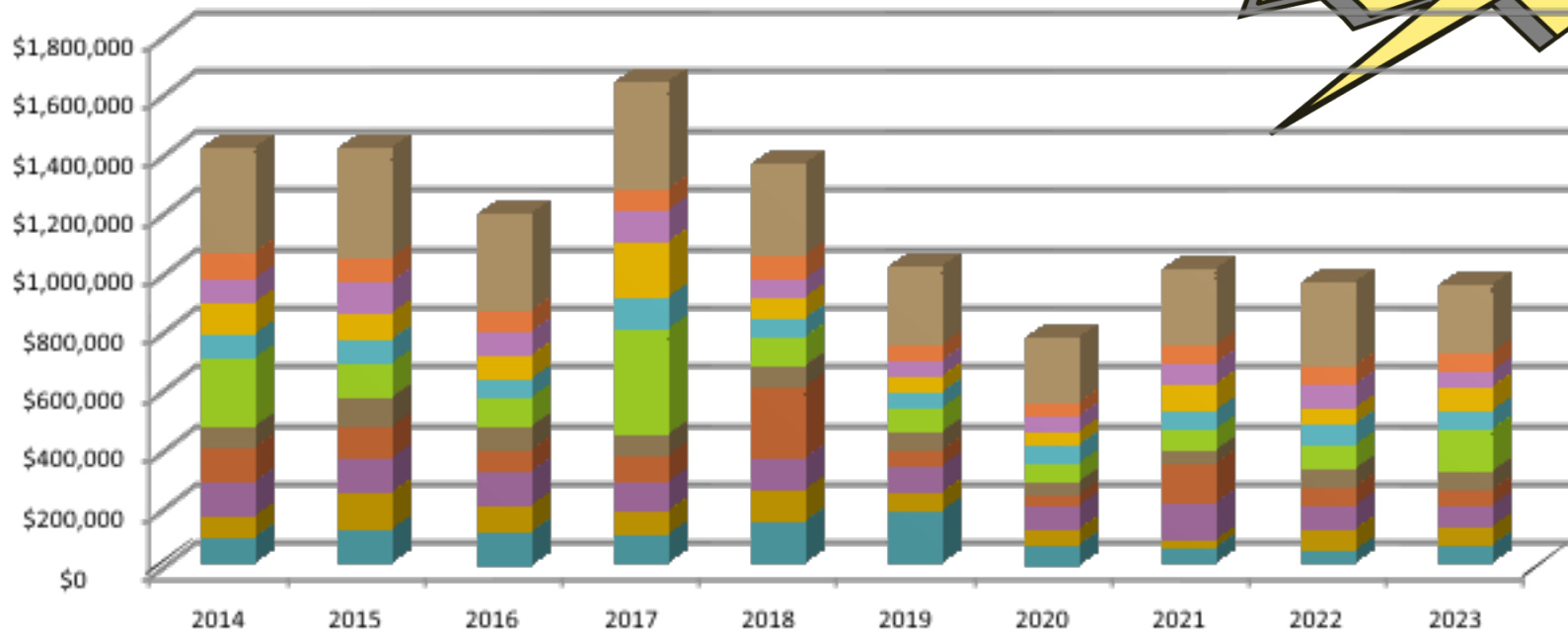


The colored boxes represent months of the year

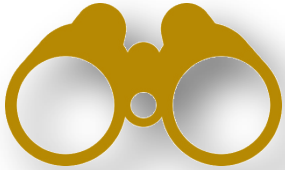
GENERAL USE TAX



**2.2%
Decrease**



The colored boxes represent months of the year



OTHER FUNDS OVERVIEW

FUND	REVENUES	EXPENDITURES	YEAR TO DATE
Parks	POSITIVE	POSITIVE	POSITIVE
Tax Increment Funds	POSITIVE	POSITIVE	POSITIVE
Community Development	POSITIVE	POSITIVE	POSITIVE
Arvada Housing	POSITIVE	MONITOR	MONITOR
Capital Projects	POSITIVE	WARNING	MONITOR
Water	MONITOR	MONITOR	POSITIVE
Wastewater	POSITIVE	MONITOR	POSITIVE
Stormwater	POSITIVE	MONITOR	POSITIVE
Golf	POSITIVE	POSITIVE	POSITIVE
Solid Waste	POSITIVE	MONITOR	MONITOR
Risk Management	POSITIVE	MONITOR	WARNING

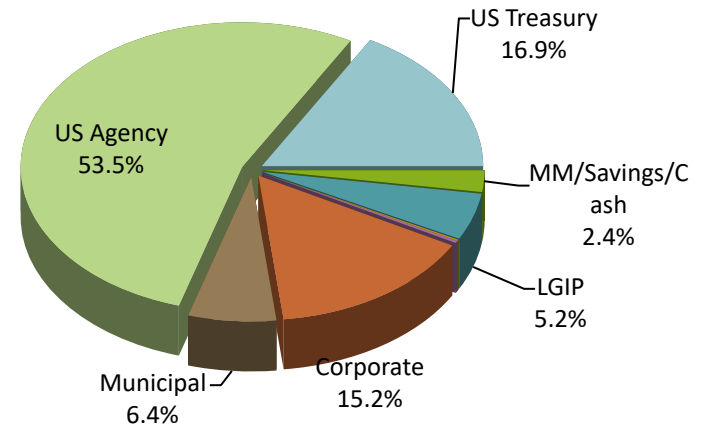
PERFORMANCE - ACTUALS VS. BUDGET

INVESTMENTS

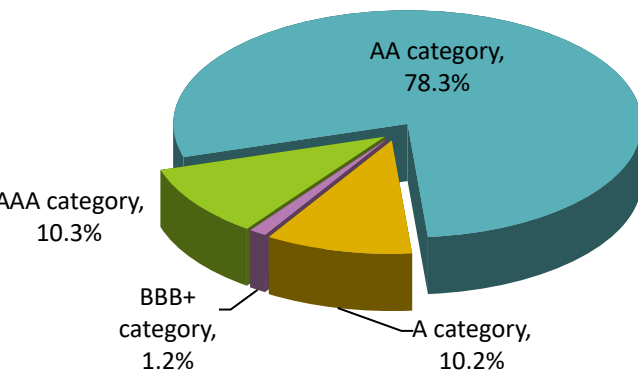
PORTFOLIO PERFORMANCE

	12/30/2023	12/30/2022	Difference
City Interest Earnings	\$ 6,071,407	\$ 3,285,356	\$ 2,786,051
PFM Interest Earnings	490,609	517,028	(26,419)
Total Interest Earned	\$ 6,562,016	\$ 3,802,384	\$ 2,759,632
YTD City Portfolio Yield	2.50%	1.46%	+104 bps
YTD PFM Portfolio Yield	3.16%	1.29%	+187 bps
YTD Benchmark	4.06%	1.46%	+260 bps

CONSOLIDATED PORTFOLIO ALLOCATION



CREDIT QUALITY (S&P RATING)



CONSOLIDATED PORTFOLIO CHANGES

	12/30/2023	12/30/2022	Difference
MM/Savings/Cash	\$ 7,320,495	\$ 9,343,292	\$ (2,022,797)
LGIP	15,849,488	27,368,166	(11,518,678)
Time CD	395,000	-	395,000
Negotiable CD	775,000	-	775,000
Corporate	45,968,000	45,173,000	795,000
Municipal	19,500,000	25,330,000	(5,830,000)
US Agency	162,402,342	150,845,000	11,557,342
US Treasury	51,115,000	44,150,000	6,965,000
Total - Combined	\$ 303,325,326	\$ 302,209,458	\$ 1,115,868

INVESTMENTS – ‘A-BBB rated’ (11.4%)

Issuer	Credit Rating	Security Type	Face Amount
Bank of NY Mellon	S&P-A	Corporate Bond	\$ 3,000,000.00
CITIBANK NA	S&P-A+	Corporate Bond	\$ 1,000,000.00
GSGI	S&P-BBB+	Corporate Bond	\$ 2,000,000.00
HONDA	S&P-A-	Corporate Bond	\$ 1,000,000.00
IBM	S&P-A-	Corporate Bond	\$ 2,242,000.00
INTC	S&P-A	Corporate Bond	\$ 1,000,000.00
John Deere Capital Corp	S&P-A	Corporate Bond	\$ 1,157,000.00
MS	S&P-A+	Corporate Bond	\$ 2,000,000.00
Toronto-Dominion Bank	S&P-A	Corporate Bond	\$ 1,000,000.00
Toyota Motor Corp	S&P-A+	Corporate Bond	\$ 1,000,000.00
Toyota Motor Cr	S&P-A+	Corporate Bond	\$ 1,000,000.00
USB	S&P-A+	Corporate Bond	\$ 3,000,000.00
			\$ 19,399,000.00

2023 GRANTS - Summary

<u>Grant Type</u>	<u>Amount</u>
Awarded	\$ 4,590,519
Preparation	163,520
Pending	50,000
Declined	11,716,865
Withdrawn	1,348,000
	\$ 17,868,904



2023 GRANTS

<u>Grant</u>	<u>Description</u>	<u>Amount</u>	<u>Status</u>
DOLA Homeless PESTEL	pestel analysis	\$ 250,000	Declined
DOLA Homeless Services	vouchers and services	\$ 1,914,000	Awarded
DOLA Navigation Center	acquisition and services	\$10,000,000	Declined
DOLA Tap Fees for Legacy	wave tap fees for legacy	\$ 1,079,865	Declined
TIP: 64th Pkwy	multimodal improvement	\$ 1,000,000	Awarded
TIP: Bike Training Facility	renovation	\$ 200,000	Declined
TIP: Citywide Safety	Planning	\$ 160,000	Awarded
TAP: Indiana at UPRR	Planning	\$ 200,000	Awarded
State JAG	PD Supplies	\$ 24,396	Awarded
Fed JAG	TBD	\$ 28,020	Awarded
Safer Streets	camp clean up	\$ 50,000	Awarded
Nighthawk Grant PD	PD Technology	\$ 42,892	Awarded

2023 GRANTS - Continued

<u>Grant</u>	<u>Description</u>	<u>Amount</u>	<u>Status</u>
Catalytic Converter	auto theft	\$ 21,291	Awarded
CIOT	click it or ticket	\$ 3,315	Awarded
POST	OT enforcement	\$ 5,766	Awarded
HVE	high visibility enforcement	\$ 12,000	Awarded
FleetZero	EV stations-city use	\$ 99,000	Awarded
ChargeAhead	EV stations-public use	\$ 78,000	Awarded
Clean Vehicle Technology Grant	14 new EV	\$ 112,000	Declined
Turf Replacement CWCB	Resource Central for residents	\$ 25,000	Withdrawn
Turf Replacement CWCB	marge roberts park	\$ 25,000	Withdrawn
EECBG	Energy Block grant	\$ 163,520	Preparation
GOCO Community Impact	Land for Gold Strike	\$ 1,000,000	Withdrawn
GOCO Restoration	Majestic View wetlands	\$ 298,000	Withdrawn
TASP Technical Assistance	Zero Waste for City	\$ 75,000	Declined

2023 GRANTS - Continued

<u>Grant</u>	<u>Description</u>	<u>Amount</u>	<u>Status</u>
TASP Technical Assistance	Zero Waste for City	\$ 75,000	Declined
RAQC	Zero emission lawn equipment	\$ 50,000	Awarded
SCFD	General Operating	\$ 41,026	Awarded
SCFD	Majestic View	\$ 20,019	Awarded
Colorado Parks & Wildlife	Majestic View Wetlands	\$ 44,000	Awarded
Colorado Water Conservation	Majestic View Wetlands	\$ 96,000	Awarded
North American Wetlands	Majestic View Wetlands	\$ 50,000	Pending
CATPA FY24	Drop Car Kits & Victim Services	\$20,000	Awarded
Bullet Proof Vests	Vests	\$2,007	Awarded
Local JAG	Laser Sights	\$28,020	Awarded
POST FY23	Simulation Equipment	\$5,766	Awarded
BHA	Co-responder	\$345,000	Awarded
LE Retention Grant	Geofencing	\$50,000	Awarded
2022 COPS	Police Positions	\$250,000	Awarded



QUESTIONS





REPORT TO CITY COUNCIL

AGENDA ITEM
8.A.

TO: THE HONORABLE CITY COUNCIL

DATE: April 15, 2024

SUBJECT: Consent Agenda

Report in Brief

1. R24-039, A Resolution Accepting 2023 Donations of Ballistic Armor to the Arvada Police Department
2. R24-040, A Resolution Authorizing the Submission of an Application for the Outdoor Recreation Legacy Partnership Grant for improvements to Gold Strike Park

Suggested Motion: Moved by: _____ I move that the Consent Item(s),
Number(s) _____
be
(Removed from the Consent Agenda and Heard Upon Item _____) (Referred to a Workshop) (Postponed
Indefinitely).

YES _____ NO _____ ABSENT _____

That All/Remaining Consent Items be (Approved) (Rejected).

YES _____ NO _____ ABSENT _____

Prepared by:
Chris Koch, CCO Admin

Reviewed by:

Approved by:

Enclosure, exhibits & attachments required to support the report



REPORT TO CITY COUNCIL RESOLUTION

AGENDA ITEM
8.A.1.

TO: THE HONORABLE CITY COUNCIL

DATE: April 15, 2024

SUBJECT: R24-039, A Resolution Accepting 2023 Donations of Ballistic Armor to the Arvada Police Department

Report in Brief

During 2023, the APD received donations of 71 pieces of rifle-rated body armor from Shield 616, a 501(c)(3) charitable organization that provides supplemental body armor to police agencies across the nation.

City Charter section 13.6 provides that the City Council is authorized to receive donations on behalf of the City.

The Arvada team recommends that the City Council approve R24-039, A Resolution Accepting 2023 Donations of Ballistic Armor to the Arvada Police Department.

Financial Impact

Approval of this donation has no negative financial impact to the City. It allows the APD to use equipment funds for other purposes.

Background

Shield 616 is a Colorado-based 501(c)(3) non-profit organization. Their mission is to provide supplemental protective equipment for first responders, including police and EMS personnel. Since 2017, Shield 616 has donated ballistic armor to 363 police and EMS agencies in 34 states, providing additional ballistic protection to over 7,400 first responders nationwide. Shield 616 has previously donated ballistic protection to the APD during 2018-2021. Councilmembers may recall that the APD's own Sergeant (now Commander) Chris McCoy appeared in a Shield 616 television spot during the 2019 Super Bowl.

Shield 616 donated 71 pieces of rifle-rated ballistic armor to the APD during 2023. This supplemental armor is prohibitively expensive. These armor donations keep APD equipment funds available for other purposes, while providing APD officers with additional protection from rifle rounds. The value of the Shield 616 armor donated to the APD in 2023 is approximately \$40,000.00.

Discussion

The APD greatly appreciates Shield 616's donations. Each donation has allowed the APD to provide its officers with supplemental equipment that would not otherwise be available, while also allowing the APD to make the best use of its equipment funds.

Public Contact

Posting of the City Council agenda.

Commission Recommendation

NA

Strategic Alignment

Accepting these donations supports the Safe Community Priority Area of the 2020-2025 City Council Strategic Plan. The donated equipment will better protect APD officers responding to critical incidents, and will allow the APD to otherwise utilize its existing budget to ensure community safety.

Alternative Courses of Action

NA

Recommendation for Action

The Arvada team recommends that the City Council approve R24-039, A Resolution Accepting 2023 Donations of Ballistic Armor to the Arvada Police Department.

Suggested Motion:

I move that R24-039, A Resolution Accepting 2023 Donations of Ballistic Armor to the Arvada Police Department, be (approved) (rejected).

Prepared by:
Aaron Jacks, Assistant City Attorney

Reviewed by:

Approved by:

Aaron Jacks, Assistant City Attorney	3/6/2024
Edward Brady, Deputy Police Chief	3/7/2024
Rachel Morris, City Attorney	3/25/2024
Lorie Gillis, City Manager	4/2/2024

Enclosure, exhibits & attachments required to support the report

RESOLUTION NO. R24-039

A RESOLUTION ACCEPTING 2023 DONATIONS OF BALLISTIC ARMOR TO THE
ARVADA POLICE DEPARTMENT

WHEREAS, the Arvada Police Department investigates crime and apprehends criminals; and

WHEREAS, Arvada police officers face threats including violent criminals that may be armed with rifles that can penetrate standard body armor; and

WHEREAS, Shield 616, a 501(c)(3) charitable organization which supports law enforcement agencies across the country with protective equipment donations, donated 71 pieces of rifle-rated ballistic armor to the Arvada Police Department during 2023; and

WHEREAS, Section 13.6 of the Arvada City Charter provides that the City Council may receive donations on behalf of the City.

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

Section 1. The City Council hereby accepts Shield 616's generous donation of ballistic armor during 2023 on behalf of the City and the members of the Arvada Police Department.

Section 2. This resolution shall be effective upon its approval by the City Council.

APPROVED AND ADOPTED this 15th day of April, 2024.

Lauren Simpson, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Rachel A. Morris, City Attorney

By: _____



REPORT TO CITY COUNCIL RESOLUTION

AGENDA ITEM
8.A.2.

TO: THE HONORABLE CITY COUNCIL

DATE: April 15, 2024

SUBJECT: R24-040, A Resolution Authorizing the Submission of an Application for the Outdoor Recreation Legacy Partnership Grant for improvements to Gold Strike Park

Report in Brief

Colorado Parks and Wildlife administers the Land and Water Conservation Fund (LWCF) that helps government agencies protect valuable natural resources and provide meaningful public recreation opportunities.

The City of Arvada is seeking to apply for an Outdoor Recreation Legacy Partnership (ORLP) Grant for a project that facilitates redesign and park improvements of Gold Strike Park, and potential land acquisition opportunities adjacent to the park, as opportunities for future park expansion. The award of grant monies from the ORLP grant program would facilitate improvements to the park, including both the development of a nature playground and community space for historical and ecological exploration, and provide flood mitigation and back water storage for large rain events, which would safeguard downstream residential homes and adjacent industrial infrastructure.

The Arvada team recommends that the City Council approve R24-040, A Resolution Authorizing the Submission of an Application for the Outdoor Recreation Legacy Partnership Grant for Improvements to Gold Strike Park.

Financial Impact

The City has currently appropriated \$2,000,000 to CIP Account #94632 Gold Strike Park. Parks & Urban Design will transfer an additional \$3,000,000 to that project account from CIP Park holding accounts. The total amount of \$5,000,000 will be matched by Jefferson County Open Space for up to \$2,000,000 and Mile High Flood District for up to \$2,000,000 for parcel acquisitions. Parks & Urban Design intends to apply for a 2025 Great Outdoors Colorado (GOCO) grant in the amount of \$1,000,000. These matching grants, along with the \$5,000,000 City match equal the \$10,000,000 match towards the additional \$10,000,000 grant request through ORLP. Parcel acquisition and park construction is estimated to be \$20,000,000. The City is able to adjust the ORLP grant application if it is determined that the parcel owners wish not to sell now or in the immediate future.

Background

Gold Strike Park is currently a 7.6 acre open space that sits at the confluence of Ralston Creek and Clear Creek. The emblematic site is the easternmost gateway to the City and the site where gold was first found in the State of Colorado. The vision for the redesign of the park was to build a vibrant park that includes active and passive recreational areas to service the existing and growing community.

The City of Arvada seeks to acquire five (5) parcels east of Gold Strike Park. The acquisition of these parcels would provide more usable space for larger events and festivals. The proposed expansion of these parcels will effectively connect Gold Strike Park to Sheridan Blvd, including the bus stop on Sheridan. This will provide increased regional access, connecting residents south of Highway 76. The five parcels are located within the floodway, 100-year floodplain, and 500-year floodplain. The parcels are fee simple and would be annexed into the City upon the sale of the land. They are currently in unincorporated Jefferson County.

Through the National Park Service (NPS) and the Land & Water Conservation Fund (LWCF), the City is seeking to submit to the ORLP grant application with a request for \$10,000,000, with a 1:1 match, on March 8, 2024.

The City of Arvada's Parks and Urban Design team initiated a solicitation for proposals in March 2024 for construction documentation and construction administration of the approved schematic design of Gold Strike Park. Phase 1 construction work is anticipated to start in early 2025, and Phase 2 construction would begin in 2027.

Discussion

The vision for this area was identified initially in the 1992 Clear Creek/I-76 Community Plan as a “synergistic mix of land uses which fosters economic growth” with Gold Strike Park being at the core. In 2000, a master plan for Gold Strike Park was completed, referring to the park as the “Gateway to the City.” In the 2016 Parks, Trails and Open Space Master Plan, the City designated the area as a Historical Site, and a Park Improvement Priority Project. The 2018 Clear Creek Corridor Plan, Gold Strike Park was identified as one of two opportunity sites to be prioritized.

Most recently, in February 2024, the Gold Strike Park Schematic Design Report was completed, outlining the refined vision that funding is being aligned to. That report was released in support of RFP 24-VCN-025 Gold Strike Park Construction Documentation & Administration, with the expectation to award that contract in May 2024.

Public Contact

Posting of the City Council agenda.

Commission Recommendation

Strategic Alignment

This project achieves the goals of activating parks, trails and open spaces; providing new parks and improvements to existing parks; and encourages access to healthy living for all as outlined in the City’s 2016 Parks, Trails and Open Space Master Plan.

Alternative Courses of Action

Alternative No. 1: Approve R24-040, A Resolution Authorizing the Submission of an Application for the Outdoor Recreation Legacy Partnership Grant for Improvements to Gold Strike Park.

Alternative No. 2: Do not approve R24-040, A Resolution Authorizing the Submission of an Application for the Outdoor Recreation Legacy Partnership Grant for Improvements to Gold Strike Park.

Recommendation for Action

The Arvada team recommends that the City Council approve Alternative No. 1:

Approve R24-040, A Resolution Authorizing the Submission of an Application for the Outdoor Recreation Legacy Partnership Grant for Improvements to Gold Strike Park.

Suggested Motion:

I move that R24-040, A Resolution Authorizing the Submission of an Application for the Outdoor Recreation Legacy Partnership Grant for Improvements to Gold Strike Park, be (approved) (rejected).

Prepared by:
Gail Walker, Legal Specialist-Contracts

Reviewed by:

Approved by:

Enessa Janes, Director of Vibrant Community and Neighborhoods	3/26/2024
Bryan Archer, Director of Finance	3/26/2024
Gail Walker, Legal Specialist-Contracts	3/26/2024
Janelle Miller, Assistant City Attorney	3/29/2024
Don Wick, Deputy City Manager	3/29/2024
Rachel Morris, City Attorney	4/1/2024
Lorie Gillis, City Manager	4/2/2024

Enclosure, exhibits & attachments required to support the report

RESOLUTION NO. R24-040

A RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION FOR THE
OUTDOOR RECREATION LEGACY PARTNERSHIP GRANT FOR IMPROVEMENTS TO
GOLD STRIKE PARK

WHEREAS, Colorado Parks and Wildlife administers the Land and Water Conservation Fund (LWCF) that helps government agencies protect valuable natural resources and provide meaningful public recreation opportunities; and

WHEREAS, the Land and Water Conservation Fund administers the Outdoor Recreation Legacy Partnership (ORLP) grant program that supports the creation of new parks or the development of existing sites that improve access and establish stronger connects between people and the outdoors; and

WHEREAS, the City of Arvada has identified a project in and around Gold Strike Park that is consistent with the goals and requirements of the Outdoor Recreation Legacy Partnership grant program; and

WHEREAS, the award of grant monies from the Outdoor Recreation Legacy Partnership grant program would facilitate improvements to Gold Strike Park, including both the development of a nature playground and community space for historical and ecological explorations, and provide flood mitigation and back water storage for large rain events, which would safeguard downstream residential homes and adjacent industrial infrastructure.

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

Section 1. Appropriate city staff is authorized to develop and submit to Colorado Parks and Wildlife an application for the Outdoor Recreation Legacy Partnership program grant for improvements to Gold Strike Park.

Section 2. If the grant is awarded, the City Council of the City of Arvada strongly supports the completion of the project.

Section 3. If the grant is awarded, the City Council of the City of Arvada will authorize the expenditure of funds necessary to meet the grant's financial 1:1 match requirement.

Section 4. If the grant is awarded, the City of Arvada will dedicate the acquired and developed land for public outdoor recreation in perpetuity.

Section 5. If the grant is awarded, the City of Arvada will maintain the site and any facilities built thereon for their reasonable life expectancy.

Section 6. This resolution shall be effective upon its approval by the City Council.

APPROVED AND ADOPTED this 15th day of April, 2024.

Lauren Simpson, Mayor

ATTEST:

Kristen Rush, City Clerk

APPROVED AS TO FORM:
Rachel A. Morris, City Attorney

By: _____



REPORT TO CITY COUNCIL RESOLUTION

AGENDA ITEM
8.B.1.

TO: THE HONORABLE CITY COUNCIL

DATE: April 15, 2024

SUBJECT: R24-041, A Resolution Authorizing the Jeffco Open Space Trails Partnership Program Grant Agreement

Report in Brief

The City of Arvada applied for a Jeffco Open Space Trails Partnership Program Grant for a project that extends the Colorado Front Range Trail from the existing regional Ralston Creek Trail north to West 82nd Avenue. The project includes the design and construction of the described segment over the next two years. The Jefferson County Board of Commissioners awarded a \$2,383,797.28 grant to assist in completion of the project. The project will complete a vital piece of the regional Colorado Front Range Trail and connect it directly to Arvada's Ralston Creek Regional Trail.

The Arvada team recommends that the City Council approve R24-041, A Resolution Authorizing the Jeffco Open Space Trails Partnership Program Grant Agreement.

Financial Impact

The City of Arvada is matching the Jefferson County Open Space Grant funding of \$2,383,797 for the design and construction of the CFRT segment as identified. The matching funds of \$2,383,797 have been appropriated through existing CIP funding dollars (CIP Account #94696).

Background

On Tuesday, January 30, 2024, the Jefferson County Board of Commissioners awarded the City of Arvada a matching grant of \$2.4 million through the Jefferson County Trails Partnership Program. The grant award represents 50% of the total project cost and will support the completion of the design and construction of the Colorado Front Range Trail through Arvada over the next two years. Matching funds have already been allocated to this project.

