

SPECIAL MEETING

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL
- IV. APPROVAL OF AGENDA
- V. EXECUTIVE SESSION
- VI. PUBLIC COMMENT

Public comment is intended for members of the public wishing to address the Board of Trustees about matters that are not listed for discussion on the agenda. Comments will be taken under advisement by the Board but no decisions will be made. At its discretion, the Board may elect to place a matter raised under public comment on a future agenda for further discussion and possible action.

- VII. PRESENTATIONS
- VIII. CONSENT AGENDA
- IX. BOARD INFORMATION ITEMS
- X. NEW BUSINESS

- a. Consideration and possible approval of City of Creede Resolution No. 2023-27, “A RESOLUTION OF THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, COLORADO SELECTING RMS UTILITIES, INC. TO COMPLETE PHASE 3 OF THE CITY’S WASTEWATER COLLECTION SYSTEM REPLACEMENT PROJECT BY THE END OF MAY 2024”;
- b. Consideration and possible approval of City of Creede Resolution No. 2023-28, “A RESOLUTION OF THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, COLORADO APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION, OLA # 331003068, FOR BOTH THE CREEDE MAIN STREET MMOF GRANT AND REVITALIZING MAIN STREET GRANT”;
- c. Consideration and possible approval of City of Creede Resolution No. 2023-29, “A RESOLUTION OF THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, COLORADO APPROVING AN OPTION LETTER WITHIN THE

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**OPEN TO THE PUBLIC**

POSTED 8/10/2023

INTERGOVERNMENTAL AGREEMENT WITH THE COLORADO  
DEPARTMENT OF TRANSPORTATION, OLA # 331003068, SELECTING A  
DESIGN FIRM FOR BOTH THE CREEDE MAIN STREET MMOF GRANT AND  
REVITALIZING MAIN STREET GRANT”;

- XI. OLD BUSINESS
- XII. BOARD REPORTS
- XIII. ADJOURN

# RESOLUTION No. 2023-26

## A RESOLUTION OF THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, COLORADO SELECTING RMS UTILITIES, INC. TO COMPLETE PHASE 3 OF THE CITY'S WASTEWATER COLLECTION SYSTEM REPLACEMENT PROJECT BY THE END OF MAY 2024

WHEREAS; the City of Creede was awarded approximately \$250,000 in funding from the Colorado Department of Local Affairs to complete Phase 3 of the City's wastewater collection system replacement project; and

WHEREAS; the City advertised a request for proposal (RFP) for a qualified firm to complete Phase 3 of the project; and

WHEREAS; the City received two responses to the RFP, one from RMS Utilities, Inc. and one from Korinek Konstruction; and

WHEREAS; per the attached bid tabulation (Exhibit A), RMS Utilities Inc proposes to complete the project for an amount of \$513,224 and Korinek Konstruction proposes to complete the project for an amount of \$702,728.10; and

WHEREAS; both firms are qualified to perform the work necessary to complete Phase 3 of the project; and

WHEREAS; RMS Utilities, Inc. has agreed to complete the project by the end of May 2024 (Exhibit B);

NOW, THEREFORE, BE IT RESOLVED BY THE Board of Trustees of the City of Creede, A Colorado Town that:

**SECTION 1:** RMS Utilities, Inc. is hereby selected to complete Phase 3 of the City's wastewater collection system replacement project.

APPROVED AND ADOPTED, this 15<sup>th</sup>, day of August 2023.

Attest:

\_\_\_\_\_  
Mayor  
Jeffrey Larson

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Clerk  
Josie Bielenberg

\_\_\_\_\_  
Date

**GMS, INC.**  
CONSULTING ENGINEERS  
611 NORTH WEBER, SUITE 300  
COLORADO SPRINGS, COLORADO 80903-1074

TELEPHONE (719) 475-2935  
TELEFAX (719) 475-2938

EDWARD D. MEYER, P.E.  
ROGER J. SAMS, P.E.  
JASON D. MEYER, P.E.  
DAVID R. FRISCH, P.L.S.

THOMAS A. McCLERNAN, P.E.  
MARK A. MORTON, P.E.  
KEN L. WHITE, P.L.S.

August 2, 2023

**VIA ELECTRONIC TRANSMISSION ONLY (5 TOTAL PAGES)**

TO: Korinek Konstruktion korinekkonstruktion.exc@gmail.com  
RMS Utilities, Inc. bmalouff2002@yahoo.com

RE: City of Creede  
Wastewater collection system Rehabilitation – Phase 3

Gentlemen:

Enclosed for your records is a copy of the detailed bid tabulation prepared for the referenced project. Award of this project is anticipated to be made at the next regularly scheduled board meeting of August 15, 2023.

Thank you for submitting a bid on this project.

Sincerely,



Lauri M. Edgar  
Executive Assistant

/lme  
Enclosure

ec: Mr. Louis Fineberg, City Manager, City of Creede (w/enclosure)  
Mr. Scott Johnson, CWP, City of Creede (w/enclosure)



Item	Description	Quantity	Unit	RMS Utilities, Inc.		Korinek Konstruction		Engineer's Estimate			
				Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price		
<b>SCHEDULE 1 - SEGMENT A - BASE BID:</b>											
1.	Mobilization	1	LS	\$6,200.00	\$6,200.00	\$8,710.00	\$8,710.00	\$0.00	\$0.00	\$2,000.00	\$2,000.00
2.	Pothole existing utilities outside the new sewer work and connections	1	LS	\$20,070.00	\$20,070.00	\$7,800.00	\$7,800.00	\$0.00	\$0.00	\$4,000.00	\$4,000.00
3.	Operate cut permits and complete traffic control plans as required by CDOT and City of Creede	1	LS	\$35,775.00	\$35,775.00	\$17,615.00	\$17,615.00	\$0.00	\$0.00	\$15,000.00	\$15,000.00
4.	8-inch SDR 35 PVC sanitary sewer pipe in same location as existing sewer main	618	LF	\$127.50	\$78,795.00	\$104.98	\$64,877.64	\$0.00	\$0.00	\$145.00	\$89,610.00
5.	Connection to existing 8-inch PVC Truss Pipe sanitary sewer to new PVC pipe at the location of the existing manhole to remain in service	4	EA	\$2,450.00	\$9,800.00	\$2,729.00	\$10,916.00	\$0.00	\$0.00	\$3,000.00	\$12,000.00
6.	4-inch sanitary sewer service connection	6	EA	\$1,150.00	\$6,900.00	\$2,851.90	\$17,111.40	\$0.00	\$0.00	\$700.00	\$4,200.00
7.	4-inch sanitary sewer stub	8	LF	\$1,150.00	\$9,200.00	\$2,799.83	\$22,398.64	\$0.00	\$0.00	\$300.00	\$2,400.00
8.	sanitary sewer piping in excess of the eight lineal feet required in connection	50	LF	\$105.00	\$5,250.00	\$57.91	\$2,895.50	\$0.00	\$0.00	\$100.00	\$5,000.00
9.	Bypass pumping to accommodate pipeline construction	1	LS	\$14,400.00	\$14,400.00	\$24,440.00	\$24,440.00	\$0.00	\$0.00	\$10,000.00	\$10,000.00
10.	Removal and replacement of existing asphalt pavement on State Highway 149	327	SY	\$135.00	\$44,145.00	\$379.78	\$124,188.06	\$0.00	\$0.00	\$210.00	\$68,670.00
11.	Placement of 2-inch to 4-inch diameter rock stabilization to a depth of 1-foot under the Class "B" pipe embedment	618	LF	\$35.00	\$21,630.00	\$40.84	\$25,239.12	\$0.00	\$0.00	\$7.50	\$4,635.00
12.	At the completion of construction, and at the end of one year, furnish all labor, equipment and materials to provide a video inspection and report of all new sanitary sewer main construction										
a.	Inspection #1 to be performed at completion of construction, and prior to final acceptance	1	LS	\$8,500.00	\$8,500.00	\$9,425.00	\$9,425.00	\$0.00	\$0.00	\$800.00	\$800.00

Item	Description	Quantity	Unit	RMS Utilities, Inc.		Korinek Konstruktion		Engineer's Estimate		
				Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	
<b>SCHEDULE 1 - SEGMENT A - BASE BID:</b>										
1.	Mobilization	1	LS	\$6,200.00	\$6,200.00	\$8,710.00	\$8,710.00	\$0.00	\$2,000.00	\$2,000.00
b.	performed at one year after the final acceptance date as a warranty work item									
13.	Demobilization	1	LS	\$9,500.00	\$9,500.00	\$9,425.00	\$9,425.00	\$0.00	\$800.00	\$800.00
		1	LS	\$3,000.00	\$3,000.00	\$6,500.00	\$6,500.00	\$0.00	\$1,000.00	\$1,000.00
	<b>Total Schedule 1 - Base Bid:</b>				<b>\$273,165.00</b>		<b>\$351,541.36</b>		<b>\$0.00</b>	<b>\$220,115.00</b>
<b>SCHEDULE 2 - SEGMENT B - BASE BID:</b>										
1.	Mobilization	1	LS	\$3,600.00	\$3,600.00	\$5,330.00	\$5,330.00	\$0.00	\$2,000.00	\$2,000.00
2.	Pothole existing utilities outside the new sewer work and connections	1	LS	\$12,500.00	\$12,500.00	\$5,200.00	\$5,200.00	\$0.00	\$5,000.00	\$5,000.00
3.	Operate cut permits and complete traffic control plans as required by CDOT and City of Creede	1	LS	\$5,200.00	\$5,200.00	\$13,520.00	\$13,520.00	\$0.00	\$10,000.00	\$10,000.00
4.	8-inch SDR 35 PVC sanitary sewer pipe	313	LF	\$167.00	\$52,271.00	\$104.97	\$32,855.61	\$0.00	\$145.00	\$45,385.00
5.	New 4-foot ID precast concrete sanitary sewer manhole	5	EA	\$8,500.00	\$42,500.00	\$12,397.43	\$61,987.15	\$0.00	\$9,000.00	\$45,000.00
6.	Remove and dispose of existing 4-foot ID sanitary sewer manhole	1	EA	\$1,850.00	\$1,850.00	\$3,550.30	\$3,550.30	\$0.00	\$4,500.00	\$4,500.00
7.	Connection to existing 8-inch PVC Truss Pipe sanitary sewer to new 3-foot-long SDR35 PVC pipe stub at the location of the installation of a new manhole	2	EA	\$1,150.00	\$2,300.00	\$2,846.27	\$5,692.54	\$0.00	\$3,000.00	\$6,000.00
8.	Connection to existing 10-inch PVC Truss Pipe sanitary sewer to new 3-foot-long PVC pipe stub at the location of the installation of a new manhole	2	EA	\$1,250.00	\$2,500.00	\$2,946.18	\$5,892.36	\$0.00	\$4,000.00	\$8,000.00
9.	Bypass pumping to accommodate pipeline construction	1	LS	\$5,400.00	\$5,400.00	\$27,170.00	\$27,170.00	\$0.00	\$10,000.00	\$10,000.00
10.	Placement of 2-inch to 4-inch diameter rock stabilization to a depth of 1-foot under the Class "B" pipe embedment	313	LF	\$335.00	\$10,955.00	\$40.94	\$12,814.22	\$0.00	\$7.50	\$2,347.50
11.	Removal and replacement of existing asphalt street surface	37	SY	\$135.00	\$4,995.00	\$374.74	\$13,865.38	\$0.00	\$210.00	\$7,770.00

Item	Description	Quantity	Unit	RMS Utilities, Inc.		Korinek Konstruktion		Engineer's Estimate			
				Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price		
<b>SCHEDULE 1 - SEGMENT A - BASE BID:</b>											
1.	Mobilization	1	LS	\$6,200.00	\$6,200.00	\$8,710.00	\$8,710.00	\$0.00	\$0.00	\$2,000.00	\$2,000.00
12.	At the completion of construction, and at the end of one year, furnish all labor, equipment and materials to provide a video inspection and report of all new sanitary sewer main construction										
a.	Inspection #1 to be performed at completion of construction, and prior to final acceptance	1	LS	\$4,500.00	\$4,500.00	\$9,425.00	\$9,425.00	\$0.00	\$0.00	\$800.00	\$800.00
b.	performed at one year after the final acceptance date as a warranty work item	1	LS	\$5,500.00	\$5,500.00	\$9,425.00	\$9,425.00	\$0.00	\$0.00	\$800.00	\$800.00
13.	Demobilization	1	LS	\$1,400.00	\$1,400.00	\$6,500.00	\$6,500.00	\$0.00	\$0.00	\$1,000.00	\$1,000.00
<b>Total Schedule 2 - Base Bid:</b>					<b>\$155,471.00</b>		<b>\$213,227.56</b>		<b>\$0.00</b>		<b>\$148,602.50</b>
<b>SCHEDULE 3 - SEGMENT C - BASE BID:</b>											
1.	Mobilization	1	LS	\$2,000.00	\$2,000.00	\$3,572.40	\$3,572.40	\$0.00	\$0.00	\$2,000.00	\$2,000.00
2.	Pothole existing utilities outside the new sewer work and connections	1	LS	\$6,500.00	\$6,500.00	\$5,200.00	\$5,200.00	\$0.00	\$0.00	\$5,000.00	\$5,000.00
3.	Operate cut permits and complete traffic control plans as required by CDDOT and City of Creede	1	LS	\$5,200.00	\$5,200.00	\$8,060.00	\$8,060.00	\$0.00	\$0.00	\$10,000.00	\$10,000.00
4.	8-inch SDR 35 PVC sanitary sewer pipe	105	LF	\$187.00	\$19,635.00	\$105.67	\$11,095.35	\$0.00	\$0.00	\$145.00	\$15,225.00
5.	New 4-foot ID precast concrete sanitary sewer manhole	2	EA	\$8,500.00	\$17,000.00	\$12,397.13	\$24,794.26	\$0.00	\$0.00	\$9,000.00	\$18,000.00
6.	Remove and dispose of existing 4-foot ID sanitary sewer manhole	2	EA	\$1,850.00	\$3,700.00	\$388.48	\$776.96	\$0.00	\$0.00	\$4,500.00	\$9,000.00
7.	Connection to existing 8-inch PVC Truss Pipe or ductile iron pipe sanitary sewer to new 3-foot long SDR35 PVC pipe stub at the location of the installation of a new manhole	3	EA	\$1,150.00	\$3,450.00	\$2,806.87	\$8,420.61	\$0.00	\$0.00	\$3,000.00	\$9,000.00
8.	6-inches of flow fill all around the new sanitary sewer main for a distance of 10 feet on both sides of the water line crossing or as shown	20	EA	\$50.00	\$1,000.00	\$388.48	\$7,769.60	\$0.00	\$0.00	\$380.00	\$7,600.00
9.	Bypass pumping to accommodate pipeline construction	1	LS	\$5,400.00	\$5,400.00	\$23,140.00	\$23,140.00	\$0.00	\$0.00	\$6,000.00	\$6,000.00

Item	Description	Quantity	Unit	RMS Utilities, Inc.		Korinek Konstruktion		Engineer's Estimate		
				Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	
<b>SCHEDULE 1 - SEGMENT A - BASE BID:</b>										
1.	Mobilization	1	LS	\$6,200.00	\$6,200.00	\$8,710.00	\$8,710.00	\$0.00	\$2,000.00	\$2,000.00
10.	Placement of 2-inch to 4-inch diameter rock stabilization to a depth of 1-foot under the Class "B" pipe embedment	105	LF	\$35.00	\$3,675.00	\$74.64	\$7,837.20	\$0.00	\$7.50	\$787.50
11.	Remove and replace 6-inch-thick structural concrete swale	84	SF	\$42.00	\$3,528.00	\$112.10	\$9,416.40	\$0.00	\$120.00	\$10,080.00
12.	Removal and replacement of existing asphalt street surface	20	SY	\$135.00	\$2,700.00	\$451.32	\$9,026.40	\$0.00	\$210.00	\$4,200.00
13.	At the completion of construction, and at the end of one year, furnish all labor, equipment and materials to provide a video inspection and report of all new sanitary sewer main construction									
a.	Inspection #1 to be performed at completion of construction, and prior to final acceptance	1	LS	\$4,500.00	\$4,500.00	\$8,125.00	\$8,125.00	\$0.00	\$500.00	\$500.00
b.	performed at one year after the final acceptance date as a warranty work item	1	LS	\$5,500.00	\$5,500.00	\$8,125.00	\$8,125.00	\$0.00	\$500.00	\$500.00
14.	Demobilization	1	LS	\$800.00	\$800.00	\$2,600.00	\$2,600.00	\$0.00	\$1,000.00	\$1,000.00
<b>Total Schedule 3 - Base Bid:</b>					<b>\$84,588.00</b>		<b>\$137,959.18</b>			<b>\$98,892.50</b>
<b>TOTAL PROJECT</b>					<b>\$513,224.00</b>		<b>\$702,728.10</b>			<b>\$467,610.00</b>



**RMS Utilities, Inc.**

**6349 Cnty. Rd. 106.65 S.**

**Alamosa, CO 81101**

**719-589-4263**

City of Creede  
PO Box 457  
Creede, CO 81130

To whom it may concern;

RMS Utilities commits to completing the City of Creede's Phase 3 Collection System project by May 31, 2024. If you have any questions or concerns, please contact us at 719-589-4263. Thank you!

Cordially,

A handwritten signature in black ink that reads "Kaitlyn Gallardo". The signature is written in a cursive, flowing style.

Kaitlyn Gallardo  
Controller  
719-589-4263

[kaitlyn@rmsutilities.com](mailto:kaitlyn@rmsutilities.com)

# RESOLUTION No. 2023-27

## A RESOLUTION OF THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, COLORADO APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION, OLA # 331003068, FOR BOTH THE CREEDE MAIN STREET MMOF GRANT AND REVITALIZING MAIN STREET GRANT

WHEREAS; the City of Creede was awarded \$1,138,000.00 in ARPA funding from the Colorado Department of Transportation’s Revitalizing Main Street program to complete improvements to Main Street; and

WHEREAS; the City of Creede was awarded \$250,702 in State funding from the Colorado Department of Transportation’s Revitalizing Main Street program to complete improvements to Main Street; and

WHEREAS; the City of Creede was awarded \$125,000 in MMOF funding from the Colorado Department of Transportation for use on the Main Street project; and

WHEREAS; the City of Creede has committed to a local agency match of \$312,355, or 17% of the Main Street project total; and

WHEREAS; the funds will be used to complete \$1,826,057 in improvements to Main Street to replacement of sidewalks, improvement of intersections and crosswalks, implementation of a coordinated lighting system and general ADA-compliance;

NOW, THEREFORE, BE IT RESOLVED BY THE Board of Trustees of the City of Creede, A Colorado Town that:

**SECTION 1:** The Board of Trustees for the City of Creede, Colorado hereby approves Intergovernmental Agreement OLA # 331003068, attached as “Exhibit A” with the Colorado Department of Transportation to receive funding to complete \$1,826,057 in improvements to Main Street.

APPROVED AND ADOPTED, this 15<sup>th</sup>, day of August 2023.

Attest:

\_\_\_\_\_  
Mayor  
Jeffrey Larson

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Clerk  
Josie Bielenberg

\_\_\_\_\_  
Date

**STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT**  
**Signature and Cover Page**

<b>State Agency</b> Department of Transportation		<b>Agreement Routing Number</b> 23-HA5-XC-00120	
<b>Local Agency</b> CITY OF CREEDE		<b>Agreement Effective Date</b> The later of the effective date or May 15, 2023	
<b>Agreement Description</b> Creede Main St MMOF & RMS		<b>Agreement Expiration Date</b> May 14, 2033	
<b>Project #</b> C M265-002 (25281)	<b>Region #</b> 5	<b>Contract Writer</b> BH	<b>Agreement Maximum Amount</b> \$1,826,057.00

**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

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

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

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

**1. PARTIES**

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

**2. TERM AND EFFECTIVE DATE**

A. Effective Date



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

**B. Initial Term and Extension**

The Parties’ respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on May 14, 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](https://www.codot.gov/business/designsupport/bulletins_manuals/2006-local-agency-manual)).
  - 2) For the construction Services, advertising the call for bids, following its approval by the State, and awarding the construction contract(s) to the lowest responsible bidder(s).
    - (a) All Local Agency's advertising and bid awards pursuant to this Agreement shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that Local Agency and its Contractor(s) incorporate Form 1273 (Exhibit I) in its entirety, verbatim, into any subcontract(s) for Services as terms and conditions thereof, as required by 23 C.F.R. 633.102(e).
    - (b) Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. Local Agency must accept or reject such bids within three (3) working days after they are publicly opened.
    - (c) If Local Agency accepts bids and makes awards that exceed the amount of available Agreement Funds, Local Agency shall provide the additional funds necessary to complete the Work or not award such bids.
    - (d) The requirements of **§6.A.iii.b.2** also apply to any advertising and bid awards made by the State.

