



City of Woodland Park

City Council

December 1, 2022 at 7:00 PM

AGENDA

1. **CALL TO ORDER AND ROLL CALL**
2. **PLEDGE OF ALLEGIANCE**
3. **CEREMONIES, PRESENTATIONS AND APPOINTMENTS**
 - A. Presentation from the Keep Woodland Park Beautiful Committee on proposed median improvements.
(Presenter, Staff Liaison to KWPB, Grace Johnson)
4. **ADDITIONS, DELETIONS OR CORRECTIONS TO AGENDA**
5. **CONSENT CALENDAR**
 - A. Approval of the November 17, 2022 Regular City Council Meeting minutes. (A)
(Presenter, Deputy City Manager/City Clerk Suzanne Leclercq)
 - B. Enter into Intergovernmental Agreement between the City of Woodland Park and Colorado Department of Transportation for Hwy 67 improvements. (A)
(Presenter, City Engineer Ben Schmitt)
6. **PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA (1)**
7. **UNFINISHED BUSINESS**
(Public Comment may be heard)
 - A. Telecommunications Master Plan briefing (continued from 9/1 regular meeting)
(Presenters, City Manager Michael Lawson and Ken Price, HR Green)
8. **ORDINANCES ON INITIAL POSTING**
(Public comment may be heard)
9. **PUBLIC HEARINGS**
(Public comment may be heard)
 - A. Approve transfer of a Retail Liquor Store License for Gold Hill Wine and Liquor located at 797 Gold Hill Place, Woodland Park, CO 80863. (QJ)
(Presenter, Deputy City Manager/City Clerk Suzanne Leclercq)
 - B. Approve Ordinance No. 1432, Series 2022, an Ordinance of the City Council for the City of Woodland Park Colorado further extending a Temporary Moratorium on the Submission Acceptance, Processing and Approval of application for Short-Term Rental Licenses. (A)
(Presenter, City Attorney Nina Williams)

- C.** Approve Amended Ordinance No. 1433, Series 2022, an Ordinance Appropriating Sums of Money to Various Funds, in the Amounts and for the Purpose Set Fourth for the City of Woodland Park, Colorado for the 2023 Budget Year for the General Fund. (A)
(Presenter, Finance Director Aaron Vassalotti)
- D.** Approve Ordinance No. 1434, Series 2022, an Ordinance Appropriating Sums of Money to the Various Funds, in the Amounts and for the Purpose set Fourth for the City of Woodland Park, Colorado for the 2023 Budget Year for All Funds Except the General Fund.(A)
(Presenter, Finance Director Aaron Vassalotti)
- E.** Approve Ordinance No. 1435, Series 2022, to amend the 2022 Budget Expenditure Appropriation, (Budget Supplemental Ordinance). (A) (Presenter, Finance Director Aaron Vassalotti)

10. NEW BUSINESS

(Public comment may be heard)

- A.** Approve Resolution No. 896, Series 2022, a Resolution of the City Council for the City of Woodland Park, Colorado, Approving an Intergovernmental agreement with the Colorado Department of Transportation for Project STU M381-024 (25165) SH 67 Lovell Gulch to Valley View. (A)
(Presenter, City Engineer Ben Schmitt)
- B.** Approve Resolution No. 897, Series 2022, a Resolution Levying General Property Taxes for the Year of 2022, to Help Defray the Cost of Government for the City of Woodland Park, Colorado, for the 2023 Budget Year. (A)
(Presenter, Finance Director Aaron Vassalotti)

11. REPORTS

(Public comment not necessary)

- A.** Mayor's Report
- B.** Council Reports
- C.** City Attorney's Report
- D.** City Manager's Report

12. ADJOURNMENT

Key to agenda abbreviations:

(A) Administrative- matters involving day-to-day decisions such as approving contracts, hiring staff and the procurement of goods and services. Administrative actions generally do not require formal actions by the elected body.

(L)Legislative- typically in the policy arena; legislative matters affect large areas and large groups of people, such as enacting dog regulations or amending the City code. Legislative

action generally involves motions, resolutions and ordinances.

(QJ)Quasi-Judicial- apply general rules to a specific interest, such as zoning change affecting a single piece of property, or a special use permit. Quasi-Judicial actions generally involve adjudication, sometimes in writing, but not a resolution or ordinance. Decision for Quasi-Judicial proceedings are made exclusively based upon the testimony presented on the record. Ex-parte communication (communication outside the official hearing) between elected officials and citizens is not permitted on Quasi-Judicial



STAFF REPORT

TO: Mayor LaBarre and City Council

FROM:

DATE: December 1, 2022

SUBJECT: Presentation from the Keep Woodland Park Beautiful Committee on proposed median improvements.
(Presenter, Staff Liaison to KWPB, Grace Johnson)

BACKGROUND:

RECOMMENDATION:

ATTACHMENTS: None



City of Woodland Park

November 17, 2022 at 7:00 PM

MINUTES

1. CALL TO ORDER AND ROLL CALL

Prior to the Regular City Council meeting, the City Council held an Executive Session pursuant to C.R.S. Section 24-6-402(4)(f)(i) for the discussion of a personnel matter, specifically the City Manager's evaluation and contract. The following individuals were present for the Executive Session: Mayor LaBarre, Mayor Pro-tem Case, Councilmember Connors, Councilmember Nakai, Councilmember Neal, Councilmember Ott, Councilmember Zuluaga and City Manager Lawson.

Prior to the City Council meeting, the following motion was made.

Motion: To approve the City Manager's contract for the 2022 - 2023 year. Zuluaga/Ott. Motion carried 7-0.

The time being 7:05 PM, Mayor LaBarre called the City Council meeting to order.

The following Councilmembers were present: Mayor LaBarre, Mayor Pro-tem Case, Councilmember Connors, Councilmember Nakai, Councilmember Neal, Councilmember Ott and Councilmember Zuluaga.

The following staff members were present: City Manager Lawson, Deputy City Manager/City Clerk Leclercq, City Attorney Williams, Finance Director Vassalotti, Planning Director Schminke, Parks and Recreation Director Keating, Deputy City Clerk Minton, Deputy City Manager/Director of Operations Wiley, Chief of Police Deisler and Assistant to the City Manager Johnson.

Mayor LaBarre asked that 8C the initial posting of the STR moratorium be moved to follow the Public Hearing of the STR ordinance. Council agreed.

2. PLEDGE OF ALLEGIANCE

3. CEREMONIES, PRESENTATIONS AND APPOINTMENTS

- A.** Review of openings on various Boards and Committees.
(Presenter, Deputy City Manager/City Clerk Suzanne Leclercq)

City Clerk Leclercq reviewed the current openings for some of the Boards and Committees. Leclercq reported that beginning January 1, there will be openings on the Board of Adjustment, Board of Review and Planning Commission. Leclercq reported that there are currently openings for the Keep Woodland Park Beautiful Committee and that they have been

unable to have a quorum due to the lack of members. Leclercq encouraged the audience to consider applying for some of the openings.

4. ADDITIONS, DELETIONS OR CORRECTIONS TO AGENDA

5. CONSENT CALENDAR

- A.** Approval of the November 3, 2022 Regular City Council Meeting Minutes.
(Presenter, Deputy City Manager/City Clerk)

City Clerk Leclercq shared the November 3, 2022, City Council minutes with the Council sharing that Councilmember Zuluaga requested an amendment to the minutes. Zuluaga shared that on page 10 of the minutes where the statement reads "At this time, Councilmember Zuluaga shared the following amendments he and Councilmember Ott would like to see added to Ordinance No. 1431, Series 2022", that the record should read "several Councilmembers would like to see added to Ordinance No. 1431, Series 2022." Council agreed that this change should be made to the minutes and City Clerk Leclercq reflected that she would do so.

Motion: To approve the November 3, 2022 Regular City Council Meeting Minutes as amended. Case/Connors. Motion carried 7-0.

- B.** Approval of the September 2022 Statement of Expenditures and Authorize the Mayor to sign Warrants in payment thereof.
(Presenter, Finance Director Aaron Vassalotti)

Finance Director Vassalotti reviewed the Statement of Expenditures from September 2022 with the City Council. Vassalotti answered the Council's questions and the following motion was made.

Motion: To approve the September 2022 Statement of expenditures and Authorize the Mayor to sign warrants in payment thereof. Zuluaga/Case. Motion carried 7-0.

- C.** Approval of the October 2022 Statement of Expenditures and Authorize the Mayor to sign Warrants in payment thereof.
(Presenter, Finance Director Aaron Vassalotti)

Finance Director Vassalotti reviewed the October 2022 Statement of Expenditures with the Council. Vassalotti answered the Council's questions and the following motion was made.

Motion: Approval of the October 2022 Statement of Expenditures and Authorize the Mayor to sign Warrants in payment thereof. Zuluaga/Case. Motion carried 7-0.

- D.** Approval of 2023 Roadway Infrastructure Projects Design and Engineering Contract Between Wilson and Co and the City of Woodland Park for \$517,859
(Presenter City Engineer Ben Schmitt)

City Engineer Schmitt reviewed and answered questions regarding the 2023 Roadway Infrastructure contract with the Council.

Motion: To approve the 2023 Roadway Infrastructure Projects Design and Engineering Contract between Wilson and Co. and the City of Woodland Park for \$517,859. Connors/Nakai. Motion carried 7-0.

- E.** Approval of Cemetery Expansion Design between Wilson and Co and City of Woodland Park for \$110,000
(Presenter, City Engineer Ben Schmitt)

City Engineer Schmitt reviewed and answered questions regarding the Cemetery Expansion contract.

Motion: To approve the Cemetery Expansion Design between Wilson and Co. and the City of Woodland Park for the amount of \$110,000. Case/Connors. Motion carried 7-0.

- F. Approval of MMOF Trail and Sidewalk Design between Basis Partners and the City of Woodland Park for \$164,445
(Presenter, City Engineer Ben Schmitt)

City Engineer Schmitt reviewed and answered questions regarding the MMOF Trail contract.

Motion: To approve the MMOF Trail and Sidewalk Design between Basis Partners and the City of Woodland Park for \$164,445. Case/Nakai. Motion carried 7-0.

- G. Approval of a contract for the Audio Visual Improvements to the Ute Pass Cultural Center from Global Technology Group in the amount of \$138,517.32.
(Presenter, Parks and Recreation Director Cindy Keating)

Parks and Recreation Director reviewed the AV improvement contract for the UPPC with the Council.

Motion: To approve the Audio Visual Improvements to the Ute Pass Cultural Center from Global Technology Group in the amount of \$138,517.32. Ott/Neal. Motion carried 7-0.

6. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA (1)

DeAnn Betterman shared with the Council that she felt they should consider a mill levy reduction.

Ken Hartsfield shared the need for people to apply to the open Boards and Commissions.

7. UNFINISHED BUSINESS

(Public Comment may be heard)

8. ORDINANCES ON INITIAL POSTING

(Public comment may be heard)

- A. Approve Ordinance No. 1433, Series 2022 on initial posting, an Ordinance Appropriating Sums of Money to the Various Funds, in the Amounts and for the Purpose set Fourth for the City of Woodland Park, Colorado for the 2023 Budget Year for the General Fund and set the Public Hearing for December 1, 2022. (A)
(Presenter, Finance Director Aaron Vassalotti)

Prior to the introduction of the first ordinance on initial posting, Finance Director Vassalotti shared the sales tax update with the Council for September 2022.

Vassalotti introduced Ordinance No. 1433, Series 2022 on initial posting.

Motion: To approve Ordinance no. 1433, Series 2022 on initial posting, an Ordinance Appropriating Sums of Money to the Various Funds, in the Amounts and for the Purpose set Fourth for the City of Woodland Park, Colorado for the 2023 Budget Year, for the General Fund and set the Public Hearing for December 1, 2022. Case/Connors. Motion carried 7-0.

- B.** Approve Ordinance No. 1434, Series 2022 on initial posting, an Ordinance Appropriating Sums of Money to the Various Funds, in the Amounts and for the Purpose set Fourth for the City of Woodland Park, Colorado for the 2023 Budget Year for All Funds Except the General Fund and set the Public Hearing for December 1, 2022. (A)
(Presenter, Finance Director Aaron Vassalotti)

Finance Director Vassalotti introduced Ordinance No. 1434, series 2022 on initial posting.

Motion: To approve Ordinance No. 1434, Series 2022 on initial posting, an Ordinance Appropriating Sums of Money to the Various Funds, in the Amounts and for the Purpose set Fourth for the City of Woodland Park, Colorado for the 2023 Budget Year for All Funds Except the General Fund and set the Public Hearing for December 1, 2022. Case/Neal. Motion carried 7-0.

- C.** Approve Ordinance No. 1432, Series 2022, on initial posting, an Ordinance of the City Council for the City of Woodland Park, Colorado further extending a Temporary Moratorium on the Submission, Acceptance, Processing and Approval of application for Short-Term Rental Licenses and set the Public Hearing for December 1, 2022. (A)
(Presenter, City Attorney Nina Williams)

This initial posting was moved to after the Public Hearing portion of the agenda.

Mary Sekowski shared that she felt that the STR licenses were being held hostage.

Motion: To Approve Ordinance No. 1432, Series 2022, on initial posting, an Ordinance of the City Council for the City of Woodland Park, Colorado further extending a Temporary Moratorium on the Submission, Acceptance, Processing and Approval of application for Short Term Rental licenses and set the Public Hearing for December 1, 2022. Zuluaga/Neal. Motion carried 7-0.

- D.** Approve Ordinance No. 1435, Series 2022 on initial posting, to amend the 2022 Budget Expenditure Appropriation, (Budget Supplemental Ordinance), and set the Public Hearing for December 1, 2022. (A)
(Presenter, Finance Director Aaron Vassalotti)

Finance Director Vassalotti introduced Ordinance No. 1435, Series 2022 on initial posting. Council member Zuluaga asked Vassalotti how much money the city is saving by paying off this debt early. Vassalotti shared that the City is paying this debt off 12 years early and saving \$795,000.

Motion: To approve Ordinance No. 1435, Series 2022 on initial posting, to amend the 2022 Budget Expenditure Appropriation, (Budget Supplemental Ordinance), and set the Public Hearing for December 1, 2022. Zuluaga/Connors. Motion carried 7-0.

9. PUBLIC HEARINGS

(Public comment may be heard)

- A.** ORDINANCE 1431, Series 2022, an Ordinance Amending Titles 5 and 18 of the Woodland Park Municipal Code, Concerning Business Regulations and Zoning, to License and Regulate Short-term Rentals. (L)
(Presenter, Planning Director, Karen Schminke, AICP)

Planning Director Schminke reviewed her staff report regarding Ordinance No. 1431, Series 2022.

Schminke reviewed the following background with the Council.

Short-term rentals can best be explained as the renting of either a part of a residence or the whole residence for less than 30 consecutive days. The City's current zoning regulations do not explicitly address short-term rentals (or rentals of residential property for any length of time) in any zoning district. Over a year ago, the Planning Commission identified short-term rentals (STR) as an issue that should be reviewed and possibly addressed with a Code change. Since then this topic gained considerable traction and a variety of meeting and community input/engagement activities have taken place. These were followed by several joint work sessions between City Council and Planning Commission where strategies to address the impacts of this use were reviewed and Planning Commission was directed to prepare an ordinance to regulate this use. Ordinance 1431, Series 2022, as recommended by the Planning Commission, is the result of the community engagement activities, joint work sessions, and the Planning Commission's own work session and public hearing process. This proposal was to regulate STRs in most zone districts, but prohibits them in the multi-family zone districts. At their November 3, 2022 meeting, City Council made a number of amendments to the proposed ordinance on first reading. Included in this packet is Ordinance 1431, Series 2022 as amended on first reading November 3, 2022. All activities on this topic have been chronicled on the City's community engagement website What's Up Woodland Park.

Schminke reviewed with Council the detailed history of what has taken place regarding this STR ordinance.

Over a year ago the Planning Commission identified short term rentals (STR) as an issue that should be reviewed and possibly addressed with a Code change. Short term rentals can best be explained as the renting of either a part of a residence or the whole residence for less than 30 consecutive days. The City's current zoning regulations do not explicitly address this type of rental (or any residential rental) in any zoning district. Within Title 3 – Revenue and Finance, lodging tax and its applicability to rentals of less than thirty consecutive days is clearly outlined:

3.38.010 - Lodging tax levied; use of revenues.

A. There is levied a tax of five and seven-tenths per cent on the purchase price paid for the short-term (less than thirty consecutive days) leasing or rental of any hotel room, motel room, apartment, lodging or inn room, motor hotel, guest house, mobile home, trailer court, bed and breakfast, or any other place that furnishes sleeping accommodations under any concession, permit, right of access, license to use or other agreement or otherwise within the city.

B. The revenues from said tax shall be used for the payment of activities associated with economic enhancement and sustainability of the city, to include without limitation capital projects and annual operating and maintenance expenses for beautification and streetscape purposes throughout the city and for advertising, marketing, and promotion of the city.

Business licenses are a means to track who is conducting business within the city limits and, depending upon the type business, ensure the appropriate sales and lodging taxes are being

collected and remitted to the City. Since rental periods of less than thirty consecutive days are subject to the lodging tax, business licenses (as detailed in Title 5) have been required for those who are operating an STR. Over the past year this topic gained considerable traction and a variety of meetings and community input/engagement activities have taken place:

November 2021 – Staff started one-on-one interviews with stakeholders.

May 5th – City Council and Planning Commission joint work session.

June – Online community questionnaire.

July 6th – Two community conversation events at Ute Pass Cultural Center.

July 7th – City Council adopted a 90-day moratorium (Ordinance 1426) on the issuance of business licenses for short term rentals.

July 21st – City Council and Planning Commission joint work session.

August 18th – City Council and Planning Commission joint work session.

The purpose of these various community engagement activities and joint work sessions was to define the issue, develop a thorough understanding of the benefits and impacts of short term rentals, and to build consensus on addressing the use in City Code. At the August 18th joint work session there was discussion regarding a variety of recommendations.

At the direction of City Council, staff prepared a draft ordinance that the Planning Commission reviewed and refined at their September 8th work session. As required by Woodland Park Code section 18.69.010, any amendment to Title 18 of the City Code must first be reviewed by the Planning Commission. Pursuant to Code section 2.40.030, the Planning Commission held a public hearing on September 24th and concluded the hearing on September 29th.

PLANNING COMMISSION PROPOSED ORDINANCE

The attached ordinance is what the Planning Commission has recommended to City Council for consideration. It is a direct result of the community engagement activities, joint work sessions, and a Planning Commission work session and public hearings. It also has incorporated the recommendations and some of the other ideas from the August 18th joint work session. The WHEREAS statements on the first page describe the objectives and the need for the ordinance:

- ☐ protect residential integrity and community character within the City
- ☐ adopt licensing regulations and restrictions on the renting or leasing of real property for occupancy of less than 30 days
- ☐ ensure clarity, increased enforcement, fairness and consistency with the goals of the City, for its residents, businesses and customers
- ☐ the subject regulations concerning short-term rentals are necessary to the health, safety and welfare of the public and to prevent adverse impacts to adjacent properties, neighborhoods and quality long-term rental housing units within the City

The body of the ordinance contains the specific language that would be added into the City Code book. The proposed language includes:

- ☐ definitions necessary to clarify what a short term rental is (Titles 5 & 18);
- ☐ standards for who can obtain a license for a short term rental businesses (5.22.020);
- ☐ establishment of caps on the number of STR units by zoning district (5.22.020 (g)) with the proposed percentages matching the current percentages of licensed STR units;

- ☐ provisions for a waiting list for licenses (5.22.020 (h));
- ☐ provisions for a designated local contact person (5.22.020 (i));
- ☐ no STR license required if renting a portion of your primary residence while you are occupying the residence during the rental period (5.22.020 (n));
- ☐ provisions for renewing or revoking a license as well as penalties (Title 5);
- ☐ STR licenses are non-transferable (5.22.030 (e));
- ☐ the use is clearly identified in the zoning regulations and includes definitions (Title 18);
- ☐ identifies the locations where an STR may be permitted (18.09.090 table of uses) and prohibits STRs in multi-family zones;
- ☐ standards for the use (18.78.050) including prohibited structures, occupancy limits, parking spaces required, and separation of STR units; and
- ☐ transitional provisions in Section 7.

Since the Planning Commission concluded their hearing and made a recommendation to City Council the following has occurred:

October 6th – City Council held a work session for discussion of short-term rental policy and directed staff to prepare an amended ordinance that would prohibit STRs in all residential zones.

October 6th - City Council extended the moratorium on the issuance of business licenses for short term rentals through December 16, 2022 (Ordinance 1430).

October 20th – At first reading of Ordinance 1431, Series 2022, City Council took public comment and voted to Table the item until November 3, 2022.

There are several items that conflict and must be resolved. The amendments are:

Strike subsection 5.22.020(l), as follows; reletter succeeding subsections accordingly: (l) No short-term rental unit within the SR zoning district shall be located within five hundred (500) feet of another short-term rental unit. No short-term rental unit within the UR or PUD zoning district shall be located within two hundred fifty (250) feet of another short-term rental unit. The separation measurement shall be made in a straight line from the nearest property line of the proposed short-term rental unit to the nearest property line of another short-term rental unit.

Strike subsection 18.78.050(b)(8), as follows: 1. No short-term rental unit within the SR zoning district shall be located within five hundred (500) feet of another short-term rental unit. No short-term rental unit within the UR or PUD zoning district shall be located within two hundred fifty (250) feet of another short-term rental unit. The separation measurement shall be made in a straight line from the nearest property line of the proposed short-term rental unit to the nearest property line of another short-term rental unit. Amend Section 7, as follows: Section 7. Current Business Licensees Operating Short-Term Rental Businesses. For the first two months after the effective date of this Ordinance, if the number of Short-Term Rental Business License applications submitted exceed the cap imposed by the Ordinance, the City shall process applications from current and valid business license holders operating a short-term rental business first, before processing other Short-Term Rental Business License applications. Provided a current and valid business license holder operating a short-term rental business applies for a Short-Term Rental Business license application within 2 months of the effective date of this Ordinance, the distance restrictions within Section 5.22.020(l) and

18.78.050(b)(8) shall not apply to such new Short-Term Rental Business License application and subsequent renewals for the same short-term rental unit. Provided a current and valid business license holder operating a short-term rental business in the MFS or MFU zoning district applies for a Short-Term Rental Business license application within 2 months of the effective date of this Ordinance, the prohibition of Short-Term Rental Businesses in the MFS or MFU zoning districts shall not apply to such new Short-Term Rental Business License applications and subsequent renewals for the same short-term rental unit and by the same license holder.

Amend 5.22.020(k), as follows: (k) The following units, structures or uses shall be prohibited from operating short-term rental businesses or from receiving Short-Term Rental Business Licenses: accessory dwelling units (ADUs), rental apartment units, apartment buildings, dormitories, bed and breakfast establishments, campgrounds, RV parks, hotels, motels, mobile homes, and recreational vehicles (RVs) which include all vehicles that bear a vehicle identification number (VIN), cabins and other structures without installed water, power or sewer facilities, tents, teepees, campers and other temporary structures.

Amend 18.78.050(b)(2), as follows: Short-term rental units are not permitted in accessory dwelling units (ADUs), bed and breakfast establishments, dormitories, campgrounds, RV parks, hotels, motels, mobile homes, and recreational vehicles (RVs) which include all vehicles that bear a vehicle identification number (VIN), cabins and other structures without installed water, power or sewer facilities, tents, teepees, campers and other temporary structures at any time in any zoning district Amend Subsection 5.22.030(c)(4) as follows: (4) Within the last twelve (12) months there has been no more than one two or more violation(s) of the provisions of this Chapter, this Title, Title 18, this Code, or of any law, or regulation pertaining to the requirements of the application, or at the short-term rental unit property, or of any of the terms pertaining to the Short-Term Rental Business License over the past year.

Amend Subsection 5.22.030(c)(5) as follows: (5) Within the last twelve (12) months, there have been no more than one two or more violation(s) of any of the Short-Term Rental Business License or application requirements or there have been no more than one two or more violation(s) of the Good Neighbor Guidelines listed on the Short-Term Rental Business License or application materials created by the City Manager and their designee(s) and updated from time to time.

1. All short-term rental units shall comply with Chapter 5.22 of the Woodland Park Municipal Code, which establishes conditions under which a property owner may apply for a Short-Term Rental Business License, except for the exemptions set forth in section 5.22.020(n). Amend Section 18.09.090- Table of Uses, as follows:

Table of Permitted Uses

Add #4 Short term rental units in accordance with Chapter 5.22 and Section 1878.050 adding SR, UR and AG to have PC (permitted conditionally)

Amend Section 5.22.020(h), as follows: (h) In the event the maximum number of licensed short-term rental units for a zoning district has been met, no new applications for short-term rental units will be accepted for that zoning district. A City of Woodland Park Short-Term Rental Business License Application Waiting List for short-term rental units in each of the applicable zoning districts shall be annually prepared and maintained by the City Clerk. In each such waiting list, applications for short-term rental units located at an owner's primary

residence, which do not fall under the exemptions set forth in subsection (n), shall be given priority over short-term rental units which are not the owner and applicant's primary residence. New Short-Term Rental Business Licenses, once available, will be processed and issued based on the ability of the applicant to comply with all applicable conditions and requirements in this Chapter 5.22 and within Title 18. To assure that owner-occupied, STR's continue to pay applicable taxes and, To clarify that owner-occupied ADU's may be STR's, notwithstanding the general prohibition of STR's in ADU's on non-owner occupied property.

Allow all existing licensed non-owner occupied STR businesses to continue to operate until they sell change ownership, signatory and license is not transferable; or if they choose not to renew, or have their license revoked. Include the 31 applicants waiting. (This will remove the need for a cap or waitlist, reducing staff time and the caps).

Any new non-owner occupied STR's allowed in commercial CBD, CC, NC, and AG zones, with no caps or distance restrictions. Non-owner occupied STR's are not allowed in residential zones.

Allow owner occupied STR's in any residential, commercial, or AG districts with no caps or distance restrictions.

Further amend the Planning Commission's version that has the L.4 language added with PC under SR,UR, NC, CC,SC, CBD and PUD to make SR, UR, PUD be fully permitted use. No conditions attached and not restrict owner occupancy.

To make SR, UR and PUD be fully permitted use. No conditions attached and not restrict owner occupancy.

Following Schminke's staff report, the following recommendation was made: to resolve all conflicting provisions and language prior to passing Ordinance No. 1431, Series 2022.

Immediately following Schminke's report, Councilmember Zuluaga stated that he would like to set a motion. Zuluaga shared that a green lined proposed version was received from the City Attorney last night and that the City Attorney stated she had the approval of four Councilmembers to draft. Zuluaga asked who the four Councilmembers were that asked City Attorney Williams to draft the amended version. Williams shared that they were Neal, Case, LaBarre and Ott. Councilmember Ott said that he was not one of the Councilmembers that gave this direction to Williams. Councilmember Neal apologized, stating that he passed on what he thought was a consensus from the four of them to the City Attorney and apologized for what he felt was a communication error.

At this time, Councilmember Zuluaga continued with his motion of reading the following into the record.

AS AMENDED ON FIRST READING (11/3): RED-LINED
Green indicates proposed 11/17 amendments by Mayor and 3
Yellow highlights indicate amendment by Zuluaga and others
Blue highlights indicate removal of said part

**CITY OF WOODLAND PARK, COLORADO
ORDINANCE NO. 1431, SERIES 2022**

**AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF WOODLAND PARK,
COLORADO AMENDING TITLES 5 AND 18 OF THE WOODLAND PARK MUNICIPAL
CODE, CONCERNING BUSINESS REGULATIONS AND ZONING, TO LICENSE AND
REGULATE SHORT-TERM RENTALS**

WHEREAS, the City of Woodland Park, Colorado (the “City”) has been duly organized and is validly existing as a home rule city under Article XX, Section 6 of the Colorado Constitution and the City Charter; and

WHEREAS, pursuant to C.R.S. § 31-15-401, the City by and through its City Council (“Council”), possesses the authority to adopt laws and ordinances within its police power in furtherance of the public health, safety and welfare; and

WHEREAS, pursuant to C.R.S. § 31-23-301 the City also possesses the authority to adopt and enforce zoning regulations; and

WHEREAS, pursuant to C.R.S. § 31-15-501, the City also possesses the authority to regulate the operation and licensing of businesses generally within its jurisdiction; and

WHEREAS, pursuant to such authority, the City has previously adopted certain regulations within Title 5, concerning business licenses and regulations, and Title 18, concerning the zoning, of the Woodland Park Municipal Code (“Code”); and

WHEREAS, in order to protect residential integrity and community character within the City, the Council finds and determines it is necessary to amend certain provisions of Title 5 and Title 18 to adopt licensing regulations and restrictions on the renting or leasing of real property for occupancy of less than 30 days; and

WHEREAS, the Council finds such regulations will also ensure clarity, increased enforcement, fairness and consistency with the goals of the City, for its residents, businesses and customers; and

WHEREAS, the Council also finds and determines that the establishment of a licensing program will accomplish these goals, and that the subject regulations concerning short-term rentals are necessary to the health, safety and welfare of the public and to prevent adverse impacts to adjacent properties, neighborhoods and quality long-term rental housing units within the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY
OF WOODLAND PARK, COLORADO as follows:**

Section 1. The foregoing recitals are incorporated herein as conclusions, facts, determinations and findings by the City Council.

Section 2. A new Chapter 5.22, concerning Short-Term Rentals, is hereby added to Title 5, Business Regulations, of the Woodland Park Municipal Code to read as follows:

CHAPTER 5.22 – SHORT-TERM RENTALS

5.22.010 - Definitions.

For the purpose of this Chapter the following words and terms have the following meanings, unless the context clearly indicates otherwise. Definitions included in Titles 5 and 18 of this Code shall apply to this Chapter unless they are otherwise expressly defined herein.

Applicant means the natural person owning the property, or the natural person controlling the corporate ownership of the property, or the natural person who is the trustee of the trust owning the property, which property is used as a short-term rental business, as evidenced on the recorded deed for the property.

Primary residence means a residence which is the usual place of return for housing and where a person lives and spends a majority of the time during the year as established by two (2) or more of the following current and valid documents: (1) driver's license or Colorado state identification card; (2) voter registration; (3) motor vehicle registration; (4) document(s) designated a primary residence for income tax purposes. A person may have only one (1) primary residence for purposes of this Chapter.

Short-term rental business means the occupation of leasing or renting one (1) or more short-term rental units.

Short-term rental unit means a dwelling unit, or a portion thereof, that is rented or utilized for furnishing lodging accommodation and occupancy for any period less than thirty (30) consecutive days.

Lodging tax means the tax levied pursuant to Chapter 3.38.

5.22.020 - Licensing; limitations; requirements.

- (a) It shall be unlawful for any person or entity to engage in the short-term rental business without first applying for and procuring a Short-Term Rental Business License ("License") from the City Clerk with respect to each short-term rental unit. The initial license fee, renewal license fee and penalty for operating without a license shall be established by resolution of City Council, as may be amended from time to time, and payable annually in advance.
- (b) Short-Term Rental Business License may only be issued to owners of properties, as evidenced on the recorded deed for the property, who are also one of the following:
 - (1) A natural person;
 - (2) A trust, if the trustee of the trust is a natural person; or
 - (3) A business entity legally registered with the Colorado Secretary of State to conduct business in the State of Colorado.
- (c) Upon approval of a Short-Term Rental Business License pursuant to this Chapter, the City Clerk shall issue a Short-Term Rental Business License number specific to the subject property and the applicant/licensee.
- (d) Short-term rental businesses shall include their Short-Term Rental Business License number in the title of the listing for all public advertising, including but not limited to webhosting services.
- (e) Applications for a Short-Term Rental Business License shall be submitted on a form provided by the City, and the City shall accept no incomplete applications. Applications shall include all information required on the application form and related materials.
- (f) The name of the Short-Term Rental Business License applicant must match either the name of the owner on the deed for the property, the trustee of the trust owning the property, or the name of the person controlling the corporate ownership of the property. The applicant shall submit to the City

a copy of the recorded deed, showing the recording data with the Teller County Clerk and Recorder.

- (g) ~~Established Cap: The maximum number of short-term rental units within the SR, UR, and PUD zoning districts shall not exceed the established cap, or applicable percentage, of the total number of dwelling units within in such zoning districts. The established cap in those districts shall be as follows: SR—4%; UR—8%; PUD—4%. The City of Woodland Park Short-Term Rental Unit Inventory is a running tally of the number of licensed short-term rental units, which will be kept in the City Clerk's office, and open and available for public inspection during business hours. This number shall be based on the survey of all existing dwelling units located within each of the SR, UR, and PUD zoning districts completed in the most recent calendar year, with the addition of new dwelling unit (with a certificate of occupancy) totals each year, added in December. No caps or maximum number of Short-Term Rental Business Licenses shall be applicable within the NC, CC, SC and CBD zoning districts. Short-term rental units are prohibited within the remaining MFS, MFU, MHP, AG, P/SPL and HSCLI zoning districts.~~
- (h) ~~In the event the maximum number of licensed short-term rental units for a zoning district has been met, no new applications for short-term rental units will be accepted for that zoning district. A City of Woodland Park Short-Term Rental Business License Application Waiting List for short-term rental units in each of the applicable zoning districts shall be annually prepared and maintained by the City Clerk or the Clerk's designee. In each such waiting list, applications for short-term rental units located at an owner's primary residence, which do not fall under the exemptions set forth in subsection (n), shall be given priority over short-term rental units which are not the owner and applicant's primary residence. New Short-Term Rental Business Licenses, once available, will be processed and issued based on the ability of the applicant to comply with all applicable conditions and requirements in this Chapter 5.22 and within Title 18.~~
- (i) Short-term rental businesses must have a designated local contact person for each short-term rental unit who shall be responsible for ensuring compliance with provisions of this Code including, but not limited to, removal of snow and ice, trash and refuse removal, and other property maintenance requirements and Good Neighbor Guidelines established by the City Manager and/or their designee(s) and updated from time to time. During periods of applicable occupancy the local contact person must be available twenty-four (24) hours per day, seven (7) days per week for the purpose of: (1) responding within sixty (60) minutes to property code violations and/or complaints regarding the condition, operation, or conduct of occupants of the short-term rental unit and (2) taking remedial action to resolve such violations and/or complaints.
- (j) Short-term rental businesses shall comply with all requirements and guidelines, as listed on the Short-Term Rental Business License and the application materials at all times.
- (k) The following units, structures or uses shall be prohibited from operating short-term rental businesses or from receiving Short-Term Rental Business Licenses: ~~accessory dwelling units (ADUs), which are not the license holder's primary residence, as that term is defined in section 5.22.010,~~ rental apartment units, apartment buildings, dormitories, bed and breakfast establishments, campgrounds, RV parks, hotels, motels, mobile homes, and recreational vehicles (RVs) which include all vehicles that bear a vehicle identification number (VIN), cabins and other structures without installed water, power or sewer facilities, tents, teepees, campers and other temporary structures.
- ~~(l) No short-term rental unit within the SR zoning district shall be located within five hundred (500) feet of another short-term rental unit. No short-term rental unit within the UR or PUD zoning district shall be located within two hundred fifty (250) feet of another short-term rental unit. The separation~~

~~measurement shall be made in a straight line from the nearest property line of the proposed short-term rental unit to the nearest property line of another short-term rental unit.~~

(m) Each short-term rental unit shall provide, at the time of application and renewal, a delineated off-street or off-right-of-way parking plan for guests' cars, which provides for parking for all users of the rental space including owners.

~~(n) A person renting or utilizing only a portion of a dwelling unit which is their primary residence, as such term is defined in Section 5.22.010, for furnishing lodging accommodations for periods of less than thirty (30) consecutive days, and where the person owns and occupies the dwelling unit during the same periods as such rental or utilization of the dwelling unit, shall not be subject to the provisions of this Chapter.—~~

5.22.030 - Application, issuance and renewals.

- (a) Any person desiring a license to engage in and operate a short-term rental business shall apply to the City ~~Clerk~~, on application forms provided by the City Clerk or their designee(s). New Short-Term Rental Business License applications must be submitted at least thirty (30) days prior to the date of the intended use and no advertising of the property as a short-term rental unit prior to issuance of a Short-Term Rental Business License is permitted. Short-Term Rental Business Licenses shall be issued and valid for one calendar year, from January 1 through December 31, and shall expire within the calendar year for which it was issued. New Short-Term Rental Business License application fees shall not be pro-rated or reduced.
- (b) The City ~~Clerk~~ may issue a new Short-Term Rental Business License upon all the following conditions:
- (1) The applicant has submitted a complete application form and provided all required information regarding both the short-term rental unit and business.
 - (2) The applicant has paid the appropriate fee(s) established by the City Council, and has paid all taxes and fees owed to the City, including those related to other properties and/or businesses and purposes within the City.
 - (3) All applicable requirements in Section 5.22.020 and Section 18.78.050 are met, and all applicable application documentation has been provided.
 - (4) There are no current or pending violations of the provisions of this Chapter, this Title, Title 18, this Code, or of any law, or regulation pertaining to the requirements of the application, or at the short-term rental unit property.
- (c) The City ~~Clerk~~ shall require the annual renewal of a Short-Term Rental Business License upon all the following conditions:
- (1) The applicant has submitted a complete renewal application form and provided all required information regarding both the short-term rental business and the unit.
 - (2) The applicant has paid the appropriate renewal fee(s) established by the City Council, and all applicable taxes throughout the previous year, including sales and lodging tax, and has paid all taxes and fees owed to the City, including those related to other properties and purposes within the City.

- (3) There are no outstanding health and safety violations on the property that are related to the short-term rental unit, or any other application requirements set by the City, or any violations of Title 15 of this Code as it relates to habitability.
- (4) Within the last ~~twelve~~ **twenty four** (~~12~~ **24**) months there has been no more than ~~no more than one two or more~~ violation(s) of the provisions of this Chapter, this Title, Title 18, this Code, or of any law, or regulation pertaining to the requirements of the application, or at the short-term rental unit property, or of any of the terms pertaining to the Short-Term Rental Business License over the past year.
- (5) Within the last ~~twelve~~ **twenty four** (~~12~~ **24**) months, there have been no more than ~~no more than one two or more~~ violation(s) of any of the Short-Term Rental Business License or application requirements or there have been no more than ~~no more than one two or more~~ violation(s) of the Good Neighbor Guidelines listed on the Short-Term Rental Business License or application materials created by the City Manager and their designee(s) and updated from time to time.
- (6) All applicable requirements in Section 5.22.020 are met.
- (d) It is the duty of each short-term rental business licensee to ensure that all of the information provided in a Short-Term Rental Business License application is kept up to date at all times, and it shall be unlawful for a short-term rental business licensee to fail to provide updated information to the City within thirty (30) days after the date upon which any information provided is no longer accurate.
- (e) No Short-Term Rental Business License issued under this Chapter shall be transferable and no license is valid as to any person or entity other than the person or entity named thereon and only for the real property identified on the license.

5.22.040 - Revocation and suspension.

Any Short-Term Rental Business License issued pursuant to this Chapter may be suspended or revoked by the City Council, after conducting a public hearing, upon ten (10) days' written notice via United States Postal Service to the short-term rental business licensee, stating the contemplated action and, in general, the grounds therefor, and after a reasonable opportunity for the licensee to be heard, for any of the following reasons:

- 1. Failure to pay the lodging tax pursuant to this Chapter 3.38 of this Code, or any other tax, such as sales tax, or the annual license fee established by the City Council.
- (b) False statement of material fact contained in the application;
- (c) Failure to file any report or provide or furnish any other information that may be required by the provisions relating to this Chapter;
- (d) If any fact or condition exists which, if it had existed or had been known to exist at the time of the application for such Short-Term Rental Business License, would have warranted the refusal of the issuance of such Short-Term Rental Business License; or
- (e) Violation of any provisions of this Chapter, or of any law or regulation pertaining to the requirements of the application, or at the property, or of any of the terms pertaining to the Short-Term Rental Business License, including any of the requirements and Good Neighbor Guidelines listed on the Short-Term Rental Business License or application

materials created by the City Manager and their designee(s) and updated from time to time.