Initiated by Colorado Parks and Wildlife in 2003, the Colorado Front Range Trail (CFRT) is a multi-purpose trail that will extend from Wyoming to New Mexico connecting more than 875-miles of trail and over 5 million people along the Front Range to the natural and cultural features of the Colorado landscape.

Led by Jefferson County in partnership with the City of Arvada, the Trust for Public Lands and others, the recent feasibility study for the trail segment that runs from North Table Mountain in Golden to the City of Boulder was completed in 2023. The study set the stage for the next round of construction. In Arvada, the 'Pioneer-Blunn' section of trail is the next critical piece in the completion of the CFRT.

The City of Arvada's Parks and Urban Design team plans to put out a design-build contract in the spring of 2024 with a goal of selecting a contractor by early summer 2024. Construction on the trail segment may start as early as this fall.

Discussion

Locally, completion of the Colorado Front Range Trail supports goals outlined in Arvada's 2016 Parks, Trails, and Open Space Master Plan. The new segment of trail will meet a growing demand for increased access to open spaces and trails, creating connections closer to home, and improving connectivity within and across Arvada as well as the larger regional trail system as a whole.

In addition to fulfilling guidance set in the Jeffco Trail Plan, the Jeffco Bike Plan, the CDOT West Connect PEL study, and the Jeffco Open Space's Conservation Greenprint under its Park System Trail Expansion goal, completion of the Colorado Front Range Trail trail also support's former Governor Hickenlooper's 'Colorado the Beautiful' initiative.

Public Contact

Posting of the City Council agenda.

Commission Recommendation

N/A

Strategic Alignment

This project achieves the goals of activating parks, trails and open spaces; providing new parks and improvements to existing parks; and encourages access to healthy living for all as outlined in the City's 2016 Parks, Trails and Open Space Master Plan.

Alternative Courses of Action

1. Alternative No. 1: Approve R24-041, A Resolution Authorizing the JeffCo Open Space Trails Partnership Program Grant Agreement.
2. Alternative No. 1: Do not approve R24-041, A Resolution Authorizing the JeffCo Open Space Trails Partnership Program Grant Agreement.

Recommendation for Action

The Arvada team recommends that the City Council approve Alternative No. 1:

Alternative No. 1: Approve R24-041, A Resolution Authorizing the JeffCo Open Space Trails Partnership Program Grant Agreement.

Suggested Motion:

I move that R24-041, A Resolution Authorizing the Jeffco Open Space Trails Partnership Program Grant Agreement, be (approved) (rejected).

Prepared by:

Enessa Janes, Director of Vibrant Community and Neighborhoods

Reviewed by:

Approved by:

Enessa Janes, Director of Vibrant Community and Neighborhoods	3/15/2024
Bryan Archer, Director of Finance	3/15/2024
Gail Walker, Legal Specialist-Contracts	3/15/2024
Emily Grogg, Senior Assistant City Attorney	3/15/2024

SUBJECT: R24-041, A Resolution Authorizing the Jeffco Open Space Trails Partnership
Program Grant Agreement

PAGE: 3
ITEM: 8.B.1.

Rachel Morris, City Attorney

3/25/2024

Don Wick, Deputy City Manager

3/25/2024

Lorie Gillis, City Manager

4/2/2024

Enclosure, exhibits & attachments required to support the report

RESOLUTION NO. R 24-041

A RESOLUTION AUTHORIZING THE JEFFCO OPEN SPACE TRAILS PARTNERSHIP
PROGRAM GRANT AGREEMENT

WHEREAS, the City of Arvada applied for a Jeffco Open Space Trails Partnership Program Grant for a project that extends the Colorado Front Range Trail from the existing regional Ralston Creek Trail north to West 82nd Avenue; the project includes the design and construction of the described segment over the next two years;

WHEREAS, the Board of County Commissioner for the County of Jefferson County awarded a \$2,383,797.28 grant to assist in completion of the project; and

WHEREAS, the project will complete a vital piece of the regional Colorado Front Range Trail and connect it directly to Arvada's Ralston Creek Regional Trail.

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

Section 1: The Mayor or Mayor Pro Tem is authorized to sign and the City Clerk to attest, in form approved by the City Attorney, an Agreement that is in substantially the same form as that attached hereto.

Section 2: This resolution shall be effective upon its approval by the City Council.

APPROVED AND ADOPTED this 15th day of April 2024.

Lauren Simpson, Mayor

ATTEST:

Kristen Rush, City Clerk

APPROVED AS TO FORM:
Rachel A. Morris, City Attorney

By: _____

JEFFCO OPEN SPACE TRAILS PARTNERSHIP PROGRAM

GRANT TERMS AND CONDITIONS

1. GRANT PROJECT TERMS.

- 1.1. The Board of County Commissioners for the County of Jefferson, State of Colorado (“County”) did duly adopt and pass Resolution No. CC24-035 awarding to the City of Arvada (“**Grantee**”) a 2024 Jeffco Open Space (“**JCOS**”) Trails Partnership Program Grant in the amount of \$2,383,797.28 (“**Grant**”). The County and Grantee may be individually referred to herein as a “**Party**” or collectively as the “**Parties**.”
- 1.2. In consideration of its award of a Grant, Grantee agrees to abide by these Grant Terms and Conditions (“**Grant Terms**”).
- 1.3. Grantee shall use the Grant for the project (“**Project**”) set out in its Trails Partnership Program Grant Application dated 09/13/2023 (“**Application**”). Unless explicitly modified herein, the Application is incorporated into these Grant Terms. The general scope of the Project is:

This project extends the Colorado Front Range Trail from the existing regional Ralston Creek Trail north to West 82nd Ave. This project includes the design and construction of this segment.

- 1.4. Grantee will begin the Project within the current calendar year and complete the Project by February 2026 (two years from award date), (the “Grant Period”). The parties understand that the Project will be deemed to be completed by the construction of this segment of the Colorado Front Range Trail. Any requested extension of the Grant Period will require JCOS’s prior written approval, which it may deny or condition in its discretion.
- 1.5. The Grant is comprised of Jefferson County Open Space Sales Tax Funds and/or a portion of the County’s share of the State of Colorado’s Conservation Trust Funds. For example and without limiting the foregoing, the use of JCOS Sales Tax Funds is limited to public open space, park, or recreation purposes pursuant to the 1972 Open Space Enabling Resolution, as amended. Grantee understands and acknowledges it is bound by the use restrictions of such Funds, as applicable.
- 1.6. Grantee shall manage the Grant funds in accordance with applicable laws, regulations, permitting requirements, these Grant Terms, and JCOS’s Policies, Procedures, and guidelines, as they may be amended from time to time.
- 1.7. **Additional Grant Project Terms.** Without limiting the foregoing, the following specific Grant terms also apply to the Grant funds and the Project:

- 1.7.1. _____
- 1.7.2. _____

2. PAYMENT OF GRANT FUNDS.

- 2.1. After review and approval of documentation submitted by Grantee establishing to JCOS's satisfaction that 50% of the cost of the Project has been completed, JCOS shall remit 50% of the Grant funds to Grantee pursuant to wiring instructions provided to JCOS.
- 2.2. After Project completion Grantee shall provide JCOS a summary of the Project that at minimum includes a written narrative, photos and/or illustrations, and a summary of expenditures. After review and approval of this information and any other relevant documentation it may require, JCOS shall remit the remaining 50% of the Grant funds to Grantee pursuant to wiring instructions provided to JCOS.
- 2.3. In lieu of the payment terms set forth in paragraphs 2.1 and 2.2 above, in its discretion JCOS may agree to an alternate payment schedule. In that event the terms of the alternate payment schedule shall be attached to these Grant Terms as an Addendum.

3. COMMUNICATION; REPORTS; RECORDS.

- 3.1. Grantee and JCOS shall each appoint one individual to act as principal contact person for notices and other communications concerning the Grant and the Project. The initial appointees are:

Grantee (name, email, phone): Maki Boyle; mboyle@arvada.org; (720) 898-7390
JCOS: Emily Guffin; eguffin@jeffco.us; (303) 271-5946

Grantee or JCOS may change its contact person at any time by written notice to the other Party.

- 3.2. On a quarterly basis Grantee shall provide JCOS with a written Project report that at minimum describes the status of the Project and provides an accounting of Grant fund expenditures.
 - 3.3. Grantee shall maintain its books and records in a manner that will provide JCOS with sufficient detail to review Grantees receipts and expenditures relating to the Grant. Grantee shall make such records available for review by JCOS upon reasonable notice during the Grant Period and for two years thereafter.
- ## **4. DONOR RECOGNITION; PUBLICITY.** Grantee agrees to adhere to the JCOS Funding Recognition Guide attached as **Exhibit A** to appropriately acknowledge a contribution from the Trails Partnership Program to complete the Project.

5. **PROJECT CHANGES.** Grantee shall notify JCOS if Grantee determines in good faith that because of changed circumstances it is no longer possible for the Grant to serve its original purpose. In that case, and upon JCOS's prior written approval, Grantee may use the remaining Grant funds on a public open space, park, or recreation project or projects in line with both Grantee's and JCOS's mission. The Parties shall execute an amendment to these Grant Terms addressing any such Project change and these Grant Terms, as amended, shall apply to and govern the new or revised Project.
6. **NONCOMPLIANCE.** Grantee understands and acknowledges that noncompliance with these Grant Terms may result, for example, in JCOS requiring the return of all or a portion of the Grant funds and/or Grantee's ineligibility for future Trails Partnership Program grant funds.
7. **MISCELLANEOUS TERMS.**
 - 7.1. **No Assumption of Liabilities.** By providing the Grant and completing the Project neither Party is assuming any liability for the acts or omissions of the other Party or any third party. Grantee shall indemnify and hold the County harmless from any loss that the County may incur as a result of any third party's claim which is in any way related to the Grant or the Project.
 - 7.2. **No Employment Relationship.** By providing the Grant and completing the Project or by execution or acceptance of these Grant Terms, neither Party is acting as an agent, servant, or employee of the other Party.
 - 7.3. **No Third-Party Beneficiaries.** The Parties agree the Grant and these Grant Terms is only intended to cover the relative responsibilities of the Parties and no third party beneficiaries are intended.
 - 7.4. **Governmental Immunity.** Nothing associated with the Grant or contained in these Grant Terms shall give or allow any claim or right of action by any third party, nor shall anything contained herein be construed as a waiver of the right of the Parties to assert all defenses and limitations on liability provided by law including, without limitation, the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S., and the Owners of Recreational Areas Act, §33-41-101, *et seq.*, C.R.S., or any successor acts or provisions.
 - 7.5. **Officials Not to Benefit.** No elected or employed member of either Party shall be paid or receive, directly or indirectly, any share or part of the Grant or any benefit that may arise therefrom.
 - 7.6. **Electronic Signatures.** These Grant Terms may be signed electronically. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. §24-71.3-101 through §24-71.3-121.

7.7. **Waiver.** The failure of JCOS to object to Grantee's use of the Grant funds or noncompliance with these Grant Terms shall not be deemed a waiver.

The undersigned, on behalf of Grantee, hereby agrees to abide by these Grant Terms.

GRANTEE:

By _____
Name _____
Title _____
Date: _____

JCOS Acceptance:

By _____
Name _____
Title _____
Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

Rachel A. Morris, City Attorney

By: _____



JEFFERSON
COUNTY COLORADO
Open Space

Jefferson County Open Space Funding Recognition Guide

Exhibit A





JEFFERSON

COUNTY COLORADO

Open Space

Jeffco Open Space was founded as a land conservation organization in 1972 by PLAN Jeffco and The League of Women Voters of Jefferson County. These organizations proposed a unique concept to the Board of County Commissioners to preserve the scenic vistas and open lands with a one-half of one percent tax on sales. The voters agreed, thereby ensuring perpetual land conservation, stewardship of open space and parklands, and access for public enjoyment.

Funded with a one-half of one percent sales tax, the Jefferson County Open Space Fund contributes to community, city, and park district projects. Local governments throughout the County also directly benefit with an attributable share of the sales tax generated from within their boundary.

This document outlines the various ways a city or district is required to recognize any land acquisition or amenity that has benefited from Jefferson County Open Space funding.

Recognition Resource Contact

We look forward to working with you on your project!

If you have any additional questions, please contact:

Chris Barker

Communications Supervisor

303.271.5960 or cbarker@jeffco.us

Website, Brochure, and Annual Reports *(Required Recognition)*

Please include our Jeffco Open Space ad, including image, logo, and text, into any website or print material that discusses use of funds.

General Ad

Choose from the following Ad options, available upon request. Should fit standard 1/4 page ad run, meant to sit in 4"x4.5" space with .25" margins of white space.



(Actual size)

Co-branded General Ad

Include photo of acquisition property or project funded and add your logo.

Photos and Videos

Jeffco Open Space is interested in before/after photos or video taken from the same vantage point, as well as photos or video that show people using the completed project. These help us tell the story of how your project is benefiting the community.



News Releases *(Required Recognition)*

You are encouraged to issue news releases regarding the project. We are happy to assist you in producing the release, if needed. Be sure to include the following description in your release and copy us on any announcements or coverage at: jeffcoparks@jeffco.us.

Jeffco Open Space was founded as a land conservation organization in 1972. Our mission is to preserve open space and parkland, protect park and natural resources, and provide healthy, nature-based experiences. Funded with a one-half of one percent sales tax, our organization contributes to city and park district projects, has preserved more than 56,000 acres, and manages 27 open space parks and more than 244 miles of trails in Jefferson County, Colorado. Jeffco Open Space also works in partnership with cities, districts, and non-profit conservation organizations by assisting with funding for local parks, trails, open spaces, and greenways.

Specific Language

When referring to Jeffco Open Space always use the full name “**Jefferson County Open Space**” or “**Jeffco Open Space.**” Do not use “Open Space” on its own or any other iterations of county spellings.

When referring to the fund, please use the following phrase as a guide:

This (facility/park/trail/land) was partially funded with Jefferson County Open Space sales tax proceeds.

Integrated Signs *(Optional Recognition)*

If you decide to install custom signage that recognizes the project, please adhere to the following:

- Do not install a separate sign acknowledging Jeffco Open Space funds; instead include the text “*This project was funded in part with Jefferson County Open Space funds*”
- Refrain from installing signage on restrooms or near trash receptacles
- Sign location and digital proofs must be approved by Jeffco Open Space
- Remove any outdated Jeffco Open Space logos or signs from premises



Logos

Below are the two approved logo versions for use on physical and digital media.

To maintain the greatest impact and legibility with the brand, always keep a specific amount of clear space around the logo. This space is measured by the height of the “O” in county.

Do not shrink the logo past the minimum size of 1” and 1.5”, respectively.

Primary Logo



1 inch



Secondary/Left Align Logo



1.5 inches



Color Palette

Below lists the primary color palette for Jefferson County materials and logo.



Pantone 5487 C

C	46
M	14
Y	26
K	43
R	98
G	125
B	119

627D77



Pantone 377 C

C	51
M	5
Y	98
K	23
R	115
G	150
B	0

739600



Pantone 382 C

C	28
M	0
Y	92
K	0
R	190
G	214
B	0

BED600



Pantone 2915 C

C	61
M	7
Y	0
K	0
R	94
G	182
B	228

5EB6E4



Pantone 1495 C

C	0
M	45
Y	69
K	0
R	255
G	145
B	51

FF9133

Logos – Alternate Color Options

In certain instances, using logos that are either reversed out, one color, or black and white may be necessary. If using the logo on a darker or colorful background, please see the below options instead of the full-color logo. All variations of these logos are available upon request.

Colored Logo with White Border

To be used with a competing background color.



White Wordmark with Color Icon

To be used with a competing background color and bring emphasis to the mark.



Single Colored Logo

To be used on single color print runs, or on complex background.



Black and White Logo

To be used when printing black and white materials.



Typography

The following fonts are approved for use: Axis Extra Bold, Aleo, Open Sans, Gotham and Arial.

Generally, Aleo is used for section headers, headlines and quotes. Axis Extra Bold is saved for stats and large call-outs. Open Sans is used for general text. Arial is used when the other fonts are unavailable.

These typefaces are used for all materials, both web and print.

Aleo Font Family

a b c d e f g h i j k l m n o p q r s t u v w x y z
A B C D E F G H I J K L M N O P Q R S T U V W X Y Z
1 2 3 4 5 6 7 8 9 0

Axis Extra Bold

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z
1 2 3 4 5 6 7 8 9 0

Open Sans Font Family

a b c d e f g h i j k l m n o p q r s t u v w x y z
A B C D E F G H I J K L M N O P Q R S T U V W X Y Z
1 2 3 4 5 6 7 8 9 0

Gotham Font Family

a b c d e f g h i j k l m n o p q r s t u v w x y z
A B C D E F G H I J K L M N O P Q R S T U V W X Y Z
1 2 3 4 5 6 7 8 9 0

Arial Font Family

a b c d e f g h i j k l m n o p q r s t u v w x y z
A B C D E F G H I J K L M N O P Q R S T U V W X Y Z
1 2 3 4 5 6 7 8 9 0





REPORT TO CITY COUNCIL RESOLUTION

AGENDA ITEM
8.B.2.

TO: THE HONORABLE CITY COUNCIL

DATE: April 15, 2024

SUBJECT: R24-042, A Resolution Authorizing an Intergovernmental Agreement between the City of Arvada, City of Aurora, City of Brighton, City of Commerce City, City of Federal Heights, City of Northglenn, City of Westminster, and the County of Adams to Provide Engineering Services to Conduct the Adams County Comprehensive Safety Action Plan Study

Report in Brief

The Adams County Comprehensive Safety Action Plan is an Adams County-led project. Adams County received grant funding to develop a plan that would ultimately assist the County and participating jurisdictions to become eligible for Safe Streets for All infrastructure funding. The City of Arvada will be participating in the planning process and providing a portion of the local match for the grant funding.

The Arvada team recommends that the City Council approve R24-042, A Resolution Authorizing an Intergovernmental Agreement between the City of Arvada, City of Aurora, City of Brighton, Commerce City, City of Federal Heights, City of Northglenn, City of Westminster, and the County of Adams to Provide Engineering Services to Conduct the Adams County Comprehensive Safety Action Plan Study.

Financial Impact

Funding for this project is allocated in CIP Project Account 93881.

Background

The plan will make all participating jurisdictions eligible for implementation funding through the Federal Highway's Safe Streets for All grant program by the year 2026. The focus of the study is to improve roadway safety for all users and be flexible and adaptable to the unique desires and capacities of the City of Arvada.

Discussion

The plan will utilize the public input and professional work that has been completed within the scope of the Transportation System Plan in order to compliment the work that has been through that process. The effort in the Comprehensive Safety Action Plan will focus on providing additional elements that will make the City of Arvada eligible for future infrastructure grant funding.

Public Contact

Posting of the City Council agenda.

Commission Recommendation

N/A

Strategic Alignment

SUBJECT: R24-042, A Resolution Authorizing an Intergovernmental Agreement between the City of Arvada, City of Aurora, City of Brighton, City of Commerce City, City of Federal Heights, City of Northglenn, City of Westminster, and the County of Adams to Provide Engineering Services to Conduct the Adams County Comprehensive Safety Action Plan Study

PAGE: 2
ITEM: 8.B.2.

The participation in the Adams County Comprehensive Safety Action Plan Study aligns with the city's infrastructure principles to maintain existing roads and transportation network to ensure swift and safe transportation modes for the community.

Alternative Courses of Action

Approve R24-042, A Resolution Authorizing an Intergovernmental Agreement between the City of Arvada, City of Aurora, City of Brighton, City of Commerce City, City of Federal Heights, City of Northglenn, City of Westminster, and the County of Adams to Provide Engineering Services to Conduct the Adams County Comprehensive Safety Action Plan Study, in An Amount Not to Exceed \$48,000.00.

Recommendation for Action

It is recommended that the Council approve the IGA for the Adams County Comprehensive Safety Action Plan Study. This approval will provide the City of Arvada additional federal funding opportunities.

Suggested Motion:

I move that R24-042, A Resolution Authorizing an Intergovernmental Agreement between the City of Arvada, City of Aurora, City of Brighton, City of Commerce City, City of Federal Heights, City of Northglenn, City of Westminster, and the County of Adams to Provide Engineering Services to Conduct the Adams County Comprehensive Safety Action Plan Study, be (approved) (rejected).

Prepared by:

Kellee Van Bruggen, Transportation Planner

Reviewed by:

Approved by:

John Firouzi, Senior Transportation Planner	3/20/2024
Jacqueline Rhoades, Public Works Director	3/27/2024
Bryan Archer, Director of Finance	3/27/2024
Tammy Hedlund, Legal Specialist	3/27/2024
Kelsy Sargent, Assistant City Attorney	3/28/2024
Don Wick, Deputy City Manager	3/28/2024
Rachel Morris, City Attorney	4/1/2024
Lorie Gillis, City Manager	4/2/2024

Enclosure, exhibits & attachments required to support the report

RESOLUTION NO. R24-042

A RESOLUTION AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF ARVADA, CITY OF AURORA, CITY OF BRIGHTON, CITY OF
COMMERCE CITY, CITY OF FEDERAL HEIGHTS, CITY OF NORTHGLENN, CITY OF
WESTMINSTER, AND THE COUNTY OF ADAMS TO PROVIDE ENGINEERING
SERVICES TO CONDUCT THE ADAMS COUNTY COMPREHENSIVE SAFETY ACTION
PLAN STUDY

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. The Mayor or Mayor Pro Tem is authorized to sign and the City Clerk to attest, in form approved by the City Attorney, an Intergovernmental Agreement, which is in substantially the same form as that attached hereto, by and between the City of Arvada and the City of Aurora, City of Brighton, City of Commerce City, City of Federal Heights, City of Northglenn, City of Westminster, and Adams County to provide engineering services to conduct the Adams County Comprehensive Safety Action Plan Study Project in an amount not to exceed \$48,000.00.

Section 2. This resolution shall be effective upon its approval by the City Council.

APPROVED AND ADOPTED this 15th day of April, 2024.

Lauren Simpson, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Rachel A. Morris, City Attorney

By: _____

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF
ARVADA, CITY OF AURORA, CITY OF BRIGHTON, COMMERCE CITY, CITY OF
FEDERAL HEIGHTS, CITY OF NORTHGLENN, CITY OF WESTMINSTER, AND THE
COUNTY OF ADAMS TO PROVIDE ENGINEERING SERVICES TO CONDUCT THE
ADAMS COUNTY COMPREHENSIVE SAFETY ACTION PLAN STUDY**

This Intergovernmental Agreement (IGA) is entered into this ____ day of _____, 20____, among the City of Arvada, a Colorado home rule municipality located at 8101 Ralston Road, Arvada, CO 80002 ("Arvada"), the City of Aurora, a Colorado home rule municipality located at 15151 East Alameda Parkway, Aurora, CO 80012 ("Aurora"), the City of Brighton, a Colorado home rule municipality located at 500 South 4th Avenue, Brighton, CO 80601 ("Brighton"), the City of Commerce City, a Colorado home rule municipality located at 7887 East 60th Avenue, Commerce City, CO 80022 ("Commerce City"), the City of Federal Heights, a Colorado home rule municipality located at 2380 West 90th Avenue, Federal Heights, CO 80260 ("Federal Heights"), the City of Northglenn, a Colorado home rule municipality located at 11701 Community Center Drive, Northglenn, CO 80233 ("Northglenn"), the City of Westminster, a Colorado home rule municipality located at 4800 West 92nd Avenue, Westminster, CO 80031 ("Westminster"), and Adams County, located at 4430 South Adams County Parkway, Brighton, CO 80601 ("Adams County"), or collectively the "Parties."

WITNESSETH

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution and Sections 29-1-201, et seq., and 29-20-105 of the Colorado Revised Statutes authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, Adams County, Arvada, Aurora, Brighton, Commerce City, Federal Heights, Northglenn, and Westminster plan to collaborate on the Adams County Comprehensive Safety Action Plan Study Project ("Project"), which will include engineering services to produce a prioritized list of safety improvement projects for each Party that will improve roadway safety for all users; and

WHEREAS, a total of twenty percent (20%) of the funding for the Project is to be provided by the Parties cumulatively ("Party Funding"), and eighty percent (80%) of the funding for the Project (\$1,600,000) is to be provided by the Colorado Department of Transportation ("CDOT") using Denver Regional Council of Governments Transportation Improvement Program funds ("DRCOG TIP Funds") for use as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and conditions contained herein, the Parties hereto agree as follows:

1. Obligations of the Parties

A. Project Management

Adams County will be the lead agency and project manager regarding the procurement and production of the Comprehensive Safety Action Plan Documents. The Parties agree to support Adams County in this role as needed. In the absence of representation from any Party, Adams County will act with the respective Party's best interests in mind but will not commit any Party to legal obligations such as policy changes or future funding agreements. CDOT will provide oversight for DRCOG TIP funding, with the roles and responsibilities of CDOT regarding such oversight to be covered by a separate agreement.

B. Project Funding and Appropriation

The Parties shall provide funding in the following amounts: \$48,000 in Project funding to be provided by Arvada, \$150,000 of Project funding to be provided by Aurora, \$15,000 of Project funding to be provided by Brighton, \$22,000 in Project funding to be provided by Commerce City, \$5,000 in Project funding to be provided by Federal Heights, \$15,000 in Project funding to be provided by Northglenn, \$45,000 in Project funding to be provided by Westminster, and \$100,000 in Project funding to be provided by Adams County. The Parties agree to use their best efforts to have their respective shares of Party Funding appropriated in their 2024 budgets and made available by early 2024. However, nothing in this Agreement shall be interpreted as creating a multi-year fiscal obligation. The financial obligations in this Agreement are subject to annual appropriation by each Party's governing body.

Promptly following appropriation, and subject to each Party's approval of the selection of the engineering services consultant as set forth in section 1(E) below, each Party shall provide Adams County their respective Project funding amounts for their share of Party Funding.