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

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

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

v. Utilities

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

vi. Railroads

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

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

vii. Environmental Obligations

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



viii. Maintenance Obligations

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

ix. Monitoring Obligations

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

B. State's Commitments

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

7. PAYMENTS

A. Maximum Amount

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

B. Payment Procedures

i. Invoices and Payment

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

ii. Interest

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

iii. Payment Disputes

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

iv. Available Funds-Contingency-Termination

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

v. Erroneous Payments

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

vi. Federal Recovery

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

C. Local Agency Funds

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

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

D. Reimbursement of Local Agency Costs

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

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

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

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

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

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

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

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

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

F. Accounting

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

i. Local Agency Performing the Work

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

ii. Local Agency-Checks or Draws

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

iii. State-Administrative Services

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

iv. Local Agency-Invoices

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

v. Invoicing Within 60 Days

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

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

vi. Risk Assessment & Monitoring

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

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

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

G. Close Out

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

**8. REPORTING - NOTIFICATION**

A. Quarterly Reports

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

**B. Litigation Reporting**

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

**C. Performance and Final Status**

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

**D. Violations Reporting**

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

**9. LOCAL AGENCY RECORDS**

**A. Maintenance**

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

**B. Inspection**

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

**C. Monitoring**

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

**D. Final Audit Report**

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

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

## **10. CONFIDENTIAL INFORMATION-STATE RECORDS**

### **A. Confidentiality**

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

### **B. Other Entity Access and Nondisclosure Agreements**

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

### **C. Use, Security, and Retention**

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

### **D. Incident Notice and Remediation**

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

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

E. Safeguarding Personally Identifying Information "PII"

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

## 11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

## 12. INSURANCE

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

A. Local Agency Insurance

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

B. Subcontractor Requirements



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

i. Workers' Compensation

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

ii. General Liability

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

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

iii. Automobile Liability

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

iv. Protected Information

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

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

v. Professional Liability Insurance

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

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

vi. Crime Insurance

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

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

vii. Cyber/Network Security and Privacy Liability

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

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

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

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

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

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

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

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

### **13. BREACH**

- A. Defined

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

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

### **14. REMEDIES**

- A. State's Remedies

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

i. Termination for Breach

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

a. Obligations and Rights

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

b. Payments

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

c. Damages and Withholding

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

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

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

c. Deny Payment

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

d. Removal

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

e. Intellectual Property

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

B. Local Agency's Remedies

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

**15. DISPUTE RESOLUTION**

A. Initial Resolution

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

B. Resolution of Controversies

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

C. Questions of Fact

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

**16. NOTICES AND REPRESENTATIVES**

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

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

**For the State**

Colorado Department of Transportation (CDOT)
Bridget McDougall, Local Agency Engineer
R5
3803 N Main Ave
Durango, CO 81301
970-692-7839
bridget.mcdougall@state.co.us

**For the Local Agency**

City of Creede
Louis M. Fineberg, Town Manager
2223 N. Main St
Creede, CO 81130
719-658-2276
manager@creedetownhall.com

**17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**

**A. Work Product**

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

**i. Copyrights**

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

**ii. Patents**

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

iii. Assignments and Assistance

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

B. Exclusive Property of the State

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

C. Exclusive Property of Local Agency

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

## 18. GOVERNMENTAL IMMUNITY

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

## 19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

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

## 20. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

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

C. Binding Effect

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

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Digital Signatures

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

H. Entire Understanding

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

I. Jurisdiction and Venue

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

J. Modification

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

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

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

L. Order of Precedence

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

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

M. Severability

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

N. Survival of Certain Agreement Terms

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

O. Third Party Beneficiaries

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

P. Waiver

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

Q. CORA Disclosure

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



R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations.

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

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

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

U. Accessibility

i. Local Agency shall comply with and the Work Product provided under this Agreement shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by the Governor's Office of Information Technology (OIT), pursuant to Section §24-85-103 (2.5), C.R.S. Local Agency shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.

ii. Each Party agrees to be responsible for its own liability incurred as a result of its participation in and performance under this Agreement. In the event any claim is litigated, each Party will be responsible for its own attorneys' fees, expenses of litigation, or other costs. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to either the Local Agency or the State by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. and Article XI of the Colorado Constitution. Nothing in the Agreement shall be construed as a waiver of any provision of the State Fiscal Rules.

iii. The State may require Local Agency's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Local Agency's Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

V. Taxes

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

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

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

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

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

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

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

**C. GOVERNMENTAL IMMUNITY.**

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

**D. INDEPENDENT CONTRACTOR**

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

**E. COMPLIANCE WITH LAW.**

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

**F. CHOICE OF LAW, JURISDICTION, AND VENUE.**

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

**G. PROHIBITED TERMS.**

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

**H. SOFTWARE PIRACY PROHIBITION.**

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

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

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

## **22. FEDERAL REQUIREMENTS**

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

## **23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

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

**EXHIBIT A**  
**SCOPE OF WORK**

Name of Project: Creede Main St MMOF & RMS  
Project Number: C M265-002  
SubAccount #: 25281

**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.**

Sidewalk, curb and gutter, striping, and crosswalk signage will be designed and constructed within the area between approximately 80 ft. North of the Creede Town Hall and the intersection of E 3rd St and N Main St. Both sides of N Main St. present design challenges posed by the presence of single concrete steps that are located at storefront entrances. A single tree, located across the corner of 1st and Main, may present design challenges related to root lifting of any new sidewalk installation. Root lifting solutions are to be considered in the design phase. There are some drainage components that will need to be included to maintain the existing storm drainage system.

Preliminary survey work will establish the existing right of way and whether the scope of work can be accomplished without the need to acquire additional right of way.

The project will be designed and constructed to meet ADA, PROWAG, AASHTO and MUTCD requirements, as well as any other applicable design standards, including CDOT design and construction standards and policies.

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

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK**

## EXHIBIT B

### SAMPLE IGA OPTION LETTER

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

Vendor Name:

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

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

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

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

#### **Option A**

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

#### **Option B**

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

#### **Option C**

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

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

**Option D**

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

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

**STATE OF COLORADO**  
**Jared S. Polis**  
**Department of Transportation**

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

Date: \_\_\_\_\_

**ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER**

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

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

By: \_\_\_\_\_  
Colorado Department of Transportation

Date: \_\_\_\_\_

**EXHIBIT C- FUNDING PROVISIONS**

**City of Creede C M265-002 (25281)**

**A. Cost of Work Estimate**

The Local Agency has estimated the total cost the Work to be \$1,826,057.00, which is to be funded as follows:

**1. FUNDING**

a.	RMS ARPA <b>US Treasury Expenditure Category EC6</b> (80% of RMS Opp 1 Award)	\$ 1,138,000.00
b.	Local Agency Funds (20% of RMS Opp 1 Award)	\$ 284,500.00
c.	MMO ARPA <b>US Treasury Expenditure Category EC6</b> (100% of MMOF Award)	\$ 125,000.00
d.	Local Agency Funds (0% of MMOF Award)	\$ 0.00
e.	RMS State Funds (90% of RMS Opp 2 Award)	\$ 250,702.00
f.	Local Agency Funds (10% of RMS Opp 2 Award)	\$ 27,855.00

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<b>TOTAL FUNDS ALL SOURCES</b>	<b>\$ 1,826,057.00</b>
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**2. OMB UNIFORM GUIDANCE**

a.	Federal Award Identification Number (FAIN):	TBD
b.	Name of Federal Awarding Agency:	FHWA, USDT
c.	Local Agency Unique Entity Identifier	M3D3ZMKLAYG9
d.	Assistance Listing # Highway Planning and Construction	ALN 20.205
e.	Assistance Listing # Coronavirus State and Local Fiscal Recovery Funds	ALN 21.027
f.	Is the Award for R&D?	No
g.	Indirect Cost Rate (if applicable)	N/A
h.	Amount of Federal Funds Obligated by this Action:	\$0.00
i.	Amount of Federal Funds Obligated to Date (including this Action):	\$0.00

**3. ESTIMATED PAYMENT TO LOCAL AGENCY**

a.	ARPA Funds Budgeted	\$ 1,263,000.00
b.	State Funds Budgeted	\$ 250,702.00
c.	Less Estimated Federal Share of CDOT-Incurred Costs	\$0.00

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<b>TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY</b>	<b>82.89%</b>	<b>\$ 1,513,702.00</b>
<b>TOTAL ESTIMATED FUNDING BY LOCAL AGENCY</b>	<b>17.11%</b>	<b>\$ 312,355.00</b>
<b>TOTAL PROJECT ESTIMATED FUNDING</b>	<b>100.00%</b>	<b>\$ 1,826,057.00</b>

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**4. FOR CDOT ENCUMBRANCE PURPOSES**

**MMO and RMS of ARPA Funds**

a.	Total Encumbrance Amount (Only ARPA funds are encumbered)	\$ 1,263,000.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$0.00

**RMS State Funds**

a.	Total Encumbrance Amount (Only State funds are encumbered)	\$ 250,702.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$0.00

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**NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS** **\$ 1,513,702.00**

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

**MMO and RMS ARPA Fund**

WBS Element 25281.10.30	Performance Period Start**/End Date TBD-TBD	Design 3020	\$0.00
WBS Element 25281.20.10	Performance Period Start**/End Date TBD-TBD	Const. 3301	\$0.00

**RMS State Fund**

WBS Element 25281.10.30	Performance Period Start**/End Date N/A- N/A	Design 3020	\$0.00
WBS Element 25281.20.10	Performance Period Start**/End Date N/A- N/A	Const. 3301	\$0.00

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\*\* Federal ARPA awards RMS Opp1, MMOF & State Awards RMS Opp2 Award 1, RMS Opp2 Award 2 the Local Agency should not begin work until both of the following are in place: 1) the execution of the document encumbering funds for the respective phase; and 2) Local Agency receipt of the official Notice to Proceed. Any work performed these two (2) milestones are achieved will not be reimbursable.

**B. Funding Ratios**

The funding ratio for the federal funds for this Work is 82.89% Federal & State funds to 17.11% Local Agency funds, and this ratio applies only to the \$1,826,057.00 that is eligible for federal & State funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$1,826,057.00, 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 \$1,826,057.00, 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 \$ 1,513,702.00. For CDOT accounting purposes, the federal ARPA funds of \$ 1,263,000.00 and State funds of \$250,702.00 will be encumbered, and the Local Agency funds of \$312,355.00 will NOT be encumbered for a total encumbrance of \$1,513,702.00. The total budget of this project is \$1,826,057.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work. ARPA Funds can only originate from and after May 18, 2021.**

**D. Single Audit Act Amendment**

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

**i. Expenditure less than \$750,000**

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

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

If the Local Agency expends \$750,000 or more, in Federal funds, but only received federal



Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the “financial” procedures and processes for this program area.

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

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

**iv. Independent CPA**

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

**EXHIBIT D**

**LOCAL AGENCY RESOLUTION (IF APPLICABLE)**

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

<b>COLORADO DEPARTMENT OF TRANSPORTATION</b>			
<b>LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST</b>			
Project No. <b>C M265-002</b>	STIP No.	Project Code <b>25281</b>	Region <b>5</b>
Project Location <b>Creede, Colorado</b>			Date <b>4/14/2023</b>
Project Description <b>Creede Main St MMOF &amp; RMS</b>			
Local Agency <b>City of Creede</b>	Local Agency Project Manager <b>Louis M. Fineberg</b>		
CDOT Resident Engineer <b>Bridget McDougall</b>	CDOT Project Manager <b>Bridget McDougall</b>		
<p><b>INSTRUCTIONS:</b></p> <p>This checklist shall be used to establish the contractual administrative responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency Agreement. Section numbers (NO.) correspond to the applicable chapters of the <i>CDOT Local Agency Desk Reference (Local Agency Manual)</i>. LAWR numbers correspond to the applicable flowchart in the Local Agency Web Resource.</p> <p>The checklist shall be prepared by placing an X under the responsible party, opposite each of the tasks. The X denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, # will denote that CDOT must concur or approve.</p> <p>Tasks that will be performed by Headquarters staff are indicated with an X in the CDOT column under Responsible Party. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.</p> <p>The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.</p> <p>Note: Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.</p>			

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
<b>TIP / STIP AND LONG-RANGE PLANS</b>				
	2.1	Review Project to ensure it is consistent with Statewide Plan and amendments thereto		<b>x</b>
<b>FEDERAL FUNDING OBLIGATION AND AUTHORIZATION</b>				
	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>		<b>x</b>
<b>PROJECT DEVELOPMENT</b>				
1	5.1	Prepare Design Data - CDOT Form 463	<b>x</b>	<b>#</b>
	5.2	Determine Delivery Method		<b>x</b>
	5.3	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		<b>x</b>
2	5.4	Conduct Consultant Selection/Execute Consultant Agreement <ul style="list-style-type: none"> <li>• Project Development</li> <li>• Construction Contract Administration (including Fabrication Inspection Services)</li> </ul>	<b>x</b> <b>x</b>	<b>#</b>
3,3A	5.5	Conduct Design Scoping Review Meeting	<b>x</b>	
3,6	5.6	Conduct Public Involvement	<b>x</b>	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
3	5.7	Conduct Field Inspection Review (FIR)	X	
4	5.8	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	
5	5.9	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	
3	5.10	Obtain Utility and Railroad Agreements	X	
3	5.11	Conduct Final Office Review (FOR)	X	
3A	5.12	Justify Force Account Work by the Local Agency	X	
3B	5.13	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	#
3	5.14	Document Design Exceptions - CDOT Form 464	X	#
	5.15	Seek Permission for use of Guaranty and Warranty Clauses	X	
3	5.18	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	X	
	5.19	Comply with Requirements for Off-and On-System Bridges & Other Structural Work	X	
	5.20	Update Approvals on PS&E Package if Project Schedule Delayed	X	
	5.21	Ensure Authorization of Funds for Construction		X
	5.22	Use Electronic Signatures	X	
	5.23	File Project Development Records/Documentation in ProjectWise		X
<b>PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE</b>				
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 <input checked="" type="checkbox"/> is <input type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.)  <b>Bridget McDougall</b> <span style="float: right;"><b>4/14/2023</b></span> _____ CDOT Resident Engineer <span style="float: right;">Date</span>		X
	6.3	Set On-the-Job Training Goals (CDOT Region Civil Rights Office) "NA", if Not Applicable		X
	6.4	Enforce Prompt Payment Requirements	X	
	6.5	Use Electronic Tracking and Submission Systems – B2GNow <input checked="" type="checkbox"/> LCPtracker <input type="checkbox"/>	X	
3	6.6	Prepare/submit Title VI Plan and Incorporate Title VI Assurances	X	
6,7		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	#
<b>ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS</b>				
Federal Project (use 7.1 series in Chapter 7) <input checked="" type="checkbox"/> Non-Federal Project (Use 7.2 series in Chapter 7) <input type="checkbox"/>				
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	
<b>CONSTRUCTION MANAGEMENT</b>				
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	x	
		Pre-survey • Construction staking • Monumentation	x x	
		Partnering (Optional)	x	
		Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i> )	x	
		Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i> )	x	
		HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i> )	x	
8	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." <b>TBD - Local Engineer</b> _____ Phone number Local Agency Professional Engineer or CDOT Resident Engineer	x	
		Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	x	
		Construction inspection and documentation (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. <b>Louis M. Fineberg</b> <b>719-658-2276 ext 1</b> _____ Phone number Local Agency Representative	x	#
9	8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	x	
9B	8.12	Prepare and Authorize Change Orders	x	#
9B	8.13	Submit Change Order Package to CDOT	x	
9A	8.14	Prepare Local Agency Reimbursement Requests	x	
9	8.15	Monitor Project Financial Status	x	
9	8.16	Prepare and Submit Monthly Progress Reports	x	
9	8.17	Resolve Contractor Claims and Disputes	x	#
	8.18	Conduct Routine and Random Project Reviews  Provide the name and phone number of the person responsible for this task. <b>Bridget McDougall</b> <b>970-692-7839</b> _____ Phone number CDOT Resident Engineer		x
9	8.19	Ongoing Oversight of DBE Participation	x	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
<b>MATERIALS</b>				
9,9C	9.1	Discuss Materials at Pre-Construction Meeting <ul style="list-style-type: none"> <li>Buy America documentation required prior to installation of steel</li> </ul>	X	X
9,9C	9.2	Complete CDOT Form 250 - Materials Documentation Record <ul style="list-style-type: none"> <li>Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project</li> <li>Update the form as work progresses</li> <li>Complete and distribute form after work is completed</li> </ul>	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 <p>Inspection of structural components:</p> <ul style="list-style-type: none"> <li>Fabrication of structural steel and pre-stressed concrete structural components</li> <li>Bridge modular expansion devices (0" to 6" or greater)</li> <li>Fabrication of bearing devices</li> </ul>	X X X	
9C	9.6	Approve Sources of Materials	X	
9C	9.7	Independent Assurance Testing (IAT) <p>Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/></p> <ul style="list-style-type: none"> <li>Generate IAT schedule</li> <li>Schedule and provide notification</li> <li>Conduct IAT</li> </ul>	X X X	
9C	9.8	Approve mix designs <ul style="list-style-type: none"> <li>Concrete</li> <li>Hot mix asphalt</li> </ul>		X X
9C	9.9	Check Final Materials Documentation	X	
9C	9.10	Complete and Distribute Final Materials Documentation	X	
<b>CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE</b>				
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. <ul style="list-style-type: none"> <li>Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements.</li> <li>Complete CDOT Form 838 – OJT Trainee / Apprentice Record.</li> <li>Complete CDOT Form 200 - OJT Training Questionnaire</li> </ul>	X X X	
9	10.6	Check Certified Payrolls (Contact the Region Civil Rights Office for training reqmts.)	X	
9	10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
	10.8	Contract Compliance and Project Site Reviews		X
<b>FINALS</b>				
	11.1	Conduct Final Project Inspection & Final Inspection of Structures, if applicable		X
10	11.2	Write Final Project Acceptance Letter	X	
10	11.3	Advertise for Final Settlement	X	
11	11.4	Prepare and Distribute Final As-Constructed Plans	X	
11	11.5	Prepare EEO Certification and Collect EEO Forms	X	
11	11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	

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

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

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

**EXHIBIT F**  
**CERTIFICATION FOR FEDERAL-AID CONTRACTS**

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

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

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

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

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



## **EXHIBIT G**

### **DISADVANTAGED BUSINESS ENTERPRISE**

#### SECTION 1. Policy.

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

#### SECTION 2. DBE Obligation.

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

#### SECTION 3 DBE Program.

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

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

upon request: Business Programs Office

Colorado Department of Transportation

2829 West Howard Place Denver,

Colorado 80204

Phone: (303) 757-9007

REQUIRED BY 49 CFR  
PART 26

## EXHIBIT H

### LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

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

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

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

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

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

- a. Qualifications,

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

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

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

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

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

## EXHIBIT I

### FEDERAL-AID CONTRACT PROVISIONS FOR CONSTRUCTION CONTRACTS

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

#### ATTACHMENTS

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

#### I. GENERAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **6. Training and Promotion:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **10. Assurances Required:**

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

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

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

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

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

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

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

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

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

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

### III. NONSEGREGATED FACILITIES

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

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

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

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

#### 1. Minimum wages (29 CFR 5.5)

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

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

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

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

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

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

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

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

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

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

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

## **2. Withholding (29 CFR 5.5)**

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

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

## **3. Payrolls and basic records (29 CFR 5.5)**

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

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

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



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

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

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

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

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

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

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

#### 4. Apprentices and trainees (29 CFR 5.5)

##### a. Apprentices (programs of the USDOL).

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

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

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

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

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

##### b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

**9. Disputes concerning labor standards.** As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor

set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### **10. Certification of eligibility (29 CFR 5.5)**

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

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

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

#### **V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

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

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

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph 1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section. 29 CFR 5.5.

\* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).