5.22.050 - Penalties.

In addition to any other remedies available at law or equity, engaging in a short-term rental business or renting short-term rental unit within the City without a Short-Term Rental Business License shall subject the property owner to a fine in an amount to be established by resolution of the City Council, as may be amended from time to time, and with a graduated financial penalty with each subsequent violation, and as provided in Chapter 1.04 this Code, or a denial of a license altogether.

ction 3. A new section 18.06.480, regarding the definition of Short-term rental business, is hereby added to read as follows:

80 – Short-term rental business.

“Short-term rental business” means the occupation of leasing or renting one (1) or more short-term rental units.

ction 4. A new section 18.06.481, regarding the definition of Short-term rental unit, is hereby added to read as follows:

81 – Short-term rental unit.

“Short-term rental unit” means a dwelling unit, or a portion thereof, that is rented or used for furnishing lodging accommodation and occupancy for any period less than thirty (30) consecutive days.

ction 5. Section 18.09.090 of the Woodland Park Municipal Code, concerning the Table of permitted uses for business, industrial and residential districts is hereby amended to read as follows:

90 - Table of uses.

Table of Permitted Uses													
USE KEY: P = Permitted Use, C = Conditional Use, PC = Permitted Conditionally													
Permitted Uses	S R	U R	MF S	MF U	MH P	A G	P/SP L	N C	C C	S C	CB D	HSCL I	PU D
...													
L. Lodgings.	-	-	-	-	-	-	-	-	-	-	-	-	-
...	-	-	-	-	-	-	-	-	-	-	-	-	-
4. Short-term rental units in accordance	PC	PC	-	-	-	PC	-	PC	PC	PC	PC	-	PC

7. ~~The number of short-term rental units shall not exceed the established cap, or applicable percentage, of the total number of dwelling units within in such zoning districts as established in Chapter 5.22.~~
8. ~~No short-term rental unit within the SR zoning district shall be located within five hundred (500) feet of another short-term rental unit. No short-term rental unit within the UR or PUD zoning district shall be located within two hundred fifty (250) feet of another short-term rental unit. The separation measurement shall be made in a straight line from the nearest property line of the proposed short-term rental unit to the nearest property line of another short-term rental unit.~~

Section 7. *Current Business Licensees Operating Short-Term Rental Businesses.*

Current Business Licensees Operating Short-Term Rental Businesses would be considered legacy licenses and require renewal during the two months after the effective date of this Ordinance. Legacy STR license applications will be issued in the form of a non-conforming business license. The license does not run with the property but is issued to the specific owner of the property. The license shall expire upon sale, change of signatory, or transfer of the property or loss of license. The license shall not be transferred or assigned to another individual, person, entity, or address but may be managed by a third party on behalf of the owner. The licensees must abide by all the terms in this ordinance.

~~For the first two months after the effective date of this Ordinance, if the number of Short-Term Rental Business License applications submitted exceed the cap imposed by the Ordinance, the City shall process applications from current and valid business license holders operating a short-term rental business first, before processing other Short-Term Rental Business License applications. Provided a current and valid business license holder operating a short-term rental business applies for a Short-Term Rental Business license application within 2 months of the effective date of this Ordinance, the distance restrictions within Section 5.22.020(1) and 18.78.050(b)(8) shall not apply to such new Short-Term Rental Business License application and subsequent renewals for the same short-term rental unit.~~ **Provided a current and valid business license holder operating a short-term rental business in the MFS or MFU zoning district applies for a Short-Term Rental Business license application within 2 months of the effective date of this Ordinance, the prohibition of Short-Term Rental Businesses in the MFS or MFU certain zoning districts shall not apply to such new Short-Term Rental Business License applications and subsequent renewals for the same short-term rental unit and by the same license holder, subject to 5.22.020(f).**

Provided a current and valid business license holder operating a short-term rental business in the MFS or MFU zoning district applies for a Short-Term Rental Business license within 2 months of the effective date of this Ordinance, the prohibition of Short-Term Rental Businesses in the MFS or MFU zoning districts shall not apply to such new Short-Term Rental Business License applications and subsequent renewals for the same short-term rental unit and by the same license holder. Furthermore, owners of property purchased in 2022, prior to November 17, 2022, in the MFS or MFU zoning districts shall be entitled to apply for a Short-Term Rental Business license, provide that said application is submitted within 2 months of the effective date of this Ordinance, and subsequent renewals shall be permitted for the same short-term rental unit by the same license holder.

Section 8. *2022 Application and Fees.* Notwithstanding the requirements of new Code section 5.22.030(a), Short-Term Rental Business License granted, and application fees paid, within the last ~~three~~ two months of the year 2022 shall be effective until and through December 31, 2023.

Section 9. *Future Review of STR regulations.* Within twelve to eighteen months from the effective date of this Ordinance, the Planning Commission shall revisit the City's short-term rental regulations. During that timeframe, the City shall direct an update to its most recent housing needs assessment, and shall have a short-term rental economic impact study conducted. Additionally, the City Police and Code Enforcement departments shall capture twelve months of data regarding calls for service or complaints of crime or nuisance at short-term rental unit properties. Once all data is collected and both studies have been completed, the Planning Commission will review and analyze same to make recommendations to City Council regarding whether amendments to the City's short-term rental regulations are required.

Section 10. *Severability.* The provisions of this ordinance are severable and the invalidity of any section, phrase, clause, or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

Section 11. *Effective Date.* This Ordinance shall be in full force and effect from and after its publication as required.

PASSED BY CITY COUNCIL ON SECOND AND FINAL READING FOLLOWING PUBLIC HEARING THIS ____ DAY OF _____, 2022.

City of Woodland Park

Hilary LaBarre, Mayor

ATTEST:

City Clerk, Suzanne Leclercq

Following Councilmember Zuluaga's motion, Councilmember Connors seconded the motion.

Mayor LaBarre asked for Council discussion.

Mayor Pro-tem Case shared that she felt Section 9 was wise and felt that they should gather some data. Case stated that what is being presented will cause great harm to people that have invested a lot of dollars and that it doesn't make sense. Case again shared that she would like to see the data gathered so that the Council can make good decisions.

Mayor LaBarre shared that if ownership changes they are no longer STR's and that this would ban them if put into place.

Councilmember Zuluaga shared that this is not banning STR's. Zuluaga stated that if you have one you are free to continue. When an STR owner sells their property, it would become part of the residential pool - no one is being banned and that he felt this was a great compromise that would then in the future direct STR's to the commercial zones.

Councilmember Neal shared that he felt this was a "clever" way of wording this motion and they would end up only in the commercial areas.

Following Council discussion, Councilmember Ott shared his proposal that he had sent to the Council and Staff earlier in the week.

Comparison Criteria	Legacy License	Wild West (Unrestricted use in all zones)	Caps
Option criteria for Ordinances	Current STRs to include 31 applications operate in perpetuity until ownership changes, signature authority changes for trusts, the license is revoked, the licensee does not use the property in accordance with licensing i.e. they have a license but are not using the property as an STR for more than six months out of the year	Unrestricted use for current STRs, 31 applicants, any future applications for all requests (non-owner occupied and owner occupied in any zone)	Different percentage caps in all zones, non-owner occupied and owner occupied allowed
Benefits	* Current owners and applicants can continue to operate, and none are financially burdened due to regulation * For residents against, non-owner occupied STRs will eventually be gone. * For residents against STRs, investors will not be able to continue to buy multiple properties in residential areas * For housing making more houses available	* For both owner and non-owner occupied, no restriction on property use for STR purpose * No current owners or applicants will be financially harmed * Property maintenance companies will continue to have opportunities with STR business	* No current owners or applicants will be financially harmed * For those financial invested, STR's will be a conditionally permitted use (they must have a license to operate) * For residents, they will be limited reducing the overall number

	for long term rental of sale to folks that want to be here has permanent residents, until more housing is built (though not guaranteed they won't be bought for STR use unless otherwise retriected due to PUD or HOA) * Property maintenance companies will continue to have opportunities with STR business * The City of Woodland Park continues to collect property tax * Owner occupied have no restriction	* All applications will be processed and allowed to operate * The City of Woodland Park collects more property tax * Allows folks to earn income with thier property with less retriCTION on their rights	* Property maintenance companies will continue to have opportunities with STR business * The City of Woodland Park continues to collect property tax * Owner occupied have no restriction
Disadvantage	* For second vacation home owners, no new non-owner occupied stops folks who live somewhere else from profiting on their vacation home when they are not using it * For investors, they will not be able to continue to buy multiple properties in residential areas * For current non-owner occupied, if they lose thier license, they will not be able to get another *	* Housing will be limited in some quantity for permanant residential use for owners and long-term rental unit! the market is saturated and STRs stabilize to what the market will support * For residents who do not want STR's in their residential neighborhoods, they will have tolerate them, or	* Some property owners get to use thier property right for STR use, but others are DENIED the same right to a conditionally permitted property use, which also affects those who retire and want to live in thier house part time and earn income in the meantime * For the 31

	Business owners are burned for legislative change to meet their satisfaction * For some commercial business such as: daycares, mechanics, tax services, and any other business that operates due to strictly permanent resident use will have less business from STRs * For residents, they will have to tolerate STRs until ownership changes, signature authority changes for trusts, they choose not to retain a license, the property is not used as an STR (licensed STRs cannot hold a license without using the property as an STR) * For folks who decide to use thier property as a second home / vacation property, they will not be able to STR thier property unless they maintain residence there and live there at least 183 days	activate an HOA, the HOA will have to create or adjust bylaws to disallow the use * The residents are burdened to create or change HOA bylaws, work to change legislation through citizen action, or call the police for a problematic STR * For some commercial business such as: daycares, mechanics, tax services, and any other business that operates due to strictly permanent resident use will have less business from STRs	applicants, will not be issued licenses until a current non-owner occupied dwelling goes unlicensed * For the residents who do not want STR's in residential areas, they will accept an STR can and will be next to their residence * Business owners are burned for legislative change to meet their satisfaction * The residents are burdened to create or change HOA bylaws, work to change legislation through citizen action, or call the police for a problematic STR * For some commercial business such as: daycares, mechanics, tax services, and any other business that operates due to strictly permanent resident use will
--	---	--	--

			have less business from STRs
Final Thought	This option removes financial harm to current STR operators while preserving current residential zoning in the long term. Also gives the STR owners time for working to change legislation if they do not agree and the burden is on the business owner to do this, not the resident who lived there potentially before the city issued licenses, and a permitted conditional use is potentially allowed	With this option, in a one to two year timeframe, there will be minimal change if any from the first option. In that one to two years, an economic impact survey can be completed along with the housing study, and have police begin documenting whether the call was to an STR or not to get data points allowing	The caps were based on current amount of STRs in residential neighbor hoods, not based on what may or may not be best for the community. The caps also create an unfair situation where some property use permitted some, yet others are denied due to a cap based on current STR licenses. This goes against the

	due to new legislation. Allowing all 31 applicants to also procure a license will generate more STRs than cap version allows. This option also restricts property use with zoning. STRs will be defined in the code and added to the use table whether the council allows the use or does not allow the use, but it will be defined in the code for either side to fight another day. Disturbance complaints are a police issue, and the police should deal with it whether or not it is an STR. Parking, and other like code issues are code enforcement, and licensing cost must reflect necessary resources to enforce code. This applies to other options as well.	real comparison between residents and STR tenants for both serious and nuisance offenses. We could then review this data in one to two years and assess what should be done at that point with taking any rash action now. Residents can also initiate the process to make change which will require a large number of signatures. If the get that done, I support what they are asking for because that will make it obvious what the city residents want to do not want for our community. It seems this may be the most reasonable option if we want to entertain changing the allowed use from the intended one single family for living quarter use to current demand use from everyone from investors to owners wanting a second vacation home they can visit anytime, and earn income in	arguements from business owners that STR use on their property is thier right, and allow the market to decide what the tolerance is for the number of STRs in the community at large. It is okay for some to execute property rights for STR use but not others. For the residents, they have to tolerate the STR next to them in perpituity, and if those residents have to do that, why limit? If enough residents get tired of STRs, they will work to change the legislation. I am not for caps. However, as previously stated, STRs will be defined in the code and added to the use table whether the council allows the use or does not allow the use, but it will be defined in the code for either side to fight another day.
--	---	--	---

the unoccupied times. STRs will be defined in the code and added to the use table whether the council allows the use or does not allow the use, but it will be defined in the code for either side to fight another day. **For me to vote this option as my number one option, I want an economic impact study agreed to happen ASAP, a planned review for the both the impact and housing study (already voted to happen), and the police chief to ensure that when officers capture whether or not the property is an STR or not an STR for all calls with a synopsis of how many calls were either a crime or a nuisance in both cases with a year to captured data. Once all data is collected, the planning commission will review for recommendations on whether change is required or not, and council can**

		approve or deny restrictions after that evaluation. I believe these conditions are reasonable and required.	
MY VOTE	YES	YES	NO

MY ORDER OF PRESIDENCE	2, 1 if conditions are not agreed in option 2	1 if condition are agreed, 2 if not	will vote no
------------------------------	--	--	---------------------

Following Councilmember Ott's presentation, the time being 9:04 PM, Mayor LaBarre called for a short comfort recess.

At 9:12 PM, Mayor LaBarre called the meeting back to order.

At this time, Mayor LaBarre opened up the Public Comment portion of the Public Hearing.

The following individuals spoke:

Jeremy Lyons - shared that the City code needed to be updated

Mary Sekowski - shared that she liked Councilmember Ott's proposal and asked the Council to do their due diligence as proposed by Councilmember Ott.

Lydia McLaren - shared that she represents two investors and would like to see our ordinance modeled after Frisco and Summit County.

Shauna Smith - shared to allow STR's to thrive in Woodland Park

Nathan Manor - shared that the City should not take away their rights to have STR's

Matt McCracken - STR's are important to Woodland Park

Mike Nakai - felt that there were some people not attending tonight's meeting because of the city website being down, and the zoom link not available. He felt that the Public Hearing should be tabled.

Arnie Sparrins - shared that he felt the process needed to be reset. Do a clean ordinance, take public sentiment better into consideration. He shared that he let neighbors guidelines necessary and that legacy licenses are ok.

Jerry Penland - don't ban STR's outright, just have them in commercial zones only.

Susie Bradley - liked the idea of collecting data first and shared that most STR owners want to be good neighbors.

Steve Starr - don't treat STR guests as a sub-class of people.

Craig Penley - like the proposal from Councilmember Ott to collect data.

Joe Fury - please table the Public Hearing. Do not allow STR's in residential zones. Allow legacy licenses and felt that owner occupied OK.

Mayor LaBarre closed the Public Comment portion of the Public Hearing and continued Council discussion.

Mayor Pro-tem Case shared that they should build upon the presentation that Councilmember Zuluaga made and that the original green lined ordinance presented by City Attorney Williams outlines what Councilmember Ott presented.

Mayor Pro-tem Case made the following motion:

Motion to approve Councilmember Zuluaga's amended ordinance removing all yellow and blue-highlighted items. Case/Neal. Motion carried 5-2 with Zuluaga and Connors voting no.

At this time, the Council spent time amending and deleting, (removing the yellow and blue-highlighted items) of Ordinance No. 1431.

The following motion was made:

Motion: To move to approve Councilmember Zuluaga's amended ordinance removing all of the yellow and blue highlights and changing the 24-month violation to 12 months and defining revocation of a license for 2 years with 2 or more violations in 12 months. Case/Neal. Motion carried 5-2 with Zuluaga and Connors voting no.

At this time, there was a discrepancy as to whether Mayor Pro-tem Case meant to say just remove the yellow and blue highlights in the amended items or to remove the yellow and blue highlighted items from the ordinance. Case asked Mayor LaBarre if she would allow her to clarify her comments. Mayor LaBarre stated she would allow this clarification.

Motion: To allow Mayor Pro-tem Case to clarify her intent to remove the items from the amended ordinance, not just the highlights. Ott/Neal. Motion carried 7-0.

The amended and final Ordinance 141, series 2022 is as follows:

**CITY OF WOODLAND PARK, COLORADO
ORDINANCE NO. 1431, SERIES 2022**

**AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF WOODLAND PARK,
COLORADO AMENDING TITLES 5 AND 18 OF THE WOODLAND PARK MUNICIPAL
CODE, CONCERNING BUSINESS REGULATIONS AND ZONING, TO LICENSE AND
REGULATE SHORT-TERM RENTALS**

WHEREAS, the City of Woodland Park, Colorado (the “City”) has been duly organized and is validly existing as a home rule city under Article XX, Section 6 of the Colorado Constitution and the City Charter; and

WHEREAS, pursuant to C.R.S. § 31-15-401, the City by and through its City Council (“Council”), possesses the authority to adopt laws and ordinances within its police power in furtherance of the public health, safety and welfare; and

WHEREAS, pursuant to C.R.S. § 31-23-301 the City also possesses the authority to adopt and enforce zoning regulations; and

WHEREAS, pursuant to C.R.S. § 31-15-501, the City also possesses the authority to regulate the operation and licensing of businesses generally within its jurisdiction; and

WHEREAS, pursuant to such authority, the City has previously adopted certain regulations within Title 5, concerning business licenses and regulations, and Title 18, concerning the zoning, of the Woodland Park Municipal Code (“Code”); and

WHEREAS, in order to protect residential integrity and community character within the City, the Council finds and determines it is necessary to amend certain provisions of Title 5 and Title 18 to adopt licensing regulations and restrictions on the renting or leasing of real property for occupancy of less than 30 days; and

WHEREAS, the Council finds such regulations will also ensure clarity, increased enforcement, fairness and consistency with the goals of the City, for its residents, businesses and customers; and

WHEREAS, the Council also finds and determines that the establishment of a licensing program will accomplish these goals, and that the subject regulations concerning short-term rentals are necessary to the health, safety and welfare of the public and to prevent adverse impacts to adjacent properties, neighborhoods and quality long-term rental housing units within the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF WOODLAND PARK, COLORADO as follows:

Section 1. The foregoing recitals are incorporated herein as conclusions, facts, determinations and findings by the City Council.

Section 2. A new Chapter 5.22, concerning Short-Term Rentals, is hereby added to Title 5, Business Regulations, of the Woodland Park Municipal Code to read as follows:

CHAPTER 5.22 – SHORT-TERM RENTALS

5.22.010 - Definitions.

For the purpose of this Chapter the following words and terms have the following meanings, unless the context clearly indicates otherwise. Definitions included in Titles 5 and 18 of this Code shall apply to this Chapter unless they are otherwise expressly defined herein.

Applicant means the natural person owning the property, or the natural person controlling the corporate ownership of the property, or the natural person who is the trustee of the trust owning the property, which property is used as a short-term rental business, as evidenced on the recorded deed for the property.

Short-term rental business means the occupation of leasing or renting one (1) or more short-term rental units.

Short-term rental unit means a dwelling unit, or a portion thereof, that is rented or utilized for furnishing lodging accommodation and occupancy for any period less than thirty (30) consecutive days.

Lodging tax means the tax levied pursuant to Chapter 3.38.

5.22.020 - Licensing; limitations; requirements.

- (a) It shall be unlawful for any person or entity to engage in the short-term rental business without first applying for and procuring a Short-Term Rental Business License (“License”) from the City with respect to each short-term rental unit. The initial license fee, renewal license fee and penalty for operating without a license shall be established by resolution of City Council, as may be amended from time to time, and payable annually in advance.

- (b) Short-Term Rental Business License may only be issued to owners of properties, as evidenced on the recorded deed for the property, who are also one of the following:
 - (1) A natural person;
 - (2) A trust, if the trustee of the trust is a natural person; or
 - (3) A business entity legally registered with the Colorado Secretary of State to conduct business in the State of Colorado.
- (c) Upon approval of a Short-Term Rental Business License pursuant to this Chapter, the City shall issue a Short-Term Rental Business License number specific to the subject property and the applicant/licensee.
- (d) Short-term rental businesses shall include their Short-Term Rental Business License number in the title of the listing for all public advertising, including but not limited to webhosting services.
- (e) Applications for a Short-Term Rental Business License shall be submitted on a form provided by the City, and the City shall accept no incomplete applications. Applications shall include all information required on the application form and related materials.
- (f) The name of the Short-Term Rental Business License applicant must match either the name of the owner on the deed for the property, the trustee of the trust owning the property, or the name of the person controlling the corporate ownership of the property. The applicant shall submit to the City a copy of the recorded deed, showing the recording data with the Teller County Clerk and Recorder.
- (g) Short-term rental businesses must have a designated local contact person for each short-term rental unit who shall be responsible for ensuring compliance with provisions of this Code including, but not limited to, removal of snow and ice, trash and refuse removal, and other property maintenance requirements and Good Neighbor Guidelines established by the City Manager and/or their designee(s) and updated from time to time. During periods of applicable occupancy the local contact person must be available twenty-four (24) hours per day, seven (7) days per week for the purpose of: (1) responding within sixty (60) minutes to property code violations and/or complaints regarding the condition, operation, or conduct of occupants of the short-term rental unit and (2) taking remedial action to resolve such violations and/or complaints.
- (h) Short-term rental businesses shall comply with all requirements and guidelines, as listed on the Short-Term Rental Business License and the application materials at all times.
- (i) The following units, structures or uses shall be prohibited from operating short-term rental businesses or from receiving Short-Term Rental Business Licenses: rental apartment units, apartment buildings, dormitories, bed and breakfast establishments, campgrounds, RV parks, hotels, motels, mobile homes, and recreational vehicles (RVs) which include all vehicles that bear a vehicle identification number (VIN), cabins and other structures without installed water, power and sewer facilities, tents, teepees, campers and other temporary structures.
- (j) Each short-term rental unit shall provide, at the time of application and renewal, a delineated off-street or off-right-of-way parking plan for guests' cars, which provides for parking for all users of the rental space including owners.

5.22.030 - Application, issuance and renewals.

- (a) Any person desiring a license to engage in and operate a short-term rental business shall apply to the City, on application forms provided by the City Clerk or their designee(s). New Short-Term

Rental Business License applications must be submitted at least thirty (30) days prior to the date of the intended use and no advertising of the property as a short-term rental unit prior to issuance of a Short-Term Rental Business License is permitted. Short-Term Rental Business Licenses shall be issued and valid for one calendar year, from January 1 through December 31, and shall expire within the calendar year for which it was issued. New Short-Term Rental Business License application fees shall not be pro-rated or reduced.

- (b) The City may issue a new Short-Term Rental Business License upon all the following conditions:
 - (1) The applicant has submitted a complete application form and provided all required information regarding both the short-term rental unit and business.
 - (2) The applicant has paid the appropriate fee(s) established by the City Council, and has paid all taxes and fees owed to the City, including those related to other properties and/or businesses and purposes within the City.
 - (3) All applicable requirements in Section 5.22.020 and Section 18.78.050 are met, and all applicable application documentation has been provided.
 - (4) There are no current or pending violations of the provisions of this Chapter, this Title, Title 18, this Code, or of any law, or regulation pertaining to the requirements of the application, or at the short-term rental unit property.
- (c) The City shall require the annual renewal of a Short-Term Rental Business License upon all the following conditions:
 - (1) The applicant has submitted a complete renewal application form and provided all required information regarding both the short-term rental business and the unit.
 - (2) The applicant has paid the appropriate renewal fee(s) established by the City Council, and all applicable taxes throughout the previous year, including sales and lodging tax, and has paid all taxes and fees owed to the City, including those related to other properties and purposes within the City.
 - (3) There are no outstanding health and safety violations on the property that are related to the short-term rental unit, or any other application requirements set by the City, or any violations of Title 15 of this Code as it relates to habitability.
 - (4) Within the last twelve (12) months there has been no more than two violation(s) of the provisions of this Chapter, this Title, Title 18, this Code, or of any law, or regulation pertaining to the requirements of the application, or at the short-term rental unit property, or of any of the terms pertaining to the Short-Term Rental Business License over the past year.
 - (5) Within the last twelve (12) months, there have been no more than two violation(s) of any of the Short-Term Rental Business License or application requirements or there have been no more than two violation(s) of the Good Neighbor Guidelines listed on the Short-Term Rental Business License or application materials created by the City Manager and their designee(s) and updated from time to time.
 - (6) All applicable requirements in Section 5.22.020 are met.
- (d) It is the duty of each short-term rental business licensee to ensure that all of the information provided in a Short-Term Rental Business License application is kept up to date at all times, and it shall be unlawful for a short-term rental business licensee to fail to provide updated information to

the City within thirty (30) days after the date upon which any information provided is no longer accurate.

- (e) No Short-Term Rental Business License issued under this Chapter shall be transferable and no license is valid as to any person or entity other than the person or entity named thereon and only for the real property identified on the license.

5.22.040 - Revocation and suspension.

Any Short-Term Rental Business License issued pursuant to this Chapter may be suspended or revoked by the City Council, after conducting a public hearing, upon ten (10) days' written notice via United States Postal Service to the short-term rental business licensee, stating the contemplated action and, in general, the grounds therefor, and after a reasonable opportunity for the licensee to be heard, for any of the following reasons:

1. Failure to pay the lodging tax pursuant to this Chapter 3.38 of this Code, or any other tax, such as sales tax, or the annual license fee established by the City Council.
- (b) False statement of material fact contained in the application;
 - (c) Failure to file any report or provide or furnish any other information that may be required by the provisions relating to this Chapter;
 - (d) If any fact or condition exists which, if it had existed or had been known to exist at the time of the application for such Short-Term Rental Business License, would have warranted the refusal of the issuance of such Short-Term Rental Business License; or
 - (e) Violation of any provisions of this Chapter, this Title, Title 18, this Code, or of any law or regulation pertaining to the requirements of the application, or at the property, or of any of the terms pertaining to the Short-Term Rental Business License, including any of the requirements and Good Neighbor Guidelines listed on the Short-Term Rental Business License or application materials created by the City Manager and their designee(s) and updated from time to time.
 - (f) If, within the last twelve (12) months, there have two or more violation(s) of the provisions of this Chapter, this Title, Title 18, this Code, or of any law, or regulation pertaining to the requirements of the application, or at the short-term rental unit property, such Short-Term Rental Business License may be revoked for a period of twenty four (24) months.

5.22.050 - Penalties.

In addition to any other remedies available at law or equity, engaging in a short-term rental business or renting short-term rental unit within the City without a Short-Term Rental Business License shall subject the property owner to a fine in an amount to be established by resolution of the City Council, as may be amended from time to time, and with a graduated financial penalty with each subsequent violation, and as provided in Chapter 1.04 this Code, or a denial of a license altogether.

ction 3. A new section 18.06.480, regarding the definition of Short-term rental business, is hereby added to read as follows:

80 – Short-term rental business.

“Short-term rental business” means the occupation of leasing or renting one (1) or more short-term rental units.

ction 4. A new section 18.06.481, regarding the definition of Short-term rental unit, is hereby added to read as follows:

81 – Short-term rental unit.

“Short-term rental unit” means a dwelling unit, or a portion thereof, that is rented or used for furnishing lodging accommodation and occupancy for any period less than thirty (30) consecutive days.

ction 5. Section 18.09.090 of the Woodland Park Municipal Code, concerning the Table of permitted uses for business, industrial and residential districts is hereby amended to read as follows:

90 - Table of uses.

Table of Permitted Uses													
USE KEY: P = Permitted Use, C = Conditional Use, PC = Permitted Conditionally													
Permitted Uses	SR	U R	MF S	MF U	MH P	A G	P/SP L	N C	C C	SC	CB D	HSCL I	PU D
...													
L. Lodgings.	-	-	-	-	-	-	-	-	-	-	-	-	-
...	-	-	-	-	-	-	-	-	-	-	-	-	-
<u>4. Short-term rental units in accordance with Chapter 5.22 and Section 18.78.050</u>	<u>P</u> <u>C</u>	<u>PC</u>	-	-	-	<u>PC</u>	-	<u>PC</u>	<u>PC</u>	<u>P</u> <u>C</u>	<u>PC</u>	-	<u>PC</u>

Section 6. A new section 18.78.050, concerning Short-Term Rentals, is hereby added to Chapter 18.78, Supplemental Regulations, of the Woodland Park Municipal Code to read as follows:

Sec. 18.78.050 – Short-Term Rental Units.

Short-term rental units shall be subject to the following regulations, provisions and standards:

1. Licensing requirements

1. All short-term rental units shall comply with Chapter 5.22 of the Woodland Park Municipal Code, which establishes conditions under which a property owner may apply for a Short-Term Rental Business License.

1. Short-Term Rental Unit Standards. The following standards shall apply to all short-term rental units within the City:

1. Short-term rental units are not permitted in a rental apartment unit or a rental apartment building at any time in any zoning district.
2. Short-term rental units are not permitted in bed and breakfast establishments, dormitories, campgrounds, RV parks, hotels, motels, mobile homes, and recreational vehicles (RVs) which include all vehicles that bear a vehicle identification number (VIN), cabins and other structures without installed water, power and sewer facilities, tents, teepees, campers and other temporary structures at any time in any zoning district.
3. No short-term rental shall be operated in such a way as to constitute a nuisance.
4. The maximum number of occupants permitted in a short-term rental shall be two (2) people per legal bedroom plus an additional two (2) people.
5. Large events, such as (but not limited to) concerts, parties and weddings, exceeding the maximum number of permitted occupants are prohibited.
6. All short-term rental units shall provide a minimum of two (2) off-street, on-site parking spaces for guest vehicles, and all short-term rental units with more than two (2) bedrooms shall provide a total of one (1) parking space per bedroom.

- **Section 7.** *Current Business Licensees Operating Short-Term Rental Businesses.* Provided a current and valid business license holder operating a short-term rental business in the MFS or MFU zoning district applies for a Short-Term Rental Business license within 2 months of the effective date of this Ordinance, the prohibition of Short-Term Rental Businesses in the MFS or MFU zoning districts shall not apply to such new Short-Term Rental Business License applications and subsequent renewals for the same short-term rental unit and by the same license holder. Furthermore, owners of property purchased in 2022, prior to November 17, 2022, in the MFS or MFU zoning districts shall be entitled to apply for a Short-Term Rental Business license, provide that said application is submitted within 2 months of the effective date of this Ordinance, and subsequent renewals shall be permitted for the same short-term rental unit by the same license holder.

- **Section 8.** *2022 Application and Fees.* Notwithstanding the requirements of new Code section 5.22.030(a), Short-Term Rental Business License granted, and application fees paid, within the last two months of the year 2022, if applicable, shall be effective until and through December 31, 2023.

- **Section 9.** *Future Review of STR regulations.* Within twelve to eighteen months from the effective date of this Ordinance, the Planning Commission shall revisit the City's short-term rental regulations. During that timeframe, the City shall direct an update to its most recent housing needs assessment, and shall have a short-term rental economic impact study conducted. Additionally, the City Police and Code Enforcement departments shall capture twelve months of data regarding calls for service or complaints of crime or nuisance at short-term rental unit properties. Once all data is collected and both studies have been completed, the Planning Commission will review and analyze same to make recommendations to City Council regarding whether amendments to the City's short-term rental regulations are required.

Section 10. *Severability.* The provisions of this ordinance are severable and the invalidity of any section, phrase, clause, or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

Section 11. *Effective Date.* This Ordinance shall be in full force and effect from and after its publication as required.

PASSED BY CITY COUNCIL ON SECOND AND FINAL READING FOLLOWING PUBLIC HEARING THIS ____ DAY OF _____, 2022.

City of Woodland Park

Hilary LaBarre, Mayor

ATTEST:

City Clerk, Suzanne Leclercq

Following passage of this ordinance, City Manager Lawson asked if Council would like for start to bring them an amended budget ordinance showing the economic impact study just approved by Council. Council gave City Manager Lawson consensus to do so.

10. NEW BUSINESS

(Public comment may be heard)

The time being 11:00 PM, the Council voted to extend the meeting.

Motion: To extend the City Council meeting to 11:30 PM. Case/Ott. Motion carried 7-0.

11. REPORTS

(Public comment not necessary)

A. Mayor's Report

Mayor LaBarre shared the events of the upcoming two weeks.

B. Council Reports

Mayor Pro-tem Case shared an update of PPACG and of PRAB.

Council member Connors wished everyone a Happy Thanksgiving and shared information on the upcoming Veteran's Breakfast.

Councilmember Zuluaga shared an update of KWPB.

C. City Attorney's Report

None.

D. City Manager's Report

City Manager Lawson shared that there is a toy and coat drive being held on November 25 and November 26.

12. ADJOURNMENT

The regular City Council meeting was adjourned at 11:07 PM.

Respectfully submitted:

Suzanne Leclercq MMC, City Clerk

APPROVED THIS ____ DAY OF _____, 2022

Hilary LaBarre, Mayor



STAFF REPORT

TO: Mayor LaBarre and City Council

FROM: Ben Schmitt, City Engineer

DATE: December 1, 2022

SUBJECT: Enter into Intergovernmental Agreement between the City of Woodland Park and Colorado Department of Transportation for Hwy 67 improvements. (A)
(Presenter, City Engineer Ben Schmitt)

BACKGROUND: In a collaborative effort between City Staff and the Colorado Department of Transportation (CDOT), a request was made to update an existing CDOT project description for phase I of Hwy 67 to better match the scope of improvements for a City Designed project from Valley View Dr. to W. Lovell Gulch Rd. This project was originally budgeted for completion in 2022 at ~\$1.2m and the City would be fully responsible for funding it. However, now that the project description is updated and included in the Pikes Peak Area Council of Governments Transportation improvement Plan and CDOT's project description, the project is eligible for cost sharing at 75% federal funds to 25% City funds. Since this is eligible to be a federally funded project, an Intergovernmental Agreement between the City of Woodland Park and Colorado Department of Transportation would need to be executed for the funding.

Given the bids received back in 2022 and the escalating cost of construction, the total project cost is estimated at \$1,950,000. If the project is awarded at this amount, the 410 fund would only encumber \$487,500, saving the taxpayers approximately \$1,462,500 at the estimated project cost. This is an incredible opportunity for Woodland Park, and is a prime example of excellent intergovernmental cooperation between both agencies where the community and all agencies benefit.

RECOMMENDATION: Intergovernmental Agreement between the City of Woodland Park and Colorado Department of Transportation for Hwy 67 improvements

ATTACHMENTS:

1. R2-25165-OLA Woodland Park SH 67 Lovell Gulch to Valley View Execs revised 17Oct2022
2. Resolution 896 IGA CDOT CWP SH67 Lovell to Valley

STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT

Signature and Cover Page

State Agency Department of Transportation		Agreement Routing Number 23-HA2-XC-00145	
Local Agency CITY OF WOODLAND PARK		Agreement Effective Date The later of the effective date or October 14, 2022	
Agreement Description SH 67 LOVELL GULCH TO VALLEY VIEW		Agreement Expiration Date October 13, 2032	
Project # STU M381- 024 (25165)	Region # 2	Contract Writer VJM	Agreement Maximum Amount \$1,950,000.00

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

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

TABLE OF CONTENTS

1. PARTIES.....	2
2. TERM AND EFFECTIVE DATE	2
3. AUTHORITY	3
4. PURPOSE	4
5. DEFINITIONS.....	4
6. SCOPE OF WORK.....	7
7. PAYMENTS.....	11
8. REPORTING - NOTIFICATION	15
9. LOCAL AGENCY RECORDS	16
10. CONFIDENTIAL INFORMATION-STATE RECORDS	17
11. CONFLICTS OF INTEREST.....	18
12. INSURANCE	18
13. BREACH.....	20
14. REMEDIES	20
15. DISPUTE RESOLUTION.....	22
16. NOTICES AND REPRESENTATIVES	22
17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION	23
18. GOVERNMENTAL IMMUNITY.....	24
19. STATEWIDE CONTRACT MANAGEMENT SYSTEM.....	24
20. GENERAL PROVISIONS	24
21. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3).....	27
22. FEDERAL REQUIREMENTS.....	29
23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)	29

EXHIBIT A, SCOPE OF WORK	
EXHIBIT B, SAMPLE OPTION LETTER	
EXHIBIT C, FUNDING PROVISIONS (Budget)	
EXHIBIT D, LOCAL AGENCY RESOLUTION	
EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST	
EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS	
EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE	
EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES	
EXHIBIT I, FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS	
EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS	
EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS	
EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM	
EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS	
EXHIBIT N, FEDERAL TREASURY PROVISIONS	
EXHIBIT O, AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS	
EXHIBIT P, SLFRF SUBRECIPIENT QUARTERLY REPORT	
EXHIBIT Q, SLFRF REPORTING MODIFICATION FORM	
EXHIBIT R, APPLICABLE FEDERAL AWARDS	
EXHIBIT S, 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 as shown on the Signature and Cover Page for this Agreement, unless sooner terminated or further extended in accordance with the terms of this Agreement. Upon request of Local Agency, the State may, in its sole discretion, extend the term of this Agreement by Option Letter pursuant **§7.E.iv**. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in **Exhibit C**.

C. Early Termination in the Public Interest

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

i. Method and Content

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

ii. Obligations and Rights

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

iii. Payments

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

D. Local Agency Termination Under Federal Requirements

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

3. AUTHORITY

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

A. Federal Authority

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

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

B. State Authority

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

4. PURPOSE

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

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

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

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

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

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

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

6. SCOPE OF WORK

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

A. Local Agency Commitments

i. Design

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

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

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

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

iii. Construction

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

- a. The State may, after providing written notice of the reason for the suspension to Local Agency, suspend the Work, wholly or in part, due to the failure of Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
- b. Local Agency shall be responsible for the following:
 - 1) Appointing a qualified professional engineer, licensed in the State of Colorado, as Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures, as defined in the CDOT Local Agency Manual (https://www.codot.gov/business/designsupport/bulletins_manuals/2006-local-agency-manual).
 - 2) For the construction Services, advertising the call for bids, following its approval by the State, and awarding the construction contract(s) to the lowest responsible bidder(s).
 - (a) All Local Agency's advertising and bid awards pursuant to this Agreement shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that Local Agency and its Contractor(s) incorporate Form 1273 (Exhibit I) in its entirety, verbatim, into any subcontract(s) for Services as terms and conditions thereof, as required by 23 C.F.R. 633.102(e).
 - (b) Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. Local Agency must accept or reject such bids within three (3) working days after they are publicly opened.
 - (c) If Local Agency accepts bids and makes awards that exceed the amount of available Agreement Funds, Local Agency shall provide the additional funds necessary to complete the Work or not award such bids.
 - (d) The requirements of **§6.A.iii.b.2** also apply to any advertising and bid awards made by the State.

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

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

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

v. Utilities

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

vi. Railroads

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

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

vii. Environmental Obligations

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

viii. Maintenance Obligations

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

ix. Monitoring Obligations

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

B. State's Commitments

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

7. PAYMENTS

A. Maximum Amount

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

B. Payment Procedures

i. Invoices and Payment

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

ii. Interest

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

iii. Payment Disputes

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

iv. Available Funds-Contingency-Termination

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

v. Erroneous Payments

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

vi. Federal Recovery

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

C. Local Agency Funds

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

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

D. Reimbursement of Local Agency Costs

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

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

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

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

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

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

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

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

fully executed Option Letter to Local Agency within thirty (30) days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iii. Option to Exercise Options i and ii.