C. Comprehensive Safety Action Plan Documents

The Party Funding and the DRCOG TIP Funds are to be used for engineering services to develop and document a comprehensive safety action plan for each Party that includes a prioritized list of safety improvement projects that improves roadway safety for all users and is adaptable to the capacities and desires of each Party ("Comprehensive Safety Action Plans Documents"). Further details related to specific scope of work elements for the Project are covered in other documents. Funds for the design and construction of any recommended project in each Comprehensive Safety Action Plan are not included in this Project.

D. Excess Costs

If, at any time, it becomes apparent that the actual total cost of the Comprehensive Safety Action Plan Documents will exceed the amount of Party Funding and DRCOG TIP Funds set forth herein, Adams County shall instruct the consultant to halt engineering services and the Parties shall discuss additional appropriations to cover such excess costs.

E. Procurement of Comprehensive Safety Action Plan Documents

Adams County will be responsible for advertising for, selecting, and engaging an engineering services consultant to produce the Comprehensive Safety Action Plan Documents. Adams County's selection of the engineering services consultant shall be subject to final approval from the Parties. Final engagement of the engineering services consultant shall be completed following and contingent upon Party Funding being received by Adams County from all Parties in accordance with subsection B, above.

F. Acceptance of Comprehensive Safety Action Plan Documents

Upon substantial completion, the Comprehensive Safety Action Plan Documents shall be circulated by Adams County to each Party for their review and approval. Each Party shall review the Comprehensive Safety Action Plan Documents and provide comments, if any, to Adams County within thirty (30) days of the County's receipt of the Comprehensive Safety Action Plan Documents, or within such other reasonable period of time as may be mutually agreed upon by the Parties. Following review, each Party shall each provide written notice to Adams County of their acceptance or conditions to acceptance thereof. Subject to and following final approval by all Parties, Adams County shall provide acceptance of the Comprehensive Safety Action Plan Documents to the consultant.

G. Study Progress

No Party shall have the right to stop or significantly delay the Project, or to take any action that would cause the Project to be stopped or significantly delayed, without the written consent of the other Parties, except in the event of an emergency; provided however that any exercise of a Party's approval rights as more specifically detailed herein shall under no circumstances be construed as a "delay" for the purposes of this section.

2. TERM AND TERMINATION

This Agreement shall continue in effect until final acceptance of the Comprehensive Safety Action Plan Documents and circulation thereof to all Parties or, in the event of non-appropriation of Party Funding by any Party, upon written notice given by such Party to the other Parties hereto.

3. GENERAL TERMS

- A. Each Party hereto shall be responsible for any suits, demands, costs, or actions at law resulting from its own acts or omissions.

- B. Any notice required by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth above, or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States mail.
- C. This Agreement represents the entire Agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties.
- D. Notwithstanding any other term, condition, or provision herein, each and every financial obligation of Arvada, Aurora, Brighton, Commerce City, Federal Heights, Northglenn, and Westminster, and Adams County stated in this Agreement is subject to the requirement of a prior appropriation of funds therefor by the parties' respective governing bodies. This Agreement will neither constitute nor be deemed a multiple fiscal-year debt or financial obligation of Arvada, Aurora, Brighton, Commerce City, Federal Heights, Northglenn, and Westminster, or Adams County.
- E. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Adams, State of Colorado.
- F. If any article, section, paragraph, sentence, clause or phrase of this Agreement is held to be unconstitutional or invalid for any reason, such holding shall not affect the validity, enforceability or constitutionality of the remaining provisions of this Agreement.
- G. A waiver by any Party of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.
- H. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- I. The Parties acknowledge that each Party, their officers and employees, are relying on, and do not waive or intend to waive, by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq.*, as it is from time to time amended, or otherwise available to the Parties, their officers, or employees.

IN WITNESS WHEREOF, the Parties hereto have executed this IGA to be effective as of the date first above written.

CITY OF ARVADA

Signature

By: (Print Name and Title)

Date: _____

2nd City of Arvada Signature if Needed

Signature

By: (Print Name and Title)

Date: _____

3rd City of Arvada Signature if Needed

Signature

By: (Print Name and Title)

Date: _____

CITY OF AURORA

Signature

By: (Print Name and Title)

Date: _____

2nd City of Aurora Signature if Needed

Signature

By: (Print Name and Title)

Date: _____

3rd City of Aurora Signature if Needed

Signature

By: (Print Name and Title)

Date: _____

CITY OF BRIGHTON

Signature

By: (Print Name and Title)

Date: _____

2nd City of Brighton Signature if Needed

Signature

By: (Print Name and Title)

Date: _____

3rd City of Brighton Signature if Needed

Signature

By: (Print Name and Title)

Date: _____

CITY OF COMMERCE CITY

Signature

By: (Print Name and Title)

Date: _____

2nd City of Commerce City Signature if Needed

Signature

By: (Print Name and Title)

Date: _____

3rd City of Commerce City Signature if Needed

Signature

By: (Print Name and Title)

Date: _____

CITY OF FEDERAL HEIGHTS

Signature

By: (Print Name and Title)

Date: _____

2nd City of Federal Heights Signature if Needed

Signature

By: (Print Name and Title)

Date: _____

3rd City of Federal Heights Signature if Needed

Signature

By: (Print Name and Title)

Date: _____

CITY OF NORTHGLENN

Signature

By: (Print Name and Title)

Date: _____

2nd City of Northglenn Signature if Needed

Signature

By: (Print Name and Title)

Date: _____

3rd City of Northglenn Signature if Needed

Signature

By: (Print Name and Title)

Date: _____

CITY OF WESTMINSTER

Signature

By: (Print Name and Title)

Date: _____

2nd City of Westminster Signature if Needed

Signature

By: (Print Name and Title)

Date: _____

3rd City of Westminster Signature if Needed

Signature

By: (Print Name and Title)

Date: _____

ADAMS COUNTY

Signature

By: (Print Name and Title)

Date: _____

2nd Adams County Signature if Needed

Signature

By: (Print Name and Title)

Date: _____

3rd Adams County Signature if Needed

Signature

By: (Print Name and Title)

Date: _____



REPORT TO CITY COUNCIL RESOLUTION

AGENDA ITEM
8.B.3.

TO: THE HONORABLE CITY COUNCIL

DATE: April 15, 2024

SUBJECT: R24-043, A Resolution Authorizing an Intergovernmental Agreement Between the City of Arvada and Apex Park and Recreation District Relating to the Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems General Permit (Presenter: Jacob Moyer, Stormwater Administrator)

Report in Brief

PRESENTER: Jacob Moyer, Stormwater Administrator

The City of Arvada holds a Municipal Separate Storm Sewer System (MS4) Permit with the Colorado Department of Health and Environment (CDPHE), which regulates pollution within the storm sewer system in accordance with the Clean Water Act. The Apex Parks and Recreation District owns and operates the Apex Center facility, which has a storm sewer system designed for a maximum daily user population of at least 1,000 people and constitutes "Non-Standard Municipal Separate Storm Sewer System" permit coverage with CDPHE. Historically, since 2003, Arvada has included the Apex Center in Arvada's General Stormwater Permit, which has been addressed through an intergovernmental agreement, and has been renewed based on term limits of the agreements and updated permit coverage. Renewing this intergovernmental agreement would ensure that the Apex Parks and Recreation District is covered under CDPHE water quality permitting under Arvada's program as we continue our cooperative partnership.

The Arvada team recommends that the City Council approve R24-043, A Resolution Authorizing an Intergovernmental Agreement Between the City of Arvada and Apex Park and Recreation District Relating to the Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems General Permit.

Financial Impact

There are no foreseen financial impacts related to the proposed intergovernmental agreement.

Background

Historically, Arvada has included the Apex Center in Arvada's Stormwater General Permit. Arvada and the Apex District entered into an Intergovernmental Agreement in 2003 regarding Arvada's Stormwater General Permit (the "2003 IGA") and cooperatively submitted a joint Application in 2003 for Stormwater General Permit coverage. In 2003, a Stormwater General Permit was issued by Colorado ("2003 Permit"). Upon expiration of the 2003 Permit in 2008, Colorado issued a new Stormwater General Permit ("2008 Permit"), and Arvada and District agreed to extend the term of the 2003 IGA accordingly. In 2014, an Amendment to the 2003 IGA was implemented to extend its expiration date, in light of a lapse between the expiration of the 2008 Permit and issuance of the next Stormwater General Permit in 2016 ("2016 Permit"). The 2016 Permit issued by Colorado necessitated revisions to the 2003 IGA, to satisfy the Measurable Goals outlined in that Permit. The 2016 Permit was modified and reissued on March 30, 2018. The modified and reissued 2016 Permit expired on June 30, 2021, and was administratively extended. The revised 2003 IGA between the Parties expired on January 1, 2024.

Discussion

- The proposed agreement includes minor updates to an existing 2003 agreement that includes references to current permit coverage and related City regulations (i.e. reference to the City's Engineering Code of Standards and Specifications).

- The benefits associated with the City Council’s approval include a continued cooperative partnership with the Apex Parks and Recreation District as well as full regulatory compliance with the City's MS4 Permit, as well as State and Federal regulations.
- The alternative action would include not entering into this agreement with Apex Parks and Recreation District. This action would require the district to apply for their own, separate permit coverage for the Apex Center. This would require additional resources from the district to ensure permit coverage and maintain compliance under a separate, Non-Standard Municipal Separate Stormwater Sewer System (MS4) Permit, which would be onerous for the district.

Public Contact

“Posting of the City Council agenda.”

Commission Recommendation

The Arvada team recommends that the City Council approve R24-043, A Resolution Authorizing an Intergovernmental Agreement Between the City of Arvada and Apex Park and Recreation District Relating to the Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems General Permit.

Strategic Alignment

This proposed agreement aligns with strategic goal SR10, by maintaining a comprehensive environmental regulatory compliance program.

Alternative Courses of Action

Alternative recommendation #1: The Arvada team recommends that the City Council approve R24-043, A Resolution Authorizing an Intergovernmental Agreement Between the City of Arvada and Apex Park and Recreation District Relating to the Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems General Permit.

Alternative recommendation #2: City Council could move not to approve the proposed Intergovernmental agreement which would require the Apex Parks and Recreation District to acquire a separate permit from CDPHE and remove coverage under the city's MS4 Permit.

Recommendation for Action

The Arvada team recommends that the City Council approve Alternative No. 1.

Suggested Motion:

I move that R24-043, A Resolution Authorizing an Intergovernmental Agreement Between the City of Arvada and Apex Park and Recreation District Relating to the Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems General Permit, be (approved) (rejected).

Prepared by:
Jacob Moyer, Stormwater Administrator

Reviewed by:

Approved by:

SUBJECT: R24-043, A Resolution Authorizing an Intergovernmental Agreement Between the City of Arvada and Apex Park and Recreation District Relating to the Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems General Permit (Presenter: Jacob Moyer, Stormwater Administrator)

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Jenny Wolfschlag, City Engineer	3/18/2024
Jessica Morales, Assistant City Attorney	3/29/2024
Jacqueline Rhoades, Public Works Director	3/29/2024
Bryan Archer, Director of Finance	3/29/2024
Tammy Hedlund, Legal Specialist	4/1/2024
Don Wick, Deputy City Manager	4/1/2024
Rachel Morris, City Attorney	4/1/2024
Lorie Gillis, City Manager	4/2/2024

Enclosure, exhibits & attachments required to support the report

RESOLUTION NO. R24-043

A RESOLUTION AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF ARVADA AND APEX PARK AND RECREATION DISTRICT RELATING TO
THE STORMWATER DISCHARGES ASSOCIATED WITH MUNICIPAL SEPARATE
STORM SEWER SYSTEMS GENERAL PERMIT

WHEREAS, Arvada, as a political subdivision of the State of Colorado, has a responsibility to construct and maintain municipal separate storm sewer systems (“MS4s”) to accommodate stormwater discharges pursuant to the rules and regulations promulgated by the Colorado Department of Public Health and Environment (“CDPHE”) in 5 CCR 1002-61 (the “Regulations”); and

WHEREAS, pursuant to the Regulations, Arvada must operate under a Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems General Permit (“Stormwater General Permit”); and

WHEREAS, the Apex Park and Recreation District (“District”) owns and operates a recreational facility known as the Apex Center, which is located within the overlapping boundaries of Arvada and District; and

WHEREAS, the Apex Center has a storm sewer system designed for a maximum daily user population of at least 1,000 people, which constitutes a “Non-Standard Municipal Separate Storm Sewer System;” and

WHEREAS, pursuant to the Regulations, in absence of this Intergovernmental Agreement, District would have an obligation to obtain a Non-Standard Stormwater General Permit for the Apex Center; and

WHEREAS, pursuant to the Regulations, there are different approaches a Non-Standard Municipal Separate Storm Sewer System permittee can use to implement their permit, including entire permit deferral to another MS4 permittee; and

WHEREAS, historically, Arvada has included the Apex Center in Arvada’s Stormwater General Permit; and

WHEREAS; Arvada and District are desirous of continuing their cooperative relationship, which will achieve maximum community benefits while avoiding duplication of services, expenses, and efforts wherever possible; and

WHEREAS, through this Intergovernmental Agreement the District agrees to entire MS4 Permit deferral of the Apex Center to Arvada, and Arvada agrees to include the Apex Center as part of Arvada’s Stormwater General Permit.

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

Section 1. The Mayor or Mayor Pro Tem is authorized to sign and the City Clerk to attest, in form approved by the City Attorney, an Intergovernmental Agreement, which is in substantially the same form as that attached hereto, between the City of Arvada and Apex Park and Recreation District Relating to the Stormwater Discharges Associated with Municipal Sperate Storm Sewer Systems General Permit.

Section 2. This resolution shall be effective upon its approval by the City Council.

APPROVED AND ADOPTED this 15th day of April, 2024.

Lauren Simpson, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:
Rachel A. Morris, City Attorney

By: _____

**AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE
CITY OF ARVADA AND APEX PARK AND RECREATION
DISTRICT RELATING TO THE STORMWATER
DISCHARGES ASSOCIATED WITH
MUNICIPAL SEPARATE STORM SEWER SYSTEMS
GENERAL PERMIT**

1. **PARTIES.** The Parties to this Intergovernmental Agreement (“IGA” or “Agreement”) are the City of Arvada, a Colorado home rule municipal corporation, whose mailing address is 8101 Ralston Road, Arvada, CO 80002 (“Arvada” or the “City”) and the Apex Park and Recreation District, a Colorado quasi-municipal corporation and political subdivision of the State of Colorado and a duly organized and existing special district pursuant to Title 32, C.R.S (“District”). The Parties may be referred to individually as a “Party” and collectively as the “Parties.”
2. **RECITALS AND PURPOSE.**
 - 2.1. C.R.S. §29-1-203, as amended, permits and encourages local governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other local governments in order to provide any lawfully authorized function, service, or facility.
 - 2.2. Arvada, as a political subdivision of the State of Colorado (“Colorado”), has a responsibility to construct and maintain municipal separate storm sewer systems (“MS4s”) to accommodate stormwater discharges pursuant to the rules and regulations promulgated by the Colorado Department of Public Health and Environment (“CDPHE”) in 5 CCR 1002-61 (the “Regulations”).
 - 2.3. Pursuant to the Regulations, Arvada must operate under a Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems General Permit (“Stormwater General Permit”).
 - 2.4. District owns and operates a recreational facility known as the Apex Center, which is located within the overlapping boundaries of Arvada and District and is legally described in **Exhibit A**.
 - 2.5. The Apex Center has a storm sewer system designed for a maximum daily user population of at least 1,000 people, which constitutes a “Non-Standard Municipal Separate Storm Sewer System.” Pursuant to the Regulations, in absence of this Agreement, District would have an obligation to obtain a Non-Standard Stormwater General Permit for the Apex Center.
 - 2.6. Pursuant to the Regulations, there are different approaches a Non-Standard Municipal Separate Storm Sewer System permittee can use to implement their permit, including entire permit deferral to another MS4 permittee.

- 2.7. Historically, Arvada has included the Apex Center in Arvada’s Stormwater General Permit. Arvada and District entered into an Intergovernmental Agreement in 2003 regarding Arvada’s Stormwater General Permit (the “2003 IGA”) and cooperatively submitted a joint Application in 2003 for Stormwater General Permit coverage. In 2003, a Stormwater General Permit was issued by Colorado (“2003 Permit”). Upon expiration of the 2003 Permit in 2008, Colorado issued a new Stormwater General Permit (“2008 Permit”), and Arvada and District agreed to extend the term of the 2003 IGA accordingly. In 2014, an Amendment to the 2003 IGA was implemented to extend its expiration date, in light of a lapse between the expiration of the 2008 Permit and issuance of the next Stormwater General Permit in 2016 (“2016 Permit”). The 2016 Permit issued by Colorado necessitated revisions to the 2003 IGA, to satisfy the Measurable Goals outlined in that Permit. The 2016 Permit was modified and reissued on March 30, 2018. The modified and reissued 2016 Permit expired on June 30, 2021, and was administratively extended until its renewal, expected to occur in 2024 or 2025. The revised 2003 IGA between the Parties expired on January 1, 2024.
- 2.8. The Parties are desirous of continuing their cooperative relationship, which will achieve maximum community benefits while avoiding duplication of services, expenses, and efforts wherever possible as more fully set forth below.
- 2.9. Through this Agreement, the District agrees to entire MS4 Permit deferral of the Apex Center to Arvada, and Arvada agrees to include the Apex Center, as shown in **Exhibit A**, as part of Arvada’s Stormwater General Permit.
- 2.10. For good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as set forth herein.

3. EXHIBITS.

- 3.1. Agreement Documents. The Agreement Documents shall consist of this Agreement together with the following:

Exhibit A: Legal Description of the Apex Center.

All exhibits referred to in this Agreement are attached hereto and are, by reference, incorporated herein for all purposes.

4. TERM AND TERMINATION.

- 4.1. Term. The term of the Agreement shall remain in effect for **five years** from the date of execution by all Parties (the “Effective Date”), unless otherwise agreed to in writing by the Parties, and subject to availability of funds.

- 4.2. Termination. Either Party may terminate this Agreement at the end of any calendar year hereof by giving at least six-months' advance written notice of said termination to the other Party, by no later than June 30th. The termination shall then become effective at 11:59 pm on December 31st of that calendar year. This Agreement may also be terminated for default as provided in Section 8.19 below.

5. OBLIGATIONS OF THE PARTIES.

5.1. Obligations of the Parties.

- 5.1.1. If construction that requires a State Stormwater Associated with Construction Activities Permit takes place at the Apex Center while this Agreement is in effect, the Parties shall jointly address Construction Sites Minimum Control Measure requirements in Arvada's Stormwater General Permit.

5.2. Arvada's obligations.

- 5.2.1. Arvada will include the Apex Center, as show in **Exhibit A**, in Arvada's Stormwater General Permit.
- 5.2.2. Arvada will include the Apex Center, as show in **Exhibit A**, in Arvada's Illicit Discharge Detection and Elimination ("IDDE") Program, which in part, must contain a plan to detect and address non-stormwater discharges and a compliance and enforcement procedure. Arvada will provide training materials to educate District employees on recognition of and response to IDDE occurrences.
- 5.2.3. Arvada shall provide the public hearing process as required in Arvada's Stormwater General Permit.
- 5.2.4. Arvada shall provide its environmental education materials to the Apex Center as required under Arvada's Stormwater General Permit for distribution to its patrons.

5.3. District's obligations.

- 5.3.1. District shall implement a Runoff Control Plan ("Plan") for the Apex Center. The Plan shall include: 1) potential pollutant sources; 2) control measures implemented for pollutant sources; 3) staff position responsible for implementation of control measures; 4) site map; 5) spill prevention and response procedures; 6) employee and contractor training program; and 7) record keeping procedures.
- 5.3.2. District shall train its employees annually on recognition and reporting of suspected environmental problems, such as IDDE, and good housekeeping procedures, including spill response and containment.

Records shall be kept on who was trained, the date training was conducted, type of training, and a list of topics covered.

- 5.3.3. District shall inspect the Apex Center property quarterly to determine compliance with the Plan. Inspections and resulting corrective actions shall be documented. Records shall be kept on inspection date, name of the inspector, applicable facility identification, inspection findings, and information and documentation that the control measures are adequate or a list of follow up actions.
- 5.3.4. District shall conduct quarterly maintenance inspections of the Apex Center storm sewer system. Inspections and resulting corrective actions shall be documented. Records shall be kept on inspection date, name of the inspector, applicable facility identification, inspection findings, and information and documentation that the control measures are adequate or a list of follow up actions.
- 5.3.5. District shall conduct semiannual parking lot sweeping. The dates on which the sweeping is conducted shall be documented and provided in District's Annual Report.
- 5.3.6. District shall comply with all requirements set forth in Arvada's Stormwater General Permit, as may be amended from time to time.
- 5.3.7. District shall comply with Arvada's Engineering Code of Standards and Specification, as may be amended from time to time.
- 5.3.8. Each year, by December 31st, District shall evaluate its compliance with the Arvada's Stormwater General Permit and the effectiveness of its Plan in an Annual Report to be provided to Arvada by January 31st of the following year for each year this Agreement is in effect.
- 5.3.9. District shall maintain records of all activities conducted under this Agreement for a minimum of five years from the date that the specific item is no longer being actively utilized for stormwater management and make them accessible to Arvada and public at reasonable times during regular business hours.

6. **NOTICES.** Any notice or notification required or permitted by the Agreement shall be in writing and may be sent to the other Party by certified or registered mail, or by electronic mail, addressed to that Party's representative, at such street address or email address as are set forth herein or subsequently designated by the Parties. Such notice or notification shall be deemed to have been given when deposited in the United States mail or, in the case of electronic mail, upon the sent date stamp contained in the electronic mail.

If to Arvada: Lorie B. Gillis
City Manager
City of Arvada
8101 Ralston Road
Arvada, Colorado 80002
lgillis@arvada.org

If to District: Jeff Glenn
Executive Director
Apex Park and Recreation District
13150 W. 72nd Avenue
Arvada, CO 80005
jeffg@apexprd.org

Notwithstanding the above, a Party may designate an employee or volunteer to be responsible for the day-to-day administration of this Agreement. Notices regarding the day-to-day administration of this Agreement, may be sent to the designated day-to-day administrator by email. A Party may change the designated day-to-day administrator.

7. INSURANCE.

- 7.1. Each Party to this Agreement will be required to, at its own expense, keep in full force and effect during the term of this Agreement, and during the term of any extension or amendment of the same, insurance reasonably sufficient to insure against the liability assumed by that Party pursuant to the provisions of this Agreement.
- 7.2. The Parties shall at their own respective expense keep in full force and effect during the term of this Agreement statutory workers' compensation insurance suitable to cover each Party's respective employees. At no time shall any Party bear responsibility for accidental injury to the employee of another Party performing services pursuant to this Agreement.

8. MISCELLANEOUS.

- 8.1. **ADDITIONAL DOCUMENTS OR ACTION.** The Parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.
- 8.2. **SEVERABILITY.** If any term, section or other provision of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, section or other provision shall not affect any of the remaining provisions of this Agreement, and to this end, each term, section and other provision of this Agreement shall be severable and continue in full force and effect.

- 8.3. **AMENDMENTS.** This Agreement may be amended only by a written document approved by formal authority of the governing bodies of the Parties. Course of conduct, no matter how long, shall not constitute an amendment to this Agreement.
- 8.4. **RELATIONSHIP OF PARTIES.** This Agreement does not create a partnership, joint venture or agency relationship between the Parties. None of the Parties shall have any authority to bind any other Party to any agreement, understanding or other instrument, in any manner whatsoever.
- 8.5. **NO THIRD-PARTY BENEFICIARIES.** Nothing in this Agreement shall be deemed to create any third-party benefits or beneficiaries or create a right or cause of action for the enforcement of its terms, in any entity or person not a Party to this Agreement.
- 8.6. **SUBCONTRACTORS.** A Party may subcontract any task it is required to perform under the terms of this Agreement without the prior written consent of the other Party.
- 8.7. **EMPLOYEES, AGENTS, CONTRACTORS, AND VOLUNTEERS.** Employees, agents, contractors, and volunteers of each Party will remain so of that Party. Nothing in this Agreement requires any Party to fund the activities of another Party.
- 8.8. **ASSIGNMENT.** Neither Party shall assign this Agreement without the prior written consent of the other Party.
- 8.9. **NO MULTI-YEAR FISCAL OBLIGATION.** Financial obligations of the Parties payable after the current fiscal year are contingent on funds for that purpose being appropriated, budgeted, and otherwise made available. The Parties obligations under the Agreement shall be from year to year only and shall not constitute a multiple-fiscal year direct or indirect debt or other financial obligation of the Parties within the meaning of Article X, Section 20 of the Colorado Constitution (TABOR).
- 8.10. **GOVERNMENTAL IMMUNITY.** This Agreement is not intended, and shall not be construed, as a waiver of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by, the Parties, and their past and present directors, officers, employees and volunteers, under federal or state constitutional, statutory or common law, including but not limited to the Colorado Governmental Immunity Act, Section 24-10-101, C.R.S., *et seq.*, as may be amended.
- 8.11. **COOPERATION BY THE PARTIES.**
- 8.11.1. Each Party will use its best efforts to cooperate in the fulfillment of this Agreement.