### **3. Withholding for unpaid wages and liquidated damages.**

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

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

## **VI. SUBLETTING OR ASSIGNING THE CONTRACT**

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

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

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

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

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or

equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

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

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

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

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

## **VII. SAFETY: ACCIDENT PREVENTION**

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

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

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance

with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

### **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

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

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

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

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

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

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

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

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

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders

or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

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

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

#### **1. Instructions for Certification – First Tier Participants:**

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

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

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

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

## **3. Instructions for Certification - Lower Tier Participants:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

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

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

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

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

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

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

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

## **XII. USE OF UNITED STATES-FLAG VESSELS:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



**EXHIBIT J**  
**ADDITIONAL FEDERAL REQUIREMENTS**

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

**Executive Order 11246**

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

**Copeland "Anti-Kickback" Act**

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

**Davis-Bacon Act**

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

**Contract Work Hours and Safety Standards Act**

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

**Clean Air Act**

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

**Energy Policy and Conservation Act**

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

**OMB Circulars**

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

**Hatch Act**

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

**Nondiscrimination**

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

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

## **ADA**

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

## **Uniform Relocation Assistance and Real Property Acquisition Policies Act**

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

## **Drug-Free Workplace Act**

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

## **Age Discrimination Act of 1975**

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

## **23 C.F.R. Part 172**

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

## **23 C.F.R Part 633**

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

## **23 C.F.R. Part 635**

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

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

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

## **Nondiscrimination Provisions:**

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

### **i. Compliance with Regulations**

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

### **ii. Nondiscrimination**

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

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

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

### **iv. Information and Reports**

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

**v. Sanctions for Noncompliance**

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

**Incorporation of Provisions §22**

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

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SAMPLE

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

**Assurances for Local Agencies**

**DOT Order No. 1050.2A**

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

**Statutory/Regulatory Authorities**

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

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

**General Assurances**

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

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

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

**Specific Assurances**

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

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

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

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

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

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

\_\_\_\_\_  
*(Name of Recipient)*

by \_\_\_\_\_  
*(Signature of Authorized Official)*

DATED \_\_\_\_\_

## APPENDIX A

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

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

## APPENDIX B

### CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

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

#### (HABENDUM CLAUSE)

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

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

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



## APPENDIX C

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

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

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

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

## APPENDIX D

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

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

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

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

## APPENDIX E

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

### **Pertinent Non-Discrimination Authorities:**

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

## **EXHIBIT K**

### **FFATA SUPPLEMENTAL FEDERAL PROVISIONS**

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

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

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

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

**1.1.1.** Grants;

**1.1.2.** Contracts;

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

**1.1.4.** Loans;

**1.1.5.** Loan Guarantees;

**1.1.6.** Subsidies;

**1.1.7.** Insurance;

**1.1.8.** Food commodities;

**1.1.9.** Direct appropriations;

**1.1.10.** Assessed and voluntary contributions; and

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

Award *does not* include:

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

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

**1.1.14.** Any award classified for security purposes; or

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

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

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

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

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

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

**1.5.2.** A foreign public entity;

**1.5.3.** A domestic or foreign non-profit organization;

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

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

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

**7.1.1** Subrecipient DUNS Number;

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

**7.1.3** Subrecipient Parent DUNS Number;

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

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

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

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

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

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

## **8. Exemptions.**

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

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


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

**8.4** There are no Transparency Act reporting requirements for Vendors.

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

## EXHIBIT L

### SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT

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



INTERNAL CONTROLS ASSESSMENT		Yes	No	N/A
12	Has your entity had any significant changes in key personnel or accounting system(s) in the last year? (e.g., Controller, Exec Director, Program Mgr, Accounting Mgr, etc.) If Yes, in the comment section, please identify the accounting system(s), and / or list personnel positions and identify any that are vacant.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13	Does your entity have financial procedures and controls in place to accommodate a federal-aid project?	<input type="checkbox"/>	<input type="checkbox"/>	
14	Does your accounting system identify the receipts and expenditures of program funds separately for each award?	<input type="checkbox"/>	<input type="checkbox"/>	
15	Will your accounting system provide for the recording of expenditures for each award by the budget cost categories shown in the approved budget?	<input type="checkbox"/>	<input type="checkbox"/>	
16	Does your agency have a review process for all expenditures that will ensure that all costs are reasonable, allowable and allocated correctly to each funding source? If Yes, in the comment section, please explain your current process for reviewing costs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17	How many total FTE perform accounting functions within your organization?	<input type="checkbox"/> $\geq 6$	<input type="checkbox"/> 2 to 5	<input type="checkbox"/> $< 2$
IMPACT ASSESSMENT		Yes	No	N/A
18	For this upcoming federal award or in the immediate future, does your entity have any potential conflicts of interest* in accordance with applicable Federal awarding agency policy? If Yes, please disclose these conflicts in writing, along with supporting information, and submit with this form. (*Any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Subrecipient's obligations to the State.)	<input type="checkbox"/>	<input type="checkbox"/>	
19	For this award, has your entity disclosed to CDOT, in writing, violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award? Response options: <b>YES</b> = 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. <b>NO</b> = 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. <b>N/A</b> = Check if have no violations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PROGRAM MANAGEMENT ASSESSMENT		Yes	No	N/A
20	Does your entity have a written process/procedure or certification statement approved by your governing board ensuring critical project personnel are capable of effectively managing Federal-aid projects? If Yes, please submit with this form.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21	Does your entity have written procurement policies or certification statement for consultant selection approved by your governing board in compliance with 23 CFR 172*? If Yes, please submit with this form. (*The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications, at a fair and reasonable price.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22	a) Is your staff familiar with the relevant CDOT manuals and federal program requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b) Does your entity have a written policy or a certification statement approved by your governing board assuring federal-aid projects will receive adequate inspections? If Yes, please submit with this form.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c) Does your entity have a written process or a certification statement approved by your governing board assuring a contractor's work will be completed in conformance with approved plans and specifications? If Yes, please submit with this form.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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



Tool Version:  
v2.0 (081816)

## EXHIBIT M

### OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS

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

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

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

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

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



Accountability Office.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Agency (EPA).

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

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

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

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

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

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

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

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

**Exhibit N**  
**Federal Treasury Provisions**

**1. APPLICABILITY OF PROVISIONS.**

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury’s Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2<sup>nd</sup> tier subrecipient), must hold the 2<sup>nd</sup> 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](http://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](http://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](http://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](http://www.treasury.gov). See section 8.1.1 for relevant Expenditure Categories.
  - 8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the public health and negative economic impacts of COVID-19. This requirement is applicable to Expenditure Categories 1 and 2. For aid to travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12), also provide the sector of employer, purpose of funds, and if not travel, tourism and hospitality a description of the pandemic impact on the industry.
  - 8.1.3.6. Narrative identifying the sector served and designated as critical to the health and well-being of residents by the chief executive of the jurisdiction and the number of workers expected to be served. For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county's average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is higher, OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions, include justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19 but should not include personally identifiable information. This requirement applies to EC 4.1, and 4.2.
  - 8.1.3.7. For infrastructure projects (EC 5), or capital expenditures in any expenditure category, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and location (for broadband, geospatial location data). For projects over \$10 million:
  - 8.1.3.8. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less



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

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

## **9. PROCUREMENT STANDARDS.**

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

## **10. ACCESS TO RECORDS.**

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

## **11. SINGLE AUDIT REQUIREMENTS.**

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

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

## **12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.**

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

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

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

### **13. CERTIFICATIONS.**

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

### **14. EXEMPTIONS.**

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

### **15. EVENT OF DEFAULT AND TERMINATION.**

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

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

**EXHIBIT O**

**AGREEMENT WITH SUBSUBRECIPIENT OF FEDERAL RECOVERY FUNDS**

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

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

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

Subrecipient Name \_\_\_\_\_

Authorized Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS  
TERMS AND CONDITIONS

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



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

9. Compliance with Applicable Law and Regulations.

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

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

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

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

13. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number SLFRF0126 awarded to the State of Colorado by the U.S. Department of the Treasury.”

14. Debts Owed the Federal Government.

- a. Any funds paid to the Subrecipient (1) in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.
- b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury’s initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

- a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or Subcontractor under this award.
- b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
  - i. A member of Congress or a representative of a committee of Congress;
  - ii. An Inspector General;

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

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

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

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

## ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

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

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

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

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

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

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

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

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

discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document. State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that 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 assurance 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
<b>EXHIBIT A,</b> SCOPE OF WORK	✓	✓	✓
<b>EXHIBIT B,</b> SAMPLE OPTION LETTER	✓	✓	✓
<b>EXHIBIT C,</b> FUNDING PROVISIONS	✓	✓	✓
<b>EXHIBIT D,</b> LOCAL AGENCY RESOLUTION (IF APPLICABLE)	✓	✓	✓
<b>EXHIBIT E,</b> LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST	✓	✓	✓
<b>EXHIBIT F,</b> CERTIFICATION FOR FEDERAL-AID AGREEMENTS	✓		✓
<b>EXHIBIT G,</b> DISADVANTAGED BUSINESS ENTERPRISE	✓		✓
<b>EXHIBIT H,</b> LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES	✓		✓
<b>EXHIBIT I,</b> FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS	✓		✓
<b>EXHIBIT J,</b> ADDITIONAL FEDERAL REQUIREMENTS	✓		✓
<b>EXHIBIT K,</b> FFATA SUPPLEMENTAL FEDERAL PROVISIONS	✓	✓	✓
<b>EXHIBIT L,</b> SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM	✓	✓	✓
<b>EXHIBIT M,</b> OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS	✓		✓

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

**EXHIBIT C- FUNDING PROVISIONS**

**City of Creede C M265-002 (25281)**

**A. Cost of Work Estimate**

The Local Agency has estimated the total cost the Work to be \$1,826,057.00, which is to be funded as follows:

**1. FUNDING**

a.	RMS ARPA <b>US Treasury Expenditure Category EC6</b> (80% of RMS Opp 1 Award)	\$ 1,138,000.00
b.	Local Agency Funds (20% of RMS Opp 1 Award)	\$ 284,500.00
c.	MMO ARPA <b>US Treasury Expenditure Category EC6</b> (100% of MMOF Award)	\$ 125,000.00
d.	Local Agency Funds (0% of MMOF Award)	\$ 0.00
e.	RMS State Funds (90% of RMS Opp 2 Award)	\$ 250,702.00
f.	Local Agency Funds (10% of RMS Opp 2 Award)	\$ 27,855.00

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<b>TOTAL FUNDS ALL SOURCES</b>	<b>\$ 1,826,057.00</b>
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**2. OMB UNIFORM GUIDANCE**

a.	Federal Award Identification Number (FAIN):	TBD
b.	Name of Federal Awarding Agency:	FHWA, USDT
c.	Local Agency Unique Entity Identifier	M3D3ZMKLAYG9
d.	Assistance Listing # Highway Planning and Construction	ALN 20.205
e.	Assistance Listing # Coronavirus State and Local Fiscal Recovery Funds	ALN 21.027
f.	Is the Award for R&D?	No
g.	Indirect Cost Rate (if applicable)	N/A
h.	Amount of Federal Funds Obligated by this Action:	\$0.00
i.	Amount of Federal Funds Obligated to Date (including this Action):	\$0.00

**3. ESTIMATED PAYMENT TO LOCAL AGENCY**

a.	ARPA Funds Budgeted	\$ 1,263,000.00
b.	State Funds Budgeted	\$ 250,702.00
c.	Less Estimated Federal Share of CDOT-Incurred Costs	\$0.00

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<b>TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY</b>	<b>82.89%</b>	<b>\$ 1,513,702.00</b>
<b>TOTAL ESTIMATED FUNDING BY LOCAL AGENCY</b>	<b>17.11%</b>	<b>\$ 312,355.00</b>
<b>TOTAL PROJECT ESTIMATED FUNDING</b>	<b>100.00%</b>	<b>\$ 1,826,057.00</b>

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**4. FOR CDOT ENCUMBRANCE PURPOSES**

**MMO and RMS of ARPA Funds**

a.	Total Encumbrance Amount (Only ARPA funds are encumbered)	\$ 1,263,000.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$0.00

# RESOLUTION No. 2023-28

## A RESOLUTION OF THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, COLORADO APPROVING AN OPTION LETTER WITHIN THE INTERGOVERNMENTAL AGREEMENT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION, OLA # 331003068, SELECTING A DESIGN FIRM FOR BOTH THE CREEDE MAIN STREET MMOF GRANT AND REVITALIZING MAIN STREET GRANT

WHEREAS; the City of Creede was awarded \$1,138,000.00 in ARPA funding from the Colorado Department of Transportation’s Revitalizing Main Street program to complete improvements to Main Street; and

WHEREAS; the City of Creede was awarded \$250,702 in State funding from the Colorado Department of Transportation’s Revitalizing Main Street program to complete improvements to Main Street; and

WHEREAS; the City of Creede was awarded \$125,000 in MMOF funding from the Colorado Department of Transportation for use on the Main Street project; and

WHEREAS; the City of Creede was has committed to a local agency match of \$312,355, or 17% of the Main Street project total; and

WHEREAS; the funds will be used to complete \$1,826,057 in improvements to Main Street to replacement of sidewalks, improvement of intersections and crosswalks, implementation of a coordinated lighting system and general ADA-compliance;

WHEREAS; the City has advertised a competitive bid for a design firm to complete the project and has selected \_\_\_\_\_ to complete the design work associated with the project;

NOW, THEREFORE, BE IT RESOLVED BY THE Board of Trustees of the City of Creede, A Colorado Town that:

**SECTION 1:** The Board of Trustees for the City of Creede, Colorado hereby approves an Option Letter , attached as Exhibit B of the Intergovernmental Agreement OLA # 331003068, selecting \_\_\_\_\_ to complete the design work associated with the Main Street improvement project;

APPROVED AND ADOPTED, this 15<sup>th</sup>, day of August 2023.

Attest:

\_\_\_\_\_  
Mayor Date  
Jeffrey Larson

\_\_\_\_\_  
City Clerk Date  
Josie Bielenberg

**EXHIBIT B**

**SAMPLE IGA OPTION LETTER**

<b>Date</b>	<b>State Fiscal Year</b>	<b>Option Letter No.</b>
<b>Project Code</b>	<b>Original Agreement #</b>	

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



**ENGINEERING SERVICES PROPOSAL  
BY  
GMS, INC., CONSULTING ENGINEERS  
FOR THE  
CITY OF CREEDE**



**Project Title:** Request for Qualifications for  
Professional Engineering Services  
City of Creede Main Street Revitalization Project

**Submitted To:** City of Creede

**Submittal Date:** June 15, 2023

**Submitted By:** GMS, Inc., Consulting Engineers  
611 North Weber Street, Ste. 300  
Colorado Springs, CO 80903  
Telephone: (719) 475-2935  
Telefax: (719) 475-2938  
Contact: Jason D. Meyer, P.E.  
jmeyer@gmsengr.com

**GMS, INC.**  
CONSULTING ENGINEERS  
611 NORTH WEBER, SUITE 300  
COLORADO SPRINGS, COLORADO 80903-1074

TELEPHONE (719) 475-2935  
TELEFAX (719) 475-2938

EDWARD D. MEYER, P.E.  
ROGER J. SAMS, P.E.  
JASON D. MEYER, P.E.  
DAVID R. FRISCH, P.L.S.

THOMAS A. McCLERNAN, P.E.  
MARK A. MORTON, P.E.  
KEN L. WHITE, P.L.S.

June 15, 2023

Ms. Sarah Efthim-Williamson, Town Clerk  
City of Creede  
2223 N. Main Street  
PO Box 457  
Creede, CO 81130

*Via Electronic Mail: [clerk@creedetownhall.com](mailto:clerk@creedetownhall.com)  
No Hard Copy to Follow*

RE: Request for Qualifications  
Professional Engineering Services  
City of Creede Main Street Revitalization Project

Dear Ms. Efthim-Williamson:

Thank you very much for providing the opportunity for GMS, Inc., Consulting Engineers, to provide professional engineering services to the City of Creede. Specifically for the City's Request for Qualifications regarding the Professional Engineering Services for the Main Street Revitalization Project. We welcome the opportunity and look forward to being of service to the City.

We have prepared our response in accordance with your submittal requirements as outlined in your Request for Qualifications. We trust that this response to your Request for Qualifications dated May 25, 2023, demonstrates our capabilities, experience, and desire to participate with the City of Creede in this important project.

Our organization has been serving Colorado communities for 45 years with extensive experience in addressing questions, needs and projects that are exactly what is being requested by the City of Creede. In addition, our firm meets the insurance requirements outlined in the Request for Qualifications.

GMS, Inc. is uniquely qualified to serve the City of Creede. Since the inception of the organization in 1978, GMS, Inc. has focused our work on local governments including the cities, towns, special districts, counties, and water providing nonprofit organizations. This is further concentrated with our main client population ranging from 200 to 5,000 people. Thus, GMS, Inc. is structured to serve rural communities. We understand the need to be available, responsive, and attentive to the community when called upon. We understand the need to know the facilities as well as the community staff. We understand the need to have a strong relationship between our staff and the community's staff. We understand that we need to be efficient, effective and honest with our time on behalf of the community. We understand that we need to be prudent and act as a fiduciary on behalf of the community. This is how we will serve the City.



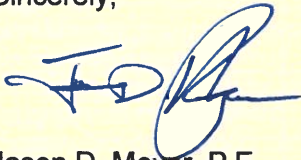
Ms. Sarah Eftim-Williamson, Town Clerk  
June 15, 2023  
Page 2

My contact information is as follows:

Jason D. Meyer, P.E.  
GMS, Inc., Consulting Engineers  
611 N. Weber Street, Suite 300  
Colorado Springs, CO 80903  
(719) 475-2935 - Office  
[jmeyer@gmsenr.com](mailto:jmeyer@gmsenr.com)

Please feel free to contact us if you require any additional information or documentation. A significantly expanded list of references may be provided beyond that enclosed, upon request. We look forward to hearing back from you and being a service to the City.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JDM', with a large, stylized flourish extending to the right.

Jason D. Meyer, P.E.

JDM/cg  
Attachment

# Section 1 – Project Team Experience

## 1. Firm Organization

GMS, Inc., Consulting Engineers (Meyer & Sams, Inc., dba GMS, Inc.), and its predecessor, Gilbert, Meyer & Sams, Inc., have been providing professional engineering services throughout Colorado since 1978. The GMS, Inc. team has focused on addressing the needs of cities, towns, counties and special districts in their water, wastewater, storm water, drainage and roadway systems. For the last 45 years, GMS, Inc. has been providing engineering, planning, surveying, funding administration, GIS consulting and construction contract administration to our clients throughout Colorado, and more recently in western Kansas.

GMS, Inc., Consulting Engineers, is a single office professional civil engineering firm located in downtown Colorado Springs. All GMS, Inc. staff work from this office with occasional use of staff member's own home office. The principals who would have daily input and administration responsibilities for this project are identified below with their contact information:

Meyer & Sams, Inc., dba GMS, Inc.  
611 North Weber Street, Suite 300  
Colorado Springs, CO 80903  
Phone: (719) 475-2935  
Fax: (719) 475-2938

Mr. Jason Meyer, P.E.  
jmeyer@gmsengr.com

GMS, Inc. staff are an exceptionally qualified team of professionals with the capability and integrated design knowledge to achieve project excellence. The staff of GMS, Inc. is presently composed of 27 individuals.

- Eight licensed professional engineers
- Two licensed professional land surveyors
- Five staff engineers
- Two staff surveyors
- Five design technicians/resident project representatives
- Five administrative support staff

Our experienced staff makes our firm extremely unique when compared to other firms of similar size and background coupled with the longevity of over 45 years in business. GMS, Inc. has been fortunate in being able to create a professional employment environment where a significant number of personnel have obviously chosen to commit many years, and in some cases their entire professional lifetime, to providing services to GMS, Inc. clients.

Name	No. of Yrs. With GMS, Inc.	Total Years of Experience	CO Prof. License No.
Roger J. Sams, P.E.	45 years	52 years	11884
David R. Frisch, P.L.S.	34 years	44 years	22095
Ken L. White, P.L.S.	33 years	38 years	25382
Thomas A. McClernan, P.E.	29 years	42 years	24170
Mark A. Morton, P.E.	27 years	27 years	35820
Jason D. Meyer, P.E.	22 years	26 years	40767
Mark A. Leasure, L.S.I.	17 years	17 years	N/A
Dannah M. Koeniger, P.E.	7 years	26 years	37106
Josh B. Armstrong, P.E.	7 years	13 years	50662
Sam Wood, P.E.	6 years	15 years	60152
Trevis D. Smith, P.E.	1 years	26 years	61669
Erica Countryman, Staff Engineer	4 years	4 years	N/A
Andrew Purgiel, E.I.	2 years	3 years	N/A
Jonny Stephens, E.I.	1 year	1 year	N/A
Jackson Mendenhall, Staff Engineer	1 year	1 year	N/A

**a. Proposed Design/Engineering Team**

GMS, Inc. key team members offer the City the experience, qualification, design knowledge and management approach to effectively collaborate with City staff to achieve the City’s goals, objectives and overall vision. Following is a list of the proposed team members to work with the City.

1. Jason D. Meyer, P.E., will be the Principal-In-Charge for this project. Jason has been with the firm for 22 years and became one of the owners of GMS, Inc. on January 1, 2015. Jason has been engaged in virtually every project passing through GMS, Inc. and has direct contact with all clients. Jason will be responsible for overall project management and application of GMS, Inc. staff for project implementation.
2. Trevis D. Smith, P.E., will serve as the Project Manager and he brings 26 years of experience. Trevis has managed and/or designed over twenty-five transportation improvement projects with the majority of those projects focused on rehabilitating and revitalizing downtown areas. Trevis’ role will be to manage the overall design process and coordinate with the City, CDOT, and the design team to ensure that the City’s project goals are met while ensuring that the project scope is maintained within the defined budget.
3. Mark A. Leasure, L.S.I., will be the Survey Manager and CDOT Design Coordinator on this project. Mark is one of our Project Managers with 14 years of experience and leads our infield surveying and GIS services. Mark has expanded our surveying capabilities with the latest technology in surveying equipment and software with scanning, robotic and GPS technology. This technology coupled with Mark’s attention to available survey information, onsite utilities, topography and surface improvements have resulted in a solid foundation to begin any design effort. Furthermore, Mark’s role includes the layout of pipeline and road alignments and overseeing the

construction phase of projects. This provides projects with the full background from conception, data collection, design and construction in one individual, thereby providing efficient and effective means to meet project budgets, schedule and constructability.

4. Ken L. White, P.L.S., will be assigned to complete all right-of-way (ROW) work. Ken is a seasoned Senior Design Technician within our organization and a registered Professional Land Surveyor. He is a key player with over 40 years of experience. Ken's role encompasses the layout of road alignments, providing expert witness testimony on surveying issues, undertaking extensive site work and grading plans to leading the office side of GMS, Inc.'s construction management services. Ken has an unsurpassable ability to layout drainage projects, pipeline alignments, road alignments and overall facility layout.
5. Erica M. Countryman, Staff Engineer, will be taking the lead on environmental review, SWMP, and drainage design. Erica has taken on several different roles in her time at GMS, Inc. Even though she doesn't have as many years of experience as the rest of the team, she has worked through several GIS designs, drainage analyses, and drainage designs while working with GMS, Inc. She also has experience working through several steps of the funding process, including environmental reviews. Erica is a certified CDOT SWMP designer.
6. Entech Engineering, Inc. will be the Geotechnical Engineer subcontractor for pavement and soils evaluation. Entech is located in Colorado Springs and has been in operation for 37 years. Entech's staff of professional geologists and geotechnical engineers have completed subsurface explorations programs and designs for a wide variety of projects including residential and commercial developments, industrial buildings, municipal bridges and roadways, municipal facilities, and utility providers. In addition, Entech regularly performs land use and geologic hazard studies.

## **b. Qualifications and Experience of Proposed Team**

This team represents a group of professionals who have worked together over multiple years to decades, on projects similar in nature to the Main Street Revitalization Project to be undertaken by the City. The exception to this is Trevis, who has been with GMS, Inc. for just one year, but he is already managing three similarly scoped CDOT funded projects with the same design team.