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

iv. Option to Extend Agreement/Phase Term and/or modify the OMB Uniform Guidance. The State, at its discretion, shall have the option to extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2, C-3**, etc.). In order to exercise this option, the State shall provide written notice to the Local Agency in a form substantially equivalent to **Exhibit B**.

F. Accounting

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

i. Local Agency Performing the Work

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

ii. Local Agency-Checks or Draws

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

iii. State-Administrative Services

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

iv. Local Agency-Invoices

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

v. Invoicing Within 60 Days

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

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

vi. Risk Assessment & Monitoring

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

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

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

G. Close Out

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

8. REPORTING - NOTIFICATION

A. Quarterly Reports

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

B. Litigation Reporting

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

C. Performance and Final Status

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

D. Violations Reporting

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

9. LOCAL AGENCY RECORDS

A. Maintenance

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

B. Inspection

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

C. Monitoring

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

D. Final Audit Report

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

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

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

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

B. Other Entity Access and Nondisclosure Agreements

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

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

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

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

E. Safeguarding Personally Identifying Information "PII"

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

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

12. INSURANCE

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

A. Local Agency Insurance

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

B. Subcontractor Requirements

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

i. Workers' Compensation

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

ii. General Liability

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

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

iii. Automobile Liability

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

iv. Protected Information

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

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

v. Professional Liability Insurance

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

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

vi. Crime Insurance

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

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

vii. Cyber/Network Security and Privacy Liability

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

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

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

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

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

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

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

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

13. BREACH

- A. Defined

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

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

14. REMEDIES

- A. State's Remedies

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

i. Termination for Breach

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

a. Obligations and Rights

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

b. Payments

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

c. Damages and Withholding

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

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

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

c. Deny Payment

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

d. Removal

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

e. Intellectual Property

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

B. Local Agency's Remedies

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

15. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

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

C. Questions of Fact

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

16. NOTICES AND REPRESENTATIVES

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

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

For the State

Colorado Department of Transportation (CDOT)
Junior Rodriguez, Local Agency Coordinator
CDOT Region 2
5615 Wills Boulevard
Pueblo, CO 81008
719-251-6980
felipe.rodriguez@state.co.us

For the Local Agency

City of Woodland Park
Ben Schmitt, City Engineer
PO BOX 9007, 220 W. South Avenue
Woodland Park, CO 80866
719-687-5280
bschmitt@city-woodlandpark.org

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

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

i. Copyrights

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

ii. Patents

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

iii. Assignments and Assistance

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

B. Exclusive Property of the State

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

C. Exclusive Property of Local Agency

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

18. GOVERNMENTAL IMMUNITY

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

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

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

20. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

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

C. Binding Effect

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

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Digital Signatures

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

H. Entire Understanding

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

I. Jurisdiction and Venue

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

J. Modification

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

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

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

L. Order of Precedence

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

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

M. Severability

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

N. Survival of Certain Agreement Terms

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

O. Third Party Beneficiaries

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

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations.

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

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

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

U. Accessibility

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

V. Taxes

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

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

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

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.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK

EXHIBIT A

SCOPE OF WORK

Name of Project: SH67 Lovell Gulch to Valley View
Project Number: STU M381-024
SubAccount #: 25165

The SH-67 Phase I project is to widen the highway to include dedicated left turn lanes, bi-directional center turn lane, deceleration lanes, and stormwater system improvements. The construction limits for the Site are defined as along SH-67 approximately from Valley View Dr. to the W. Lovell Gulch Rd (Start MP 78.25 to End MP 78.56) for a project length of 1,570 feet.

The design is in full compliance with section 4 of the state highway access code, 2 CCR 601-1 except for the following approved design waivers:

1. North-bound left at Research Drive: 330' storage and bay taper instead of 500' deceleration length.
2. 12' left turn lane instead of 16' left turn lane with (12' lane with 4' buffer)
3. South-bound right turn lane at Tamarac Parkway: 95' taper instead of 180' to avoid large hillside.
4. East-bound right turn lane at Tamarac Parkway: 25' storage instead of 200' storage (per traffic report) to avoid purchase of center median
5. Back-to-back left turn lanes on SH-67 between Research Drive and Tamarac Parkway

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

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

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.

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 performance of this Agreement and/or update a Work Phase Performance Period.

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 performance of this Agreement and/or update a Work Phase Performance Period.

The total encumbrance as a result of this option and all previous options and/or amendments is now \$0.00, as referenced in **Exhibit C-1**. The total budgeted funds to satisfy services/goods ordered under the Agreement remains the same: as referenced in **Exhibit C-1**.

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

STATE OF COLORADO
Jared S. Polis
Department of Transportation

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

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

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

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

By: _____
Colorado Department of Transportation

Date: _____

EXHIBIT C- FUNDING PROVISIONS**Woodland Park STU M381-024 (25165)****A. Cost of Work Estimate**

The Local Agency has estimated the total cost the Work to be \$1,950,000.00, which is to be funded as follows:

1. FUNDING		
STU M381-024 (25165)		
a. Federal Funds (75% of Award)		\$1,462,500.00
b. Local Agency Funds (25% of Award)		\$487,500.00
TOTAL FUNDS ALL SOURCES		\$1,950,000.00
2. OMB UNIFORM GUIDANCE		
a. Federal Award Identification Number (FAIN):		TBD
b. Name of Federal Awarding Agency:		FHWA
c. Local Agency Unique Entity Identifier		C13AEQSTP9E6
d. Assistance Listing # Highway Planning and Construction		ALN 20.205
e. Is the Award for R&D?		No
f. Indirect Cost Rate (if applicable)		N/A
g. Amount of Federal Funds Obligated by this Action:		\$0.00
h. Amount of Federal Funds Obligated to Date (including this Action):		\$0.00
3. ESTIMATED PAYMENT TO LOCAL AGENCY		
a. Federal Funds Budgeted		\$1,462,500.00
b. Less Estimated Federal Share of CDOT-Incurred Costs		\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY	75%	\$1,462,500.00
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY	25%	\$487,500.00
TOTAL PROJECT ESTIMATED FUNDING	100.00%	\$1,950,000.00
4. FOR CDOT ENCUMBRANCE PURPOSES		
STU M381-024 (25165)		
a. Total Encumbrance Amount (Federal funds + Local Agency funds)		\$1,950,000.00
b. Less ROW Acquisition 3111 and/or ROW Relocation 3109		\$0.00
NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS		\$1,950,000.00

Note: No funds are currently available. Funds will become available after execution of an Option Letter (Exhibit B) or formal Amendment.

STU M381-024 (25165)			
WBS Element 25165.10.30	Performance Period Start*/End Date	Design 3020	\$0.00
	TBD - TBD		
WBS Element 25165.20.10	Performance Period Start*/End Date	Const. 3301	\$0.00
	TBD - TBD		

* For STU M381-024 (25165) the Local Agency should not begin work until all three (3) of the following are in place: 1) Phase Performance Period Start Date; 2) the execution of the document encumbering funds for the respective phase; and 3) Local Agency receipt of the official Notice to Proceed. Any work performed before these three (3) milestones are achieved will not be reimbursable.

B. Funding Ratios**STU M381-024 (25165)**

The funding ratio for the federal funds for this Work is 75% federal funds to 25% Local Agency funds, and

this ratio applies only to the \$1,950,000.00 that is eligible for federal funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$1,950,000.00, and additional federal funds are available for the Work, the Local Agency shall pay 25% of all such costs eligible for federal funding and 100% of all other costs. If additional federal funds are not available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than \$1,950,000.00, then the amounts of Local Agency and federal funds will be decreased in accordance with the funding ratio described herein. **This applies to the entire scope of Work.**

C. Maximum Amount Payable

STU M381-024 (25165)

The maximum amount payable to the Local Agency under this Agreement shall be \$1,462,500.00. For CDOT accounting purposes, the federal funds of \$1,462,500.00 and the Local Agency funds of \$487,500.00 will be encumbered for a total encumbrance of \$1,950,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work.**

D. Single Audit Act Amendment

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

i. Expenditure less than \$750,000

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

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

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

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

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

iv. Independent CPA

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

EXHIBIT D

LOCAL AGENCY RESOLUTION (IF APPLICABLE)

EXHIBIT E

Local Agency Contract Administration Checklist

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

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
		TIP / STIP AND LONG-RANGE PLANS		
	2.1	Review Project to ensure it is consistent with STIP and amendments thereto		X
		FEDERAL FUNDING OBLIGATION AND AUTHORIZATION		
	4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement). <i>Please write in "NA", if Not Applicable.</i>		x
		PROJECT DEVELOPMENT		
	5.1	Determine Delivery Method on Infrastructure Projects		
1	5.2	Prepare Design Data - CDOT Form 463		
	5.3	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
2	5.4	Conduct Consultant Selection/Execute Consultant Agreement - Project Development - Construction Contract Administration (including Fabrication Inspection Services)		
3,3A	5.5	Conduct Design Scoping Review Meeting		
3,6	5.6	Conduct Public Involvement		
3	5.7	Conduct Field Inspection Review (FIR)		

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
4	5.8	Conduct Environmental Processes (may require FHWA concurrence/involvement)		
5	5.9	Acquire Right-of-Way (may require FHWA concurrence/involvement)		
3	5.10	Obtain Utility and Railroad Agreements		
3	5.11	Conduct Final Office Review (FOR)		
3A	5.12	Justify Force Account Work by the Local Agency		
3B	5.13	Justify Proprietary, Sole Source, or Local Agency Furnished Items		
3	5.14	Document Design Exceptions - CDOT Form 464		
3	5.15	Prepare Plans, Specifications, Construction Cost Estimates and Submittals		
	5.16	Ensure Authorization of Funds for Construction		X
	5.17	Electronic Signatures		
	5.18	Records Management		
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE				
3	6.1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist).		X
	6.2	Determine Applicability of Davis-Bacon Act This project ☐ is ☐ is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) _____ CDOT Resident Engineer _____ Date _____		X
	6.3	Set On-the-Job Training Goals (CDOT Region EEO/Civil Rights Specialist) "NA", if Not Applicable		X
3	6.4	Title VI Assurances		
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)		
ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS				
6,7	7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks		
7	7.2	Advertise for Bids		
7	7.3	Distribute "Advertisement Set" of Plans and Specifications		
7	7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement		
7	7.5	Open Bids		
7	7.6	Process Bids for Compliance		
		Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals. <i>Please write in "NA", if Not Applicable.</i>		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		
	7.7	Concurrence from CDOT to Award		X
	7.8	Approve Rejection of Low Bidder		X
7,8	7.9	Award Contract		
8	7.10	Provide "Award" and "Record" Sets of Plans and Specifications		
CONSTRUCTION MANAGEMENT				
8	8.1	Issue Notice to Proceed to the Contractor		
8	8.2	Project Safety		
8	8.3	Conduct Conferences:		
		Pre-construction Conference (Appendix B) • Fabrication Inspection Notifications		
		Pre-survey • Construction staking • Monumentation		
		Partnering (Optional)		
		Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)		

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
		Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)		
		HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)		
8	8.4	Develop and distribute Public Notice of Planned Construction to media and local residents		
9	8.5	Supervise Construction		
		A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision."		
		_____ Local Agency Professional Engineer or CDOT Resident Engineer	_____ Phone number	
		Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications		
		Construction inspection and documentation		
		Fabrication Inspection and documentation		
9	8.6	Approve Shop Drawings		
9	8.7	Perform Traffic Control Inspections		
9	8.8	Perform Construction Surveying		
9	8.9	Monument Right-of-Way		
9,9A	8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent)		
		Provide the name and phone number of the person authorized for this task.		
		_____ Local Agency Representative	_____ Phone number	
9	8.11	Prepare and Approve Interim and Final Utility and Railroad Billings		
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		
9	8.16	Prepare and Submit Monthly Progress Reports		
9	8.17	Resolve Contractor Claims and Disputes		
	8.18	Conduct Routine and Random Project Reviews		
		Provide the name and phone number of the person responsible for this task.		X
		_____ CDOT Resident Engineer	_____ Phone number	
9	8.19	Ongoing Oversight of DBE Participation	X	
	MATERIALS			
9,9C	9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel		
9,9C	9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed		
9C	9.3	Perform Project Acceptance Samples and Tests		
9C	9.4	Perform Laboratory Verification Tests		
9C	9.5	Accept Manufactured Products		
		Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices		

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
9C	9.6	Approve Sources of Materials		
9C	9.7	Independent Assurance Testing (IAT). Local Agency Procedures ☐ CDOT Procedures ☐ • Generate IAT schedule • Schedule and provide notification • Conduct IAT		
9C	9.8	Approve mix designs • Concrete • Hot mix asphalt		
9C	9.9	Check Final Materials Documentation		
9C	9.10	Complete and Distribute Final Materials Documentation		
CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE				
9	10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements		
8,9	10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist		
9	10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280		
9	10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements		
9	10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. • Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements. • Complete CDOT Form 838 – OJT Trainee / Apprentice Record. • Complete CDOT Form 200 - OJT Training Questionnaire		
9	10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)		
9	10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report		
FINALS				
	11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
10	11.2	Write Final Project Acceptance Letter		
10	11.3	Advertise for Final Settlement		
11	11.4	Prepare and Distribute Final As-Constructed Plans		
11	11.5	Prepare EEO Certification and Collect EEO Forms		
11	11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications		
11	11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)		
11	11.8	Obtain CDOT Form 1419 from the Contractor and Submit to the CDOT Project Manager		
	11.9	(FHWA Form 47 discontinued)		
	11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		X
11	11.11	Process Final Payment		
	11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11	11.13	Retain Project Records		
11	11.14	Retain Final Version of Local Agency Contract Administration Checklist		

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

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

EXHIBIT F
CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

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

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

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

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

EXHIBIT G
DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

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

SECTION 2. DBE Obligation.

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

SECTION 3 DBE Program.

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

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

Colorado Department of Transportation 2829 West Howard Place

Denver, Colorado 80204

Phone: (303) 757-9007

REVISED 1/22/98

REQUIRED BY 49 CFR PART 26

EXHIBIT H

LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

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

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

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

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

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

- a. Qualifications,

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

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

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

EXHIBIT I

FEDERAL-AID CONTRACT PROVISIONS FOR CONSTRUCTION CONTRACTS

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. **Training and Promotion:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

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

1. Minimum wages

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

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

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

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

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

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

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

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

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

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

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

2. Withholding

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

3. Payrolls and basic records

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

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the 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. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

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

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

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

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

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

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

10. Certification of eligibility.

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

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

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

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

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

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

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

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

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

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

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

EXHIBIT J

ADDITIONAL FEDERAL REQUIREMENTS

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

Executive Order 11246

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

Copeland "Anti-Kickback" Act

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

Davis-Bacon Act

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

Contract Work Hours and Safety Standards Act

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

Clear Air Act

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

Energy Policy and Conservation Act

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

OMB Circulars

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

Hatch Act

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

Nondiscrimination

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

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

ADA

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

Uniform Relocation Assistance and Real Property Acquisition Policies Act

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

Drug-Free Workplace Act

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

Age Discrimination Act of 1975

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

23 C.F.R. Part 172

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

23 C.F.R Part 633

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

23 C.F.R. Part 635

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

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

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

Nondiscrimination Provisions:

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

i. Compliance with Regulations

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

ii. Nondiscrimination

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

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

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

iv. Information and Reports

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

v. Sanctions for Noncompliance

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

Incorporation of Provisions §22

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

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

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 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, subpart C;

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

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

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

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

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

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

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

8. Exemptions.

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

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

EXHIBIT L

SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT

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

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

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

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

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

- 9. Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.
- 9.1. “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
 - 9.2. “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.
 - 9.3. “Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. 2CFR §200.37
 - 9.4. “FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
 - 9.5. “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.
 - 9.6. “OMB”** means the Executive Office of the President, Office of Management and Budget.
 - 9.7. “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
 - 9.8. “State”** means the State of Colorado, acting by and through its departments, agencies and institutions of higher education.
 - 9.9. “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.
 - 9.10. “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.
 - 9.11. “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.
- 10. 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.

11. 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 subcontract or 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.”

- 4.2 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.

- 4.3 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.
 - 4.4 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).
 - 4.5 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.” 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.
 - 4.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 7. Certifications.** Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.
- 1.8.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.

9. **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.

10. **Performance Measurement**

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

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

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

Exhibit N

Federal Treasury Provisions

1. APPLICABILITY OF PROVISIONS.

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

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
 - 2.1.1. "Award" means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
 - 2.1.2. "Data Universal Numbering System (DUNS) Number" means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet's website may be found at: <http://fedgov.dnb.com/webform>.
 - 2.1.3. "Entity" means:
 - 2.1.3.1. a Non-Federal Entity;
 - 2.1.3.2. a foreign public entity;
 - 2.1.3.3. a foreign organization;
 - 2.1.3.4. a non-profit organization;
 - 2.1.3.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
 - 2.1.3.6. a foreign non-profit organization (only for 2 CFR part 170) only;

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

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

3. COMPLIANCE.

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

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS.

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

5. TOTAL COMPENSATION.

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

6. REPORTING.

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

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

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

8. SUBRECIPIENT REPORTING REQUIREMENTS.

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

EC 1 – Public Health

All Public Health Projects

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

- v. Labor reporting

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

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

COVID-19 Small Business Economic Assistance (1.8)

- a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

- a) Number of non-profits served

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

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

EC 2 – Negative Economic Impacts

All Negative Economic Impacts Projects

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

Household Assistance (2.1-2.8)

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

Healthy Childhood Environments (2.11-2.13)

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

Education Assistance (2.14, 2.24-2.27)

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

Housing Support (2.15, 2.16, 2.18)

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

Small Business Economic Assistance (2.29-2.33)

- a) Number of small businesses served

Assistance to Non-Profits (2.34)

- a) Number of non-profits served

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

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

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

Payroll for Public Health and Safety Employees (EC 3.1)

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

Rehiring Public Sector Staff (EC 3.2)

- a) Number of FTEs rehired by governments

EC 4 – Premium Pay

All Premium Pay Projects

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

EC 5 – Infrastructure Projects

All Infrastructure Projects

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

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

Water and sewer projects (EC 5.1-5.18)

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

Broadband projects (EC 5.19-5.21)

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

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

All Expenditure Categories

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

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

- 8.1.2.1. Subrecipient DUNS Number;
- 8.1.2.2. Subrecipient DUNS Number if more than one electronic funds transfer (EFT) account;
- 8.1.2.3. Subrecipient parent's organization DUNS Number;
- 8.1.2.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 8.1.2.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

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

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

- 8.1.3.8. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.
- 8.1.3.8.1. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.
- 8.1.3.8.2. Whether the project prioritizes local hires.
- 8.1.3.8.3. Whether the project has a Community Benefit Agreement, with a description of any such agreement.
- 8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor's Office and Office of the State Controller. The State of Colorado may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Exhibit 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 Agreement with the enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never Agreement with the enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

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

13. CERTIFICATIONS.

13.1. Subrecipient Certification. Subrecipient shall sign a "State of Colorado Agreement with Recipient of Federal Recovery Funds" Certification Form in Exhibit O and submit to State Agency with signed grant agreement.

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

14. EXEMPTIONS.

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

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

15. EVENT OF DEFAULT AND TERMINATION.

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

15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:

- 15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
- 15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
- 15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- 15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or

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

EXHIBIT O

AGREEMENT WITH 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 assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

EXHIBIT P

SLFRF SUBRECIPIENT QUARTERLY REPORT

1. SLFRF SUBRECIPIENT QUARTERLY REPORT WORKBOOK

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

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

EXHIBIT Q

SAMPLE SLFRF REPORTING MODIFICATION FORM

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

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

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

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

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

Local Agency

Date

CDOT Program Manager

Date

EXHIBIT R
APPLICABLE FEDERAL AWARDS

FEDERAL AWARD(S) APPLICABLE TO THIS GRANT AWARD

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

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

EXHIBIT S

PII Certification

STATE OF COLORADO

**LOCAL AGENCY CERTIFICATION FOR ACCESS TO PII THROUGH A
DATABASE OR AUTOMATED NETWORK**

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

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

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT T

CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

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

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

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

CITY OF WOODLAND PARK, COLORADO

RESOLUTION NO. 896

SERIES 2022

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF WOODLAND PARK, COLORADO APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION FOR PROJECT STU M381-024 (25165) SH 67 LOVELL GULCH TO VALLEY VIEW

WHEREAS, the City of Woodland Park (“City”) has been duly organized and is validly existing as a home rule city under Article XX, Section 6 of the Colorado Constitution and the City Charter; and

WHEREAS, pursuant to C.R.S. § 30-15-401 et seq., the City is authorized to enter into contracts with other governmental organizations for mutual benefit; and

WHEREAS, intergovernmental agreements to provide functions or services, including the sharing of costs of such services or functions by political subdivisions of the State of Colorado are specifically authorized by C.R.S. § 29-1-203; and

WHEREAS, the City requested to update the description of State Highway 67 phase I from the Colorado Department of Transportation (“CDOT”) for funding for the construction of the SH 67 Lovell Gulch to Valley View Project (the “Project”); and

WHEREAS, CDOT approved the City of Woodland Park’s request for funding and the funding ratio for the federal funds for this Work is 75% federal funds to 25% City funds, and this ratio applies only to the \$1,950,000.00 that is eligible for federal funding. All other costs are borne by the City at 100%, and if the total cost of performance of the Work exceeds \$1,950,000.00, and additional federal funds are available for the Work, the City shall pay 25% of all such costs eligible for federal funding and 100% of all other costs. If additional federal funds are not available, the City shall pay all such excess costs. If the total cost of performance of the Work is less than \$1,950,000.00, then the amounts of City and federal funds will be decreased in accordance with the funding ratio described herein; and

WHEREAS, the City Council of the City of Woodland Park desire to enter into an Intergovernmental Agreement in order to obtain the funds necessary for the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO:

Section 1. The Intergovernmental Agreement attached hereto as Exhibit A is hereby approved and the Mayor is authorized to execute the same.

Section 2. This Resolution shall take effect immediately upon adoption.

ADOPTED this 1st day of December, 2022.
CITY OF WOODLAND PARK, COLORADO

Hilary LaBarre, Mayor

ATTEST

Suzanne Leclercq, City Clerk



STAFF REPORT

TO: Mayor LaBarre and City Council

FROM:

DATE: December 1, 2022

SUBJECT: Telecommunications Master Plan briefing (continued from 9/1 regular meeting)
(Presenters, City Manager Michael Lawson and Ken Price, HR Green)

BACKGROUND:

RECOMMENDATION:

- Accept Telecommunications Master Plan report and Phase C proposal from HR Green.
- Direct staff to evaluate options to fund Phase C work proposed by HR Green. Staff will recommend a funding arrangement to the City Council in the coming months. The City Council will have the opportunity approve funding and the Phase C contract.

ATTACHMENTS:

1. Woodland Park - HR Green - Telecommunication Advisory Services - Phase C - Final
2. Woodland Park - Telecommunications Master Plan -Draft 11232022



FIBER AND BROADBAND

▷ 1975 Research Parkway | Suite 230 | Colorado Springs, CO 80920
Cell 303.601.5554

▷ HRGREEN.COM

November 23, 2022

Michael Lawson
City Manager
City of Woodland Park
220 W South Avenue
Woodland Park, CO 80866

Subject: Telecommunications Advisory Services - Phase C

Dear Michael,

Thank you for the recent opportunity to advance Woodland Park's desire to enhance telecommunications services, its fiber optic network, and the City's municipal broadband needs.

By moving forward with this initiative, the city is demonstrating that it understands that access to reliable Broadband is crucial to the livelihood of its citizens and its future economic development efforts.

We have assisted many communities like Woodland Park increase its involvement in their broadband future by creating an active strategy to serve its constituents with meaningful broadband access. Now, with the support of the City Council, we are pleased to assist in leveraging its capabilities, advancing its strategic goals, exploring partnerships, and creating a series of prioritized programs that will drive maximum impact. The technologies may vary, but the will to create a defined path forward is crucial to closing the all too frequent broadband gap.

HR Green's approach is guided by a belief that the City Council must clearly articulate key issues and desired goals through a measured process in order to shepherd this process from study to action. Now that the council has weighed in, our team will provide work products and deliverables and will do so in a framework that enables the City to move quickly from visioning onward into deployment of facilitative solutions to drive availability and adoption of true broadband services.

Based on our conversation, we envision a multi-task approach as outlined in our proposal. Because of the many factors such as market forces and emerging technologies can impact broadband, this can be a confusing process. Even more challenging is the need to help your senior leaders define a path forward to achieving your unique vision and goals. Having a firm with our experience can help cut through this confusion, clarifying your viable options, and quickly eliminating irrelevant ones. Our team prides itself on providing broadband master plans that are practical to ensure they can be the basis for preliminary and final designs of your broadband project.

We believe no firm in Colorado has advised more cities and counties in the last five years, and more importantly, has helped them define plans which are actionable, financially feasible and result in improving service to their residents.

Our team will be led by our Project Manager, **Ken Price, CGCIO, CCM**. In addition to his work with dozens of Colorado cities and counties, prior to joining HR Green, he served for 14 years as the I.T. Director for the City of Littleton. Ken well understands the unique needs of helping local governments decipher the dizzying array of alternatives and technologies to develop an executable strategy. He will oversee the key tasks outlined below,



engage with DOLA and the Colorado Broadband Office for funding on your behalf and lead Woodland Park's team from visioning and into master plan development.

John Merritt, PE will continue to coordinate the City's efforts with other government agencies, CDOT, your "anchor institutions," weaving in concerns about the private sector and balancing them with the needs of your citizens to improve service to your under-served and your unserved areas. He will also lead the design efforts begun in the last phase and resulting in the successful placement of fiber optic infrastructure with this past summer's paving program.

In the last five years, we have also helped other nearby local governments with their broadband planning, including **Buena Vista, Fountain, Manitou Springs, El Paso County, Douglas County, Jefferson County and Eagle County** just to name a few. With nearly 50 counties, cities, and districts throughout Colorado in the last five years and more than 100 combined years of local government experience on our team, we believe no one has the breadth or depth that our team can bring you.

Our staff is vigilant, takes a thoughtful, programmatic approach, and leverages complementary services to help you navigate small cell, broadband, emerging technologies, and asset management needs. Whether it is crafting public policies, facilitating public-private partnerships, managing your program, or providing ongoing staff augmentation support, our staff members can guide your community through the technologies and create an executable plan.

Our assessment will prioritize recommendations, establish detailed action plans, and serve as the foundation to manage your public rights-of-way and smartly charting the upcoming tsunami of telecommunications deployment.

Finally, it's worth noting that El Paso County has confirmed the "...*County contract terms can be extended to other municipalities w/concurrence from contractor.*" With that in mind, we would be pleased to extend the terms of the County's contract to Woodland Park for the purposes of this study. We hope this method will allow the City to move the contract forward expeditiously and help ensure the work now underway updating the County's study can be as seamless as possible and ensure a highly coordinated pair of projects.

We look forward to working with you on the execution of the City's initiatives.

Sincerely,

HR GREEN, INC.

A handwritten signature in blue ink, appearing to read 'Ken Price'.

Ken Price
Municipal Services Manager

A handwritten signature in blue ink, appearing to read 'Edward K. Barrett'.

Ed Barrett
Principal-in-Charge

Project Understanding and Approach

HR Green will continue to work with Woodland Park to help educate staff and policy makers on the potential alternatives, and to guide staff in obtaining funding for the potential build out of a backbone fiber network.

As envisioned by the City Council, our proposal is organized with the following key tasks detailed in the proposal below.

Task 1 – Evaluate Funding Alternatives

Task 2 – Create Maps of Existing Infrastructure

Task 3 – Provider Outreach

Task 4 – Market Assessment

Task 5 – Develop Public Policies

Task 6 – Explore and Establish Partnerships

Task 7 – Finalize Detail Designs and Costs

Task 8 – Pursue/Acquire Funding

It's also worth noting that the City Council stated its clear preference for an underground network of fiber optic infrastructure, enhancing the resiliency of its communication systems in the event of a catastrophic wildland fire. This theme has been carefully considered in the development of this proposal.

Scope of Work

The flexible structure of HR Green's scope of work allows the City to either bundle various tasks or phases in a logical manner in keeping with your current and future needs and desires.

Task 1 – Evaluate Funding Alternatives

An initial analysis of the City's broadband project will need to look at the City's projected revenue versus expected costs – an examination of whether the revenue that should be generated from the infrastructure can pay for the infrastructure costs that would be incurred. The analysis will need to include a review of funding sources that could help offset infrastructure costs. These grants and other funding options can have significant positive impact on the scope, feasibility, and options of the broadband project.

It should be noted that grant funding and other funding opportunities are a constantly emerging and changing target. The federal government and state legislatures across the country have recognized the need for broadband funding support. The Federal Communications Commission (FCC) and Congress have approved several channels of funding. And state legislatures across the country are working on broadband funding, mostly geared towards the desire to have ubiquitous broadband, specifically in rural areas. The important positive implication of that is there are several opportunities for external project funding that can dramatically improve the financial considerations of broadband projects.

It is also important to maintain awareness of other funding sources. It is not uncommon for an agency (regional, state, or federal) to have targeted programs that can provide funding for broadband projects. These can range from utility related topics to community betterment to citizen specific needs to business attraction or retention, block grants, etc.

DELIVERABLES

- Detailed description of different programs that the City could potentially use as funding sources

Task 2 - Create Maps of Existing Infrastructure

The HR Green team, utilizing the GIS data provided by the City GIS staff and assuming minimal manipulation, will assist the City in identifying current City, regional and (where available by providers) private sector fiber deployment; traffic signal and streetlight placement; and municipal assets and their applicable characteristics that can be placed in geospatial layers to help inventory your assets and more effectively manage your public right-of-way. Our team may need to rely upon the outcomes from the next Task, Provider Outreach, to complete this Task.

Task 2.1 – Document Existing Assets & Architecture

The network architecture is the basis for network design and engineering. **HR Green** team members will evaluate the community's existing fiber-optic network and its architecture in order to understand its capability and how best to leverage this asset. This evaluation will reflect existing conduit, fiber-optic, vaults, and boxes and related outside plant infrastructure. It will also reflect capacity and usability, as well as the existing electronics and communication equipment and their appropriateness to serve the extended network.

Task 2.2 - Implement a GIS-Based Mapping Tool

HR Green has robust internal GIS services. Because of the depth GIS use, we have developed tools that are an important part of our broadband analysis. Not only do they show current information, but the tools that we developed also provide the ability to do near-real-time “what if” modeling. Many consultants will provide you with a static map. We believe it is important for you to have real-time, GIS-based information. Our tools will help you better understand what you are seeing; give you the ability to explore various models; and retain the information for future phases.

DELIVERABLES

- Technical Architecture Memorandum
- Creation of GIS database to support network planning

Task 3 – Provider Outreach

HR Green will identify local fiber and broadband providers in order to help you identify said providers’ deployed fiber assets. We will develop and implement an outreach program to the private sector to develop cooperative relationships necessary to identify these assets.

HR Green has helped other communities not only identify asset locations, but has created national- first cooperative agreements leading to the creation of cost-sharing and right-of-way-protecting joint-use infrastructure such as duct banks and other assets.

We will caution that Broadband implementation of programs like Woodland Park’s require many months of coordinated effort to build local understanding and trust with the provider communities. In many communities, we have found that providers are reluctant to share currently deployed assets due to competitive concerns, so our efforts may be limited by their willingness to share information and, in some cases, require a Non-Disclosure Agreement to facilitate their involvement. In that regard, we may require the involvement of City legal counsel and staff to acquire and develop the database needed to complete our study and recommendations.

Note: HR Green assumes one (1) meeting, potentially a virtual call, with each of the providers.

DELIVERABLES:

- Outreach to identified private sector providers.
- Best effort to identify core communication assets.
- Implementation of provided data into GIS asset maps.

Task 4 – Market Assessment

The broadband coverage available has changed from something nice to have, to becoming incredibly important. Education, working from home, Economic Development, keeping youth in the area, telemedicine, etc. all need good connectivity. Competitive analysis of the availability of coverage is challenging due to the fluidity of market pricing, products offered and differences in the various sectors that need to be understood.

The initial task of a Market Assessment is to develop an understanding of coverage. This is an analysis of industry data that shows what providers report their coverage to be, as well as the providers’ fee ranges.

While this industry data is known to be potentially flawed for several reasons, it is important for two reasons:

1. Provide a baseline of data to work from.
2. This data is used for many federal and state grants. If it is incorrect, it is important to correct it.

To begin this analysis, service offerings of each primary provider in the City will need to be examined, cataloged, and compared with a few other areas of similar size. This is industry reported data, so there are some concerns.

The second step is to verify this industry reported data. This can be accomplished via focused feedback through a community engagement program. The good news here is that, according to the “What’s Up Woodland Park” website, the City completed such an engagement program in 2021. This program surveyed residents and business owners.

In addition to helping City decision makers better understand community needs, the survey results can also shed light on the actual practice of providers and, more importantly, on pricing and satisfaction, as well as determining what needs are in demand and are either not supplied by the marketplace or underserved in the market.

DELIVERABLE:

- Summary of providers and current offerings

Task 5 – Develop Public Policies

The City has the ability to make key public policy decisions that can protect its interests while incentivizing fiber deployment within preferred public right-of-way locations; expedite the fiber application review and approval process that incorporates colocation and incentives; and establish permit fees for fiber deployments.

The initial step of the public policy development process could be to evaluate the City’s current policies to help determine how the City can further its goals via changes to public policy designed to achieve smart, timely, and successful deployment of fiber facilities and services.

To illustrate, the kinds of programs which are inter-related that could be developed concurrently include:

- Joint-Build initiatives with the private sector
- Piggybacking and dig-once ordinances enacted by the City Council
- Incentives to discourage open trenching, and to encourage co-location
- Undergrounding of appurtenant structures to preserve views, enhance safety, minimize impact on pedestrian circulation in key areas and mitigate impacts to the public rights-of-way
- Required co-locations for private sector providers and specifications for new developers
- Exploring street cut and pavement degradation fee exemptions and other complementary initiatives
- Creating fiber construction specifications

Communities are frequently asked to leverage staff, equipment, and time in order to support contractors who are implementing projects for private providers. In most cases, support for these “cost causers” is provided without recovering the costs being incurred by the community. A revenue recovery package may need to be developed that includes policies and supporting processes related to these projects and the integration of these policies into existing City codes and ordinances, in order to create a new revenue stream for the City.

Communities who seek to develop advanced communications infrastructure have a unique opportunity to deploy assets at a fraction of the cost of overbuilding individually. By developing a co-location policy and standards, the community can require builders with open trenches and boring projects to deploy conduit and/or fiber on behalf of the community.

DELIVERABLES:

- Pavement degradation policy
- Street cut fee policy
- Traffic control policy
- Conduit/Fiber colocation policy
- Conduit/Fiber construction specifications

Task 6 – Explore and Establish Partnerships

Task 6.1 - Explore and Establish Public Private Partnerships (P3)

Broadband service model #3, the Hybrid Ownership model, which City Council unanimously supported, may need to leverage funding for both core network and last-mile construction available through DOLA and DORA, respectively, or other funding sources. This will mean that the City must identify one or more potential for-profit partners who are interested in leasing the core network asset, and in building and managing last-mile connectivity. Identifying interested partners, therefore, is an important step to help the City envision a path forward, and may be required by some funding sources.

The approach used to engage with potential partners includes building a list of potential partners and other interested parties, developing a request for expressions of interest (RFEI), sending the RFEI to the list of potential partners, processing responses to the RFEI, and selecting potential partners based on the level of interest. This approach will create a faster-moving cycle in which partners can be identified and brought to the table more quickly and with a higher likelihood of successful progress.

The RFEI process will be useful to determine interested parties but does not provide the City with enough details to fully determine a proposed partner nor the form of the partnership. It is recommended that the City conduct a formal request for proposal (RFP) to identify and select its partner(s) for the potential buildout.

Task 6.2 - Explore and Establish Public to Public Partnerships

The Telecommunications Master Plan development process included the opportunity to have preliminary discussions with CDOT about possible fiber trades. CDOT has fiber and conduit from US 24 at Walmart, west all the way through the City of Woodland Park. They have a need for fibers along Baldwin and Kelley to get to their signal at Kelly and HW 67. The City needs fiber from the Walmart to at least Baldwin and possibly all the way to the hospital on the west end of town.

The process to undertake discussions with CDOT to trade fiber is fairly involved and time consuming. It begins with the submittal of an Unsolicited Proposal to CDOT for their review. If CDOT agrees with a fiber trade, then negotiations will commence to finalize the trade. As part of the negotiations, Woodland Park along with El Paso County may want to evaluate and propose to upgrade fiber to be installed in the CDOT conduit through the City, which would benefit all parties.

DELIVERABLES:

- Request for expressions of interest (RFEI)
- List of potential private sector partners
- Prepare Unsolicited Proposal to CDOT for submission by the City
- Facilitate negotiations between Woodland Park, El Paso County, and CDOT

Task 7 – Finalize Detail Designs and Costs

Task 7.1 - Develop a Detailed Final Network Design

Drawing on the Council's decision to support the conceptual underground fiber network system, a final network design will need to be developed. In developing this potential technical solution, a wide range of technologies and approaches will need to be considered. The focus will need to be on creating a robust, reliable, and cost-effective approach to meeting the City's networking needs. To that end, for example, the design will need to include excess dark fiber designed to enable the implementation of future communication needs across the community.

The potential solution will need to be based on an analysis of existing infrastructure, conceptual designs of high-level maps and routing, and a system-level overview of the potential infrastructure. This final network design will become a road map for financial analysis and business modeling, and for future decisions (potentially including detailed engineering, construction, and operations).

Task 7.2 - Develop Final Network Design Cost Estimates

A cost estimate and supporting documentation for network deployment and interconnection, inclusive of anticipated construction labor, materials, engineering, permitting, quality control and testing will need to be prepared. These estimates should be provided in the form of a cost range and should include a most likely cost with appropriate budget that includes suitable contingencies.

The analysis should provide guidance regarding ongoing costs, medium and long-term needs to refresh and replace equipment and potential revenue sources to support network operations.

Various data points will need to be taken into consideration during the cost estimating process. These included: estimated underground footage of existing and proposed fiber conduits, total number of splice points, pedestals, and hand holds, total number of fibers, material costs breakout, and labor costs.

Task 7.3 - Perform a Financial Analysis

A study of the financial feasibility of the project will be performed to determine if a system could be built and operated that meets the Council's goals, while remaining financially self-funding. The financial model will be tested to see if it demonstrates financial viability across 20- and 30-year lifecycles.

The financial model will also be based on the creation of a dark fiber network and subsequent leasing of dark fibers to provider(s) who would extend service to individual homes and businesses.

In addition, the financial model will be based on the final fiber network design and feature the use of current conduit assets and the extension of new fiber and conduit to form a middle-mile backbone. The model assumes that a private-sector partner will construct and finance individual connections to homes and businesses and will pay lease fees to the City for the use of the middle-mile backbone.

DELIVERABLES:

- GIS Map of final network design.
- Report of the final network design.
- Cost estimate and supporting documentation for network deployment and interconnection.
- Analysis and Report of proposed infrastructure.
- Financial analysis, Pro Forma and Excel Workbook.

Task 8 – Pursue/Acquire Funding – Grants, etc.

Most likely for the project to move forward grant funding will need to be identified and committed. It is important to note that some funding sources, such as DOLA, can be used for both engineering and final construction expenses. A formal grant application should be submitted as soon as practical to cover final engineering design and construction of the proposed City-owned network.

