

TOWN OF PARKER COUNCIL AGENDA

June 7, 2021

Notes:

Town Council meeting packets are prepared several days prior to the meeting. This information is reviewed and studied by the Councilmembers eliminating lengthy discussions to gain a basic understanding. Timely action and short discussion on agenda items does not reflect lack of thought or analysis on the part of Council.

Ordinances listed for first reading are being approved to introduce them. Public comment will be held upon second reading.

Start times for regular agenda items are tentative; some items may be held earlier than scheduled time.

Public comment for items that are not on the agenda may be made in person, by Zoom or electronically at <http://parkeronline.org/CouncilPublicComment>. For those unable to provide comments in person, electronically through the website or via Zoom, please contact the Clerk's Office to make alternative arrangements. The Town Clerk can be reached at 303-805-3198. Public comments provided electronically through the website that are provided by 5:00 p.m. on the day of the regular or special Town Council meeting will be provided to the Town Council and will be included with the approved minutes of the Town Council meeting.

Virtual Public Participation by Zoom Webinar: Instructions on how to participate in the public comment or public hearing part of the meeting are available by viewing the individual Town Council meeting listings on the Town's online calendar at www.parkeronline.org/calendar.

Public Viewing Only - Facebook Live: Town Council meetings may be viewed through Facebook Live from the Town of Parker website: www.facebook.com/townofparkerco.

PLEASE NOTE: Public participation is NOT available through Facebook Live.

1. TOWN COUNCIL MEETING SCHEDULE

- A. 5:00 P.M. – Call to Order Town Council Meeting and Roll Call
- B. Executive Session – Immediately following Call to Order/Roll Call – (See Attached)
- C. Reconvene Town Council Meeting at 7:00 P.M. or as soon thereafter as the regular public meeting can be conducted.

2. PARKER CHAMBER OF COMMERCE UPDATES

3. DOWNTOWN BUSINESS ALLIANCE UPDATES

- 4. PUBLIC COMMENTS (No action will be taken on these items.) *Public Comment is an opportunity for Town residents and other interested individuals to speak about items that are NOT on the agenda. This comment period is limited to 30 minutes total time, with each individual allowed a maximum of 3 minutes to speak. You must sign up ahead of time in order to comment, and that sign up begins 30 minutes before the start of the meeting. The Council will accommodate as many speakers as possible during this time—with preference to Town residents—but if public comment extends beyond the allotted 30 minutes, Town Council will continue the comment period at the end of the meeting, prior to adjourning for those who signed up before the meeting.*

5. REPORTS, ITEMS AND COMMENTS FROM MAYOR AND COUNCIL

6. **CONSENT AGENDA**

Consent Agenda Items are considered to be routine and will be enacted by one motion and vote. There will be no separate discussion of Consent Agenda Items unless Council votes to remove an item for individual discussion. Ordinances on the Consent Agenda are for introduction only and will not be removed for discussion. Consent Agenda items discussed at study session can be viewed by clicking the following link: <https://parkerco.civicclerk.com/Web/Player.aspx?id=1752&key=-1&mod=-1&mk=-1&nov=0>

A. APPROVAL OF MINUTES - May 17, 2021

B. ORDINANCE NO. 3.01.124 - First Reading

A Bill for an Ordinance to Amend Sections 13.01.140, 13.07.060, 13.07.070, 13.07.080, 13.07.090 and 13.07.100 of the Parker Municipal Code Concerning Extensions of Time

Department: Community Development, Bryce Matthews

Second Reading: June 21, 2021

C. ORDINANCE NO. 3.01.125 - First Reading

A Bill for an Ordinance to Amend Section 13.03.030 of the Parker Municipal Code concerning Planning Department Adjustments

Department: Community Development, Bryce Matthews

Second Reading: June 21, 2021

D. ORDINANCE NO. 3.324.3 - First Reading

A Bill for an Ordinance to Amend Section 13.09.040 of the Parker Municipal Code concerning Registration of Temporary Signs

Department: Community Development, Bryce Matthews

Second Reading: June 21, 2021

E. ORDINANCE NO. 3.353.1 - First Reading

A Bill for an Ordinance to Amend Sections 13.01.140 and 13.10.250 of the Parker Municipal Code Concerning Prairie Dog Management

Department: Community Development, John Fussa

Second Reading: June 21, 2021

F. ORDINANCE NO. 9.335 - First Reading

A Bill for an Ordinance Approving the Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for Cottonwood Meadows Tributary By and Between Urban Drainage and Flood Control District d/b/a Mile High Flood District and the Town of Parker (Agreement No. 21-05.15 Project No. 108520)

Department: Engineering and Public Works, Michael Grabczyk

Second Reading: July 12, 2021

G. *CONTRACTS OVER \$100,000*

Purchase of Zoom Unified Communications Platform

Amount: \$110,000

Contractor: Zoom

Department: Information Technology, Matt Lynch

7. **ORDINANCES**

- A. **ORDINANCE NO. 5.59.2 - Second Reading (Continued from March 22, 2021)**
A Bill for an Ordinance to Amend Chapters 6.01 and 6.03 of the Parker Municipal Code Concerning Noise Regulations
Department: Community Development, John Fussa
Town Attorney, Jamie Wynn
- B. **ORDINANCE NO. 9.136.4 - Second Reading (Continued from April 19, 2021 – to be continued to a date uncertain)**
A Bill for an Ordinance to Approve the Addendum to Amended and Restated Funding Agreement By and Between the Town of Parker and the Douglas County Emergency Telephone Service Authority Concerning the Hosted 911 NICE Recording Services
Department: Town Attorney, Jamie Wynn
- C. **ORDINANCE NO. 9.330 - Second Reading**
A Bill for an Ordinance to Approve the Intergovernmental Agreement By and Between the Town of Parker And The State of Colorado Acting By and Through the Colorado Department of Transportation Concerning FY 21 Parker Traffic Responsive Phase 2
Department: Engineering and Public Works, David Aden
- D. **ORDINANCE NO. 9.331 - Second Reading**
A Bill for an Ordinance to Approve the Intergovernmental Agreement By and Between the Town of Parker And The State of Colorado Acting By and Through the Colorado Department of Transportation Concerning SH 83 (Parker Road) Traffic Signal Maintenance
Department: Engineering and Public Works, David Aden
- E. **ORDINANCE NO. 9.333 - Second Reading**
A Bill for an Ordinance Approving the Intergovernmental Agreement By and Between the Town of Parker and The State of Colorado Acting By and Through the Colorado Department of Transportation Concerning Parker Road (SH 83) Multi-Use Trail/Sidewalk: Sulphur Gulch Trail to Parker Square
Department: Engineering and Public Works, Tom Gill
- F. **ORDINANCE NO. 9.334 - Second Reading**
A Bill for an Ordinance Approving the Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for Cherry Creek at Dransfeldt Road (Agreement No. 21-05.04 Project No. 108515) by and between Urban Drainage and Flood Control District

d/b/a Mile High Flood District, the Town of Parker and Cherry Creek Basin Water Quality Authority

Department: Engineering and Public Works, Michael Grabczyk

G. HIGH PLAINS TRAIL PROJECT

Department: Parks, Recreation and Open Space, Dennis Trapp

- 1. ORDINANCE NO. 1.390.1 - Second Reading**
A Bill for an Ordinance to Approve Amendment #2 to Deed of Conservation Easement for the 17 Mile House property by and between the Board of County Commissioners of the County of Arapahoe, State of Colorado and the Town of Parker
- 2. ORDINANCE NO. 1.264.2 - Second Reading**
A Bill for an Ordinance to Approve the First Amendment to the Second Revised and Restated Deed of Conservation Easement (Norton Property - Douglas County, Colorado) by and between the Town of Parker and Board of County Commissioners of the County of Douglas, State of Colorado
- 3. ORDINANCE NO. 9.283.2 - Second Reading**
A Bill for an Ordinance to Approve the Second Amendment to Intergovernmental Agreement Regarding the Design of Improvements to the High Plains Trail by and between the Town of Parker and Arapahoe County Board of County Commissioners

8. RESOLUTIONS

A. RESOLUTION NO. 21-029

A Resolution to Appoint the Chair and to Appoint Members and Alternates to the Town of Parker Planning Commission

Department: Community Development, Bryce Matthews

B. RESOLUTION NO. 21-030

A Resolution Concerning Certain Application Materials Submitted as Part of, and Included as a Condition of Approval for, the Use By Special Review for Lot 3 of the Blair Industrial Park Replat of Tract 3 Subdivision

Department: Town Attorney, Kristin Hoffmann

9. PUBLIC COMMENTS CONTINUED IF NECESSARY

10. ADJOURNMENT

Parker Town Council

Executive Session Agenda

June 7, 2021

“To hold a conference with the Town’s attorney to receive legal advice on specific legal questions, pursuant to C.R.S. § 24-6-402(4)(b).”

1. H.R. 1319, The American Rescue Plan Act of 2021 (U.S. Department of Treasury Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions)

2. Section 2.1 of the Parker Home Rule Charter concerning the election calendar for a November 2, 2021, coordinated election under the Uniform Election Code, and potential charter questions

“To determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiations, and/or instruct negotiators, pursuant to C.R.S. § 24-6-402(4)(e).”

3. Proposed assignment and assumption of the Amended and Restated Stroh/Hess Ranch Annexation Agreement (Southern Property) dated September 21, 2015

4. Chapter 10.08 of the Parker Municipal Code concerning waiver of fees and Town costs associated with community event permits

**TOWN OF PARKER COUNCIL
MINUTES
MAY 17, 2021**

Mayor Jeff Toborg called the meeting to order at 4:59 P.M. All Councilmembers were present. Anne Barrington and Joshua Rivero were previously sworn in so they could participate in the Executive Session.

Town Attorney Jim Maloney announced the topics for discussion in Executive Session were eight (8) items. Under C.R.S. § 24-6-402(4)(b) there were 4 (four) items, the first item was to hold a conference with the Town's attorney to receive legal advice on specific legal questions concerning C.R.S. Section 31-12-108 related to the annexation of real property located at the southeast corner of the intersection of Dransfeldt Road and Lincoln Avenue commonly known as the Peaslee Property; the second item was to hold a conference with the Town's attorney to receive legal advice on specific legal questions concerning C.R.S. Section 24-72-204(3)(a)(IV) related to the public disclosure of proprietary, confidential information and trade secrets of a local Parker business; the third item was to hold a conference with the Town's attorney to receive legal advice on specific legal questions concerning Senate Bill 20-110 related to the imposition of fines by the Special Licensing Authority; and, the forth item was to hold a conference with the Town's attorney to receive legal advice on specific legal questions concerning Senate Bill 21-260 related to transportation. Under C.R.S. § 24-6-402(4)(e) there were three (3) items, the first item was concerning the proposed amendment to the Anthology North Annexation Agreement to address the timing for the construction of Chambers Road; the second item was concerning the proposed High Plains Trail project agreements, including the proposed amendment to the conservation easement for the Norton Property, between the Town and Douglas County, the proposed amendment to the conservation easement for the 17-Mile House Property, between the Town and Arapahoe County, and the proposed amendment to the intergovernmental agreement between the Town and Arapahoe County concerning the release of funds held by the Town for the project; and the third item was concerning the proposal from the Parker Chamber of Commerce concerning Parker Days. Under C.R.S. § 24-6-402(4)(a) there was one (1) item, which was concerning the potential sale of Town-owned right-of-way located in the vicinity of Mainstreet and Jordan Road.

EXECUTIVE SESSION

Joshua Rivero moved and Laura Hefta seconded to go into Executive Session at 5:05 P.M., to hold a conference with the Town's attorney to receive legal advice on specific legal questions, pursuant to C.R.S. § 24-6-402(4)(b), and to determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiations, and/or instruct negotiators, pursuant to C.R.S. § 24-6-402(4)(e); and to consider the purchase, acquisition, lease, transfer or sale of real, personal or other property, pursuant to C.R.S. § 24-6-402(4)(a)

The motion was approved unanimously.

Joshua Rivero moved and Todd Hendreks seconded to recess the Executive Session at 6:31 P.M.

Joshua Rivero moved and Todd Hendreks seconded to rescind Joshua's motion to recess the Executive Session and remain in Executive Session.

The motion was approved unanimously.

Joshua Rivero moved and Todd Hendreks seconded to recess the Executive Session at 6:38 P.M.

The motion was approved unanimously.

Todd Hendreks moved and Cheryl Poage seconded to recess the regular meeting until 7:00 P.M.

The motion was approved unanimously.

REGULAR MEETING

Mayor Toborg called the meeting to order at 7:05 p.m. All Councilmembers were present.

Mayor Toborg led the Pledge of Allegiance.

SWEARING-IN OF COUNCILMEMBERS

As part of the public swearing-in ceremony, Anne Barrington and Joshua Rivero were each sworn as Councilmembers.

PUBLIC COMMENTS

The Mayor stated there were seven written general public comments that will be attached to the May 17, 2021 approved minutes.

There was no one on Zoom wanting to speak.

David Casiano, 21541 Omaha Ave., gave a blessing for all of the Councilmembers.

REPORTS, ITEMS AND COMMENTS FROM MAYOR AND COUNCIL

Each Councilmember reported on meetings they attended since the last Town Council meeting.

CONSENT AGENDA

A. *APPROVAL OF MINUTES - May 3, 2021*

B. *ORDINANCE NO. 9.330 - First Reading*

A Bill for an Ordinance to Approve the Intergovernmental Agreement By and Between the Town of Parker And The State of Colorado Acting By and Through the Colorado Department of Transportation Concerning FY 21 Parker Traffic Responsive Phase 2

Department: Engineering and Public Works, David Aden

Second June 7, 2021

Reading:

C. *ORDINANCE NO. 9.331 - First Reading*

A Bill for an Ordinance to Approve the Intergovernmental Agreement By and Between

the Town of Parker And The State of Colorado Acting By and Through the Colorado Department of Transportation Concerning SH 83 (Parker Road) Traffic Signal Maintenance

Department: Engineering and Public Works, David Aden

Second June 7, 2021

Reading:

D. ORDINANCE NO. 9.333 - First Reading

A Bill for an Ordinance Approving the Intergovernmental Agreement By and Between the Town of Parker and The State of Colorado Acting By and Through the Colorado Department of Transportation Concerning Parker Road (SH 83) Multi-Use Trail/Sidewalk: Sulphur Gulch Trail to Parker Square

Department: Engineering and Public Works, Tom Gill

Second June 7, 2021

Reading:

E. HIGH PLAINS TRAIL PROJECT

Department: Parks, Recreation and Open Space, Dennis Trapp

Second June 7, 2021

Reading:

1. ORDINANCE NO. 1.390.1 - First Reading

A Bill for an Ordinance to Approve Amendment #2 to Deed of Conservation Easement for the 17 Mile House property by and between the Board of County Commissioners of the County of Arapahoe, State of Colorado and the Town of Parker

2. ORDINANCE NO. 1.264.2 - First Reading

A Bill for an Ordinance to Approve the First Amendment to the Second Revised and Restated Deed of Conservation Easement (Norton Property - Douglas County, Colorado) by and between the Town of Parker and Board of County Commissioners of the County of Douglas, State of Colorado

3. ORDINANCE NO. 9.283.2 - First Reading

A Bill for an Ordinance to Approve the Second Amendment to Intergovernmental Agreement Regarding the Design of Improvements to the High Plains Trail by and between the Town of Parker and Arapahoe County Board of County Commissioners

F. ORDINANCE NO. 9.334 - First Reading

A Bill for an Ordinance Approving the Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for Cherry Creek at Dransfeldt Road (Agreement No. 21-05.04 Project No. 108515) by and between Urban Drainage and Flood Control District d/b/a Mile High Flood District, the Town of Parker and Cherry Creek Basin Water Quality Authority

Department: Engineering and Public Works, Michael Grabczyk

Second June 7, 2021

Reading:

G. CONTRACTS OVER \$100,000

On-Call Development Construction Inspection Services (SOQ-21-004) Agreement for Professional Services

Amount: \$147,198.00

Contractor: Alfred Benesch & Company

Department: Engineering and Public Works, Alex Mestdagh

H. PROCLAMATION - NATIONAL PUBLIC WORKS WEEK

Department: Town Council

Joshua Rivero moved to approve Consent Agenda 5A through 5H. He noted the Proclamation for National Public Works Week and recognized the Town's Public Works Department.

Cheryl Poage seconded the motion.

The motion was approved unanimously.

PUBLIC HEARINGS

LINCOLN PROFESSIONAL PARK - Annexation and Zoning

Department: Community Development, Stacey Nerger

Trakit No.: ANX20-006 and Z20-017

7:25 P.M.

The Lincoln Professional Park property is located at the southeastern corner of the intersection of Lincoln Avenue and Dransfeldt Road. This property is approximately 4.4 acres in size and is undeveloped except for several dilapidated agricultural buildings. The adjacent properties and the surrounding area are located in the Town of Parker.

Municipal annexation of land requires a series of actions prescribed by State law, Municipal Code and the Town Charter, all of which have been followed with the request to annex the Lincoln Professional Park property into the Town. On February 16, 2021, the Town Council

approved Resolution 21-008 that set the public hearing date of April 5, 2021, to determine compliance with the Municipal Annexation Act of 1965. On April 5, 2021, the Town Council approved Resolution 21-018 that determined the Lincoln Professional Park property was eligible for annexation into the Town and set the public hearing date for consideration of the annexation and zoning ordinances on May 17, 2021. On May 3, 2021, the Town Council approved the annexation and zoning ordinances on first reading.