These individuals will all be supported by other GMS, Inc. professional staff as required in addition to support staff. This includes administrative roles as well as the needed surveying, GIS, and AutoCAD related activities.

The brief resumes of each the primary project team members are included in Attachment A to this response to Request for Qualifications of professional engineering services. Each staff member listed has a unique set of gifts, talents and skills that can be tapped to complete this project on behalf of the City of Creede.

## Section 2 – Firm Capabilities, Past Performance and Experience

### a. Firm Profile

As indicated in Section 1 – Firm Organization, the professional engineering services provided by GMS, Inc. address public utilities for water and wastewater management together with storm water management and roadway systems. GMS, Inc. also provides a very significant amount of consulting services for day-to-day operations of our public utilities and public works clients. More specifically, each of these disciplines are addressed by our services to include the activities listed below.

- Project identification, evaluation, planning and programming
- Conduct of preliminary engineering evaluations and reporting together with acknowledgement of funding challenges and identification of project funding approaches including local entity reserve funds, and grant and loan packages generally sourced through Colorado State agencies, Colorado State administered Federal programs and Federal programs
- Preparation of concept, schematic, and final designs and construction documents
- Preparation of procurement and bidding documents and administration of those processes
- Administration of construction contracts
- Onsite resident project representation
- Utility user charge and rate studies assessing utility operations, renewals and replacements, capital improvement financing, development of plant investment fees and programming revenue models to support complete utility agency operations
- Consultations on day-to-day challenges of public utilities and public works operations with agency staff

### b. Capability to Provide Audited Indirect Cost Rate

GMS did not exceed \$500,000 in fees for CDOT administered projects in calendar year 2022, therefore an audited internal cost rate was not conducted. GMS can readily provide published labor categories and associated rates for all staff. Indirect costs are billed at actual cost with 10% markup and a summary of indirect costs is provided with each invoice.

### c. Three Similar Projects

We offer the following prior projects that are similar in nature to that being requested by the City of Creede.

#### **Town of Hugo Sidewalks Improvements Project**

Project Name:	Sidewalks Improvements Project
Owner:	Town of Hugo
Contact:	Maria Nestor, Town Clerk PO Box 367 507 Fourth Street Hugo, CO 80821 (719) 743-2485
Project Size:	1,300 SY of sidewalk, 500 SY of driveway, and miscellaneous improvements
Project Status:	90% Design Completion (FOR Submittal)



Estimated Budget: \$1,268,000  
Summary of Work: The Town is utilizing state funding through CDOT for the removal and replacement of existing curb, gutter and sidewalk along several street segments within the Town of Hugo.

**Town of Limon Main St. Ped Safety Improvements**

Project Name: East Main (Hwy 24/40) & First Street Improvements  
Owner: Town of Limon  
Contact: Ms. Chris Snyder, Town Clerk  
PO Box 9  
100 Civic Center Drive  
Limon, CO 80828  
(719) 775-2346  
Project Size: Reconstruct 2,300 feet of 2-lane gravel road with new asphalt section including two travel lanes and a bike lane, 1,210 SY of new sidewalk and ADA curb ramps, storm, lighting, and other miscellaneous improvements.  
Project Status: 30% Design (FIR Submittal)  
Estimated Budget: \$3,011,500  
Summary of Work: The Town is utilizing federal and state funding through CDOT to improve multi-modal connectivity and improve a deficient street within the downtown area of Limon.

**Beaty Avenue Bridge Replacement Project**

Project Name: Beaty Avenue Bridge Replacement Project  
Owner: Town of Manzanola  
Contact: Ms. Shirley Adams, Mayor  
PO Box 187  
301 North Park Street  
Manzanola, CO 81058  
(719) 462-5544  
Project Size: Replacement of the existing bridge structure at Beaty Avenue and the Catlin Canal crossing with a new, precast concrete box culvert, 100-feet of roadway reconstruction, replacement of 150-feet of water main, and other miscellaneous improvements.  
Project Status: Construction completion, April 2021  
Construction contract \$478,907.36 (Awarded construction amount)  
Final construction total \$454,219.97 (Final contract amount, includes (1) project cost saving change order)  
Project Description: The Town utilized CDOT Federal Off-Stem Bridge Funds to replace the Beaty Avenue bridge failing bridge over the Catlin Canal. GMS provided design, contract administration, funding administration, and construction management services throughout the whole project.

**Ryus Avenue Bridge Replacement Project**

Project Name: Ryus Avenue Bridge Replacement Project  
Owner: Town of La Veta  
Contact: Ms. Heather Hillis, Town Clerk  
PO Box 174  
209 South Main Street  
La Veta, CO 81055  
(719) 742-3631



Project Size: Replacement of the existing bridge structure at West Ryus Avenue and Cucharas River crossing with a new wider, precast concrete arch bridge, 150-feet of roadway reconstruction, and other miscellaneous improvements.

Project Status: Construction completion, August 2018

Construction contract \$875,100.30 (Awarded construction amount)

Final construction total \$799,856.40 (Final contract amount, includes (1) project cost saving change order)

Project Description: The Town utilized CDOT funding to replace the Ryus Avenue bridge at the Cucharas River Crossing. GMS provided construction management services to ensure that the design was followed and CDOT requirements were met.

#### **d. Familiarity with CDOT Design Specifications**

GMS, Inc. has extensive experience with DOT based standard specifications, including CDOT's. The 2022 CDOT Standard Specifications will provide the general conditions and overall project requirements. CDOT Standard Special Provisions will be incorporated as necessary based on the project scope and funding requirements. It is anticipated that numerous Project Special Provisions (PSP's) will be required due to the unique scope and nature of a downtown rehabilitation project that falls outside the typical scope of work covered in the standard specifications. Previously approved CDOT generated PSP's will be utilized wherever possible and consultant generated PSP's will be created as needed for all other unique project elements.

#### **e. Familiarity with FHWA or CDOT Funded Projects**

GMS, Inc. is familiar with each phase of CDOT funded local agency projects. The firm's experience spans from the Design Scoping Review meeting through Construction Closeout documentation. GMS, Inc. has partnered with five separate local agencies with work scopes ranging from bridge replacement, to sidewalk infill, to complete street reconstruction. Additionally, several of these projects have been completed in downtown areas where projects provide their own unique set of design challenges in order to work in and around existing infrastructure and historic features. These types of projects require additional coordination with both CDOT and the Local Agency client in order to meet CDOT requirements while providing a tailored design that serves the local agency and its unique community.

#### **f. Pending Litigation**

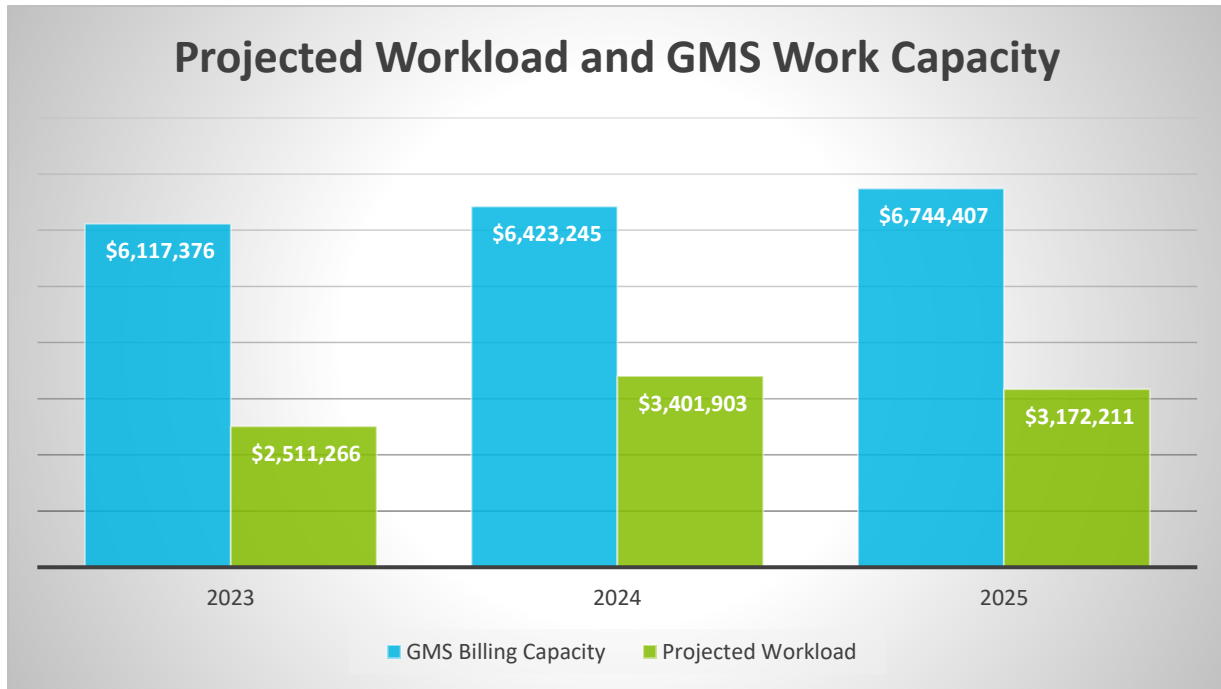
There is no pending litigation involving GMS, Inc. on any of our projects.

#### **g. Current Workload**

GMS, Inc. currently has \$9.08 million in contracted projects with completion dates spanning the next three years. GMS, Inc.'s maximum billing capacity is approximately \$6.12M on an annual basis, accounting for holidays and PTO. This assumes a 100% billing rate for all staff and is used for comparative purposes against the currently contracted projects.

The following graph depicts GMS, Inc.'s billing capacity against the projected workload through 2025. This graph shows that GMS, Inc. is capable of taking on and completing additional projects within this timeframe. The projected workload assumes a consistent monthly billing for every project over its contract duration. This is useful but not accurate. In actuality, all projects will be managed as necessary to meet their respective milestone deadlines, which means that work and actual billings will vary on a monthly basis. The billing capacity assumes a 5% annual wage increase, which is currently built into

the executed contracts given the current inflationary environment. The projected workload only accounts for contracts that are currently executed and does not include pending contracts or on-call engineering services, which GMS, Inc. is regularly responsive to for many of its clients.



## **h. Volume of Previously Awarded Projects**

GMS, Inc. has been in business for over 45 years. During 2021 and 2022 calendar years, GMS, Inc. has billed \$4.39M and \$4.96M of direct staff time, respectively. These billings are indicative of GMS, Inc.’s capacity to take on and complete projects. Projects completed in just these two years range from water and wastewater facility plans, water and wastewater treatment plants or upgrades, utility upgrades and expansions, bridge reconstruction, street rehabilitation, drainage studies and many others. GMS, Inc. has the experience and capacity to take on projects across the breadth of civil engineering.

## Section 3 – Project Approach and Schedule

### a. Project Approach

Our project approach will always be performed in order to provide the City with a cost effective, efficient, thorough, and timely project.

The following approach provides a framework on how to address design projects with funding administered through CDOT.

#### A. Preliminary Design Phase

1. A Design Scoping Review meeting will be scheduled with City and CDOT staff. The items to be discussed shall include, but are not limited to:
  - a) Review the full scope of work to ensure all parties agree with expectations and the definition of the scope.
  - b) Determine if any additional CDOT requirements are needed after discussing the scope of the project.
  - c) Review and confirm the level of environmental review.
  - d) Review and confirm the appropriate level of public involvement.
  - e) Discuss the overall cost estimate and associated committed funding for the project.
2. Coordinate with City staff for locations on utilities. Coordinate and place information request to all other private utility providers within the project area.
3. Conduct a detailed topographical site survey within the project limits including the identification of surface features, existing underground and overhead private and public utilities, and measure downs of below grade utilities in structures.
4. Define any permits required. Review permitting requirements with the City to verify if any additional permits are required.
5. Review existing rights-of-way in relation to the proposed improvements and note any possible encroachments. Coordinate with the City as necessary to either reduce project scope and avoid encroachment or obtain ROW if necessary. It is noted that ROW acquisition is not anticipated and will require additional coordination with the City, property owner, and CDOT if needed.
6. Determine if any temporary construction easements will be needed for construction of the proposed improvements. If so, easements will be obtained following CDOT ROW clearance process.
7. Complete the defined environmental items as generated from the Design Scoping Review meeting and submit to CDOT for review.

8. Complete drainage analysis and submit preliminary drainage report to CDOT for review.
  9. Perform geotechnical pavement investigation and prepare pavement recommendation report meeting CDOT requirements for reconstruction areas.
  10. Prepare preliminary design plans and updated cost estimate.
  11. Submit preliminary design plans to CDOT for Field Inspection Review (FIR) meeting. Schedule and facilitate FIR meeting with City and CDOT staff to obtain initial review comments and confirm overall project direction and scope. A significant outcome of this meeting will be confirmation of project scope with respect to the available budget.
- B. During the final design phase, Engineer shall:
1. Adjust project scope if necessary following FIR meeting and incorporate FIR meeting comments from City and CDOT into design.
  2. Obtain environmental, ROW, and utility clearances from CDOT.
  3. Conduct public outreach with priority given to informing and meeting with property owners that will be impacted by project.
  4. Finalize drainage report, incorporating CDOT and City review comments.
  5. Prepare and update construction cost estimate as necessary during this phase to ensure that overall budget constraints are met.
  6. Prepare and submit overall bid package including 90% plans, specifications, and cost estimate meeting CDOT Final Office Review (FOR) requirements. CDOT 2022 Standard Specifications will be utilized. The bid package will also include required documentation from various funding agencies. Attend and facilitate FOR meeting with City and CDOT.
  7. Incorporate FOR review comments and finalize bid package. Resubmit to CDOT to obtain CDOT Concurrence to Advertise.

Close coordination will be maintained with City staff during the final design phase to ensure that the plans and specifications developed for the project will meet the City's needs. GMS, Inc. will provide updates to the City on progress being undertaken and associated submittals as desired by the City.

## b. Project Schedule

Date	Task	Review Time	Additional Information
Aug. 1, 2023	Approx. Engineering Start Date		
Late Aug. 2023	Design Scoping Review Meeting (DSR)		Issues identified by CDOT that must be addressed for construction; NEPA level determined; Finding in Public Interest (FIPI) determined; Confirmation of survey limits
Sept. 2023	Surveying		
Sept. – Nov. 2023	Preliminary Design Process		30% Plans; Right-of-Way research; Preliminary Hydraulic/Drainage Memorandum (to include the memorandum; 70-80% Plans; draft project special provisions)
Oct. 2023 to Feb. 2024	Public Involvement		As determined by FIPI
Nov. 2023	FIR (30% plan) Submittal to CDOT	2-4 weeks CDOT review time	
Early Dec. 2023	FIR Meeting		Plan review meeting and optional field review meeting
Dec. 2023 to Feb. 2024	Final Design Process		90% Plans and Specifications; Right-of-Way Clearance Process; Environmental Clearance Process; Utility Clearance Process; Final Hydraulic Report
Mar. 2024	FOR (90% Plans and Specs) Submittal to CDOT	2-3 weeks CDOT review time	
Late Mar. 2024	FOR Meeting		
April 2024	Final PS&E Submittal for CDOT approval	1-3 weeks CDOT review time	
April 2024	CDOT grants permission to bid project		
May 2024	Bid		Advertise project for 3 weeks prior
June 2024	Award Contract/Notice to Proceed		
July 2023	Approximate construction start date		Approximately one month after Notice of Award
Nov. 2024	End Construction		Anticipate 5 month construction project

## Section 4 – References

<u>Client</u>	<u>Contact</u>
Town of Hugo PO Box 367 507 Fourth Street Hugo, CO 80821 (719) 743-2485	Maria Nestor, Town Clerk
Town of Limon PO Box 9 100 Civic Center Drive Limon, CO 80828 (719) 775-2346	Greg Tacha, Town Manager Gillian Laycock, Assistant Town Manager Chris Snyder, Town Clerk
Town of Manzanola PO Box 187 . 301 North Park Street Manzanola, CO 81058 (719) 462-5544	Shirley Adams, Mayor Kris Baylor, Town Clerk
Town of La Veta PO Box 174 209 South Main Street La Veta, CO 81055 (719) 742-3631	Doug Brgoch, Mayor Heather Hillis, Town Clerk

**JASON D. MEYER**

**EDUCATION**

- \* Colorado State University, Ft. Collins, Colorado, B.S., Watershed Science, 1998
- \* University of Colorado, Denver, Colorado, M.S., Water Resources Engineering, 2002

**REGISTRATION**

- \* Professional Engineer: Colorado No. 40767

**PROFESSIONAL EXPERIENCE**

- \* GMS, Inc., Consulting Engineers 2002 to present
- \* Principal of the firm of GMS, Inc., Consulting Engineers 2015 to present

Principal in charge of:

- \* New 0.86 MGD mechanical wastewater treatment plant and collection system rehabilitation for the Town of La Veta, Colorado
- \* Wastewater collection system rehabilitation focused on elimination of the infiltration of zinc-laden water for the Town of Silver Plume, Colorado
- \* Water system evaluation with the design of 47 blocks of distribution mains ranging from 8" to 18" including design, bid and construction administration, and aid in funding administration for the City of Trinidad, Colorado
- \* Evaluation of 24" transmission line including the design, bid and construction administration of the replacement transmission line for the City of Trinidad, Colorado

**Water Projects**

Project Engineering, design and construction management of water system evaluations and design/contract administration for expansions, upgrades and replacements for water systems including supply, transmission, distribution, water storage and treatment related facilities

**Wastewater Projects**

Project Engineering, design and construction management of wastewater treatment facility evaluations and design/contract administration of construction, expansions, upgrades and/or replacement of wastewater treatment plants, sewage lift stations and collection systems

- \* Camp Dresser & McKee 1998 - 2002

**TREVIS D. SMITH**

**EDUCATION**

- \* Oregon State University, Corvallis, Oregon, B.S., Civil Engineering, 1997
- \* George Fox University, Newberg, Oregon, B.S., Applied Science, 1996

**REGISTRATION**

- \* Professional Engineer: Colorado No. 0061669
- \* Professional Engineer: Washington No. 40187
- \* Professional Engineer: Oregon No. 56420PE

**PROFESSIONAL EXPERIENCE**

- \* **GMS, Inc., Consulting Engineers** 2022 to present  
  
Senior Project Manager
  - \* Town of Limon: Currently managing Main Street Pedestrian Safety Improvement CDOT funded project. The project consists of 2,600 feet of road reconstruction with new bicycle lane and 2,600 feet of sidewalk infill.
  - \* Town of Hugo: Co-managing Main Street Sidewalk Replacement project which consists of CDOT coordination, preparation of contract specifications, and project management.
  - \* Project manager for eight separate projects which includes water system evaluations, water treatment plant improvements, wastewater collection system evaluations, and a drainage master plan.
  
- \* **City of Beaverton** 2019 to 2022  
  
Project Engineer for pipeline, sidewalk, and roadway projects
  
- \* **Engineering Ministries International** 2010 to 2019  
  
Project Manager responsible for overseeing all aspects of project development, design, and coordination for 16 multi-discipline projects in locations throughout the Middle East and Africa.
  
- \* **Wallis Engineering** 2001 to 2010
  - \* Managed/designed over 50 projects in Oregon & Washington including water reservoirs, pump stations, distribution and transmission mains, treatment plant improvements, collection system improvements, and pump stations, transportation, and storm drainage improvement projects.
  - \* Provided construction management oversight and inspection for the \$3.2M wastewater treatment plant expansion in Ridgefield, WA.
  - \* Managed construction for the \$4.2M Beavercreek Road Improvements Project in the City of Oregon City, OR.