It is also recommended that the selection of private partners be timed to allow for coordination of private-sector grant requests to assist with paying for last-mile connectivity. Ideally, a coordinated approach would assure both the private sector and the City of availability of state and/or federal funds to complete both the City-owned middle-mile network and the last-mile connections due to the interdependence of funding sources to complete the project.

DELIVERABLES:

- Drafting of grant applications
- Memoranda of Understanding/Agreements with public and/or private partners/stakeholders

Task 9 – Construct Core Network (Optional)

Once a partner is identified and funding is secured, the next step will be to begin the deployment of infrastructure to support broadband improvements. This step can be started as soon as engineering is completed through the selection of a contractor with fiber optic deployment experience. The City should work closely with its selected private sector partners to ensure that the network constructed meets its required last-mile architecture.

Task 9.1 - Field Survey

The **HR Green** field survey team will follow the established standards and project design requirements for the project. Because our intent is to optimize the network and reduce the overall cost, the field engineering must ensure that all possible routing alternatives are documented. The final fiber network design can only be optimized by analyzing all possible connectivity routes, the location of all service points and existing infrastructure.

Task 9.2 - OSP Network Design

As a contiguous area is surveyed and posted, the actual fiber network is designed. Once Fielding is completed, the design of the planned network Low-Level Design(s) (LLD) necessary to create associated construction and permitting plan sets will be completed.

Task 9.3 - Create Permits

All permits will be tracked in the GIS database with map-based visual status reports so that any non-technical person researching a particular portion of the route can determine the status and pending issues that may prevent construction from occurring, without sifting through large rights-of-way and permits from the various agencies.

Task 9.4 - Contractor Selection and RFP Support

HR Green will assist the City in creating the required documentation to select and manage the chosen contractor. The RFP will include a comprehensive construction specification manual, a complete design document set with permits, and a comprehensive bill of material. Our team can act as the City's representative and support bid letting, pre-bid conferences that may occur, and assist in formatting timely response to questions that may arise. Furthermore, our team can provide its professional opinion upon review of the various responses and formulate recommendations of choice.

Task 9.5 - Contract Administration

HR Green will act as an extension of the City and drive the project forward. We will attend and facilitate kickoff meetings and facilitate regular project status calls with the contractor. Our team will review and approve project timelines for engineering and construction prepared by the contractor. We understand the importance of maintaining the project schedule and understand timely delivery of our project is critical to the communities we serve. The Construction Management team will work diligently with the contractor to continuously analyze the project's progress versus the approved project schedule. The team will monitor the project to address unexpected challenges and recommend innovative solutions to keep a project progressing. In addition, proposals received from the contractor requesting to modify the contract documents are thoroughly vetted to evaluate the overall cost implications and design benefits stated in the proposal.

HR Green will proactively anticipate the need for extra work and/or change orders and recommend approval of the work prior to the work being performed. All change orders and extra work orders will be tracked and logged so an accurate accounting and current budget of the project is always available.

Our firm is committed to responsive project budget management to protect the community's financial investment. We employ a proactive budget approach by identifying and vetting potential cost overruns in advance to create the most cost-effective solution for the community. Throughout the project, our team meticulously tracks the project quantities to pro-actively generate change orders/extra work orders as needed to balance contract quantities, providing an accurate project value.

HR Green understands the importance of an efficient project closeout and knows that the closeout process starts at the commencement of the project by properly setting up the project records and maintaining the records throughout the project.

Having organized, detailed project records will greatly assist written agreement of final quantities with the contractor and the generation of the Final Pay Estimate. All calculations, measurements, and final contract documents related to the project will be indexed, boxed, and archived.

Task 9.6 - Project Inspection/Coordination

Prior to construction, **HR Green** will attend the pre-construction conference held by the City along with additional project stakeholders. As part of this meeting, we anticipate the following items will be discussed: the overall project schedule milestones, working restrictions and/or locations, emergency closure guidelines, material requirements, sediment and erosion requirements, coordination efforts with affected parties, etc.

We recognize the importance of maintaining detailed and accurate project records. While paper records can be used, we would like to suggest the creation of a Project Portal for use by the City, **HR Green** personnel, and the Contractor's staff. This one-stop source of information will provide everyone with visual dashboards that demonstrate project progress at a macro level, while allowing for the creation of geo-referenced data and attached visual documentation real-time.

HR Green staff will be onsite to observe and verify that items are being constructed and materials being utilized are in general conformance with the approved plans and specifications. Staff will complete reports including documentation of materials installed, location of work performed, and completion of daily diary entries. We will verify that all materials incorporated into this project are approved and evidence of material inspection complies with contract documents. Finally, we will keep the City informed as to the progress of construction and shall endeavor to guard the City against deficiencies in work.

DELIVERABLES:

- Field Survey
- OSP Network Design
- Permits
- Support contractor selection
- Contract administration
- Construction oversight

Proposed Project Timeline

Task	Description of Task	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9
1	Evaluate Funding Alternatives									
2	Map Existing Infrastructure									
3	Provider Outreach									
4	Market Assessment									
5	Develop Public Policies									
6	Explore and Establish Partnerships									
7	Finalize Detail Designs and Costs									
8	Pursue/Acquire Funding – Grants, etc.									
9	Construct Core Network (Optional)									TBD

Proposed Project Pricing

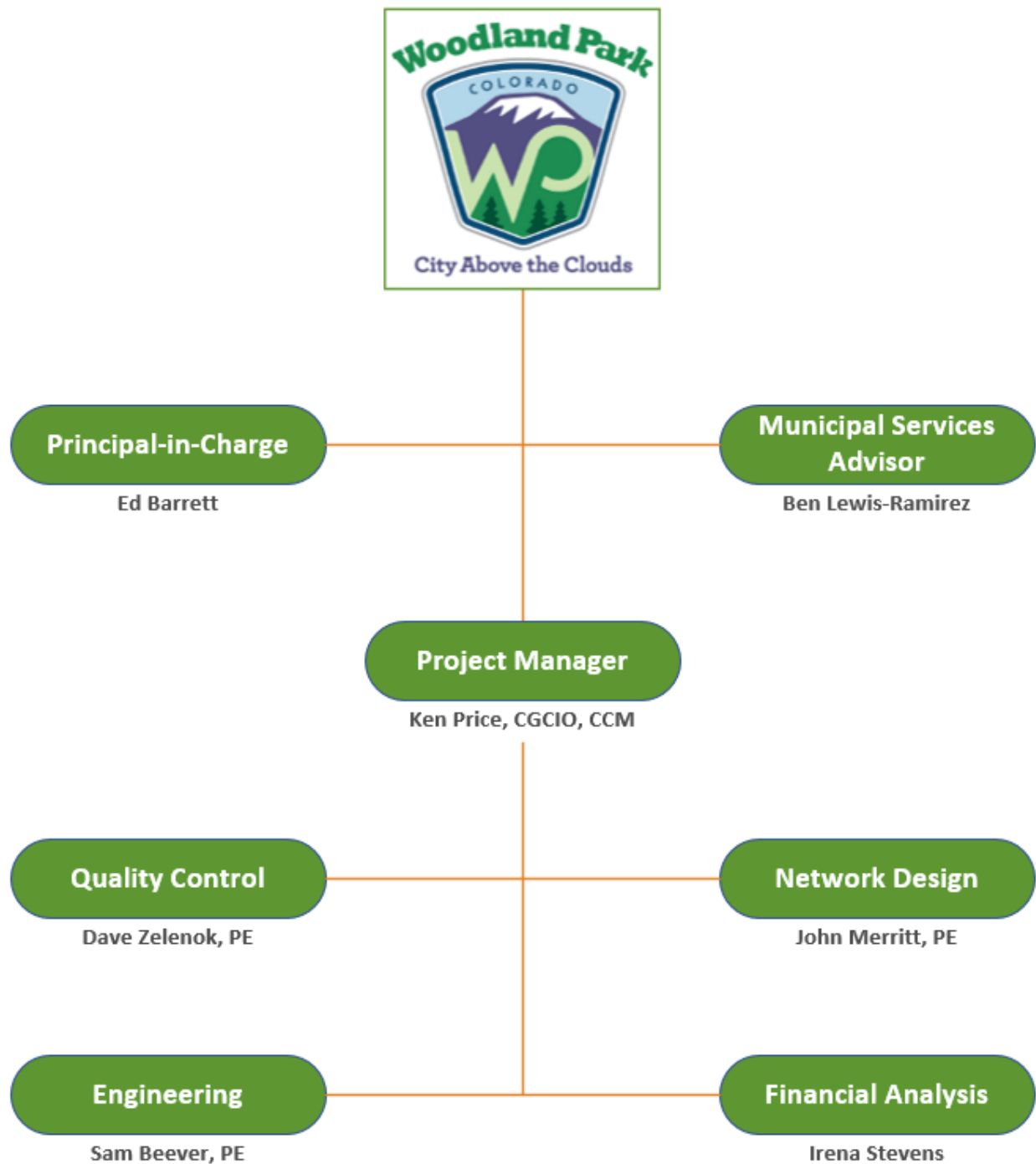
Task	Description of Task	Labor Task Total
1	Evaluate Funding Alternatives	\$6,400.00
2	Map Existing Infrastructure	\$11,985.00
3	Provider Outreach	\$5,540.00
4	Perform a Market Assessment	\$9,840.00
5	Develop Public Policies	\$7,640.00
6	Explore and Establish Public Private Partnerships (P3)	\$6,950.00
7	Finalize Detail Designs and Costs	\$14,375.00
8	Pursue/Acquire Funding – Grants, etc.	\$5,870.00
9	Construct Core Network (Optional)	TBD
	Travel Expense	\$1,200.00
	TOTAL COST	\$69,800.00

Special Note: Coordination with El Paso County

The HR Green is now undertaking an update to its 2018 El Paso County broadband study. With that closely related work now underway, El Paso County has confirmed the “...***County contract terms can be extended to other municipalities with concurrence from contractor.***”

With that in mind, we would be pleased to extend the terms of the County's contract to Woodland Park. We hope this method will allow the City to move the contract forward expeditiously and help ensure the work now underway updating the County's study can be as seamless as possible and ensure a highly coordinated pair of projects. We can provide those rates upon request should the City decide to pursue that option.

Our Project Team





Telecommunications Master Plan

November 23, 2022



Table of Contents

Executive Summary	iv
Introduction	iv
Create Conceptual Network Designs	iv
Develop Cost Estimates for Designs	v
Engage Stakeholders.....	v
Facilitate City Council Visioning Sessions	vi
Establish Recommendations	x
Telecommunications Master Plan.....	1
1. Introduction.....	1
Background	1
Task A - Fiber Optic Layout and Conceptual Plan	1
Task B - Telecommunications Master Plan	3
2. High-Level Conceptual Fiber Network Designs	4
Background	4
All-Aerial Fiber System.....	5
All-Underground Fiber System	7
Hybrid Fiber System	8
Fiber Connection to the City Reservoir	8
CDOT Fiber Trade Opportunity.....	9
Estimated Costs for the Conceptual Designs	9
3. Stakeholder Engagement.....	11
Background	11
Key Findings.....	11
4. Vision Survey	13
Background	13
Questions and Key Findings.....	13
5. Competing Values Survey	22
Background	22
Survey Results	23
Key Findings.....	24
6. Broadband Service Models.....	26
Background	26
Five Models.....	26
Four Key Factors.....	27
Decision Tree.....	28

Financial Considerations	29
Four Key Challenges	30
7. Vision Working Sessions	32
Background	32
August 4 th Session	32
Key Outcomes	33
September 1 st Session	33
Key Outcomes	33
8. Recommendations.....	36
Background	36
Recommendation #1 – Evaluate Funding Alternatives	36
Recommendation #2 – Map Existing Infrastructure	39
Recommendation #3 – Provider Outreach	40
Recommendation #4 – Perform a Market Assessment	40
Recommendation #5 – Develop Public Policies	40
Recommendation #6 – Explore and Establish Public Private Partnerships (P3)	41
Recommendation #7 – Finalize Detail Designs and Costs	41
Recommendation #8 – Pursue/Acquire Funding – Grants, etc.	42
Recommendation #9 – Construct Core Network	42

Executive Summary

Introduction

The City of Woodland Park initiated the development of this Telecommunication Master Plan because it wanted to explore the possibility of creating a City-owned fiber optic network, as well as develop a long-term Vision to address the community's goals for advanced telecommunications. The City also decided to develop this Plan because it understood from the results of its 2021 broadband survey, that many of Woodland Park's residents and businesses experience problems related to the quality, reliability, and speed of telecommunications. Additionally, the pandemic revealed that communities without access to high-quality modern infrastructure, including broadband, potentially face roadblocks to fully participating in aspects of daily life.

There is another factor that contributed to the City's desire to develop a Telecommunications Master Plan, which is how best to utilize 24 strands of fiber owned by the City at the Walmart on Highway 24. As part of a 2019 project to deploy fiber up Ute Pass, the City owns 24 strands of fiber optic cable from the Walmart to the Point-of-Presence (POP) on South Tejon Street in downtown Colorado Springs. These fibers are needed to "light up" the City's future dark fiber. The 24 strands of fiber owned by the City have been deployed and are currently available to the City for their use.

In January 2022, the City contracted with HR Green to develop the physical concepts and schematic layout for a city-owned fiber optic backbone to service both the immediate need for robust communications between all City facilities and the possible expansion to a city-wide fiber network.

The Tasks that were performed to complete the development of this Telecommunication Master Plan included:

- Create Conceptual Network Designs
- Develop Cost Estimates for Designs
- Engage Stakeholders
- Facilitate City Council Visioning Sessions
- Establish Recommendations

Create Conceptual Network Designs

The goal of creating the conceptual fiber network designs was to provide insights into the issues and costs associated with network designs the City of Woodland Park might want to consider should it decide to install a fiber optic-based network system connecting all or some of the major anchor institutions within the City. Three high-level conceptual network design alternatives were developed that could be used to connect the anchor institutions included on the list provided by the City. The list is outlined below:

✓ City Hall	✓ Meadow Woods Sport Complex
✓ Police and Public Safety facilities	✓ Memorial Park
✓ Aquatics Center	✓ Ute Pass Cultural Center
✓ Trail-head Cabin	✓ Public Works / Fleet facilities
✓ Water treatment facilities	✓ Wastewater Treatment Center
✓ Variable Message sign on HW 24	✓ Water tank sites
✓ Current reservoir	✓ Possible future reservoir
✓ Connecting to the City-owned fiber near the Walmart	

As previously mentioned, three high-level conceptual fiber network designs were developed to determine their viability and a high-level estimate of the cost to install a system connecting the City identified anchor institutions. The conceptual network designs are:

- An all-aerial fiber system
- An all-underground fiber system
- A hybrid aerial and underground fiber system

Develop Cost Estimates for Designs

The table below shows the estimated total installation costs for the three conceptual designs assuming a \$50.00/foot cost for the installation of the conduit. Also shown in the table is the estimated savings that Woodland Park can expect if an agreement with CDOT can be reached for the trading of fibers. If this opportunity were to come to fruition, Woodland Park would receive fibers from the Walmart intersection with US 24 to the intersection of Baldwin St. and US 24. CDOT would receive fibers from Baldwin St. and US 24, north on Baldwin St. to Kelly Rd. and then west on Kelly Rd. to Highway 67.

Cost Estimate Summary of Fiber Network Design Concepts									
Aerial				Underground				Hybrid	
Pole Replacements	10	\$	4,000.00	\$	40,000.00		N/A		N/A
Total Cost				\$	585,670.00	\$	2,161,400.00	\$	951,900.00
Fiber trade with CDOT				\$	(49,800.00)	\$	(276,000.00)	\$	(276,000.00)
Total Cost with fiber trade				\$	535,870.00	\$	1,885,400.00	\$	675,900.00

Engage Stakeholders

During April 2022 and May 2022, stakeholder engagement meetings took place with City staff, anchor institutions, neighboring communities, regional entities, and community partners. The various goals of these meetings included identifying existing broadband needs, evaluating current broadband services, exploring future broadband expectations, and collaborating with neighboring communities and regional entities.

Here is a summary of some of the key findings from the stakeholder engagement meetings.

- There seems to be reliability and speed concerns with broadband services (data, voice, and video) to City buildings, to City facilities, and for accessing City services
- Generally, the perception is that broadband services are important for the public health, safety, and welfare of the community, so there are concerns due to poor to no wired or wireless broadband services in some areas of the City
- Economic Development (retaining current businesses and attracting new businesses) is a driving force behind improved broadband services for home based, online, and traditional brick and mortar businesses
- More and more people are working from home, so reliable and high-speed broadband services are important
- Some organizations have good and reliable broadband services, while others do not – it is “hit or miss”
- There is a desire to have wireless public internet in the downtown area, and at parks and recreation areas
- Broadband infrastructure should be part of the City’s policies and plans

- Generally, some of the major concerns with broadband services in Woodland Park are cost, reliability, and redundancy
- CDOT has expressed interest in trading some of their fiber infrastructure for some of the City's potential fiber infrastructure
- Some private sector ISPs have expressed interest in partnering with the City to provide broadband services
- CORE will allow the attachment of City fiber to their poles as long as it meets their requirements

Facilitate City Council Visioning Sessions

Two Vision Work Sessions were held with City Council, to help the City to develop a vision of the future for planned Fiber and Commercial Broadband deployments. Prior to the City Council Vision Work Sessions, a three-part Vision Exercise Survey and supporting materials were developed, which the City Manager's Office sent to all seven Council Members and eleven City staff members.

The first part of the Vision Exercise Survey, the Vision Survey, included questions about the level of importance Council and staff would rate statements regarding high-speed internet in the City.

Here is a summary of some of the key findings from the Vision Survey.

- Both Council and staff view access to high-speed internet as *important* to *absolutely essential* to the residents, guests, and businesses in the City.
- Both Council and staff view that it is *important* to *absolutely essential* that high-speed internet options in Woodland Park are accessible and affordable to all.
- While Council and staff have various views regarding the adequacy of broadband services in downtown Woodland Park, 8 out of 11 staff respondents seem to indicate that they do not think that currently there is adequate broadband services in downtown Woodland Park.
- 4 out of 6 Council respondents and 7 out of 11 staff respondents do not feel that broadband services are adequate in the residential areas of Woodland Park.
- 3 out of 6 Council respondents and most staff respondents, 8 out of 11, do not feel that broadband services are adequate in the park and recreation areas of Woodland Park.
- 3 out of 6 Council respondents and 10 out of 11 staff respondents agree that the City should encourage and/or enable the deployment of broadband services in Woodland Park.
- One of the cellular providers has had many complaints from residents due to poor coverage. There is no real public Wi-Fi for residents or tourists. Many neighborhoods are still on DSL that is unreliable and slow.
- City should engage in backbone infrastructure for City offices and facilities and leave the rest to the private sector to build.
- Every time the internet is down, which is way too much, the aquatics center cannot take payments.
- High speed public connections in public spaces would be great. As more and more schools and jobs become dependent on an internet connection, it would create more space for citizens to work.
- Having free access to high-speed internet in our parks such as Meadow Wood, Memorial Park, and Bergstrom Park would be a huge asset to our community.
- Would be beneficial to all in the community to have a high-speed reliable broadband service available, by better reliability at City Hall for streaming capabilities.
- It would bring us into the 21st century and help everyone from students to home businesses.
- Would like public owned, private serviced.

- Better services for our community.
- Access for school-aged children to enhance their research ability.
- To save the taxpayers money on internet costs for city facilities.
- Vendors at our Farmer's Markets and events in our parks and downtown having access to free high-speed internet would be huge for economic development. Tourists stopping by may stay longer to research their destination or local recreation areas if they have good internet access. The community might also spend more time in our parks.
- Ubiquity of high-speed and affordable broadband. Ability to supercharge economic development by bringing in reliable, high-speed services.
- This has become a main form of communication and a means to conduct business. Consider it a necessity in today's world.
- Reliability, the ability to attract new business that rely on high-speed data, a more informed community with better access to information.
- Improved access for businesses to operate.
- Everything we do to operate relies heavily on technology. This will only become more prevalent. We need to put a solid system in place to allow management functions and critical incidents to operate without having to worry about connectivity.
- Reliable fiber service at a reasonable price. Maybe a public 5g Wi-Fi pay as you go service.
- Biggest concern is that the City Staff appears to want to encroach on an area that clearly belongs in the private sector. The direction the City Staff is heading is completely opposite that which industry advises. Small municipalities cannot afford the staff to properly administer an IT network or any component of an IT System. We barely keep the audio/video system in City Hall functioning. The residence seems to prefer small government, not ever increasing. Owning an IT System is not free nor labor neutral.
- Lose out on city beneficial opportunity because we did not do our homework.
- See fiber as being a better focus, but broadband is a great option as well.
- Do not want the City to be an ISP provider. Don't have a problem with the build out of the Broadband so long as the private internet providers provide the service.
- There is a misconception in the community and among councilmembers that the City wants to be an ISP or internet utility, and that does not seem to be the case. Being very clear with language we use and any communication on the topic throughout the process will be important to get buy in from our Council and concerned residents.
- That it will not reach far enough. Due to the topography of the area many locations can't get internet access, or it cost a fortune for terrible connections. Much of the population lies outside the city limits but those areas need to be considered.
- It does not reach a huge portion of our population. We will not attract new and younger residents without good internet services and the City will suffer for that in the long run. Look at the declining high school population as an example of the lack of young new residents.
- Funding.
- Being able to get the infrastructure established affordably. Uncertain how affordable this utility may or may not be given the current population of the community.

The second part of the Vision Exercise Survey included a Competing Values Survey. In general, communities considering broadband deployments typically share common objectives when considering an investment in a broadband network. Experience has shown that most communities have some or all of the following goals:

- Ubiquity
- Affordability
- Consumer choice
- Competition in the market
- Ownership and control of assets
- Performance
- Risk aversion
- Positive cash flow

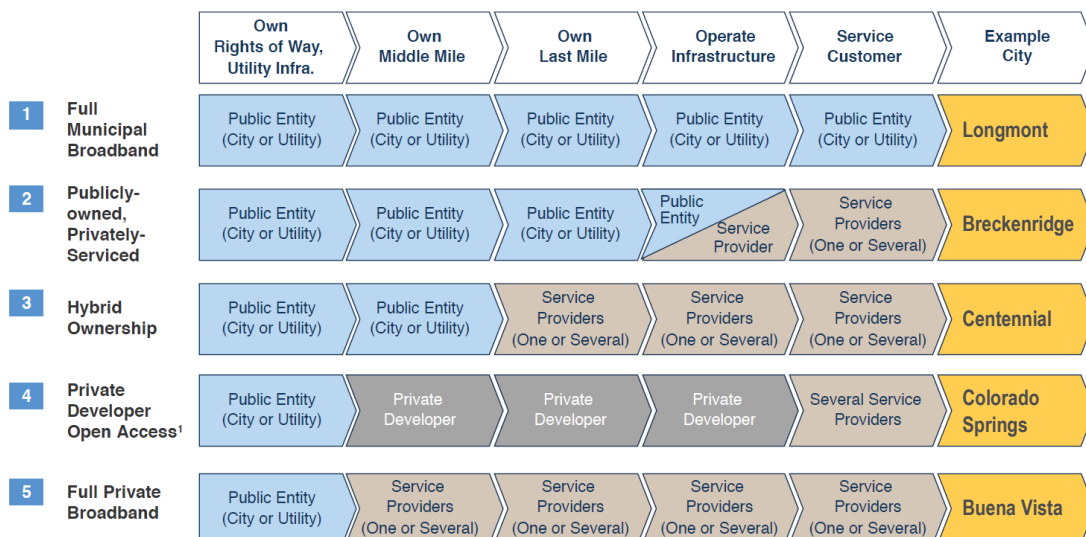
Choosing which goals to prioritize can be challenging, as some of these objectives can be complementary, while others lie in strict opposition. The Competing Values Survey helped the City surface these competing objectives and provided staff with a sound footing upon which to base its future decisions.

Here is a summary of some of the key findings from the Competing Values Survey.

- Council leans more toward **System Profitability**; however, staff leans more toward **Ubiquity**.
- Council leans more toward **System Profitability**; however, staff leans more toward **Affordability**.
- Council does not seem to have a preference regarding the **Performance** of the system (**Constant Speeds** vs. **Varied Speeds**); however, staff leans more toward **Constant Speeds**.
- Council and staff lean toward an **Outsource** system services delivery model.
- Council and staff lean toward **Standalone Profitability**.

The last part of the Vision Exercise Survey included a weblink to a guide created by *US Ignite* in July of 2020 titled **Broadband Models for Unserved and Underserved Communities** that presented an overview of the different municipal broadband models. There are several models for fully private and fully public broadband networks, plus a growing range of municipally enabled broadband strategies that rely on a combination of public and private investment. Despite the many ways that municipalities have gone about implementing their broadband programs, there are five main ways to do it, each requiring a different level of investment and engagement from the municipality. The five models are shown in the following chart.

City Main Business Model Options for Broadband Expansion



Note: 1) Private Developer is defined as private company that builds, owns and operates the network infrastructure and offers open access to it to several retail SPs that provide service on the top

Again, two vision work sessions took place with the City Council. The first one took place on August 4, 2022, and the second one took place on September 1, 2022. During the vision work sessions, the network design concepts and estimated costs; the feedback from the stakeholder engagement meetings; the Vision Survey and the Competing Values Survey results; as well as the various Broadband Service Models were discussed.

The August 4th session took place prior to the regularly scheduled City Council meeting. It was a study session with the Council that started at 5:00 pm and concluded at 6:45 pm.

The primary outcome from the August 4th Vision Working Session was that Council set some general guardrails regarding their thoughts about which one of the broadband service models might be appropriate for the community. Specifically, they decided that they did not want to go down the path of broadband service Model #1, which, as shown in the chart above, is a Full Municipal Broadband model. In other words, they did not seem to support the City becoming an Internet Service Provider (ISP).

The Council also indicated that it was probably in the best interest of the City to explore ways to improve upon the Full Private Broadband model that is currently in place in the City because, it did not seem to be meeting the needs of the community. As shown in the chart above, the Full Private Broadband model is described in broadband service Model #5.

The September 1st session took place during the regularly scheduled City Council meeting that started at 7:00 pm. This Vision Working Session was item number 7 on the City Council Meeting Agenda, under the heading of Unfinished Business.

There were two very important outcomes from the September 1st Vision Working Session that helped clarify the path forward regarding broadband in the City of Woodland Park. First, the Council choose which of the broadband service models best aligned with their broadband vision for the future of the community. Secondly, they decided which of the three conceptual network designs would best service the community going forward.

At the conclusion of the session, Council indicated that they unanimously support broadband service model #3, which, as shown on the chart above, is described as a Hybrid Ownership model. Generally, Council shared their thoughts that the City should construct and own the middle-mile network that can be used initially, to interconnect City facilities. This means that the City would own the physical assets that make up the network, such as conduit and fiber optic cables. The Council went on to share that they think the City should seek potential partners from the private sector to operate and maintain the network, as well as to provide services over it initially, to the City government. This type of partnership is known as a public-private partnership or a P3.

As a next step, these same potential private sector partners, could develop a lease agreement with the City for the use of unused conduit, and/or unused or “dark” fiber cable strands to build out a last mile network. This last mile network would be owned, operated, and maintained by the private sector partners to potentially provide services to the community’s anchor institutions, businesses, and residents.

Also, at the conclusion of the session, Council shared their unanimous support for the underground conceptual network design, which means that the potential city fiber network will be exclusively placed in underground conduits. Council stated that they understood that aerial cable is subject to environmental elements, such as wind, snow rain, and UV light; whereas, underground cable is immune to these issues, so, the underground design is the best installation method because of the security of the fiber.

The Council went on to share their understanding that the underground fiber network design is the more costly design but thought that the need for securing the fiber was a priority particularly when considering the impact of forest fires on aerial cable.

While Council understands that the underground fiber conceptual network is the most secure, it is also the most expensive. So, it is recommended that the City pursue state or federal grant funding to cover the costs of the underground network. If these funds are limited or not available, then the City may want to pursue a hybrid fiber network that combines both aerial and underground fiber cable. The hybrid fiber network is designed to balance the need for security and to reduce costs.

Establish Recommendations

The key outcomes from the Vision Working Sessions with the City Council, as well as the findings from other Tasks contributed to the following summary of the recommendations. These recommendations are next steps for the City to consider. While the recommendations are listed in a sequential order this does not necessarily mean they need to be implemented in this order. Please note that a more detailed description of these recommendations can be found in the Recommendations chapter of the Telecommunications Master Plan.

Recommendation #1 – Evaluate Funding Alternatives

An initial analysis of the City's broadband project will need to look at the City's projected revenue verses expected costs – an examination of whether the revenue that should be generated from the infrastructure can pay for the infrastructure costs that would be incurred. The analysis will need to include a review of funding sources that could help offset infrastructure costs. These grants and other funding options can have significant positive impact on the scope, feasibility, and options of the broadband project.

It should be noted that grant funding and other funding opportunities are a constantly emerging and changing target. The federal government and state legislatures across the country have recognized the need for broadband funding support. The Federal Communications Commission (FCC) and Congress have approved several channels of funding. And state legislatures across the country are working on broadband funding, mostly geared towards the desire to have ubiquitous broadband, specifically in rural areas. The important positive implication of that is there are several opportunities for external project funding that can dramatically improve the financial considerations of broadband projects.

It is also important to maintain awareness of other funding sources. It is not uncommon for an agency (regional, state, or federal) to have targeted programs that can provide funding for broadband projects. These can range from utility related topics to community betterment to citizen specific needs to business attraction or retention, block grants, etc.

The following is a list of five different programs that the City could potentially use as funding sources for the design, engineering, and construction of the middle-mile fiber network, as well as a potential last-mile fiber network. It is recommended that the City look at pursuing the three federal programs that include the **Capital Projects Fund (CFP)**, **Broadband Equity, Access, and Deployment Program (BEAD)**, and the **Digital Equity Act Programs**.

- Colorado Department of Local Affairs' Energy and Mineral Impact Assistance Fund (EIAF) program
- Colorado Department of Regulatory Agencies' Broadband Fund
- U.S. Department of the Treasury's Coronavirus Capital Projects Fund (Capital Projects Fund or CFP)
- Infrastructure Investment and Jobs Act's Broadband Equity, Access, and Deployment Program (BEAD)
- Infrastructure Investment and Jobs Act's Digital Equity Act Programs

Recommendation #2 – Map Existing Infrastructure

It is recommended that a detailed mapping and evaluation of the existing fiber-optic networks in the City be performed, based on available data from the City and private sector providers of broadband services to the community's businesses and residents. Developing a full understanding of the capabilities and conditions of these existing networks will allow the City to understand the role these existing networks play today and in the future.

Recommendation #3 – Provider Outreach

Local fiber and broadband providers will need to be identify in order to identify deployed fiber assets. A private sector outreach program may need to be developed and implemented to help establish the cooperative relationships necessary to identify these assets.

Recommendation #4 – Perform a Market Assessment

The broadband coverage available has changed from something nice to have, to becoming incredibly important. Education, working from home, economic development, keeping youth in the area, telemedicine, etc. all need good connectivity. Competitive analysis of the availability of coverage is challenging due to the fluidity of market pricing, products offered, and differences in the various sectors that need to be understood.

Recommendation #5 – Develop Public Policies

The City has the ability to make key public policy decisions that can protect its interests while incentivizing fiber deployment within preferred public right-of-way locations; expedite the fiber application review and approval process that incorporates colocation and incentives; and establish permit fees for fiber deployments.

The initial step of the public policy development process could be to evaluate the City's current policies to help determine how the City can further its goals via changes to public policy designed to achieve smart, timely, and successful deployment of fiber facilities and services.

To illustrate, the kinds of programs which are inter-related that could be developed concurrently include:

- Joint-Build initiatives with the private sector
- Piggybacking and dig-once ordinances enacted by the City Council
- Incentives to discourage open trenching, and to encourage co-location
- Undergrounding of appurtenant structures to preserve views, enhance safety, minimize impact on pedestrian circulation in key areas and mitigate impacts to the public rights-of-way
- Required co-locations for private sector providers and specifications for new developers
- Exploring street cut and pavement degradation fee exemptions and other complementary initiatives
- Creating fiber construction specifications

Recommendation #6 – Explore and Establish Public Private Partnerships (P3)

Broadband service model #3, the Hybrid Ownership model, which City Council unanimously supported, may need to leverage funding for both core network and last-mile construction available through DOLA and DORA, respectively, or other funding sources. This will mean that the City must identify one or more potential for-profit partners who are interested in leasing the core network asset, and in building and managing last-mile connectivity. Identifying interested partners, therefore, is an important step to help the City envision a path forward, and may be required by some funding sources.

Recommendation #7 – Finalize Detail Designs and Costs

Develop a Detailed Final Network Design

Drawing on the Council's decision to support the conceptual underground fiber network system, a final network design will need to be developed. In developing this potential technical solution, a wide range of technologies and approaches will need to be considered. The focus will need to be on creating a robust, reliable, and cost-effective approach to meeting the City's networking needs. To that end, for example, the design will need to include excess dark fiber designed to enable the implementation of future communication needs across the community.

Develop Final Network Design Cost Estimates

A cost estimate and supporting documentation for network deployment and interconnection, inclusive of anticipated construction labor, materials, engineering, permitting, quality control and testing will need to be prepared. These estimates should be provided in the form of a cost range and should include a most likely cost with appropriate budget that includes suitable contingencies.

Perform a Financial Analysis

A study of the financial feasibility of the project will be performed to determine if a system could be built and operated that meets the Council's goals, while remaining financially self-funding. The financial model will be tested to see if it demonstrates financial viability across 20- and 30-year lifecycles.

Recommendation #8 – Pursue/Acquire Funding – Grants, etc.

Most likely for the project to move forward grant funding will need to be identified and committed. It is important to note that some funding sources, such as DOLA, can be used for both engineering and final construction expenses. A formal grant application should be submitted as soon as practical to cover final engineering design and construction of the proposed City-owned network.

Recommendation #9 – Construct Core Network

Once a partner is identified and funding is secured, the next step will be to begin the deployment of infrastructure to support broadband improvements. This step can be started as soon as engineering is completed through the selection of a contractor with fiber optic deployment experience. The City should work closely with its selected private sector partners to ensure that the network constructed meets its required last-mile architecture.

Telecommunications Master Plan

1. Introduction

Background

The City of Woodland Park initiated the development of this Telecommunications Master Plan because it wanted to explore the possibility of creating a City-owned fiber optic network, as well as develop a long-term Vision to address the community's goals for advanced telecommunications.

The City was also motivated to develop this Plan because it understood from the results of its 2021 broadband survey, that many of Woodland Park's residents and businesses experience problems related to the quality, reliability, and speed of telecommunications. Related to these issues, recent advancements in telecommunications technologies may not be embraced by current broadband providers to the extent to which the City could take full advantage of their benefits.

Additionally, the pandemic revealed and continues to reinforce an understanding that communities without access to high-quality modern infrastructure, including broadband, potentially face roadblocks to fully participating in aspects of daily life, such as remote work, telehealth, distance learning, online procurement of goods and services, etc.

There is another factor that contributed to the City's desire to develop a Telecommunications Master Plan, which is how best to utilize 24 strands of fiber owned by the City at the Walmart on Highway 24. As part of a 2019 project to deploy fiber up Ute Pass, the City owns 24 strands of fiber optic cable from the Walmart to the Point-of-Presence (POP) on South Tejon Street in downtown Colorado Springs. These fibers are needed to "light up" the City's future dark fiber. It is important to note that the 24 strands of fiber owned by the City have been deployed and are currently available to the City for their use. The next step would be to develop an agreement with an internet service provider to connect to these fibers to enable service delivery.

In January 2022, the City contracted with HR Green to develop the physical concepts and schematic layout for a city-owned fiber optic backbone to service both the immediate need for robust communications between all City facilities and the possible expansion to a city-wide fiber network.

Below is a description of the Phases and Tasks that were performed to complete the development of this Telecommunication Master Plan.

Task A - Fiber Optic Layout and Conceptual Plan

During the execution of this task, three fiber network design concepts were created for a City-owned fiber optic backbone and the development of high-level cost estimates for each of the design concepts. The effort included developing an understanding of the extent to which the Intermountain Rural Electric Association (IREA) that is now known as CORE would allow aerial deployment of fiber on the existing electric transmission and distribution grid versus the alternative of installing City-owned fiber by boring / plowing underground or constructing the fiber by means other than CORE aerial infrastructure. These network design concepts included exploring approaches such as shared conduits, partnering with other public agencies, and possibly engaging with the private sector.

The conceptual network designs are:

- An all-aerial fiber system
- An all-underground fiber system
- A hybrid aerial and underground fiber system

As requested by the City, the key Woodland Park sites included in the network design concepts are:

✓ City Hall	✓ Meadow Woods Sport Complex
✓ Police and Public Safety facilities	✓ Memorial Park
✓ Aquatics Center	✓ Ute Pass Cultural Center
✓ Trail-head Cabin	✓ Public Works / Fleet facilities
✓ Water treatment facilities	✓ Wastewater Treatment Center
✓ Variable Message sign on HW 24	✓ Water tank sites
✓ Current reservoir	✓ Possible future reservoir
✓ Connecting to the City-owned fiber near the Walmart	

High-level estimated construction costs were also developed during this task for each of the three fiber network design concepts.

In addition, this task included the development of a full understanding of the extent to which CORE would allow and possibly subsidize aerial deployment of fiber on the co-op's existing electric transmission and distribution grid. While a pole-by-pole structural assessment and "pole loading analysis" was not performed as part of the study, a meeting with CORE took place to better understand their requirements for a possible Pole Attachment Agreement (PAA).

During this task, stakeholder engagement meetings took place with City staff, anchor institutions, neighboring communities, regional entities, and community partners. The goals of these meetings included identifying existing broadband needs, evaluating current broadband services, exploring future broadband expectations, and collaborating with neighboring communities and regional entities.

Another one of the activities that was part of this task was participating in work sessions with City Council, to help the City to develop a vision of the future for planned Fiber and Commercial Broadband deployments. Prior to the City Council Vision Working Sessions, a three-part Vision Exercise Survey and supporting materials were developed, which the City Manager's Office sent to all seven Council Members and eleven City staff members.

The first part of the Vision Exercise Survey, the Vision Survey, included questions about the level of importance Council and staff would rate statements regarding high-speed internet in the City.

The second part of the Vision Exercise Survey included a Competing Values Survey. In general, communities considering broadband deployments typically share common objectives when considering an investment in a broadband network. Experience has shown that most communities have some or all of the following goals:

- Ubiquity
- Affordability
- Consumer choice
- Competition in the market
- Ownership and control of assets
- Performance
- Risk aversion
- Positive cash flow

Choosing which goals to prioritize can be challenging, as some of these objectives can be complementary, while others lie in strict opposition. The Competing Values Survey helped the City surface these competing objectives and provided staff with a sound footing upon which to base its future decisions.

The last part of the Vision Exercise Survey included a weblink to a white paper that presented an overview of the different municipal broadband models. There are several models for fully private and fully public broadband networks, plus a growing range of municipally enabled broadband strategies that rely on a combination of public and private investment. Despite the many ways that municipalities have gone about implementing their broadband programs, there are five main ways to do it, each requiring a different level of investment and engagement from the municipality.

The five models are:

1. Full Municipal Broadband
2. Publicly Owned / Privately Serviced
3. Hybrid Ownership
4. Private Developer Open Access
5. Full Private Broadband

Two vision work sessions took place with the City Council. The first one took place on August 4, 2022, and the second one took place on September 1, 2022. During the vision work sessions, the network design concepts and estimated costs; the feedback from the stakeholder engagement meetings; the Vision Survey and the Competing Values Survey results; as well as the various Broadband Service Models were discussed.