The Lincoln Professional Park property that is proposed for annexation is located within the Town's Planning Area for future growth and development, is identified in the 2020 Three-Mile Plan as an annexation opportunity and is recommended for future annexation in the Parker 2035 Master Plan. Staff's review of the submitted annexation map indicates that the subject property satisfies the contiguity requirement of the Municipal Annexation Act of 1965 pursuant to C.R.S. § 31-12-104(a). The proposed annexation is consistent with the Town Master Plan and land use policies for future growth and development.

The applicant proposes concurrent annexation and zoning as required by the Town's Land Development Ordinance and Charter. The current zoning for the subject property is A1-Agricultural One within unincorporated Douglas County. The proposed zoning to C-Commercial will permit future commercial development including retail, service and restaurant uses.

The applicant has also submitted a Use by Special Review (UbSR) application to allow a gasoline service station with a convenience store on the subject property. The proposed C-Commercial zoning referenced above permits gasoline service stations subject to the UbSR process. The C-Commercial zoning establishes those uses that are permitted by-right and as a UbSR with applicable bulk standards. The UbSR process is utilized when a proposed use may generate nuisance impacts that require additional review within a zone district. The request for UbSR approval is made by an applicant and must address whether the proposed use meets or can meet the nine (9) criteria for approval criteria set forth in the Land Development Ordinance and outlined in the Planning Commission staff report. It is typical that staff will recommend a UbSR approval and include conditions to address or mitigate potential impacts.

The UbSR application process is focused primarily upon the proposed use and not the planned site design. The review of these items occurs during the required site plan and building permit process.

The Planning Commission held a public hearing for the applications on April 22, 2021, and unanimously recommended that Town Council approve them.

Applicant:

Attorney Brain Connelly, 950 17th Street, Suite 1600, Mr. Connelly provide a brief description of the project.

Ryanne Sass, Plaza Street Partners, 2400 W. 75th Street, Suite 220, was present on Zoom for any questions.

Public Comment: None.

The Public Hearing was closed at 7:38 P.M.

1. ORDINANCE NO. 2.276 - Second Reading

A Bill for an Ordinance Approving and Accomplishing the Annexation of Contiguous Unincorporated Territory Known as Lincoln Professional Park in Douglas County

Todd Hendreks moved to approve Ordinance No. 2.276 on second reading subject to the approval of Ordinance No. 3.358, the annexation agreement and the Use by Special Review.

Joshua Rivero seconded the motion.

The motion was approved unanimously.

2. ORDINANCE NO. 3.358 - Second Reading

A Bill for an Ordinance Zoning Certain Property within the Town of Parker, Colorado, Known as the Lincoln Professional Park Property to C-Commercial District, Pursuant to the Town of Parker Land Development Ordinance and Amending the Zoning Ordinance and Map to Conform Therewith

Todd Hendreks moved to approve Ordinance No. 3.358 on second reading subject to the approval of the annexation agreement and the Use by Special Review.

John Diak seconded the motion.

The motion was approved unanimously.

3. ANNEXATION AGREEMENT

Todd Hendreks moved to approve the Lincoln Professional Park Annexation Agreement subject to approval of the Use by Special Review.

Joshua Rivero seconded the motion.

The motion was approved unanimously.

4. USE BY SPECIAL REVIEW

Joshua River moved to approve the Use by Special Review, based on staff findings, with the following conditions contained in the staff report:

- A. That the Use by Special Review materials submitted to the Community Development Department on November 30, 2020, shall be the approved Use by Special Review materials.
- B. The property owner shall dedicate public access easements through the Property connecting adjacent properties (south and east) to the access points that are allowed by the Town on the property for access to Dransfeldt Road and Lincoln Avenue at

the time of the first final plat for the property.

C. This approval shall expire twelve (12) month after the date of approval unless a building permit has been applied for by the property owner. The Community Development Director, upon written request, may grant a ninety-day (90) extension as provided by the Parker Municipal Code.

Todd Hendreks seconded the motion.

The motion was approved unanimously.

ORDINANCES

TERMINATION OF HAZARDOUS MATERIALS BOARD AND AMENDMENT TO EMERGENCY OPERATIONS PLAN

**Department: Town Attorney, Jamie Wynn
 Police Department, Andy Coleman**

On March 17, 2003, Town Council approved an Ordinance adopting the Arapahoe/Douglas Counties Regional Hazardous Materials Board Intergovernmental Agreement ("IGA"). On May 5, 2003, Town Council again approved an Ordinance to incorporate minor changes to the IGA.

The purpose of the IGA in 2003 was based on Colorado statute which requires governing bodies of any municipality to designate an emergency response authority that is responsible for hazardous substance incidents. Under the IGA, the Board served as the oversight for all of the various jurisdictions in Arapahoe and Douglas Counties and acted to manage the various entities for the purpose of conducting joint hazardous materials activities, to include the planning and information management response, as well as for purposes of obtaining equipment, training, and personnel needs, and other related activities.

The IGA included multiple jurisdictions and agencies, including South Metro Fire Rescue Authority (SMFRA), which is the agency generally and locally responsible for Town of Parker hazardous materials incidents.

While SMFRA currently handles and will continue to handle Town of Parker hazardous materials incidents, and can request the assistance of other agencies, if necessary, the Town of Parker Emergency Operations Plan ("EOP") did specifically designate the Regional Hazardous Materials Board as the management and oversight entity for such incidents.

Based on changes that have occurred with respect to methods and capabilities of handling hazardous materials incidents, it was determined that the Regional Hazardous Materials Board is no longer necessary. A new IGA was provided for all member municipalities and agencies to sign to formally terminate the Regional Board.

There is still a statutory requirement, pursuant to CRS Section 29-22-102(3)(a), that the Town Council must designate the emergency response authority responsible for hazardous substances

incidents within the Town's jurisdiction. As SMFRA has always been the responsible authority and will remain so, the EOP will also be amended to reflect the specific designation of SMFRA.

As the Regional Hazardous Materials Board (RHMB) no longer exists, and Council is concurrently considering the Intergovernmental Agreement terminating the RHMB, the Town must specifically designate the authority or entity responsible for hazardous materials incidents within the Town of Parker. The Emergency Operations Plan (EOP) currently lists RHMB as the responsible entity. Therefore, the EOP must be updated with the proper designation. Under state law, as well as based on current practice, the responsible entity for hazardous materials incidents is South Metro Fire Rescue Authority (SMFRA), and this Resolution will amend the EOP to reflect SMFRA as the responsible agency.

Public Comment:

Michael Cavanaugh, 12793 Red Rose Circle, asked about the oversight of South Metro.

Commander Coleman stated each entity has their own emergency management team and the Town also works with Douglas County and South Metro as well. This item is only to eliminate the oversight board.

1. ORDINANCE NO 9.75.2 - Second Reading

A Bill for an Ordinance to Approve the Intergovernmental Agreement Terminating the Regional Hazardous Materials Board of Arapahoe/Douglas Counties

Cheryl Poage moved to approve Ordinance No. 9.75.2 on second reading.

Laura Hefta seconded the motion.

The motion was approved unanimously.

2. RESOLUTION NO. 21-024

A Resolution to Amend Resolution No. 19-051, Series of 2019, and to Adopt the Amended Town of Parker Emergency Operations Plan

Joshua Rivero moved to approve Resolution No. 21-024.

Todd Hendreks seconded the motion.

The motion was approved unanimously.

RESOLUTIONS**A. RESOLUTION NO. 21-023****A Resolution Accepting the Conveyance of Real Property From the Diocese of Colorado Springs for Right-of-Way Parcel RW-1 of Lot 1, Block 2, Horseshoe Ridge Subdivision, 1st Amendment****Department: Engineering and Public Works, Tom Gill**

The Town is planning to competitively bid the Motsenbocker Road/Hess Road improvements project this summer with construction starting soon thereafter. This project is to alleviate the traffic congestion at this intersection during the peak travel times. This project includes the construction of a northbound-to-westbound double left lane and one additional southbound lane on Motsenbocker Road south of the Hess Road intersection. In addition, the project will eliminate a gap in the sidewalk on the west side of Motsenbocker Road south of Hess Road. The Town's design consultant advanced the project design in 2020 and identified additional right-of-way for Motsenbocker Road at the northwest corner of the Hess Road intersection. The additional property and easements required to construct the project improvements are owned by the Diocese of Colorado Springs.

An ordinance authorizing Town staff and/or the consultant to initiate the acquisition of this needed right-of-way parcel area was approved by Town Council in February 2021. The Town's property acquisition consultant negotiated the acquisition of this property from the Diocese of Colorado Springs at a cost of \$44,640.00 which is fair market value based on appraisals obtained by the Town. The resolution, if approved, accepts the conveyance of the property.

Public Comment: None.

Joshua Rivero moved to approve Resolution No. 21-023.

Anne Barrington seconded the motion.

The motion was approved unanimously.

B. RESOLUTION NO. 21-025**A Resolution Accepting the Conveyance of Real Property From North Parker Investments, LLC, for Motsenbocker Road Right-of-Way****Department: Engineering and Public Works, Tom Gill**

The Town is planning to competitively bid the Motsenbocker Road/Hess Road Improvements project this summer with construction starting soon thereafter. The proposed project improvements are needed to relieve traffic congestion at this intersection during the peak travel times. This project includes the construction of a northbound-to-westbound double left lane and one additional southbound lane on Motsenbocker Road south of the Hess Road intersection. In addition, the project will eliminate a gap in the sidewalk on the west side of Motsenbocker Road south of Hess Road. The Town's design consultant advanced the project design in 2020 and identified additional right-of-way and easement for IREA for Motsenbocker Road at the southwest corner of the Hess Road intersection. The additional property required to construct the

project improvements are owned by North Parker Investments, LLC. A vicinity map showing the property, right-of-way and easements is attached to this Town Council item.

An ordinance authorizing Town staff to initiate the acquisition of this needed right-of-way parcel area and easements was approved by Town Council in February 2021. Town staff successfully negotiated the acquisition of this property from North Parker Road Investments. The resolution, if approved, would accept the conveyance of the right-of-way.

Public Comment: None.

Cheryl Poage moved to approve Resolution No. 21-025.

Joshua Rivero seconded the motion.

The motion was approved unanimously.

C. RESOLUTION NO. 21-026

A Resolution Adopt an Amended Town Council Policy Statement 1-8 Concerning Public Hearing Procedure and Public Comment Policy

Department: Town Attorney, Kristin Hoffmann

Policy Statement 1-8 establishes procedures for public hearings and public comment periods. During the pandemic, public comment and public hearings were conducted via Zoom. The current policy addresses public comments made in person, but does not address public comments made via Zoom. This resolution also makes revisions to the public hearing procedure as indicated in the attached policy.

Public Comment: None.

Cheryl Poage moved to approve Resolution No. 21-026.

Laura Hefta seconded the motion.

The motion was approved unanimously.

D. RESOLUTION NO. 21-027

A Resolution Authorizing the Possession and Consumption of Alcoholic Beverages in Discovery Park, Subject to Certain Conditions

Department: Town Attorney, Kristin Hoffmann

Pursuant to Sections 8.08.010 and 12.02.200 of the Parker Municipal Code, the Town Council may designate park lands where the possession and consumption of alcoholic beverages are allowed. This resolution designates Discovery Park, subject to certain conditions, to allow alcohol possession and consumption (glass containers prohibited) between the hours of 4 p.m. and 9 p.m., on the following concert dates: August 5, August 12, August 19, and August 26,

2021.

Public Comment: None.

Todd Hendreks moved to approve Resolution No. 21-027.

Anne Barrington seconded the motion.

The motion was approved unanimously.

E. RESOLUTION NO. 21-028

A Resolution to Amend Resolution No. 20-060, Series of 2020, to Allow a Partial Waiver of Subsections 13.07.100(i) and (j) of the Parker Municipal Code to Extend the Expiration Date of the Parker Pointe Minor Development Plat

Department: Community Development, Bryce Matthews

The Town Council approved the Parker Pointe Minor Development Plat (MDP) on April 6, 2020. This was the second time that the Town Council approved the MDP because the original approval expired in 2019. The 2019 expiration was caused by a change in ownership/management team for the project that prevented them from meeting the recordation deadline as stated in the Land Development Ordinance (LDO). As a result, the original MDP expired and the new ownership/management team had to resubmit it and obtain Town Council approval again.

Under the LDO, “Within ninety (90) days of approval of the minor development plat, unless stated otherwise in such approval, the applicant shall submit: one (1) photographic Mylar copy (Fix-line, emulsion down) of the approved final plat, amended, if necessary, and ready for recordation (except for Town signatures)...” This also includes the requirement for the applicant to provide financial security for all necessary public improvements. The applicant has submitted the required MDP Mylar, but has not been able to obtain the required financial security in the form of a Letter of Credit for the public improvements. The Town Code provides that the Planning Director may grant an extension of up to 30 days, which extension has been requested and granted for the approved project. Additionally, for the reason that the approved project was pending when the Town declared the local disaster emergency in response to the COVID-19 pandemic, the MDP approval was extended for another four (4) months as provided by Emergency Order No. 12-2020. On November 16, 2020, the Town Council granted an additional 6 month extension of the MDP approval through May 27, 2021, by approval of Resolution 20-060.

The current expiration date for the approved MDP is May 27, 2021, with the approved extensions described above. The applicant states that they will not be able to obtain a Letter of Credit to secure the necessary public improvements which is a pre-requisite for the recordation of the MDP prior to the expiration date. According to the applicant, they have made significant progress in addressing this issue and represent that they are in the process of obtaining project financing including the required security for public improvements. However, they indicate that

the continuing impacts of the COVID-19 pandemic have impeded their ability to obtain the Letter of Credit to secure required public improvements by the May 27, 2021 expiration date. The applicant is requesting an additional extension to December 31, 2021, to provide more time to obtain the required Letter of Credit from a new bank. If the extension is not granted, the MDP approval will expire after May 27, 2021.

Public Comment: None.

Joshua Rivero moved to approve Resolution No. 21-028.

Todd Hendreks seconded the motion.

The motion was approved unanimously.

Todd Hendreks moved and Joshua Rivero seconded to recess the regular meeting at 8:21 P.M.

The motion was approved unanimously.

Joshua Rivero moved and Todd Hendreks seconded to reconvene the Executive Session at 8:34 P.M.

The motion was approved unanimously.

Joshua Rivero moved and John Diak seconded to adjourn the Executive Session at 9:22 P.M.

The motion was approved unanimously.

Joshua Rivero moved and Todd Hendreks seconded to adjourn the regular meeting at 9:22 P.M.

The motion was approved unanimously.

Chris Vanderpool, Acting Town Clerk

Jeff Toborg, Mayor



Request for Town Council Action

Date: June 7, 2021

Submitted By: Bryce Matthews, Planning Manager

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 3.01.124 - First Reading**
A Bill for an Ordinance to Amend Sections
13.01.140, 13.07.060, 13.07.070, 13.07.080, 13.07.090 and
13.07.100 of the Parker Municipal Code Concerning
Extensions of Time
Department: Community Development, Bryce Matthews
Second June 21, 2021
Reading:

EXECUTIVE SUMMARY

The Town Administrator issued a series of Emergency Orders in 2020 to respond to the COVID-19 pandemic. As the Town, state and country are recovering from the pandemic, staff proposes several amendments to the Municipal Code to establish a formal transition from the emergency orders back to pre-pandemic Code requirements. The proposed ordinance will allow for the Planning Director to grant administrative extensions of approved land use applications to December 31, 2021.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Parker Municipal Code provides for the following:

1. Site Plans Approvals- Effective for 12 months, the applicant may request an additional 90-day extension from the Planning Director.
2. Sketch and Preliminary Plan Approvals - Effective for 12 months, the applicant may request an additional 12 month extension from the Planning Director.
3. Final Plat, Minor Development Plat and Replat Approvals - Effective for 90 days, the applicant may request an additional 30 day extension from the Planning Director.

The Town Administrator issued an Emergency Order in 2020 that allowed for all land use approvals to receive an additional extension of four (4) months to obtain their Grading Permit or Building Permit, for a total of 16 months prior to expiration. The proposed ordinance will allow the Planning Director to administratively extend approvals to December 31, 2021. After December 31, 2021, the ordinance will sunset and approvals will revert back to the code standard of 12 months with the option for a 90-day extension.

On May 27, 2021, the Planning Commission unanimously recommended that the Town Council approve the proposed ordinance.

FINANCIAL IMPACT

None

STRATEGIC GOAL(S)

DEVELOP A VISIONARY
COMMUNITY THROUGH
BALANCED GROWTH



ENHANCE ECONOMIC
VITALITY

ATTACHMENTS

1. PC Staff Report
2. Ordinance 3.01.124

RECOMMENDED MOTION

I move to approve Ordinance No. 3.01.124 on first reading and to schedule second reading for June 21, 2021, as part of the consent agenda.



Planning Commission Staff Report

Planning Commission Date: 5/27/2021

Town Council Date: 6/21/2021

Hearing Type: **Public Meeting**
A Bill for an Ordinance to Amend Sections 13.01.140, 13.07.060, 13.07.070, 13.07.080, 13.07.090, and 13.07.100 of the Parker Municipal Code Concerning Extensions of Time

Location: **Townwide**

Project Planner: **Bryce Matthews, Planning Manager**

Applicant: **Town of Parker**

Executive Summary: The Town Administrator issued a series of executive orders to respond to the COVID-19 pandemic. As the Town, state and country are recovering from the pandemic, the Town is codifying amendments to the code to establish a formal transition from the executive orders back to pre-pandemic code requirements. The proposed ordinance will allow for the Planning Director to grant administrative extensions of approved applications beyond the 90 days permitted today to a date certain of December 31, 2021.