- 8.11.2. The Parties agree that in the event any claim or suit is brought against either or both Parties by any third party as a result of the operation of this Agreement, both Parties will cooperate with each other, and with the insuring entities of both Parties, in defending such claim or suit.
- 8.12. **ATTORNEYS' FEES, COSTS, AND EXPENSES.** Except as otherwise expressly stated in this Agreement, in the event there is any litigation, mediation, arbitration or other dispute resolution proceedings arising out of or related to this Agreement, each Party shall pay for its own attorney(s)' and other professional(s)' fees, costs and expenses.
- 8.13. **COMPLIANCE WITH LAWS.** The Parties shall comply with all laws that apply to performance under the Agreement.
- 8.14. **WAIVER.** Any waiver by any Party hereto of a breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Agreement. To be effective, any waiver must be in writing. Failure by any Party hereto to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered a waiver or deprive such Party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.
- 8.15. **FORCE MAJEURE.** No Party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes, to the extent beyond its reasonable control (which events and/or circumstances are hereinafter referred to as "**Force Majeure**"): acts of God, accident, riots, war, terrorist act, epidemic, pandemic (except for the COVID-19 pandemic), quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, and generalized lack of availability of raw materials or energy.
- 8.16. **GOVERNING LAW AND VENUE.** The laws of the State of Colorado shall govern this Agreement. Venue for any action arising under this Agreement or for the enforcement of this Agreement shall be in the appropriate court for Jefferson County, Colorado.
- 8.17. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the Parties hereto relating to the subject matter contained herein and supersedes any and all prior agreements, arrangements, communications, or representations, whether oral or written.
- 8.18. **PARAGRAPH CAPTIONS.** The captions of the paragraphs are set forth only for convenience and reference and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

8.19. **DEFAULT.** Time is of the essence. If any condition, obligation, or duty is not timely made, tendered or performed by either party, then this Agreement, at the option of the party who is not in default, may be terminated by the non-defaulting party, in which case, the non-defaulting party may recover such damages as may be proper. If the non-defaulting party elects to treat this Agreement as being in full force and effect, the non-defaulting party shall have the right to an action for specific performance or damage or both.

9. **COUNTERPARTS, ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same document. Facsimile signatures shall be accepted as originals. The Parties consent to the use of electronic signatures by each of the Parties. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or an electronic signature or that it is not in its original form or is not an original.
10. **BINDING EFFECT AND AUTHORITY.** This Agreement shall inure to the benefit of, and be binding upon, the Parties, their respective legal representatives, successors, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein. The undersigned to this Agreement warrant that each has the authority to execute and enter into this Agreement, that their signatures are authorized and binding, and that all actions and approvals necessary for the execution and delivery of the Agreement have been properly taken by their respective governing boards.
11. **EFFECTIVE DATE.** This Agreement shall be effective on the date of execution, below.

(Signatures on next page.)

DATED this _____ day of _____, 2024.

CITY OF ARVADA, a Colorado home
rule municipal corporation

Lauren Simpson
Mayor
8101 Ralston Road
Arvada, CO 80002

ATTEST:

City Clerk

APPROVED AS TO FORM:
Rachel A. Morris

By: _____

**APEX PARK AND RECREATION
DISTRICT**

Vicki Pyne, President and
Chairman of the Board of Directors

ATTEST:

Rich Garrimone, Secretary/Treasurer

APPROVED AS TO FORM:
Attorney for District

Exhibit A

LEGAL DESCRIPTION

AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF ARVADA AND APEX PARK
AND RECREATION DISTRICT RELATING TO THE
STORMWATER DISCHARGES ASSOCIATED WITH
MUNICIPAL SEPARATE STORM SEWER SYSTEMS
GENERAL PERMIT

EXHIBIT A

LEGAL DESCRIPTION

A tract of land in the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 6 and in the NW $\frac{1}{4}$ of Section 5, all in Township 3 South, Range 69 West of the 6th P.M., more particularly described as follows:

Beginning at the NW corner of said Section 5; thence N89 degrees 47 minutes 00 seconds E a distance of 105.22 feet along the north line of said section; thence S00 degrees 07 minutes 25 seconds W a distance of 220.00 feet parallel with the west line of said Section 5; thence S89 degrees 47 minutes 00 seconds W parallel with the north line of said section a distance of 47.50 feet; thence S00 degrees 07 minutes 25 seconds W parallel with said west line, a distance of 42.00 feet; thence S89 degrees 47 minutes 00 seconds W parallel with said north line, a distance of 111.72 feet to a line which lies 54.00 feet west of and parallel with said west section line; thence N00 degrees 07 minutes 25 seconds E parallel with said west line, a distance of 231.99 feet to the south right of way line of West 72nd Avenue; thence N 89 degrees 46 minutes 20 seconds E along said line a distance of 54.00 feet to the west line of said Section 6; thence N00 degrees 07 minutes 25 seconds E along said line a distance of 30.00 feet to the Point of Beginning, containing 38,100 square feet or 0.875 acres more or less.

PARCEL 1:

A tract of land located in the NW $\frac{1}{4}$ of Section 5, Township 3 South, Range 69 West, of the 6th P.M., more particularly described as follows:

Commencing at the NW corner of said Section 5; thence N89 degrees 47 minutes 00 seconds E along the north line of said section, a distance of 389.78 feet to the Point of Beginning; thence continuing on said north line N89 degrees 47 minutes 00 seconds E a distance of 382.35 feet; thence S00 degrees 03 minutes 00 seconds E a distance of 726.13 feet; thence N89 degrees 01 minutes 00 seconds W a distance of 384.58 feet; thence N 00 degrees 07 minutes 25 seconds E parallel with the west line of said section, a distance of 718.10 feet to the Point of Beginning, containing 276,880 square feet or 6.356 acres more or less.

PARCEL 2:

A tract of land in the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 6 and in the NW $\frac{1}{4}$ of Section 5, all in Township 3 South, Range 69 West of the 6th P.M., more particularly described as follows:

Commencing at the NW corner of said Section 5; thence N89 degrees 47 minutes 00 seconds East along the north line of said Section, a distance of 105.22 feet to the Point of Beginning; thence S00 degrees 07 minutes 25 seconds W parallel with the West line of said Section 5, a distance of 220.00 feet; thence S89 degrees 47 minutes 00 seconds W parallel with the North line of said Section 5, a distance of 47.50 feet; thence S00 degrees 07 minutes 25 seconds W parallel with said west line, a distance of 42.00 feet; thence S89 degrees 47 minutes 00 seconds W parallel with said north line, a distance of 111.72 feet to a line which lies 54.00 feet west of and parallel with said west section line; thence S00 degrees 07 minutes 25 seconds W along said line a distance of 447.01 feet; thence N89 degrees 46 minutes 20 seconds E parallel with the north line of said Section 6, a distance of 54.00 feet to the west line of said Section 5; thence S00 degrees 07 minutes 25 seconds W along said line a distance of 0.92 feet; thence S89 degrees 01 minutes 00 seconds E a distance of 389.82 feet; thence N00 degrees 07 minutes 25 seconds E parallel with the west line of said Section 5, a distance of 718.10 feet to the north line of said Section 5; thence S89 degrees 47 minutes 00 seconds W along said north line a distance of 284.56 feet to the Point of Beginning, containing 276,870 square feet or 6.356 acres more or less.

Except that portion of Parcel 2 described as follows: Commencing at a point on the North line of Parcel 2 which is 140 feet East of the Northeast corner of the parcel described in Exhibit B hereto attached and incorporated by this reference ("Parcel 3"), thence Southwesterly in a straight line to a cottonwood tree situate at the Northeast corner of a pond, thence West to the West line of Parcel 2, thence North along the West line of Parcel 2 and Parcel 3 to the Northwest corner of Parcel 3, thence East along the North line of Parcel 3 and Parcel 2 to the point of beginning.



REPORT TO CITY COUNCIL RESOLUTION

AGENDA ITEM
8.B.4.

TO: THE HONORABLE CITY COUNCIL

DATE: April 15, 2024

SUBJECT: R24-044, A Resolution Authorizing an Intergovernmental Agreement between the Colorado Department of Transportation and the City of Arvada Regarding the 64th Parkway MM Improvements

Report in Brief

The City Council is requested to authorize the approval of the Intergovernmental Agreement (IGA) between the City of Arvada and the State of Colorado for 64th Parkway MM (Multi-Modal) Improvements as shown in the attached Intergovernmental Agreement.

The Arvada team recommends that the City Council approve R24-044, A Resolution Authorizing an Intergovernmental Agreement between the Colorado Department of Transportation and the City of Arvada Regarding the 64th Parkway MM Improvements.

Financial Impact

The city has been awarded the grant of \$1,000,000.00 through the Denver Regional Council of Governments (DRCOG). The local match required for this project in which the city is responsible is \$250,000.00. The city is also responsible for any additional costs exceeding the agreement amount. A City CIP project number will be established with the funds coming from available budgets such as, ADA Compliance Streets (\$980k), Missing Sidewalks (\$1,700k), Collector Street Improvements (\$195k), or the future Arterial Street Improvements (\$300k).

Background

In April 2023, the City received a grant for \$1,000,000.00 through the Federal Transportation Improvement Program (TIP) and the Colorado Department of Transportation (CDOT) to improve the pedestrian crossings and install a side path along 64th Parkway from Virgil Way to Dunraven Street. The Federal funding is set to cover 80% of the design and construction costs.

The purpose of the agreement is to establish the scope of the project and the amount of Federal participation administered by CDOT, outline the responsibilities of CDOT and the City of Arvada to complete the design and construction of the project. This IGA allows the Federal funds to be received from CDOT as reimbursement after expenditure by the City.

Discussion

The 64th Parkway project addresses safety and connectivity for pedestrians and bicycle users at high risk intersections. This project proposes to provide safety improvements to five intersections along 64th Parkway (including Dunraven Street, Long Lake Park access, NAAC East Entrance access, Arvada Reservoir, and Virgil Way). This project also includes new sidewalk along the north side of 64th to provide easier access to the surrounding recreational areas.

Public Contact

Posting of the City Council agenda.

Commission Recommendation

N/A

Strategic Alignment

The proposed actions completes a successful capital project associated with our transportation network and therefore aligns with the Infrastructure Priority Area of the City Council Strategic Plan:

Provides safe and efficient connections to modes of transportation, including transit, streets, sidewalks, and bikeways with a focus on enhanced technology at high-priority intersections, improving safety and minimizing traffic congestion.

Alternative Courses of Action

N/A

Recommendation for Action

The Arvada team recommends that the City Council approve R24-044, A Resolution Authorizing an Intergovernmental Agreement between the Colorado Department of Transportation and the City of Arvada Regarding the 64th Parkway MM Improvements.

Suggested Motion:

I move that R24-044, A Resolution Authorizing an Intergovernmental Agreement between the Colorado Department of Transportation and the City of Arvada Regarding the 64th Parkway MM Improvements, be (approved) (rejected).

Prepared by:
Deirdre Oster, Civil Engineer III

Reviewed by:

Approved by:

Jenny Wolfschlag, City Engineer	3/25/2024
Jacqueline Rhoades, Public Works Director	3/27/2024
Bryan Archer, Director of Finance	3/27/2024
Tammy Hedlund, Legal Specialist	3/27/2024
Kelsy Sargent, Assistant City Attorney	3/29/2024
Don Wick, Deputy City Manager	4/1/2024
Rachel Morris, City Attorney	4/1/2024
Lorie Gillis, City Manager	4/2/2024

Enclosure, exhibits & attachments required to support the report

RESOLUTION NO. R24-044

A RESOLUTION AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN
THE COLORADO DEPARTMENT OF TRANSPORTATION AND THE CITY OF ARVADA
REGARDING THE 64TH PARKWAY MM IMPROVEMENTS

WHEREAS, the City of Arvada and the Colorado Department of Transportation are authorized to enter this agreement pursuant to C.R.S. §§ 29-1-201 *et. seq.*, CRS §§43-1-106, 43-1-110, 43-1-117, 43-1-701, 43-1-702 and 43-2-101(4)(c); and

WHEREAS, this agreement's project proposes to provide safety improvements to five intersections along 64th Parkway (cross streets/entrances include Dunraven St., Long Lake Park access, NAAC East Entrance access, Arvada Reservoir, and Virgil Way) and install a side path along the north side of W 64th where there are currently missing sidewalks, in addition to other improvements; and

WHEREAS, Arvada has estimated the total cost of the work to be \$1,250,000.00, with \$1,000,000.00 being contributed from federal funds and \$250,000.00 being contributed by Arvada; and

WHEREAS, Arvada and the Colorado Department of Transportation are entering into this Agreement to serve the residents of Arvada and the public interest of the State of Colorado at large.

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

Section 1. The Mayor or Mayor Pro Tem is authorized to sign and the City Clerk to attest, in form approved by the City Attorney, an Intergovernmental Agreement, which is in substantially the same form as that attached hereto.

Section 2. This resolution shall be effective upon its approval by the City Council.

APPROVED AND ADOPTED this 15th day of April, 2024.

Lauren Simpson, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:
Rachel A. Morris, City Attorney

By: _____

STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT

Signature and Cover Page

State Agency Department of Transportation		Agreement Routing Number 24-HA1-XC-00255	
Local Agency CITY OF ARVADA		Agreement Effective Date The later of the effective date or November 06, 2023	
Agreement Description 64TH PKWY MM IMPORVEMENTS		Agreement Expiration Date November 05, 2033	
Project # STU M040- 040 (26043)	Region # R1	Contract Writer DMM	Agreement Maximum Amount \$1,250,000.00

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

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

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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 November 05, 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 (this insurance requirement only applies if the Subcontractor has or will have access to State Confidential Information)

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

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

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

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

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

vi. Crime Insurance

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

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

vii. Cyber/Network Security and Privacy Liability

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

- b. \$2,000,000 general aggregate.
- C. Additional Insured

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

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

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

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

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

13. BREACH

- A. Defined

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

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

14. REMEDIES

- A. State's Remedies

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

i. Termination for Breach

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

a. Obligations and Rights

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

b. Payments

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

c. Damages and Withholding

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

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

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

c. Deny Payment

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

d. Removal

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

e. Intellectual Property

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

B. Local Agency's Remedies

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

15. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

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

C. Questions of Fact

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

16. NOTICES AND REPRESENTATIVES

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

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

For the State

Colorado Department of Transportation (CDOT)
Cristobal Abbud, R-1 Local Agency Coordinator
CDOT
2829 W Howard Pl
Denver, CO 80204
303-512-4135
cristobal.abbudgarcia@state.co.us

For the Local Agency

CITY OF ARVADA
Deirdre Oster, Engineer III
8101 Ralston Rd
Arvada, CO 80002
720-390-0717
doster@arvada.org

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

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

i. Copyrights

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

ii. Patents

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

iii. Assignments and Assistance

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

B. Exclusive Property of the State

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

C. Exclusive Property of Local Agency

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

18. GOVERNMENTAL IMMUNITY

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

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

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

20. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

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

C. Binding Effect

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

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Digital Signatures

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

H. Entire Understanding

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

I. Jurisdiction and Venue

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

J. Modification

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

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

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

L. Order of Precedence

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

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

M. Severability

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

N. Survival of Certain Agreement Terms

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

O. Third Party Beneficiaries

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

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations.

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

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

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

U. Accessibility

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

V. Taxes

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

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

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

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

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

H. SOFTWARE PIRACY PROHIBITION.

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

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

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

22. FEDERAL REQUIREMENTS

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

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

EXHIBIT A
SCOPE OF WORK

Name of Project: 64TH PKWY MM IMPORVEMENTS
Project Number: STU M040-040
SubAccount #: 26043

This project proposes to provide safety improvements to five intersections along 64th Parkway (cross streets/entrances include Dunraven St., Long Lake Park access, NAAC East Entrance access, Arvada Reservoir, and Virgil Way) and install a side path along the north side of W 64th where there are currently missing sidewalks. The project would remove at-grade crossings at the Long Lake Park and Arvada Reservoir entrances in favor of sidewalk installation to existing nearby grade separated trail crossings still meeting ADA needs. The project would eliminate the at-grade crossing at Dunraven St in favor of utilizing the crossing at 64th and Highway 93. The entrance of NAAC and the intersection of Virgil Way would upgrade the crosswalk markings and provide RRFBs for pedestrians crossing 64th Parkway. Sidewalk would be installed along the north side of 64th to provide easier access to recreational areas.

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

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

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EXHIBIT B

SAMPLE IGA OPTION LETTER

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

Vendor Name:

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

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

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

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

Option A

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

Option B

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

Option C

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

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

Option D

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

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

STATE OF COLORADO
Jared S. Polis
Department of Transportation

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

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

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

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

By: _____
Colorado Department of Transportation

Date: _____

EXHIBIT C - FUNDING PROVISIONS**City of Arvada - STU M040-040 (26043)****A. Cost of Work Estimate**

The Local Agency has estimated the total cost of the Work to be \$1,250,000.00, which is to be funded as follows:

1. FUNDING			
a.	Federal Funds (80% of STBG Award)		\$1,000,000.00
b.	Local Agency Funds (20% of STBG Award)		\$250,000.00
TOTAL FUNDS ALL SOURCES			\$1,250,000.00
2. OMB UNIFORM GUIDANCE			
a.	Federal Award Identification Number (FAIN):		TBD
b.	Name of Federal Awarding Agency:		FHWA
c.	Local Agency Unique Entity Identifier		VD6FQDTQB8J7
d.	Assistance Listing # Highway Planning and Construction		ALN 20.205
e.	Is the Award for R&D?		No
f.	Indirect Cost Rate (if applicable)		N/A
g.	Amount of Federal Funds Obligated by this Action:		\$0.00
h.	Amount of Federal Funds Obligated to Date (including this Action):		\$0.00
3. ESTIMATED PAYMENT TO LOCAL AGENCY			
a.	Federal Funds Budgeted		\$1,000,000.00
b.	Less Estimated Federal Share of CDOT-Incurred Costs		\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		80%	\$1,000,000.00
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY		20%	\$250,000.00
TOTAL PROJECT ESTIMATED FUNDING		100%	\$1,250,000.00
4. FOR CDOT ENCUMBRANCE PURPOSES			
a.	Total Encumbrance Amount (Federal + Local Agency Funds)		\$1,250,000.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109		\$0.00
NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS			\$1,250,000.00

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

WBS Element 26043.10.30	Performance Period Start*/End Date TBD-TBD	Design 3020	\$0.00
WBS Element 26043.20.10	Performance Period Start*/End Date TBD-TBD	Const. 3301	\$0.00

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

B. Funding Ratios

The funding ratio for the federal funds for this Work is 80% federal funds to 20% Local Agency funds, and this ratio applies only to the \$1,250,000.00 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 \$1,250,000.00, 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 \$1,250,000.00, then the amounts of Local Agency and federal funds will be decreased in accordance with the funding ratio described in **A1. This applies to the entire scope of Work.**

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$1,000,000.00. For CDOT accounting purposes, the federal funds of \$1,000,000.00, and the Local Agency funds of \$250,000.00 will be encumbered for a total encumbrance of \$1,250,000.00. The total budget of this project is \$1,250,000.00, 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 any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work.**

D. Single Audit Act Amendment

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

i. Expenditure less than \$750,000

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

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

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

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

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

iv. Independent CPA

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

EXHIBIT D

LOCAL AGENCY RESOLUTION (IF APPLICABLE)

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

COLORADO DEPARTMENT OF TRANSPORTATION			
LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. STU M040 040	STIP No. SDR9000	Project Code 26043	Region R1
Project Location 64TH PKWY MM IMPORVEMENTS			Date 11/02/2023
Project Description Provide safety improvements to five intersections along 64th Parkway (SH – 93 to Virgil Way)			
Local Agency City of Arvada	Local Agency Project Manager Deirdre Oster		
CDOT Resident Engineer Maria Hajiaghaee	CDOT Project Manager Cristobal Abbud		
INSTRUCTIONS: This checklist shall be used to establish the contractual administrative responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency Agreement. Section numbers (NO.) correspond to the applicable chapters of the <i>CDOT Local Agency Desk Reference (Local Agency Manual)</i>. LAWR numbers correspond to the applicable flowchart in the Local Agency Web Resource. The checklist shall be prepared by placing an X under the responsible party, opposite each of the tasks. The X denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, # will denote that CDOT must concur or approve. Tasks that will be performed by Headquarters staff are indicated with an X in the CDOT column under Responsible Party. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT. The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist. Note: Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.			

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
		TIP / STIP AND LONG-RANGE PLANS		
	2.1	Review Project to ensure it is consistent with Statewide Plan and amendments thereto		x
		FEDERAL FUNDING OBLIGATION AND AUTHORIZATION		
	4.1	Authorize funding by phases (Requires FHWA concurrence/involvement if Federal-aid Highway funded project.). <i>Please write in "NA", if Not Applicable.</i>		x
		PROJECT DEVELOPMENT		
1	5.1	Prepare Design Data - CDOT Form 463	x	
	5.2	Determine Delivery Method	x	#
	5.3	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		x
2	5.4	Conduct Consultant Selection/Execute Consultant Agreement - Project Development - Construction Contract Administration (including Fabrication Inspection Services)	x x	# #
3,3A	5.5	Conduct Design Scoping Review Meeting	x	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	#
	5.15	Seek Permission for use of Guaranty and Warranty Clauses (Must be included as a project special)	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	
	5.23	File Project Development Records/Documentation in ProjectWise		x
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE				
3	6.1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region Civil Rights Office).		x
	6.2	Determine Applicability of Davis-Bacon Act This project ☐ is ☒ is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Cristobal Abbud <u>11/02/2023</u> CDOT Design Project Manager Date		x
	6.3	Set On-the-Job Training Goals (CDOT Region Civil Rights Office) "NA", if Not Applicable		x
	6.4	Enforce Prompt Payment Requirements	x	x
	6.5	Use Electronic Tracking and Submission Systems – B2GNow ☒ LCPtracker ☒	x	
3	6.6	Prepare/submit Title VI Plan and Incorporate Title VI Assurances	x	
6,7		Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)	x	#
ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS				
Federal Project (use 7.1 series in Chapter 7) ☒ Non-Federal Project (Use 7.2 series in Chapter 7) ☐				
6,7		Obtain Approval for Advertisement Period of Less Than Three Weeks;	x	#
7		Advertise for Bids	x	#
7		Concurrence to Advertise		x
7		Distribute "Advertisement Set" of Plans and Specifications	x	
7		Review Worksite & Plan Details w/ Prospective Bidders While Project Is Under Ad	x	
7		Open Bids	x	
7		Process Bids for Compliance		
		Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals. (Please write in "NA", if Not Applicable)		x
		Evaluate CDOT Form 1416 - Good Faith Effort Report and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals. "NA", if Not Applicable.		x
		Submit required documentation for CDOT award concurrence	x	
		Concurrence from CDOT to Award		x

		Approve Rejection of Low Bidder		x
7,8		Award Contract (federal)	x	#
LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
8		Provide "Award" and "Record" Sets of Plans and Specifications (federal)	x	#
CONSTRUCTION MANAGEMENT				
8	Intro	File Project Construction Records/Documentation in ProjectWise or as directed	x	
8	8.1	Issue Notice to Proceed to the Contractor	x	#
8	8.2	Project Safety	x	
8	8.3	Conduct Conferences:		
		Pre-construction Conference (Appendix B) • Fabrication Inspection Notifications (Structures)	x	#
		Pre-survey • Construction staking • Monumentation	x x	
		Partnering (Optional)	N/A	N/A
		Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	x	
		Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	x	
		HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	x	
8	8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	x	
9	8.5	Supervise Construction		
		A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Deirdre Oster 720-390-0717 _____ Local Agency Professional Engineer Phone number	x	
		Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	x	
		Construction inspection and documentation (including projects with structures)	x	
		Fabrication Inspection and documentation	x	#
9	8.6	Review and Approve Shop Drawings	x	#
9	8.7	Perform Traffic Control Inspections	x	#
9	8.8	Perform Construction Surveying	x	
9	8.9	Monument Right-of-Way	x	
9,9A	8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent) or use compliance software system. Provide the name and phone number of the person authorized for this task. Deirdre Oster 720-390-0717 _____ Local Agency Representative Phone number	x	#
9	8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	x	#
9B	8.12	Prepare and Authorize Change Orders	x	x
9B	8.13	Submit Change Order Package to CDOT	x	
9A	8.14	Prepare Local Agency Reimbursement Requests	x	
9	8.15	Monitor Project Financial Status	x	#
9	8.16	Prepare and Submit Monthly Progress Reports	x	#
9	8.17	Resolve Contractor Claims and Disputes (No Federal Funds used for claims)	x	

	8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. <u>Andrea Hebard</u> CDOT Construction Project Manager <u>andrea.hebard@state.co.us</u> Email Address		x
9	8.19	Ongoing Oversight of DBE Participation	x	
LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA CDOT	
	MATERIALS			
9,9C	9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	x x	x #
9,9C	9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	x x	# x
9C	9.3	Perform Project Acceptance Samples and Tests	x	
9C	9.4	Perform Laboratory Acceptance Tests	x	
9C	9.6	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	x x x	# # #
9C	9.6	Approve Sources of Materials	x	#
9C	9.7	Independent Assurance Testing (IAT) Local Agency Procedures ☐ CDOT Procedures ☒ • Generate IAT schedule • Schedule and provide notification • Conduct IAT	x x	x
9C	9.8	Approve mix designs On-system requires CDOT Approval • Concrete • Hot mix asphalt	x x	
9C	9.9	Check Final Materials Documentation	x	#
9C	9.10	Complete and Distribute Final Materials Documentation	x	#
	CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
9	10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	x	
8,9	10.2	Process CDOT Form 205 - Sublet Permit Application and CDOT Form 1425 – Supplier Application Approval Request. Review & sign completed forms, or review/approve in compliance software system, as applicable, & submit to Region Civil Rights Office.	x	#
9	10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	x	
9	10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the “Commercially Useful Function” Requirements	x	
9	10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. • Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements. • Complete CDOT Form 838 – OJT Trainee / Apprentice Record. • Complete CDOT Form 200 - OJT Training Questionnaire	x	
9	10.6	Check Certified Payrolls (Contact the Region Civil Rights Office for training reqmts.)	x	
9	10.7	Submit FHWA Form 1391 - Highway Construction Contractor’s Annual EEO Report	x	
	10.8	Contract Compliance and Project Site Reviews	x	#

FINALS				
	11.1	Conduct Final Project Inspection & Final Inspection of Structures, if applicable	x	#
10	11.2	Write Final Project Acceptance Letter	x	
10	11.3	Advertise for Final Settlement	x	
11	11.4	Prepare and Distribute Final As-Constructed Plans	x	
11	11.5	Prepare EEO Certification and Collect EEO Forms	x	
11	11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	x	
LA WK	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
11	11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	x	x
	11.8	Review CDOT Form 1419		x
	11.9	Submit CDOT Professional Services Closeout Report Form	x	
	11.10	Complete and Submit CDOT Form 1212 LA – Final Acceptance Report (by CDOT)	x	#
11	11.11	Process Final Payment	x	
	11.12	Close out Local Project	x	x
	11.13	Complete and Submit CDOT Form 950 - Project Closure		x
11	11.14	Retain Project Records	x	x
11	11.15	Retain Final Version of Local Agency Contract Administration Checklist	x	x

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

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

EXHIBIT F
CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

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

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

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

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

EXHIBIT G

DISADVANTAGED BUSINESS ENTERPRISES

SECTION 1. Policy

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

SECTION 2. Subrecipient and Participant Obligation.