The key outcomes from the Vision Working Sessions with the City Council, as well as the findings shared throughout the execution of the Task A activities contributed to the recommendations presented at the end of this Plan. These recommendations are next steps for the City to consider.

Task B - Telecommunications Master Plan

The Telecommunications Master Plan includes a summary of all activities performed in Task A, as well as the findings and/or outcomes from each of those activities. This Plan also identifies how to leverage the available infrastructure, engage local assets and plan for emerging technologies, possibly including aerial and underground assets, and related infrastructure. Task A focused on interconnecting city facilities only, so this is the primary focus of the Plan as well.

This Plan includes the information from the discussions with City Council and staff about the City's role in the future of managing the wireless and wireline (e.g., fiber optics) within the City limits and the exploration of an array of approaches to community-based broadband services serving residents through the development of a middle-mile network.

This Telecommunications Master Plan also includes a review of potential funding sources. The review will help City staff identify how to leverage Department of Local Affairs (DOLA) / Colorado Broadband Office (CBO), as well as other federal and state funding sources to create the middle-mile network that was identified by Council during the Vision Work Sessions. This Plan will be coordinated with an update to the 2018 El Paso County Broadband Master Plan.

2. High-Level Conceptual Fiber Network Designs

Background

The goal of this analysis was to provide insights into the issues and costs associated with network design concepts the City of Woodland Park might want to consider should it decide to install a fiber optic-based network system connecting all or some of the major anchor institutions within the City. Three high-level conceptual network designs have been developed that could be used to connect the anchor institutions included on the list provided by the City. The list is outlined below:

✓ City Hall	✓ Meadow Woods Sport Complex
✓ Police and Public Safety facilities	✓ Memorial Park
✓ Aquatics Center	✓ Ute Pass Cultural Center
✓ Trail-head Cabin	✓ Public Works / Fleet facilities
✓ Water treatment facilities	✓ Wastewater Treatment Center
✓ Variable Message sign on HW 24	✓ Water tank sites
✓ Current reservoir	✓ Possible future reservoir
✓ Connecting to the City-owned fiber near the Walmart	

The City-owned fiber near the Walmart that is referenced in the list above was part of a 2019 project to deploy fiber up Ute Pass. The City currently owns 24 strands of fiber optic cable from the Walmart to the Point-of-Presence (POP) on South Tejon Street in downtown Colorado Springs. These fibers are needed to “light up” the City’s future dark fiber. It is important to point out that the 24 strands of fiber owned by the City have been deployed and are currently available to the City for their use.

Here is some additional background information about the 2019 project to deploy fiber up Ute Pass:

- A multiparty Intergovernmental Agreement (IGA) was executed
- The agencies that signed the IGA are Woodland Park, Manitou Springs, El Paso County, Colorado Springs Utilities (CSU), and CDOT
- The agencies are sharing 90,000 feet of fiber
- The total project cost was \$3,000,000

Here is a table that breaks out the total project costs between each agency:

Agency	Share of Costs	Percentage of Total Cost	Fibers Obtained
Woodland Park	\$ \$50,000	2%	24
Manitou Springs	\$ \$50,000	2%	24
El Paso County	\$ 129,000	4%	96
CSU	\$ 122,000	4%	24
CDOT	\$ 2,649,000	88%	144

As previously mentioned, three high-level conceptual fiber network designs were developed to determine their viability and a high-level estimate of the cost to install a system connecting the identified anchor institutions. The conceptual network designs are:

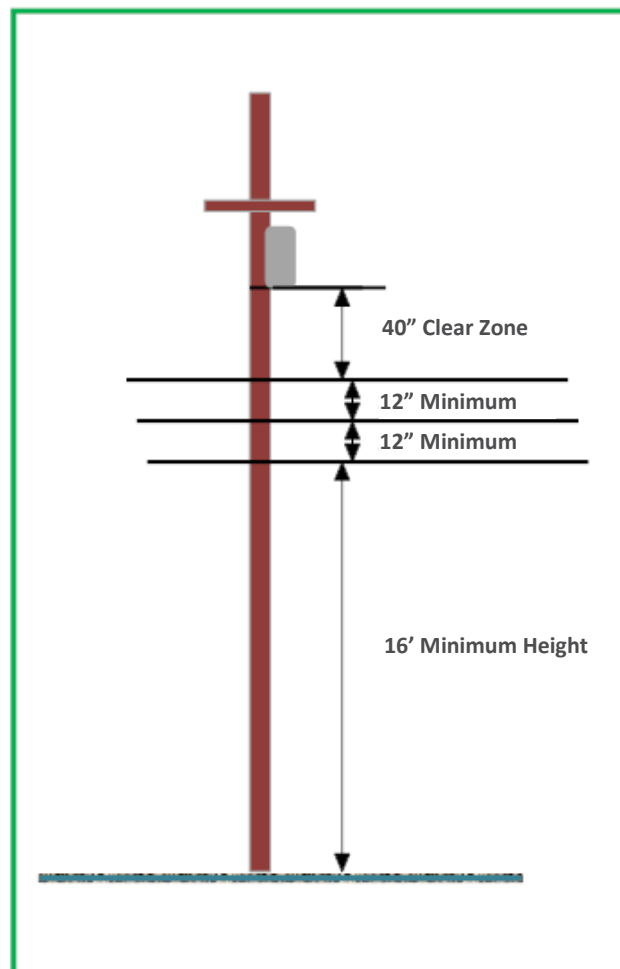
- An all-aerial fiber system
- An all-underground fiber system
- A hybrid aerial and underground fiber system

All-Aerial Fiber System

An all-aerial fiber network conceptual design means that the potential City fiber system is attached to CORE infrastructure exclusively. With this design, CORE would perform a study of all poles identified for connection to determine if the poles are structurally capable and have sufficient room to support the fiber system cabling.

CORE's requirement for communication cable placement is forty (40) inches below their infrastructure (electrical cable and equipment), and a twelve (12) inch separation between the City's proposed cable and other existing cables. Additionally, CORE requires a sixteen (16) foot minimum distance between the ground and the bottom non-electrical cable.

The following figure graphically represents the minimum spacing required on one of CORE's utility poles.



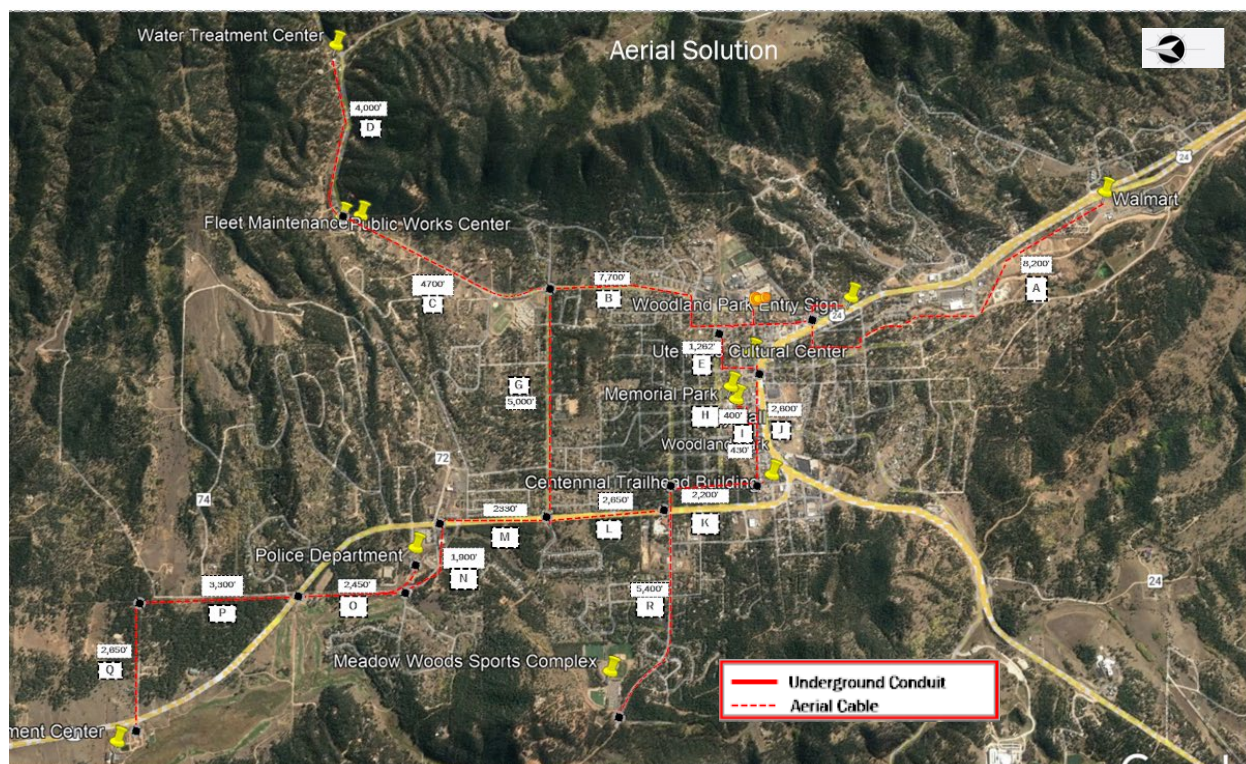
The cost involved with attaching to CORE's infrastructure is as follows:

- Study costs
 - \$1,000 fee to initiate the pole study
 - \$100 for each pole examined
- Pole replacement fees
 - Each pole that is determined by CORE to be insufficient for additional cable attachment will cost between \$3,000.00 to \$5,000.00 to be replaced. The work is performed by CORE crews.
- Rental Fees
 - There is a \$20.00 per year rental fee per pole charged by CORE

A field examination of the CORE poles within Woodland Park that are proposed to be used for the installation of fiber cables indicates that most poles appear to have the capacity for the installation of additional cables.

For this study, it is estimated that ten (10) CORE poles will need to be upgraded at an average cost of \$4,000.00 each.

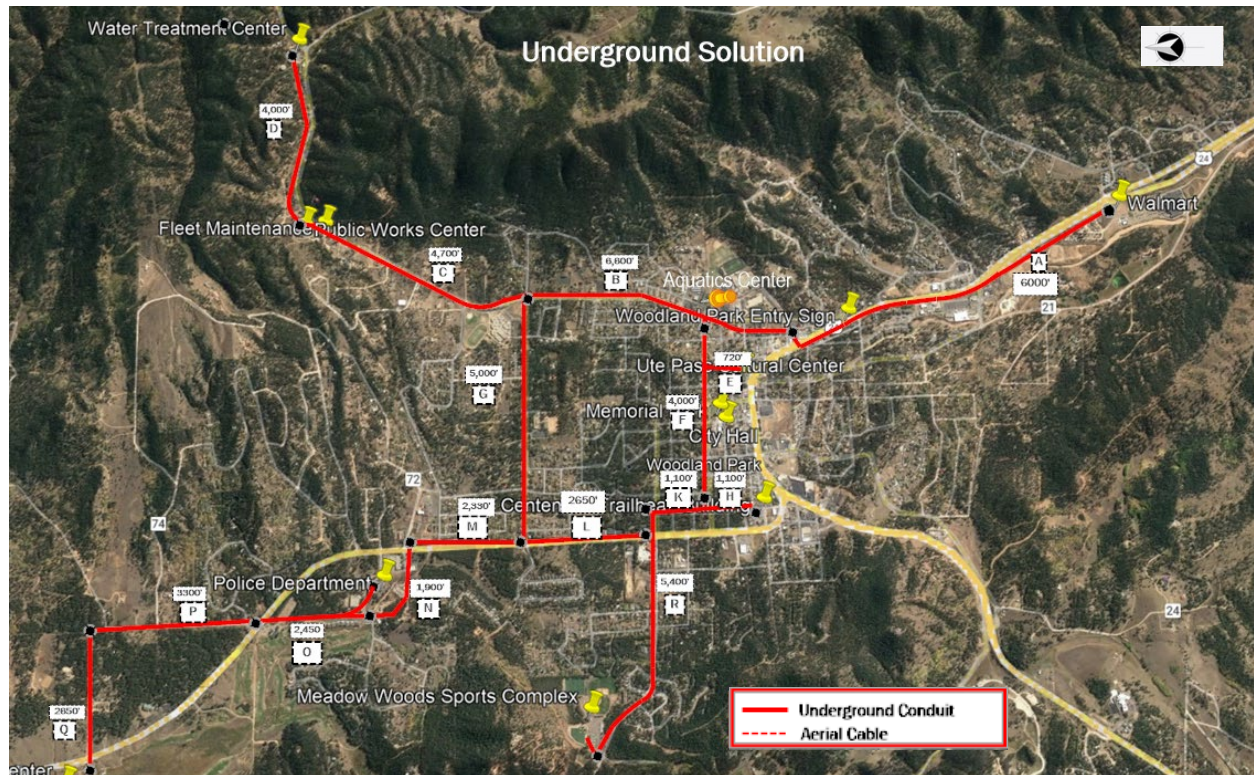
The figure below is a map that shows the conceptual aerial fiber cable network design using CORE utility poles.



All-Underground Fiber System

An all-underground fiber network conceptual design means that the potential city fiber network will be exclusively placed in underground conduits. An underground system is considered to be the best installation method because of the security of the fiber. Aerial cable is subject to environmental elements, such as wind, snow rain and UV light. An underground cable is immune to these issues. However, if not installed with an appropriate locate wire, an underground cable could be cut when an excavation occurs near where it is buried.

The following figure is a map that shows the conceptual underground fiber cable network design.



Hybrid Fiber System

The conceptual hybrid fiber system is designed to balance the need for security and to reduce costs. It is recommended that underground fiber cables and conduits be installed on the east side of the City. The two primary end points of the hybrid design are the City Administration Building and at the existing termination of the Colorado Springs to Woodland Park underground fiber cable and conduit at US 24 and the Walmart. In addition, Baldwin and Kelly are presently under construction, which includes the installation of underground conduit that can be used for fiber cables as part of this conceptual network design.

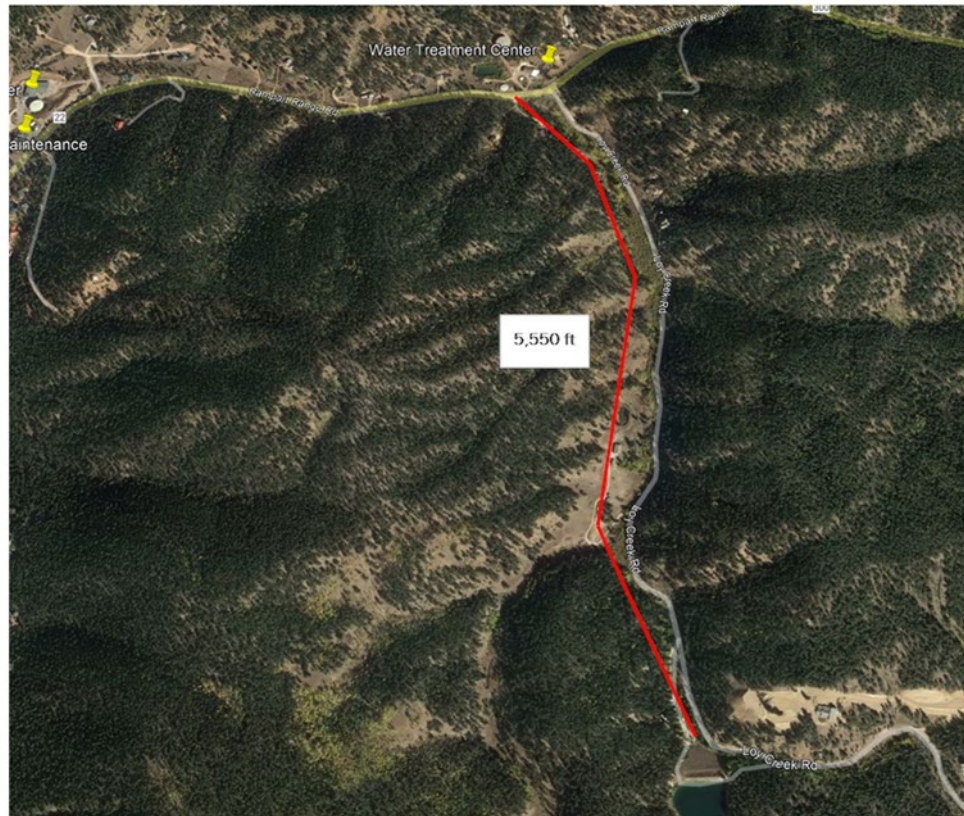
The figure below is a map that shows the hybrid conceptual network design.



Fiber Connection to the City Reservoir

There are two ways to connect fiber to the Woodland Park Reservoir. The first is to attach fiber to the existing CORE pole line. The estimated distance is 5,550 ft from the fiber placed to service the water plant to the base of the reservoir. This is shown in the figure below. The aerial installation will be costly as the pole line is off-road and will most likely require manually placing the fiber without the use of aerial lift equipment. It is estimated that the cost of construction will be between \$110,000 and \$170,000

The second way would be to place a conduit over the top of the water pipeline between the Water Treatment Plant and the reservoir. The advantages of this alternative are the security of the fiber and the possibility of installing a fiber sensing system to monitor the pipeline from any illegal activities or to quickly detect leaks. The disadvantage will be the cost. It is estimated that the cost to install the conduit will be between \$170,000 and \$280,000.



CDOT Fiber Trade Opportunity

Preliminary discussions have been initiated with CDOT regarding their interest in partnering with the City to help meet the City's fiber goals. CDOT is very interested in a fiber trade, which would give Woodland Park fiber from US 24 and Walmart west along US24 to Baldwin St. In return, Woodland Park would grant access to CDOT to their new conduit along Baldwin St. and Kelly Rd. This would allow CDOT to connect to their new signal at HW67 and Kelly Rd. This should decrease the cost of the underground and hybrid network design concepts by \$276,000.

Estimated Costs for the Conceptual Designs

Estimated costs of construction to build out the three conceptual designs are shown in the table below. The estimated construction costs are based upon the following assumptions:

- The cost of installing aerial cable is estimated at \$9.00 per foot
- The cost to install underground fiber cable and conduit is estimated at \$50.00 per foot
- The cost to install fiber in existing conduits is estimated at \$4.00 per foot

A spring 2022 bid price received for the installation of conduit on Baldwin was \$75.00/foot. This was due to the following issues that could be mitigated in future conduit installations:

- The Baldwin St. and Kelly Rd. projects were designed without performing a Subsurface Utility Engineering (SUE) investigation required by State law for any excavation greater than 2 feet in depth. Because the conduit was a late addition to the projects, there was not enough time to perform the SUE investigation and keep the project on schedule for the 2022 summer construction season. The SUE investigation would have taken 3 to 6 months. To avoid this issue the construction method chosen was to saw cut in the trench for the conduits at a depth of two (2) feet and backfill with it with concrete or flow fill. This method is more expensive than direct boring but avoids the need for the SUE investigation.

- The second problem encountered was the lack of knowledge of the soil conditions and the concern that the soil would be very rocky making boring or saw cutting very difficult and time consuming.

The recommended solution for these issues for future projects is to include a SUE investigation as part of the design process. The SUE process requires that all underground utilities be accurately located by potholes. It is further recommended that the design include potholes 5 feet deep every 250 feet to determine soil types. With this information, potential bidders will know what to expect for a boring solution. This should reduce the cost per foot to under \$50.00/foot to possibly as low as \$25.00 per foot, which could save at least \$250,000 to \$500,000 on a 5,000-foot installation.

The table below details the estimated installation costs for the three conceptual designs assuming a \$50.00/foot cost for the installation of the conduit. Also shown in the table is the estimated savings that Woodland Park can expect if an agreement with CDOT can be reached for the trading of fibers. If this opportunity were to come to fruition, Woodland Park would receive fibers from the Walmart intersection with US 24 to the intersection of Baldwin St. and US 24. CDOT would receive fibers from Baldwin St. and US 24, north on Baldwin St. to Kelly Rd. and then west on Kelly Rd. to Highway 67.

Cost Estimate Summary of Fiber Network Design Concepts												
Link	Aerial				Underground				Hybrid			
	Length(Ft)	Cost/Ft			Length(Ft)	Cost/Ft			Length(Ft)	Cost/Ft		
A	8,200	\$	9.00	\$ 73,800.00	6,000	\$	50.00	\$ 300,000.00	U	6,000	\$	50.00 \$ 300,000.00
B	7,700	\$	9.00	\$ 69,300.00	UE	6,600	\$	4.00 \$ 26,400.00	UE	6,600	\$	4.00 \$ 26,400.00
C	4,700	\$	9.00	\$ 42,300.00		4,700	\$	50.00 \$ 235,000.00	A	4,700	\$	9.00 \$ 42,300.00
D	4,000	\$	9.00	\$ 36,000.00		4,000	\$	50.00 \$ 200,000.00	A	4,000	\$	9.00 \$ 36,000.00
E	720	\$	9.00	\$ 6,480.00		720	\$	50.00 \$ 36,000.00	A	720	\$	9.00 \$ 6,480.00
F	4,000	\$	9.00	\$ 36,000.00		4,000	\$	50.00 \$ 200,000.00	U	4,000	\$	50.00 \$ 200,000.00
G	5,000	\$	9.00	\$ 45,000.00	UE	5,000	\$	4.00 \$ 20,000.00	UE	5,000	\$	4.00 \$ 20,000.00
H	400	\$	9.00	\$ 3,600.00		1,100	\$	50.00 \$ 55,000.00	A	1,100	\$	9.00 \$ 9,900.00
I	430	\$	9.00	\$ 3,870.00		N/A				N/A		
j	2,600	\$	9.00	\$ 23,400.00		N/A				N/A		
K	2,200	\$	9.00	\$ 19,800.00		1,100	\$	50.00 \$ 55,000.00	A	1,100	\$	9.00 \$ 9,900.00
L	2,650	\$	9.00	\$ 23,850.00		2,650	\$	50.00 \$ 132,500.00	A	2,650	\$	9.00 \$ 23,850.00
M	2,330	\$	9.00	\$ 20,970.00		2,330	\$	50.00 \$ 116,500.00	A	2,330	\$	9.00 \$ 20,970.00
N	1,900	\$	9.00	\$ 17,100.00		1,900	\$	50.00 \$ 95,000.00	A	1,900	\$	9.00 \$ 17,100.00
O	2,450	\$	9.00	\$ 22,050.00		2,450	\$	50.00 \$ 122,500.00	A	2,450	\$	9.00 \$ 22,050.00
P	3,300	\$	9.00	\$ 29,700.00		3,300	\$	50.00 \$ 165,000.00	A	3,300	\$	9.00 \$ 29,700.00
Q	2,650	\$	9.00	\$ 23,850.00		2,650	\$	50.00 \$ 132,500.00	A	2,650	\$	9.00 \$ 23,850.00
R	5,400	\$	9.00	\$ 48,600.00		2,600	\$	50.00 \$ 130,000.00	A	2,600	\$	9.00 \$ 23,400.00
S				N/A		2,800	\$	50.00 \$ 140,000.00	U	2,800	\$	50.00 \$ 140,000.00
Pole Replacements	10	\$	4,000.00	\$ 40,000.00				N/A				N/A
Total Cost				\$ 585,670.00				\$ 2,161,400.00				\$ 951,900.00
Fiber trade with CDOT				\$ (49,800.00)				\$ (276,000.00)				\$ (276,000.00)
Total Cost with fiber trade				\$ 535,870.00				\$ 1,885,400.00				\$ 675,900.00

A - Aerial
U - Underground
UE - Underground Existing

3. Stakeholder Engagement

Background

During April 2022 and May 2022, stakeholder engagement meetings took place with City staff, anchor institutions, neighboring communities, regional entities, and community partners. The various goals of these meetings included identifying existing broadband needs, evaluating current broadband services, exploring future broadband expectations, and collaborating with neighboring communities and regional entities.

Engagement meetings were held with the following stakeholders:

City Staff

- City Manager's Office
- Public Works
- Planning
- Parks and Recreation
- Information Technology
- Police

Anchor Institutions

- Woodland Park School District
- Northwest Teller County Fire Protection District
- Rampart Library District
- Ute Pass Regional Health Service District

Neighboring Communities

- Teller County

Community Partners

- Greater Woodland Park Chamber of Commerce
- Charis Bible College
- UCHealth Pikes Peak Regional Hospital
- CORE
- CDOT

Key Findings

Here is a summary of some of the key findings from the stakeholder engagement meetings.

- There seems to be reliability and speed concerns with broadband services (data, voice, and video) to City buildings, to City facilities, and for accessing City services
- Generally, the perception is that broadband services are important for the public health, safety, and welfare of the community, so there are concerns due to poor to no wired or wireless broadband services in some areas of the City
- Economic Development (retaining current businesses and attracting new businesses) is a driving force behind improved broadband services for home based, online, and traditional brick and mortar businesses
- More and more people are working from home, so reliable and high-speed broadband services are important
- Some organizations have good and reliable broadband services, while others do not – it is “hit or miss”

- There is a desire to have wireless public internet in the downtown area, and at parks and recreation areas
- Broadband infrastructure should be part of the City's policies and plans
- Generally, some of the major concerns with broadband services in Woodland Park are cost, reliability, and redundancy
- CDOT has expressed interest in trading some of their fiber infrastructure for some of the City's potential fiber infrastructure
- Some private sector ISPs have expressed interest in partnering with the City to provide broadband services
- CORE will allow the attachment of City fiber to their poles as long as it meets their requirements

4. Vision Survey

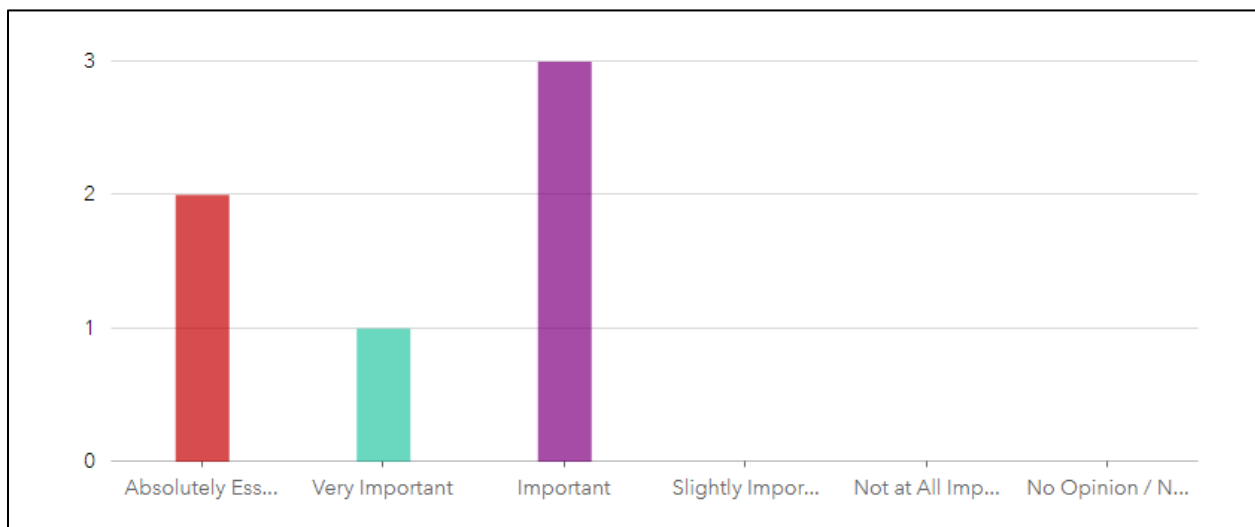
Background

Prior to the August 4, 2022, City Council Vision Working Session, a three-part Vision Exercise Survey and supporting materials were developed, which the City Manager's Office sent to all seven Council Members and eleven City staff members. The first part of the Vision Exercise Survey, the Vision Survey, included questions about the level of importance Council and staff would rate statements regarding high-speed internet in the City.

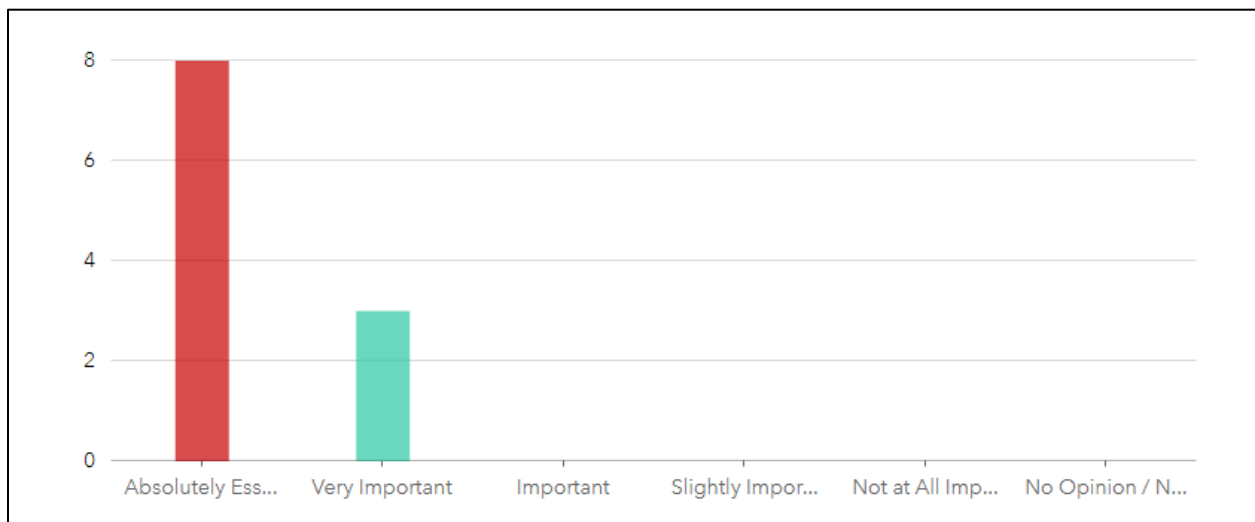
Questions and Key Findings

Question 1: Please share how important you think it is that Woodland Park residents, guests, and businesses have access to high-speed internet?

Council Response:



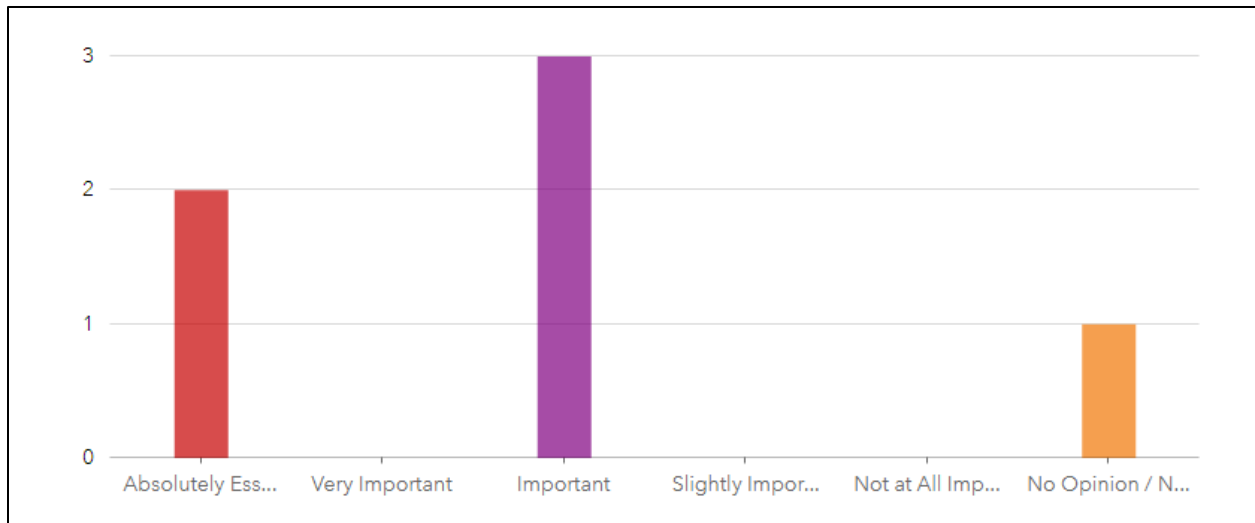
Staff Response:



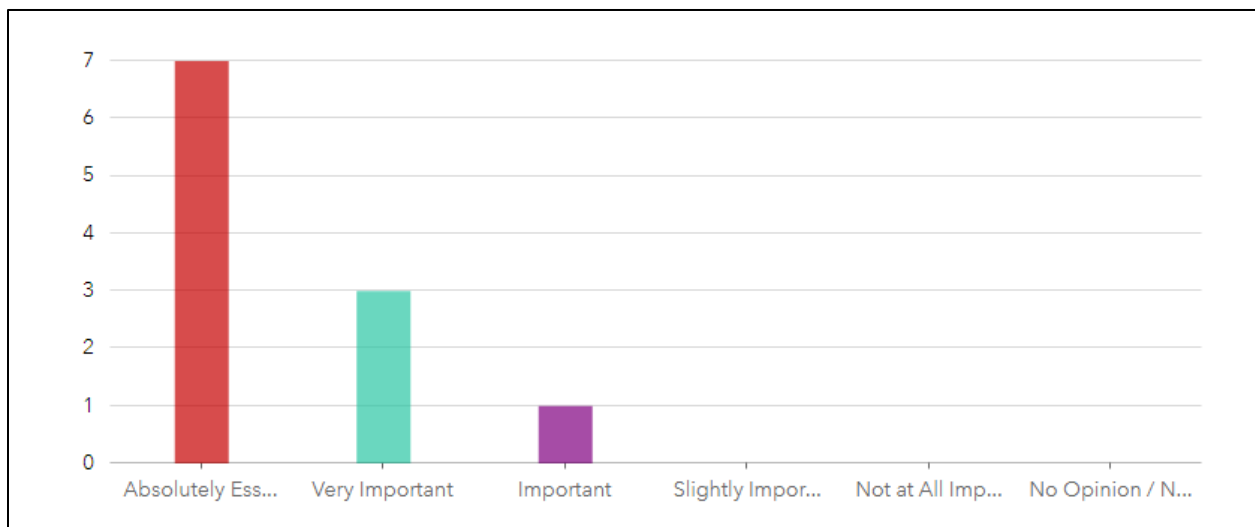
Question 1 Findings: Both Council and staff view access to high-speed internet as *important* to *absolutely essential* to the residents, guests, and businesses in the City.

Question 2: Please share how important it is that access to high-speed internet in Woodland Park is accessible and affordable to all.

Council Response:



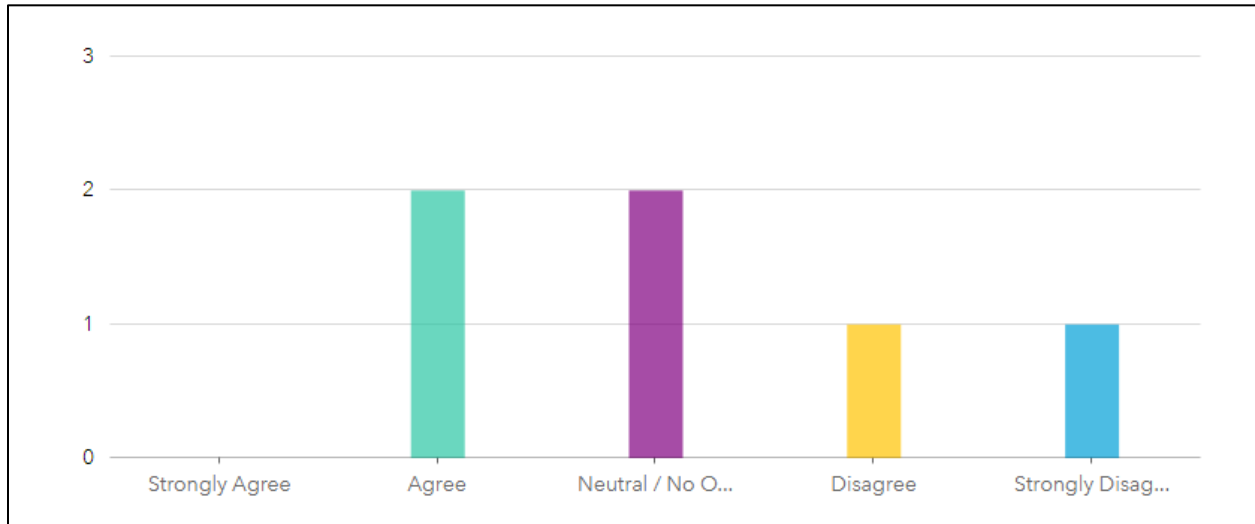
Staff Response:



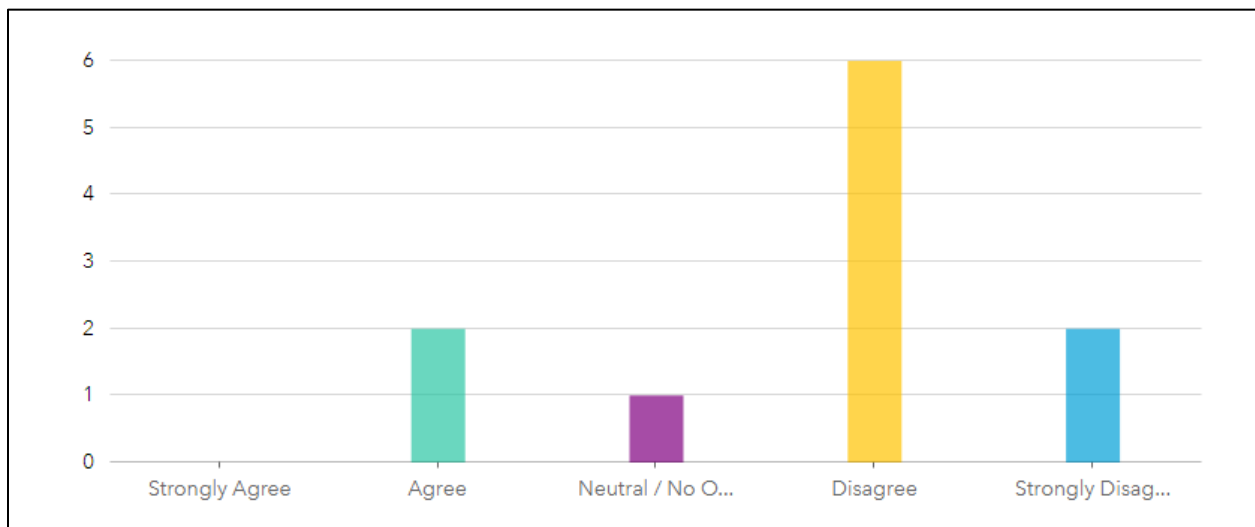
Question 2 Findings: Both Council and staff view that it is *important* to *absolutely essential* that high-speed internet options in Woodland Park are accessible and affordable to all.

Question 3: Current broadband services are adequate in downtown Woodland Park.