Staff Recommendation: **Approval**

RECOMMENDED MOTION

“I move the Planning Commission recommend Town Council approve an ordinance to amend the Parker Municipal Code regarding administrative extensions of land use approvals.”

ALTERNATIVE MOTIONS

“I move the Planning Commission recommend Town Council approve an ordinance to amend the Parker Municipal Code regarding administrative extensions of land use approvals with the following conditions:”

-List proposed conditions

“I move the Planning Commission recommend Town Council deny an ordinance to amend the Parker Municipal Code regarding administrative extensions of land use approvals:”

-List criteria not met (either by staff or Planning Commission)

“I move the Planning Commission vote to continue an ordinance to amend the Parker Municipal Code regarding administrative extensions of land use approvals.”

I. BACKGROUND/DISCUSSION

The Town administrator issued a series of Executive Orders in response to the COVID-19 pandemic. The Parker Municipal Code requires that applicants receive a Building Permit or Grading Permit within 12 months of approval of a land use application or the approval will expire. The Code also allows for the applicant to request a 90-day extension from the Planning Director in addition to the 12 months. The Town administrator issued an Executive Order that allowed for all land use approvals to receive an additional 4 months to receive their Grading Permit or Building Permit, for a total of 16 months prior to expiration. The proposed ordinance will allow the Planning Director the ability to administratively extend approvals up to December 31, 2021. After December 31, 2021 approvals will revert back to the code requirement of 12 months with the option for a 90-day extension.

II. PARKER 2035 MASTER PLAN

[Parker 2035 Master Plan | Town of Parker - Official Website](#)

MASTER PLAN CONSISTENCY	
Master Plan Designation	Choose an item. ☐ Consistent ☐ Inconsistent ☒ Not Applicable
Master Plan Character Discussion	N/A
Consistent Goals/Strategies	N/A
Inconsistent Goals/Strategies	None
Staff Analysis	Amending the code to allow for extension of approvals is not addressed in the Parker 2035 Master Plan.

III. CONCLUSION

Staff recommends that the Planning Commission recommend that Town Council approve an ordinance that will allow the Planning Director to grant administrative extensions of approved applications beyond the 90 days permitted today to a date certain of December 31, 2021.

IV. RECOMMENDED CONDITIONS

None

V. ATTACHMENTS

Draft Ordinance

Report Approved By: Bryce Matthews, Planning Manager

ORDINANCE NO. 3.01.124, Series of 2021

TITLE: A BILL FOR AN ORDINANCE TO AMEND SECTIONS 13.01.140, 13.07.060, 13.07.070, 13.07.080, 13.07.090, AND 13.07.100 AND OF THE PARKER MUNICIPAL CODE CONCERNING EXTENSIONS OF TIME

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. Section 13.01.140 of the Parker Municipal Code is amended to read as follows:

13.01.140 Resubmittals and expiration of approvals.

* * *

(b) Approval by the Town Council, Planning Commission, or Planning Director of any site plan or use by special review shall remain in effect for a period of twelve (12) months. Any approval of an application for which a grading permit or building permit has not been issued or for which the use by special review has not commenced within twelve (12) months after approval of the site plan or use by special review shall be null and void. An extension of time of up to ninety (90) days may be granted by the Planning Director for good cause. **An additional extension of time, beyond the foregoing 90-day extension, may be granted by the Planning Director; provided, however, no such extension shall extend beyond December 31, 2021.** Any denial of the extension may be appealed to the Town Council. If denied, the applicant may resubmit a new application and fees for the same project.

* * *

Section 2. Section 13.07.060 of the Parker Municipal Code is amended to read as follows:

13.07.060 Sketch plan.

* * *

(i) Expiration of approval.

(1) The sketch plan shall be effective for a period of one (1) year from the date of approval, unless stated otherwise in such approval or unless a preliminary plan has been approved for a portion of the area covered by the sketch plan. In such event the sketch plan approval for the remainder of the area shall be effective for one (1) year following preliminary plan approval. The Planning Director may grant an extension of time, of no more than one (1) year, upon a written request by the applicant prior to the expiration of the one-

year period. **An additional extension of time, beyond the foregoing one-year extension, may be granted by the Planning Director; provided, however, no such extension shall extend beyond December 31, 2021.**

* * *

Section 3. Section 13.07.070 of the Parker Municipal Code is amended to read as follows:

13.07.070 Preliminary plan.

* * *

(i) Expiration of approval.

(1) The preliminary plan shall be effective for a period of one (1) year from the date of approval, unless stated otherwise in such approval. The Planning Director may grant an extension of time, of no more than one (1) year, upon a written request by the applicant prior to the expiration of the one-year period. **An additional extension of time, beyond the foregoing one-year extension, may be granted by the Planning Director; provided, however, no such extension shall extend beyond December 31, 2021.** However, when a part of the preliminary plan is final platted, approval of the remaining area of the preliminary plan shall be effective for the one-year period or as otherwise extended by the Planning Director or the Town Council.

* * *

Section 4. Section 13.07.080 of the Parker Municipal Code is amended to read as follows:

13.07.080 Final plat.

* * *

(h) Expiration of approval.

* * *

(2) The Planning Director may grant ~~no more than~~ one (1) extension of time, of no more than thirty (30) days, upon a written request by the applicant or staff for good cause being shown. **An additional extension of time, beyond the foregoing 30-day extension, may be granted by the Planning Director; provided, however, no such extension shall extend beyond December 31, 2021.**

* * *

Section 5. Section 13.07.090 of the Parker Municipal Code is amended to read as follows:

13.07.090 Minor development—single-family residential.

* * *

(j) Expiration of approval.

* * *

(2) The Planning Director may grant ~~no more than~~ one (1) extension of time, of no more than thirty (30) days, upon a written request by the applicant or staff for good cause being shown. **An additional extension of time, beyond the foregoing 30-day extension, may be granted by the Planning Director; provided, however, no such extension shall extend beyond December 31, 2021.**

* * *

Section 6. Section 13.07.100 of the Parker Municipal Code is amended to read as follows:

13.07.100 Minor development—nonresidential and multiple-family.

* * *

(j) Expiration of approval.

* * *

(2) The Planning Director may grant ~~no more than~~ one (1) extension of time, of no more than thirty (30) days, upon a written request by the applicant or staff for good cause being shown. **An additional extension of time, beyond the foregoing 30-day extension, may be granted by the Planning Director; provided, however, no such extension shall extend beyond December 31, 2021.**

* * *

Section 7. **Safety Clause.** The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 8. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 9. This Ordinance shall become effective ten (10) days after final publication.

Section 10. This Ordinance shall sunset on December 31, 2021, and be of no further force or effect after this date.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney



Request for Town Council Action

Date: June 7, 2021

Submitted By: Bryce Matthews, Planning Manager

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 3.01.125 - First Reading**
A Bill for an Ordinance to Amend Section 13.03.030 of the
Parker Municipal Code concerning Planning Department
Adjustments
Department: Community Development, Bryce Matthews
Second June 21, 2021
Reading:

EXECUTIVE SUMMARY

The Town Administrator issued a series of Emergency Orders in 2020 to respond to the COVID-19 pandemic. As the Town, state and country are recovering from the pandemic, staff proposes several amendments to the Municipal Code to establish a formal transition from the emergency orders back to pre-pandemic Code requirements. The proposed ordinance would exclude certain temporary site plan changes, such as marking pick-up/delivery parking spaces, from the requirement for Site Plan Adjustment approval by the Town. If approved, this ordinance will be in effect through September 30, 2021.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The purpose of this ordinance is to continue to support the business community through the summer by allowing them to operate temporary pick-up parking and other temporary changes to their site to accommodate drive up, pick-up and delivery services. The Municipal Code requires that any change to a commercial site receive Town approval. Minor changes of less than 15 percent qualify to receive a site plan adjustment approval, which entails a limited review process. The requirement for approval would normally apply to designating certain parking spaces for pick-up and delivery, painting new private crosswalks and other changes to site plans that have been necessary for businesses to adjust their business operations during the pandemic. The proposed exclusion from the site plan adjustment process will be extended through September 30, 2021, and sunset thereafter.

On May 27, 2021, the Planning Commission unanimously recommended that the Town Council approve the proposed ordinance.

FINANCIAL IMPACT

None

STRATEGIC GOAL(S)



DEVELOP A VISIONARY
COMMUNITY THROUGH
BALANCED GROWTH



ENHANCE ECONOMIC
VITALITY

ATTACHMENTS

1. PC Staff Report
2. Ordinance 3.01.125

RECOMMENDED MOTION

I move to approve Ordinance No. 3.01.125 on first reading and to schedule second reading for June 21, 2021, as part of the consent agenda.



Planning Commission Staff Report

Planning Commission Date: 5/27/2021

Town Council Date: 6/21/2021

Hearing Type: **Public Meeting**
A Bill for an Ordinance to Amend Section 13.03.030 of the Parker Municipal Code Concerning Planning Department Adjustments

Location: **Townwide**

Project Planner: **Bryce Matthews, Planning Manager**

Applicant: **Town of Parker**

Executive Summary: The Town Administrator issued a series of executive orders in 2020 to respond to the COVID-19 pandemic. The proposed ordinance would exclude certain temporary site plan changes, such as marking pick-up/delivery parking spaces, from the requirement for Site Plan Adjustment approval by the Town. This ordinance will be in effect through September 30, 2021.

Staff Recommendation: **Approval**

RECOMMENDED MOTION

"I move the Planning Commission recommend Town Council approve an ordinance to amend the Parker Municipal Code regarding suspending certain Planning Department Adjustment requirements through September 30, 2021."

ALTERNATIVE MOTIONS

"I move the Planning Commission recommend Town Council approve an ordinance to amend the Parker Municipal Code regarding suspending certain Planning Department Adjustment requirements through September 30, 2021 with the following conditions:"

-List proposed conditions

"I move the Planning Commission recommend Town Council deny an ordinance to amend the Parker Municipal Code regarding suspending certain Planning Department Adjustment requirements through September 30, 2021:"

-List criteria not met (either by staff or Planning Commission)

“I move the Planning Commission vote to continue an ordinance to amend the Parker Municipal Code regarding suspending certain Planning Department Adjustment requirements through September 30, 2021.”

I. BACKGROUND/DISCUSSION

The Town administrator issued a series of Executive Orders in response to the COVID-19 pandemic including an Executive Order to exclude certain temporary commercial site improvements from the requirement to seek a Planning Department Adjustment approval. The purpose of this Ordinance is to continue to support the business community through the summer by allowing them to operate temporary pick up parking and other temporary changes to their site to accommodate drive up, pick-up and delivery services. The Parker Municipal Code requires that any change to a commercial site receive Town approval. Changes less than 15%, qualify to receive a Site Plan Adjustment approval which is a shorter review process. This requirement for approval would normally apply to designating certain parking spaces for pick up/delivery, painting new crosswalks and other changes to site plans that have been necessary for businesses to facilitate changes to their business model during the pandemic. This exclusion from the Site Plan Adjustment process will be extended through September 30, 2021.

II. PARKER 2035 MASTER PLAN

[Parker 2035 Master Plan | Town of Parker - Official Website](#)

MASTER PLAN CONSISTENCY	
Master Plan Designation	Choose an item. ☐ Consistent ☐ Inconsistent ☒ Not Applicable
Master Plan Character Discussion	N/A
Consistent Goals/Strategies	N/A
Inconsistent Goals/Strategies	None
Staff Analysis	Amending the code to temporarily exclude certain activities from the requirement for a Site Plan Adjustment is not addressed in the Parker 2035 Master Plan.

III. CONCLUSION

Staff recommends that the Planning Commission recommend that Town Council approve an ordinance that will exclude businesses that are making temporary site plan changes, such as marking pick-up/delivery parking spaces, from the requirement for Site Plan Adjustment approval by the Town. This ordinance will be in effect through September 30, 2021.

IV. RECOMMENDED CONDITIONS

None

V. ATTACHMENTS

Draft Ordinance

Report Approved By: Bryce Matthews, Planning Manager

ORDINANCE NO. 3.01.125, Series of 2021

TITLE: A BILL FOR AN ORDINANCE TO AMEND SECTION 13.03.030 OF THE PARKER MUNICIPAL CODE CONCERNING PLANNING DEPARTMENT ADJUSTMENTS

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. Section 13.03.030 of the Parker Municipal Code is amended by the addition of a new Subsection (e) to read as follows:

13.03.030 Planning Department adjustments.

* * *

(e) Adjustments to allow retail and service businesses to provide pick-up/delivery of personal, tangible property, parking, and other adjustments to previously approved site plans to facilitate temporary activities related to the operation of such businesses shall not be considered an adjustment under the provisions of this Section.

Section 2. **Safety Clause.** The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. **Severability.** If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

Section 5. This Ordinance shall sunset on September 30, 2021, and be of no further force or effect after this date.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney



Request for Town Council Action

Date: June 7, 2021

Submitted By: Bryce Matthews, Planning Manager

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 3.324.3 - First Reading**
A Bill for an Ordinance to Amend Section 13.09.040 of the Parker Municipal Code concerning Registration of Temporary Signs
Department: Community Development, Bryce Matthews
Second June 21, 2021
Reading:

EXECUTIVE SUMMARY

The Town Administrator issued a series of Emergency Orders in 2020 to respond to the COVID-19 pandemic. As the Town, state and country are recovering from the pandemic, staff proposes several amendments to the Municipal Code to establish a formal transition from the emergency orders back to pre-pandemic Code requirements. The proposed Ordinance will temporarily remove the requirement for temporary signs to be registered from June 1, 2021 through September 30, 2021, to assist local businesses in their transition to normal operations.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The purpose of this ordinance is to continue to support the business community through the busy summer season by not requiring temporary sign registration before a transition back to regular enforcement of the Sign Code. The Municipal Code currently suspends the registration requirement for temporary signs between October 1 and November 15 of each year. The proposed ordinance will also suspend the registration requirement for temporary signs between June 1 and September 30. The ordinance will sunset after September 30, 2021.

On May 27, 2021, the Planning Commission unanimously recommended that the Town Council approve the proposed ordinance.

FINANCIAL IMPACT

None

STRATEGIC GOAL(S)



DEVELOP A VISIONARY
COMMUNITY THROUGH
BALANCED GROWTH



ENHANCE ECONOMIC
VITALITY

ATTACHMENTS

1. PC Staff Report
2. Ordinance No. 3.324.3

RECOMMENDED MOTION

I move to approve Ordinance No. 3.324.3 on first reading and to schedule second reading for June 21, 2021, as part of the consent agenda.



Planning Commission Staff Report

Planning Commission Date: 5/27/2021

Town Council Date: 6/21/2021

Hearing Type: **Public Meeting**
A Bill for an Ordinance to Amend Section 13.09.040 of the Parker Municipal Code to Concerning the Registration of Temporary Signs

Location: **Townwide**

Project Planner: **Bryce Matthews, Planning Manager**

Applicant: **Town of Parker**

Executive Summary: The Town Administrator issued a series of executive orders to respond to the COVID-19 pandemic. As the Town, state and country are recovering from the pandemic, the Town is codifying amendments to the code to establish a formal transition from the executive orders back to pre-pandemic code requirements. The proposed Ordinance will remove the requirement for temporary signs to be registered between June 1, 2021 through September 30, 2021.

Staff Recommendation: **Approval**

RECOMMENDED MOTION

"I move the Planning Commission recommend Town Council approve an ordinance to amend the Parker Municipal Code regarding suspending registration of temporary signs between June 1 and September 30, 2021."

ALTERNATIVE MOTIONS

"I move the Planning Commission recommend Town Council approve an ordinance to amend the Parker Municipal Code regarding suspending registration of temporary signs between June 1 and September 30, 2021 with the following conditions:"

-List proposed conditions

"I move the Planning Commission recommend Town Council deny an ordinance to amend the Parker Municipal Code regarding suspending registration of temporary signs between June 1 and September 30, 2021:"

-List criteria not met (either by staff or Planning Commission)

“I move the Planning Commission vote to continue an ordinance to amend the Parker Municipal Code regarding suspending registration of temporary signs between June 1 through September 30, 2021.”

I. BACKGROUND/DISCUSSION

The Town administrator issued a series of Executive Orders in response to the COVID-19 pandemic. The Town administrator issued an Executive Order to excluded certain temporary signs from the requirement for registration and time limits in the sign code. The purpose of this ordinance is to continue to support the business community through the summer by not requiring temporary sign registry as a transition back to regular enforcement of the Sign Code. The Parker Municipal Code currently suspends the registration requirement for temporary signs between October 1 and November 15 of each calendar year. The proposed Ordinance will also suspend the registration requirement for temporary signs between June 1 and September 30. The Ordinance if approved will sunset on September 30, 2021, and will not be in effect in future years.

II. PARKER 2035 MASTER PLAN

[Parker 2035 Master Plan | Town of Parker - Official Website](#)

MASTER PLAN CONSISTENCY	
Master Plan Designation	Choose an item. ☐ Consistent ☐ Inconsistent ☒ Not Applicable
Master Plan Character Discussion	N/A
Consistent Goals/Strategies	N/A
Inconsistent Goals/Strategies	None
Staff Analysis	Amending the code to allow for temporary signs to temporarily not be registered is not addressed in the Parker 2035 Master Plan.