**MARK A. LEASURE**

**EDUCATION**

- \* University of Northern Colorado, Greeley, Colorado, B.S. Business Management, 1983

**REGISTRATION**

- \* Land Surveyor Intern: Colorado

**PROFESSIONAL EXPERIENCE**

- \* **GMS, Inc., Consulting Engineers** August 2006 to present  
Resident Representative/Engineering Design Technician
  - \* Penrose Water District - Resident project representative services and surveying for over 30,000 feet of 12-inch water transmission line, installation of four new wells, pump house with associated water storage tank, discharge structure into reservoir and modifications to ditch headgate
  - \* Cherokee Metropolitan District - Resident project representative services and surveying for Construction observation and field surveying on Duncan Well Water Transmission Line
  - \* Town of Boone: Resident project representative and field surveying for water distribution system improvements, tank rehabilitation and new water treatment plant
  - \* Town of Rockvale: Resident project representative services and surveying for 15,500 feet of water transmission line, rehabilitation of six wells with infiltration piping and rehabilitation of existing raw water storage facility
  - \* Town of Silver Plume: Resident project representative and surveying services for significant sanitary sewage collection system replacements
  - \* Town of Kim: Resident project representative and surveying on 29,500 LF of transmission line, communitywide meter pit assembly replacements, booster station and bolted steel water storage tank
  - \* Perform Field Surveying and Design Technician Services: Worked on a multitude of water and wastewater projects for municipal and special district clients
- \* **Colorado Springs Sky Sox** 1988 to 2006  
Senior VP of Stadium Operations/Head Groundskeeper
- \* **School District 11, Colorado Springs, Colorado** 2002 to present  
Licensed Substitute Teacher

**EDUCATION**

- \* University of Southern Colorado, B.S., Civil Engineering Technology, 1979-1983

**REGISTRATION**

- \* Professional Land Surveyor: Colorado Registration No. 25382, Effective January 1988

**PROFESSIONAL EXPERIENCE**

- \* GMS, Inc., May 1990 to present

Pipeline route selection, surveying, easement and permit preparation, project design, project management and construction administration for the following clients:

- \* City of Colorado Springs: Colorado Avenue Gateway, Boulder Street storm Sewer, Ivywild sidewalk improvements - Phase 4 and Southwest Water Project - Segment 3
- \* Fountain Sanitation District: Jimmy Camp Creek Sanitary Sewer Outfall
- \* City of Las Animas: Water, wastewater and storm sewer system improvements
- \* Town of Manzanola: Wastewater treatment plant expansion, water and wastewater system improvements and bridge replacement

**Partial Listing – Water Projects**

- |                                       |                       |
|---------------------------------------|-----------------------|
| * Town of Akron                       | * Town of Pritchett   |
| * Town of Arriba                      | * Town of Springfield |
| * Town of Brookside                   | * Town of Starkville  |
| * Cascade Metropolitan District No. 1 | * Town of Swink       |
| * Town of Crowley                     | * City of Trinidad    |
| * Town of Eads                        | * Town of Two Buttes  |
| * Town of Gardner                     | * Town of Vilas       |
| * Town of Kim                         | * City of Walsenburg  |
| * Town of Kit Carson                  | * Town of Walsh       |
| * Penrose Water District              | * Town of Wiley       |

**Partial Listing – Wastewater Projects**

- |                         |                                   |
|-------------------------|-----------------------------------|
| * Town of Akron         | * Town of Ordway                  |
| * Town of Crowley       | * Otis Sanitation District        |
| * Town of Gardner       | * Palmer Lake Sanitation District |
| * Town of Kit Carson    | * Town of Silver Plume            |
| * Town of La Veta       | * Town of Springfield             |
| * Town of Pritchett     | * Town of Vilas                   |
| * Town of Olney Springs | * City of Walsenburg              |

**ERICA M. COUNTRYMAN**

**EDUCATION**

- \* Wartburg College, B.S. Engineering Science, 2018

**PROFESSIONAL EXPERIENCE**

- \* **GMS, Inc., Consulting Engineers** May 2019 to present

Resident Project Representative/Staff Engineer:

- \* **SECWCD:** Water system modeling for Crowley County Water System connection to AVC and possible regionalization with nearby Towns.
- \* **Palmer Lake Sanitation District:** Prepare the Environmental Assessment as part of the State Revolving Fund process.
- \* **Town of Granada:** Prepare the Environmental Assessment as part of the Drinking Water Revolving Fund process.
- \* Certified payroll report review for many projects.
- \* Completing prequalification applications for clients for both the DWRF and WPCRF application process.
- \* **Monument Sanitation District:** Resident project representative services for wastewater collection system and lift station installation for the new Wagons West development.
- \* **Cucharas Sanitation and Water District:** Resident project representative services for water distribution system improvements.
- \* **Monument Sanitation District:** Field surveying and GIS design technician for sanitary sewer mapping.
- \* **City of Walsenburg:** GIS design technician for sanitary sewer mapping.
- \* **Town of Vona:** Analyze the Town drainage patterns and prepare a master drainage plan.

- \* **Christopher B. Burke Engineering, Rosemont, Illinois** August 2018 to December 2018

Civil Engineering Intern:

- \* **Town of Shorewood:** Project inspection for sanitary sewer manhole improvements, water well replacement, and pedestrian bridge construction.
- \* Pre and post lot inspections for new home construction in Shorewood, IL.

[jcg@entechengineers.com](mailto:jcg@entechengineers.com) | (719) 531-5599

Joey has extensive experience managing geotechnical services on a wide variety of Colorado municipality and CDOT infrastructure projects including bridges, roadways, retaining structures, and trails. He has experience coordinating and managing subsurface exploration programs including auger, rotary, and rock coring. His pavement design recommendations have included both flexible hot mix asphalt (HMA) and rigid Portland cement concrete pavement (PCCP) designs. In addition, he has experience with unstable or poor-quality subgrades and full depth reclamation (FDR) and overlay designs to maximize the pavement section and minimize project budgets. He regularly provides bridge design recommendations including driven piles, drilled shafts, micropiles, and footings. In addition, he also provides recommendations for retaining walls, and evaluating slope stability.

### PROJECT EXPERIENCE

#### **S. Broadway and US-285 Interchange | Englewood, CO**

Joey was the project manager for the proposed improvements of the S. Broadway / US-285 interchange. This local agency project involves replacing the existing overpass structure and reconfiguring the interchange on- and off-ramps. Pavement along CDOT right-of-way were designed using mechanistic-empirical (M-E) design techniques using Pavement M-E software and required review and coordination with CDOT Materials staff. Joey also oversaw the development of geotechnical recommendations for the design of drilled shaft to support the bridge abutments and to provide earth retention below the underpass.

#### **CDOT C470 and Morrison Road Improvements | Morrison, CO**

Joey served as a project engineer for this bridge replacement project. The proposed bridge replacement includes C470 mainline bridges over Bear Creek and Morrison Road. In addition, pavement design recommendations were provided for Morrison Road, C470 mainline and on/off ramps.

#### **County Line and Inverness Intersection Improvements | Centennial, CO**

Joey was a project engineer for this project to reconfigure the intersection of County Line Road and Inverness Drive. He managed and executed a subsurface exploration program that required coordination with multiple municipalities, counties, and private property owners, while minimizing impacts to the travelling public. He provided design recommendations and construction considerations for pavements, a cantilever drilled shaft wall, a conventional concrete retaining wall, and earthwork.

#### **8<sup>th</sup> Avenue Bridge | Denver, CO**

Joey served as the project manager for the design and construction observation and materials testing for the CCD 8th Avenue Bridge project, which included a new bridge to carry 8th Avenue over the South Platte River. Bridge design recommendations as well as pavement design following MGPEC standards were provided. During construction, Joey oversaw field observations of the 48-inch and 36-inch diameter drilled shafts. In addition, materials testing included concrete testing of the drilled shaft concrete, deck pour, abutments, and other miscellaneous structures. In addition, compaction testing was completed on backfill materials and asphalt paving.

#### **Nichols Road Improvements | Pueblo, CO**

Joey provided foundation and pavement design as a project engineer for this project located in Pueblo West, Colorado, north of the Lake Pueblo State Park. The project consists of roadway improvements and reconstruction of the S. Nichols Road pavements along with additional improvements at the intersection of S. Nichols Road and W. McCulloch Boulevard. A pedestrian bridge was also constructed as part of the associated trail project. Both cast-in-place footings and a geosynthetic reinforced soil abutment-integrated foundation systems were considered in design for the pedestrian bridge. Traffic loading ESALs were projected using available traffic data and assumptions about the future traffic loadings. Pavement design alternatives were provided for S. Nichols Road and W. McCulloch Boulevard.

#### **Barnes Road Improvements | Colorado Springs, CO**

Joey was the project manager for the Barnes Road Widening Project in Colorado Springs, Colorado. The project involved approximately 0.5 miles of widening design including new asphalt pavement and cast-in-place concrete and mechanically stabilized earth wall design. The proposed widening will include a raised median, two lanes in each direction, a sidewalk, multiuse trail, and turning lanes where applicable.



#### EDUCATION

MS, Civil Engineering, University of Colorado Boulder, 2013

BS, Civil Engineering, University of Colorado Boulder, 2013

#### REGISTRATION

Professional Engineer, CO

#### YEARS EXPERIENCE

10 years





**STATEMENT OF QUALIFICATIONS FOR  
CITY OF CREEDE  
MAIN STREET REVITALIZATION PROJECT  
CDOT PROJECT NO. C M265-002  
JUNE 15, 2023 | 3 PM**



**Bohannon  Huston**



June 15, 2023

City of Creede

Ms. Sarah Efthim-Williamson, Town Clerk

2223 N. Main St.

Creede, CO 81130

[www.bhinc.com](http://www.bhinc.com)

voice: 303.799.5103

facsimile: 303.799.5104

toll free: 877.799.5103

## **RE: Request for Qualifications for Professional Engineering Services City of Creede Main Street Revitalization Project**

Dear Ms. Efthim-Williamson, Mr. Fineberg, and Members of the Selection Committee:

The City of Creede (the City) desires an experienced, well-rounded team of consultants to facilitate Main Street revitalization by replacing and improving the sidewalks through the heart of the city. As a civil engineering firm with a wealth of experience, a proven track record, and extensive knowledge of Local Agency projects, we believe Bohannon Huston, Inc. (BHI) and our team of speciality subconsultants can provide exceptional value and deliver outstanding results for the City, its residents, and stakeholders.

**Experience with Similar Projects:** Over the years, BHI has successfully completed numerous projects similar to the Main Street Revitalization Project. As our proposal will demonstrate, we have worked on a wide range of infrastructure development initiatives aimed at improving pedestrian connectivity and safety and have consistently met or exceeded our clients' expectations. Our team of highly skilled and experienced civil engineers has the expertise necessary to tackle the unique challenges posed by projects of this nature, as shown in our project examples starting on page 10. By leveraging our past experiences, we can ensure efficient project management, accurate cost estimation, and timely delivery.

**History of Working for Similar Clients:** We take pride in our long-standing relationships with clients similar to The City of Creede. Our portfolio boasts an impressive list of successful collaborations with rural / mountain community municipalities, including Manitou Springs, Pagosa Springs, Cripple Creek, Alamosa, and Montrose. That said, we also understand that each community has its own distinctive feel and unique project goals. Our commitment to client satisfaction has earned us a reputation for delivering projects on time, within budget, and to the highest quality standards.

**Experience with Local Agency Projects:** Navigating the complex regulatory landscape can often be a daunting task for many organizations. At BHI, we possess extensive experience working closely with regulatory agencies, including CDOT Region 5 and the FHWA. We have developed strong working relationships with their representatives and understand the necessary procedures, permits, and approvals required for seamless project execution. Our familiarity with the regulatory process ensures compliance with all relevant laws and regulations, saving you valuable time and resources, such as our recent work on the Pagosa Springs N. 8th Street Sidewalk Project and Cripple Creek Transportation Alternatives (TAP) Sidewalk Project.

In addition to our experience, we also prioritize effective communication, collaboration, and transparency throughout the entire project lifecycle through the use of proprietary software. Our dedicated project management team will work closely with your team to ensure that your goals and objectives are met. Furthermore, we maintain a commitment to sustainability and environmental stewardship, implementing innovative design practices that minimize the ecological impact of our projects.

We kindly request an opportunity to discuss your project requirements in detail and how our expertise can contribute to its success. We are confident that our tailored approach, technical proficiency, and commitment to excellence make us the ideal choice for the City of Creede.

Thank you for considering our proposal. We look forward to partnering with you and exceeding your expectations, building on the relationship with the City fostered by our previous work on the Willow Creek Flume. Please do not hesitate to reach out to me directly at 303.799.5103 or [jlee@bhinc.com](mailto:jlee@bhinc.com) should you require any additional information.

Sincerely,



Jared Lee, PE, LEED AP

Senior Vice President | Principal-in-Charge

**Engineering** ▲

**Spatial Data** ▲

**Advanced Technologies** ▲

# PROJECT TEAM EXPERIENCE

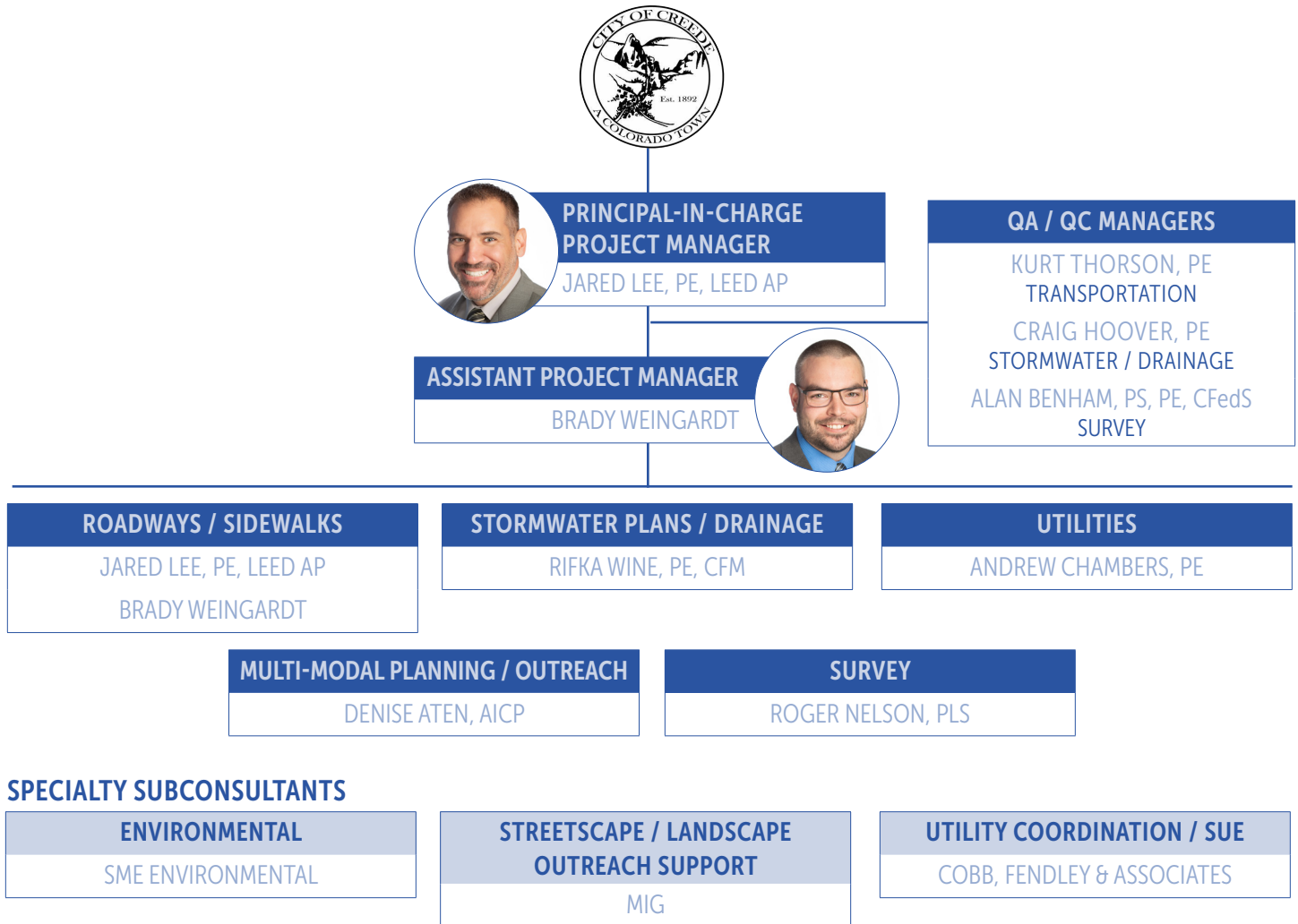
The BHI team stands ready to provide complete civil engineering services through a team of experienced professionals and technicians committed to the mutual success of this project.

We commit our experience and expertise to effectively complete each project we execute. Our team members understand first-hand the local and CDOT processes and requirements, and each person contributes to deliver quality-driven, integrated services.

Our organization chart below outlines the structure of our team and key personnel that will be led by Jared Lee. BHI's project management philosophy begins with an investment in a qualified team of experts with the skills and experience that matches the project requirements.

The following pages include résumés of the team members below, which highlight individual qualifications and experience, as well as experience working with the team and subconsultants. **Please note the résumé projects marked with an asterisk indicate CDOT Local Agency projects.**

## ORGANIZATION CHART



**JARED LEE, PE, LEED AP**  
**PRINCIPAL-IN-CHARGE | PROJECT MANAGER**  
 CO PE 51313  
 BS Civil Engineering



**Professional Experience Summary.** As an experienced project manager, Jared Lee’s primary responsibility is leading BHI design teams in a wide range of civil engineering projects—from roadway and stormwater facilities to full site development projects—while maintaining an active role in the design process. Throughout his career, Jared has gained valuable experience in projects, ranging from roadways to site grading and drainage, to private and public infrastructure studies and design, to commercial and residential subdivision planning and engineering, as well as governmental and environmental approvals and compliance. His experience includes new roadway and reconstruction projects involving multi-modal and pedestrian facilities; master planning; roadway, utility, and drainage design; drainage reports; stormwater management and erosion control plans associated with these developments; cost estimation; and bid document preparation.

Jared has managed several municipal contracts, including CDOT Local Agency (LA) Projects. He is adept at meeting or exceeding clients’ needs with on-time and on-budget delivery. Jared applies environmentally minded design principles to projects as a Leadership in Energy and Environmental Design (LEED) Accredited Professional and has experience with green and bio-engineered solutions on a variety of drainage and site projects. He also has experience with TAP-, DOLA- and CDBG-funded projects.

**Similar Project Experience**

- Manitou Ave. - Park Ave. to Serpentine Dr. (MAPS) | City of Manitou Springs | Project Manager\*
- N. 8th St. Sidewalks and Harman Hill Trail | Town of Pagosa Springs | Project Manager\*
- Transportation Alternatives Program (TAP) Sidewalk Project | City of Cripple Creek | Project Manager / Engineer\*
- Downtown Multi-modal Improvements / Union Avenue and Main Street Reconstruction | City of Pueblo | Project Manager\*
- 32nd St. Traffic Calming Design | City of Durango | Principal-in-Charge / Project Manager
- Downtown’s Next Steps (Main St. Reconstruction) | City of Durango | Project Manager

**BRADY WEINGARDT**  
**ASSISTANT PROJECT MANAGER**  
 LabCAT APM Inspector  
 BS Project Management (anticipated 2023)



**Professional Experience Summary.** Brady Weingardt has focused experience in transportation design, plan production, construction inspection, construction administration, project management, QA / QC, and constructability reviews. He has been highly involved in local agency roadway reconstruction and rehabilitation, emphasizing multi-modal approaches, integration of ADA accessibility, construction phasing, and cost estimating. His project work has varied from studies and planning efforts to final design and plan production utilizing Inroads and Civil 3D. Brady has more than 10 years of construction management experience. He is a LabCAT-certified asphalt pavement material inspector. He has worked on numerous construction projects, ranging from the inspection of new municipal water mains to construction management and administration of local agency pavement management programs.

Brady’s combination of design and construction experience with proactive communication is invaluable, as he is able to assist in navigating a project through planning, final plans and specifications, bidding, and construction. Increasing project effectiveness and efficiency to avoid unnecessary expenses and delays to our clients. This integration of experience within all stages of a project’s life cycle facilitates the production of contractor-friendly deliverables with a focus on constructability and mitigating impacts on the general public.

**Similar Project Experience**

- Manitou Ave. - Park Ave. to Serpentine Dr. (MAPS) | City of Manitou Springs | Engineering Technician\*
- N. 8th St. Sidewalks and Harman Hill Trail | Town of Pagosa Springs | Technical Specialist\*
- Downtown Multi-modal Improvements / Union Avenue and Main Street Reconstruction | City of Pueblo | Assistant Project Manager\*
- Transportation Alternatives Program (TAP) Sidewalk Project | City of Cripple Creek | Technical Specialist\*
- 32nd St. Traffic Calming Design | City of Durango | Assistant Project Manager



**CRAIG HOOVER, PE**  
**STORMWATER / DRAINAGE QA / QC**  
 CO PE 42037  
*MS Civil Engineering (Hydrology & Hydraulics),  
 BS Civil Engineering*



**Professional Experience Summary.** Craig Hoover is a recognized leader in the water resources community. His wide-ranging technical expertise includes planning and design of civil engineering projects in the areas of flood control, storm drainage, storm water quality, water systems, sanitary sewers, subdivision, and roadway improvements. Because he has been involved in all stages of the design process, Craig is adept in the preparation of feasibility studies, reports, and design plans. His ability to clearly understand a client’s needs and goals allows him to be able to communicate this information in the reports and plans, particularly with respect to storm water. After beginning his career as a roadway engineer in training, since 1990, Craig has focused on storm water management and has been involved with a wide variety of drainage / flood control projects involving analysis, design, approval processing, and public involvement activities. His experience has involved watershed analysis, storm water runoff modeling, storm water quality system design, floodplain mapping, dam design, sub-critical and supercritical flow analysis, channel and bank stabilization, and the design of hydraulic structures. With over 30 years of drainage analysis and design experience, one of Craig’s primary roles is providing QA / QC for drainage projects and drainage elements on roadway and other projects that include drainage components. Craig has provided QA / QC on numerous Front Range storm drainage projects including work in Fountain on the Fountain Creek Watershed Study and more recently the Fountain Creek at Hanson Trailhead project for El Paso County. Craig has either authored, managed, or provided QA / QC for over 35 large-scale drainage master plans, including half a dozen with Mile High Flood District (MHFD) and Arapahoe County.

**Similar Project Experience**

- *Willow Creek Flume Rehabilitation | City of Creede | Principal-in-Charge*
- *Willow Creek LOMR | City of Creede | Principal-in-Charge*
- *Willow Creek Culvert Repair at Maximus Dr. (Lone Tree) | Mile High Flood District | Principal-in-Charge*
- *Storm Drainage Master Plan City of Alamosa | Principal-in-Charge*
- *Manitou Ave. - Park Ave. to Serpentine Dr. (MAPS) | City of Manitou Springs | Drainage QA / QC\**
- *El Monte / Manitou Ave. Storm Drainage Improvements | City of Manitou Springs | Principal-in-Charge*

**KURT THORSON, PE**  
**TRANSPORTATION QA / QC**  
 CO PE 43081  
*BS Civil Engineering*



**Professional Experience Summary.** As a Senior Vice President and Regional Transportation Manager for BHI’s traffic and transportation engineering group, Kurt Thorson manages BHI’s transportation design projects and staff throughout development and production. He will serve as a QA / QC technical advisor, using his design experience to provide technical guidance and oversight to design teams. He offers independent review experience for BHI’s transportation and roadway projects and is a trusted advisor to staff throughout project development and production. He works closely with clients – like the Cities of Durango and Cripple Creek and the Town of Pagosa Springs – to ensure that their project objectives are met. His technical experience includes traffic access management, roadway and street design, intersection geometric design (including roundabout geometrics), intersection grading, roadway signing and striping, drainage, and traffic signal and street lighting design. Kurt is experienced in multiple agency design and review processes. As a result of his wide range of experience in transportation studies and design, he helps deliver realistic and cost-effective design concepts on every project.