Council Response:



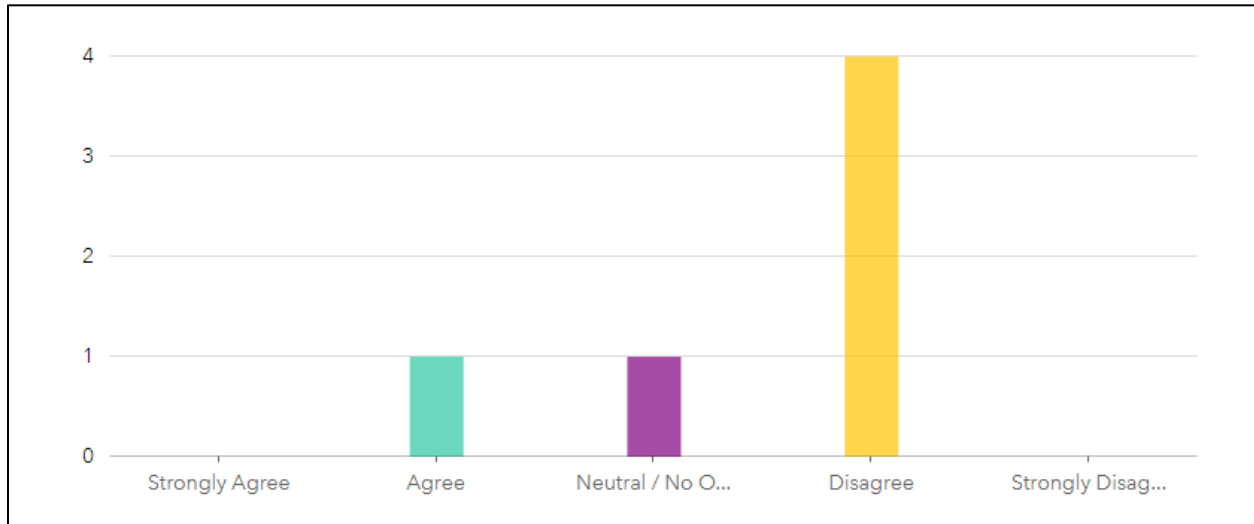
Staff Response:



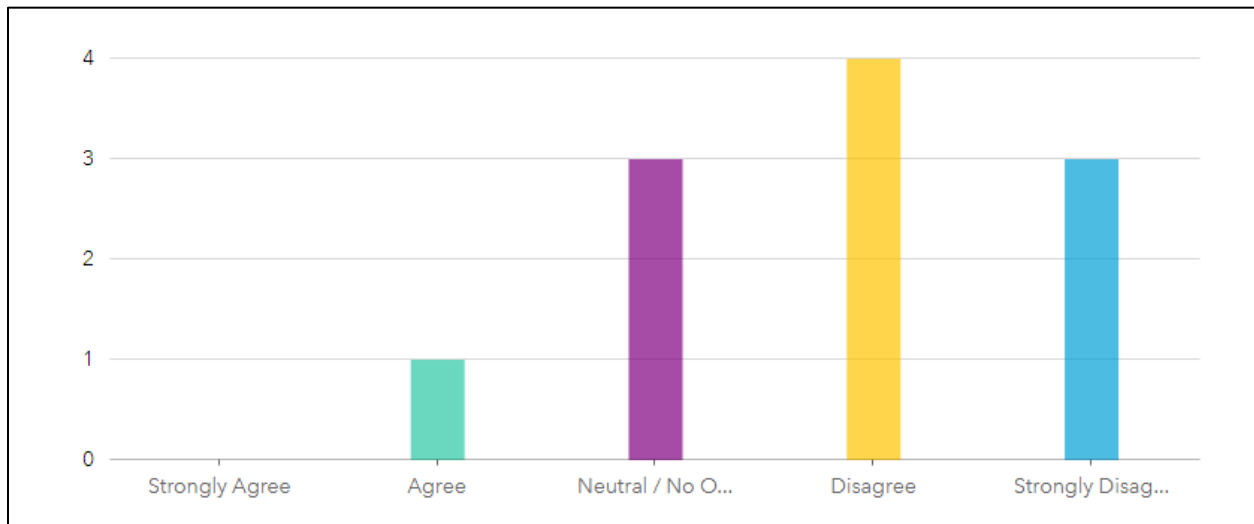
Question 3 Findings: While Council and some staff have various views regarding the adequacy of broadband services in downtown Woodland Park, 8 out of 11 staff respondents seem to indicate that they do not think that currently there is adequate broadband services in downtown Woodland Park.

Question 4: Broadband services are adequate in the residential areas of Woodland Park.

Council Response:



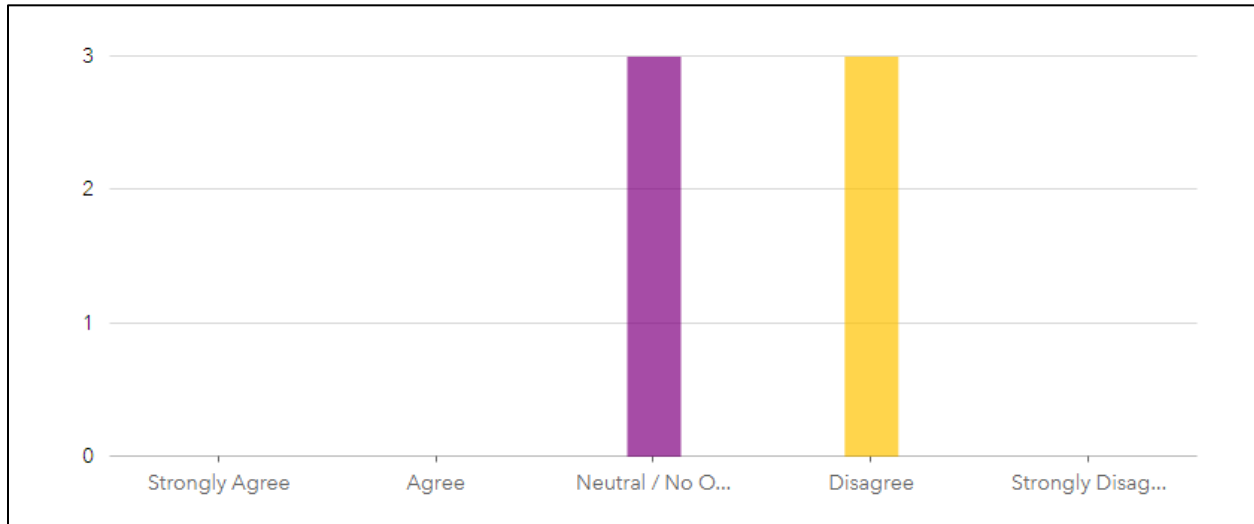
Staff Response:



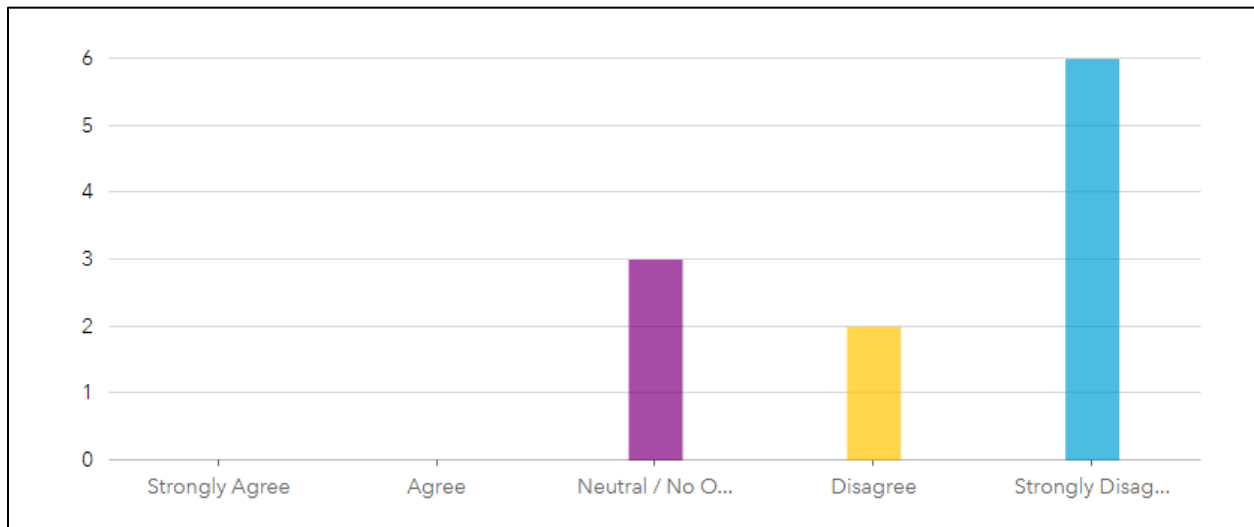
Question 4 Findings: 4 out of 6 Council respondents and 7 out of 11 staff respondents do not feel that broadband services are adequate in the residential areas of Woodland Park.

Question 5: Broadband services are adequate in the park and recreation areas of Woodland Park.

Council Response:



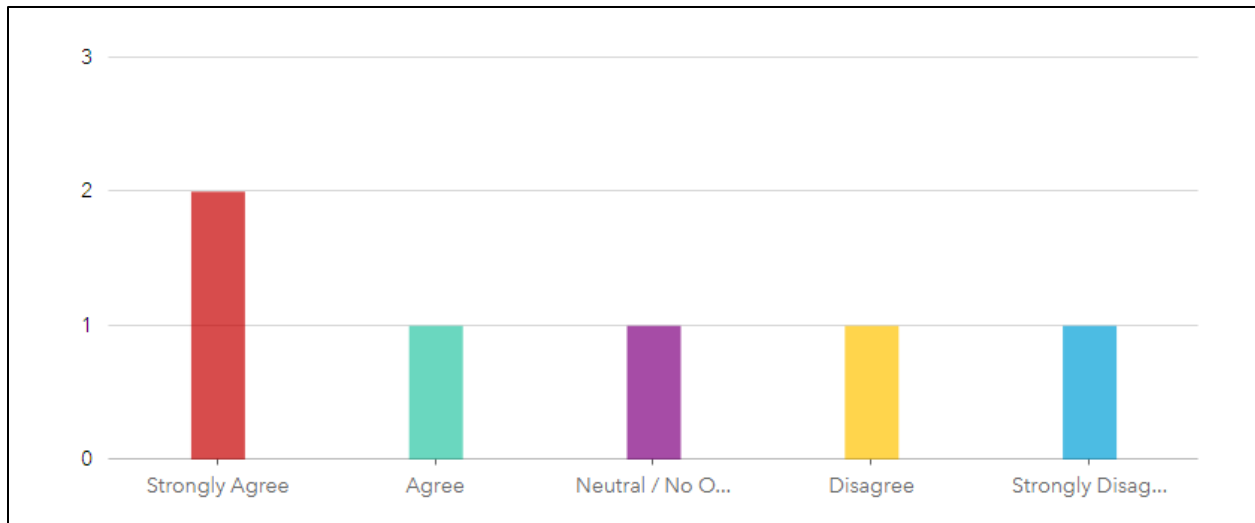
Staff Response:



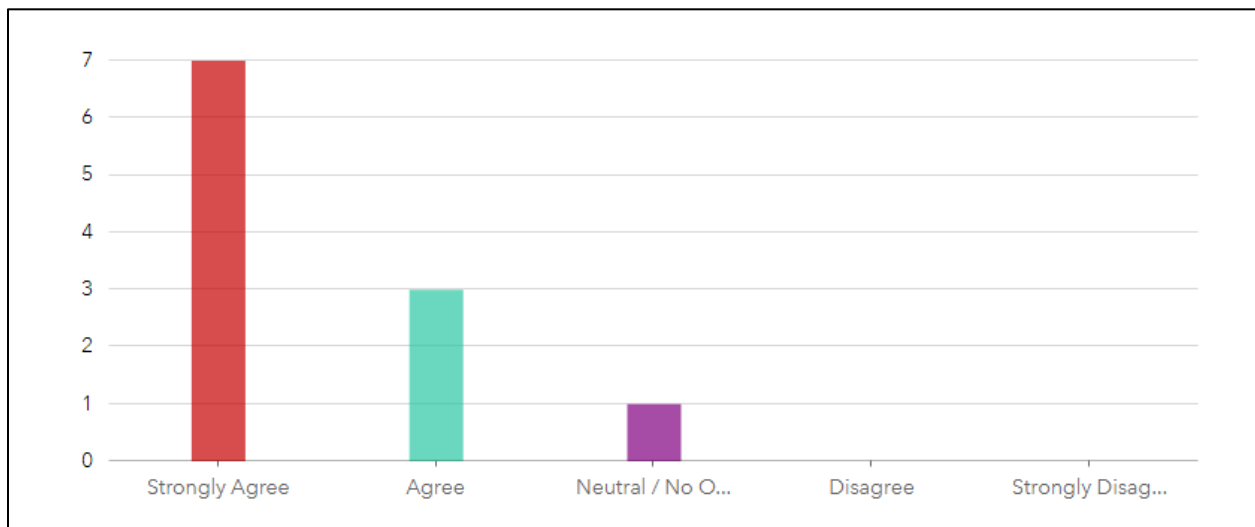
Question 5 Findings: 3 out of 6 Council respondents and most staff respondents, 8 out of 11, do not feel that broadband services are adequate in the park and recreation areas of Woodland Park.

Question 6: The City should encourage and/or enable the deployment of broadband services in Woodland Park.

Council Response:



Staff Response:



Question 6 Findings: 3 out of 6 Council respondents and 10 out of 11 staff respondents agree that the City should encourage and/or enable the deployment of broadband services in Woodland Park.

Comments: Do you have any comments regarding any of the questions 1 through 6?

Council Response:

Responses (Findings)

One of the cellular providers has had many complaints from residents due to poor coverage. There is no real public Wi-Fi for residents or tourists. Many neighborhoods are still on DSL that is unreliable and slow.

City should engage in backbone infrastructure for City offices and facilities and leave the rest to the private sector to build.

Staff Response:

Responses (Findings)

Every time the internet is down, which is way too much, the aquatics center cannot take payments.

High speed public connections in public spaces would be great. As more and more schools and jobs become dependent on an internet connection, it would create more space for citizens to work.

Having free access to high-speed internet in our parks such as Meadow Wood, Memorial Park, and Bergstrom Park would be a huge asset to our community.

Question 7: What do you see as the biggest benefits for Woodland Park as the City considers potentially enhancing broadband services throughout the community?

Council Response:

Responses (Findings)

Would be beneficial to all in the community to have a high-speed reliable broadband service available, by better reliability at City Hall for streaming capabilities.

It would bring us into the 21st century and help everyone from students to home businesses.

Would like public owned, private serviced.

Better services for our community.

Access for school-aged children to enhance their research ability.

To save the taxpayers money on internet costs for city facilities.

Staff Response:

Responses (Findings)

Vendors at our Farmer's Markets and events in our parks and downtown having access to free high-speed internet would be huge for economic development. Tourists stopping by may stay longer to research their destination or local recreation areas if they have good internet access. The community might also spend more time in our parks.

Ubiquity of high-speed and affordable broadband. Ability to supercharge economic development by bringing in reliable, high-speed services.

This has become a main form of communication and a means to conduct business. Consider it a necessity in today's world.

Reliability, the ability to attract new business that rely on high-speed data, a more informed community with better access to information.

Improved access for businesses to operate.

Everything we do to operate relies heavily on technology. This will only become more prevalent. We need to put a solid system in place to allow management functions and critical incidents to operate without having to worry about connectivity.

Question 8: What are your biggest concerns for Woodland Park regarding the future of broadband services? And why?

Council Response:

Responses (Findings)

Reliable fiber service at a reasonable price. Maybe a public 5G Wi-Fi pay as you go service.

Biggest concern is that the City Staff appears to want to encroach on an area that clearly belongs in the private sector. The direction the City Staff is heading is completely opposite that which industry advises. Small municipalities cannot afford the staff to properly administer an IT network or any component of an IT System. We barely keep the audio/video system in City Hall functioning. The residence seems to prefer small government, not ever increasing. Owning an IT System is not free nor labor neutral.

Lose out on city beneficial opportunity because we did not do our homework.

See fiber as being a better focus, but broadband is a great option as well.

Do not want the City to be an ISP provider. Don't have a problem with the build out of the Broadband so long as private internet providers provide the service.

Staff Response:

Responses (Findings)

There is a misconception in the community and among Councilmembers that the City wants to be an ISP or internet utility, and that does not seem to be the case. Being very clear with language we use and any communication on the topic throughout the process will be important to get buy in from our Council and concerned residents.

That it will not reach far enough. Due to the topography of the area many locations can't get internet access, or it costs a fortune for terrible connections. Much of the population lies outside the city limits but those areas need to be considered.

It does not reach a huge portion of our population. We will not attract new and younger residents without good internet services and the City will suffer for that in the long run. Look at the declining high school population as an example of the lack of young new residents.

Funding.

Being able to get the infrastructure established affordably. Uncertain how affordable this utility may or may not be given the current population of the community.

5. Competing Values Survey

Background

Prior to the August 4, 2022, City Council Vision Working Session, a three-part Vision Exercise Survey and supporting materials were developed, which the City Manager's Office sent to all seven Council Members and eleven City staff members. The second part of the Vision Exercise Survey included a Competing Values Survey.

When developing a broadband vision for their communities, governing bodies are sometimes confronted with difficult choices regarding competing values. To better understand elected officials and City staff preferences on these topics the second part of the visioning survey asked questions of Council members and staff regarding competing values for community broadband networks.

Communities considering broadband deployments typically share common objectives when considering an investment in a broadband network. Most communities have some or all of the following goals:

- Ubiquity
- Affordability
- Consumer choice
- Competition in the market
- Ownership and control of assets
- Performance
- Risk aversion
- Positive cash flow

Choosing which goals to prioritize can be challenging, as some of these objectives can be complementary, while others lie in strict opposition. The survey should surface these competing objectives and should provide the City with a sound footing upon which to base its future decisions.

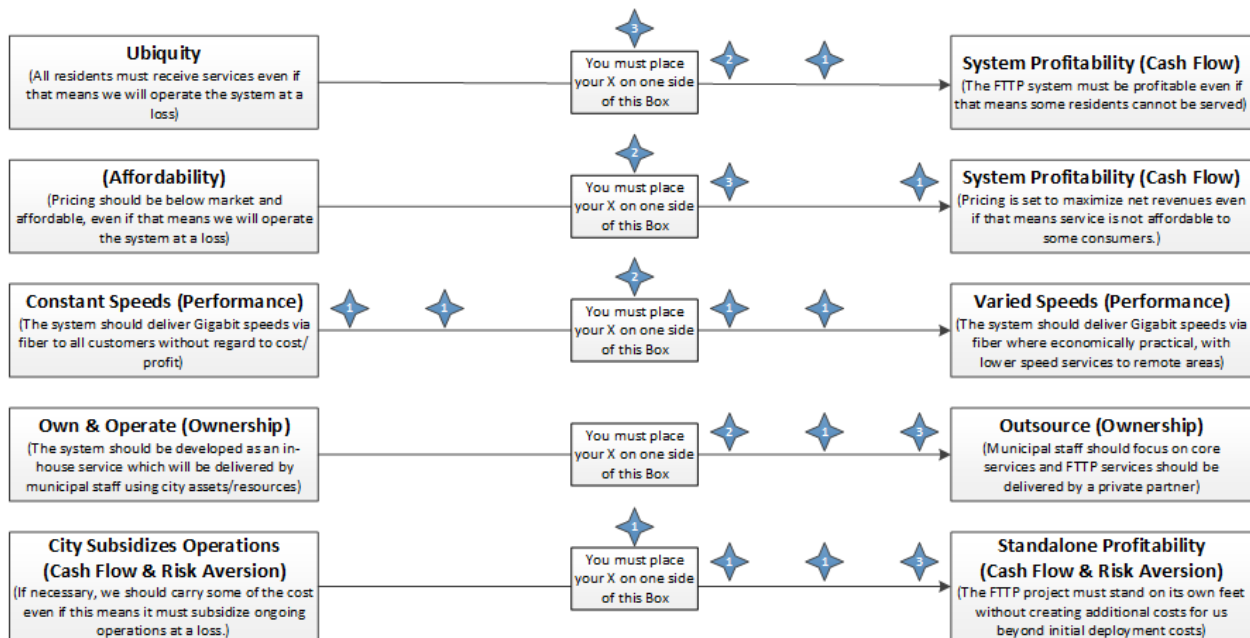
The following table was included in the Competing Values Survey for the Council members and staff as a tool to help them weigh Ubiquity and Financial Viability and Risk and Complexity. As shown on the table, one objective may have no impact on another (NI), objectives may align (A), or they may conflict (C).

	Ubiquity	Choice	Competition	Ownership	Performance	Affordability	Risk Aversion	Cash Flow
Ubiquity		A	A	A	NI	C	C	C
Choice	A		A	A	A	A	C	NI
Competition	A	A		A	A	A	C	NI
Ownership	A	A	A		A	A	A	C
Performance	NI	A	A	A		NI	A	A
Affordability	C	A	A	A	NI		C	C
Risk Aversion	C	C	C	A	A	C		A
Cash Flow	C	NI	NI	C	A	C	A	

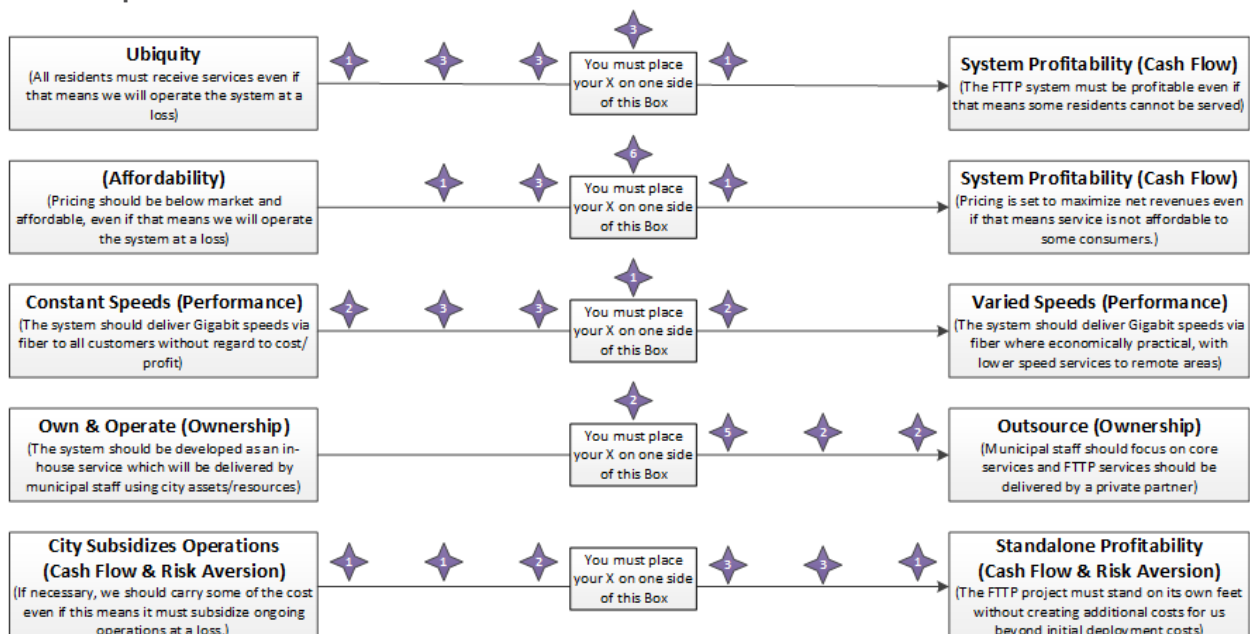
Survey Results

The following charts shows the survey results from the Council members and City staff regarding competing values. For each of the paired values either an ♦ indicator has been placed for each Council member respondent or an ♦ indicator has been placed for each staff member respondent. These indicators were placed between the two competing priorities at the point which most closely matches the preference shared by each Council or staff member via the survey. The number inside the indicator notes the number of Council members or staff members who shared that preference. An indicator near the terminal arrow indicates a strong preference for one competing value over its pair, while an indicator near the middle represents a preference but still considering aspects of the competing values.

Council Response:



Staff Response:



Key Findings

Ubiquity – All residents must receive services even if that means that the system will operate at a loss – 7 out of 11 City staff respondents indicated that this is a key objective. While 3 out of 6 Council member respondents and 3 out of 11 City staff respondents indicated that they are still considering this objective.

Versus

System Profitability (Cash Flow) - The system must be profitable even if that means some residents cannot be served – 3 out of 6 Council member respondents and 1 of out 11 City staff respondents indicated that this is a key objective. While 3 out of 6 Council member respondents and 3 out of 11 City staff respondents indicated that they are still considering this objective.

Finding: Council leans more toward **System Profitability**; however, staff leans more toward **Ubiquity**.

Affordability – Pricing should be below market and affordable, even if that means the system will operate at a loss - 4 of out 11 City staff respondents indicated that this is a key objective. While 2 out of 6 Council member respondents and 6 out of 11 City staff respondents indicated that they are still considering this objective.

Versus

System Profitability (Cash Flow) - Pricing is set to maximize net revenues even if that means service is not affordable to some consumers – 4 out of 6 Council member respondents and 1 of out 11 City staff respondents indicated that this is a key objective. While 2 out of 6 Council member respondents and 6 out of 11 City staff respondents indicated that they are still considering this objective.

Finding: Council leans more toward **System Profitability**; however, staff leans more toward **Affordability**.

Constant Speeds (Performance) - The system should deliver Gigabit speeds via fiber to all customers without regard to cost/profit - 2 out of 6 Council member respondents and 8 of out 11 City staff respondents indicated that this is a key objective. While 2 out of 6 Council member respondents and 1 out of 11 City staff respondents indicated that they are still considering this objective.

Versus

Varied Speeds (Performance) - The system should deliver Gigabit speeds via fiber where economically practical, with lower speed services to remote areas - 2 out of 6 Council member respondents and 2 of out 11 City staff respondents indicated that this is a key objective. While 2 out of 6 Council member respondents and 1 out of 11 City staff respondents indicated that they are still considering this objective.

Finding: Council does not seem to have a preference regarding the **Performance** of the system (**Constant Speeds** vs. **Varied Speeds**); however, staff leans more toward **Constant Speeds**.

Own & Operate (Ownership) - The system should be developed as an in-house service which will be delivered by municipal staff using city assets/resources - 2 out of 11 City staff respondents indicated that they are still considering this objective.

Versus

Outsource (Ownership) - Municipal staff should focus on core services and system services should be delivered by a private partner - 6 out of 6 Council member respondents and 9 of out 11 City staff respondents indicated that this is a key objective. While 2 out of 11 City staff respondents indicated that they are still considering this objective.

Finding: Council and staff lean toward an **Outsource** system services delivery model.

City Subsidizes Operations (Cash Flow & Risk Aversion) - If necessary, the City should carry some of the cost even if this means it must subsidize ongoing operations at a loss - 4 of out 11 City staff respondents indicated that this is a key objective. While 1 out of 6 Council member respondents indicated that they are still considering this objective.

Versus

Standalone Profitability (Cash Flow & Risk Aversion) - The system must stand on its own feet without creating additional costs for the City beyond initial deployment costs - 5 out of 6 Council member respondents and 7 of out 11 City staff respondents indicated that this is a key objective. While 1 out of 6 Council member respondents indicated that they are still considering this objective.

Finding: Council and staff lean toward **Standalone Profitability**.

6. Broadband Service Models

Background

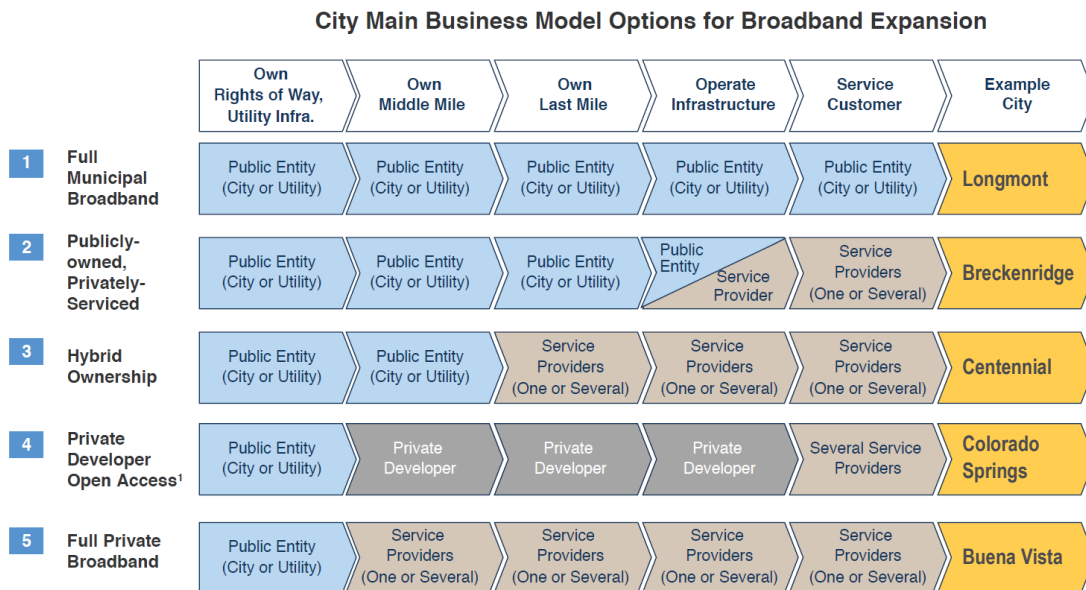
Prior to the August 4, 2022, City Council Vision Working Session, a three-part Vision Exercise Survey and supporting materials were developed, which the City Manager's Office sent to all seven Council Members and eleven City staff members. The last part of the Vision Exercise Survey included a weblink to a white paper that presented an overview of the different municipal broadband models. Council members and City staff were asked to please spend some time to reviewing the white paper prior to the August 4, 2022, City Council Vision Working Session. Information from the white paper is presented below.

The following information is from a guide created by *US Ignite* in July of 2020 for communities considering ways to expand broadband service. The guide, titled **Broadband Models for Unserved and Underserved Communities**, includes models for fully private and fully public broadband networks, but also covers a growing range of municipally enabled broadband strategies that rely on a combination of public and private investment. It is intended to help communities understand how much capital is needed for different models of deployment, what returns to expect, and finally how to avoid the most common pitfalls.

Five Models

There are several models for fully private and fully public broadband networks, plus a growing range of municipally enabled broadband strategies that rely on a combination of public and private investment. Despite the many ways that municipalities have gone about implementing their broadband programs, there are five main ways to do it, each requiring a different level of investment and engagement from the municipality.

The five models are shown in the following chart.



Note: 1) Private Developer is defined as private company that builds, owns and operates the network infrastructure and offers open access to it to several retail SPs that provide service on the top

Four Key Factors

Generally, there are four key factors that municipalities should consider when making decisions on which municipal broadband model to pursue:

Key Decision Factors	Options	Definition	Impact on City's Decision
Capital Availability	Good Access to Capital / Funding	There are sufficient financing sources to fund a significant part of the build	Good capital availability should push the municipality to own / fund a larger part of the project without bringing in private ISPs
	Poor Access to Capital / Funding	There is limited capital / funding availability, so seeking commercial capital will be required to fund the build	
Existing Infrastructure	Good Existing Infrastructure / Capabilities	There is an existing public utility with conduit / infrastructure and operating capabilities	Presence of existing infrastructure and/or capabilities should push the municipality to take more control over the project, which provides a "bargaining" chip with ISPs
	Poor Existing Infrastructure / Capabilities	There is no existing utility or there is, but infrastructure and operating capabilities are poor	
Partnership Options	Viable ISP Partner(s)	The municipality has attractive demographics or a good value proposition for a third-party ISP	Lack of viable ISP partnerships limits the municipality's options to those models that require a significant involvement from the ISP
	No Partner Options	The municipality is too small, too remote, or otherwise unattractive for a third-party ISP	
Objective and Risk Tolerance	Community Benefit	Using the broadband infrastructure to create innovation and benefit the community in non-financial ways	Strong public support towards anchoring the project around community benefits should push the municipality to seek more control / ownership over the infrastructure
	Meeting Financial Goals (High Risk)	Using the broadband infrastructure to meet measurable financial goals while maximizing broadband availability	Focusing on meeting financial goals / targets should push the municipality to more predictable financial models (e.g., third-party driven)
	Meeting Financial Goals (Low Risk)		

Decision Tree

Depending on where municipalities fall on the criteria for the four key factors, there may be a business model that is a more optimal choice for them. To steer municipalities in the right direction the choices have been distilled into the following decision tree that could help communities to develop the best strategy.

Capital Availability	Existing Infrastructure	Partnership Options	Objective and Risk Tolerance	Optimal Business Model	
Good Access to Capital / Funding	Good Existing Infrastructure / Capabilities	Viable ISP Partner(s)	Community Benefits	Full Municipal Broadband – maximizes community benefits when capital / infrastructure are available	1
			Meeting Financial Goals	Publicly-owned, Privately Serviced – reduces risk when full control over service not as important	2
		No Partner Options	Community Benefits	Full Municipal Broadband – maximizes community benefits when capital / infrastructure are available	1
			Meeting Financial Goals	Full Municipal Broadband – is the only option when no ISPs will partner	1
	Limited Existing Infrastructure / Capabilities	Viable ISP Partner(s)	Community Benefits	Publicly-owned, Privately Serviced – reduces risk in absence of operational capabilities	2
			Meeting Financial Goals, High Risk	Publicly-owned, Privately Serviced – maximizes return potential while leveraging ISP partnership	2
			Meeting Financial Goals, Low Risk	Private Developer Open Access – limits risk to the municipality but maximizes chances of success w/ISP partner	4
		No Partner Options	Community Benefits	Full Municipal Broadband – is the only option when no ISPs will partner but there's capital	1
			Meeting Financial Goals		
		<i>Does not matter</i>		Hybrid Ownership – hybrid models are optimal when capital is limited but there's existing infrastructure, regardless of other factors	3
Limited Access to Capital / Funding	Good Existing Infrastructure / Capabilities				
	Limited Existing Infrastructure / Capabilities	Viable ISP Partner(s)	Community Benefits	Private Developer Open Access – maximizes municipal control in light of limited funding / infrastructure	4
			Meeting Financial Goals	Full Private Broadband – maximizes chances of success while ensuring goals are met	5
		No Partner Options	<i>Does not matter</i>	<i>Limited options, have to go back and seek more capital, likely government funding / subsidies</i>	

While a decision tree like this may suggest that picking a business model is easy, it is quite the contrary. A decision tree is a good “rule of thumb”; however, there are unique circumstances that each municipality faces and doing a thorough diligence across all potential options should always be the starting point. To do that analysis accurately, a municipality first needs to understand how much capital is required and what the financial returns of the program may be.

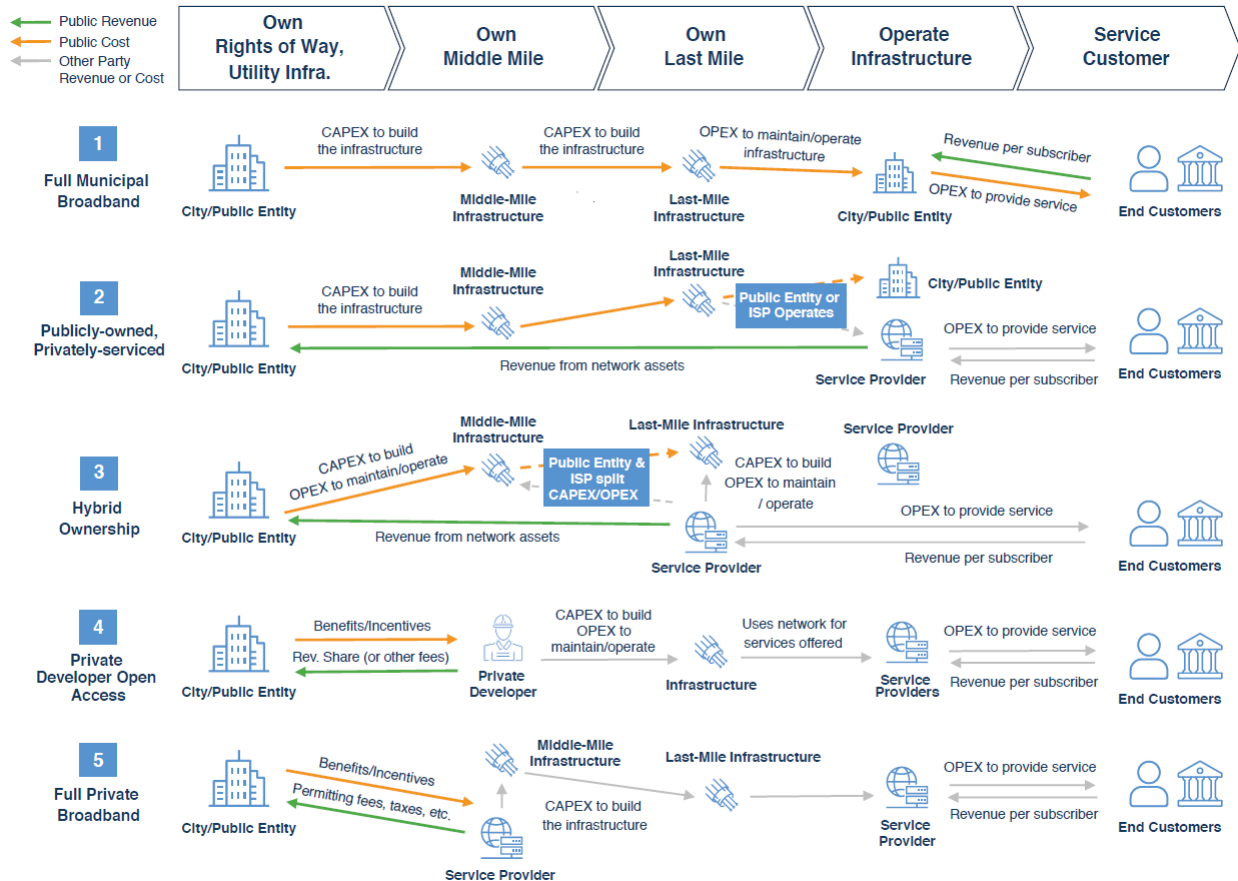
Financial Considerations

Municipal broadband programs are long-term investments, and these projects can take up to five to ten years to complete. Fiber is a resilient and future-proof piece of telecom infrastructure, but it is also expensive to deploy. This means investment in fiber is hardly a “no-brainer” for all municipalities. Those looking to invest to close the digital divide in their communities should prepare for payback periods of 15+ years, particularly across smaller and/or rural communities. These paybacks have often deterred interest from the private sector and make careful planning and business analysis critically important for any municipal broadband program.

The capital expenditures (CAPEX) associated with building a fiber-to-the-home network include a range of fixed and variable costs. These include the cost of laying the initial network infrastructure, which could range from \$500 to \$4,000 per home largely depending on the density of the municipality, as well incremental costs to connect each customer. Costs to connect each customer can include the cable drop to the home, the modem at the home, and the labor cost of the installation. Those could add up to \$1,000 for each incremental customer. All-in, capital requirements for a broadband program in a municipality with 100,000 residents could end up around \$150M.

Operating costs can vary greatly as well, and those depend on experience and efficiency of the broadband provider, number of synergies with the core municipal staff (if any), and types of services delivered to the customers. Municipalities that want or need to offer TV to its residents must prepare for lower margins given high and rising content costs (although this can be mitigated with Over-The-Top offers). We see municipalities most often budgeting between \$40 and \$100 of OPEX monthly for each residential subscriber they sign up.

Not all municipalities will have to cover all these costs. Those that bring in a private ISP or developer to help service the customers and/or build the network can split operating costs, capital costs, or both with that third party. In return they would most typically offer free or low-cost access to municipal infrastructure, fixed payments, or some variable revenue share typically tied to the number of subscribers in the municipal broadband program.



In addition to impacting share of required costs, the business model also dictates the amount of revenue that municipalities can generate from the program. On the high-end, municipalities that deploy and operate Full Municipal Broadband themselves could generate direct revenues of up to \$140 per residential customer every month, without considering additional revenue streams from businesses and other anchor institutions. On the low-end, municipalities that choose Full Private Broadband models would generate limited revenues, aside from permitting and tax fees, which could even be waived in many cases to entice private engagement.