III. CONCLUSION

Staff recommends that the Planning Commission recommend that Town Council approve an ordinance that will suspend the registration requirement for temporary signs between June 1 and September 30 with a sunset on September 30, 2021. The sunset provision makes the code amendment expire and therefore not be in effect in future years.

IV. RECOMMENDED CONDITIONS

None

V. ATTACHMENTS

Draft Ordinance

Report Approved By: Bryce Matthews, Planning Manager

ORDINANCE NO. 3.324.3, Series of 2021

TITLE: A BILL FOR AN ORDINANCE TO AMEND SECTION 13.09.040 OF THE PARKER MUNICIPAL CODE CONCERNING REGISTRATION OF TEMPORARY SIGNS

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. Section 13.09.040 of the Parker Municipal Code is amended to read as follows:

13.09.040 Administrative procedures.

* * *

(b) Temporary signs. The Town will permit temporary signs on residential and nonresidential parcels in accordance with the following standards and procedures:

* * *

(2) Registry not required. Notwithstanding Paragraph (1) above, registration of temporary signs will not be required between October 1 and November 15 of each calendar year. **Additionally, registration of temporary signs shall not be required between June 1 and September 30 of each calendar year.** During such period, temporary signs will be required to conform in all other respects to the provisions of this Chapter.

Section 2. **Safety Clause.** The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. **Severability.** If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

Section 5. This Ordinance shall sunset on September 30, 2021, and be of no further force or effect after this date.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____,
2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney



Request for Town Council Action

Date: June 7, 2021

Submitted By: John Fussa, Community Development Director

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 3.353.1 - First Reading**
A Bill for an Ordinance to Amend Sections 13.01.140 and 13.10.250 of the Parker Municipal Code Concerning Prairie Dog Management
Department: Community Development, John Fussa
Second June 21, 2021
Reading:

EXECUTIVE SUMMARY

The proposed Ordinance No. 3.353.1 will amend the Prairie Dog Management Ordinance to provide a 180-day extension of approval where an applicant undertakes relocation. It also requires that humane extermination occur not less than 30 days after Town approval of a development application. The proposed ordinance amendment is in follow-up to Town Council direction given at the March 29, 2021 Study Session after discussion of the issue with staff.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Town Council approved the Prairie Dog Management Ordinance on April 6, 2020 after public comment and Planning Commission recommendation. At that time, the Commission and staff discussed the need for (and benefit of) a provision to clarify the minimum due diligence period in which applicants must evaluate the feasibility of relocation for projects where the ordinance is applicable. Staff determined during the course of ordinance administration in 2020 that this provision would be helpful and subsequently discussed it with Town Council. The Council directed staff to proceed with the proposed, limited ordinance amendment at the March 29, 2021 Study Session, after a presentation and discussion of the issue (copy attached).

On May 27, 2021, the Planning Commission unanimously recommended that the Town Council approve the proposed ordinance.

FINANCIAL IMPACT

None

STRATEGIC GOAL(S)



INNOVATE WITH
COLLABORATIVE
GOVERNANCE



DEVELOP A VISIONARY
COMMUNITY THROUGH
BALANCED GROWTH

ATTACHMENTS

1. PC_Staff Report_052021_Amendment Prairie Dog Mgmt Ordinance
2. CD_Presentation_Wildlife Mgmt_3-29-21
3. Ordinance No. 3.353.1

RECOMMENDED MOTION

I move to approve Ordinance No. 3.353.1 on first reading and schedule the second reading for June 21, 2021, as part of the consent agenda.



Planning Commission Staff Report

Planning Commission Date: 5/27/2021

Town Council Date: 6/21/2021

Hearing Type: **Public Meeting**
A Bill for an Ordinance to Amend Sections 13.01.140 and 13.10.250 of the Parker Municipal Code Concerning Prairie Dog Management

Location: **Town-wide**

Project Planner: **John Fussa, Director**

Applicant: **Town of Parker**

Executive Summary: The proposed Ordinance will amend the Prairie Dog Management Ordinance to provide a 180-day administrative extension of land use approvals where an applicant undertakes relocation of prairie dogs. The proposed ordinance also requires that humane extermination occur not less than 30 days after Town approval of a development application.

Staff Recommendation: **Approval**

RECOMMENDED MOTION

“I move the Planning Commission recommend Town Council approve an ordinance to amend the Parker Municipal Code regarding Prairie Dog Management to provide a 180-day extension of approval where an applicant undertakes relocation and requires that humane extermination occur not less than 30 days after Town approval of a development application.”

ALTERNATIVE MOTIONS

“I move the Planning Commission recommend Town Council approve an ordinance to amend the Parker Municipal Code regarding Prairie Dog Management to provide a 180-day extension of approval where an applicant undertakes relocation and requires that humane extermination occur not less than 30 days after Town approval of a development application with the following conditions:”

- *List proposed conditions*

“I move the Planning Commission recommend Town Council deny an ordinance to amend the Parker Municipal Code regarding Prairie Dog Management to provide a 180-day extension of approval where an applicant undertakes relocation and requires that humane extermination occur not less than 30 days after Town approval of a development application.”

- List criteria not met (either by staff or Planning Commission)

“I move the Planning Commission vote to continue an ordinance to amend the Parker Municipal Code regarding Prairie Dog Management to provide a 180-day extension of approval where an applicant undertakes relocation and requires that humane extermination occur not less than 30 days after Town approval of a development application.”

I. BACKGROUND/DISCUSSION

The Town Council approved the Prairie Dog Management Ordinance on April 6, 2020 after public comment and Planning Commission recommendation. At that public meeting regarding the ordinance, the Planning Commission and staff discussed the need for (and benefit of) a provision to clarify the minimum due diligence period in which applicants must evaluate the feasibility of relocation of prairie dogs for projects where the ordinance is applicable. Staff determined during the course of administration of the new code, *13.20.250 Prairie Dogs*, that the provision of a due diligence period would be useful. The Council directed staff to proceed with the proposed, limited ordinance amendment at the March 29, 2021 Study Session to address these two items.

II. PARKER 2035 MASTER PLAN

[Parker 2035 Master Plan | Town of Parker - Official Website](#)

MASTER PLAN CONSISTENCY	
Master Plan Designation	Choose an item. ☒ Consistent ☐ Inconsistent ☐ Not Applicable
Master Plan Character Discussion	N/A
Consistent Goals/Strategies	Consistent with Chapter 12, Natural Resource Protection, of the Master Plan
Inconsistent Goals/Strategies	None
Staff Analysis	The Parker 2035 Master Plan does not specifically address prairie dog management but Chapter 12, Natural Resource Protection, includes the goal to: <i>“Consider the impacts of development on wildlife when evaluating land use applications.”</i>

III. CONCLUSION

Staff recommends that the Planning Commission recommend that the Town Council approve an ordinance that will amend the Parker Municipal Code regarding Prairie Dog Management to provide a 180-day extension of approval where an applicant undertakes relocation and requires that humane extermination occur not less than 30 days after Town approval of a development application where applicable.

IV. RECOMMENDED CONDITIONS

None

V. **ATTACHMENTS**
Draft Ordinance

Report Approved By: John Fussa, Director

Town Council Study Session

Wildlife Management Discussion - Prairie Dog Management and Environmental Assessment

March 29, 2021



Background & Context

- **Issue:** Growth/development may impact wildlife, wildlife habitat depending upon the project, location, wildlife present and natural features that exist.
- **Response:** Town Council directed staff to research the issue, discussed publicly in 2019-2020, considered options and took certain actions.
- **Prior Discussion:** July 22, 2019; September 9, 2019; September 23, 2019; February 10, 2020; August 10, 2020; November 9, 2020
- **Prairie Dog Mgmt. Ordinance:** Adopted April 6, 2020
 - Promotes humane management
 - Encourages relocation if feasible
 - Requires humane extermination if relocation infeasible
 - Protects other species to minimize impacts
- **Wildlife/Wildlife Habitat:**
 - Considered multiple options in 2019 – 2020
 - Town Council accepted recommendation for Environmental Assessment
 - Town Council directed preparation of concept for further consideration



Prairie Dog Mgmt. Ordinance Amendment

- **Issue:** Ordinance does not specify duration for good faith relocation effort w/application
- **Feedback:** Applicants, Planning Commission and staff request/recommend a standard
- **Benefit:** Provides additional clarity about requirements and a standard where none exists
- **Town Council:** Provided direction to revise Ordinance on August 10, 2020
- **Summary:** Applicant should address Ordinance during application
 - Shall not perform humane extermination until a development application is approved and for a period of not less than 30 days after approval.
 - May request an administrative extension of approval for maximum 6 months if relocation feasible to allow time for effort and preserve approval



Environmental Assessment (EA)

- Discussed w/Town Council 2019 - 2020
- Issue(s): Growth/development has and may impact wildlife and wildlife habitat
- Options Discussed:
 - No action
 - Increased Coordination w/CPW, USFW
 - Phase One (1) Assessment
 - **Environmental Assessment (EA)**
 - Environmental Impact Statement
- Council directed staff to refine EA concept, review w/Developer Liaison Committee and return for discussion, direction
- Issues:
 - Goal/Purpose?: Recommend identification of impacts, avoidance or mitigation as appropriate
 - Applicability?: Recommend apply to private development only
 - How Broad?: Recommend apply to priority issues only
 - Approach?: Recommend ordinance w/clear standards and requirements for technical document
 - Overlap?: Recommend coordinate, consistency w/existing Town environmental standards



Environmental Assessment (EA)

- **Applicability:**
 - Certain private development applications only
 - Properties with specified environmentally sensitive features
 - Properties with Federal, State designated endangered or threatened wildlife species
 - Properties with known or potential contamination from prior use
 - Properties of 100 acres or greater where development will disturb 50+ percent of site
 - Properties where development raises substantive environmental considerations
- **Purpose:**
 - Allow development consistent with Land Development Ordinance and Master Plan
 - Identify potential impacts that may be caused by development proposals
 - Avoid identified potential impacts through development review if feasible
 - Mitigate identified potential impacts through development review if avoidance infeasible
 - Achieve a balance of growth/development with preservation of wildlife, habitat, natural features
- **Method:** Preparation of EA study to Town criteria with development application
- **Limitations:** Town will continue to grow/develop. All development has impacts, mitigation more feasible than avoidance
- **Seek Balance:** Pursue approach that balances benefits, detriments



Next Steps

- Refine EA concept to address Town Council comments
- Update new Town Council members in Q3
- Share revised concept with DLC in Q3
- Continue discussion w/Town Council at Study Session in Q3
- Prepare draft ordinance in Q3 for Town Council consideration if Council directs this action



ORDINANCE NO. 3.353.1, Series of 2021

TITLE: A BILL FOR AN ORDINANCE TO AMEND SECTIONS 13.01.140 AND 13.10.250 OF THE PARKER MUNICIPAL CODE CONCERNING PRAIRIE DOG MANAGEMENT

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. Section 13.01.140 of the Parker Municipal Code is amended to read as follows:

13.01.140 Resubmittals and expiration of approvals.

* * *

(b) Approval by the Town Council, Planning Commission, or Planning Director of any site plan or use by special review shall remain in effect for a period of twelve (12) months. Any approval of an application for which a grading permit or building permit has not been issued or for which the use by special review has not commenced within twelve (12) months after approval of the site plan or use by special review shall be null and void. An extension of time of up to ninety (90) days may be granted by the Planning Director for good cause. **An additional extension of time, beyond the foregoing 90-day extension, of up to 180 days may be granted by the Planning Director, if such extension is necessary to accommodate prairie dog relocation efforts, as provided in Section 13.10.250 of this Code.** Any denial of the extension may be appealed to the Town Council. If denied, the applicant may resubmit a new application and fees for the same project.

* * *

Section 2. Section 13.10.250 of the Parker Municipal Code is amended to read as follows:

13.10.250 Prairie dog management.

* * *

(d) Use of humane extermination. If, **after Town approval of a development application and a period of not less than thirty (30) days of attempted relocation, such** relocation of prairie dogs is infeasible or prohibited, except as provided in Subsection (c) above, the applicant shall utilize humane extermination using a licensed professional exterminator to eradicate all or part of a prairie dog colony. All products shall be approved for use by the Colorado Department of Agriculture, U.S. Fish and Wildlife Service, and U.S. Environmental Protection Agency. Humane extermination shall not occur when endangered or

threatened species such as the Western Burrowing Owl or Black-Footed Ferret are present on a site until such species are protected or relocated in accordance with the requirements of the U.S. Fish and Wildlife Service. For purposes of this Section, humane extermination shall include the use of products that (1) are nontoxic (such as carbon dioxide and carbon monoxide); (2) eliminate secondary poisoning; and (3) eliminate impacts to nontarget species.

* * *

Section 3. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 4. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 5. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Acting Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Acting Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney



Request for Town Council Action

Date: June 7, 2021

Submitted By: Michael Grabczyk, Project Engineer

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 9.335 - First Reading**
A Bill for an Ordinance Approving the Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for Cottonwood Meadows Tributary By and Between Urban Drainage and Flood Control District d/b/a Mile High Flood District and the Town of Parker (Agreement No. 21-05.15 Project No. 108520)
Department: Engineering and Public Works, Michael Grabczyk
Second Reading: July 12, 2021

EXECUTIVE SUMMARY

The Town of Parker and the Mile High Flood District (MHFD - formerly the Urban Drainage and Flood Control District) have identified the Cottonwood Meadows Tributary as a reach of major drainageway requiring rehabilitation to support existing and future Town growth. The Town and MHFD intend to partner in funding and managing the design and construction of the improvements by executing an intergovernmental agreement.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Town of Parker and Mile High Flood District (MHFD) have partnered previously to design and construct several major drainage projects within the Town. This reach was originally constructed in the early 1980s and has been identified as an area of concern for storm water quality and flood conveyance due to updates in design standards and regulations since its original construction. Due to the older design strategy, this reach has experienced severe aggradation or sediment accumulation over time causing a reduction in flood conveyance and decrease in the water quality of Cherry Creek. Additionally, this drainageway is considered a Waters of the United States and as such any dredging or sediment removal for maintenance requires federal permitting, which is difficult to obtain with the channel's current configuration. This project is anticipated to propose the installation of channel improvements such as outfall forebays, a natural low-flow channel, increased flood conveyance, and a formalized connection to Cherry Creek. Construction of this project in conjunction with the MHFD will also enter the

reach into their Maintenance Eligibility Program (MEP), which allows the Town to leverage funds from the MHFD for both routine maintenance and more intensive maintenance activities. This IGA will fund a final design in 2021 and contribute partial towards construction funding in 2022.

FINANCIAL IMPACT

This project has been identified in the Stormwater Capital Improvements Projects 10-year plan and is included within the 2021 budget approved by Town Council. The 2021 contributions will fund final design as well as portions of the construction costs. The Town and MHFD will provide additional funding in 2022 necessary to meet the estimated construction costs determined during design.

2021 Design:

Town of Parker	\$600,000
MHFD	\$170,000

STRATEGIC GOAL(S)



INNOVATE WITH
COLLABORATIVE
GOVERNANCE



PROMOTE A SAFE AND
HEALTHY COMMUNITY

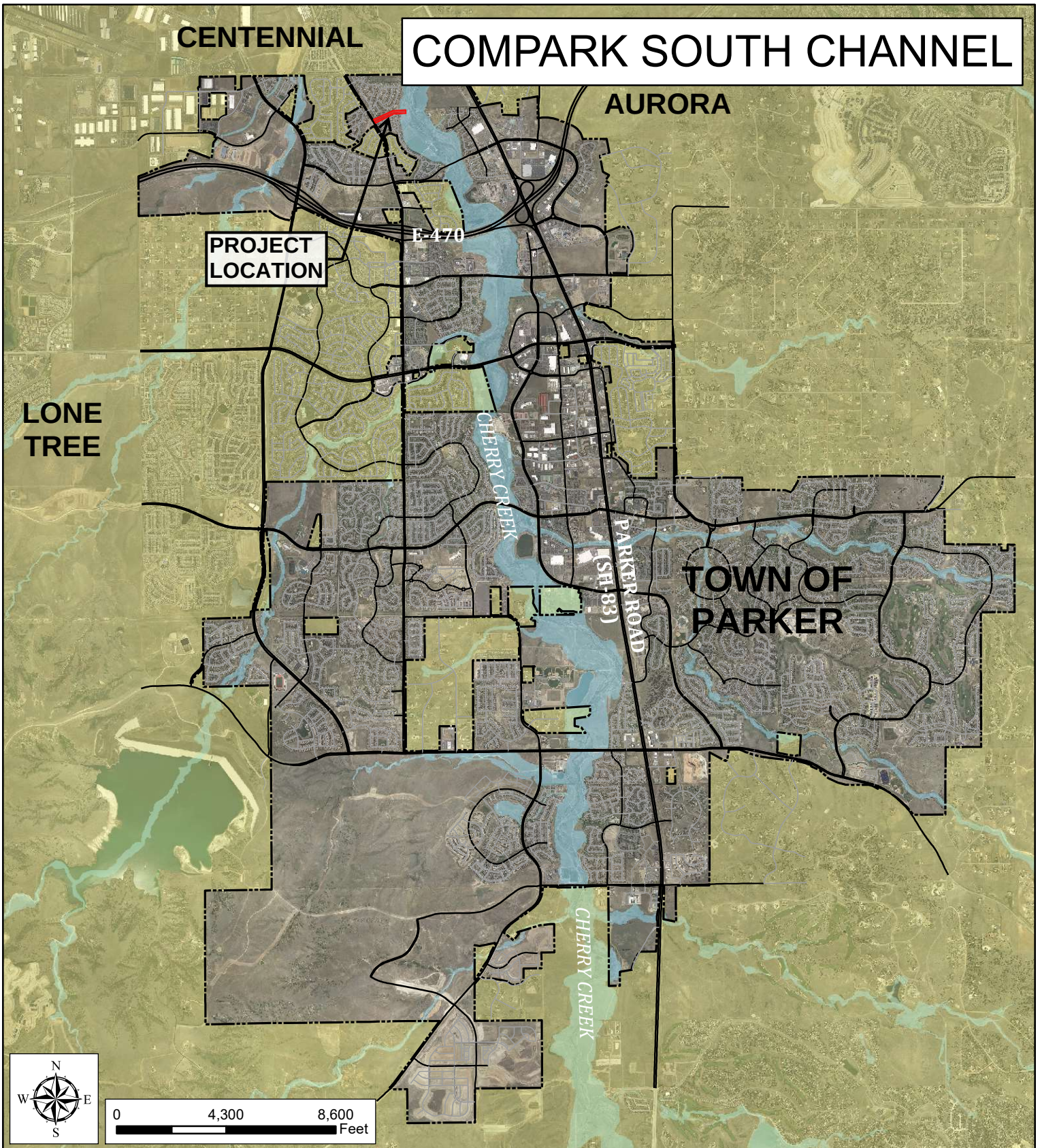
ATTACHMENTS

1. Vic Map - Cottonwood Meadows Trib
2. Ordinance No. 9.335

RECOMMENDED MOTION

I move to approve Ordinance No. 9.335 on first reading and to schedule second reading for June 21, 2021, as part of the consent agenda.