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

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

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

SECTION 3. DBE Program.

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

Local Agency requirements can be found at:

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

EXHIBIT H

LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

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

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

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

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

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

- a. Qualifications,

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

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

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

EXHIBIT I

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

8. Reasonable Accommodation for Applicants /

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

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:

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

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

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

10. Assurances Required:

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

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

1. Minimum wages (29 CFR 5.5)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Withholding (29 CFR 5.5)

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

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

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

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

3. Records and certified payrolls (29 CFR 5.5)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

3. Withholding for unpaid wages and liquidated damages

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

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

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

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

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

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

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

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

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

3. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general 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.

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

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

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

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

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

XII. USE OF UNITED STATES-FLAG VESSELS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT J

ADDITIONAL FEDERAL REQUIREMENTS

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

Executive Order 11246

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

Copeland "Anti-Kickback" Act

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

Davis-Bacon Act

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

Contract Work Hours and Safety Standards Act

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

Clean Air Act

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

Energy Policy and Conservation Act

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

OMB Circulars

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

Hatch Act

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

Nondiscrimination

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

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

ADA

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

Uniform Relocation Assistance and Real Property Acquisition Policies Act

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

Drug-Free Workplace Act

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

Age Discrimination Act of 1975

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

23 C.F.R. Part 172

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

23 C.F.R Part 633

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

23 C.F.R. Part 635

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

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

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

Nondiscrimination Provisions:

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

i. Compliance with Regulations

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

ii. Nondiscrimination

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

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

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

iv. Information and Reports

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

v. Sanctions for Noncompliance

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

Incorporation of Provisions §22

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

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SAMPLE

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

Assurances for Local Agencies

DOT Order No. 1050.2A

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

Statutory/Regulatory Authorities

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

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

General Assurances

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

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

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

Specific Assurances

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

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

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

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

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

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

(Name of Recipient)

by _____
(Signature of Authorized Official)

DATED _____

APPENDIX A

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

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

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

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

(HABENDUM CLAUSE)

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

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

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

APPENDIX C

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

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

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

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

APPENDIX D

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

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

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

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

APPENDIX E

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

Pertinent Non-Discrimination Authorities:

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

EXHIBIT K

FFATA SUPPLEMENTAL FEDERAL PROVISIONS

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

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

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

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

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

Award *does not* include:

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

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

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

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

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

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

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

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

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

7.1.1 Subrecipient DUNS Number;

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

7.1.3 Subrecipient Parent DUNS Number;

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

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

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

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

7.2.1 Subrecipient's DUNS Number as registered in SAM.

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

8. Exemptions.

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

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

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

8.4 There are no Transparency Act reporting requirements for Vendors.

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

EXHIBIT L

SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT

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

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

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

EXHIBIT M

OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS

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

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

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

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

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

Accountability Office.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Agency (EPA).

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

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

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

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

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

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

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

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

Exhibit N

Federal Treasury Provisions

1. APPLICABILITY OF PROVISIONS.

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

2. DEFINITIONS.

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

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

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

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

3. COMPLIANCE.

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

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

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

5. TOTAL COMPENSATION.

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

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

6. REPORTING.

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

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

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

8. SUBRECIPIENT REPORTING REQUIREMENTS.

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

EC 1 – Public Health

All Public Health Projects

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

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

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

COVID-19 Small Business Economic Assistance (1.8)

- a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

- a) Number of non-profits served

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

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

EC 2 – Negative Economic Impacts

All Negative Economic Impacts Projects

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

Household Assistance (2.1-2.8)

- a) Number of households served

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

Healthy Childhood Environments (2.11-2.13)

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

Education Assistance (2.14, 2.24-2.27)

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

Housing Support (2.15, 2.16, 2.18)

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

Small Business Economic Assistance (2.29-2.33)

- a) Number of small businesses served

Assistance to Non-Profits (2.34)

- a) Number of non-profits served

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

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

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

Payroll for Public Health and Safety Employees (EC 3.1)

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

Rehiring Public Sector Staff (EC 3.2)

- a) Number of FTEs rehired by governments

EC 4 – Premium Pay

All Premium Pay Projects

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

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

EC 5 – Infrastructure Projects

All Infrastructure Projects

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

Water and sewer projects (EC 5.1-5.18)

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

Broadband projects (EC 5.19-5.21)

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

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

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

All Expenditure Categories

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

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

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

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

9. PROCUREMENT STANDARDS.

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

10. ACCESS TO RECORDS.

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

11. SINGLE AUDIT REQUIREMENTS.

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

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

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

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

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

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

13. CERTIFICATIONS.

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

14. EXEMPTIONS.

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

15. EVENT OF DEFAULT AND TERMINATION.

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

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

EXHIBIT O

AGREEMENT WITH SUBSUBRECIPIENT OF FEDERAL RECOVERY FUNDS

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

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

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

Subrecipient Name _____

Authorized Representative: _____

Title: _____

Signature: _____

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
TERMS AND CONDITIONS

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

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

9. Compliance with Applicable Law and Regulations.

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

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

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

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

13. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number SLFRF0126 awarded to the State of Colorado by the U.S. Department of the Treasury.”

14. Debts Owed the Federal Government.

- a. Any funds paid to the Subrecipient (1) in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.
- b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury’s initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

- a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or Subcontractor under this award.
- b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;

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

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

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

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

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

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

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

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

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

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

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

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

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

discrimination, please so state.

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

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

EXHIBIT P

SLFRF SUBRECIPIENT QUARTERLY REPORT

1. SLFRF SUBRECIPIENT QUARTERLY REPORT WORKBOOK

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

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

EXHIBIT Q
SAMPLE SLFRF REPORTING MODIFICATION FORM

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

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

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

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

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

Local Agency

Date

CDOT Program Manager

Date

EXHIBIT R
APPLICABLE FEDERAL AWARDS

FEDERAL AWARD(S) APPLICABLE TO THIS GRANT AWARD

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

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

EXHIBIT S

PII Certification

STATE OF COLORADO

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

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

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

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT T

CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

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

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

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



REPORT TO CITY COUNCIL ORDINANCE FIRST READING

**AGENDA ITEM
8.C.1.**

TO: THE HONORABLE CITY COUNCIL

DATE: April 15, 2024

SUBJECT: CB24-007, An Ordinance Authorizing an Additional Appropriation for Fiscal Year 2023 (Public Hearing to be set for May 6, 2024 at 6:15 p.m.)

Report in Brief

PRESENTER: Bryan Archer - Finance Director

The attached ordinance is the final cleanup process to ensure that all Funds will end the year within their legally approved limits. The original budget of \$359,784,184 was approved by the City Council in October 2022. The carryover ordinance approved by City Council in April 2023 increased the total appropriation by \$65,719,633, bringing the current budget to \$425,503,817. A "Clean-up" ordinance was approved by the City Council in December 2023 which added an additional \$19,858,962 to the budget, bringing the total appropriation to \$445,362,779. This final request is to add an additional \$1,900,000 to the Housing Fund to reflect grant funding received and spent in 2023, bringing the total appropriation to \$447,262,779.

The Arvada team recommends that the City Council approve CB24-007, An Ordinance Authorizing an Additional Appropriation for Fiscal Year 2023 on first reading, ordered published in full and a public hearing set for May 6, 2024 at 6:15 P.M.

Financial Impact

The overall increase in the 2023 appropriation is \$1,900,000 and will bring the total appropriation to \$447,262,779. Increased revenues exist to cover each of the proposed budgeted items. The final modification to the budget will ensure each fund does not exceed its legally adopted appropriation.

Background

The budget is an ongoing process throughout the year. It begins eight months prior to the beginning of the fiscal year. Throughout any given budget year, many things can change. Most of these changes can be accommodated within the appropriation that the City Council adopts. Other changes, such as grants and extraordinary expenditures, require City Council approval.

At the beginning of the year, there may be items that were not contemplated in the prior year and must be re-appropriated. This is referred to as the "Carry-Forward" ordinance. This usually comes to the City Council in the first quarter of the year and increases the total appropriation. Throughout the year, the City Council also adopts resolutions approving the acceptance of grants and other types of arrangements. Resolutions inform the City Council of changes. However, the budget may only be legally increased through the adoption of an ordinance. The final way to modify the budget is to adopt a final ordinance near the end of the year. This ordinance is often referred to as the "Clean-up" ordinance and usually comes to the City Council in the final quarter of the year. This request is an exception.

Discussion

Housing Authority Fund - \$1,900,000

An increase of \$1,900,000 is needed for the Mainstream Housing program for rental assistance. This request is funded by grant funds from the Housing and Urban Development Grant.

Public Contact

Posting of the City Council agenda

Commission Recommendation

N/A

Strategic Alignment

The Ordinance supports the following principle within the Organizational and Service Effectiveness Priority area within the City Council Strategic Plan.

"Provides a well-managed, fiscally responsible government that operates effectively and efficiently while identifying revenue requirements to sustain current service levels and achieve future requested levels of service"

Alternative Courses of Action

Approve
Approve with Amendments
Deny

Recommendation for Action

The City team recommends that City Council approve CB24-007, An Ordinance Authorizing an Additional Appropriation for Fiscal Year 2023.

Suggested Motion:

I move that CB24-007, An Ordinance Authorizing an Additional Appropriation for Fiscal Year 2023, be (approved on first reading, ordered published in full, and a public hearing set for May 6, 2024, at 6:15 p.m.) (rejected)

Prepared by:
Bryan Archer, Director of Finance

Reviewed by:

Approved by:

Jenna Belec, Executive Assistant	4/4/2024
Debra Nielson, Deputy Director of Finance	4/4/2024
Bryan Archer, Director of Finance	4/4/2024
Gail Walker, Legal Specialist-Contracts	4/5/2024
Laura Hemler, Assistant City Attorney	4/5/2024
Linda Haley, Deputy City Manager	4/5/2024

SUBJECT: CB24-007, An Ordinance Authorizing an Additional Appropriation for Fiscal Year 2023 (Public Hearing to be set for May 6, 2024 at 6:15 p.m.)

PAGE: 3

ITEM: 8.C.1.

Rachel Morris, City Attorney

4/5/2024

Lorie Gillis, City Manager

4/5/2024

Enclosure, exhibits & attachments required to support the report

COUNCIL BILL NO. 24-007
ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AN ADDITIONAL APPROPRIATION
FOR FISCAL YEAR 2023

WHEREAS, the City Council of the City of Arvada adopted Ordinance No. 4822 (Council Bill No. 22-074), which authorized the annual appropriation for Fiscal Year 2023; and

WHEREAS, Section 10.8(a) of the Arvada Home Rule Charter provides that City Council may make additional appropriations by Ordinance during the fiscal year for unanticipated expenditures required of the City; and

WHEREAS, the City Council of the City of Arvada adopted Ordinance No. 4862 (Council Bill No. 4862) on December 18, 2023, which made the additional appropriations; and

WHEREAS, the City Council of the City of Arvada finds that this appropriation is necessary for the City to meet unanticipated expenditures; and

WHEREAS, the City Council of the City of Arvada finds that a second additional appropriation is necessary to ensure the Housing Authority Fund is accurate; and

WHEREAS, the City Council of the City of Arvada further finds that such additional expenditures and budgeted expenses do not exceed budgeted revenues and reserves for Fiscal Year 2023.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. The following sums of money as may be needed or deemed necessary to defray the expenses and liabilities of the City of Arvada are hereby appropriated for Fiscal Year 2023.

City of Arvada Final Appropriation

Fund	Final Budget
General Fund	\$128,564,278
Conservation Trust Fund	\$184,481
Street Maintenance Fund	\$12,494,119
Community Development Fund	\$4,444,709
Housing Authority Fund	\$7,879,660
Emergency Fund	\$5,296,529
Parks Fund	\$14,051,742

Police Seizure	\$30,312
Police Tax Increment Fund .21	\$8,345,151
Police Tax Increment Fund .25	\$10,148,513
Debt Service	\$5,363,782
COP Debt Service Fund	\$3,277,985
Capital Improvement Projects Fund	\$24,964,907
Construction Fund	\$8,016,508
Water Fund	\$126,643,916
Wastewater Fund	\$39,896,599
Golf Course Fund	\$8,431,835
Stormwater Fund	\$9,219,839
Solid Waste Fund	\$4,585,779
Insurance Fund	\$4,344,812
Computer Replacement Fund	\$12,673,739
Print Shop	\$405,750
Vehicle Fund	\$7,196,662
Building Fund	\$801,172
Total Appropriation	\$447,262,779

Section 2. This Ordinance shall take effect five days after publication following final passage.

INTRODUCED, READ, AND ORDERED PUBLISHED this 15th day of April, 2024.

PASSED, ADOPTED, AND APPROVED this _____ day of _____, 2024.

Lauren Simpson, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:
Rachel A. Morris, City Attorney

By: _____

Publication Dates: April 18, 2024



REPORT TO CITY COUNCIL

AGENDA ITEM
9.A.

TO: THE HONORABLE CITY COUNCIL

DATE: April 15, 2024

SUBJECT: Appointments to Boards and Commissions

Report in Brief

City Council will make appointments and reappointments to various boards and commissions as set out below:

Arvada Arts and Culture Commission –

I move to **Appoint** Mark Nelson and Cathy Moore to 4 year terms ending April 30, 2028. I move to **Appoint** Nick Armstrong to an unexpired term ending April 30, 2027.

I move to **Reappoint** Suzanne Ellenbogen, Heather Steffen and Kimberly Wagner to 4 year terms ending April 30, 2028.

Arvada Urban Renewal Authority

I move to **Reappoint** Tim Steinhaus to a 5 year term ending April 30, 2029.

Arvada Festivals Commission –

I move to **Appoint** Brett Medina, Whitney Ayer, Andie Scott, David Vega, Paul Crowley and Amy Williams to 3 year terms ending April 30, 2027. I move to **Appoint** Cory Randell, Sierra Wright, Ashley Pitman and Matthew Brogdon to unexpired terms ending April 30, 2025.

I move to **Reappoint** Michael Bozeman, Lisa Garza, Ethan Lutz and Barret Wolf to 3 year terms ending April 30, 2027.

Building Code Advisory Board-

I move to **Reappoint** John Blake Tomlinson to a 3 year term ending April 30, 2027.

Design Review Advisory Committee-

I move to **Reappoint** William Cheever, Scott Spears and Danielle Vorthmann to 3 year terms ending April 30, 2027.

Human Services Advisory Committee-

I move to **Appoint** Jacquelin Wisler to an unexpired term ending April 30, 2025.

I move to **Reappoint** Keisha Givner, Melissa Jamieson and Robert Slay to 3 year terms ending April 30, 2027.

Park Advisory Committee –

I move to **Appoint** Elizabeth Faircloth, Abigail Griffith, Sarah Ruen, Hannah Szakal and Ted Harberg to 3 year terms ending April 30, 2027. I move to **Appoint** Greg Miller to an unexpired term ending April 30, 2026.

I move to **Reappoint** Jackie Marquis to a 3 year term ending April 30, 2027.

Planning Commission-

I move to **Reappoint** Tom Aljinovich to a 4 year term ending April 30, 2028.

Police Pension Board-

I move to **Reappoint** Tim Collins to a 3 year term ending April 30, 2027.

Sustainability Advisory Committee –

I move to **Appoint** Mark Jelinske, Emma Boff and Michelle Martin to the Sustainability Advisory Committee to 3 year terms ending April 30, 2027. I move to **Appoint** Aaron Coffeen and Krystle Morey to unexpired terms ending April 30, 2026.

I move to **Reappoint** Harriett Hall, Alex Pray and Kia Ruiz to 3 year terms ending April 30, 2027.

Transportation Committee –

I move to **Reappoint** Jim Arndt, Jadwiga Brown and Jesse Dubin to 3 year terms ending April 30, 2027.

Prepared by:
Chris Koch, CCO Admin

Reviewed by:
Toni Riebschlager, Law Office Administrator 3/25/2024
Laura Hemler, Assistant City Attorney 3/25/2024

Approved by:

Linda Haley, Deputy City Manager 3/26/2024
Rachel Morris, City Attorney 4/1/2024
Lorie Gillis, City Manager 4/2/2024

Enclosure, exhibits & attachments required to support the report



REPORT TO CITY COUNCIL PUBLIC HEARING

AGENDA ITEM
10.A.

TO: THE HONORABLE CITY COUNCIL

DATE: April 15, 2024

SUBJECT: CB24-005, An Ordinance Authorizing an Additional Appropriation for Fiscal Year 2024
(Ordinance No. 4871) (Presenter: Bryan Archer, Director of Finance)

Report in Brief

Presenter: Bryan Archer, Director of Finance

The appropriation for the expenditure of funds from the 2023 budget lapsed on December 31, 2023. At the end of 2023, there were several projects/programs that had been approved, although not yet completed. In order to complete these projects, funds that were designated for these projects will now need to be carried over from the 2023 budget to the 2024 budget. These items total \$73,142,238. The majority of these carryovers are from the Enterprise Funds for ongoing capital improvement projects.

Additionally, there are several items that need to be added to the 2024 budget. The majority of these items are also capital in nature. These items total \$20,076,526.

Finally, during the 2024 budget process, City team members identified a group of one-time items, that if there were additional funds available at the end of 2023, would be presented for approval. These items total \$3,851,280.

The Arvada team recommends that the City Council approve CB24-005, An Ordinance Authorizing an Additional Appropriation for Fiscal Year 2024.

Financial Impact

The overall increase in the 2024 appropriation is \$97,070,044, consisting of \$73,142,238 of carryover items, \$20,076,526 in new items and \$3,851,280 in one-time items. Sufficient revenues exist to cover each of the new proposed budget items. These budget items, if approved, will be incorporated into the 2024-2034 ten-year financial plan.

Background

See attachment for a summary of items by fund.

CARRYOVERS

GENERAL FUND

Organizational Service and Effectiveness

City Attorney's Office

Several trainings for City Attorney team members were not completed in 2023 and will be completed in 2024. The request is to carry over \$41,000 for training.

The City Attorney's Office had estimated that certain litigation matters would occur in 2023. Some of this litigation will not happen until 2024, so the City Attorney's Office is requesting to carry over the remaining professional service funds of \$76,450.

City Manager's Office

Funds were set aside in 2023 for the DEI program and were not used. The City Manager's Office is requesting to carry over

\$33,949 into 2024.

Hosting of the City's website was budgeted for 2024 and 2025 in the 2023 budget but not paid until 2024. The City Manager's office is requesting \$90,766 to be carried over into 2024 for this project.

Funds were budgeted in 2023 for a Legislative consultant. The consultant is now on board and the City Manager's office is requesting to carry over \$125,000 into 2024.

Funds were budgeted in 2023 for the Community Survey and not completed. The City Manager's office is requesting \$80,000 be carried over into 2024 for this program.

An Xcel Energy light pole assessment was started but not completed in 2023. The city Manager's office is requesting \$120,640 be carried over into 2024 to complete this project.

Funds were budgeted in 2023 for the homelessness program but not spent. The City Manager's office is requesting to carry \$27,042 over into 2024 for this program.

Finance

\$8,000,000 was budgeted in 2023 for a loan to AURA for a developer project at Ralston Creek. This loan was not executed in 2023, and a request is being made to carry this loan amount into 2024.

\$3,100,000 was budgeted in 2023 to purchase the property on West 60th Ave. The property was purchased in 2024. A request is being made to carry this amount to 2024 for the purchase of the property on West 60th Ave.

Human Resources

Human Resources was working on an office remodel and move in 2023. This project was not completed in 2023 and Human Resources is requesting to carry over \$50,000 to complete the remodel.

Funds were budgeted in 2023 for executive cohort training and not completed. Human Resources is requesting \$41,250 be carried over into 2024 to complete this program.

Funds were budgeted in 2023 for a Job Architecture project and not completed. Human Resources is requesting \$50,000 be carried over into 2024 to complete this project.

Information Technology

Funds were budgeted in 2023 for security training, which was not completed. Information Technology is requesting \$21,262 be carried over into 2024 for this training.

Safe Community

Judicial

A Full Court software upgrade was started in 2023 and was not completed. Courts is requesting \$6,000 be carried over into 2024 for this upgrade.

Funds were budgeted in 2022 for court appointed attorneys but not used. Courts is requesting to carry over \$20,000 into 2024.

Public Safety

Funds were budgeted for a Delta station concrete study which was not completed. Public Safety is requesting to carry \$15,200 into 2024 for this project.

Funds were budgeted in 2023 for a recruiting contract which was not completed. Public Safety is requesting to carry \$23,000 into 2024 for this contract.

Pepperballs were budgeted and ordered in 2023 but not received. Public Safety is requesting to carry \$8,940 into 2024 for these items.

Funds were budgeted in 2023 for load bearing vests but not received. Public Safety is requesting to carry \$8,108 into 2024 for these items.

Community and Economic Development

Funds were budgeted for computer monitors and furniture in 2023 but not received. Community and Economic Development is requesting \$17,169 be carried over into 2024 for these items.

Infrastructure

Funds were budgeted for computer monitors and furniture in 2023 but not received. Public Works is requesting \$2,600 be carried over into 2024 for these items.

Funds were budgeted in 2023 for a signal master maintenance plan and not completed. Public Works is requesting \$135,000 be carried over to 2024 for this project.

Funds were budgeted in 2023 for a site scan single operator but not received. Public Works is requesting \$14,995 be carried over to 2024 for this item.

Virbrant Communities and Neighborhoods

The Energy Audit Program with Xcel Energy authorized an additional 80 homes in the program. Vibrant Communities and Neighborhoods is requesting \$8,000 be carried over into 2024 for this program.

Street Maintenance Fund

Delineator and rumble strips were budgeted and ordered in 2023 but not received. A request is being made to carryover \$120,000 for this purchase in 2024.

\$297,169 was contracted and budgeted for contract concrete work in 2023 and not completed. A request is being made to carryover \$297,169 to compete this work in 2024.

Emergency Fund

The City received \$10,383,800 in ARPA funds. \$142,020 of the funds have not been spent. The team is requesting to carry over these funds into 2024 to complete the ARPA funded projects.

Parks Fund

A donation was received in 2023 for the Arvada Reservoir in the amount of \$6,002. The improvements will not be completed until 2024. A request is being made to carryover \$6,002 to complete the work related to this donation.

Temporary wages were budgeted in 2023 for \$20,000 but not used, a request is being made to carryover \$20,000 to 2024 to utilize the \$20,000.

\$140,000 was budgeted in 2023 for LED security lighting and electric gate at Long Lake but not completed. A request is being made to carryover \$10,000 to 2024 for this project.

\$96,000 was budgeted in 2023 for tennis court overlay but not completed. A request is being made to carryover \$96,000 to 2024 for this project.

\$35,200 was budgeted in 2023 for lazer grading at Lutz but not completed. A request is being made to carryover \$35,200 to 2024 for this project.

\$128,000 for soccer goals at Lutz was budgeted and ordered in 2023 but not received. A request is being made to carryover \$128,000 to 2024 for these items.

\$25,000 was budgeted in 2023 for grass seed but not received. A request is being made to carry \$25,000 over into 2024 for this purchase.

\$17,559 was budgeted for repairs in 2023 and not completed. A request is being made to carry \$17,559 over into 2024 for these repairs. The total cost of the repairs are \$35,117 with the Insurance fund is paying for one-half of these repairs.

Police Tax Increment .21 Fund

\$64,026 in grants were received to purchase geofencing and equipment in 2023, but the items will not be received until 2024. A request to carryover \$64,026 into 2023 for these items.

\$50,000 was budgeted in 2023 for a flock contract and Jefferson County Mental Health MOU which were not executed in 2023. A request to carryover \$50,000 into 2024 is being made for these agreements.

Pepperballs were budgeted and ordered in 2023 but not received. Public Safety is requesting to carry \$4,096 into 2024 for these items.

Police Tax Increment .25 Fund

\$9,995 was budgeted and ordered in 2023 for sim rounds and uniforms but not received. A request to carryover \$9,995 into 2024 is being made for these items.

\$8,930 was budgeted and ordered in 2023 for flashlights and sim gear but not received. A request to carryover \$8,830 into 2024 is being made for these items.

\$2,869 was budgeted in 2023 for SWAT helmets and e-ticketer paper but not received. A request to carryover \$2,896 into 2024 is being made for these items.

\$62,800 was budgeted in 2020 for the Jefferson County Mental Health MOU and not executed. A request to carryover \$62,800 is being made for this agreement.

Water Fund

\$32,862,561 was budgeted in 2023 for various capital improvement projects but not completed. A request to carryover \$32,862,561 is being made to complete these projects. Examples of the Capital Improvement projects include raw water treatment plant handling, pumped zones storage tank and pump station, smart meter upgrades Denver Moffat project and chemical system replacement.

\$32,463 was budgeted in 2023 for a financial planning model project but not completed. A request to carryover \$32,463 is being made to complete this project.

\$48,060 was budgeted for meter materials in 2023 but not received. A request to carryover \$48,060 is being made for these items.

\$160,000 was budgeted in 2023 for an integration between Cityworks and CIS Utility Billing and not completed. A request to carryover \$160,000 is being made to complete this integration in 2024.

\$133,461 was budgeted in 2023 for a jet vac truck but not received. A request to carryover \$133,461 is being made for this item.

\$75,120 was budgeted in 2023 for a tank cleaning but not completed. A request to carryover \$75,120 is being made to complete this work.

\$4,748,992 was budgeted in 2023 for watermain replacement but not completed. A request to carryover \$4,748,992 into 2024 is being made to complete this work.