**Similar Project Experience**

- *CR 250 / 251 Roadway and Intersection Improvements | City of Durango | Principal-in-Charge*
- *N. 8th St. Sidewalks and Harman Hill Trail | Town of Pagosa Springs | Transportation QA / QC\**
- *Pavement Assessment and Maintenance Plan | Town of Pagosa Springs | Principal-in-Charge*
- *Transportation Alternatives Program (TAP) Sidewalk Project | City of Cripple Creek | Transportation QA / QC\**
- *Piedra Road Improvements | Archuleta County | Principal-in-Charge\**



**ALAN BENHAM, PS, PE, CFedS**  
**SURVEY QA / QC**

*NM PS 15700, NM PE 14940, CFedS 1013*  
*BS Survey Engineering, BS Civil Engineering*



**Professional Experience Summary.** Alan Benham is a BHI Senior Vice President and the Group Leader and Project Manager for the survey team. In these positions, Alan leads the team of licensed surveyors, manages specific client and project types, and supervises the Survey Group’s business operations, quality assurance, and financial health across all of our offices. He is a licensed surveyor in multiple states and is involved in much of the legal aspect of BHI’s surveying work, primarily with respect to operations and quality assurance. In a QA / QC role, his in-depth understanding of BHI processes and workflows will allow him to develop automated routines to validate data, as well as dedicate time to scrutinize data sets prior to integration into established BHI workflows . Alan is also a member of the first national group of 69 who earned their CFedS certificate from the Bureau of Land Management (BLM). The CFedS certification has prepared him to participate on federal cadastral work. In addition to his professional surveying license, Alan is also a licensed professional engineer with both transportation and land development experience. The dual licenses help Alan problem-solve, particularly in situations that require him to understand an issue from both a surveying and an engineering perspective.

**Similar Project Experience**

- *Manitou Ave. - Park Ave. to Serpentine Dr. (MAPS) | City of Manitou Springs | Survey QA / QC\**
- *Transportation Alternatives Program (TAP) Sidewalk Project | City of Cripple Creek | Survey QA / QC\**
- *Downtown’s Next Steps (Main St. Reconstruction) | City of Durango | Survey QA / QC*
- *2021 Color Digital Ortho Aerial Photography / Digital Mapping | City of Durango | Survey Manager*

**RIFKA WINE, PE, CFM**  
**DRAINAGE / HYDRAULIC STUDIES**

*CO PE 49772 | CFM US-19-11134*  
*BS Civil Engineering*



**Professional Experience Summary.** Rifka Wine brings recent experience and a record of establishing rapport with municipal clients and local agencies, including El Paso County and MHFD, from her work on recent master drainage planning projects. She is a versatile engineer, with a unique combination of hydrology and hydraulic, GIS, analysis, and design skills she puts to use on drainage study and design projects. As a certified floodplain manager, she has distinctive knowledge of floodplain management, as well as a thorough understanding of FEMA floodplain regulations and guidelines. She has completed multiple floodplain delineations for no-rise certifications and Letters of Map Revision. She has experience on multiple master drainage planning projects including hydrologic and hydraulic analysis of existing and developed conditions, as well as development of recommendations and prioritization of improvements, most recently on the Wolf Creek MDP for Arapahoe County. She has created design plans and specifications and provided construction support for multiple storm drainage projects to provide bank protection, improve pedestrian access to streams, and remove or revise FEMA floodplains, including for Fountain Creek at Hanson Trailhead (the design of which has been adequate to accommodate recent rains). Additionally, she has completed bridge hydraulic and scour analysis on multiple bridge replacement projects, including the Rio Grande Street bridge over Slaughterhouse Gulch for the City of Littleton. Rifka also has detailed knowledge of MHFD’s uniform approach to planning studies and criteria manual from other recent projects. She has established proficiency in CUHP, UD-Culvert, HY-8, FLO-2D, HEC-HMS, HEC-RAS, AutoCAD Civil 3D, ArcMap, Arc Hydro Tools, HEC-GeoHMS, and EPA SWMM. Her expertise in these programs ensures the efficient use of technology enhances the speed and accuracy of design and analysis work and provides a reproducible workflow to aid a robust QA / QC process.

**Similar Project Experience**

- *Willow Creek Flume Rehabilitation | City of Creede | Drainage Engineer*
- *Willow Creek LOMR | City of Creede | Drainage Engineer*
- *Willow Creek Culvert Repair at Maximus Dr. (Lone Tree) | Mile High Flood District | Drainage Engineer*
- *Manitou Ave. - Park Ave. to Serpentine Dr. (MAPS) | City of Manitou Springs | Drainage Engineer\**
- *Flood Control Master Plan | City of Manitou Springs | Drainage Engineer*

**ANDREW CHAMBERS, PE**  
**UTILITIES**  
 CO PE 58679  
*BS Civil Engineering*



**Professional Experience Summary.** Andrew Chambers brings eight years of experience working in municipal, commercial, and residential land development. Andrew has been involved in all phases of the design process and has provided efficient and cost-effective solutions to numerous municipalities up and down the Front Range. He has experience preparing calculations, plan sets, and documentation packages for single- and multi-family residential and commercial projects throughout Colorado. He has strong knowledge of municipal water project specifications and expertise in utility design, including storm, sanitary, and water networks. Recent work has also included review of preliminary and final drainage reports, as well as Storm Water Management Plans (SWMP) and reports and erosion control plan sets for compliance with local, state, and federal standards and specifications as part of BHI’s development review contracts. Having worked as a field engineer, he has construction experience and draws upon this experience to support teams with site layout, drainage, and utility design for various projects. Andrew is proficient in AutoCAD, Civil3D, StormCAD, Stormwater Studio, and Google Earth.

**Similar Project Experience**

- *N. 8th St. Sidewalks and Harman Hill Trail | Town of Pagosa Springs | Project Engineer\**
- *Manitou Ave. - Park Ave. to Serpentine Dr. (MAPS) | City of Manitou Springs | Project Engineer\**
- *Transportation Alternatives Program (TAP) Sidewalk Project | City of Cripple Creek | Project Engineer\**
- *CR 250 / 251 Roadway and Intersection Improvements | City of Durango | Project Engineer*
- *Downtown’s Next Steps (Main St. Reconstruction) Utility Replacement | City of Durango | Project Engineer*

**DENISE ATEN, AICP**  
**MULTI-MODAL PLANNING / OUTREACH**  
 AICP 023292  
*BA Mathematics and Economics*  
*MS Environmental Planning*



**Professional Experience Summary.** Denise brings a strong resume of experience in multi-modal transportation planning and outreach for a wide variety of transportation projects, large and small. Her efforts have included successful public involvement programs for projects with multi-state, bilingual, and sensitive public issues, under both in-person and / or virtual platforms. Combining her technical knowledge in transportation planning with her passion for listening and supporting the public, she brings a genuine and effective approach to outreach activities. Supplementing all this is her attention to detail and follow-through, ensuring all comments and issues are addressed in the best interest of the public and successfully integrate transportation planning elements into the project solutions. With the support of her planning team, she has developed a comprehensive outreach toolbox which includes a variety of in person and online applications in order to safely and effectively collect, document, and address stakeholder and community input. With her NEPA compliance and federal funding experience, she is experienced with CDOT and FHWA requirements and regulations on roadway corridor projects.

**Similar Project Experience**

- *Manitou Ave. - Park Ave. to Serpentine Dr. (MAPS) | City of Manitou Springs | Planning and Outreach Lead\**
- *Heritage Road Roundabout / Bike / Pedestrian Facilities Assessment and Public Outreach | City of Golden | Planning and Outreach Lead*
- *Transportation Alternatives Program (TAP) Sidewalk Project | City of Cripple Creek | Principal-in-Charge\**
- *Eastside Streetscape | City of Pueblo | Principal-in-Charge / Planning and Outreach Lead\**
- *Downtown Multi-modal Improvements / Union Avenue and Main Street Reconstruction | City of Pueblo | Principal-in-Charge / Planning and Outreach Lead\**



## ROGER D. NELSON, PLS SURVEY: RIGHT-OF-WAY

CO PLS 33200

BS Production Management, AS Land Surveying



**Professional Experience Summary.** Roger Nelson brings 33 years of survey experience to BHI's clients, from project scoping, estimating, planning, field acquisition, management, and quality assurance, to the generation of a variety of software deliveries. His attention to detail assures clients they are getting accurate information as the foundational data for future decision-making which will allow accurate first time estimates and work breakdown structure development to maintain schedule and develop solid foundational survey deliverables.

Roger's experience includes boundary surveying, ROW surveying, topographic mapping, planimetric mapping, utility mapping, corridor mapping, alignment surveys, plan and profile surveys, cross-section surveys, design surveys, GPS surveys, ALTA surveys, plat preparation, easement and ROW parcel descriptions, monumentation, and construction staking. Roger has served clients throughout Colorado and the Western U.S., including private entities and governmental agencies.

### Similar Project Experience

- *Transportation Alternatives Program (TAP) Sidewalk Project | City of Cripple Creek | Survey Manager\**
- *Soda Springs Park Topography | City of Manitou Springs | Survey Manager*
- *Manitou Ave. – Park Ave. to Serpentine Dr. | City of Manitou Springs | Survey Manager\**
- *Downtown Multi-modal Improvements / Union Avenue and Main Street Reconstruction | City of Pueblo | Survey Manager\**
- *N. 8th St. Sidewalks and Harman Hill Trail | Town of Pagosa Springs | Survey Manager\**



**OUR TEAM IS READY AND EAGER TO HELP YOU REVITALIZE MAIN STREET!**





## SUBCONSULTANT QUALIFICATIONS



Cobb, Fendley & Associates, Inc. (CobbFendley) was founded on April 1, 1980 and is an employee-owned consulting firm providing civil engineering and land surveying services for 43 years. Our staff of 600+ employees bring an unmatched level of expertise and experience and are committed to serving the communities where we live and work. CobbFendley’s diverse team of professionals is comprised of engineers, designers, surveyors, ROW agents, utility specialists, technicians, and support personnel.

Our in-house services include road design, sidewalk and ADA design, drainage design, structural / bridge design, hydrologic and hydraulic evaluation, flood disaster protection and recovery support, traffic engineering, site design, utility coordination and wet / dry utility design, SUE, surveying and mapping, and ROW acquisition, among others.

As a client-oriented firm, CobbFendley believes that the principal factor behind our 43 years of success and growth is our dedication to producing quality, timely work. CobbFendley has established and will continue to maintain confidence with our clients by exhibiting sound management, offering unrivaled professional surveying experience and capabilities, producing quality products, and adhering to high standards of professional ethics using local staff committed to working in their own communities.

**SIMILAR PROJECTS:** Parker Rd. Sidewalk Improvements, Town of Parker | Bridge St. Roadway Widening and Improvements, City of Brighton | QuikTrip Corp. National On-Call Contract, Various Locations | 25th St. SUE Investigation, City of Aurora | Uvalda and 56th Avenue Drainage Improvements, City and County of Denver, Colorado | Lobo Four-Mile Creek Bikeway, Boulder County Department of Transportation, Boulder County, Colorado | Niblick Drive Drainage, Boulder County Department of Transportation, Boulder County, Colorado.



## COBBFENDLEY AND BHI PARTNERED PROJECTS:

Downtown Next Step Design, City of Durango | Warrior Dr. Multi-Use Trail, Ruidoso Municipal School District | NM 74 and Po ‘Pay Intersection Improvements, Pueblo of Ohkay Owingeh | Sunport Blvd. Extension, Bernalillo County.



Headquartered in Durango, Colorado since 1995, SME Environmental, Inc. (SME) provides environmental consulting services to public and private sector clients throughout the western United States with a focus on work in the Four Corners and Colorado Western Slope regions. SME’s Durango-based staff of six includes experts in National Environmental Policy Act (NEPA) compliance, Clean Water Act compliance (including wetland delineations and 404 Permitting), Endangered Species Act (ESA) compliance and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

During the last 28 years, SME has established an excellent working relationship with CDOT regional staff via the successful completion of more than 200 individual resource inventory and environmental clearance projects for CDOT Regions 2, 3, and 5. SME also has extensive experience in providing environmental support services on third party off-system projects having completed more than 40 individual trail / sidewalk, bridge replacement, and right-of-way acquisition projects in Colorado and New Mexico since 1995—most of these projects involved CDOT / NMDOT oversight due to funding sources. These projects have been completed for city / town clients throughout southern Colorado. As a result of this work history, SME has extensive experience in the completion of CDOT Form 128 for projects qualifying for Categorical Exclusions (CatEx) under NEPA and Federal Highway Administration specifications. SME has also completed trail / sidewalk support work (mostly not CDOT-sanctioned) for the following private sector clients: Purgatory Resort, Three Springs (Durango), Twin Buttes



**BEFORE (LEFT) AND AFTER (RIGHT) IMAGES OF THE CR 527 BRIDGE REPLACEMENT, A BHI / SME PROJECT.**



(Durango), Tamarron / Glacier Club, Rivergate subdivision (Durango), and Snowmass Ski Company.

**SIMILAR PROJECTS:** ART and SMART 160 Trail Segments, City of Durango | Riverwalk, Town to Lakes Trail Segments and Safe Routes to Schools Projects, Town of Pagosa Springs | Paths to Mesa Verde, Montezuma County | Twin Bridges Replacement, Town of Bayfield | Fremont St Sidewalk Improvements, City of Fruita | Lone Ranger Motion Picture shoot location environmental clearances on Willow Creek set just north of Creede.

**SME AND BHI PARTNERED PROJECTS:** Crestview Ditch, City of Durango | 8th St. Sidewalks & Harman Hill Trail, Town of Pagosa Springs | Piedra Rd. Improvements, Ph. I and II, Archuleta County | CR 527 Beaver Creek Bridge Replacement, La Plata County



MIG, Inc., improves, adapts, and creates organizations, environments, and tools for human development. We are

a community of designers, planners, engineers, scientists, and storytellers who engage people in creative problem-solving and collective action.

We believe that the physical and social environment around us have a profound impact on our lives, and this belief shapes the principles that guide our work:

- Communities can plan their own futures.
- The world needs an ecological perspective.

- Great projects work for everyone.
- Elegant design inspires new thinking.
- Every project presents an opportunity to advance racial and social equity.
- All work must be context driven.

MIG is at the forefront of innovation. We are leading local, regional, and national planning and design initiatives to ensure accessibility and equity; engage, educate, and empower people through participatory processes; facilitate strategy development for social change; create playful and inclusive communities; reimagine streets and repurpose infrastructure; revitalize cities and restore ecosystems; and promote environmental stewardship by recognizing that the health of the natural and built world is mutually dependent.

**SIMILAR PROJECTS:** Downtown Design Plan, City of Alamosa | US 6 and 19th St. Interchange Deck Park and Gateway, City of Golden | Downtown Streetscape, Town of Lyons | Coffman St. Busway, City of Longmont

**MIG AND BHI PARTNERED PROJECTS:** Downtown's Next Step Design, City of Durango | Union Ave. and Main St. Master Plan Design, City of Pueblo | 4th-5th One-Way to Two-Way Feasibility Study, City of Grand Junction | Eastside Streetscape, City of Pueblo | Growing Ute Futures Education Campus Master Plan, Ute Mountain Ute Tribe | Comprehensive Master Plan, Town of Firestone



**STREETSCAPE RENDERINGS GENERATED FOR THE CITY OF PUEBLO BY THE BHI / MIG TEAM FOR THE UNION AVENUE / MAIN STREET PROJECT.**





# FIRM CAPABILITIES / PAST PERFORMANCE / EXPERIENCE

Founded in 1959, BHI is a leading multidisciplinary engineering, spatial data, and advanced technologies firm serving the municipal infrastructure needs of communities throughout the Rocky Mountain West. Celebrating 64 of successful service, BHI has grown into a nationally recognized service provider in the areas of water resources, utility engineering, civil and structural engineering, planning, traffic and transportation engineering, land surveying, GIS, and aerial mapping (photogrammetry and LiDAR). Our breadth of collaborative expertise enables us to see project solutions from concept through completion. We have developed a staff of professionals, currently more than 250 strong, within a diverse company structure that allows us to provide our clients with a full range of integrated services. Our firm's management philosophy embraces continuous quality improvement initiatives, direct owner involvement, dedication of resources, principal-level leadership of each primary discipline, team-driven services, and direct client-staff communications. We know this region and have a strong understanding of local standards of practice.

Our work is about solving problems, turning challenges into solutions that fulfill the project requirements and meeting or exceeding client expectations. BHI staff have both the expertise and creativity to devise the right solutions, and we take advantage of a broad suite of technological tools to ensure that these solutions are created efficiently and accurately. Below, we have highlighted our approach to cost control, quality of work, and ability to meet schedules, as well as projects that showcase the range of expertise the BHI team will bring to the City.

## FAMILIARITY WITH THE CITY OF CREEDE AND SURROUNDING AREA

BHI's working relationship with the City extends to 2015 when we were first contracted by the City to develop a PER for design and rehabilitation of the Willow Creek Flume. Over the next three years, we provided additional services relating to the Flume rehabilitation, which culminated in the preparation and submittal of a Letter of Map Revision to

FEMA to request the removal of 50 acres of floodplain from the City.



*BHI is an approved prequalified vendor with CDOT with an approved MPA and, if selected, is capable of quickly providing an audited indirect cost rate approved by a cognizant agency.*

## BHI'S SUITE OF SERVICES

<p><b>WATER &amp; WASTEWATER UTILITIES</b></p> <ul style="list-style-type: none"> <li>• Planning and modeling</li> <li>• Source assessment and development</li> <li>• Treatment systems and plants</li> <li>• Elevated, ground, and sub-surface storage</li> <li>• Booster pump stations</li> <li>• Distribution mains and transmission lines</li> <li>• Permitting services and O&amp;M solutions</li> </ul>	<p><b>SPATIAL DATA</b></p> <ul style="list-style-type: none"> <li>• Surveying, land boundary surveys and legal descriptions</li> <li>• Topographic design surveys</li> <li>• Plat, annexation, legal description reviews</li> <li>• Geodetic and photogrammetric control points for mapping/GIS</li> <li>• GIS database development</li> <li>• State-of-the-art GPS</li> <li>• Photogrammetry/mapping</li> <li>• Spatial data acquisition</li> <li>• Right-of-way</li> </ul>	<p><b>TRANSPORTATION</b></p> <ul style="list-style-type: none"> <li>• Transportation master plans</li> <li>• Rural roadways</li> <li>• Urban arterials</li> <li>• Intersections</li> <li>• Lighting and illumination plans</li> <li>• Traffic studies</li> <li>• Corridor analysis</li> <li>• Planning documents</li> <li>• Traffic signal systems</li> <li>• Streetscape/urban enhancement</li> <li>• Pedestrian, bicycle, and equestrian facilities</li> <li>• Airports and aviation</li> <li>• Interstate and US highways</li> <li>• Interchanges</li> </ul>
<p><b>SURFACE WATER</b></p> <ul style="list-style-type: none"> <li>• Master drainage plans</li> <li>• Floodplain management</li> <li>• Hydrology and hydraulics</li> <li>• Street drainage and storm sewers</li> <li>• Culverts and bridges</li> <li>• Detention storage facilities</li> <li>• Open channels and river Restoration</li> <li>• Geomorphology</li> <li>• Irrigation facilities</li> <li>• Storm water quality and Best Management Practices (BMPs)</li> </ul>	<p><b>PLANNING</b></p> <ul style="list-style-type: none"> <li>• Multi-modal transportation planning</li> <li>• Comprehensive planning</li> <li>• Land use planning</li> <li>• Transportation planning</li> <li>• Public involvement</li> <li>• Independent reviews</li> <li>• Land development plans &amp; submittals for permitting</li> </ul>	<p><b>STRUCTURAL</b></p> <ul style="list-style-type: none"> <li>• Stormwater infrastructure</li> <li>• Large earth-retaining systems</li> <li>• Evaluation of municipal facilities</li> <li>• Structural facilities</li> <li>• Design for substations and plants</li> <li>• Bridge rehabilitation</li> <li>• Bridge damage repair</li> <li>• Bridge evaluation/assessments</li> <li>• Scanning and model generation</li> <li>• Inspections and sufficiency ratings</li> <li>• Seismic screening</li> <li>• Traffic signal systems</li> <li>• Rendering and animations</li> <li>• Bridges (roadway and pedestrian)</li> </ul>
<p><b>COMMUNITY DEVELOPMENT</b></p> <ul style="list-style-type: none"> <li>• Stormwater management plans</li> <li>• State stormwater permitting</li> <li>• Site feasibility studies</li> <li>• Site layout and access</li> <li>• Zoning and entitlements</li> <li>• Plan processing</li> <li>• Construction permitting</li> </ul>	<p><b>MECHANICAL &amp; ELECTRICAL</b></p> <ul style="list-style-type: none"> <li>• Facilities infrastructure design</li> <li>• Natural gas utilities</li> <li>• Building systems</li> <li>• Mechanical engineering (process, piping, and HVAC)</li> <li>• Electrical engineering (power, controls, SCADA, communications, and lighting)</li> </ul>	<p><b>CONSTRUCTION ENGINEERING</b></p> <ul style="list-style-type: none"> <li>• Constructibility review</li> <li>• Cost estimating</li> <li>• Bidding and contract management</li> <li>• Inspection and observation</li> <li>• Materials testing laboratory</li> </ul>





## TRANSPORTATION ALTERNATIVES PROGRAM (TAP) SIDEWALK PROJECT | CITY OF CRIPPLE CREEK

**Project Description.** The City of Cripple Creek received a CDOT Transportation Alternatives Program (TAP) Grant to improve the connectivity of their existing sidewalk network by constructing new sidewalks along Galena Avenue, Crystal Street, and Prospect Street in Cripple Creek. The addition of sidewalks improved pedestrian access by connecting the gaps that existed in the sidewalk network around the north side of the city. Special consideration was given to historical preservation and cultural elements of the project, such as historic walls.