COMPARK SOUTH CHANNEL



Stormwater

- | | |
|---------------------|------------------------------|
| Inlet | Storm Pipe |
| Inlet - by Others | Storm Pipe - by Others |
| Outfall | Culvert |
| Outfall - by Others | Culvert - by Others |
| Manhole | Channel or Swale |
| Manhole - by Others | Channel or Swale - by Others |

- | |
|----------------------------|
| Drop or Check |
| Drop or Check - by Others |
| Streams |
| Pond |
| Pond - by Others |
| Retention Pond |
| Retention Pond - by Others |

Other Features

- | |
|----------------------------|
| Floodway |
| 100 Year Floodplain |
| Riparian Conservation Zone |
| Maintenance Regions |
| Town Boundary |

* Layers displayed in the map image are dependent on active layers at the time of print and may not reflect all layers shown in this legend.

ORDINANCE NO. 9.335, Series of 2021

TITLE: A BILL FOR AN ORDINANCE APPROVING THE AGREEMENT REGARDING DESIGN AND CONSTRUCTION OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR COTTONWOOD MEADOWS TRIBUTARY BY AND BETWEEN URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT AND THE TOWN OF PARKER (AGREEMENT NO. 21-05.15 PROJECT NO. 108520)

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. The Town Council of the Town of Parker hereby approves the Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for Cottonwood Meadows Tributary by and between Urban Drainage and Flood Control District d/b/a Mile High Flood District and the Town of Parker (Agreement No. 21-05.15 Project No. 108520), which is attached hereto as **Exhibit 1** and incorporated herein by this reference, and authorizes the Mayor of the Town to enter into the Agreement on behalf of the Town.

Section 2. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Acting Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Acting Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1

AGREEMENT REGARDING DESIGN AND CONSTRUCTION OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR COTTONWOOD MEADOWS TRIBUTARY TOWN OF PARKER

Agreement No. 21-05.15
Project No. 108520

THIS AGREEMENT, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT") and TOWN OF PARKER (hereinafter called "TOWN") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, DISTRICT, in a policy statement previously adopted, (Resolution No. 14, Series of 1970 and Resolution No. 11, Series of 1973) expressed an intent to assist public bodies which have heretofore enacted floodplain regulation measures; and

WHEREAS, PARTIES participated in a joint planning study titled "Cottonwood Area of Parker Outfall System Planning Alternative Evaluation Report" by Farnsworth and Polk, dated 2000, and "Cottonwood Area of Parker Outfall System Planning Preliminary Design Report" by Farnsworth and Polk dated 2001 (hereinafter called "PLAN"); and

WHEREAS, PARTIES now desire to proceed with design and construction of drainage and flood control improvements for Cottonwood Meadows Tributary (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT has adopted at a public hearing a Five-Year Capital Improvement Program (Resolution No. 67, Series of 2021) for drainage and flood control facilities in which PROJECT was included in the 2021 calendar year; and

WHEREAS, DISTRICT has heretofore adopted a Special Revenue Fund Budget for calendar year 2021 subsequent to public hearing (Resolution No. 64, Series of 2020) which includes funds for PROJECT; and

WHEREAS, DISTRICT's Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 38, Series of 2021); and

WHEREAS, the Town Council of TOWN and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. **SCOPE OF AGREEMENT**

This Agreement defines the responsibilities and financial commitments of PARTIES with respect to PROJECT.

2. **SCOPE OF PROJECT**

A. **Final Design.** PROJECT shall include the final design of improvements in accordance with the recommendations defined in PLAN. Specifically, the final design of facilities shall

extend from approximately Jordan Road to the confluence with Cherry Creek, as shown on Exhibit A.

- B. Construction. PROJECT shall include construction by DISTRICT of the drainage and flood control improvements as set forth in the final design including vegetation establishment.

3. PUBLIC NECESSITY

PARTIES agree that the work performed pursuant to this Agreement is necessary for the health, safety, comfort, convenience, and welfare of all the people of the State, and is of particular benefit to the inhabitants of PARTIES and to their property therein.

4. PROJECT COSTS AND ALLOCATION OF COSTS

- A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:

1. Final design services;
2. Construction of improvements;
3. Contingencies mutually agreeable to PARTIES.

- B. It is understood that PROJECT costs as defined above are not to exceed \$770,000 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

<u>ITEM</u>	<u>AMOUNT</u>
1. Final Design	\$ 350,000
2. Construction *	\$ 420,000
3. Contingency	\$ -0-
Grand Total	\$ 770,000

* It is anticipated that funds for construction shall be added to this Agreement at a future date.

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest, if applicable.

- C. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

	<u>Percentage Share</u>	<u>Maximum Contribution</u>
DISTRICT	22%	\$170,000
TOWN	78%	\$600,000
TOTAL	100%	\$770,000

5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's one-half share may come from its own revenue sources or from funds received from state, federal or other sources of funding without limitation and without prior DISTRICT approval.

Payment of each party's full share (TOWN - \$600,000; DISTRICT - \$170,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to TOWN of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares; or, at TOWN request, TOWN share of remaining monies shall be transferred to another special fund held by DISTRICT.

6. FINAL DESIGN

The contracting officers for PARTIES, as defined under Paragraph 13 of this Agreement, shall select an engineer mutually agreeable to both PARTIES. DISTRICT shall contract with selected engineer and shall supervise and coordinate the final design including right-of-way delineation subject to approval of the contracting officer for TOWN. Payment for final design shall be made by DISTRICT as the work progresses from the PROJECT fund established as set forth above.

Final design services shall consist of, but not be limited to, the following:

- A. Preparation of a work plan schedule identifying the timing of major elements in the design;
- B. Preparation of detailed construction plans and specifications;
- C. Preparation of an estimate of probable construction costs of the work covered by the plans and specifications;
- D. Preparation of an appropriate construction schedule.

DISTRICT shall provide any written work product by the engineer to TOWN.

7. OWNERSHIP OF PROPERTY AND LIMITATION OF USE

PARTIES acknowledge that TOWN owns the property on which PROJECT is constructed either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the right-of-way is being used for drainage and flood control purposes. The properties upon which PROJECT is constructed shall not be used for any purpose that shall diminish or preclude its use for drainage and flood control purposes. TOWN may not dispose of or change the use of the properties to diminish or preclude its use for drainage and flood control purposes without approval of DISTRICT, which shall not be unreasonably withheld.

If, in the future, TOWN disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement; changes the use to diminish or preclude its use for drainage and flood control purposes of any portion or all of the properties upon which PROJECT is constructed pursuant to this Agreement; or modifies any of the improvements located on any portion of the properties upon which PROJECT is constructed to diminish or preclude its use for drainage and flood control purposes pursuant to this Agreement; and TOWN has not obtained the written approval of DISTRICT prior to such action, TOWN shall take any and all action necessary within their legal authority to reverse said unauthorized activity and return the properties and improvements thereon, acquired and constructed pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at no expense to DISTRICT. However, TOWN shall not be responsible for the actions of third parties that would violate the provisions of this Paragraph who may have legal rights in the property as long as TOWN has taken reasonable action to stop those actions. In the event TOWN breaches the terms and provisions of this Paragraph 7 and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against TOWN for specific performance of this portion of the Agreement.

8. MANAGEMENT OF CONSTRUCTION

- A. Costs. Construction costs shall consist of those costs as incurred by the most qualified contractor(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 4 of this Agreement.
- B. Construction Management and Payment
 - 1. DISTRICT, with the concurrence of TOWN, shall administer and coordinate the construction-related work as provided herein.
 - 2. DISTRICT, with concurrence of TOWN, shall select and award construction contract(s).
 - 3. DISTRICT shall require the contractor to provide adequate liability insurance that includes TOWN. The contractor shall be required to indemnify TOWN. Copies of the insurance coverage shall be provided to TOWN upon request.
 - 4. DISTRICT, with assistance of TOWN, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct PROJECT. DISTRICT, with assistance of TOWN, shall assure that construction is performed in accordance with the construction contract documents including approved plans and specifications and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to TOWN on a weekly basis upon request. DISTRICT shall retain an engineer to perform all or a part of these duties.
 - 5. DISTRICT, with concurrence of TOWN, shall contract with and provide the services of the design engineer for basic engineering construction services to include

addendum preparation; survey control points; explanatory sketches; revisions of contract plans; shop drawing review; as-built plans; weekly inspection of work; and final inspection.

6. PARTIES shall have access to the site during construction at all times to observe the progress of work and conformance to construction contract documents including plans and specifications.
7. DISTRICT shall review and approve contractor billings.. DISTRICT shall remit payment to contractor based on billings.
8. DISTRICT, with concurrence of TOWN, shall prepare and issue all written change or work orders to the contract documents.
9. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.
10. DISTRICT shall provide TOWN a set of reproducible "as-built" plans.

C. Construction Change Orders. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under the contract(s), such changes shall be rejected or approved in writing by the contracting officers. No change orders shall be approved that increase the costs beyond the funds available in the PROJECT fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES.

9. MAINTENANCE

PARTIES agree that TOWN shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at TOWN's request, shall assist TOWN with the maintenance of all facilities constructed or modified by virtue of this Agreement to the extent possible depending on availability of DISTRICT funds. Such maintenance assistance shall be limited to drainage and flood control features of PROJECT. Maintenance assistance may include activities such as keeping flow areas free and clear of debris and silt, keeping culverts free of debris and sediment, repairing drainage and flood control structures such as drop structures and energy dissipaters, and clean-up measures after periods of heavy runoff. The specific nature of the maintenance assistance shall be set forth in a memorandum of understanding from DISTRICT to TOWN, upon acceptance of DISTRICT's annual Maintenance Work Program.

DISTRICT shall have right-of-access to right-of-way and storm drainage improvements at all times for observation of flood control facility conditions and for maintenance when funds are available.

10. FLOODPLAIN REGULATION

TOWN agrees to regulate and control the floodplain of Cottonwood Meadows Tributary within TOWN in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum.

PARTIES understand and agree, however, that TOWN cannot obligate itself by contract to exercise its police powers. If TOWN fails to regulate the floodplain of Cottonwood Meadows Tributary

within TOWN in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum, DISTRICT may exercise its power to do so and TOWN shall cooperate fully.

11. TERM OF AGREEMENT

The term of this Agreement shall commence upon execution and shall terminate three (3) years after the final payment is made to the construction contractor and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 5 herein, except for Paragraph 10. FLOODPLAIN REGULATION, Paragraph 7.C. Ownership of Property and Limitation of Use, and Paragraph 9. MAINTENANCE, which shall run in perpetuity.

12. LIABILITY

Each party hereto shall be responsible for any suits, demands, costs or actions at law resulting from its own acts or omissions and may insure against such possibilities as appropriate.

13. CONTRACTING OFFICERS

- A. The contracting officer for TOWN shall be Public Works and Engineering Director, 20120 E. Main Street, Parker, Colorado, 80138.
- B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.
- C. The contracting officers for PARTIES each agree to designate and assign a PROJECT representative to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT or TOWN. Said representatives shall have the authority for all approvals, authorizations, notices or concurrences required under this Agreement. However, in regard to any amendments or addenda to this Agreement, said representative shall be responsible to promptly obtain the approval of the proper authority.

14. RESPONSIBILITIES OF PARTIES

DISTRICT shall be responsible for coordinating with TOWN the information developed by the various consultants hired by DISTRICT and for obtaining all concurrences from TOWN needed to complete PROJECT in a timely manner. TOWN agree to review all concept plans, preliminary design plans, and final plans and specifications; and to provide comments within 21 calendar days after the drafts have been provided by DISTRICT to TOWN.

15. AMENDMENTS

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

16. SEVERABILITY

If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable

clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

17. APPLICABLE LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Jurisdiction for any and all legal actions regarding this Agreement shall be in the State of Colorado and venue for the same shall lie in the TOWN where PROJECT is located.

18. ASSIGNABILITY

No party to this Agreement shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the nonassigning party or parties to this Agreement.

19. BINDING EFFECT

The provisions of this Agreement shall bind and shall inure to the benefit of PARTIES hereto and to their respective successors and permitted assigns.

20. ENFORCEABILITY

PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

21. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) days' written notice by any party to this Agreement, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon the cancellation of all contingent, outstanding contracts. All costs associated with the cancellation of the contingent contracts shall be shared between PARTIES in the same ratio(s) as were their contributions.

22. PUBLIC RELATIONS

It shall be at TOWN's sole discretion to initiate and to carry out any public relations program to inform the residents in PROJECT area as to the purpose of PROJECT and what impact it may have on them. Technical information shall be presented to the public by the selected engineer. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist TOWN as needed and appropriate.

23. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this Agreement, PARTIES agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified because of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, gender identity, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

24. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of TOWN and/or DISTRICT stated in this Agreement is subject to the requirement of a prior appropriation of funds therefore by the appropriate governing body of TOWN and/or DISTRICT.

25. NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to PARTIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of PARTIES that any person or party other than any one of PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

26. ILLEGAL ALIENS

PARTIES agree that any public contract for services executed as a result of this intergovernmental agreement shall prohibit the employment of illegal aliens in compliance with §8-17.5-101 C.R.S. *et seq.* The following language shall be included in any contract for public services:

- A. At the time of execution of this Agreement, CONTRACTOR does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
- B. CONTRACTOR shall participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- C. CONTRACTOR shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- D. CONTRACTOR shall not enter into a contract with a subconsultant or subcontractor that fails to certify to CONTRACTOR that it shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- E. CONTRACTOR shall confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in the E-Verify Program.
- F. CONTRACTOR is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligation under this Agreement, and that otherwise requires CONTRACTOR to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- G. If CONTRACTOR obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contract with an illegal alien, it will notify such subconsultant or subcontractor and PARTIES within three (3) days. CONTRACTOR shall also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three (3) day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

- H. CONTRACTOR shall comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.
- I. CONTRACTOR shall, within twenty days after hiring an employee who is newly hired for employment to perform work under this Agreement, affirms that it has examined the legal work status of such employees, retained file copies of the documents required by 8 U.S.C. Section 1324a, and not altered or falsified the identification documents for such employees. CONTRACTOR shall provide a written, notarized copy of the affirmation to PARTIES.

27. GOVERNMENTAL IMMUNITIES

PARTIES hereto intend that nothing herein shall be deemed or construed as a waiver by any party of any rights, limitations, or protections afforded to them under the Colorado Governmental Immunity Act (§ 24-10-101, *et seq.*, C.R.S.) as now or hereafter amended or otherwise available at law or equity.

28. INTENT OF AGREEMENT

Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between PARTIES and is not intended to and shall not be deemed to confer rights upon any person or entities not named as PARTIES, nor to limit in any way the powers and responsibilities of TOWN, DISTRICT or any other entity not a party hereto.

29. EXECUTION IN COUNTERPARTS – ELECTRONIC SIGNATURES

This Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement, may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. PARTIES approve the use of electronic signatures for execution of this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement. Only the following two forms of electronic signatures shall be permitted to bind PARTIES to this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement.

- A. Electronic or facsimile delivery of a fully executed copy of a signature page; or
 - B. The image of the signature of an authorized signer inserted onto PDF format documents.
- Documents requiring notarization may also be notarized by electronic signature, as provided above. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24-71.3-101 to -121.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first above written.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year written below.