\$18,658 was budgeted in 2023 for an AQ Property Contract and not completed. A request to carryover \$18,658 into 2024 is being made to complete this work.

\$65,772 was budgeted in 2023 for the Badger Meter Contract and was not completed. A request to carryover \$65,772 into 2024 is being made to complete this work.

\$75,000 was budgeted in 2023 for an Inland Potable Services contract and not completed. A request to carryover \$75,000 into 2024 is being made to complete this work.

Wastewater Fund

\$17,053,487 was budgeted in 2023 for various capital improvement projects but not completed. A request to carryover \$17,053,487 is being made to complete these projects. Examples of the Capital Improvement projects include the North Trunk Line Sewer Replacement, the Central Trunk Line Sewer Replacement and the Alkire Lift Station.

\$150,000 was budgeted in 2023 for CCTV services and not completed. A request is being made to carryover \$150,000 to 2024 to complete this work.

Golf Fund

\$18,050 was budgeted in 2023 for the Lake Arbor feasibility study and not completed. A request to carryover \$18,050 to 2024 is being made to complete this study.

\$405.00 was budgeted for remote software for the QSR system and not completed. A request is being made to carryover \$405.00 to 2024 for this software.

Stormwater Fund

\$1,535,944 was budgeted in 2023 for various capital improvement projects but not completed. A request to carryover \$1,535,944 is being made to complete these projects. Examples of the Capital Improvement projects include Lake Arbor Dredging and miscellaneous drainage projects.

\$24,560 was budgeted in 2023 for a MS4 contract and not completed. A request to carryover \$24,560 to 2024 is being made to complete this contract.

Vehicles Fund

The Vehicle fund ordered several vehicles and equipment in 2023 that will not be received until 2024. The Vehicle fund is requesting to carry over \$615,630 into 2023 for these purchases.

Computer Fund

The Computer fund is requesting to carry over \$1,791,000 for various technology projects in process. These projects relate to work that is being done for scanning equipment, radio system, plotter, phone system replacement, TVs in conference rooms and computer monitor replacement. A request is being made to carry \$1,791,000 into 2024 for these projects.

Insurance Fund

\$17,558 was budgeted for repairs in 2023 and not completed. A request is being made to carry \$17,558 over into 2024 for these repairs. The total cost of the repairs \$35,117 with the Parks fund paying for one-half of these repairs.

New Requests

General Fund

Several personnel positions were corrected and moved to the General Fund from the utility funds and the computer fund. These positions were not budgeted in the General Fund in 2024. This request is to budget these positions in the amount of \$2,067,621 which is being supported by transfers from the utilities and computer funds.

An increase of \$30,000 is being requested for the annual rent for AEDA's new office space.

An increase of \$30,000 is being requested for an emergency IVR purchase for the Trackit permitting system.

An increase of \$13,000 is being requested for ongoing utilities at 4600 West 60th Ave.

Streets Maintenance Fund

A personnel position was corrected and moved to the Streets Maintenance Fund from the utility fund. These positions were not budgeted in the Streets Maintenance fund in 2024. This request is to budget these positions in the amount of \$169,487, which is being supported by transfers from the utility fund.

An increase of \$1,900,000 is being requested due to additional one-time funding for the Streets Maintenance Fund. This supports the budget and fiscal policy budget director of "...50% of all excess revenues (year-end actual General Fund revenues over budgeted revenues) be appropriated to the street infrastructure as a supplemental budget appropriation in the first quarter of the subsequent year."

Parks Fund

An increase of \$41,027 is being requested for Majestic View Nature Center programs. This increase will be funded by additional SCFD grant funds.

An increase of \$6,050 is being requested for employee bonuses for employees at Majestic View Nature Center and Arvada Festivals.

An increase of \$2,383,797 is being requested for a grant received from Jeffco Open Space for trails. This request will allow the funds from this grant to be spent.

Police Tax Increment .21 Fund

An increase of \$500,000 is being made for funding for an evidence storage building.

Police Tax Increment .25 Fund

An increase of \$3,000,000 is being requested for funding for an evidence storage building.

Water Fund

An increase of \$1,921,308 is being requested for additional watermain replacement.

Wastewater Fund

An increase of \$820,000 is being requested for the the North Sewer Trunk Line replacement. This will be funded by bond proceeds from the 2022 bond issue.

Capital Improvement Projects Fund

Each year as part of new construction, Park tap fees are collected along with water taps. These fees are accumulated throughout the year and then transferred to the CIP to fund new park construction. The amount collected in 2023 was \$282,145. The team requests to appropriate these funds in 2024 for future park taps.

The Water fund provides revenue to CIP fund for irrigation improvements. In the early 1990's, a "3 cents per thousand gallons" calculation was created and collected by the Water fund. The amount collected in 2023 was \$193,740. The team requests to appropriate these funds in 2024 for future park irrigation projects.

Each year as part of new construction, Park development fees are collected. These fees are accumulated throughout the year in the CIP fund to fund new park construction. The amount collected in 2023 was \$305,195. The team requests to appropriate these funds in 2024 for future park projects along with tree replacements.

Each year as part of new construction, Lands Dedicated fees are collected. These fees are accumulated throughout the year in the CIP fund to fund new park construction. The amount collected in 2023 was \$1,193,648. The team requests to appropriate these funds in 2024 for future parks projects.

Each year, the City collects Adams County Transportation Tax revenue. This revenue is accumulated in the CIP to fund new traffic projects in Adams County. The amount collected in 2023 was \$266,104. The team requests to appropriate these funds in 2024 for future traffic projects.

Each year, the City collects Adams County Open Space Tax revenue. This revenue is accumulated in the CIP to fund new parks projects in Adams County. The amount collected in 2023 was \$108,654. The team requests to appropriate these funds in 2024 for future park projects.

Each year, the City receives a Public Education and Government (PEG) fee from cable franchising companies. The amount collected in 2023 was \$80,009. The team requests to appropriate these funds in 2024 for eligible PEG purchases.

Each year interest is received in the Capital Improvement Projects Fund. The amount collected in 2023 was \$1,674,447. The team requests to appropriate these funds in 2024.

An increase of \$50,000 is being requested for the HR remodel and move. This funding is coming from the HR budget.

An increase of \$254,288 is being requested due to additional sales tax collected in 2023. This funding is referred to as 98-101 funds. The team requests to appropriate these funds in 2024 for use towards current CIP projects.

An increase of \$15,600 is being requested for the Ralston Triangle Project. The funding for this project is from AURA.

An increase of \$12,599 is being requested for tree replacements. This is being funded by the Insurance Fund.

An increase of \$3,247 is being requested. These are funds remaining from the Lake Arbor Golf Improvement project and the request is to transfer these funds back to the CIP fund.

COP Fund

Each year interest is received in the COP fund. The amount collected in 2023 was \$939,218. The team requests to appropriate these funds in 2024.

An increase of \$443,541 is being requested for a grant received for the Meyer's Pool diving board. The team requests to appropriate these funds in 2024.

Construction Fund

Each year interest is received in the construction fund. The amount collected in 2023 was \$1,512,212. The team requests to appropriate these funds in 2024.

Insurance Fund

An increase of \$53,329 is being requested to fund a Health and Safety module for the Risk Management Origami software. There is sufficient fund balance for this purchase.

ONE TIME REQUESTS

A number of one-time requests were presented during the 2023 budget process as items that the Arvada team would like to fund if there were savings in the General Fund budget at the end of 2023. The table below shows these items. Our team proposes to fund all of these items in 2023 as part of this budget ordinance.

Item	
Batteries at the radio tower	\$ 40,000
IT workforce plan	55,000
Additional contribution to Streets Maintenance Fund	1,900,000
PD low staff retention bonus	850,000
Olde Town outreach	400,000
CRM replacement	175,000
ADA digital compliance	95,000
Arvada Center bathrooms	45,000
Turf removal	25,000
Homelessness strategic plan	145,000

Grazing	31 280
Accessibility documents	30 000
City Hall hot water boilers	60,000
Total	\$3,851,280

Discussion

The recommended action will authorize the expenditure of resources that aligns to the City Council's direction. A total of \$73,142,238 of the requests as described are funded as carryover of unspent resources approved as part of the 2023 operating and capital budget. A total of \$20,076,526 is funded by additional revenues, transfers from other funds, or reserves within the various funds within our fully balanced ten-year financial models. Finally, there are one-time requests totaling \$3,851,280 that are funded by a combination of unspent 2023 appropriations and additional 2023 revenue over budgeted estimates.

If approved by the City Council, total appropriations for 2024 will be \$484,536,141 as presented in the Carryover Summary attachment included with this agenda item.

Public Contact

Posting of the City Council Agenda

Commission Recommendation

N/A

Strategic Alignment

The proposed action aligns with the Organizational and Service Effectiveness worksystem within the City Council Strategic Plan by authorizing resources that will be administered by the Finance Department in accordance with applicable City Code and financial policies. Other worksystems that will be served through the recommended action include Safe Community, Infrastructure, Community and Economic Development and Vibrant Community and Neighborhoods.

Alternative Courses of Action

N/A

Recommendation for Action

The Arvada team recommends that the City Council approve CB23-005, An Ordinance Authorizing an Additional Appropriation for Fiscal Year 2024.

Suggested Motion:

I move that CB24-005, An Ordinance Authorizing an Additional Appropriation for Fiscal Year 2024, be (approved on final reading, numbered 4871 and ordered published by title only) (rejected).

Prepared by:
Chris Koch, CCO Admin

Reviewed by:

Approved by:

Jenna Belec, Executive Assistant	3/25/2024
Bryan Archer, Director of Finance	3/25/2024
Gail Walker, Legal Specialist-Contracts	3/26/2024
Laura Hemler, Assistant City Attorney	3/26/2024
Rachel Morris, City Attorney	4/1/2024
Linda Haley, Deputy City Manager	4/1/2024
Lorie Gillis, City Manager	4/2/2024

Enclosure, exhibits & attachments required to support the report

COUNCIL BILL NO. CB24-005
ORDINANCE NO. 4871

AN ORDINANCE AUTHORIZING AN ADDITIONAL APPROPRIATION
FOR FISCAL YEAR 2024

WHEREAS, the City Council of the City of Arvada adopted Ordinance No. 4860 (Council Bill No. 23-027), which authorized the annual appropriation for Fiscal Year 2024; and

WHEREAS, Section 10.8(a) of the Arvada Home Rule Charter provides that City Council may make additional appropriations by Ordinance during the fiscal year for unanticipated expenditures required of the City; and

WHEREAS, the City Council of the City of Arvada finds that an additional appropriation is necessary in order for the City to meet unanticipated expenditures; and

WHEREAS, the City Council of the City of Arvada further finds that such additional expenditures and budgeted expenses do not exceed budgeted revenues and reserves for Fiscal Year 2024.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. The following sums of money as may be needed or deemed necessary to defray the expenses and liabilities of the City of Arvada are hereby appropriated for Fiscal Year 2024.

City of Arvada Final Appropriation

Fund	Final Budget
General Fund	\$142,685,036
Conservation Trust Fund	190,016
Street Maintenance Fund	15,311,629
Community Development Fund	1,226,248
Housing Authority Fund	6,021,464
Emergency Fund	142,020
Parks Fund	17,236,113
Police Seizure	31,222
Police Tax Increment Fund .21	8,209,541
Police Tax Increment Fund .25	11,353,974
Debt Service	5,804,282
COP Debt Service Fund	3,277,484

Capital Improvement Projects Fund	12,495,448
Construction Fund	2,894,971
Water Fund	141,548,193
Wastewater Fund	73,995,416
Golf Course Fund	8,028,653
Stormwater Fund	8,321,794
Solid Waste Fund	4,737,907
Insurance Fund	3,619,203
Computer Replacement Fund	8,819,141
Print Shop	365,994
Vehicle Fund	7,744,330
Building Fund	476,062
Total Appropriation	\$484,536,141

Section 2. This Ordinance shall take effect five days after publication following final passage.

INTRODUCED, READ, AND ORDERED PUBLISHED this 1st day of April, 2024.

PASSED, ADOPTED, AND APPROVED this 15th day of April, 2024.

Lauren Simpson, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:
Rachel A. Morris, City Attorney

By: _____

Publication Dates: April 4, 2024
April 18, 2024

Fund	Original Budget	Carry over	One-time	New Requests
General Fund	\$ 124,576,764	\$ 12,116,371	\$ 3,851,280	\$ 2,140,621
Grants Fund	190,016	\$ -	-	\$ -
Street Maintenance Fund	12,824,973	\$ 417,169	-	\$ 2,069,487
Community Development	1,226,248	\$ -	-	\$ -
Arvada Housing	6,021,464	\$ -	-	\$ -
ARPA	-	\$ 142,020	-	\$ -
Parks Fund	14,337,478	\$ 467,761	-	\$ 2,430,874
Police Seizure Fund	31,222	\$ -	-	\$ -
Police Tax Increment .21	7,591,419	\$ 118,122	-	\$ 500,000
Police Tax Increment .25	8,269,420	\$ 84,554	-	\$ 3,000,000
COP Debt Service	3,277,484	\$ -	-	\$ -
Debt Service	5,804,282	\$ -	-	\$ -
Capital Projects Fund	8,249,512	\$ -	-	\$ 4,245,936
Construction Fund	-	\$ -	-	\$ 2,894,971
Water Fund	101,037,278	\$ 38,589,607	-	\$ 1,921,308
Wastewater Fund	55,971,929	\$ 17,203,487	-	\$ 820,000
Golf Course Fund	8,010,198	\$ 18,455	-	\$ -
Stormwater Fund	6,761,290	\$ 1,560,504	-	\$ -
Solid Waste Fund	4,737,907	\$ -	-	\$ -
Insurance Fund	3,548,316	\$ 17,558	-	\$ 53,329
Computers	7,028,141	\$ 1,791,000	-	\$ -
Print Shop	365,994	\$ -	-	\$ -
Vehicles	7,128,700	\$ 615,630	-	\$ -
Buildings	476,062	\$ -	-	\$ -
Total	\$ 387,466,097	\$ 73,142,238	\$ 3,851,280	\$ 20,076,526

Revised Budget	
\$	142,685,036
\$	190,016
\$	15,311,629
\$	1,226,248
\$	6,021,464
\$	142,020
\$	17,236,113
\$	31,222
\$	8,209,541
\$	11,353,974
\$	3,277,484
\$	5,804,282
\$	12,495,448
\$	2,894,971
\$	141,548,193
\$	73,995,416
\$	8,028,653
\$	8,321,794
\$	4,737,907
\$	3,619,203
\$	8,819,141
\$	365,994
\$	7,744,330
\$	476,062
\$	484,536,141



2024

FIRST BUDGET ORDINANCE



Overview

- **2023 Carry-over Items**

- Projects, programs approved but not completed in 2023

- **2024 One-time Items**

- Priorities identified during the 2023 budget process that did not have an identified funding source

- **2024 New Requests**

- Items identified at previous City Council meetings (since the 2024 budget approval) that need formal appropriation



Carryover Table

Fund	Original Budget	Carry over	One-time	New Requests	Revised Budget
General Fund	\$ 124,576,764	\$ 12,116,371	\$ 3,851,280	\$ 2,140,621	\$ 142,685,036
Grants Fund	190,016	\$ -	-	\$ -	\$ 190,016
Street Maintenance Fund	12,824,973	\$ 417,169	-	\$ 2,069,487	\$ 15,311,629
Community Development	1,226,248	\$ -	-	\$ -	\$ 1,226,248
Arvada Housing	6,021,464	\$ -	-	\$ -	\$ 6,021,464
ARPA	-	\$ 142,020	-	\$ -	\$ 142,020
Parks Fund	14,337,478	\$ 467,761	-	\$ 2,430,874	\$ 17,236,113
Police Seizure Fund	31,222	\$ -	-	\$ -	\$ 31,222
Police Tax Increment .21	7,591,419	\$ 118,122	-	\$ 500,000	\$ 8,209,541
Police Tax Increment .25	8,269,420	\$ 84,554	-	\$ 3,000,000	\$ 11,353,974
COP Debt Service	3,277,484	\$ -	-	\$ -	\$ 3,277,484
Debt Service	5,804,282	\$ -	-	\$ -	\$ 5,804,282
Capital Projects Fund	8,249,512	\$ -	-	\$ 4,245,936	\$ 12,495,448
Construction Fund	-	\$ -	-	\$ 2,894,971	\$ 2,894,971
Water Fund	101,037,278	\$ 38,589,607	-	\$ 1,921,308	\$ 141,548,193
Wastewater Fund	55,971,929	\$ 17,203,487	-	\$ 820,000	\$ 73,995,416
Golf Course Fund	8,010,198	\$ 18,455	-	\$ -	\$ 8,028,653
Stormwater Fund	6,761,290	\$ 1,560,504	-	\$ -	\$ 8,321,794
Solid Waste Fund	4,737,907	\$ -	-	\$ -	\$ 4,737,907
Insurance Fund	3,548,316	\$ 17,558	-	\$ 53,329	\$ 3,619,203
Computers	7,028,141	\$ 1,791,000	-	\$ -	\$ 8,819,141
Print Shop	365,994	\$ -	-	\$ -	\$ 365,994
Vehicles	7,128,700	\$ 615,630	-	\$ -	\$ 7,744,330
Buildings	476,062	\$ -	-	\$ -	\$ 476,062
Total	\$ 387,466,097	\$ 73,142,238	\$ 3,851,280	\$ 20,076,526	\$ 484,536,141

2023 Carryover



FUND	AMOUNT
General Fund	\$ 12,116,371
Street Maintenance Fund	417,169
ARPA Fund	142,020
Parks Fund	467,761
Police Tax Increment .21	118,122
Police Tax Increment .25	84,554
Water Fund	38,589,607
Wastewater Fund	17,203,487
Golf Course Fund	18,455
Stormwater Fund	1,560,504
Insurance Fund	17,558
Computers	1,791,000
Vehicles	615,630
	\$ 73,142,238

2023 Carryover Detail

GENERAL FUND

AMOUNT

Loan to AURA	\$ 8,000,000
Property purchase	3,100,000
Outside Studies	460,640
Operations	<u>555,731</u>
Total	\$ 12,116,371

STUDIES

- Street Light Analysis
- Legislative
- Signal Master Plan
- Community Survey

ALL OTHER FUNDS

AMOUNT

Capital Projects	\$56,093,555
Street Maintenance	417,169
ARPA Funds	142,020
Equipment/Vehicles	732,295
Operations	<u>3,640,828</u>
Total	\$61,025,867

CAPITAL PROJECTS

- Gross Reservoir
- Water line replacement
- Ralston Truck Sewer
- Wastewater CIPP
- Lake Arbor dredging
- North Trunk Line
- Central Trunk Line

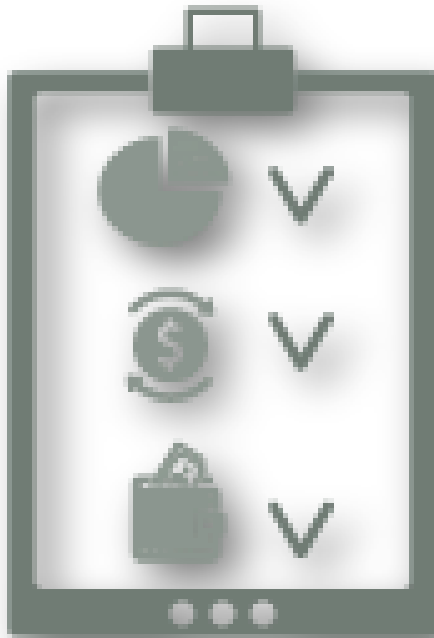


2023 One-Time Detail

GENERAL FUND	AMOUNT
Streets Maintenance	\$ 1,900,000
PD Retention Bonus	850,000
Olde Town Outreach	400,000
CRM Replacement	175,000
Homeless Work	145,000
ADA Digital Compliance	95,000
City Hall Boilers	60,000
IT Workforce Plan	55,000
Arvada Center Bathrooms	45,000
Radio Tower Batteries	40,000
Grazing	31,280
Accessibility documents	30,000
Turf Removal	<u>25,000</u>
Total	\$ 3,851,280



2024 New Requests



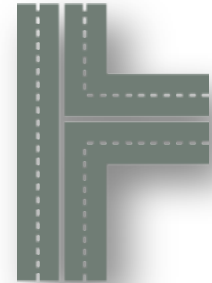
FUND	AMOUNT
General Fund	\$ 2,140,621
Street Maintenance Fund	2,069,487
Parks Fund	2,430,874
Police Tax Increment .21	500,000
Police Tax Increment .25	3,000,000
Capital Projects Fund	4,245,936
Construction Fund	2,894,971
Water Fund	1,921,308
Wastewater Fund	820,000
Insurance Fund	53,329
	\$ 20,076,526

2023 New Requests Detail

ALL OTHER FUNDS	AMOUNT
Capital Projects	\$ 9,524,704
Personnel Adjustments	2,243,158
Evidence Building	3,500,000
Street Maintenance	1,900,000
Water line replacement	1,921,308
North Truck Line	820,000
Operations	<u>167,356</u>
Total	\$ 20,076,526

CAPITAL PROJECTS

- Jeffco Open Space Trail Grant
- AAC Pool Diving Board
- Interest Revenue Earned
- Recurring Projects (park development fees, lands dedicated fees)



Source of “one-time” Funds

General Fund



REVENUES	AMOUNT
Sales Tax	\$ 1,271,000
Building Revenues	1,499,000
All other (auto, grants, use, interest)	<u>1,065,000</u>
Total Revenues	\$ 3,835,000

EXPENDITURES	AMOUNT
Total Expenditure Savings	\$ 13,061,000
Carryover	<u>(12,116,371)</u>
Total Expenditures	944,629
 Total Savings	 \$ 4,779,629
 Proposed One-Time Use	 3,851,280
Proposed New Budget Requests	73,000
 10-year Model/Major Capital Projects	 \$ 855,349

Questions ?





REPORT TO CITY COUNCIL PUBLIC HEARING

AGENDA ITEM
10.B.

TO: THE HONORABLE CITY COUNCIL

DATE: April 15, 2024

SUBJECT: CB24-006, An Ordinance Repealing and Reenacting Certain Sections of Chapter 6 Alcoholic Beverages, of the Arvada City Code (Ordinance No. 4872) (Presenter: Kylie Justus)

Report in Brief

Presenter: Kylie Justus

The City team has been looking at a possible change in Arvada's local liquor licensing authority ("LLA") structure. By transitioning the LLA to a hearing officer, the City would provide a more expeditious, efficient, fair, consistent, and business-friendly process for businesses wishing to obtain an Arvada liquor license and for addressing violations of the liquor code. While the City would lose the citizen participation aspect of the current LLA, it would minimize the risk associated with the lack of specialization of such boards and the risk of improper agendas or biases. Additionally, because the LLA is a quasi-judicial authority with narrow discretion, having a hearing officer would minimize the City's risk of appeal to the district court due to an insufficient record or improper legal analysis. Therefore, staff recommends City Council support an amendment to the Arvada City Code to designate a hearing officer to serve as the LLA.

The Arvada team recommends that the City Council approve CB24-006, An Ordinance Repealing and Reenacting Certain Sections of Chapter 6 Alcoholic Beverages, of the Arvada City Code be approved.

Financial Impact

There will be cost savings by designating a hearing officer to serve as the Liquor Licensing Authority.

Currently, the LLA meetings cost the City significant resources. An assistant city attorney, deputy city clerk, liquor licensing investigator, and facilities staff are all compensated to stay past working hours for the meetings which take place twice a month at City Hall at 5:30 p.m. Each of the five members of the Liquor Licensing Authority are also compensated at a rate of \$75 per meeting. There are also time obligations for the City Clerk and City Council in interviewing and selecting new board members each year, as well as for the City Attorney to train the new members. Selecting a single hearing officer would save the City all these resources by reducing the need for training, appointments, compensatory time/overtime, and meeting time.

Background

In 1935, Colorado passed its first licensing code for alcohol to protect the "social and economic welfare and the health, peace, and morals of this state." This licensing code has persisted as the law in Colorado since then, although it has been amended many times. Under the current Code, local jurisdictions have the right to regulate retail (not manufacturer or wholesaler) licenses within their jurisdiction by establishing a Liquor Licensing Authority which is "the governing body of a municipality or city and county, the board of county commissioners of a county, or any authority designated by municipal or county charter, municipal ordinance, or county resolution." The Code does not mandate any particular composition of the Liquor Licensing Authority. Since 1960, Arvada has had a Liquor Licensing Authority. Over the years, the type of entity designated by Arvada as the LLA has changed from the City Manager to the current five-member citizen board.

Many nearby jurisdictions have switched to the hearing officer approach for their LLAs. This includes Denver, Centennial, Golden, Castle Rock, Commerce City, Loveland, Lakewood, Superior (for violations only), and Fort Collins. The change

would allow the City to have virtual hearings, making it easier for business owners to attend. Additionally, having a hearing officer who is a legally trained judge would help streamline hearings by ensuring focus on proper legal considerations.

Discussion

The Liquor Licensing Authority is not a policy-making body but acts in a quasi-judicial manner, primarily to: (a) consider whether to grant new liquor licenses; and (b) determine if a violation of the Code has occurred and if so, to impose administrative sanctions within the Liquor Licensing Authority and State-adopted guidelines. With a conversion to a hearing officer acting as the Liquor Licensing Authority, the same legal standards for approval of a new license shall remain. The legal standards are limited to consideration of the following: (1) whether the needs and desires of the neighborhood are being met; (2) the moral character of the applicant. Notifications to the public of all hearings will be provided in the same manner and any member of the public may attend. Additionally, the sanctions imposed for violations of the Code are based on a set of written guidelines that are consistent with previous cases and the State's guidelines. Because the Liquor Licensing Authority acts as a quasi-judicial body, a hearing officer is uniquely qualified to analyze evidence, apply it to the required criteria, and reach a well-reasoned, supported, and defensible decision for the City. The appeal process for aggrieved applicants, licensees, or opponents to a new license will be unchanged (an appeal to the district court in Jefferson County). Having a hearing officer with legal and professional experience having a good record that supports the decision will ensure that the City is in a good position to withstand an appeal. A hearing officer would ensure that decisions are fair and consistent with the law and that all applicants are treated with respect.