It should be clear by the broad ranges quoted above that the financial performance varies greatly not only by the model, but even from municipality to municipality. Using an “average” set of assumptions for a municipality of 100K residents, typical Investment Rate of Returns (IRRs) can be between 9% and 16% for Models 1 and 2, with a significant amount of capital required but also significant cash flow potential once the program is mature. Municipalities that are not ready to take on this amount of risk could pursue hybrid models or fully give up network ownership to third parties – those investments will be relatively low risk, result in high IRRs but also (typically) more limited cash flow upside.

While financial performance varies from municipality to municipality, the inability to budget appropriately is a main reason some programs fail, reinforcing the need to develop a detailed business case as the first step in any municipality’s implementation plan.

Four Key Challenges

There are four key challenges common to most municipalities pursuing a municipal broadband program: in addition to poor budgeting, some choose the wrong business model due to a “one-size-fits-all” mentality, struggle to secure adequate funding, or fail to maximize their program’s value.

1. **Budgeting:** Detailed budgeting is critical to success. A detailed analysis— including designing a full network plan —is essential during the planning phase. It is also important not to overlook any major sources of costs. Those most typically include labor for delivering the service, managing and maintaining the network, but also costs to support any debt and interest payments. As costs increase, it is also important to be clear-eyed and consider private sector involvement; many private ISPs have much lower operating costs due to their scale and experience, while having private developers build and operate the network can significantly reduce the cost associated with network operations and maintenance.
2. **Funding:** Especially when the total budget is high, securing the right funding may become a roadblock. More “traditional” funding options include soliciting contributions from anchor institutions, selling bonds, enlisting local utility involvement, securing federal and state grants, or asking private partners to co-fund the builds. When those are not an option and/or are not enough, municipalities often get creative. For example, some had their residents contribute money to the program, by either paying for several months of service upfront, or pooling money across neighborhoods and buying bonds from the municipality. Creative approaches like this may work for certain municipalities when securing more traditional funding is not an option.
3. **Diligence:** Even when budgets are finalized and capital secured, it is also tempting to just copy a “success story” from another municipality. Skipping the diligence on evaluating which business model to pursue, however, can lead municipalities down the wrong path. There are numerous examples of municipalities ultimately having to pivot from the initially selected business model because they “dove-in” too quickly.
4. **Related Benefits:** Lastly, when the path is chosen and business model is selected, municipalities should think holistically about how else they can use the program to serve their communities and ensure the network has the architecture to support that plan. For example, while residential service is often the primary motivation, municipalities should not forget about enabling internet access to the commercial sector, which can spur job and value creation. Additionally, while few municipalities have thus far used their municipal fiber to enable “Smart City” solutions, these solutions can spread digital literacy to more residents. And, while the municipality’s focus has been on fiber services thus far, there are also scenarios where mobile or fixed wireless broadband are more appropriate for last mile connectivity. Communities should consider where fiber investment is valuable and how it can be tied to other network technologies as needed.

While these challenges are common regardless of the selected business model, Municipalities pursuing models with more municipal involvement are more prone to many of these. To maximize chances of success, special attention should be paid to budgeting and costing, and revenue generation should be prioritized and accelerated to the extent possible. For example, targeting the densest business and residential areas first or starting with commercial-only services is one way to generate a steady inflow of cash to help cover program costs.

Working with the private sector avoids many of the budgeting and costing issues mentioned above, but it brings about a different set of challenges. First, attracting the attention of private ISPs, particularly for smaller municipalities, could be a challenge. Municipalities should be persistent in soliciting private engagement and think creatively about how to entice private cooperation. For example, streamlining permitting and rights-of-way, enabling access to backhaul and middle mile infrastructure (if such exists or can be leased), becoming the anchor institution for the private ISP, or co-sponsoring an “Open Access” network and enlisting a private developer to sign up the ISPs (Model #4) all can improve chances of finding a partner. Once a partner is identified, it is also important to clearly define rules and goals for the program to maintain some degree of control and ensure municipal objectives are met. This is especially true for the “Open Access” programs which require participation of a private developer and one or several ISP partners. These models have been relatively rare in the U.S., but “Open Access” has proven successful in Europe and should be considered as an option for any municipality considering a municipal broadband program today, particularly as it strikes a good balance between providing a municipality the control it needs while also de-risking the investment and operations.

7. Vision Working Sessions

Background

Two Vision Working Sessions were held with the Woodland Park City Council. One session took place on Thursday, August 4, 2022, and the second session took place on Thursday, September 1, 2022. During these work sessions, a summary was presented of the results from the visioning and competing values surveys. Also, during the work sessions, Council had an opportunity to provide input into the Telecommunications Master Plan while it was still under development. The sessions also provided the City Council with an understanding of the issues involving municipal broadband and the development of a “roadmap” which best suits its desires, maintains its competitive position from an economic development standpoint, and best positions the community for the future.

August 4th Session

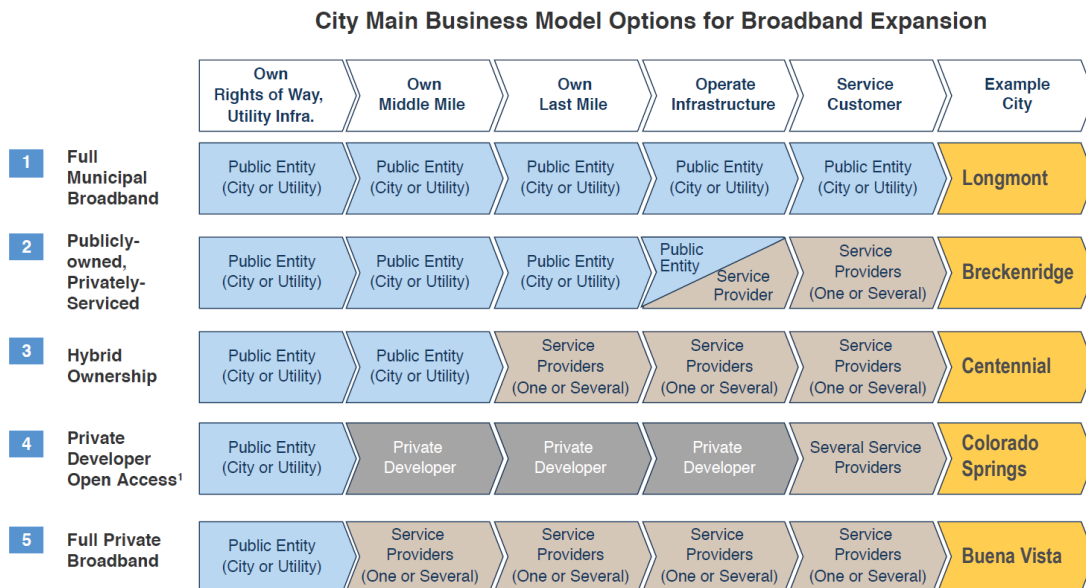
The August 4th session took place prior to the regularly scheduled City Council meeting. It was a study session with the Council that started at 5:00 pm and concluded at 6:45 pm.

The following was the agenda for the session.

- Broadband 101
- Project Background & Overview
- Project Progress Update
- Review Service Models for Broadband
- Review Vision Exercise – “Competing Values”
- Next Steps & Path Forward

As indicated in the agenda, the session started with a basic overview of Broadband. That was followed by a presentation and discussion of the materials included in the previous chapters of this Plan. The session included a focused discussion regarding the 2019 project to deploy fiber up Ute Pass, the conceptual network designs and costs, and the service models for broadband.

The following chart was the focus of the broadband service model discussion.



Key Outcomes

The primary outcome from the August 4th Vision Working Session was that Council set some general guardrails regarding their thoughts about which one of the broadband service models might be appropriate for the community. Specifically, they decided that they did not want to go down the path of broadband service Model #1, which, as shown in the chart above, is a Full Municipal Broadband model. In other words, they did not seem to support the City becoming an Internet Service Provider (ISP).

The Council also indicated that it was probably in the best interest of the City to explore ways to improve upon the Full Private Broadband model that is currently in place in the City because, it did not seem to be meeting the needs of the community. As shown in the chart above, the Full Private Broadband model is described in broadband service Model #5.

At the end of the Vision Working Session, Council decided that they needed some additional time to decide which of the remaining 3 models they wanted to pursue (Models #2, #3, or #4, as shown in the chart above). So, they requested that an additional Vision Working Session be scheduled to discuss this further and provide additional direction. Per Council's request, a second Vision Working Session was scheduled to take place during the regular City Council meeting on Thursday, September 1, 2022.

September 1st Session

The Thursday, September 1st session took place during the regularly scheduled City Council meeting that started at 7:00 pm. This Vision Working Session was item number 7 on the City Council Meeting Agenda, under the heading of Unfinished Business.

The following was the agenda for the session.

- Project Overview
- Review Conceptual Designs
- Review Service Models for Broadband
- Review Vision Exercise – “Competing Values”
- Discuss Council Vision, Goals, & Objectives
- Next Steps & Path Forward

At the beginning of the session, Council indicated that they wanted to jump right to the “Discuss Council Vision, Goals, & Objectives” item on the agenda. So, this session included a focused discussion regarding the remaining 3 broadband service models (Models #2, #3, or #4, as shown in the chart above), as well as a focused discussion on the conceptual network designs and costs.

Key Outcomes

There were two very important outcomes from the September 1st Vision Working Session that helped clarify the path forward regarding broadband in the City of Woodland Park. First, the Council choose which of the broadband service models best aligned with their broadband vision for the future of the community. Secondly, they decided which of the three conceptual network designs would best service the community going forward.

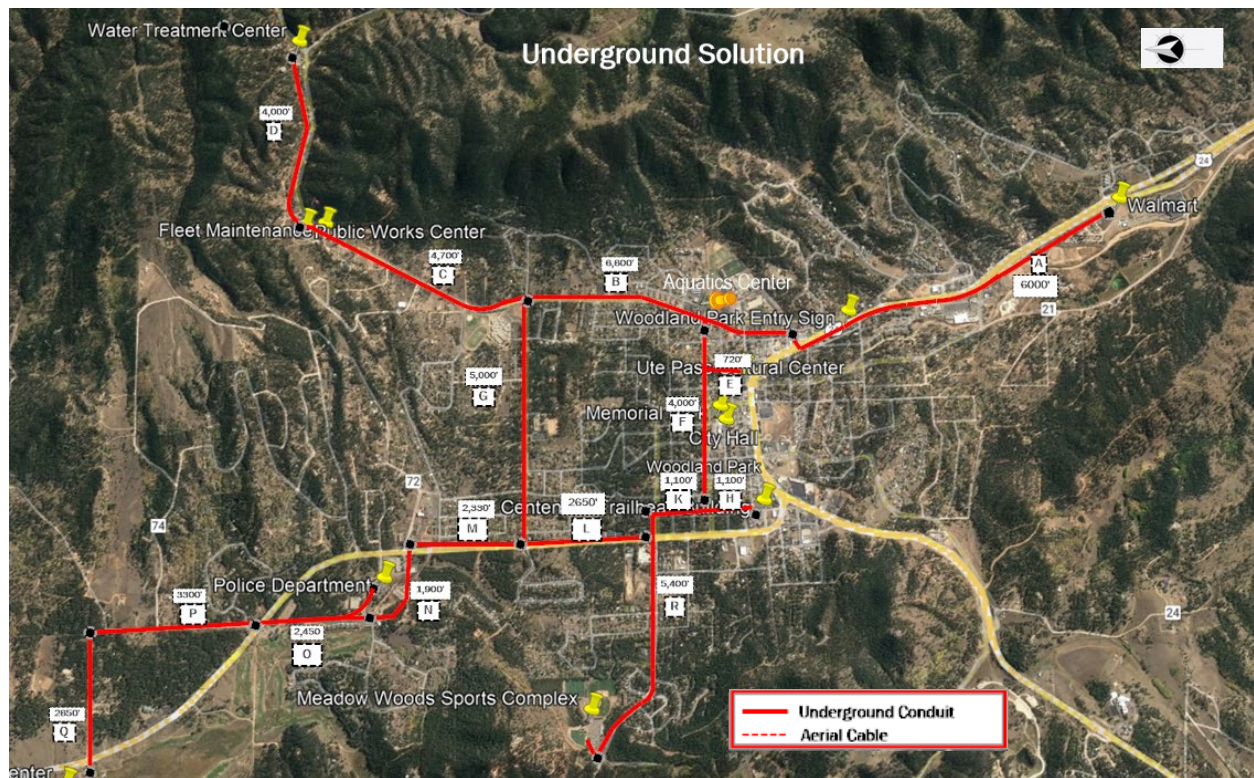
At the conclusion of the session, Council indicated that they unanimously support broadband service model #3, which, as shown on the chart above, is described as a Hybrid Ownership model. Generally, Council shared their thoughts that the City should construct and own the middle-mile network that can be used initially, to interconnect City facilities. This means that the City would own the physical assets that make up the network, such as conduit and fiber optic cables. The Council went on to share that they think the City should seek potential partners from the private sector to operate and maintain the network, as well as to provide services over it initially, to the City government. This type of partnership is known as a public-private partnership or a P3.

As a next step, these same potential private sector partners, could develop a lease agreement with the City for the use of unused conduit, and/or unused or “dark” fiber cable strands to build out a last mile network. This last mile network would be owned, operated, and maintained by the private sector partners to potentially provide services to the community’s anchor institutions, businesses, and residents.

The lease agreements between the City and potential private sector partners could be used as a revenue source for the City. These funds could be used to cover the capital costs the City might incur as part of the construction of the middle-mile network. Long term, they could be used to cover the recurring costs of the broadband services provided to the City by private sector providers.

Also, at the conclusion of the session, Council shared their unanimous support for the underground conceptual network design, which means that the potential city fiber network will be exclusively placed in underground conduits. Council stated that they understood that aerial cable is subject to environmental elements, such as wind, snow rain, and UV light; whereas, underground cable is immune to these issues, so, the underground design is the best installation method because of the security of the fiber.

The following figure is a map that shows the conceptual underground fiber cable network design that Council supports.



The Council went on to share their understanding that the underground fiber network design is the more costly design but thought that the need for securing the fiber was a priority particularly when considering the impact of forest fires on aerial cable.

While Council understands that the underground fiber conceptual network is the most secure, it is also the most expensive. So, it is recommended that the City pursue state or federal grant funding to cover the costs of the underground network. If these funds are limited or not available, then the City may want to pursue a hybrid fiber network that combines both aerial and underground fiber cable. The hybrid fiber network is designed to balance the need for security and to reduce costs.

As presented in an earlier chapter of this document, the table below details the estimated installation costs for the underground conceptual network design assuming a \$50.00/foot cost for the installation of the conduit. Also shown in the table is the estimated savings that Woodland Park can expect if an agreement with CDOT can be reached for the trading of fibers. If this opportunity were to come to fruition, Woodland Park would receive fibers from the Walmart intersection with US 24 to the intersection of Baldwin St. and US 24. CDOT would receive fibers from Baldwin St. and US 24, north on Baldwin St. to Kelly Rd. and then west on Kelly Rd. to Highway 67.

Cost Estimate of Underground Fiber Links

<u>Link</u>		<u>Length(Ft)</u>	<u>Cost/Ft</u>	<u>Total Cost/Link</u>
A		6,000	\$ 50.00	\$ 300,000.00
B	UE	6,600	\$ 4.00	\$ 26,400.00
C		4,700	\$ 50.00	\$ 235,000.00
D		4,000	\$ 50.00	\$ 200,000.00
E		720	\$ 50.00	\$ 36,000.00
F		4,000	\$ 50.00	\$ 200,000.00
G	UE	5,000	\$ 4.00	\$ 20,000.00
H		1,100	\$ 50.00	\$ 55,000.00
I		N/A		
j		N/A		
K		1,100	\$ 50.00	\$ 55,000.00
L		2,650	\$ 50.00	\$ 132,500.00
M		2,330	\$ 50.00	\$ 116,500.00
N		1,900	\$ 50.00	\$ 95,000.00
O		2,450	\$ 50.00	\$ 122,500.00
P		3,300	\$ 50.00	\$ 165,000.00
Q		2,650	\$ 50.00	\$ 132,500.00
R		2,600	\$ 50.00	\$ 130,000.00
S		2,800	\$ 50.00	\$ 140,000.00
Total Cost				\$ 2,161,400.00
Fiber trade with CDOT				\$ (276,000.00)
Total Cost with fiber trade				\$ 1,885,400.00
UE - Underground Existing				

8. Recommendations

Background

The key outcomes from the Vision Working Sessions with the City Council, as described in the previous Chapter, as well as the findings shared throughout this Plan contributed to the following recommendations. These recommendations are next steps for the City to consider. While the recommendations are listed in a sequential order this does not necessarily mean they need to be implemented in this order.

Recommendation #1 – Evaluate Funding Alternatives

An initial analysis of the City's broadband project will need to look at the City's projected revenue verses expected costs – an examination of whether the revenue that should be generated from the infrastructure can pay for the infrastructure costs that would be incurred. The analysis will need to include a review of funding sources that could help offset infrastructure costs. These grants and other funding options can have significant positive impact on the scope, feasibility, and options of the broadband project.

It should be noted that grant funding and other funding opportunities are a constantly emerging and changing target. The federal government and state legislatures across the country have recognized the need for broadband funding support. The Federal Communications Commission (FCC) and Congress have approved several channels of funding. And state legislatures across the country are working on broadband funding, mostly geared towards the desire to have ubiquitous broadband, specifically in rural areas. The important positive implication of that is there are several opportunities for external project funding that can dramatically improve the financial considerations of broadband projects.

It is also important to maintain awareness of other funding sources. It is not uncommon for an agency (regional, state, or federal) to have targeted programs that can provide funding for broadband projects. These can range from utility related topics to community betterment to citizen specific needs to business attraction or retention, block grants, etc.

The following is a detailed description of five different programs that the City could potentially use as funding sources for the design, engineering, and construction of the middle-mile fiber network, as well as a potential last-mile fiber network. It is recommended that the City look at pursuing the three federal programs that include the **Capital Projects Fund (CFP)**, **Broadband Equity, Access, and Deployment Program (BEAD)**, and the **Digital Equity Act Programs**.

Colorado Department of Local Affairs (DOLA)

DOLA's Energy and Mineral Impact Assistance Fund (EIAF) program was created to assist **political subdivisions** that are socially and/or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels. Funds come from the state severance tax on energy and mineral production and from a portion of the state's share of royalties paid to the federal government for mining and drilling of minerals and mineral fuels on federally owned land. The creation of the fund is outlined in C.R.S. 34-63-102 (Federal Mineral Lease) and C.R.S. 39-29-110 (Severance). Grant dollars are awarded for the planning, construction, and improvement of public facilities, and for the provision of services by political subdivisions.

Only political subdivisions of the State of Colorado (local governments) are eligible to apply for grants through this program. Local governments must be in compliance with all laws and provisions governing their operations as well as in compliance with all Department of Local Affairs programs prior to receiving an award. Applicant projects can range from community strategic plans, comprehensive or master plans, and land use codes, to the construction of community capital assets.

Grants can be used for community broadband projects that support local government efforts to provide public institutions, private businesses, and local citizens with access to reliable broadband service at affordable costs. Funding opportunities include **regional planning and interconnectivity**, and **middle-mile Infrastructure**. Additional funding requirements and/or considerations are: Due to the technical complexity of these grants, a more in-depth review by DOLA staff is required, therefore applicants must contact their Regional Manager prior to submitting a grant application, and a 50% match is required for middle-mile infrastructure.

It is important to note that, according to the staff of the Colorado Broadband Office (CBO), DOLA may be discontinuing their EIAF broadband funding program.

Colorado Department of Regulatory Agencies (DORA)

DORA's Broadband Fund exists to connect communities and fuel economic growth in unserved areas across Colorado. The Broadband Deployment Board provides grants through the Broadband Fund to deploy broadband service in unserved areas of the state.

Broadband access has become a crucial factor for economic development in communities across the country. It directly impacts not only local business' ability to operate outside their region but affects residents' access to goods and services like education and healthcare. Communities with broadband access experience real, measurable benefits, and the Broadband Fund seeks to amplify those benefits by enabling more infrastructure projects to kickoff across Colorado.

The Broadband Deployment Board seeks public comment on applications before reviewing and selecting which projects to fund. Grants from the Fund can provide up to 75 percent of infrastructure project costs and may only be awarded to **for-profit entities**, with a few exceptions. The Board awards money from the Broadband Fund according to statutory requirements and Board policy, as well as demonstrated urgency and local commitment to complete the project. These grants are for projects that provide **last mile service**.

Capital Projects Fund (CPF)

The Coronavirus Capital Projects Fund (Capital Projects Fund) will address many challenges laid bare by the pandemic, especially in rural America, Tribal communities, and low- and moderate-income communities, helping to ensure that all communities have access to the high-quality modern infrastructure, including broadband, needed to access critical services. At the federal government level, the U.S. Department of the Treasury manages the CPF in partnership with the U.S. Department of Commerce, National Telecommunications and Information Administration (NTIA).

The federal government's American Rescue Plan provides \$10 billion for payments to eligible governments to carry out critical capital projects that directly enable work, education, and health monitoring, including remote options, in response to the public health emergency.

Funding Objectives

The COVID-19 public health emergency revealed and continues to reinforce an understanding that communities without access to high-quality modern infrastructure, including broadband, face impediments to fully participating in aspects of daily life, such as remote work, telehealth, and distance learning. Treasury is launching the Capital Projects Fund to allow recipients to invest in capital assets that meet communities' critical needs in the short- and long-term, with a key emphasis on making funding available for broadband infrastructure. The Capital Projects Fund aims to:

- Directly support recovery from the COVID-19 public health emergency by strengthening and improving the infrastructure necessary for participation in work, education, and health monitoring that will last beyond the pandemic.
- Enable investments in capital assets designed to address inequities in access to critical services.
- Contribute to the goal of providing every American with the modern infrastructure necessary to access critical services, including a high-quality and affordable broadband internet connection.

A key priority of this program is to make funding available for reliable, affordable broadband infrastructure and other digital connectivity technology projects. Recipients may also use funds for certain other capital projects, such as multi-purpose community facilities, that enable work, education, and healthcare monitoring, including remote options. The program encourages recipients to focus on economically distressed areas, support community empowerment, and adopt strong labor practices.

Eligible Projects

For a capital project to be an eligible use of Capital Projects Fund grant funds, it must meet all the following criteria:

1. The capital project invests in capital assets designed to directly enable work, education, and health monitoring.
2. The capital project is designed to address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency.
3. The capital project is designed to address a critical need of the community to be served by it.

The following capital projects are identified in the Capital Projects Fund Guidance as being eligible uses of Capital Projects Fund grant funding:

- **Broadband Infrastructure Projects:** the construction and deployment of broadband infrastructure designed to deliver service that reliably meets or exceeds symmetrical speeds of 100Mbps so that communities have future-proof infrastructure to serve their long-term needs.
- **Digital Connectivity Technology Projects:** the purchase or installation of devices and equipment, such as laptops, tablets, desktop personal computers, and public Wi-Fi equipment, to facilitate broadband internet access for communities where affordability is a barrier to broadband adoption and use.
- **Multi-Purpose Community Facility Projects:** the construction or improvement of buildings designed to jointly and directly enable work, education, and health monitoring located in communities with critical need for the project.

Case-by-Case Review: In addition to the eligible Capital Projects identified above, recipients may propose a different use of funds. Such uses must meet the statutory criteria, and recipients will be required to demonstrate that any such projects satisfy the eligibility criteria identified in the Capital Projects Fund Guidance.

Capital Projects Fund grant funding can also be used for the ancillary costs related to eligible capital projects that are necessary to put the asset to full use. For example, if an applicant plans for Digital Connectivity Technology Projects, Capital Projects Fund awards can be used to provide digital literacy training to community members so that they gain the knowledge and skills necessary to make full use of the devices in order to conduct activities related to education, work, and health monitoring.

In Colorado, the CPF is administered by the Colorado Broadband Office (CBO). In August 2021, the CBO received a CPF allocation from the US Treasury Department of \$170 million. Of that amount, the CBO, will make \$162 million available for grants for broadband projects to improve broadband services to unserved and underserved communities throughout the state. One of the requirements for this program is that the applicant must have already identified one or more last-mile providers (partners) prior to applying for a grant. The CBO will start accepting applications for this program beginning in November 2022.

Broadband Equity, Access, and Deployment Program (BEAD)

The federal government's Infrastructure Investment and Jobs Act (IIJA) sets forth a \$65 billion investment into broadband, of which \$48.2 billion will be administered by the National Telecommunications and Information Administration (NTIA). The BEAD program is one of the IIJA broadband programs managed by the NTIA.

Program objective: To close the availability gap, as Congress finds that "access to affordable, reliable, high-speed broadband is essential to full participation in modern life in the United States."

Program priorities

1. Unserved locations (No access to 25/3 Mbps)
2. Underserved locations (No access to 100/20 Mbps)
3. Community anchor institutions (Without gigabit connections)

Eligible entities must also prioritize persistent poverty / high-poverty areas, speed of proposed network, build time and demonstrated records on compliance with federal labor & employment laws. Eligible entities will also be required to offer a low-cost plan to all their subscribers. The details and rules around the low-cost plans will be part of each State's plan, which will have to be approved by NTIA.

Eligible entities: All 50 U.S. States and certain U.S. Territories (including the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands)

In Colorado, this program is administered by the Colorado Broadband Office (CBO). According to the CBO, it will be late 2023 or 2024 before applications will be open for this program.

Digital Equity Act Programs

The federal government's Infrastructure Investment and Jobs Act (IIJA) sets forth a \$65 billion investment into broadband, of which \$48.2 billion will be administered by the National Telecommunications and Information Administration (NTIA). The Digital Equity Act Programs are one of the IIJA broadband programs managed by the NTIA.

Program objective: Support the closure of the digital divide & promote equity and digital inclusion, so that "individuals and communities have the information technology capacity that is needed for full participation in the society and economy of the United States."

Program priorities - Prioritizes covered populations:

- Individuals living in households earning at or below 150% of the poverty line
- Veterans
- Aging individuals
- Incarcerated individuals
- Individuals with a language barrier
- Individuals with disabilities
- Individuals who are members of a racial or ethnic minority group
- Individuals who primarily reside in rural areas

Eligible entities - State Planning Grant Program: Any U.S. State, the District of Columbia & Puerto Rico. State Governors must appoint an 'administering entity,' which can be one, or a partnership of:

The State, political subdivision, agency, or instrumentality of State; An Indian Tribe, Alaska Native entity or Native Hawaiian organization located in the State; A foundation, corporation, institution, association, or coalition that is a not-for-profit, not a school, and is providing services in the State; A community anchor institution (not a school) located in the State; A local educational agency that is located in the State; An entity located in the State that carries out a workforce development program; An agency of the State that is responsible for administering or supervising adult education and literacy activities in the State; A public or multi-family housing authority that is located in the State.

In Colorado, the Office of the Future of Work under the Colorado Department of Labor and Employment is handling the Digital Equity Act Programs.

Recommendation #2 – Map Existing Infrastructure

It is recommended that a detailed mapping and evaluation of the existing fiber-optic networks in the City be performed, based on available data from the City and private sector providers of broadband services to the community's businesses and residents. Developing a full understanding of the capabilities and conditions of these existing networks will allow the City to understand the role these existing networks play today and in the future.

The network architecture is the basis for network design and engineering. The evaluation of the existing fiber-optic networks in the City could include existing conduit, fiber-optic cables, vaults, and boxes and related outside plant infrastructure as well as capacity and usability, as well as the existing electronics and communication equipment.

Recommendation #3 – Provider Outreach

Local fiber and broadband providers will need to be identified in order to identify deployed fiber assets. A private sector outreach program may need to be developed and implemented to help establish the cooperative relationships necessary to identify these assets.

This outreach program could not only identify asset locations but could also create cooperative agreements leading to the creation of cost-sharing and right-of-way-protecting joint-use infrastructure such as duct banks and other assets.

A cautionary note for the City to consider is that broadband implementation programs like the City's, could require many months of coordinated effort to build local understanding and trust with the provider communities. In many communities, providers are reluctant to share currently deployed assets due to competitive concerns. To address these concerns, the City may need to sign a Non-Disclosure Agreement in order to facilitate provider involvement, which may require the involvement of City legal counsel and staff to acquire and develop the database needed in order to identify deployed fiber assets.

Recommendation #4 – Perform a Market Assessment

The broadband coverage available has changed from something nice to have, to becoming incredibly important. Education, working from home, Economic Development, keeping youth in the area, telemedicine, etc. all need good connectivity. Competitive analysis of the availability of coverage is challenging due to the fluidity of market pricing, products offered and differences in the various sectors that need to be understood.

The initial task of a Market Assessment is to develop an understanding of coverage. This is an analysis of industry data that shows what providers report their coverage to be, as well as the providers fee ranges.

While this industry data is known to be potentially flawed for several reasons, it is important for two reasons:

1. Provide a baseline of data to work from.
2. This data is used for many federal and state grants. If it is incorrect, it is important to correct it.

To begin this analysis, service offerings of each primary provider in the City will need to be examined, cataloged, and compared with a few other areas of similar size. This is industry reported data, so there are some concerns.

The second step is to verify this industry reported data. This can be accomplished via focused feedback through a community engagement program. The good news here is that, according to the "What's Up Woodland Park" website, the City completed such an engagement program in 2021. This program surveyed residents and business owners.

In addition to helping City decision makers better understand community needs, the survey results can also shed light on the actual practice of providers and, more importantly, on pricing and satisfaction, as well as determining what needs are in demand and are either not supplied by the marketplace or underserved in the market.

Recommendation #5 – Develop Public Policies

The City has the ability to make key public policy decisions that can protect its interests while incentivizing fiber deployment within preferred public right-of-way locations; expedite the fiber application review and approval process that incorporates colocation and incentives; and establish permit fees for fiber deployments.

The initial step of the public policy development process could be to evaluate the City's current policies to help determine how the City can further its goals via changes to public policy designed to achieve smart, timely, and successful deployment of fiber facilities and services.

To illustrate, the kinds of programs which are inter-related that could be developed concurrently include:

- Joint-Build initiatives with the private sector
- Piggybacking and dig-once ordinances enacted by the City Council
- Incentives to discourage open trenching, and to encourage co-location
- Undergrounding of appurtenant structures to preserve views, enhance safety, minimize impact on pedestrian circulation in key areas and mitigate impacts to the public rights-of-way
- Required co-locations for private sector providers and specifications for new developers
- Exploring street cut and pavement degradation fee exemptions and other complementary initiatives
- Creating fiber construction specifications

Communities are frequently asked to leverage staff, equipment, and time in order to support contractors who are implementing projects for private providers. In most cases, support for these "cost causers" is provided without recovering the costs being incurred by the community. A revenue recovery package may need to be developed that includes policies and supporting processes related to these projects and the integration of these policies into existing City codes and ordinances, in order to create a new revenue stream for the City.

Communities who seek to develop advanced communications infrastructure have a unique opportunity to deploy assets at a fraction of the cost of overbuilding individually. By developing a co-location policy and standards, the community can require builders with open trenches and boring projects to deploy conduit and/or fiber on behalf of the community.

Recommendation #6 – Explore and Establish Public Private Partnerships (P3)

Broadband service model #3, the Hybrid Ownership model, which City Council unanimously supported, may need to leverage funding for both core network and last-mile construction available through DOLA and DORA, respectively, or other funding sources. This will mean that the City must identify one or more potential for-profit partners who are interested in leasing the core network asset, and in building and managing last-mile connectivity. Identifying interested partners, therefore, is an important step to help the City envision a path forward, and may be required by some funding sources.

The approach used to engage with potential partners includes building a list of potential partners and other interested parties, developing a request for expressions of interest (RFEI), sending the RFEI to the list of potential partners, processing responses to the RFEI, and selecting potential partners based on the level of interest. This approach will create a faster-moving cycle in which partners can be identified and brought to the table more quickly and with a higher likelihood of successful progress.

The RFEI process will be useful to determine interested parties but does not provide the City with enough details to fully determine a proposed partner nor the form of the partnership. It is recommended that the City conduct a formal request for proposal (RFP) to identify and select its partner(s) for the potential buildout.

Recommendation #7 – Finalize Detail Designs and Costs

Develop a Detailed Final Network Design

Drawing on the Council's decision to support the conceptual underground fiber network system, a final network design will need to be developed. In developing this potential technical solution, a wide range of technologies and approaches will need to be considered. The focus will need to be on creating a robust, reliable, and cost-effective approach to meeting the City's networking needs. To that end, for example, the design will need to include excess dark fiber designed to enable the implementation of future communication needs across the community.

The potential solution will need to be based on an analysis of existing infrastructure, conceptual designs of high-level maps and routing, and a system-level overview of the potential infrastructure. This final network design will become a road map for financial analysis and business modeling, and for future decisions (potentially including detailed engineering, construction, and operations).

Develop Final Network Design Cost Estimates

A cost estimate and supporting documentation for network deployment and interconnection, inclusive of anticipated construction labor, materials, engineering, permitting, quality control and testing will need to be prepared. These estimates should be provided in the form of a cost range and should include a most likely cost with appropriate budget that includes suitable contingencies.

The analysis should provide guidance regarding ongoing costs, medium and long-term needs to refresh and replace equipment and potential revenue sources to support network operations.

Various data points will need to be taken into consideration during the cost estimating process. These included: estimated underground footage of existing and proposed fiber conduits, total number of splice points, pedestals, and hand holds, total number of fibers, material costs breakout, and labor costs.

Perform a Financial Analysis

A study of the financial feasibility of the project will be performed to determine if a system could be built and operated that meets the Council's goals, while remaining financially self-funding. The financial model will be tested to see if it demonstrates financial viability across 20- and 30-year lifecycles.

The financial model will also be based on the creation of a dark fiber network and subsequent leasing of dark fibers to provider(s) who would extend service to individual homes and businesses.

In addition, the financial model will be based on the final fiber network design and feature the use of current conduit assets and the extension of new fiber and conduit to form a middle-mile backbone. The model assumes that a private-sector partner will construct and finance individual connections to homes and businesses and will pay lease fees to the City for the use of the middle-mile backbone.

Recommendation #8 – Pursue/Acquire Funding – Grants, etc.

Most likely for the project to move forward grant funding will need to be identified and committed. It is important to note that some funding sources, such as DOLA, can be used for both engineering and final construction expenses. A formal grant application should be submitted as soon as practical to cover final engineering design and construction of the proposed City-owned network.

It is also recommended that the selection of private partners be timed to allow for coordination of private-sector grant requests to assist with paying for last-mile connectivity. Ideally, a coordinated approach would assure both the private sector and the City of availability of state and/or federal funds to complete both the City-owned middle-mile network and the last-mile connections due to the interdependence of funding sources to complete the project.

Recommendation #9 – Construct Core Network

Once a partner is identified and funding is secured, the next step will be to begin the deployment of infrastructure to support broadband improvements. This step can be started as soon as engineering is completed through the selection of a contractor with fiber optic deployment experience. The City should work closely with its selected private sector partners to ensure that the network constructed meets its required last-mile architecture.



STAFF REPORT

TO: Mayor LaBarre and City Council

FROM:

DATE: December 1, 2022

SUBJECT: Approve transfer of a Retail Liquor Store License for Gold Hill Wine and Liquor located at 797 Gold Hill Place, Woodland Park, CO 80863. (QJ)
(Presenter, Deputy City Manager/City Clerk Suzanne Leclercq)

BACKGROUND:

CITY OF WOODLAND PARK Liquor License Summary

Note: Liquor License forms contain a mixture of confidential and public information. In an effort to protect the confidentiality of items such as Social Security Numbers, Drivers License numbers, and dates of birth, liquor application forms will no longer be available to the public. This summary is intended to give Council and citizens the public content of the issue at hand.

=====

Type of Action Requested: Conduct Public Hearing for a transfer Retail Liquor Store License.

Applicant: Gold Hill Wine and Liquor located at 797 Gold Hill Place South, Woodland Park, CO 80863

Application details:

- Applicant is Melissa Nuanes.
- LLC has current sales tax license and FEIN number.
- A petition of needs and desires is not necessary for a transfer liquor license since the location has previously been licensed.
- The location is eligible to be licensed.
- Possession of the property is documented by a Lease expiring February 19, 2027.

Factual Findings:

- The application was submitted on October 6, 2022.
- Subject property was posted on November 21, 2022 as required by law.
- Public Notice was published on the City's Website November 21, 2022.
- Character of the applicant is not an issue for this hearing.

- All applicable fees have been paid.

Recommended Action:

Following Public Hearing, approve application from Gold Hill Wine and Liquor for a transfer Retail Liquor Store License located at 797 Gold Hill Place South, Woodland Park, Colorado.

RECOMMENDATION:

ATTACHMENTS: None

**CITY OF WOODLAND PARK, COLORADO
ORDINANCE NO. 1432, SERIES 2022**

**AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF WOODLAND
PARK, COLORADO FURTHER EXTENDING A TEMPORARY MORATORIUM
ON THE SUBMISSION, ACCEPTANCE, PROCESSING AND APPROVAL OF
APPLICATIONS FOR SHORT-TERM RENTAL LICENSES**

WHEREAS, the City of Woodland Park, Colorado (“City”) is a statutory City, duly organized and existing under the laws of the state of Colorado; and

WHEREAS, pursuant to C.R.S. § 31-15-401, the City by and through its City Council (“Council”), possesses the authority to adopt laws and ordinances within its police power in furtherance of the public health, safety and welfare; and

WHEREAS, pursuant to C.R.S. § 31-23-301 the Council also possesses the authority to adopt and enforce zoning regulations; and

WHEREAS, pursuant to C.R.S. § 31-15-501, the City also possesses the authority to regulate the operation and licensing of businesses generally within its jurisdiction; and

WHEREAS, pursuant to such authority, the City has previously adopted certain regulations within Title 5, concerning business licenses and regulations, and Title 18, concerning zoning, of the Woodland Park Municipal Code (“Code”); and

WHEREAS, on July 7, 2022, through Ordinance 1426, the City Council imposed a three (3) month temporary moratorium on receiving applications for review and issuing or approving short-term rental licenses in order to preserve the status quo while the City conducted public engagement, neighborhood meetings, surveys and work sessions, and while City Council, Planning Commission and City staff completed its review and draft of the City’s regulatory framework for short-term rentals and its impact on neighborhood character and availability of housing stock; and

WHEREAS, on October 6, 2022, through Ordinance 1430, the City Council extended said temporary moratorium, originally set to expire on October 15, 2022, to December 15, 2022, because the Planning Commission and City Council were still in the process of holding meetings and public hearings to obtain further relevant public comment, and so that City staff could continue diligently researching and drafting these requested short-term rental regulations appropriate for the needs of the Woodland Park community; and

WHEREAS, on October 20, 2022, City Council heard public comment from numerous residents and property owners on this important issue to the community, and determined that more time was necessary to obtain further input from the community, as well as to consider all available options with sufficient time to do so, and therefore directed legal staff to draft an ordinance further extending the moratorium an additional six months past the December 15, 2022 expiration; and

WHEREAS, Council finds that these six (6) additional months is an appropriate length of

time to consider, hold further public hearings and finalize draft short-term rental regulations; and

WHEREAS, in order for equitable enforcement and consistent application of the Code and the City's administrative regulations, it is crucial that the temporary moratorium be extended until June 24, 2023, for six (6) additional months past the current expiration date of December 15, 2022; and

WHEREAS, the Council also finds and determines that the subject regulations concerning short-term rentals, as well as this short extension of the temporarily moratorium on short-term rental license applications, are necessary to the preservation of the public health, safety and welfare, as well as consistent and equitable enforcement and applicability.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF WOODLAND PARK, COLORADO as follows:

Section 1. The foregoing recitals are incorporated herein as conclusions, facts, determinations and findings by the City Council.