BHI provided survey (research, right-of-way determination, topographic design, and CDOT-compliant control and ownership maps) and design for construction of approximately 4,700 LF of new 5-foot-wide sidewalk, curb, and gutter. The project also included installation of new ADA ramps, drivepads, retaining walls, street lighting, new storm sewer, and drainage improvements. The project included field surveying, geotechnical investigation, environmental clearances, civil engineering design, and construction management, as well as coordination with local CDOT R2 offices. As part of the federal grant, it was necessary to follow CDOT processes and documentation. BHI supported the bid advertisement and construction contracting. The BHI team also provided construction management, quality inspection, materials testing, and oversight.

### PROJECT DETAILS

**COMPLETION DATE:**

*November 2022 (substantially complete, awaiting final closeout documentation)*

**COSTS:**

\$1,909,838.64	\$1,838,356.14
<i>(original bid)</i>	<i>(current contract)</i>

**CLIENT CONTACT:**

*Steve DiCamillo, Public Works Director | 719.689.2125*

## N. 8TH ST. SAFE ROUTES TO SCHOOL SIDEWALKS AND HARMAN HILL TRAIL | TOWN OF PAGOSA SPRINGS

**Project Description.** BHI provided right-of-way and design survey, civil design, and construction management for two distinct local agency projects under one contract for the Town of Pagosa Springs.

The first project included the design and construction of approximately 1,800 LF of the new 6-foot-wide sidewalk, curb, and gutter along N. 8th Street, Florida Street, and N. 6th Street in Pagosa Springs as a Safe Routes to School (SRTS) Grant. The project also included the installation of new ADA ramps, drive pads, retaining walls, drainage conveyance, and street lighting. Construction was completed in early 2020.

The second project originally included approximately 2,500 LF of new trail from the eastern cul-de-sac on Cornerstone Drive up Harman Hill to Highway 160 and Piedra Road. BHI has worked with the Town on several alternative alignments and configurations of the project to ensure the final project meets Town budget and aligns with other development projects in the area. The most recent version of the project includes a new crosswalk facility crossing Highway 160 at Piedra Road. The project requires improvements to the existing traffic signal at the intersection to accommodate the new pedestrian crossing. Right-of-way was originally needed as part of the new trail alignment across private property. BHI's survey team provided exhibits and legal descriptions for use in the acquisition process.

Both projects included field surveying (research, boundary determinations, topographic design, and staking), geotechnical investigation, environmental clearances, civil engineering design, construction management, and coordination with CDOT R5 offices.

### PROJECT DETAILS

**COMPLETION DATE:**

*June 2020 (8th St. Sidewalks Completion)*

**COSTS:**

\$554,774.10 (8th St. SW estimate)	\$553,643.50 (8th St. SW award)
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**CLIENT CONTACT:**

*James Dickhoff, Community Development Director | 970.264.4151 x225*





# MANITOU AVE. – PARK AVE. TO SERPENTINE DR. (MAPS) | CITY OF MANITOU SPRINGS

**Project Description.** BHI completed roadway corridor and drainage improvements on the west end of Manitou Avenue, from Park Avenue to Serpentine Drive, for the City of Manitou Springs. The CDOT Local Agency (LA) project consisted of addressing bicycle and pedestrian facilities, including integration of the City’s Creek Walk Trail; on-street parking; lighting; landscaping; and drainage improvements along the corridor, including floodplain analysis. The drainage challenges include a roadway that is partially or completely within the floodplain and parallels a major narrow-channeled, steep-banked creek that is prone to extreme flooding. Inlets and storm drains for the local drainage are difficult to design and construct without conflict with existing utilities.

Field surveys were included with establishment of field control, historic (1800s vintage) document research (El Paso County and Miramonte Castle records) to assist with definition of the poorly documented Manitou Avenue ROW, boundary survey and determinations, topographic design survey, and existing utility survey. Survey also located existing aerial LiDAR mapping and integrated that data set into the roadway field survey data set for large-area, off-site drainage evaluations. BHI made ROW corrective action recommendations to the City of Manitou Springs.

This section of the roadway is also the connection for the Creek Walk Trail and the project includes consideration of how to integrate the improvements with Fountain Creek. The project involved a robust community engagement process and extensive agency coordination, which included CDOT, Pikes Peak Rural Transportation Authority (PPRTA), Colorado Springs Utilities (CSU), the City’s Metropolitan Parking Authority, local residents, local business owners, and numerous other stakeholders. Opportunities for input were provided through a project website, interactive online map, and in-person community workshops.

## PROJECT DETAILS

### COMPLETION DATE:

*October 2022*

### COSTS:

**\$3,528,678**

*(engineer est.)*

**\$4 M**

*(actual cost)*

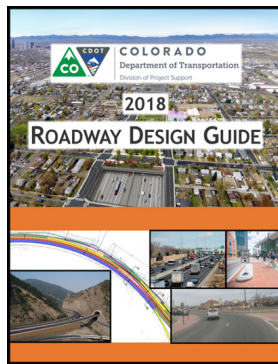
### CLIENT CONTACT:

*Dole Grebenik, City Engineer | 719.685.2569*



## FAMILIARITY WITH CDOT DESIGN SPECIFICATIONS

BHI is well versed in CDOT project development and has provided numerous local government clients assistance with negotiating CDOT’s processes, gaining the requisite approvals, and implementing improvements that both meet their needs and CDOT’s requirements. Since 2005, we have been working with Colorado municipalities, DOLA, and CDOT, gaining valuable experience with CDOT project development procedures. The BHI team is well versed in CDOT’s standards and development and review procedures which leads to efficient project progression. BHI frequently prepares design and construction documents for roadway construction and rehabilitation projects following CDOT Roadway Design Guide, including Chapter 7: Rural and Urban



Arterials, Chapter 12: Accessible Pedestrian Design, and Chapter 14: Bicycle and Pedestrian Facilities. Our team has developed numerous CDOT Local Agency Agreement projects in the surrounding region, including similar communities like Cripple Creek, La Veta, and Pagosa Springs.

Our projects frequently reference CDOT M&S Standard Plans and Standard Specifications for Road and Bridge Construction, as well as provide project special provisions or custom details formatted in accordance with these standards. We also regularly prepare construction cost estimates using CDOT unit items and historic pricing information. This will ensure our planning estimates are in line with recent project costs and are as accurate as possible.

PLAN NUMBER	W STANDARD	FACE NUMBER	PLAN NUMBER	W STANDARD	FACE NUMBER	PLAN NUMBER	W STANDARD	FACE NUMBER
CD 101-1	SECTION 101-1.01	101-1.01	CD 101-2	SECTION 101-1.02	101-1.02	CD 101-3	SECTION 101-1.03	101-1.03
CD 101-4	SECTION 101-1.04	101-1.04	CD 101-5	SECTION 101-1.05	101-1.05	CD 101-6	SECTION 101-1.06	101-1.06
CD 101-7	SECTION 101-1.07	101-1.07	CD 101-8	SECTION 101-1.08	101-1.08	CD 101-9	SECTION 101-1.09	101-1.09
CD 101-10	SECTION 101-1.10	101-1.10	CD 101-11	SECTION 101-1.11	101-1.11	CD 101-12	SECTION 101-1.12	101-1.12
CD 101-13	SECTION 101-1.13	101-1.13	CD 101-14	SECTION 101-1.14	101-1.14	CD 101-15	SECTION 101-1.15	101-1.15
CD 101-16	SECTION 101-1.16	101-1.16	CD 101-17	SECTION 101-1.17	101-1.17	CD 101-18	SECTION 101-1.18	101-1.18
CD 101-19	SECTION 101-1.19	101-1.19	CD 101-20	SECTION 101-1.20	101-1.20	CD 101-21	SECTION 101-1.21	101-1.21
CD 101-22	SECTION 101-1.22	101-1.22	CD 101-23	SECTION 101-1.23	101-1.23	CD 101-24	SECTION 101-1.24	101-1.24
CD 101-25	SECTION 101-1.25	101-1.25	CD 101-26	SECTION 101-1.26	101-1.26	CD 101-27	SECTION 101-1.27	101-1.27
CD 101-28	SECTION 101-1.28	101-1.28	CD 101-29	SECTION 101-1.29	101-1.29	CD 101-30	SECTION 101-1.30	101-1.30
CD 101-31	SECTION 101-1.31	101-1.31	CD 101-32	SECTION 101-1.32	101-1.32	CD 101-33	SECTION 101-1.33	101-1.33
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CD 101-43	SECTION 101-1.43	101-1.43	CD 101-44	SECTION 101-1.44	101-1.44	CD 101-45	SECTION 101-1.45	101-1.45
CD 101-46	SECTION 101-1.46	101-1.46	CD 101-47	SECTION 101-1.47	101-1.47	CD 101-48	SECTION 101-1.48	101-1.48
CD 101-49	SECTION 101-1.49	101-1.49	CD 101-50	SECTION 101-1.50	101-1.50	CD 101-51	SECTION 101-1.51	101-1.51
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CD 101-64	SECTION 101-1.64	101-1.64	CD 101-65	SECTION 101-1.65	101-1.65	CD 101-66	SECTION 101-1.66	101-1.66
CD 101-67	SECTION 101-1.67	101-1.67	CD 101-68	SECTION 101-1.68	101-1.68	CD 101-69	SECTION 101-1.69	101-1.69
CD 101-70	SECTION 101-1.70	101-1.70	CD 101-71	SECTION 101-1.71	101-1.71	CD 101-72	SECTION 101-1.72	101-1.72
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CD 101-76	SECTION 101-1.76	101-1.76	CD 101-77	SECTION 101-1.77	101-1.77	CD 101-78	SECTION 101-1.78	101-1.78
CD 101-79	SECTION 101-1.79	101-1.79	CD 101-80	SECTION 101-1.80	101-1.80	CD 101-81	SECTION 101-1.81	101-1.81
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CD 101-88	SECTION 101-1.88	101-1.88	CD 101-89	SECTION 101-1.89	101-1.89	CD 101-90	SECTION 101-1.90	101-1.90
CD 101-91	SECTION 101-1.91	101-1.91	CD 101-92	SECTION 101-1.92	101-1.92	CD 101-93	SECTION 101-1.93	101-1.93
CD 101-94	SECTION 101-1.94	101-1.94	CD 101-95	SECTION 101-1.95	101-1.95	CD 101-96	SECTION 101-1.96	101-1.96
CD 101-97	SECTION 101-1.97	101-1.97	CD 101-98	SECTION 101-1.98	101-1.98	CD 101-99	SECTION 101-1.99	101-1.99
CD 101-100	SECTION 101-1.100	101-1.100						

## FAMILIARITY & EXPERIENCE WITH FHWA / CDOT FUNDED PROJECTS

The BHI team has developed numerous CDOT or federally funded Local Agency Agreement projects in the surrounding region, including the Pagosa Springs 8th Street Safe Routes to School (SRTS) and Harman Hill Trail projects and has provided municipal clients assistance with navigating CDOT’s processes, gaining the requisite clearances and approvals, and implementing improvements meeting both local needs and CDOT’s requirements. Our knowledge of CDOT allows us to optimally navigate the review process with CDOT and to keep the project on schedule. Our success with CDOT is based not only on our expertise and quality work, but also on our relationships with CDOT staff and our commitment to working within their processes, manuals, and procedures to get jobs done right. A few of our completed CDOT Local Agency projects are listed below.

- Manitou Ave. - Park Ave. to Serpentine Dr. (MAPS) | City of Manitou Springs
- Ryus Ave. Bridge Replacement over the Cucharas River | Town of La Veta
- N. 8th St. Sidewalks and Harman Hill Trail | Town of Pagosa Springs
- TAP Sidewalks | Town of Cripple Creek
- Downtown Multi-modal Improvements / Union Avenue and Main Street Reconstruction | City of Pueblo
- Piedra Rd. Improvements, Ph. I and II | Archuleta County
- West 136th Ave. Safety Improvements at Legacy High School | City and County of Broomfield
- SH 177 (University Blvd.) between County Line Road and Orchard Road Infill Sidewalk | City of Centennial
- Rio Grande Bridge / Slaughterhouse Gulch | City of Littleton

- Hover Rd. Underpass and Trail | City of Longmont
- Kipling Multi-Use Pedestrian Path and Bridge | City of Wheat Ridge
- WCR47 / 66 WCR47 / 392 Design | Weld County

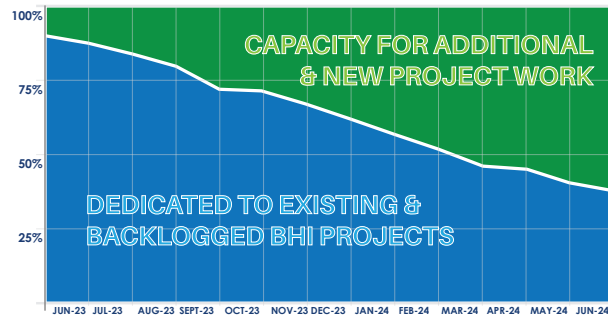
## PENDING LITIGATION

BHI is currently involved in a pending case with home-owner plaintiffs that claim that BHI did not properly verify a grading and drainage plan, done by others, for the HOA. The case is currently slated for jury trial sometime in 2025, and BHI is awaiting a decision on a motion to dismiss. BHI is currently involved in a complaint against the City of Bloomfield for non-payment of a delay claim by a contractor, allegedly caused by an improperly approved submittal. This case is pending a scheduling conference in July 2023.

## CURRENT PROJECT WORKLOAD

BHI schedules our work weekly to incorporate future work and upcoming resource constraints and monitors progress daily. This ensures a constant awareness of our project load and provides for system-wide adjustments in resource scheduling to ensure schedules are maintained or, in many cases, accelerated. Due to our depth of staff resources, our team is able and eager to take on this project for the City of Creede.

**PROJECT CAPACITY CHART**



## PREVIOUSLY AWARDED PROJECTS

For 64 years, BHI has developed and expanded its professional staff, geographic area of operation, and scope of services. On average, we provide services on \$40 million worth of projects a year. Though listing each of our awarded projects would exceed the page limit, additional details of these projects can be provided upon request. Our previously awarded projects include the following located within CDOT Region 5 for regional relevancy:

### ARCHULETA COUNTY

- Improvements to Trails Blvd., Park, Port, & Holiday Aves
- North Pagosa Blvd. Traffic Study
- Archuleta County Piedra Rd. Improvements, Ph. I and II
- Piedra Rd. Ph. 3 Final Design Project (1000’ South of Laurel Dr. to Ace Ct.)
- On-Call Engineering Services

### CITY OF ALAMOSA

- Storm Drainage Master Plan

### CITY OF CREEDE

- Willow Creek Flume Rehabilitation PER
- Willow Creek Flume Rehabilitation
- Willow Creek Flume PNA
- Willow Creek Flume Letter of Map Revision (LOMR)

### CITY OF DURANGO

- Digital Mapping and GIS Development
- College Mesa Water Treatment Plant Auxiliary Finished Water Storage Tank
- Crestview Ditch
- CR 250 and CR 251 Improvements
- 2021 Color Digital Ortho Aerial Photography / Digital Mapping
- 32nd Street Traffic Calming Design
- Downtown’s Next Steps Improvements

### CITY OF MONTROSE

- 2011 Orthophotography

### DEL NORTE SCHOOL DISTRICT

- Surveying Services for Del Norte School District C-7 New K-12 School

### LA PLATA COUNTY

- Aerial Photography and Digital Mapping
- CR 527 Beaver Creek Bridge Replacement

### TOWN OF PAGOSA SPRINGS

- Third-Party Development Review (Walmart)
- 5th Street Bridge
- N. 8th St. Sidewalks and Harman Hill Trail
- Pavement Assessment and Maintenance Plan
- On-Call Engineering Services



# PROJECT APPROACH AND SCHEDULE

## PROJECT UNDERSTANDING

Based on our review of the RFP and initial research, we understand the City of Creede, Colorado is looking at reconstructing sidewalks along Main Street in an effort to revitalize the downtown area. We understand the project will include replacement or installation of new sidewalks along Main Street, starting at the north end of the City at the intersection of Loma Street and Main Street intersection to 3rd Street intersection. The project will include intersection and crossing improvements along the corridor. The project will need to account for existing infrastructure, including new drainage improvements, relocation of existing features, building encroachment into the sidewalk area, and relocation of power / light poles. We have developed a project map (see following page) to further convey our understanding of the project and the issues.

We understand the project will be partially funded with City of Creede Capital Improvement Funds and will be overseen by Colorado Department of Transportation (CDOT). The sidewalks and crossing will be design to current Americans with Disabilities Act (ADA) standards and best practices, as well as meet CDOT, Federal Highway Administration (FHWA), PROWAG, and MUTCD guidelines.

BHI has extensive experience supporting communities in design of sidewalk facilities and planning and development of downtown corridors to maximize and prioritize improvements that best suit the community. Our team fully understands that each individual element of a downtown corridor, including the sidewalk, can influence the future of the downtown atmosphere. We are eager to help positively improve the Main Street corridor for the City of Creede.

Below is our approach to successfully complete this project for the City.

## PROJECT CONTROL



One of the keys to a successful project is good management. BHI has adopted a standardized yet flexible BHI Project Management Methodology to deliver repeatable success to BHI's clients. While each project presents a unique scope, schedule, budget, and deliverable, having defined steps that move our projects from negotiation to closeout assures our clients that they can expect a focus on effective project management from our company that is consistent from project to project. This BHI-tailored approach provides Jared Lee (Principal-in-Charge and Project Manager) with a proven tool that helps ensure that your project goals are accomplished, the schedule is met, the budget is adhered

to, and the project delivered is the project expected. By beginning each project with an established performance plan, the entire team shares a clear understanding of the project objectives as well as the activities that form the work breakdown structure. The plan is the living tool for efficiently guiding the project to a successful completion, enabling Jared to effectively manage the schedule, budget, issues, change, and risk to ultimately deliver a successful project to a satisfied client.



Another key to a successful project is effective communication with the client, stakeholders, and the public. Unlike other phases with distinct start and end dates this phase will span the entire project, and evolve as necessary to ensure a successful project.

PROJECT MEETINGS This will include an initial project scoping and kick-off meeting, regular project meetings and progress reports, review meetings, and coordination with the City and CDOT to discuss project details. These meetings can be held using the City's preferred virtual meeting software, along with other supporting technical tools, to ensure clear communication is ongoing among the project team. From our other projects, we have found virtual meetings to be an effective way to save time and money. For each of these meetings, we will prepare agendas and distribute meeting minutes to document decisions made. Periodic internal meetings will be held to keep the design team aware of how the project is progressing in relation to the Scope of Work, discuss any new challenges that may arise, and determine how we can address them to the greatest benefit to the City.

PUBLIC OUTREACH We have extensive experience facilitating a variety of outreach elements through visual and informative techniques in person and online, with great success. Our team can create a flexible outreach approach to be meet your needs: we can engage and inform local residents about the project utilizing a combination of virtual meeting platforms and in-person opportunities. Under both scenarios, we can create and facilitate interactive meetings with visuals and techniques to engage and collect comments. We can also integrate other virtual tools, such as polling and / or live interactive maps, that can be used in conjunction with the actual meeting events. We will participate in public meetings at the 30% and 60% levels to solicit public feedback for integration into the final design and then present the final project to the public. Renderings, like the one shown on page 15, can be created to help convey the design to the public. By using high-quality graphics and photo-simulated

-- CONTINUED ON PG 15



**PROJECT UNDERSTANDING**

We understand the project will include replacement or installation of new sidewalks along Main Street, starting at the north end of the City at the intersection of Loma Street and Main Street intersection to 3rd Street intersection. The project will include intersection and crossing improvements along the corridor. The project will need to account for existing infrastructure, including new drainage improvements, relocation of existing features, building encroachment into the sidewalk area, and relocation of power / light poles.