Public Contact

Posting of the City Council agenda.

Commission Recommendation

N/A

Strategic Alignment

This item is aligned with the Organizational and Service Effectiveness principle to provide leadership, policy and guidance, communication, and engagement services to the City Council, the community, and the organization, utilizing a values-driven organizational culture, ethical behavior, and transparency to the community to maintain public trust.

Alternative Courses of Action

None

Recommendation for Action

The Arvada team recommends that the City Council approve CB24-006, An Ordinance Repealing and Reenacting Certain Sections of Chapter 6 Alcoholic Beverages, of the Arvada City Code.

Suggested Motion:

I move that CB24-006, An Ordinance Repealing and Reenacting Certain Sections of Chapter 6 Alcoholic Beverages, of the Arvada City Code, be (approved on final reading, numbered 4872 and ordered published by title only (rejected)).

Prepared by:
Chris Koch, CCO Admin

SUBJECT: CB24-006, An Ordinance Repealing and Reenacting Certain Sections of Chapter 6 Alcoholic Beverages, of the Arvada City Code (Ordinance No. 4872) (Presenter: Kylie Justus)

PAGE: 3
ITEM: 10.B.

Reviewed by:

Toni Riebschlager, Law Office Administrator 3/25/2024

Approved by:

Kylie Justus, Assistant City Attorney 3/26/2024

Rachel Morris, City Attorney 4/1/2024

Linda Haley, Deputy City Manager 4/1/2024

Lorie Gillis, City Manager 4/2/2024

Enclosure, exhibits & attachments required to support the report

COUNCIL BILL NO. CB24-006
ORDINANCE NO. 4872

AN ORDINANCE REPEALING AND REENACTING CERTAIN SECTIONS OF CHAPTER
6, ALCOHOLIC BEVERAGES, OF THE ARVADA CITY CODE

WHEREAS, since 1960, Arvada has had a liquor licensing authority charged with regulating and disciplining retail liquor licenses within the City; and

WHEREAS, Arvada's current liquor licensing authority is composed of five citizens appointed by City Council; and

WHEREAS, in order to increase efficiency, reduce legal risk, save costs, and facilitate hearings for licensees, City Council finds that it is in Arvada's best interest to transition from a citizen board to a hearing officer.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. Section 6-5, Penalties, of Article I, In General, of Chapter 6 – Alcoholic Beverages, of the Arvada City Code is hereby repealed and reenacted to read as follows:

“Sec. 6-5. Penalties.

- (a) Except as otherwise provided in this section 6-5, any violation of this chapter shall be punishable by a fine not to exceed the limits established in section 1-5.
- (b) Any licensee or permit holder who violates, or any licensee or permit holder whose employees violate, any of the terms of this chapter or of Title 44, Articles 3, 4 and 5, C.R.S., or the rules and regulations related thereto, shall be subject to suspension or revocation of his or her license pursuant to the laws of the State, the imposition of a fine in lieu of suspension under the provisions of Section 44-3-601(3), C.R.S., written reprimand, or such other penalty as the licensing authority deems appropriate.
 - (1) Revocation or suspension of license. The licensing authority may, on its own motion or on complaint, after investigation and public hearing at which the licensee shall be afforded an opportunity to be heard, suspend or revoke any license or permit issued by the authority for any violation by the licensee or by any of the agents, servants, or employees of such licensee of the provisions of this chapter, or any of the rules or regulations authorized pursuant to this chapter or of any of the terms, conditions, or provisions of the license or permit issued by the authority.
 - (2) Fine in lieu of suspension. Whenever a decision of the licensing authority suspending a license for 14 days or less becomes final, whether by failure of the licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension or such earlier date

as the licensing authority may designate in its decision, petition the authority for permission to pay a fine in lieu of having the license suspended for all or part of the suspension period. The authority may, in its sole discretion and otherwise in accordance with the State's sentencing guidelines, stay the proposed suspension in part or in whole and grant the petition if it finds, after any investigation that it deems desirable, that:

- (i) The public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine in lieu of suspension will achieve the desired disciplinary purpose; and
 - (ii) The books and records of the licensee are kept in such a manner that the loss of sales during the proposed suspension can be determined with reasonable accuracy therefrom; and
 - (iii) The licensee has not had its license suspended or revoked nor had any suspension stayed by payment of a fine in lieu of suspension during the two years immediately preceding the date of the motion or complaint which has resulted in a final decision to suspend the license.
- (c) Payment of any fine in lieu of suspension shall be in the form of cash, a certified check or a cashier's check payable to the city. Such fine in lieu of suspension shall be paid into the general fund of the city.
- (d) The licensing authority may grant such conditional or temporary stays as are necessary for it to complete its investigations, to make its findings as specified in subsection (a) above, and to grant a permanent stay of the entire or part of the suspension. If no permanent stay is granted, the suspension shall go into effect on the operative date finally set by the licensing authority.
- (e) In this section 6-5(b) "fine in lieu of suspension" means a form of discipline imposed pursuant to this article in lieu of a suspension. Any fine in lieu of suspension shall be within the limits imposed by Title 44, Article 3 of the Colorado Revised Statutes, and the corresponding Code of Colorado Regulations.

Section 2. Division 2, Licensing Authority, of Article II, Licenses, of Chapter 6, Alcoholic Beverages, of the Arvada City Code is hereby repealed and reenacted to read as follows:

“ARTICLE II. LICENSES

DIVISION 2. LICENSING AUTHORITY

Sec. 6-61. Established.

There is hereby established a local licensing authority, which shall have and is vested with the authority to grant or refuse licenses for the sale at retail of malt, vinous or spirituous liquors and fermented malt beverages, as provided by law; to conduct investigations as are required by law; and to suspend or revoke such licenses for cause in the manner provided by law. Such authority

shall have all the powers of the local licensing authority as set forth in C.R.S. title 44, art. 3, 4, or 5.

Sec. 6-62. Composition.

- (a) *Hearing Officer.* The authority shall consist of a sole hearing officer. The hearing officer may be chosen by the city clerk from any of the city's appointed judges as described in article III of chapter 58 of this Code. While only one hearing officer shall preside over any meeting of the authority, the city clerk may select the hearing officer for any meeting from the pool of appointed judges.
- (b) *Qualifications.* In addition to being a judge appointed pursuant to article III of chapter 58 of this Code, a hearing officer must be an attorney currently licensed to practice in the State and be in good standing with the Supreme Court of the State. The hearing officer or any person in the hearing officer's immediate family must not have any financial interest in a liquor licensed establishment within the city. Ownership of stock solely for investment purposes in a corporation whose stock is publicly traded shall not be deemed to be a disqualifying financial interest.
 - (1) For purposes of this section, "immediate family" means the hearing officer's spouse or person who identifies as their significant other or domestic partner and whose primary residence or place of primary abode is the same as that of the hearing officer. It also means the hearing officer's child, parent, sibling, aunt, uncle, or cousin, including biological, step, adopted foster, or in-law relationships.

Sec. 6-63. Compensation.

The hearing officer shall receive the hourly compensation described in the hearing officer's employment contract with the city. If the hearing officer is a salaried employee of the city, the hearing officer shall not be paid any additional compensation.

Sec. 6-64. Removal of a hearing officer.

All hearing officers shall serve at the pleasure of city council and may be prohibited from serving as a hearing officer of the authority, with or without cause, by majority vote of city council.

Sec. 6-65. City clerk as secretary; duties; powers.

- (a) The city clerk shall receive all applications for licenses and permits under this chapter, and shall issue all licenses and permits granted by the licensing authority, upon receipt of such license and permit fees and taxes as are required by law and this chapter. The city clerk shall serve as the official secretary of the authority and shall designate a person to provide the necessary secretarial and reporting services for the authority. The city clerk or designee shall attend the meetings of the authority. All public notice by publication in a newspaper and by the posting of signs, as required by the C.R.S. title 44, art. 3, 4, or 5, as amended, shall be accomplished by the city clerk.
- (b) The city clerk may administratively review and issue, without consideration of the licensing authority, all types of liquor license and permit applications, except that the following shall be approved or heard by the licensing authority:

- (1) New liquor license applications; provided that the city clerk will accept the file for processing, set the applicable neighborhood boundaries, and set the date of the public hearing;
 - (2) Transfer applications;
 - (3) Applications for Modification of Licensed Premises, excluding applications for temporary modifications;
 - (4) Violations or actions related to violations and show cause hearings; and
 - (5) Applications for change of location.
- (c) Notwithstanding the foregoing, the city clerk may refer any licensing determination authorized under this section to the local licensing authority for its consideration at his or her sole discretion.
 - (d) The authority may authorize the city clerk to administratively approve liquor license applications not otherwise required by applicable law to be considered by the authority.

Sec. 6-66. Administrative procedures; legal counsel.

- (a) *Administrative procedures.* The authority may adopt administrative procedures, rules, and policies as necessary or convenient to implement the provisions of this chapter 6 of the Code and Colorado Liquor Code in accordance with chapter 2 of this Code.
- (b) *Legal counsel.* The city attorney or designee thereof shall be the legal advisor to the authority and shall serve as prosecutor for violations of this Code or Colorado Liquor Code. In the event of a conflict, the city attorney may appoint outside legal counsel.

Secs. 6-67—6-90. Reserved.”

Section 3. Section 6-164, Notice and public hearing, of Article V, Entertainment Districts and Common Consumption Areas, of Chapter 6, Alcoholic Beverages, of the Arvada City Code is hereby repealed and reenacted to read as follows:

“Sec. 6-164. Notice and public hearing.

- (a) *Public notice, posting, and publication.*
 - (1) Upon receipt of a complete application for certification of a promotional association and issuance of a common consumption area license, the city clerk shall schedule one public hearing on both applications before the authority at least 30 days after the acceptance date, but not more than 91 days after the acceptance date. The city clerk shall post and publish the public notice thereof at least ten days prior to the public hearing. Public notice shall be given by the conspicuous posting of a sign at each participating business within and attached to the common consumption area and by publication in a newspaper of general circulation.
 - (2) Notice shall otherwise conform to the requirements of C.R.S. § 44-3-311, as amended, and any other requirements set forth by the city clerk.

(b) *Conduct of public hearings.*

- (1) The city clerk shall designate the neighborhood being affected by such application. The designation of the geographical extent and boundaries of such neighborhood shall be within the sole discretion of the city clerk.
- (2) All exhibits presented at a public hearing must be filed with the clerk's office at least 72 hours prior to the public hearing.
- (3) At the public hearing held pursuant to this section, any party in interest shall be allowed to present relevant evidence and to cross-examine witnesses. Other than the applicant, any party in interest who wishes to present evidence or cross-examine witnesses at the public hearing must notify the city clerk at least 24 hours prior to the hearing of their intent to do so. As used in this section, "party in interest" means any of the following:
 - (i) The applicant;
 - (ii) An adult resident of the neighborhood under consideration;
 - (iii) The owner or manager of a business located in the neighborhood under consideration;
 - (iv) The principal or representative of any school located within five hundred feet of the boundaries of the common consumption area; or
 - (v) An authorized representative of a registered neighborhood organization that encompasses all or part of the neighborhood under consideration.
- (4) At the public hearing held pursuant to this section, the authority may:
 - (i) Set time limits on evidence and testimony;
 - (ii) Limit evidence and testimony if such evidence is irrelevant or cumulative; and
 - (iii) Cease the examination of a witness if the witness is being harassed, badgered, or disrespected by the examiner.
- (5) Other than the provisions specified in this section, public hearings shall be held in accordance with chapter 2 of the Arvada City Code and the Colorado Liquor Code.

(c) *Results of investigation; decision of the authority.*

- (1) At least seven days prior to the date of hearing, the city clerk shall make known the findings based on the liquor licensing control investigator's initial investigation of the application documents in writing to the applicant and the authority.
- (2) Before certifying a promotional association and issuing a common consumption area license, the authority shall consider the reasonable requirements of the neighborhood, the desires of the adult inhabitants as evidenced by petitions, remonstrances, or otherwise, and all other reasonable restrictions that are or may be placed upon the licensee.

- (3) Before entering any decision approving or denying the application, the authority shall consider, except where this article specifically provides otherwise, the facts and evidence adduced as a result of its investigation and the public hearing required by this section, and any other pertinent matters affecting the qualifications of the applicant for issuance of a common consumption area license and certification of a promotional association including this article, the Colorado Liquor Code, chapter 6 of the Arvada City Code, or any rules and regulations adopted pursuant thereto.
- (4) Unless additional time is necessary to fully investigate an application, any decision of the authority approving or denying an application shall be stated on the record after the evidence is presented at the public hearing. A copy of the decision shall be sent by certified mail to the applicant at the address shown in the application and to the state licensing authority.”

Section 4. Severability. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The city council declares that it would have adopted this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 5. This ordinance shall be effective five days after publication following final passage.

INTRODUCED, READ, AND ORDERED PUBLISHED this 1st day of April, 2024.

PASSED, ADOPTED, AND APPROVED this 15th day of April, 2024.

ATTEST:

City Clerk

Lauren Simpson, Mayor

APPROVED AS TO FORM:

Rachel A. Morris, City Attorney

By: _____

Publication Dates: April 4, 2024
 April 18, 2024

REDLINE/STRIKEOVER VERSION

FOR INFORMATION ONLY – NOT PART OF THE ORDINANCE

Underlined indicates new material
~~Strikethrough~~ indicates deleted material

Section 1. Section 6-5, Penalties, of Article I, In General, of Chapter 6 – Alcoholic Beverages, of the Arvada City Code is hereby repealed and reenacted to read as follows:

“Sec. 6-5. Penalties.

- (a) Except as otherwise provided in this section 6-5, any violation of this chapter shall be punishable by a fine not to exceed the limits established in section 1-5.
- (b) Any licensee or permit holder who violates, or any licensee or permit holder whose employees violate, any of the terms of this chapter or of Title 44, Articles 3, 4 and 5, C.R.S, or the rules and regulations related thereto, shall be subject to suspension or revocation of his or her license pursuant to the laws of the State, the imposition of a fine in lieu of suspension under the provisions of Section 44-3-601(3), C.R.S., written reprimand, or such other penalty as the licensing authority deems appropriate.
 - (1) Revocation or suspension of license. The licensing authority may, on its own motion or on complaint, after investigation and public hearing at which the licensee shall be afforded an opportunity to be heard, suspend or revoke any license or permit issued by the authority for any violation by the licensee or by any of the agents, servants, or employees of such licensee of the provisions of this chapter, or any of the rules or regulations authorized pursuant to this chapter or of any of the terms, conditions, or provisions of the license or permit issued by the authority.
 - (2) Fine in lieu of suspension. Whenever a decision of the licensing authority suspending a license for 14 days or less becomes final, whether by failure of the licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension or such earlier date as the licensing authority may designate in its decision, petition the authority for permission to pay a fine in lieu of having the license suspended for all or part of the suspension period. The authority may, in its sole discretion and otherwise in accordance with the State's ~~authority's~~ sentencing guidelines, stay the proposed suspension in part or in whole and grant the petition if it finds, after any investigation that it deems desirable, that:
 - (i) The public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine in lieu of suspension will achieve the desired disciplinary purpose; and

- (ii) The books and records of the licensee are kept in such a manner that the loss of sales during the proposed suspension can be determined with reasonable accuracy therefrom; and
 - (iii) The licensee has not had its license suspended or revoked nor had any suspension stayed by payment of a fine in lieu of suspension during the two years immediately preceding the date of the motion or complaint which has resulted in a final decision to suspend the license.
- (c) Payment of any fine in lieu of suspension shall be in the form of cash, a certified check or a cashier's check payable to the city. Such fine in lieu of suspension shall be paid into the general fund of the city.
- (d) The licensing authority may grant such conditional or temporary stays as are necessary for it to complete its investigations, to make its findings as specified in subsection (a) above, and to grant a permanent stay of the entire or part of the suspension. If no permanent stay is granted, the suspension shall go into effect on the operative date finally set by the licensing authority.
- (e) In this section 6-5(b) "fine in lieu of suspension" means a form of discipline imposed pursuant to this article in lieu of a suspension. Any fine in lieu of suspension shall be within the limits imposed by Title 44, Article 3 of the Colorado Revised Statutes, and the corresponding Code of Colorado Regulations. ~~the equivalent of 20 percent of the retail licensee's estimated gross revenues from sales of alcoholic beverages during the period of the proposed suspension, except that the fine shall be not less than \$200.00 nor more than \$5,000.00.~~

Section 2. Division 2, Licensing Authority, of Article II, Licenses, of Chapter 6, Alcoholic Beverages, of the Arvada City Code is hereby repealed and reenacted to read as follows:

“ARTICLE II. LICENSES

DIVISION 2. LICENSING AUTHORITY

Sec. 6-61. Established.

There is hereby established a local licensing authority, which shall have and is vested with the authority to grant or refuse licenses for the sale at retail of malt, vinous or spirituous liquors and fermented malt beverages, as provided by law; to conduct investigations as are required by law; and to suspend or revoke such licenses for cause in the manner provided by law. Such authority shall have all the powers of the local licensing authority as set forth in C.R.S. title 44, art. 3, 4, or 5.

Sec. 6-62. Composition ~~Composition.~~

- (a) Hearing Officer. The authority shall consist of a sole hearing officer. The hearing officer may be chosen by the city clerk from any of the city's appointed judges as described in article III of chapter 58 of this Code. While only one hearing officer shall preside over any meeting of the authority, the city clerk may select the hearing officer for any meeting from the pool of appointed judges. ~~five qualified electors of the city, who shall be~~

~~appointed by the city council. Of those initially appointed two shall be for a term of three years, two for a term of two years and one for a one year term. Thereafter, appointments shall be for a three year term. No person shall serve as a member of the local licensing authority who shall have any interest in the operation of an Arvada liquor establishment or in one serving fermented malt beverages or who has a member of his immediate family who has such an interest.~~

(b) Qualifications. In addition to being a judge appointed pursuant to article III of chapter 58 of this Code, a hearing officer must be an attorney currently licensed to practice in the State and be in good standing with the Supreme Court of the State. The hearing officer or any person in the hearing officer's immediate family must not have any financial interest in a liquor licensed establishment within the city. Ownership of stock solely for investment purposes in a corporation whose stock is publicly traded shall not be deemed to be a disqualifying financial interest.

(1) For purposes of this section, "immediate family" means the hearing officer's spouse or person who identifies as their significant other or domestic partner and whose primary residence or place of primary abode is the same as that of the hearing officer. It also means the hearing officer's child, parent, sibling, aunt, uncle, or cousin, including biological, step, adopted foster, or in-law relationships.

Sec. 6-63. Compensation; ~~expenses.~~

~~The hearing officer shall receive the hourly compensation described in the hearing officer's employment contract with the city. If the hearing officer is a salaried employee of the city, the hearing officer shall not be paid any additional compensation. Members of the licensing authority shall receive compensation in the amount provided in section 2-77 and shall be reimbursed for any necessary expenditures incurred in the performance of their duties.~~

Sec. 6-64. Removal of a hearing officer ~~Chair; quorum; voting; appeals.~~

~~All hearing officers shall serve at the pleasure of city council and may be prohibited from serving as a hearing officer of the authority, with or without cause, by majority vote of city council. The licensing authority shall annually elect a chair and a chair pro tem who shall preside over all hearings and proceedings of the authority. The chair may designate a member of the authority to assume his duties in his absence, generally the chair pro tem. A quorum shall consist of three members, and a decision of a majority of the members of the authority shall control. Any absent member may join in a decision of the authority after he has considered the evidence adduced in any hearings conducted during his absence. All decisions are final, subject only to appeal to a court of competent jurisdiction.~~

Sec. 6-65. City clerk as secretary; duties; powers.

(a) The city clerk shall receive all applications for licenses and permits under this chapter, and shall issue all licenses and permits granted by the licensing authority, upon receipt of such license and permit fees and taxes as are required by law and this chapter. The city clerk shall serve as the official secretary of the authority and shall designate a person to provide the necessary secretarial and reporting services for the authority. The city clerk or

designee shall attend the meetings of the authority. All public notice by publication in a newspaper and by the posting of signs, as required by the C.R.S. title 44, art. 3, 4, or 5, as amended, shall be accomplished by the city clerk.

- (b) The city clerk may administratively ~~review and issue complete~~, without consideration of the licensing authority, all types of liquor license and permit applications, except that the following shall be approved or heard by the licensing authority:
 - (1) New liquor license applications; provided that the city clerk will accept the file for processing, set the applicable neighborhood boundaries, and set the date of the public hearing;
 - (2) Transfer applications;
 - (3) Applications for Modification of Licensed Premises, excluding applications for temporary modifications;
 - (4) Violations or actions related to violations and show cause hearings; and
 - (5) Applications for change of location.
- (c) Notwithstanding the foregoing, the city clerk may refer any licensing determination authorized under this section to the local licensing authority for its consideration at his or her sole discretion.
- (d) The authority may authorize the city clerk to administratively approve liquor license applications not otherwise required by applicable law to be considered by the authority.

Sec. 6-66. ~~Removal of members; vacancies.~~ Administrative procedures; legal counsel.

- (a) Administrative procedures. The authority may adopt administrative procedures, rules, and policies as necessary or convenient to implement the provisions of this chapter 6 of the Code and Colorado Liquor Code in accordance with chapter 2 of this Code. ~~y member of the licensing authority may be removed with or without cause by a majority vote of the city council. Any vacancy occurring on the licensing authority as a result of such removal shall be filled for the unexpired term by a qualified elector appointed by the city council.~~
- (b) Legal counsel. The city attorney or designee thereof shall be the legal advisor to the authority and shall serve as prosecutor for violations of this Code or Colorado Liquor Code. In the event of a conflict, the city attorney may appoint outside legal counsel.

Secs. 6-67—6-90. Reserved.”

Section 3. Section 6-164, Notice and public hearing, of Article V, Entertainment Districts and Common Consumption Areas, of Chapter 6, Alcoholic Beverages, of the Arvada City Code is hereby amended to read as follows:

“Sec. 6-164. Notice and public hearing.

(a) *Public notice, posting, and publication.*

- (1) Upon receipt of a complete application for certification of a promotional association and issuance of a common consumption area license, the city clerk shall schedule one public hearing on both applications before the authority at least 30 days after the acceptance date, but not more than 91 days after the acceptance date. The city clerk shall post and publish the public notice thereof at least ten days prior to the public hearing. Public notice shall be given by the conspicuous posting of a sign at each participating business within and attached to the common consumption area and by publication in a newspaper of general circulation.
- (2) Notice shall otherwise conform to the requirements of C.R.S. § 44-3-311, as amended, and any other requirements set forth by the city clerk.

(b) *Conduct of public hearings.*

- (1) The city clerk shall designate the neighborhood being affected by such application. The designation of the geographical extent and boundaries of such neighborhood shall be within the sole discretion of the city clerk.
- (2) All exhibits presented at a public hearing must be filed with the clerk's office at least 72 hours prior to the public hearing.
- (3) At the public hearing held pursuant to this section, any party in interest shall be allowed to present relevant evidence and to cross-examine witnesses. Other than the applicant, any party in interest who wishes to present evidence or cross-examine witnesses at the public hearing must notify the city clerk at least 24 hours prior to the hearing of their intent to do so. As used in this section, "party in interest" means any of the following:
 - (i) The applicant;
 - (ii) An adult resident of the neighborhood under consideration;
 - (iii) The owner or manager of a business located in the neighborhood under consideration;
 - (iv) The principal or representative of any school located within five hundred feet of the boundaries of the common consumption area; or
 - (v) An authorized representative of a registered neighborhood organization that encompasses all or part of the neighborhood under consideration.
- (4) At the public hearing held pursuant to this section, the ~~chair or chair pro tem of the~~ authority may:
 - (i) Set time limits on evidence and testimony;

- (ii) Limit evidence and testimony if such evidence is irrelevant or cumulative; and
 - (iii) Cease the examination of a witness if the witness is being harassed, badgered, or disrespected by the examiner.
 - (5) Other than the provisions specified in this section, public hearings shall be held in accordance with chapter 2 of the Arvada City Code and the Colorado Liquor Code.
- (c) *Results of investigation; decision of the authority.*
- (1) At least seven days prior to the date of hearing, the city clerk shall make known the findings based on the liquor licensing control investigator's initial investigation of the application documents in writing to the applicant and the authority.
 - (2) Before certifying a promotional association and issuing a common consumption area license, the authority shall consider the reasonable requirements of the neighborhood, the desires of the adult inhabitants as evidenced by petitions, remonstrances, or otherwise, and all other reasonable restrictions that are or may be placed upon the licensee.
 - (3) Before entering any decision approving or denying the application, the authority shall consider, except where this article specifically provides otherwise, the facts and evidence adduced as a result of its investigation and the public hearing required by this section, and any other pertinent matters affecting the qualifications of the applicant for issuance of a common consumption area license and certification of a promotional association including this article, the Colorado Liquor Code, chapter 6 of the Arvada City Code, or any rules and regulations adopted pursuant thereto.
 - (4) Unless additional time is necessary to fully investigate an application, any decision of the authority approving or denying an application shall be stated on the record after the evidence is presented at the public hearing. ~~Any authority member present may make a motion to approve or deny the license and to certify or deny certification of the promotional association. Such motions shall be decided by a vote of the majority of the authority members present.~~ A copy of the decision shall be sent by certified mail to the applicant at the address shown in the application and to the state licensing authority.”

Section 4. Severability. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The city council declares that it would have adopted this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 5. This ordinance shall be effective five days after publication following final passage.



REPORT TO CITY COUNCIL WORKSHOP

AGENDA ITEM
11.A.

TO: THE HONORABLE CITY COUNCIL

DATE: April 15, 2024

SUBJECT: Public Safety/Police Department Update

Report in Brief

APD Chief Brady and APD Command Staff will give a presentation on the state of the Police Department and Public Safety in Arvada. APD will touch on topics to include crime, sector strategy, homelessness and traffic.