URBAN DRAINAGE AND FLOOD
CONTROL DISTRICT

D/B/A
MILE HIGH FLOOD DISTRICT

By_____

Name Ken A. MacKenzie

Title Executive Director

Date_____

Checked By

TOWN OF PARKER

Jeff Toborg, Mayor

Date_____

ATTEST:

Town Clerk's Office

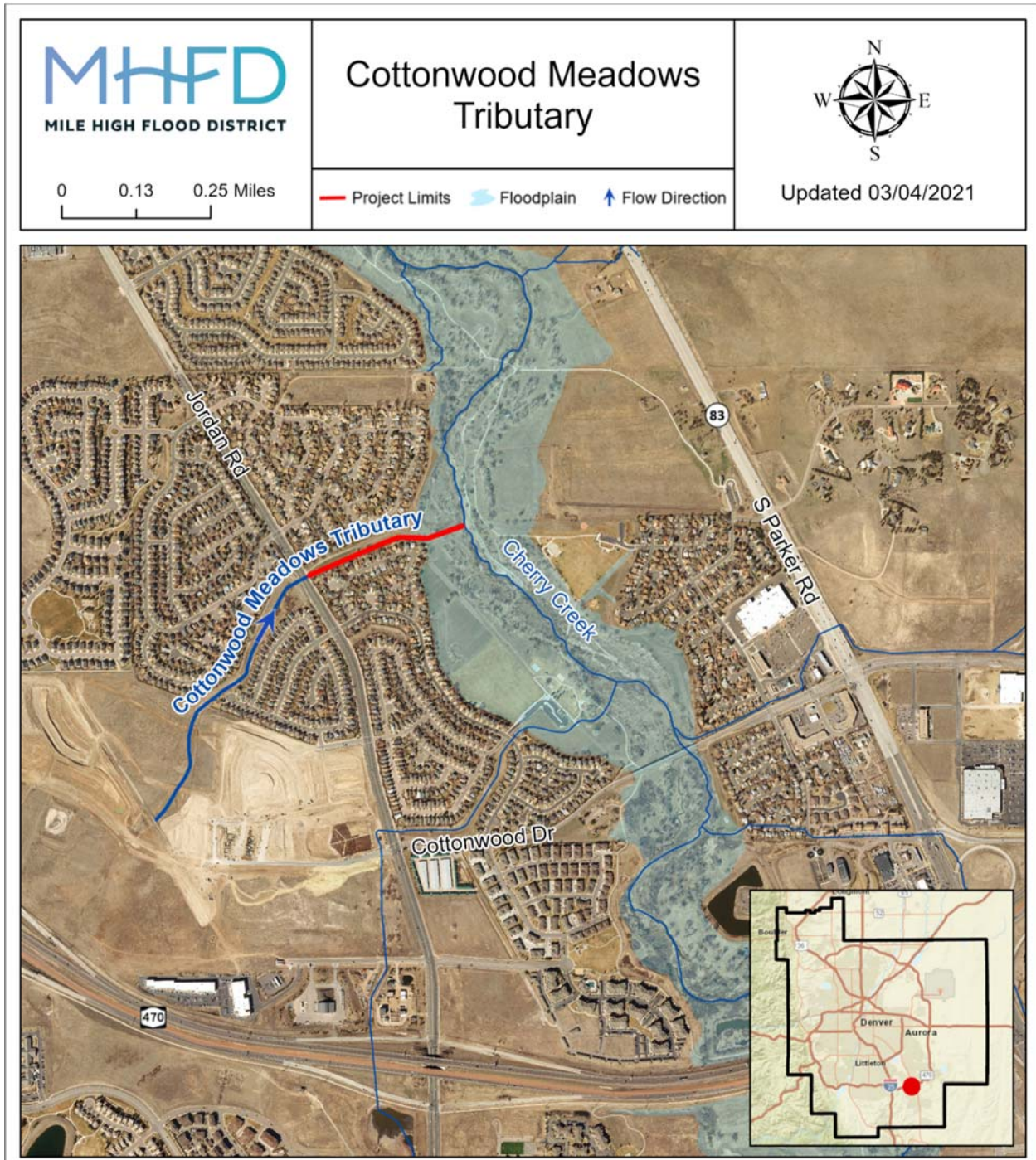
APPROVED AS TO FORM AND SUFFICIENCY:

Town Attorney's Office

AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
COTTONWOOD MEADOWS TRIBUTARY
TOWN OF PARKER

Agreement No. 21-05.15

Exhibit A:





Request for Town Council Action

Date: June 7, 2021

Submitted By: Matt Lynch, Sr. Systems Administrator

Reviewed By: Michelle Kivela, Town Administrator

Title: **Purchase of Zoom Unified Communications Platform**

Amount: **\$110,000**

Contractor: **Zoom**

Department: **Information Technology, Matt Lynch**

EXECUTIVE SUMMARY

Approval of the Zoom Unified Communications contract for \$110,000. This item was discussed at a recent Study Session.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

Two years ago, staff discovered that our current phone system's hardware was at the end of its life. The owner of our current system has decided to no longer develop for the platform. Last year, the Town issued a Request for Proposal. Zoom was selected because of ease of implementation, fully hosted architecture, and feature set.

Using Zoom will facilitate communications between Town employees and the Town's citizenry. It will give the Town the ability to communicate from anywhere using the Town's phone numbers. Zoom will also increase the number of ways everyone can communicate, including text messaging and video conferencing.

FINANCIAL IMPACT

Up to \$110,000 per year for as long as we use Zoom's unified communications platform.

STRATEGIC GOAL(S)



ATTACHMENTS

None

RECOMMENDED MOTION

I move to approve the staff recommendation, as a part of the consent agenda.



Request for Town Council Action

Date: June 7, 2021

Submitted By: John Fussa, Community Development Director
Jim Tsurapas, Chief of Police
Jamie Wynn, Assistant Town Attorney

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 5.59.2 - Second Reading (Continued from March 22, 2021)**
A Bill for an Ordinance to Amend Chapters 6.01 and 6.03 of the Parker Municipal Code Concerning Noise Regulations
Department: Community Development, John Fussa
Town Attorney, Jamie Wynn

EXECUTIVE SUMMARY

Town Council and staff have discussed the need for an amendment to the Noise Ordinance multiple times dating back to 2019. Based on those discussions with Town Council, a review of noise ordinances throughout Colorado and the nation, as well as a noise study conducted by CENSEO AV+Acoustics, staff has prepared various versions of a draft Noise Ordinance. On May 24, 2021, the majority of Town Council directed that staff proceed with the version of the Noise Ordinance Amendment that comprises all areas of the Town of Parker, including the residential areas, for second reading, which had been continued to June 7, 2021.

The purpose of the amendments are to update the Parker Municipal Code and to further clarify the sections of the Code dealing with noise regulations. The amendments will address updated objective standards for the regulation of noise and sound and various prohibitions, based on prior discussions with Town Council. The proposed standards are based upon the information and recommendations from the sound engineering consultants, CENSEO AV+Acoustics, Town Council direction, as well as other relevant information.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

Sections of Chapter 6 of the Parker Municipal Code focus on public health and welfare and are intended to provide for a safe environment and quality of life. Excessive noise, sound, and vibration can jeopardize public health, welfare, and the safety of the Town's citizens by creating nuisances that degrade quality of life and adversely impact the community.

In 2019, the Town Council approved an amendment to Chapter 6.03 of the Parker Municipal

Code related to the use of loudspeakers, public address systems, and similar devices. After discussions with Town Council and reviewing the effect of these amendments, staff proposed additional amendments to clarify the purpose of the Code sections that regulate noise and sound throughout the Town. The proposal includes updated objective standards, prohibitions, and exceptions regarding noise and sound based on expert advice, discussions with Town Council, and other relevant information.

FINANCIAL IMPACT

Sounds level meters will need to be purchased, and staff will need to be trained on using the purchased equipment for purposes of enforcing this ordinance. There will be an initial cost for the purchase of the meters and related equipment, potential costs for the software to download the information from the meters, and subsequent yearly costs for calibration and maintenance of the meters.

STRATEGIC GOAL(S)



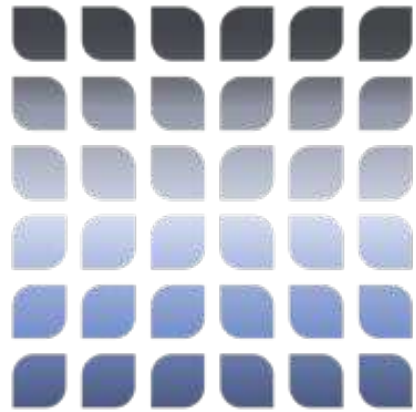
PROMOTE A SAFE AND
HEALTHY COMMUNITY

ATTACHMENTS

1. Parker Town Council Censeo Noise Presentation_Final
2. Ordinance No. 5.59.2

RECOMMENDED MOTION

I move to approve Ordinance No. 5.59.2 on second reading.



PARKER
C O L O R A D O

Your kind of place.

CENSEO AV+Acoustics

November 9, 2020





Outdated Noise Regulation | Qualitative Rules | Limited Enforcement

* The Town of Parker currently regulates by hours, *not* by decibel levels.



Effective regulation is enforceable and balances the desire for a quiet environment with the ability of businesses to reasonably function and operate.



- Consistency with Nearby Jurisdictions
- Based on Measured Ambient Noise Measurements
 - Noise levels from typical area activities
- Point of Compliance
- Council Directed Standards
 - Regulated by Decibel Level
- Considerations for District Type
 - Related to anticipated sensitivity of noise receiver



Chapter 6.03



Outdoor Loudspeakers / Public Address Systems

- Prohibited 10PM to 7AM

Live Music

- Not Specifically Addressed

Stationary Sources

- Noise Disturbances Generally Prohibited

Construction Noise

- Specified Hours
 - 7AM to 7PM Weekdays
 - 7AM to 8PM Saturdays
 - 10AM to 7PM Sundays or Holidays

Vehicle Noise

- Mufflers Required





- State, County, and City/Town
- Colorado and Outside of Colorado
- Types of Regulations
 - Outdoor Amplified Noise
 - Stationary Noise Sources
 - Construction Noise
 - Vehicle Noise Emissions
- Quantitative Limits or Audibility Based
- Point of Compliance





Point of Compliance

- Property Line
 - Noise Source Property
 - Noise Receiver Property
- Specified Distance
 - 25' / 50' / 100' / 150' from source
 - 10' / 25' from property line
- Indoor or Outdoor
 - Indoor with windows & doors closed
 - Outdoor at designated location



WHAT'S COLORADO DOING?



State of Colorado

- Outdoor Amplified Noise

- Not Included

- Stationary Sources

- Measurement Distance Specified
 - Max. Noise Levels

	(7AM-7PM)	(7PM-7AM)
Residential	55 dBA	50 dBA
Commercial	60 dBA	55 dBA
Light Industrial	70 dBA	65 dBA
Industrial	80 dBA	75 dBA



Construction

Subject to Industrial
Limits

Construction Permit
Limits Hours



Vehicle Noise

Quantitative Level
Requirements

Measurement Distance
Specified



LET'S LOOK AT COLORADO COUNTIES

Boulder County

Outdoor Amplified Noise

- Subject to Stationary Source Limits
- Measured Location
 - 10' from Property Line, or
 - 50' from source, whichever is less

Stationary Sources

- Quantitative Limits, Specified Hours
- Impulsive Noise, 5 dBA reduction

Construction Noise

- Quantitative Levels, Specified Hours

Vehicle Noise

- Quantitative Levels at Distance per Type
- Mufflers Required

Pueblo County

Outdoor Amplified Noise

- Not Addressed

Stationary Sources

- Quantitative Limits, Specified Hours
- Impulsive Noise, 5 dBA Reduction
- Exceedance of 10 dBA for up to 15 min.

Construction Noise

- Subject to Industrial Zone Levels, Specified Hours

Vehicle Noise

- Quantitative Levels at Distance per Type
- Mufflers Required



FROM A CITY VIEW



Denver

Outdoor Amplified Noise / Live Music

- Provision for Marching Band Instruments

Stationary Sources

- Quantitative Limits, Specified Hours
- Compliance at Receiver Property Line

Construction Noise

- Specified Hours

Vehicle Noise

- Quantitative Levels at Distance per Type
- Mufflers Required

Boulder

Outdoor Amplified Noise

- 11PM-7AM Prohibited When Audible
 - 100' from Source in Residential
 - 150' from Source in Commercial

Stationary Sources

- Quantitative Limits, Specified Hours
- Lawnmowers, Leaf Blowers Prohibited 9PM-7AM

Construction Noise

- Quantitative Levels, Specified Hours

Vehicle Noise

- Quantitative Levels at Distance per Type
- Measured at 25' Distance



Castle Rock

Outdoor Amplified Noise / Live Bands

- Noncommercial
 - 10PM-7AM No Disturbance at Residential Property Line
- Commercial
 - No Disturbance
- Live Music
 - 12AM-7AM No Audibility at Residential Property Boundary

Stationary Sources

- Limited Hours for Internal Combustion Equipment

Construction Noise

- Specified Hours

Vehicle Noise

- Mufflers Required

Greenwood Village

Outdoor Amplified Noise / Live Bands

- Prohibited from Being Audible at Residences 10PM-7AM
- Live Music
 - 12AM-7AM No Audibility at Residential Property Boundary
 - Amphitheaters Exempt
 - Sound Level at Mix Limited
 - Specified Hours
 - Records Required

Stationary Sources

- Limited Hours for Internal Combustion Equipment

Construction Noise

- Specified Hours

Vehicle Noise

- Mufflers Required



Lakewood

Outdoor Amplified Noise

- 10PM to 7AM Prohibited to be Plainly Audible at Property Line
- 7AM to 10PM Intensity & Loudness Shall Not be Unreasonable

Stationary Sources

- Unlawful to Make Unreasonable Noise

Construction Noise

- Specified Hours

Vehicle Noise

- Mufflers Required

Thornton

Outdoor Amplified Noise

- Temporary Permits Required, Exempt from Limits
- Entities/Organizations with Operational License Not Eligible for Temp Permit, Regulation through Operational License

Stationary Sources

- Quantitative Limits, Specified Hours
- Power Equipment Level Limits, Hours

Construction Noise

- Quantitative Levels, Specified Hours

Vehicle Noise

- Mufflers Required



Morrison



Outdoor Amplified Noise

■ Max. Noise Levels	(7AM-10PM)	(10PM-7AM)
■ Residential	55 dBA	50 dBA
	65 dBC	60 dBC
■ Commercial	65 dBA	60 dBA
	75 dBC	70 dBC
■ Public	75 dBA	70 dBA
	75 dBC	70 dBC

Stationary Sources

- Power Equipment Limited Hours
- Amplified Sound Included

Construction Noise

- Specified Hours

Vehicle Noise

- Mufflers Required

- Low frequency sound shall not be plainly audible inside residence with windows/doors closed
- Minimum 20 seconds audio recording for each measurement record, dBA is primary measure, dBC is secondary measure
- Point of compliance is property line
- Permit required



OUTSIDE OF COLORADO



Austin, TX

Live Music

- Permit Required
 - 85 dB Limits for Outdoor Music Venue
 - 70 dB Limit for Venue with Restaurant
- Hours Vary
 - 10AM-10:30PM Sun-Wed
 - 10AM-Midnight Thurs
 - 10AM-1AM Fri, Sat, NYE

Business Sound Equipment

- Permit Required
 - Additional Restrictions for Impact to Residential Properties
- Compliance at Business Property Line
- Time Restrictions
 - 10AM-2AM Limited to 85 dB
 - 2AM-10AM No Audibility





FIELD

Week of October 19, 2020

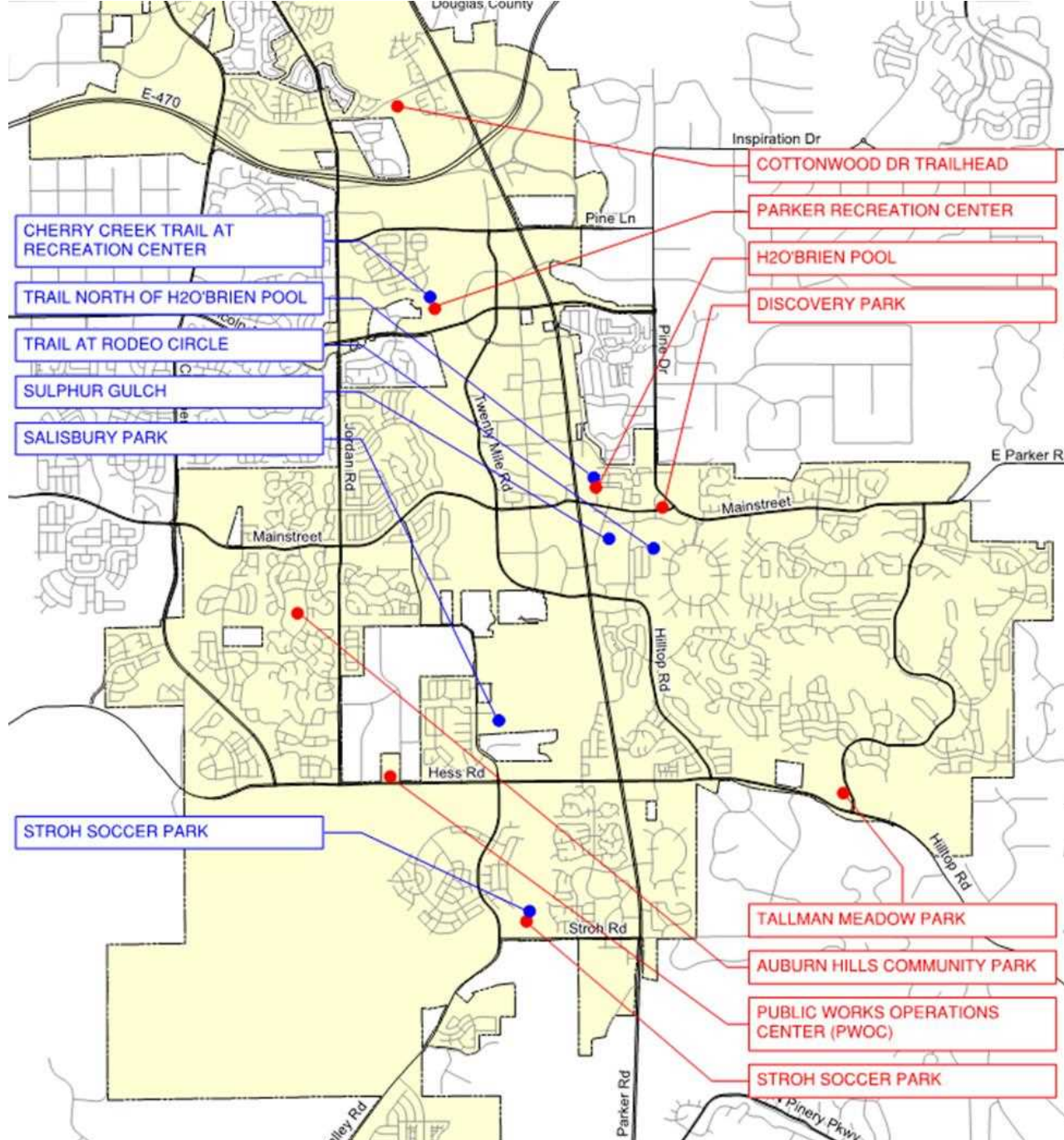
Long-Term:

- Eight (8) Locations
- Continuous for 3-7 days
- Audio Recordings (1 min/hr)

Short-Term:

- Six (6) Locations
- 30 minutes each
- Audio Recordings





● Long-Term

● Short-Term

INITIAL FINDINGS

Long-Term Measurement Location	Daytime Average Measured Sound Levels (1-Hour Leq in dBA)	Nighttime Average Measured Sound Levels (1-Hour Leq in dBA)
Auburn Hills Community Park	53	44
Tallman Meadow Park	51	48
Stroh Soccer Park	49	42
Parker Recreation Center	51	45
Cottonwood Dr Trailhead	54	48
H2O'Brien Pool	52	48
Discovery Park	59	51
PWOC	64	58



A close-up, vertical photograph of a bicycle wheel. The tire is black with a textured tread pattern. The spokes are silver and arranged in a radial pattern. The background is blurred, showing hints of green and white.