Section 2. Extension of Temporary Moratorium. Effective upon the effective date of this Ordinance, the moratorium extended on October 15, 2022, upon the submission, acceptance, processing, and approval of all applications for short-term rental licenses within the City of Woodland Park is hereby extended until June 24, 2023. No application for a short-term rental license shall be submitted to or accepted by the City, and no such application shall be reviewed or license issued or approved in response to such an application. City Staff and the City Council are directed to develop and amend and adopt regulations appropriate to short term rentals prior to the expiration of this moratorium period.

Section 3. Effective Date; Expiration. The moratorium originally imposed on July 7, 2022, and extended until December 15, 2022, shall continue, and shall expire on June 24, 2023, unless repealed prior to that date, or extended to a later date.

Section 4. Current Business Licensees Operating Short-Term Rental Businesses. Current City of Woodland Park business license holders operating a short-term rental business shall be entitled to apply for a renewal of their business license with the City of Woodland effective January 1, 2023, provided that the name and identity of the license holder, applicant, property address, short-term rental unit address, and all other relevant details are identical to last year's business license application, and provided that the business license holder understands that said business license shall be provisional and effective only through June 30, 2023.

Section 5. Should any one or more sections or provisions of this Ordinance or of the Code provisions enacted hereby be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance or of such Code provision, the intention being that the various sections and provisions are severable.

Section 6. Effective Date. This Ordinance shall be in full force and effect from and after its publication as required.

PASSED BY CITY COUNCIL ON SECOND AND FINAL READING FOLLOWING PUBLIC
HEARING THIS ____ DAY OF _____, 2022.

City of Woodland Park

Hilary LaBarre, Mayor

ATTEST:

City Clerk, Suzanne Leclercq



STAFF REPORT

TO: Mayor LaBarre and City Council

FROM:

DATE: December 1, 2022

SUBJECT: Approve Amended Ordinance No. 1433, Series 2022, an Ordinance Appropriating Sums of Money to Various Funds, in the Amounts and for the Purpose Set Fourth for the City of Woodland Park, Colorado for the 2023 Budget Year for the General Fund. (A)
(Presenter, Finance Director Aaron Vassalotti)

BACKGROUND: The 2023 budget ordinances (Ordinances 1433 and 1434) were amended at the request of a consensus of the City Council at its meeting on November 17, 2022. The Council directed staff to add an appropriation of \$40,000 to the Lodging Tax Fund fund balance to pay for an economic impact study that will analyze the impact of short-term rentals on the Woodland Park economy.

The 2023 budget ordinances are unchanged from Initial Posting except for the following adjustments:

Ordinance 1434

- Add \$40,000 expenditure appropriation in the Lodging Tax Fund for a short-term rental economic impact study (GL: 230-491-9100 – Transfer Out to General Fund).

Ordinance 1433

- Increase by \$40,000 revenue appropriation in the General Fund for transfer in from the Lodging Tax Fund (GL: 100-000-3923 – Transfers in from Lodging Tax Fund).
- Add \$40,000 expenditure appropriation in the General Fund, City Manager's Office, for a short-term rental economic impact study (GL: 100-110-3500 – Professional Services).

RECOMMENDATION:

ATTACHMENTS: 1. 2023 budget ordinance 1432_GF 100 - Amended

CITY OF WOODLAND PARK, COLORADO
ORDINANCE NO. 1433, SERIES 2022
AMENDED

AN ORDINANCE APPROPRIATING SUMS OF MONEY TO THE VARIOUS FUNDS, IN THE AMOUNTS AND FOR THE PURPOSE AS SET FORTH BELOW, FOR THE CITY OF WOODLAND PARK, COLORADO FOR THE 2023 BUDGET YEAR FOR GENERAL FUND (100).

WHEREAS, the City Council has adopted the annual budget for the General Fund (100) in accordance with the City Charter on December 1, 2022; and

WHEREAS, the City Council has made provisions therein for revenues in an amount equal to or greater than the total proposed expenditures in the fund as set forth in said budget or has made appropriations to expend a portion of fund balance for capital outlays, acquisitions, and improvements; and

WHEREAS, it is not only required by the City Charter, but also necessary to appropriate the revenues provided in the budget to and for the purposes described below, so as not to impair the operations of the City.

NOW, THEREFORE THIS ORDINANCE:

THE CITY COUNCIL OF THE CITY OF WOODLAND PARK, COLORADO
ORDAINS;

That an Ordinance entitled “AN ORDINANCE APPROPRIATING SUMS OF MONEY TO THE VARIOUS FUNDS, IN THE AMOUNTS AND FOR THE PURPOSE AS SET FORTH BELOW, FOR THE CITY OF WOODLAND PARK, COLORADO FOR THE 2023 BUDGET YEAR FOR GENERAL FUND (100).” be and the same is hereby adopted as follows:

Section 1. That the following sums are appropriated from the revenue or fund balance of each fund to each fund, for the purpose stated:

GENERAL FUND

Budgeted Revenue	<u>\$ 14,408,282</u>
Current Operating Expenditures	
Elected Officials	\$ 46,600
City Manager	682,093
City Clerk	368,657
Municipal Court	124,604
Planning and Building	503,690
Inter/Nondepartmental	931,507
Education Support	3,068,516

Finance	607,690
Parks, Buildings and Grounds	909,903
Information Technology	425,762
Police	3,200,135
Public Works Administration	426,497
Fleet Maintenance	508,243
Street Operations	632,918
Total Current Operating Expenditures	12,436,815
Debt Service Expenditures	705,088
Capital Outlay Expenditures	647,000
Transfers Out	608,678
Total General Fund Expenditures and Transfers Out	<u>\$ 14,397,582</u>

Section 2. This Ordinance shall be in full force and effect on and after January 1, 2023 after adoption and publication required by law.

PASSED BY CITY COUNCIL ON SECOND AND FINAL READING FOLLOWING PUBLIC HEARING THIS 1st DAY OF DECEMBER 2022.

Hilary LaBarre, Mayor Pro Tem

ATTEST:

Suzanne Leclercq, City Clerk



STAFF REPORT

TO: Mayor LaBarre and City Council

FROM:

DATE: December 1, 2022

SUBJECT: Approve Ordinance No. 1434, Series 2022, an Ordinance Appropriating Sums of Money to the Various Funds, in the Amounts and for the Purpose set Fourth for the City of Woodland Park, Colorado for the 2023 Budget Year for All Funds Except the General Fund.(A)
(Presenter, Finance Director Aaron Vassalotti)

BACKGROUND: The 2023 budget ordinances (Ordinances 1433 and 1434) were amended at the request of a consensus of the City Council at its meeting on November 17, 2022. The Council directed staff to add an appropriation of \$40,000 to the Lodging Tax Fund fund balance to pay for an economic impact study that will analyze the impact of short-term rentals on the Woodland Park economy.

The 2023 budget ordinances are unchanged from Initial Posting except for the following adjustments:

Ordinance 1434

- Add \$40,000 expenditure appropriation in the Lodging Tax Fund for a short-term rental economic impact study (GL: 230-491-9100 – Transfer Out to General Fund).

Ordinance 1433

- Increase by \$40,000 revenue appropriation in the General Fund for transfer in from the Lodging Tax Fund (GL: 100-000-3923 – Transfers in from Lodging Tax Fund).
- Add \$40,000 expenditure appropriation in the General Fund, City Manager's Office, for a short-term rental economic impact study (GL: 100-110-3500 – Professional Services).

RECOMMENDATION:

ATTACHMENTS: 1. 2023 Budget ordinance_Ord 1433_All funds except GF - Final (1)

CITY OF WOODLAND PARK, COLORADO
ORDINANCE NO. 1434, SERIES 2022
AMENDED

AN ORDINANCE APPROPRIATING SUMS OF MONEY TO THE VARIOUS FUNDS, IN THE AMOUNTS AND FOR THE PURPOSE AS SET FORTH BELOW, FOR THE CITY OF WOODLAND PARK, COLORADO FOR THE 2023 BUDGET YEAR FOR ALL FUNDS EXCEPT THE GENERAL FUND (100).

WHEREAS, the City Council has adopted the annual budget in accordance with the City Charter on December 1, 2022; and

WHEREAS, the City Council has made provisions therein for revenues in an amount equal to or greater than the total proposed expenditures in each fund as set forth in said budget or has made appropriations to expend a portion of fund balance for capital outlays, acquisitions, and improvements; and

WHEREAS, it is not only required by the City Charter, but also necessary to appropriate the revenues provided in the budget to and for the purposes described below, so as not to impair the operations of the City.

NOW, THEREFORE THIS ORDINANCE:

THE CITY COUNCIL OF THE CITY OF WOODLAND PARK, COLORADO
ORDAINS;

That an Ordinance entitled “AN ORDINANCE APPROPRIATING SUMS OF MONEY TO THE VARIOUS FUNDS, IN THE AMOUNTS AND FOR THE PURPOSE AS SET FORTH BELOW, FOR THE CITY OF WOODLAND PARK, COLORADO FOR THE 2023 BUDGET YEAR FOR ALL FUNDS EXCEPT THE GENERAL FUND (100).” be and the same is hereby adopted as follows:

Section 1. That the following sums are appropriated from the revenue or fund balance of each fund to each fund, for the purpose stated:

GRANTS FUND

Budgeted Revenues	
Victim Assistance Law Enforcement (VALE) grant	\$ 75,363
Victims of Crimes Act Grant (VOCA) grant	57,153
American Rescue Plan (ARPA) grant	0
Use of Fund Balance	<u>1,349,703</u>
Total Sources	<u>\$ 1,482,219</u>

Victim Assistance Law Enforcement (VALE)	\$ 71,128
Victims of Crimes Act (VOCA)	57,067
American Rescue Plan (ARPA)	1,349,703
Total Grant Fund Expenditures	<u>\$ 1,477,898</u>
<u>DOWNTOWN DEVELOPMENT AUTHORITY</u>	
Budgeted Revenues	\$ 768,351
Total Sources	<u>\$ 768,351</u>
Current Operating Expenditures	\$ 187,700
Debt Service Expenditures	478,798
Total Downtown Development Authority Fund Expenditures	<u>\$ 666,498</u>
<u>CULTURE AND RECREATION FUND</u>	
Budgeted Revenues	<u>\$ 1,345,328</u>
Current Operating Expenditures	
Parks and Recreation	\$ 359,853
Cultural Center	183,763
Aquatic Center	801,712
Total Culture and Recreation Fund Expenditures	<u>\$ 1,345,328</u>
<u>LODGING TAX FUND</u>	
Budgeted Revenues	\$ 524,264
Use of Fund Balance	0
Total Sources	<u>\$ 524,264</u>
Transfer to General Fund	<u>\$ 524,235</u>
Total Lodging Tax Fund Transfer Out	<u>\$ 524,235</u>
<u>CONSERVATION TRUST FUND</u>	
Budgeted Revenues	\$ 75,300
Use of Fund Balance	0
Total Sources	<u>\$ 75,300</u>
Transfer to General Fund	\$ 0
Transfer to Culture and Recreation Fund	75,000
Total Conservation Trust Fund Transfer Out	<u>\$ 75,000</u>
<u>STREET CAPITAL IMPROVEMENT FUND</u>	
Budgeted Revenues	\$ 2,830,800
Use of Fund Balance	3,365,460
Total Sources	<u>\$ 6,196,260</u>

Capital Outlay Expenditures	\$ 6,034,585
Transfers Out	<u>161,675</u>
Total Street Capital Improvement Fund Expenditures and Transfers Out	<u>\$ 6,196,260</u>

STORMWATER MANAGEMENT FUND

Budgeted Revenues	\$ 157,940
Use of Fund Balance	<u>6,135</u>
Total Sources	<u>161,675</u>

Capital Outlay Expenditures	\$ 2,400
Transfer Out	<u>161,675</u>
Total Stormwater Management Fund Expenditures	<u>\$ 164,075</u>

WATER UTILITY ENTERPRISE FUND

Budgeted Revenues	\$ 2,662,085
Use of Funds Available	<u>2,194,663</u>
Total Sources	<u>\$ 4,856,748</u>

Current Operating Expenditures	\$ 1,918,748
Capital Outlay Expenditures	2,938,000

Total Water Utility Enterprise Fund Expenditures	<u>\$ 4,856,748</u>
---	----------------------------

WASTEWATER UTILITY ENTERPRISE FUND

Budgeted Revenues	\$ 2,249,450
Use of Funds Available	<u>280,675</u>
Total Sources	<u>\$ 2,530,125</u>

Current Operating Expenditures	\$ 1,446,899
Capital Outlay Expenditures	633,000
Debt Service Expenditures	<u>450,226</u>
Total Wastewater Utility Enterprise Fund Expenditures	<u>\$ 2,530,125</u>

Section 2. This Ordinance shall be in full force and effect on and after January 1, 2023 after adoption and publication required by law.

PASSED BY CITY COUNCIL ON SECOND AND FINAL READING FOLLOWING PUBLIC HEARING THIS 1st DAY OF DECEMBER 2022.

Hilary LaBarre, Mayor Pro Tem

ATTEST:

Suzanne Leclercq, City Clerk



City of Woodland Park Staff Report for City Council

Meeting Date	Agenda Item
November 17, 2022	8C
Department	Presenter
City Manager's Office/ Finance	Michael Lawson, City Manager Aaron Vassalotti, Finance Director

Item Title

Ordinance 1435, Series 2022 to amend 2022 Budget expenditure appropriations (Budget Supplemental Ordinance)

Long title: Ordinance No. 1435, Series 2022, AN ORDINANCE ADJUSTING EXPENDITURES APPROPRIATIONS TO THE VARIOUS FUNDS, IN THE AMOUNTS AND FOR THE PURPOSE AS SET FORTH BELOW, FOR THE CITY OF WOODLAND PARK, COLORADO, FOR THE 2022 BUDGET YEAR, AND AMENDING ORDINANCE NO. 1407, SERIES 2021

History

City Council adopted the City's 2022 Annual Budget on December 2, 2021. Pursuant to the City's Home Rule Charter, City Council can amend the budget when the City Manager certifies that there are available for appropriation revenues in excess of those estimated in the budget.

Summary

The purpose of this supplemental appropriation is summarized below. This budget expenditure adjustment and revenue source is described in the attachment to this report.

- **Memorial Park Certificate of Participation, Series 2015** – As of December 1, 2022 the remaining principal on the COP is \$2,425,000 and the fund balance reserve designated for Capital debt service is \$1,950,000. The original call date on the this COP is December 1, 2025; however, the COP can be paid off in full without penalty prior to that date as long as the funds do not come from a refinancing or new debt issuance. The City will use the Capital debt service reserve of \$1,950,000 and fund balance of \$475,000 to pay off the COP. The City intends to make this payment on 12/27/2022.

Staff Recommendation

Approve Ordinance No. 1435, Series 2022 to amend the 2022 Annual Budget.

Question for Council

Does the City Council approve Ordinance No. 1435, Series 2022 to amend the 2022 Annual Budget?

City of Woodland Park
2022 Amended Budget
Supplemental Appropriations

	2022 Current Budget	2022 Supplemental Appropriation (incr/decr)	2022 Amended Budget
General Fund (100)			
Revenue	\$ 13,819,583	\$ -	\$ 13,819,583
Expenditures	(13,625,266)	(2,425,000)	(16,050,266)
Revenue over/(under) Expenditures	\$ 194,317	\$ (2,425,000)	\$ (2,230,683)
Fund Balance Summary:			
Beginning Fund Balance - 1/1/2022	\$ 5,267,343		\$ 5,267,343
Revenue over/(under) Expenditures	194,317	(2,425,000)	(2,230,683)
Ending Fund Balance - 12/31/2022	\$ 5,461,660	\$ (2,425,000)	\$ 3,036,660
Ending Fund Balance Designations:			
Non-spendable Due from DDA			\$ 550,000
Non-spendable Inventory/Prepaid Expenditures			65,386
Restricted for Emergencies (TABOR 3%)			451,865
Unrestricted, Unassigned			1,969,409
Ending Fund Balance - 12/31/2022			\$ 3,036,660
Supplemental Appropriation Detail:			
	Expenditures	Revenue	
1. Memorial Park Certificate of Participation (COP), Series 2015	\$ 2,425,000	\$ -	
		\$ -	
		\$ -	
Total adjustment	\$ 2,425,000	\$ -	

City of Woodland Park
2022 Supplemental Appropriation

Exhibit A

General Fund	
Increase Budgeted Revenues	\$ -
Supplemental Appropriation	2,425,000

CITY OF WOODLAND PARK, COLORADO
ORDINANCE NO. 1435, SERIES 2022

AN ORDINANCE ADJUSTING EXPENDITURE APPROPRIATIONS TO THE VARIOUS FUNDS, IN THE AMOUNTS AND FOR THE PURPOSE AS SET FORTH BELOW, FOR THE CITY OF WOODLAND PARK, COLORADO FOR THE 2022 BUDGET YEAR, AND AMENDING ORDINANCE NO. 1407, SERIES 2021.

WHEREAS, the Home Rule Charter of the City of Woodland Park specifies that City Council may, by ordinance, make supplemental appropriations when there are available for appropriation revenues in excess of those estimated in the budget.

NOW, THEREFORE, THIS ORDINANCE:

THE CITY OF WOODLAND PARK, COLORADO, ORDAINS

That an Ordinance entitled “AN ORDINANCE ADJUSTING EXPENDITURE APPROPRIATIONS TO THE VARIOUS FUNDS, IN THE AMOUNTS AND FOR THE PURPOSE AS SET FORTH BELOW, FOR THE CITY OF WOODLAND PARK, COLORADO FOR THE 2021 BUDGET YEAR, AND AMENDING ORDINANCE NO. 1407, SERIES 2021,” be and the same is hereby adopted as follows:

Section 1. The 2022 Amended Budget for the City of Woodland Park, Colorado, which is attached hereto as Exhibit A and incorporated by this reference, is hereby adopted and the monies are appropriated to the various funds as the same are budgeted.

Section 2. Effective Date. This Ordinance shall be in full force and effect from and after its publication as required by law.

PASSED BY CITY COUNCIL ON SECOND AND FINAL READING, FOLLOWING PUBLIC HEARING, THIS 1st DAY OF DECEMBER 2022.

Hilary LaBarre, Mayor

ATTEST:

Suzanne Leclercq, City Clerk



11/16/2022

Zions First National Bank
Kathy Gonzales
James Scardaville

This letter is in regards to the \$3,455,000 REFUNDING AND IMPROVEMENT CERTIFICATES OF PARTICIPATION (COP), SERIES 2015 that Zions First National Bank holds for the City of Woodland Park. The City intends to pay off the aforementioned COP on December 27, 2022. The remaining balance as of December 1, 2022 will be \$2,425,000. The City will pay this balance using existing fund balance reserve. No refinancing or new debt will be issued to make any portion of the payment.

Per Section 4.04, titled Notice of Redemption, the City is providing written notice to Zions First National Bank, the Trustee, of its election to redeem the COP.

Best Regards,

Aaron Vassalotti
Finance Director

Michael Lawson
City Manager

CITY OF WOODLAND PARK, COLORADO

RESOLUTION NO. 896

SERIES 2022

**A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF WOODLAND PARK,
COLORADO APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE
COLORADO DEPARTMENT OF TRANSPORTATION FOR PROJECT STU M381-024
(25165) SH 67 LOVELL GULCH TO VALLEY VIEW**

WHEREAS, the City of Woodland Park (“City”) has been duly organized and is validly existing as a home rule city under Article XX, Section 6 of the Colorado Constitution and the City Charter; and

WHEREAS, pursuant to C.R.S. § 30-15-401 et seq., the City is authorized to enter into contracts with other governmental organizations for mutual benefit; and

WHEREAS, intergovernmental agreements to provide functions or services, including the sharing of costs of such services or functions by political subdivisions of the State of Colorado are specifically authorized by C.R.S. § 29-1-203; and

WHEREAS, the City requested to update the description of State Highway 67 phase I from the Colorado Department of Transportation (“CDOT”) for funding for the construction of the SH 67 Lovell Gulch to Valley View Project (the “Project”); and

WHEREAS, CDOT approved the City of Woodland Park’s request for funding and the funding ratio for the federal funds for this Work is 75% federal funds to 25% City funds, and this ratio applies only to the \$1,950,000.00 that is eligible for federal funding. All other costs are borne by the City at 100%, and if the total cost of performance of the Work exceeds \$1,950,000.00, and additional federal funds are available for the Work, the City shall pay 25% of all such costs eligible for federal funding and 100% of all other costs. If additional federal funds are not available, the City shall pay all such excess costs. If the total cost of performance of the Work is less than \$1,950,000.00, then the amounts of City and federal funds will be decreased in accordance with the funding ratio described herein; and

WHEREAS, the City Council of the City of Woodland Park desire to enter into an Intergovernmental Agreement in order to obtain the funds necessary for the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO:

Section 1. The Intergovernmental Agreement attached hereto as Exhibit A is hereby approved and the Mayor is authorized to execute the same.

Section 2. This Resolution shall take effect immediately upon adoption.

ADOPTED this 1st day of December, 2022.
CITY OF WOODLAND PARK, COLORADO

Hilary LaBarre, Mayor

ATTEST

Suzanne Leclercq, City Clerk



City of Woodland Park Staff Report for City Council

Meeting Date: December 1, 2022

<u>Agenda Item</u>	<u>Department</u>	<u>Presenter</u>
10A	Finance	Aaron Vassalotti Finance Director

ITEM:

Resolution No. 897, Series 2022.

A RESOLUTION LEVYING GENERAL PROPERTY TAXES FOR THE YEAR OF 2022, TO HELP DEFRAY THE COST OF GOVERNMENT FOR THE CITY OF WOODLAND PARK, COLORADO, FOR THE 2023 BUDGET YEAR.

BACKGROUND:

In accordance with the City Charter and State Statute, Council must adopt next year's tax levy by resolution and then have it certified to the Teller County Commissioners by December 15, 2022.

DISCUSSION:

The City's mill levy rate is 15.75 mills and with this Resolution, would remain unchanged since 2020. The preliminary assessed valuation (AV) within the City is \$130,901,891. The resulting property tax revenue generated based on this preliminary AV is \$2,061,704.7.

ATTACHMENTS:

Certification of Tax Levies to Teller County
Certification of Valuation from Teller County

RECOMMENDED ACTION:

Approve Resolution No. 897, Series 2022.

CERTIFICATION OF TAX LEVIES - 2022

TO: COUNTY COMMISSIONERS OF TELLER COUNTY, COLORADO

This is to certify that the tax levies to be assessed by you upon all property within the limits of the City of Woodland Park for the year 2021, as determined and fixed by the City Council on December 1, 2022 is:

15.75 Mills

and you are hereby authorized and directed to extend said levies upon your tax list.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Woodland Park, Colorado this 1st day of December, 2022.

Aaron Vassalotti, City Treasurer

Hilary LaBarre, Mayor Pro Tem

CITY OF WOODLAND PARK, COLORADO
RESOLUTION NO. 897, SERIES 2022

A RESOLUTION LEVYING GENERAL PROPERTY TAXES FOR THE YEAR OF 2022, TO HELP DEFRAY THE COST OF GOVERNMENT FOR THE CITY OF WOODLAND PARK, COLORADO, FOR THE 2023 BUDGET YEAR.

WHEREAS, the City Council of the City of Woodland Park has determined the amount of general ad valorem taxes required for the budget year 2022; and,

WHEREAS, the mill levy total of 15.75 mills for the City of Woodland Park has remained unchanged since 2020; and,

WHEREAS, the 2022 Assessed Valuation for the City of Woodland Park as certified by the Teller County Assessor is \$130,901,891.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WOODLAND PARK:

Section 1. That for the purpose of meeting the General Fund operation expenses of the City of Woodland Park during the 2023 budget year, there is hereby levied a tax of 15.75 mills upon each dollar of the total assessed valuation of all taxable property within the City for the year 2022.

Section 2. That the Mayor is hereby authorized and directed to immediately certify to the County Commissioners of Teller County, Colorado, the mill levy total of 15.75 mills for the City of Woodland Park for the 2023 budget year.

The foregoing Resolution was adopted at a regular meeting of the City Council, held in Woodland Park, Colorado on the 1st day of December, 2022.

Hilary LaBarre, Mayor Pro Tem

ATTEST:

Suzanne Leclercq, City Clerk



(719) 686-7920 www.co.teller.co.us Fax (719) 686-7900

November 2, 2022

City of Woodland Park
P.O. Box 9007
Woodland Park CO 80866

Dear Ms. Suzanne Leclercq,

Re: Certification of Mill Levy for Budget Year 2023

This letter is a reminder that, pursuant to C.R.S. 39-5-128, your District's Certification of Mill Levies for the 2023 Budget Year must be received by the Teller County Board of County Commissioners no later than **December 15, 2022**.

Please mail Certification related information to:

Attn: Mill Levy Certification
Teller County Board of County Commissioners
P.O. Box 959
Cripple Creek, Colorado 80813

OR, you may hand deliver related information to:

Administration Office
Teller County Centennial Building
112 North "A" Street (corner of "A" and Carr Street)
Cripple Creek, CO

We have identified the City of Woodland Park as being affected by the Woodland Park Downtown Development Authority. Please make sure that you calculate and certify your mill levies including the Downtown Development Authority. If you need assistance regarding the Tax Increment Financing, contact the Department of Local Affairs, Division of Property Taxation at (303) 864-7777.

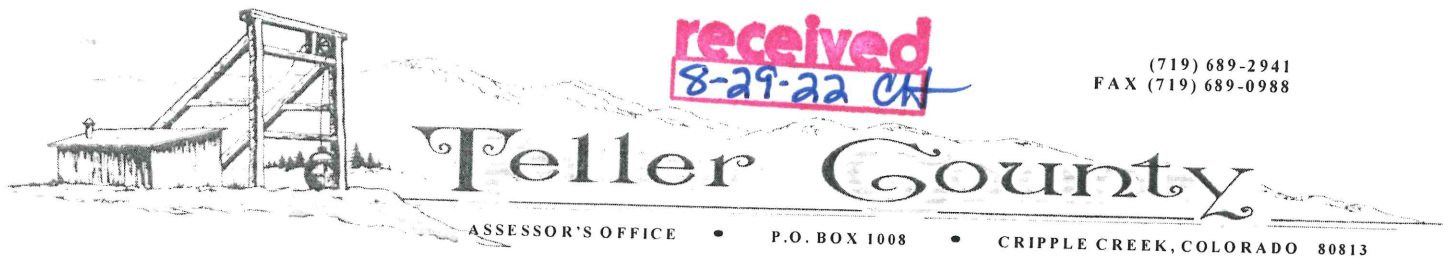
If this letter should be addressed to another individual, please forward it to the correct contact person and contact us so we can update our records. Should you have any questions, please feel free to call me at (719) 686-7920.

*** This request for 2022 Mill Levy information is separate from any other requirement you may have received from another state or local government department. ***

Sincerely,

Cheryle Beres
Staff Accountant

File



August 24, 2022,

Re: 2022 Certification of Values

To Whom it May Concern:

In accordance with §39-5-121(2) and §39-5-128 C.R.S., and Article X. Section 20 of the Colorado Constitution, I hereby certify the required values of property located within the territorial limits of the above entity as listed on the enclosed Certification of Values form, DLG-57.

Prior to December 10, as required in §39-1-111(5) C.R.S. the Assessor's office will mail a final certification of value to reflect any value changes made by the Assessor's office after August 25, 2022.

Pursuant to §39-5-128 C.R.S., you must officially certify your levy to the Board of County Commissioners no later than December 15, 2022. Please send your levy certification to the following address:

Teller County Board of Commissioners
P. O. Box 959
Cripple Creek, CO 80813

If you have any questions regarding the enclosed Certification of Values, please contact Michael Akana, Chief Deputy Appraiser, or Andrew Hopkins, Assessment Analyst, at 719-689-2941.

Sincerely,

David 'Colt' Simmons
Teller County Assessor

Enclosure

CERTIFICATION OF VALUATION BY TELLER COUNTY COUNTY ASSESSOR

Name of Jurisdiction: **33 - WOODLAND PARK**

IN TELLER COUNTY COUNTY ON 8/24/2022

New Entity: No

USE FOR STATUTORY PROPERTY TAX REVENUE LIMIT CALCULATIONS (5.5% LIMIT) ONLY

IN ACCORDANCE WITH 39-5-121(2)(a) AND 39-5-128(1), C.R.S. AND NO LATER THAN AUGUST 25, THE ASSESSOR CERTIFIES THE TOTAL VALUATION FOR ASSESSMENT FOR THE TAXABLE YEAR 2022 IN TELLER COUNTY COUNTY, COLORADO

1. PREVIOUS YEAR'S NET TOTAL TAXABLE ASSESSED VALUATION:	\$133,094,841
2. CURRENT YEAR'S GROSS TOTAL TAXABLE ASSESSED VALUATION: *	\$140,567,480
3. LESS TIF DISTRICT INCREMENT, IF ANY:	\$9,665,589
4. CURRENT YEAR'S NET TOTAL TAXABLE ASSESSED VALUATION:	\$130,901,891
5. NEW CONSTRUCTION: **	\$1,967,830
6. INCREASED PRODUCTION OF PRODUCING MINES: #	\$0
7. ANNEXATIONS/INCLUSIONS:	\$0
8. PREVIOUSLY EXEMPT FEDERAL PROPERTY: #	\$0
9. NEW PRIMARY OIL OR GAS PRODUCTION FROM ANY PRODUCING OIL AND GAS LEASEHOLD ## OR LAND (29-1-301(1)(b) C.R.S.):	\$0
10. TAXES COLLECTED LAST YEAR ON OMITTED PROPERTY AS OF AUG. 1 (29-1-301(1))(a) C.R.S.):	\$0.00
11. TAXES ABATED AND REFUNDED AS OF AUG. 1 (29-1-301(1)(a) C.R.S.) and (39-10-114(1)(a)(I)(B) C.R.S.):	\$238.30

* This value reflects personal property exemptions IF enacted by the jurisdiction as authorized by Art. X, Sec.20(8)(b), Colo.

** New construction is defined as: Taxable real property structures and the personal property connected with the structure.

Jurisdiction must submit respective certifications (Forms DLG 52 AND 52A) to the Division of Local Government in order for the values to be treated as growth in the limit calculation.

Jurisdiction must apply (Forms DLG 52B) to the Division of Local Government before the value can be treated as growth in the limit calculation.

USE FOR 'TABOR' LOCAL GROWTH CALCULATIONS ONLY

IN ACCORDANCE WITH THE PROVISION OF ARTICLE X, SECTION 20, COLO CONST, AND 39-5-121(2)(b), C.R.S. THE ASSESSOR CERTIFIES THE TOTAL ACTUAL VALUATION FOR THE TAXABLE YEAR 2022 IN TELLER COUNTY COUNTY, COLORADO ON AUGUST 25, 2022

1. CURRENT YEAR'S TOTAL ACTUAL VALUE OF ALL REAL PROPERTY: @	\$1,495,881,888
ADDITIONS TO TAXABLE REAL PROPERTY:	
2. CONSTRUCTION OF TAXABLE REAL PROPERTY IMPROVEMENTS: !	\$28,313,265
3. ANNEXATIONS/INCLUSIONS:	\$0
4. INCREASED MINING PRODUCTION: %	\$0
5. PREVIOUSLY EXEMPT PROPERTY:	\$0
6. OIL OR GAS PRODUCTION FROM A NEW WELL:	\$0
7. TAXABLE REAL PROPERTY OMITTED FROM THE PREVIOUS YEAR'S TAX WARRANT:	\$0
(If land and/or a structure is picked up as omitted property for multiple years, only the most current year's actual value can be reported as omitted property.)	
DELETIONS FROM TAXABLE REAL PROPERTY:	
8. DESTRUCTION OF TAXABLE REAL PROPERTY IMPROVEMENTS:	\$0
9. DISCONNECTIONS/EXCLUSION:	\$0
10. PREVIOUSLY TAXABLE PROPERTY:	\$0

@ This includes the actual value of all taxable real property plus the actual value of religious, private schools, and charitable real property.

! Construction is defined as newly constructed taxable real property structures.

% Includes production from new mines and increases in production of existing producing mines.

IN ACCORDANCE WITH 39-5-128(1), C.R.S. AND NO LATER THAN AUGUST 25, THE ASSESSOR CERTIFIES TO SCHOOL DISTRICTS: 1. TOTAL ACTUAL VALUE OF ALL TAXABLE PROPERTY:----->

\$0

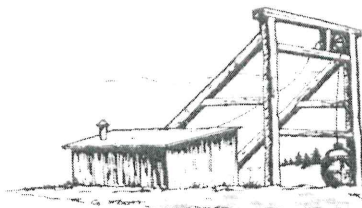
NOTE: All levies must be Certified to the Board of County Commissioners NO LATER THAN DECEMBER 15, 2022

IN ACCORDANCE WITH 39-5-128(1.5) C.R.S. THE ASSESSOR PROVIDES:

HB21-1312 ASSESSED VALUE OF EXEMPT BUSINESS PERSONAL PROPERTY (ESTIMATED): **

** The tax revenue lost due to this exempted value will be reimbursed to the tax entity by the County Treasurer in accordance with 39-3-119 f(3). C.R.S.

Data Date: 8/24/2022



received
8-29-22 CH

(719) 689-2941
FAX (719) 689-0988

Teller County

ASSESSOR'S OFFICE • P.O. BOX 1008 • CRIPPLE CREEK, COLORADO 80813

August 24, 2022,

Re: 2022 Certification of Values

To Whom it May Concern:

In accordance with §39-5-121(2) and §39-5-128 C.R.S., and Article X, Section 20 of the Colorado Constitution, I hereby certify the required values of property located within the territorial limits of the above entity as listed on the enclosed Certification of Values form, DLG-57.

Prior to December 10, as required in §39-1-111(5) C.R.S. the Assessor's office will mail a final certification of value to reflect any value changes made by the Assessor's office after August 25, 2022.

Pursuant to §39-5-128 C.R.S., you must officially certify your levy to the Board of County Commissioners no later than December 15, 2022. Please send your levy certification to the following address:

Teller County Board of Commissioners
P. O. Box 959
Cripple Creek, CO 80813

If you have any questions regarding the enclosed Certification of Values, please contact Michael Akana, Chief Deputy Appraiser, or Andrew Hopkins, Assessment Analyst, at 719-689-2941.

Sincerely,

David 'Colt' Simmons
Teller County Assessor

Enclosure

CERTIFICATION OF VALUATION BY TELLER COUNTY COUNTY ASSESSOR

Name of Jurisdiction: **85 - WOODLAND PARK DDA**

IN TELLER COUNTY COUNTY ON 8/24/2022

New Entity: No

USE FOR STATUTORY PROPERTY TAX REVENUE LIMIT CALCULATIONS (5.5% LIMIT) ONLY

IN ACCORDANCE WITH 39-5-121(2)(a) AND 39-5-128(1), C.R.S. AND NO LATER THAN AUGUST 25, THE ASSESSOR CERTIFIES THE TOTAL VALUATION FOR ASSESSMENT FOR THE TAXABLE YEAR 2022 IN TELLER COUNTY COUNTY, COLORADO

1. PREVIOUS YEAR'S NET TOTAL TAXABLE ASSESSED VALUATION:	\$16,897,991
2. CURRENT YEAR'S GROSS TOTAL TAXABLE ASSESSED VALUATION: *	\$27,138,880
3. LESS TIF DISTRICT INCREMENT, IF ANY:	\$9,665,589
4. CURRENT YEAR'S NET TOTAL TAXABLE ASSESSED VALUATION:	\$17,473,291
5. NEW CONSTRUCTION: **	\$408,880
6. INCREASED PRODUCTION OF PRODUCING MINES: #	\$0
7. ANNEXATIONS/INCLUSIONS:	\$0
8. PREVIOUSLY EXEMPT FEDERAL PROPERTY: #	\$0
9. NEW PRIMARY OIL OR GAS PRODUCTION FROM ANY PRODUCING OIL AND GAS LEASEHOLD OR LAND (29-1-301(1)(b) C.R.S.): ##	\$0
10. TAXES COLLECTED LAST YEAR ON OMITTED PROPERTY AS OF AUG. 1 (29-1-301(1)(a) C.R.S.):	\$0.00
11. TAXES ABATED AND REFUNDED AS OF AUG. 1 (29-1-301(1)(a) C.R.S.) and (39-10-114(1)(a)(I)(B) C.R.S.):	\$0.00

* This value reflects personal property exemptions IF enacted by the jurisdiction as authorized by Art. X, Sec.20(8)(b), Colo.

** New construction is defined as: Taxable real property structures and the personal property connected with the structure.

Jurisdiction must submit respective certifications (Forms DLG 52 AND 52A) to the Division of Local Government in order for the values to be treated as growth in the limit calculation.

Jurisdiction must apply (Forms DLG 52B) to the Division of Local Government before the value can be treated as growth in the limit calculation.

USE FOR 'TABOR' LOCAL GROWTH CALCULATIONS ONLY

IN ACCORDANCE WITH THE PROVISION OF ARTICLE X, SECTION 20, COLO CONST, AND 39-5-121(2)(b), C.R.S. THE ASSESSOR CERTIFIES THE TOTAL ACTUAL VALUATION FOR THE TAXABLE YEAR 2022 IN TELLER COUNTY COUNTY, COLORADO ON AUGUST 25, 2022

1. CURRENT YEAR'S TOTAL ACTUAL VALUE OF ALL REAL PROPERTY: @	\$119,854,992
ADDITIONS TO TAXABLE REAL PROPERTY:	
2. CONSTRUCTION OF TAXABLE REAL PROPERTY IMPROVEMENTS: !	\$5,883,119
3. ANNEXATIONS/INCLUSIONS:	\$0
4. INCREASED MINING PRODUCTION: %	\$0
5. PREVIOUSLY EXEMPT PROPERTY:	\$0
6. OIL OR GAS PRODUCTION FROM A NEW WELL:	\$0
7. TAXABLE REAL PROPERTY OMITTED FROM THE PREVIOUS YEAR'S TAX WARRANT:	\$0

(If land and/or a structure is picked up as omitted property for multiple years, only the most current year's actual value can be reported as omitted property.)

DELETIONS FROM TAXABLE REAL PROPERTY:

8. DESTRUCTION OF TAXABLE REAL PROPERTY IMPROVEMENTS:	\$0
9. DISCONNECTIONS/EXCLUSION:	\$0
10. PREVIOUSLY TAXABLE PROPERTY:	\$0

@ This includes the actual value of all taxable real property plus the actual value of religious, private schools, and charitable real property.

! Construction is defined as newly constructed taxable real property structures.

% Includes production from new mines and increases in production of existing producing mines.

IN ACCORDANCE WITH 39-5-128(1), C.R.S. AND NO LATER THAN AUGUST 25, THE ASSESSOR CERTIFIES TO SCHOOL DISTRICTS: 1. TOTAL ACTUAL VALUE OF ALL TAXABLE PROPERTY:----->

\$0

NOTE: All levies must be Certified to the Board of County Commissioners NO LATER THAN DECEMBER 15, 2022

IN ACCORDANCE WITH 39-5-128(1.5) C.R.S. THE ASSESSOR PROVIDES:

HB21-1312 ASSESSED VALUE OF EXEMPT BUSINESS PERSONAL PROPERTY (ESTIMATED): **

** The tax revenue lost due to this exempted value will be reimbursed to the tax entity by the County Treasurer in accordance with 39-3-119 f(3). C.R.S.

Data Date: 8/24/2022