Background

Public safety is a focus of all communities, including Arvada. The workshop is meant to educate the City Council on public safety issues impacting the community and the Police Department's efforts to improve public safety; make roadways in the City safe; and improve the quality of life for citizens.

Strategic Alignment

Safe Neighborhoods is one of the five strategic Council Goals.

Next Steps

Receive feedback from the City Council. The APD will continue to provide periodic updates as appropriate.

Prepared by:
Chris Koch, CCO Admin

Reviewed by:

Approved by:

Edward Brady, Deputy Police Chief	2/14/2024
Alyssa Gleinn, Legal Specialist-Prosecution	2/15/2024
Rachel Morris, City Attorney	3/18/2024
Lorie Gillis, City Manager	4/2/2024

Enclosure, exhibits & attachments required to support the report

City Council Presentation



April 15, 2024

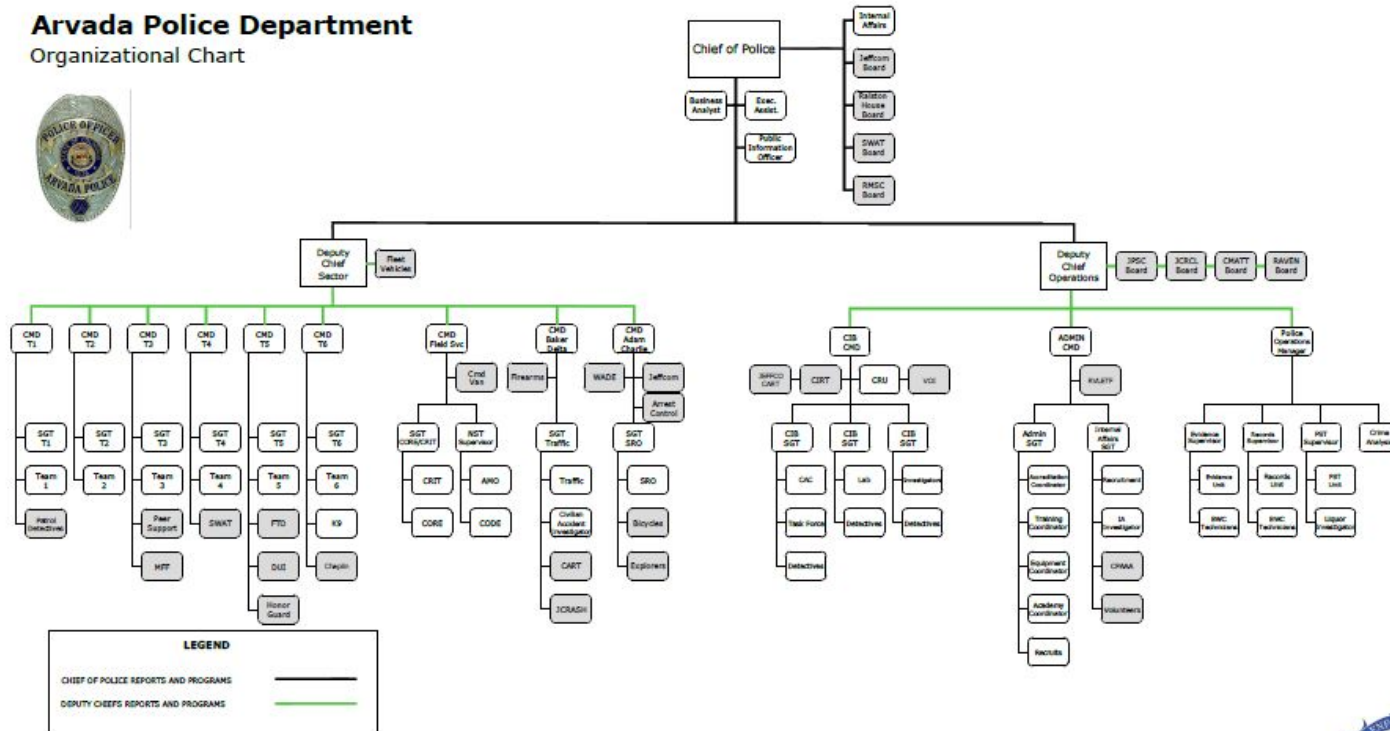
Mission and Values

Respect - For the law, our community, and one another

Dedication - To Service and Professionalism

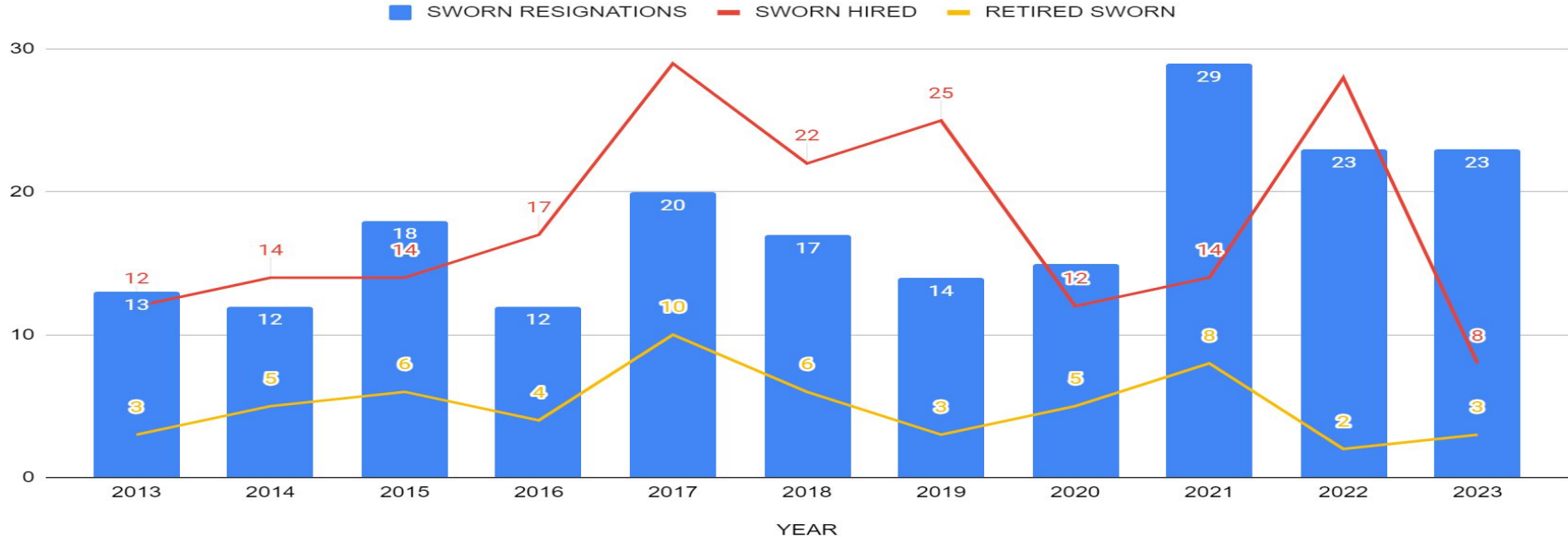
Responsibility - For public safety and ethical conduct.

We Always Strive for Excellence.



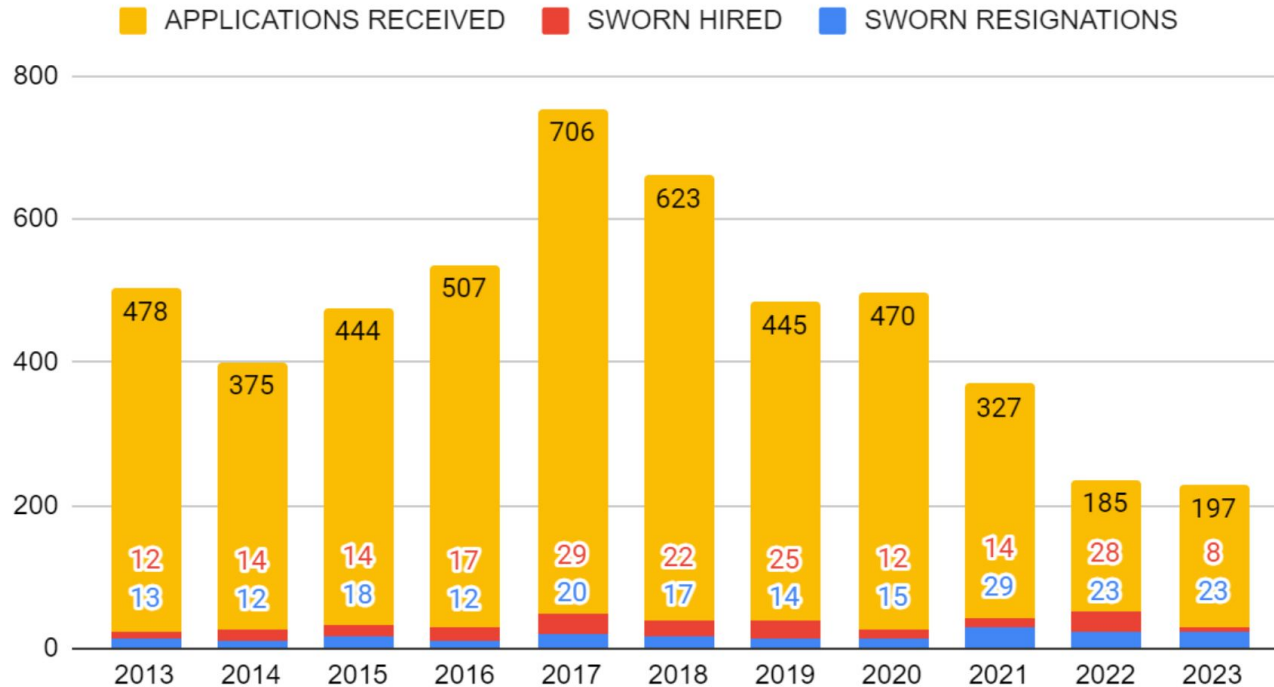
Staffing and Personnel

SWORN RESIGNATIONS, SWORN HIRED and RETIRED SWORN



Staffing and Personnel

10 YEAR HIRING DATA



Budget and Grant Overview

- **Grant Funding**
- **Increasing Cost for Equipment, Technology & Services**
- **Unfunded Mandates**

Crime Statistics and Trends

- **Overall Calls for Service 5 Year Trend:**
 - Downward trend for Citizen Calls for Service 73, 567 in 2019 versus 71, 374 in 2023
 - Total Arrests made by APD in 2023 was 2, 528
 - 36% of total arrest were of unhoused individuals
- **Overall Crime Rates/Specific Crime Categories:**
 - Persons Crime (Assault, Robbery, Sex Assault etc) has trended down since 2021 – 708 versus 615. Assaults make up 85% of all persons crimes
 - Crimes against Property (Motor Vehicle Theft; Burglary etc) – Also have trended down since 2021; 6, 342 versus 5, 489)
 - Crimes Against Society (Drug Offenses, Disorderly Conduct etc.) – Societal crimes have continued to trend up since 2020.
- **Geographical Analysis:**
 - Baker has the most crime at 43% of the City's total
 - Adam Sector comes in second at 26%
 - Charlie Sector is third at 24%
 - Delta Sector at 7%

Crime Statistics and Trends (cont.)

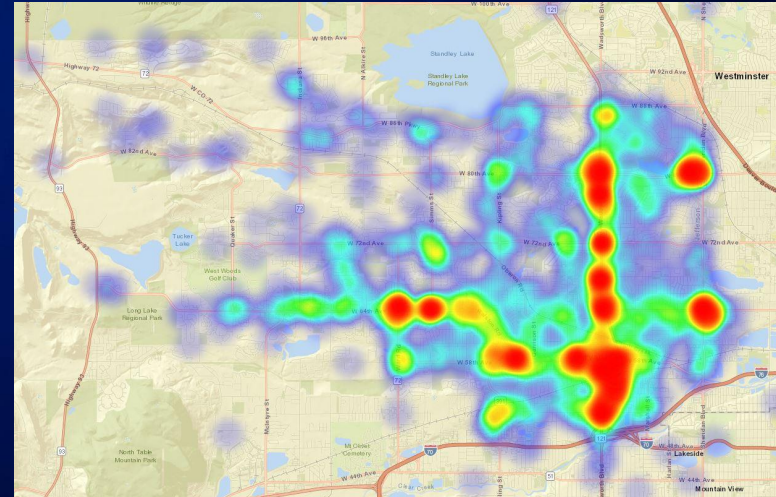
- **Mental Health Calls for Service:**

- Significant upward trend since 2019; 600 calls for service versus 789 in 2023

- **Driving Under the Influence Trends:**

- In 2019 we made 414 DUI Arrests; 2023 405 Arrests
- 89 DUI Arrests in 2024 (January-April 8)

	2020	2021	2022	Avg	St Dev	Normal Range	2023	Change from Average
DUI Arrest	341	372	410	374	28.22	346-403	405	8%
Involves Accident	129	94	114	112	14.34	98-127	129	15%
Age Range								
Teens	19	21	29	23	4.32	19-27	19	-17%
Twenties	116	126	116	119	4.71	115-124	126	6%
Thirties	103	100	122	108	9.74	99-118	124	14%
Forties	40	59	64	54	10.34	44-65	70	29%
Fifty +	63	66	79	69	6.94	62-76	66	-5%
Gender								
Female	117	103	115	112	6.18	105-118	116	4%
Male	224	269	295	263	29.33	233-292	289	10%



Technology and Equipment

- **FARO**
 - to scale, 3D documentation of traffic crashes, crime scenes
- **Cellebrite**
 - advanced cell phone extraction software
- **Criminal Investigation Software & Subscriptions**
 - Nighthawk, LeadsOnline
- **Crime Labs**
 - APD lab
 - JCRCL regional lab for advanced evidence processing
- **Drone Program**
 - SWAT and major event safety, locating offenders or missing persons, crime scene documentation



Community Engagement

- **Classes on Crime Prevention and Self Defense**
- **Sector Policing**
 - Focus on connecting with community
- **Community Outreach**
 - Social Media Platforms to share information
 - Catalytic Converter Program
 - Coffee with a Cop
 - National Night Out
 - Birthdays and Lemonade Stands
- **Community Partnerships**
 - 4 Ps
 - Crime Free Multi Housing
 - TRIAD - Regional Crime Prevention programs for older adults



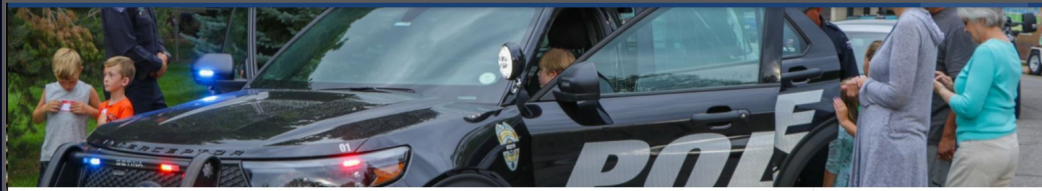
Training and Professional Development

- **24 Hours Required by Colorado P.O.S.T.**
 - 12 Hours of perishable skills (Driving, Arrest Control/Defensive Tactics, Firearms)
 - 12 Hours Mandated Training up to the Chief Executive Officer
 - Proper Holds and Restraints
 - Anti-Bias Training
 - Community Policing/Partnership
- **72 Hours Completed by the Arvada Police Department**
 - 30 Hours of Perishable skills
 - 20 hours of Additional Training included:
 - Mental Health/De-Escalation
 - Legal Updates, First Aid, Building Searches, Ballistics Demo, Narcan, Case Filings

De-Escalation and Mental Health Response

- **De-Escalation Training for 2024**
 - Co-Responders De-Escalation Training
 - Ti-Training Simulation Training
 - Foot Pursuit Training
- **Mental Health**
 - Co-Responders Provide Training to APD Yearly
 - Field Response, Active De-escalation
 - Mental Health Hold Consultation
 - Resources/Referrals
- **ABLE - Active Bystandardship for Law Enforcement**
 - The intent of ABLE is to provide a process that serves as a safety net to help peace officers avoid a career-ending mistake. These interventions may occur before or during a physical encounter in the field, with a coworker struggling with addiction, or with a shift mate who may be considering self-harm.

Accountability and Transparency



[Home](#) | [Services](#) | [Public Safety \(Police\)](#) | [About Our Department](#) | [Police Transparency](#)

POLICE TRANSPARENCY

The [2022 Arvada Police Annual Report \(PDF\)](#) is now available.

The City of Arvada's Police Department (APD) is dedicated to serving our community. We feel that more transparency about the work we do and the way we do it will only enhance our commitment to community policing. Below is some important information that we think gives the community an insight into that work. We welcome any comments or questions on how the Arvada Police Department operates and treats our community members. Complete the [Arvada PD Performance Survey](#) or call 720-898-6654.

Would you like a community group presentation of the Arvada Police Department's ongoing efforts in developing a community-based policing culture? [Email Detective David Snelling](#), Public Information Officer.

Information is available in the following areas:

- Anti-Bias Training
- Body Worn Cameras: Impact & Implementation
- Community & Police Demographics
- Crime Maps & Statistics
- Internal Affairs Statistical Summary 2022
- Police Recruiting
- Traffic Warnings & Citations Data

Contact Us

Police

Physical Address
8101 Ralston Rd
Arvada, CO 80002

Phone: Non-Emergency
Issues: 720-898-6900 | 303-980-7300.

Emergency Phone: 911

Complete a Survey

We want your feedback! Please share your thoughts, questions, compliments and concerns by completing a short [Arvada PD Performance Survey](#).



- **PD Website Transparency Page:**
 - **Anti-Bias**
 - **BWC**
 - **Community / PD demographics**
 - **Crime Maps**
 - **IA Summary**
 - **Recruiting**
 - **Traffic Enforcement**
 - **Facial Recognition**

Future Initiatives and Challenges

- Resources - Mental health, Unhoused.
- Legislation

City Council, CMO & City Staff

Thank you

For your continued support for Public Safety



REPORT FROM CITY COUNCIL

AGENDA ITEM
13.A.

DATE: April 15, 2024

SUBJECT: Council Committee Reports

Report in Brief

City Council members are appointed to various committees and boards as set out on the attached listing. As meetings are held, individual council members will report back to the full City Council any relevant discussions and issues that occurred.

Prepared by:
Chris Koch, CCO Admin

Lauren Simpson	Arvada City Attorney Committee Arvada Municipal Court/Judicial Committee Arvada Urban Renewal Authority Arvada Visitors Center Committee *Metro Mayors' Caucus Urban Drainage and Flood Control District West Connect Coalition E-470 Authority (Alternate) Olde Town Business Improvement (BID) (Alternate)
Shawna Ambrose	Adams County Regional Economic Partnership (ACREP) Arvada Audit Committee Bond Oversight Committee Jefferson County R-1 Schools Coordinating Committee Arvada Visitors Center Committee (Alternate)
Sharon Davis	Apex Coordinating Committee Arvada Municipal Court/Judicial Committee Arvada Parks Advisory Committee CML Policy Committee Jefferson Economic Development Council (JDEC) Denver Regional Council of Governments (DRCOG) (Alternate) E-470 Authority (Alternate) Jeffco Transportation Action & Advisory Group (JEFFTAAG) (Alternate) Jefferson County Community Corrections Board and West Connect Coalition (Alternate)

Lisa Feret	Arvada Chamber of Commerce Government Affairs Committee Arvada Fire Protection District Coordinating Committee Denver Regional Council of Governments (DRCOG) Housing Advisory Committee Jeffco Transportation Action & Advisory Group (JEFFTAAG) Jefferson County Community Corrections Board Smart City Advisory Committee Adams County Regional Economic Partnership (ACREP) (Alternate)
Bob Fifer	Apex Coordinating Committee Arvada City Attorney Committee Arvada Fire Protection District Coordinating Committee Arvada Transportation Committee Jefferson County R-1 Schools Coordinating Committee Jefferson Parkway Public Highway Authority Smart City Advisory Committee Northwest Parkway Authority (Alternate)
John Marriott	Arvada Economic Development Association Board Bond Oversight Committee Olde Town Business Improvement (BID) Rocky Mountain Metropolitan Airport Community Noise Roundtable
Randy Moorman	Arvada Audit Committee Arvada Center for the Arts and Humanities Arvada Sustainability Committee CML Policy Committee Jefferson Parkway Public Highway Authority The Rocky Flats Stewardship Council Northwest Parkway Authority (Alternate)

*asterisked committees are not appointed by Council



REPORT TO CITY COUNCIL

AGENDA ITEM
14.A.

TO: THE HONORABLE CITY COUNCIL

DATE: April 15, 2024

SUBJECT: Review of Future Workshops and Presentations

Report in Brief

The City Manager's Office maintains a list of upcoming workshops and presentations to be scheduled for City Council meetings. During City Manager Reports, at the end of City Council business meetings, City Manager, Lorie Gillis, will review with City Council the tentative schedule and make any adjustments necessary.

Prepared by:
Chris Koch, CCO Admin

Reviewed by:

Approved by:

Rachel Morris, City Attorney 3/25/2024

Lorie Gillis, City Manager 4/2/2024

Enclosure, exhibits & attachments required to support the report

2024 CITY COUNCIL WORKSHOPS, STUDY SESSIONS, PRESENTATIONS AND RETREATS (TENTATIVE)

WORKSHOPS	Date	Lead
Public Safety/Police Department Update @Business Meeting	April 15	PD
2024-2030 City Council Strategic Plan Provide City Council with an overview of the new 2024-2030 City Council Strategic Plan. The City Team will highlight the new structure and elements and review the new results and goals.	Apr 22	CMO
Sustainability @Business meeting The Arvada Sustainability Division will provide the City Council with an overview of division projects since the inception of the program in January 2023. The workshop will highlight achievements from 2023 and provide a vision for the future of Arvada Sustainability, with a focus on upcoming city-wide sustainability and climate action planning efforts.	Apr 22	VCN
APAC Presentation –	May 6	
Park Maintenance Standards @Business meeting Arvada Parks will provide the City Council with an overview of the City's Park Maintenance Standards. The workshop will highlight community survey data, key methodologies and emerging best practices/innovations.	May 6	VCN
CDOT 101 CDOT will present "CDOT 101" to the Council. CDOT 101 is designed to provide a basic overview of CDOT, its responsibilities, and how CDOT works with local agencies.	May 13	
Waste Hauling Fees	May 13	Utilities
Quarterly Bond Projects Update The Public Works engineering team will provide the City Council with an update on the bond projects for streets and utilities.	Jun 10	PW
10-Year Model Update	June 10	Finance
CIP Update	June 10	Finance
	July 8	
Water, Wastewater & Stormwater 2025 Rates/Fees	July 22	Utilities
	Aug 12	
Water, Wastewater & Stormwater 2025 Rates/Fees	Aug 26	Utilities
Quarterly Bond Projects Updates The Public Works engineering team will provide the City Council with an update on the bond projects for streets and utilities.	Sept 23	PW
Work System Update	Sept 23	Finance
Final Water, Wastewater & Stormwater 2025 Rates/Fees	Sept 23	Utilities
Pay Plan/Additional Work System (if needed)	Oct 14	
Transportation System Plan The traffic team will present the outcomes of the Transportation System plan, including future development opportunities, transportation funding and financial strategies, and a capital improvement plan.	Oct 14	PW
Updated ADA Transition Plan The draft plan will be updated in a comprehensive document that outlines strategies and actions to ensure accessibility for individuals with disabilities, addressing areas of improvement and accommodating their needs.	Oct 28	PW
	Nov 11	
	Dec 9	
PRESENTATIONS		
STUDY SESSIONS		
Transportation Systems Existing Conditions @4	Feb 12	PW

The traffic team will present a summary of the existing conditions for Arvada's transportation systems. The workshop will cover a review of travel trends, evaluation of safety conditions, an assessment findings of the existing roadway, transit, and freight rail networks. The team will discuss Intelligent Transportation Systems and highlight ongoing and upcoming projects and system maintenance plans.		
BID and Chamber funding	TBD	
WORKSHOP TBD's		
Pavement Management The Pavement Management Team will provide an update on 2023 and looking ahead to 2024 pavement projects.	TBD	PW
Right of Way Acquisition	TBD	CED
Water Infrastructure for Fire Protection	TBD	Utilities
Smart Meters Update	TBD	Utilities
Capital Campaign Update and Strategy Discussion	TBD	CMO/Fin
Community Engagement	TBD	CMO
Fleet Electrification	TBD	Utilities
Pre-Sentencing/One Small Step	TBD	Courts
Meyers Pool Provide City Council an update on the VCN's SR3: By 12/2025 develop a maintenance and reinvestment plan to ensure a sustainable, resilient and beautiful community of parks, trails, open space and medians in alignment with our diverse, changing and growing community and VCN's SR3 Milestone [M3H] By 7/2024 replace Meyer's Pool with a new 50 meter natatorium.	TBD	CMO
Financial Scenarios for Street Maintenance Deficit/Options for Increasing Maintenance Funds Engage City Council in a discussion around the current street maintenance needs and how the City might fund them. This will include revenue enhancements, future allocations and expenditure realignments.	TBD	PW/Fin/ CMO
Fiber Master Plan The Fiber Master Plan which is also called Arvada Fiber Optic Network (AFON), was first presented to City Council 4/10/2017. City Councils had set a strategic goal to build a fiber network to enable high speed/real-time connectivity to city facilities and assets in order to enhance city operations. This workshop is intended to brief City Council as to the progress of the AFON build out. Updates are intended to cover conduit installation progress, fiber installation progress, current co-locate opportunities, IGA member updates, and connections to current assets (city buildings, traffic, signals, utilities, radio, etc.).	TBD	PW
Problem Properties	TBD	P.D.
Activation of Historical Assets	TBD	VCN
Customer Service Philosophy	TBD	CMO
Ask Arvada Update	TBD	CMO
COUNCIL JOINT MEETINGS/DINNERS:		
Denver Water Board Apex Board AURA Board Arvada Center Board—Per Coop Agreement - Annually after October 1 of each year Jefferson Parkway Meeting with Jeffco and Broomfield Council Annual Retreat		