OUTDOOR

Demonstration

- Background Ambient
- Amplified Music Sources
- Varying Sound Levels



- Items for Discussion
 - Outdoor Amplified Noise
 - Community Events?
 - Stationary Noise Sources
 - Construction Noise
 - Compression Breaking/Modified Mufflers
- Quantitative Limits or Subjective Limits
- Option to Require Permits
- Point of Compliance
- Policy Question: Add Noise Standards to LDO?



Draft Report

- Ambient Measurement Field Study Summary
- Noise Regulation Review Summary
- Summary/Consensus of Noise Demonstration
- Proposed Noise Regulation Recommendations

Final Report

- Incorporate Revisions based on Town Council and Staff Comments
- Finalize Figures and Graphs
- Finalize Noise Ordinance Suggested Language
- Finalize Proposed Noise Regulation Standards
- Staff team to prepare amendment to Noise Ordinance





C E N S E O
AV+Acoustics

THANK YOU

KAILUA | DENVER | SEATTLE



ORDINANCE NO. 5.59.2, Series of 2021

TITLE: A BILL FOR AN ORDINANCE TO AMEND CHAPTERS 6.01 AND 6.03 OF THE PARKER MUNICIPAL CODE CONCERNING NOISE REGULATIONS

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. Chapter 6.01 of the Parker Municipal Code is amended by the addition of a new Section 6.01.330, Noise regulation violations, to read as follows:

6.01.330 Noise regulation violations.

It is unlawful and deemed a nuisance for any person to violate the Noise Regulations set forth in Chapter 6.03 of this Code.

Section 2. Section 6.03.020 of the Parker Municipal Code is amended by the addition of the following definitions (inserted alphabetically) to read as follows:

6.03.020 Definitions.

* * *

Commercial / mixed-use area means an area with local shopping and service establishments; areas containing offices, retail businesses, commercial enterprises; and/or mixed-use areas with commercial and multiple-dwelling units.

Development permit, for purposes of this Chapter, means any building permit, grading permit, or approval for development, as defined in Section 13.02.010 of this Code, including but not limited to, site plans, subdivisions, and uses by special review.

Decibel means a logarithmic unit of measure often used in measuring magnitudes of sound. The symbol for decibel is dB. Decibels are generally measured in sound pressure levels on either the A-weighted scale or the C-weighted scale. The A-weighted scale is generally used for judging loudness that corresponds to the hearing threshold of the human ear. For purposes of this Chapter, sound levels will be measured in decibels on the A-weighted scale. The standard notation is dB(A).

Greater Downtown District, for purposes of this Chapter only, means the Greater Downtown District of the Town of Parker, east of Parker Road, and as otherwise designated in Section 13.04.110 of this Code and the Town's official zoning maps.

“Leq” means the equivalent sound level, which is the constant sound level in a given time period that conveys the same sound energy as the actual time-varying A-weighted sound. The applicable time period for the Leq must be specified.

Residential area means an area of single- family, two-family, or multifamily dwellings where businesses may or may not be conducted in the dwellings as a home occupation. This shall include nursing homes, hospice, and similar institutions.

Summer season means the Friday before Memorial Day through Labor Day.

Section 3. Section 6.03.030 of the Parker Municipal Code is amended to read as follows:

6.03.030 General prohibitions.

It shall be unlawful for any person to make, continue or cause to be made or continued, any noise disturbance, including, but not limited to, the specific prohibitions described in ~~Section 6.03.040 below~~ **this Chapter**. Noncommercial public speaking and public assembly activities conducted on any public space or public right-of-way, public events held on Town property with the consent of the Town, and the operation of emergency vehicles are exempt from the operation of this Chapter. **The regulation of aviation and aviation-generated noise is under federal jurisdiction and is not subject to Town regulation.**

Section 4. Chapter 6.03 of the Parker Municipal Code is amended by the addition of new Sections 6.03.040 and 6.03.050 to read as follows:

6.03.040 Measurements.

(a) Distance for measurements.

(1) Noise occurring within the jurisdiction of the Town in a commercial or mixed-use area shall be measured one hundred (100) feet from the property line on which the noise source is generated.

(2) Noise occurring within the jurisdiction of the Town in the Greater Downtown District, as defined in Section 6.03.020 of this Chapter, shall be measured fifty (50) feet from the property line on which the noise source is generated.

(3) Noise occurring within the jurisdiction of the Town in a residential area shall be measured twenty-five (25) feet from the property line on which the noise source is generated.

(b) Method of sound measurements.

(1) Noise shall be measured on the A-weighted scale with a calibrated sound level meter of standard design and quality having characteristics established by the American National Standards Institute.

(2) Permissible sound levels are based on the Leq during the measurement interval, using a minimum of one (1) minute for a constant sound source, or a minimum of five (5) minutes for a noncontinuous sound source.

6.03.050 Permissible sound levels on the dB(A) scale.

(a) Residential.

(1) During daytime hours, 7:00 a.m. to 7:00 p.m. on the same day, the sound measurements must measure at or below 55 dB(A).

(2) During nighttime/quiet hours, 7:00 p.m. to 7:00 a.m. on the next consecutive day, the sound measurements must measure at or below 50 dB(A).

(b) Commercial / mixed-use.

(1) During daytime hours, 7:00 a.m. to 7:00 p.m. on the same day, the sound measurements must measure at or below 60 dB(A).

(2) During nighttime/quiet hours, 7:00 p.m. to 7:00 a.m. on the next consecutive day, the sound measurements must measure at or below 55 dB(A).

(c) Greater Downtown District.

(1) During daytime hours, 10:00 a.m. to 7:00 p.m. on the same day, the sound measurements must measure at or below 70 dB(A) from Monday through Thursday, and 75 dB(A) from Friday through Sunday.

(2) During Greater Downtown District evening hours, 7:00 p.m. to 10:00 p.m. on the same day, the sound measurements must measure at or below 65 dB(A) Monday through Thursday, and 70 dB(A) from Friday through Sunday.

(3) During nighttime/quiet hours, 10:00 p.m. to 10:00 a.m. on the next consecutive day, the sound measurements must measure at or below 55 dB(A).

(d) Commercial / mixed-use venues (not located within the Greater Downtown District) with a development permit for an outdoor sound system, loudspeaker, or public address system.

(1) During daytime hours, 7:00 a.m. to 7:00 p.m. on the same day, the sound measurements must measure at or below 70 dB(A).

(2) During nighttime/quiet hours, 7:00 p.m. to 7:00 a.m. on the next consecutive day, the sound measurements must measure at or below 55 dB(A).

Section 5. Section 6.03.040 of the Parker Municipal Code is renumbered as Section 6.03.060 and amended to read as follows:

6.03.040060 Specific prohibitions; time of day.

The following acts and the causing thereof are declared to be in violation of this Chapter:

(1) Outdoor loudspeakers/public address systems.

(a) Using or operating any loudspeaker, public address system or similar device in a residential or commercial/mixed-use area is prohibited between the hours of 10:00 p.m. and 7:00 a.m. the following day.

(b) Using or operating any loudspeaker, public address system or similar device in the Greater Downtown District, as defined in Section 6.03.020 of this Chapter, is prohibited between the hours of 10:00 p.m. and 10:00 a.m. the following day.

(c) Using or operating any loudspeaker, public address system or similar device (i) in violation of any specific provision contained within Title 11 or Title 13 of this Code; (ii) in violation of any approved development permit to include, but not be limited to, building permits, grading permits, site plan, subdivision or use by special review approvals; or (iii) in violation of, or a failure to meet, any specific requirements contained within a development permit, including performing sound studies and/or sound mitigation, is prohibited.

(2) Construction. Operating or permitting the operating of any tools or equipment in connection with construction, drilling or demolition work **is prohibited** between the hours of 7:00 p.m. and 7:00 a.m. the following day on weekdays, between the hours of 7:00 p.m. **on Fridays** and 8:00 a.m. on Saturdays, and between the hours of 7:00 p.m. **on Saturdays** and 10:00 a.m. on Sundays, from 7:00 p.m. Sunday through 7:00 a.m. Monday, and before 10:00 a.m. and after 7:00 p.m. on holidays, except for emergency work on public service utilities or emergency work by Town personnel or by special variance issued by the Director of Engineering, **Chief Building Official**, or designee.

Section 6. Chapter 6.03 of the Parker Municipal Code is amended by the addition of a new Section 6.03.070 to read as follows:

6.03.070 Exceptions.

(a) Summer season. During the summer season, the use of outdoor loudspeakers/public address systems shall be extended by one (1) hour in the evening, on both Friday and Saturday. The allowed decibel levels shall not change.

(b) Community events. Community events approved by the Town may be exempted from the limitations on time and decibel levels for the use of outdoor loudspeakers/public address systems, as part of the review and approval process for a Community Event Permit pursuant to Section 10.08.070(a)(6) of this Code. Applicants for Community Event Permits must request any specific limitations on time and decibel levels in the permit application.

(c) Temporary use permits. Temporary use permits approved by the Town may be exempted from the limitations on time and decibel levels for the use of outdoor loudspeakers/public address systems, as part of the review and approval process. Temporary use permit applicants must request any specific limitations on time and decibel levels in the permit application.

(d) Town-sponsored events. Events sponsored by the Town shall be exempted from the limitations on time and decibel levels for the use of outdoor loudspeakers/public address systems.

Section 7. Section 6.03.050 of the Parker Municipal Code is renumbered as Section 6.03.080 and amended to read as follows:

6.03.050080 Violations; penalty.

(a) It is unlawful to violate the provisions of this Chapter. Any violation of this Chapter is considered to be a public nuisance under Chapter 6.01.

(b) Any person who is convicted of a violation of the provisions of this Chapter shall be punished by a fine of not more than four hundred ninety-nine dollars (\$499.00). Each day of a continuing violation shall be deemed to be a separate violation.

(c) Any person who is convicted of a violation of the provisions of this Chapter may be subjected to other penalties and actions as set forth in Chapter 6.01.

Section 8. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this

Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 9. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 10. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Acting Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Acting Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney



Request for Town Council Action

Date: June 7, 2021

Submitted By: Jamie Wynn, Assistant Town Attorney

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 9.136.4 - Second Reading (Continued from April 19, 2021 - to be continued to a date uncertain)**
A Bill for an Ordinance to Approve the Addendum to Amended and Restated Funding Agreement By and Between the Town of Parker and the Douglas County Emergency Telephone Service Authority Concerning the Hosted 911 NICE Recording Services
Department: Town Attorney, Jamie Wynn

EXECUTIVE SUMMARY

The Town of Parker entered into an Agreement with the Douglas County Emergency Telephone Service Authority ("The Authority") to participate in the Emergency Telephone Service / E911 system. The current Agreement includes a provision requiring an Addendum to be executed by both parties for any additional "Authority Funded Improvements." The Authority agreed to fund a Hosted 911 NICE Recorder for use by the Town of Parker, and this Addendum memorializes that agreement.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

In 2007, the Town of Parker approved the Funding Agreement with the Douglas County Emergency Telephone Service Authority ("The Authority") agreeing to participate in the Emergency Telephone Service / E911 system. The 2007 Agreement was amended in 2011 ("Amended Agreement") and approved and signed by the Town of Parker. The 2011 Amended Agreement included Exhibit B, which was a blank form addendum, for the parties to complete and sign upon The Authority approving any additional "Authority Funded Improvements."

In 2013, both parties signed an Addendum to amend the term "Authority Funded Improvements" to include services purchased by The Authority for use by the Town. In 2017, the Town approved and signed an Addendum as provided for in Exhibit B to the Amended Agreement for purchase of equipment and other improvements for use by the Town. In 2018, a third Addendum was provided for review and signature by the Town of Parker. The 2018 Addendum provided that The Authority will "appropriate and budget the Funds . . . and deliver the Funds on behalf of the Public Agency directly to the Vendor in a timely manner" for the

purchase of a "Venture Technologies - NICE Recorder." There is no financial obligation to the Town of Parker based on this Addendum and the system is being used by Parker 911. The Addendum is a formality to incorporate the updated funded improvements and the financial obligation of The Authority into the Amended Agreement.

FINANCIAL IMPACT

None.

STRATEGIC GOAL(S)



INNOVATE WITH
COLLABORATIVE
GOVERNANCE



PROMOTE A SAFE AND
HEALTHY COMMUNITY

ATTACHMENTS

1. Ordinance No. 9.136.4

RECOMMENDED MOTION

I move to continue Ordinance No. 9.134.4 to a date uncertain.

ORDINANCE NO. 9.136.4, Series of 2021

TITLE: A BILL FOR AN ORDINANCE TO APPROVE THE ADDENDUM TO AMENDED AND RESTATED FUNDING AGREEMENT BY AND BETWEEN THE TOWN OF PARKER AND THE DOUGLAS COUNTY EMERGENCY TELEPHONE SERVICE AUTHORITY CONCERNING THE HOSTED 911 NICE RECORDING SERVICES

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. The Town Council of the Town of Parker hereby approves the Addendum to Amended and Restated Funding Agreement by and between the Town of Parker and the Douglas County Emergency Telephone Service Authority concerning the Hosted 911 NICE Recording Services, which is attached hereto as **Exhibit 1** and incorporated herein by this reference, and authorizes the Mayor of the Town to enter into the Agreement on behalf of the Town.

Section 2. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1

ADDENDUM TO AMENDED AND RESTATED FUNDING AGREEMENT

_____, 2021

THIS ADDENDUM TO AMENDED AND RESTATED FUNDING AGREEMENT ("Addendum") is made by and between Town of Parker (for the Parker Police Department), hereinafter referred to as "the Public Agency," and the Douglas County Emergency Telephone Service Authority, hereinafter referred to as "the Authority" (the Public Agency and the Authority being referred to individually as "Party" or jointly as "Parties").

In consideration of the mutual covenants, agreements and conditions hereinafter specified, the receipt and sufficiency of which are hereby acknowledged, the Public Agency and the Authority hereby modify the Amended and Restated Funding Agreement as follows:

The Authority shall provide \$297,435.90 (the "Funds") for the purchase of the following equipment, facilities and/or improvements for use by the Public Agency: A fully hosted Venture Technologies, Inc., dba ConvergeOne, Inc.-NICE Recorder for Hosted 911 NICE Recording Services (collectively, the "Additional Authority Funded Improvements").

The Additional Authority Funded Improvements shall be subject to the terms and conditions of the Amended and Restated Funding Agreement, in addition to the following conditions, requirements and/or restrictions: NONE.

The Authority has appropriated and budgeted the Funds for the fiscal year(s) of the purchase and has sufficient funds currently available to pay the vendor of the Additional Authority Funded Improvements (the "Vendor"). The Authority shall deliver the Funds on behalf of the Public Agency directly to the Vendor in a timely manner. All expenditures made by the Authority shall be subject to the Public Agency's procurement policies.

The Parties expressly intend and agree that this Addendum is hereby incorporated into the Amended and Restated Funding Agreement and the terms herein shall modify and control the terms in the Amended and Restated Funding Agreement. Any inconsistency between the terms of this Addendum and the terms of the Amended and Restated Funding Agreement shall be resolved in favor of the terms contained in this Addendum.