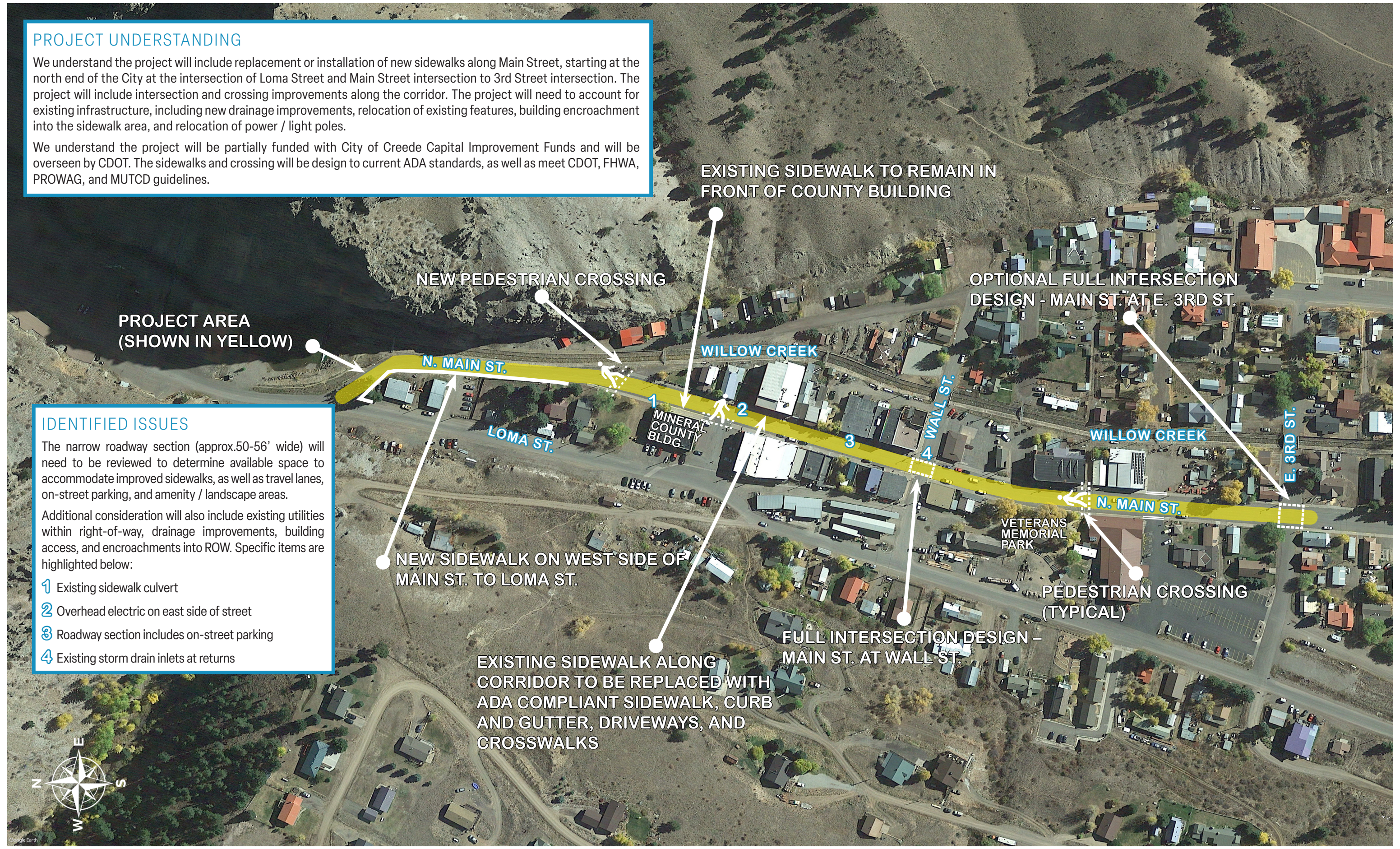
We understand the project will be partially funded with City of Creede Capital Improvement Funds and will be overseen by CDOT. The sidewalks and crossing will be design to current ADA standards, as well as meet CDOT, FHWA, PROWAG, and MUTCD guidelines.

**IDENTIFIED ISSUES**

The narrow roadway section (approx.50-56' wide) will need to be reviewed to determine available space to accommodate improved sidewalks, as well as travel lanes, on-street parking, and amenity / landscape areas.

Additional consideration will also include existing utilities within right-of-way, drainage improvements, building access, and encroachments into ROW. Specific items are highlighted below:

- 1 Existing sidewalk culvert
- 2 Overhead electric on east side of street
- 3 Roadway section includes on-street parking
- 4 Existing storm drain inlets at returns





renderings to illustrate alternatives, we are better able to help community members assess what trade-offs may be required to complete this project. Our team is skilled at creating appropriate visuals and associated information during the different phases of the design process. We will work closely with the City to build an outreach program that matches the expectations of staff and bring value to the project.



**RENDERING CREATED FOR THE MANITOU SPRINGS MAPS PROJECT.**

## PROJECT SITE INVENTORY AND ANALYSIS

Existing conditions will be analyzed through the collection of field data, use of online data resources, and more. All existing utilities, easements, topography, and vegetation will be documented and evaluated. This information will be used as a foundation for the corridor design.



### SURVEY / MAPPING

BHI internal survey crews will utilize various collection methods to obtain the required roadway design data. First, field survey (RTK GPS & Total Station) will be used to obtain right-of-way boundary evidence, to obtain existing utility data, and to control alternate data collection methodologies. Second, existing aerial LiDAR mapping data will be field-verified and used to understand the larger area drainage implications for this roadway corridor. Third, field-collected data will be processed, evaluated, and compiled into a single AutoCAD C3D drawing file or MicroStation ORD file for the design team to work from. A modified Colorado State Plane South Zone coordinate system will be developed to leverage integration of publicly available data sources for other team members.



### ROW DETERMINATION AND PLANS

BHI will hire a title company to research easements of record and will research Mineral County Clerk & Recorder's for Subdivision Plats and Land Survey Plats. Relevant monument record data will be obtained from the Architects, Engineers, & Surveyors (AES) State Board of Registration to aid with survey control. All research documents will be compiled to determine preliminary ROW locations that will be further investigated and supported by field work evidence collection in order to develop an ownership map for CDOT right-of-way clearance procedures.



### PROPERTY LEGAL DESCRIPTIONS

Should additional ROW or temporary easements be required to achieve project design goals, BHI can generate the required property descriptions and exhibits per CDOT's right-of-way manual for individual ownerships and can stake proposed ROW takes for appraisals.



### SUBSURFACE UTILITY ENGINEERING (SUE)

Our teaming partner, CobbFendley, will provide SUE and utility coordination for the project. Based on a field review of the project and initial utility investigations, we have developed a general inventory of utilities on the project, including City water, sanitary, storm sewer, and fiber optic facilities, as well as gas, streetlight, phone, cable, and intermittent primary electric lines. During the data collection phase BHI's SUE partner, CobbFendley, will verify all utility owners and perform a SUE Quality Level B investigation. Existing underground utilities will be electronically verified, marked, and surveyed, and a utility composite will be created and reviewed by CobbFendley's project manager and field supervisor along with all utility record information collected. Following the verification of 'known' utilities, CobbFendley will scan the project limits to search for previously unknown utilities. A utility map, utility contact list, and potential conflict list will be developed and provided to BHI at the completion of SUE Quality Level B services. This map will be reconciled against BHI field survey of visible utility infrastructure / appurtenances.

When vertical conflicts with the proposed design cannot be resolved through design modifications, CobbFendley can excavate SUE Quality Level A test holes to accurately identify and confirm existing utilities. These holes will be completed at the precise point of conflict using nondestructive air-vacuum excavation equipment, owned and operated by CobbFendley. Prior to beginning field locating activities, the field manager will contact CO811 and coordinate with utility owner inspectors as may be required by law or utility owner policy. Once the subject utility is exposed, field technicians will measure and record utility data, including type, size, material(s), configuration, and condition, as well as horizontal and vertical location data at each



test hole. Elevations will be taken within an accuracy of 0.10 feet unless a more precise tolerance is specified. Any potholes required will be restored.

All SUE data can be provided in AutoCAD or MicroStation format. Hardcopy deliverables will be signed and sealed by registered Colorado PEs and PLS's as applicable. CobbFendley is fluent with the Colorado Subsurface Utility Law (SB 18-167) and ASCE C-I 38-22.

 **ENVIRONMENTAL**

Our environmental partner, SME, has specialists devoted to Local Agency projects and can support the City in obtaining environmental clearance for the project. Most of the environmental clearances for the City of Creede Main Street Revitalization project should be relatively straightforward – especially with regard to natural resources inventories / clearances (e.g., TES Species and wetlands / Waters of the US). Other clearance actions (specifically Hazardous Waste and Cultural Resources) will likely prove slightly more challenging given the project corridor's location through an urbanized area with a mining history dating back more than 130 years. However, all of the resources can be cleared through the standard CDOT Form 128 (NEPA Categorical Exclusion) process. The resource areas scoped by CDOT for the City of Creede RFQ for the project are addressed, in order, below.

**HAZARDOUS WASTE** A Materials Management Plan (MMP) (under CDOT 250 specifications) will likely be recommended in the Modified Environmental Site Assessment (MESA) due to the potential to encounter historic mining related materials (e.g., heavy metal concentrations during excavation for the project). Additionally, the project area is likely adjacent to at least one historic and / or current gas station that may require additional investigation and monitoring as well, depending on results of MESA and the depth of excavation proposed in given locations. The potential for lead-based paint and asbestos (ACM) in some structures is likely high, which would require sampling prior to construction should any demolition of structures be proposed. Additionally, if any utility relocations are proposed, subsurface utilities with suspect ACM could be encountered that should be addressed / inspected either during excavation activities or prior to construction. All of these issues will be fully addressed in the MESA and should in turn be addressed in the MMP to be written to CDOT specifications by a qualified Health and Safety Officer (HSO) on behalf of the contractor who is selected by the City to build the project.

**THREATENED, ENDANGERED AND SENSITIVE (TES) SPECIES REPORT (BIOLOGICAL ASSESSMENT / BA)** The project is sited in a mostly disturbed area with minimal value for special status species. No long-term impacts to species

are anticipated. Removal of nesting habitat (trees / shrubs / structures) for birds protected by the Migratory Bird Treaty Act should occur outside the nesting season or after a pre-construction survey confirms no active nesting is occurring. All TES issues will be fully addressed and a complete list of recommendations / mitigation measures to be implemented prior to and / or during construction will be included in the TES Species Report / BA.

**WETLAND DETERMINATION** Willow Creek, a perennial stream that flows in an armored channel through Creede, closely parallels the Main Street corridor for about 600 feet at the north end of the project area. It is unlikely that the proposed improvements will affect the creek. However, should any impacts to WOUS be proposed during construction of the project, verification of a 404 Permit would be required – very likely a Nationwide 404 Permit (NWP) (e.g., NWP 14 – Linear Transportation Projects).

**CULTURAL RESOURCES (ARCHAEOLOGY AND HISTORY)** Based on the age of the corridor, adjacent properties may contain potentially eligible historic resources. An initial analysis of what adjacent properties may be historic resources will be performed to determine the extent of the cultural resources work, including prehistoric (archaeological) and historic resources that could be impacted during construction. SME will work with CDOT and Colorado State Historic Preservation Office (SHPO) and Colorado Office of Archaeology and Historic Preservation (OAHP) to evaluate property eligibility on the National Register of Historic Places (NRHP) and determine those locations that will require field survey and documentation to support NEPA compliance activities, if needed. The project will look to minimize the number of buildings on the project area that would need to be fully inventoried, working with CDOT / SHPO up front to identify areas that will not be affected.

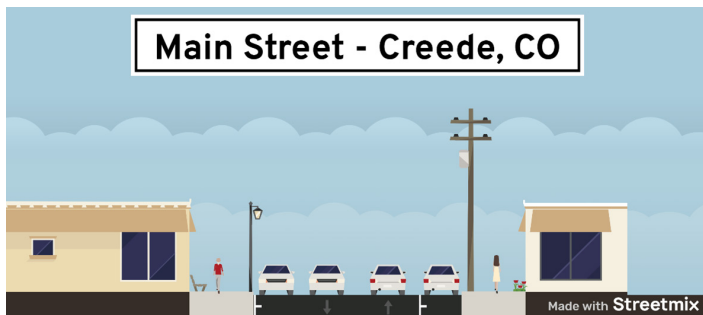
**PALEONTOLOGY** A paleontological resource desktop analysis will be performed that will consist of a fossil locality record search, review of existing geologic maps, and a review of primary literature regarding fossiliferous geologic units within the vicinity and region surrounding the project. A review of existing topographic and geologic maps will be conducted to identify the geologic units mapped within the study area and other geologic units that might reasonably be expected to be impacted during ground disturbing activity. The paleontological sensitivity of those units will be characterized and assessed for potential impacts to scientifically significant paleontological resources from project development. If determined to be needed, a field survey will be conducted to visually inspect the ground surface for exposed fossils and to evaluate geologic exposures for their potential to contain preserved fossil material at the subsurface. A paleontological technical report will be drafted to document the results and to provide management recommendations for the project. The

report will include an analysis of the regulatory environment, a description of geologic units in the project area, museum record search results, survey results, a list of taxa observed, paleontological management recommendations, and a bibliography.

## DESIGN DEVELOPMENT AND PLANS (30 AND 60 PERCENT)

### **CORRIDOR PLANNING AND DESIGN**

While we understand the overall project goal is to replace existing sidewalks with compliant facilities, the enhanced road section will increase the opportunity to successfully integrate the new facilities along with other positive elements of the corridor. Our team, along with partner MIG, has extensive experience helping clients look at the corridor as a whole and develop a complete cross section, as we did together on the City of Pueblo Union Avenue and Main Street Master Plan and Final Design. We use our experience and graphic tools like the example road section generated below to help identify and prioritize roadway elements, including pedestrian facilities, travel and parking lanes, utility corridors, landscape and amenity areas in order to maximize the available right-of-way and improve the traveling experience for all users.



### **DESIGN OF ROADWAY AND PEDESTRIAN FACILITIES**

The BHI team is fully trained and knowledgeable in current federal ADA guidelines for design of pedestrian sidewalks, curb access ramps, driveways, and cross walks within public right-of-way. The Draft FHWA document, Public Right-of-way Accessibility Guidelines (PROWAG), provides additional direction for designers and agencies, relative to implementation of the most current ADA policy design criteria within public roadways. We also have recent relevant experience with communities in design of sidewalk, trails, and curb ramps following CDOT's Roadway Design Guide Chapter 14: Bicycle and Pedestrian Facilities. BHI staff can bring this knowledge of allowable cross slopes of sidewalks, ramp grades, and configuration of curb ramps, tactile warning devices, and positioning of cross walks, assuring the

City that projects will be completed in compliance with all current codes. Our staff of structural engineers can provide design recommendations and details, such as retaining walls and pavement sections, as needed.

### **DRAINAGE ANALYSIS**

The BHI team's experience and resources enable us to efficiently complete drainage plans and designs for roadway corridor projects. Our depth of experience with surface hydrology services and plans includes rainfall and stormwater run-off analyses, storm conveyance design, drainage facility optimization, floodplain revisions, drainage system assessments, flood routing, flood control planning, and storm water quality analyses. We have designed storm sewer systems for both new roadways in developing areas and rehabilitation projects in older, highly urban areas. We are very experienced at coordinating storm sewer design requirements with roadway grading and other utilities and completed design of the Willow Creek Flume project for the City in 2015.

Prior to completing our hydrology and hydraulic engineering analysis and design, we will research, collect, and evaluate existing pertinent drainage reports and studies, if available. We will complete a hydrologic analysis to determine off-site runoff impacting, as well as existing and post project runoff. We will use the Colorado Urban Hydrograph Procedure (CUHP) / SWMM methodology to generate runoff hydrographs for routing calculations. We will delineate basins and their hydrologic parameters based on available LiDAR mapping and site investigation. Field survey data of the existing storm drain network will be applied to ensure proper modeling of the system.

We will then development proposed recommended storm drain improvements based on the above and accurately size the system to convey roadway runoff, including new storm sewer pipes, manholes, inlets, and crossing culverts' locations, sizes, and inverts. We will develop design options for the proposed improvements and review them with the City. Preliminary and Final Drainage Reports will be prepared to document our analysis and serve as the basis for the design development with respect to drainage.

### **UTILITIES DESIGN AND COORDINATION**

Utility conflicts can have dramatic impact on a project's budget and schedule, and early contact with utility owners and close coordination with all the stakeholders in this project will help identify and resolve potential conflicts efficiently. The BHI team can provide a utility conflict assessment that includes possible design solutions and a unit rate cost estimate for the relocation of utilities in conflict based on




these solutions. In addition, we will provide unit cost savings for each utility adjustment or design adjustment solution to avoid conflicts shown. An accurate and comprehensive existing utility map, utility owner contact list, and potential conflict list will be provided at the completion of SUE Level B services as part of the data collection phase. Meetings will be held with the City and all stakeholders to review the data and consider small design changes to eliminate a costly utility relocation. If conflicts are unavoidable, BHI will work with the City to authorize the utility owners to complete relocation plans, or if need be, BHI can add such work to our scope and complete the plans for inclusion in the bid package.



### LANDSCAPE DESIGN AND RESTORATION

We have included MIG on our team to support with restoration and reclamation of project disturbance through the corridor, as well as additional landscape to enhance the Main Street corridor. BHI and MIG have worked together on several roadway corridor projects, including the City of Pueblo's Eastside Streetscape project and the City of Grand Junction's 4th-5th One-Way to Two-Way Feasibility Project, both of which have similar walkability and accessibility components. The team will also provide erosion and sediment control plans to reduce the loss of soil on a construction site, establish new vegetation, and minimize offsite impacts. These goals will be met through the use of Best Management Practices, both structural and non-structural, intended to reduce or eliminate storm water quality impacts specific to this site.

## FINAL DESIGN (90 PERCENT)



### FINAL ROADWAY CONSTRUCTION DRAWINGS


BHI frequently prepares construction drawings for roadway reconstruction and rehabilitation projects, including CDOT LA Projects such as the Cripple Creek TAP Sidewalks project. BHI will develop a plan set with current City and CDOT bid items and standard notes and details to provide a bid package for the selected improvements. Plans will include necessary quantity, bid item information, general notes, survey control, demolition plans, roadway typical sections, roadway plan sheets, utility relocation plans, stormwater management sheets, signing and striping sheets, as well as intersection, driveway, curb ramp, median, retaining wall, and construction details as needed.



### TECHNICAL SPECIFICATIONS

As part of the final design, BHI will provide technical specifications, including any project special provisions, formatted in accordance with the City of Creede or CDOT Standard Specifications for Road and Bridge Construction.

All construction shall be referenced to the City of Creede or CDOT construction specifications or the design drawings. Our staff members regularly produce construction specifications and bid document packages on various projects.



### CONSTRUCTION BUDGET

We will prepare a total estimate of construction costs as part of the preliminary design phase. We will also refine the final Engineer's Estimate to accompany the final stamped plans and specifications. BHI routinely designs and bids projects, and we maintain a construction cost reference database that includes unit prices for bid items from hundreds of projects, including ones in the CDOT Region 5 area. Our experienced engineers will draw upon this database and the knowledge of our Construction Management Group staff, as well as CDOT unit pricing information, as we prepare the project construction cost estimates. This will ensure our estimates are in line with the project costs once the contractor bids are received.

We will then verify our estimate of probable costs is within the budget established for the project or certain portions of the overall project under consideration. As a rule, we incorporate value engineering activities into our designs from the project outset and monitor the construction cost throughout the design process to ensure the project remains within our client's budget. Our engineers are always conscious of project costs, and we strive to design the most efficient infrastructure products through value engineering and innovation.



### STORMWATER MANAGEMENT PLAN

BHI will prepare stormwater management plans (SWMP) for the anticipated construction in accordance with the City of Creede MS4 Program, CDOT, and the Colorado Department of Public Health and Environment – Water Quality Control Division. The goal of our project SWMP will be met through the documentation and use of Best Management Practices (BMPs) intended to reduce or eliminate possible stormwater quality impacts. The individual BMPs appropriate for a particular construction site are dependent on the types of potential pollutant sources present, the nature of the construction activity, and specific site conditions. We will assess each site for the best options that suit the context.



## PRE-ADVERTISEMENT REVIEW AND FINAL BID PACKAGE

### FINAL BID DOCUMENTS

BHI will integrate any final comments, as well as all permit and clearance reporting provisions into a complete pre-advertisement package for review. Any additional comments—including those from the City, CDOT, and other stakeholders—will be incorporated into the complete final bid and construction package. We will prepare documentation for CDOT Utility, Right-of-Way, and Environmental Clearances and other requirements as required. The BHI team has provided numerous municipal clients with assistance navigating CDOT’s processes, gaining the requisite approvals, and implementing improvements meeting both local needs and CDOT’s requirements. With our knowledge of CDOT, this allows us to optimally navigate the review process with CDOT and keep the project on schedule. Success with CDOT is based not only on our expertise and quality work, but

also on our relationships with CDOT staff and our continued commitment to working within their processes to get projects and tasks done right.

### SERVICES TO BE PROVIDED BY THE CITY

It is assumed the City, or City consultants, will be responsible for provide the following items:

- Public Meeting Advertisement / Venue
- Property Acquisition / Negotiation
- Title Work
- Front End Bid Document / General Conditions
- Construction Bid Advertisement
- Full-time Construction Management / Inspection Services

### SCHEDULE

Provided on the following page.

### REFERENCES

Provided with the project descriptions on pages 10-11.

## CLOSING STATEMENT

On behalf of the entire team at BHI, I would like to express our heartfelt gratitude to you for considering our business proposal. It has been an absolute pleasure to have the opportunity to present our comprehensive plan and vision for your project. I, personally, enjoy working and visiting Colorado mountain communities and am excited about the opportunity to work for the City of Creede.

As a team, we are committed to delivering excellence in every aspect of our work, and we firmly believe our proposal encapsulates the finest solutions tailored specifically to your needs. We are invested in designing a project plan that not only meets your requirements but also surpasses your expectations, providing sustainable, innovative, and cost-effective solutions.

We understand the significance of this project and the trust you have placed in us to deliver results that will have a lasting impact. Our team comprises highly skilled professionals with a wealth of experience in the field of civil engineering and streetscape improvements. We are driven by a shared passion for engineering excellence and a commitment to client satisfaction. Rest assured, should you choose to move forward with us, we will dedicate ourselves wholeheartedly to ensuring the successful revitalization of the Main Street heart of the City. Thank you for your consideration.