[Remainder of Page Intentionally Left Blank]



Request for Town Council Action

Date: June 7, 2021

Submitted By: David Aden, Traffic Engineer

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 9.330 - Second Reading**
A Bill for an Ordinance to Approve the Intergovernmental Agreement By and Between the Town of Parker And The State of Colorado Acting By and Through the Colorado Department of Transportation Concerning FY 21 Parker Traffic Responsive Phase 2
Department: Engineering and Public Works, David Aden

EXECUTIVE SUMMARY

An ordinance is needed to approve the Intergovernmental Agreement (IGA) between the Colorado Department of Transportation (CDOT) and the Town to fund the expansion of traffic responsive operations in the Town of Parker. CDOT will contribute \$400,000 to the Town. This project and the associated funding from CDOT was discussed with Town Council at a prior Study Session.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

Traffic Services has successfully been operating in a traffic signal control strategy called Traffic Responsive (TR) operation. This strategy allows traffic to be counted in real-time, and appropriate signal plans to match the flow are automatically selected. The strategy can identify differences in volume as well as heaviest direction of traffic flow. Currently, 44 Town signals, including the 13 on Parker Road operated for CDOT, which operate under TR. Significant benefits have been observed in travel times.

In 2020, Town Council approved the concept of extending this operation to additional locations by way of a CDOT grant that was applied for through the Denver Regional Council of Governments (DRCOG). The Town was given a grant of \$400,000. This money was to be matched by the Town with \$100,000.

The IGA adopted through this ordinance is the mechanism for the Town to receive the funds from CDOT.

FINANCIAL IMPACT

Based on prior discussions with Town Council and the Finance Department, money has already been budgeted for this Capital Improvement Project. The impact to the Town is positive in terms of the raw dollar value of the grant.

STRATEGIC GOAL(S)



INNOVATE WITH
COLLABORATIVE
GOVERNANCE



DEVELOP A VISIONARY
COMMUNITY THROUGH
BALANCED GROWTH

ATTACHMENTS

1. Ordinance No. 9.330

RECOMMENDED MOTION

I move to approve Ordinance No. 9.330 on second reading.

ORDINANCE NO. 9.330, Series of 2021

TITLE: A BILL FOR AN ORDINANCE TO APPROVE THE INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE TOWN OF PARKER AND THE STATE OF COLORADO ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION CONCERNING FY 21 PARKER TRAFFIC RESPONSIVE PHASE 2

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. The Town Council of the Town of Parker hereby approves the Intergovernmental Agreement by and between the Town of Parker and the State of Colorado acting by and through the Colorado Department of Transportation concerning FY 21 Parker Traffic Responsive Phase 2, which is attached hereto as **Exhibit 1** and incorporated herein by this reference, and authorizes the Mayor of the Town to enter into the Agreement on behalf of the Town.

Section 2. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1OLA #: 331002382
Routing #: 21-HA1-XC-00033**STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT****Signature and Cover Page**

State Agency Department of Transportation			Agreement Routing Number 21-HA1-XC-00033
Local Agency TOWN OF PARKER			Agreement Effective Date The later of the effective date or March 10, 2021
Agreement Description FY 21 PARKER TRAFFIC RESPONSIVE PHASE 2			Agreement Expiration Date March 09, 2031
Project # AQC M039- 006 (24383)	Region # 1	Contract Writer VJM	Agreement Maximum Amount \$500,000.00

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 TOWN OF PARKER 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: _____	

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EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM
EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS

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; 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.**, the expiration of Multimodal Transportation Options Funding (“MMOF”) if applicable, whichever is sooner. The State’s obligation to pay Agreement Funds exclusive of MMOF 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

The Parties’ respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on March 09, 2031 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.

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, 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 of such termination 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.

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”).

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.

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. **"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.
- D. **"Budget"** means the budget for the Work described in **Exhibit C**.
- E. **"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.
- F. **"Consultant"** means a professional engineer or designer hired by Local Agency to design the Work Product.
- G. **"Contractor"** means the general construction contractor hired by Local Agency to construct the Work.
- H. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- I. **"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.
- J. **"Evaluation"** means the process of examining Local Agency's Work and rating it based on criteria established in **§6, Exhibit A** and **Exhibit E**.
- K. **"Exhibits"** means the following exhibits attached to this Agreement:
 - i. **Exhibit A**, Statement 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")
- L. **"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.
- M. **"Federal Awarding Agency"** means a Federal agency providing a Federal Award to a Recipient.

- N. **“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.
- O. **“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.
- P. **“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.
- Q. **“Initial Term”** means the time period defined in **§2.B**
- R. **“Multimodal Transportation Options Funding”** or **“MMOF”** means money transferred from the general fund to the fund pursuant to C.R.S. §§24-75-219 (5)(a)(III) and (5)(b)(III) and any other money that the general assembly may appropriate or transfer to the fund.
- S. **“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.
- T. **“OMB”** means the Executive Office of the President, Office of Management and Budget.
- U. **“Oversight”** means the term as it is defined in the Stewardship Agreement between CDOT and the FHWA.
- V. **“Party”** means the State or Local Agency, and **“Parties”** means both the State and Local Agency.
- W. **“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.
- X. **“Recipient”** means the Colorado Department of Transportation (CDOT) for this Federal Award.
- Y. **“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.
- Z. **“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.
- AA. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).
- BB. **“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.
- CC. **“State Purchasing Director”** means the position described in the Colorado Procurement Code and its implementing regulations.
- DD. **“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.
- EE. **“Subcontractor”** means third-parties, if any, engaged by Local Agency to aid in performance of the Work.
- FF. **“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.
- GG. **“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.

HH. **“Work”** means the delivery of the Goods and performance of the Services in compliance with CDOT’s Local Agency Manual described in this Agreement.

II. **“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. STATEMENT 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 period of performance for a phase of Work authorized under this Agreement. To exercise this 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 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 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 to 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 by the State with MMOF there is an expiration date for the funds. The expiration date applies to grants and local funds used to match grants. In order to receive payment from the State or credit for the match, Work must be completed prior to the expiration date of funding and invoiced in compliance with C.R.S. §§24-75-102(a) and 24-30-202(11). Billing for this work must be submitted 30 days prior to the end of the State Fiscal Year which is June 30th.

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**).

C. Matching Funds

Local Agency shall provide matching funds as provided in **§7.A** and **Exhibit C**. Local Agency shall have raised the full amount of matching 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 Matching 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**. 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**. 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. 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.

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 issue a unilateral Option Letter to simultaneously increase and 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 Update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. The State may update any information contained in **Exhibit C**, Sections 2 and 4 of the Table, and sub-sections B and C of the **Exhibit C**.

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. 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 has not closed this Federal Award within 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 five (5) Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

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") of three years following the date of submission to the State of the final expenditure report, 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 years following final disposition of such property.

B. Inspection

Local Agency shall permit the State to audit, inspect, examine, excerpt, copy, and transcribe Local Agency 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 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.

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.

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.

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.

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.
- 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 7 Business Days following the Effective Date. Local Agency shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within 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 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 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 cancelled 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 noninfringing Work or modify the Work so that it becomes noninfringing; 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.

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)
Chris Vokurka, P.E., PTOE, Project Manager
CDOT Region 1
2829 W. Howard Place
Denver, CO 80204
303-512-4058
christopher.vokurka@state.co.us

For the Local Agency

Town of Parker
David Aden, P.E., Traffic Engineer
9045 Tammy Lane
Parker, CO 80134
303-805-3202
DAden@parkeronline.org

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

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.

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.

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.

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 anytime thereafter, this **§19** shall apply. Local Agency agrees to be governed by and comply with the provisions of §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 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. 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.

H. 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.

I. 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.

J. 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.

K. 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. Colorado Special Provisions in the main body of this Agreement.
- ii. The provisions of the other sections of the main body of this Agreement.
- iii. **Exhibit A**, Statement of Work.
- iv. **Exhibit D**, Local Agency Resolution.
- v. **Exhibit C**, Funding Provisions.
- vi. **Exhibit B**, Sample Option Letter.
- vii. **Exhibit E**, Local Agency Contract Administration Checklist.
- viii. Other exhibits in descending order of their attachment.

L. 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.

M. 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.

N. 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.

O. 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.

P. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-103.5-101 C.R.S., if any, are subject to public release through the CORA.

Q. 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.

R. 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.

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

These Special Provisions apply to all contracts except where noted in italics.

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 State, 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.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due

under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, et seq., C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, et seq., C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, et seq., C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, et seq., C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

Revised 11-1-18

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 and Exhibit M are hereby incorporated by this reference.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Local Agency will comply with all requirements of Exhibit G and 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.

24. DISPUTES

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.

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EXHIBIT A

SCOPE OF WORK

Parker Traffic Responsive Phase 2 AQC M039-006 (24383)

Project Overview:

This project is to add permanent count stations at 7 locations in the Town. These count stations will measure roadway volumes in real time. The volumes will provide raw data for new traffic responsive (TR) areas beyond the 44 signals currently on TR. It is estimated this will bring 40 new intersections under TR operation. Along with the new count stations, Pan/Tilt/Zoom cameras will be added at nearby intersections to enhance situational awareness. This awareness consists of both routine roadway monitoring, as well as count and incident verification, and could be shared regionally as requested.

Scope of Work:

Project is relatively straight forward copy of existing traffic responsive model in use by the Town that was implemented in 2019/2020. Project schedule is attached to this application. Due to the facts that this project uses off the shelf technology, and the tech has already been proven successful, it is anticipated that all activities can be completed relatively quickly. Elements of the project include:

CDOT Design Review

CDOT IGA

FIR/FOR

Advertise/Bid project

CDOT Concurrence

NTP

Equipment Procurement

Installation/TR algorithm deployment

Contract Closeout

Project Description:

Count Station #1 (Mainstreet east of Stonehenge)

New count station including caisson, pole, cabinet, radar detection equipment.

New power feed in new conduit from existing electric meter.

Radio communication between new pole assembly and existing traffic signal cabinet at Mainstreet/Stonehenge intersection.

New PTZ camera at Mainstreet/Willow Park intersection traffic signal.

Count Station #2 (Hilltop Road west of Sundown Trail)

New count station including caisson, pole, cabinet, radar detection equipment.

New power feed in new conduit from existing electric meter.

Radio communication between new pole assembly and existing traffic signal cabinet at Hess/Hilltop intersection.

New PTZ camera at Hilltop/Canterberry Parkway intersection traffic signal.

Count Station #3 (Chambers Road north of Cottonwood Drive)

New count station including caisson, pole, cabinet, radar detection equipment.
New power feed in new conduit from proposed electric meter.
Radio communication between new pole assembly and existing traffic signal cabinet at Chambers/Compark intersection.
New PTZ camera at Chambers/Compark Blvd intersection traffic signal.

Count Station #4 (Lincoln Avenue east of Challenger Park)

New count station including caisson, pole, cabinet, radar detection equipment.
New power feed in new conduit from existing electric meter.
Radio communication between new pole assembly and existing traffic signal cabinet at Lincoln/Challenger Park intersection.
New PTZ camera at Lincoln Ave/Challenger Park intersection traffic signal.

Count Station #5 (Mainstreet at west of 20-Mile Road)

New count station including caisson, pole, cabinet, radar detection equipment.
New power feed in new conduit from existing electric meter.
Radio communication between new pole assembly and existing traffic signal cabinet at Mainstreet/20-Mile intersection.
New PTZ camera at Mainstreet/20-Mile Road intersection traffic signal.

Count Station #6 (Hess Road east of Jordan Road)

New count station including caisson, pole, cabinet, radar detection equipment.
New power feed in new conduit from existing electric meter.
Radio communication between new pole assembly and existing traffic signal cabinet at Hess/Jordan intersection.
New PTZ camera at Chambers Road/Hess Road intersection traffic signal. Serves to monitor new station on Hess, and existing station on Chambers north of Hess.

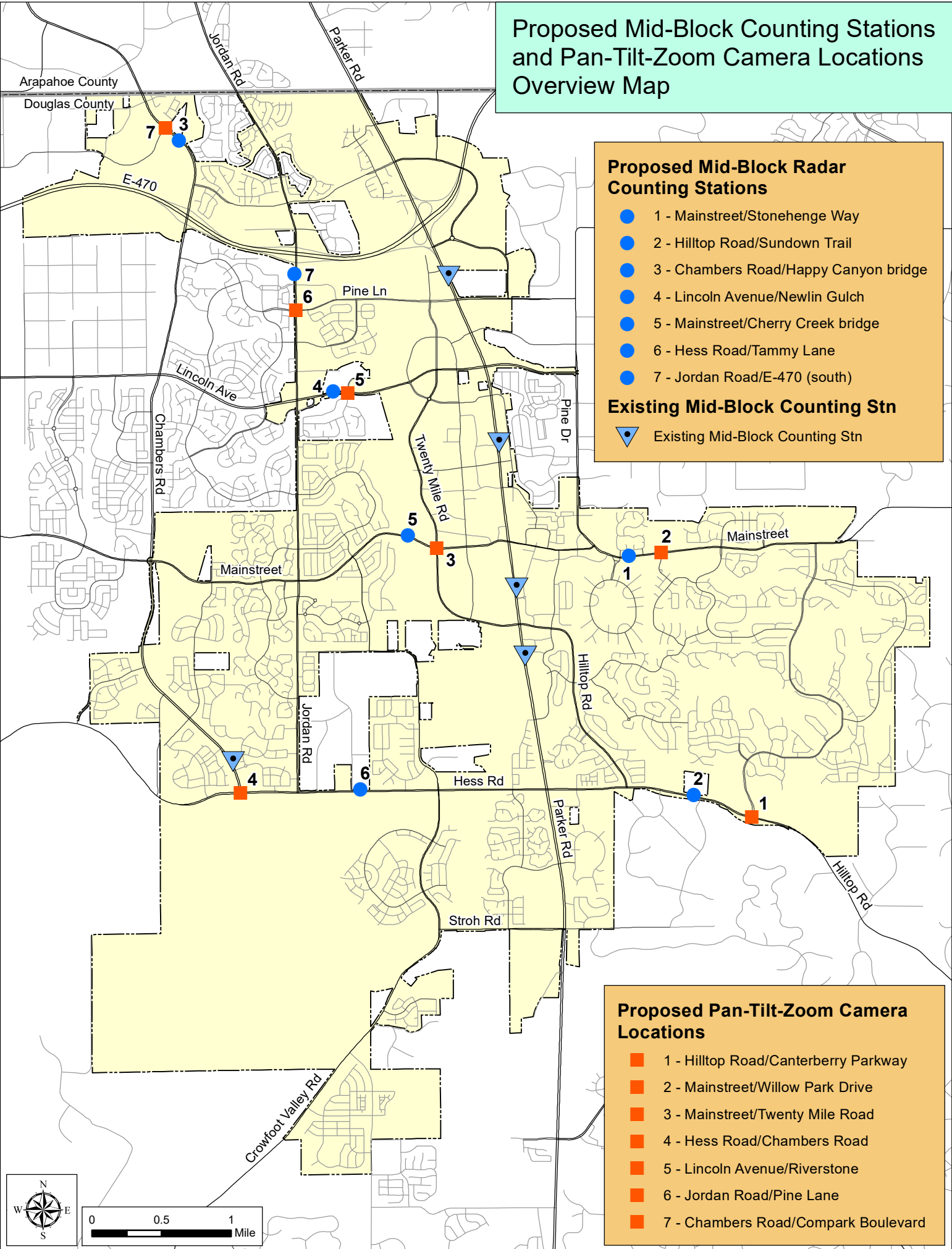
Count Station #7 (Jordan Rd south of E-470)

New count station including caisson, pole, cabinet, radar detection equipment.
New power feed in new conduit from existing electric meter.
Radio communication between new pole assembly and existing traffic signal cabinet at Jordan Road/Carlson Dr intersection.
New PTZ camera at Jordan/Carlson intersection traffic signal.

Detailed project sheets are attached to this proposal.

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Proposed Mid-Block Counting Stations and Pan-Tilt-Zoom Camera Locations Overview Map



Potential RTOT Project Mainstreet/Stonehenge Way (1 of 7)

- Install Ethernet Radio Unit
- Pull wire back to Traffic Signal Cabinet

- Install CDOT S-614-44 Pole
- Install 18" Caisson
- Install 303-8 Cabinet
- Install Wavetronix Radar Unit
- Install Ethernet Radio Unit
- Install conduit tie into new pull box
- Install conduit from new pull box to tie in with current electrical conduit

- Electric sub-panel (existing)

Notes:

- 18" x 5' Caisson (1 ea)
- CDOT S-614-44 Pole (1 ea)
- 303-8 Cabinet (Install only)(1 ea)
- Wavetronix radar (1 ea)
- Ethernet Radio Unit (2 ea)
- Conduit (2") (20 LF)
- Pull box (13" x 24" x 12")(1 ea)

Disclaimer: The property boundaries, titles, legends, scale, infrastructure, reference to individual parcels and any and all other data shown or depicted on this map is for visual representation only and may not be accurate. Further studies and surveys, on a site specific basis, are required to verify this data.



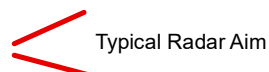
0 125 250 Feet

Traffic

- Traffic Signal Pole
- - - Conduit - Fiber (approx)
- - - Conduit - Electrical (approx)

Other Features

- Douglas County Parcels
- Town Boundary



Potential RTOT Project Hilltop Road/Sundown Trail (2 of 7)

- Pull wiring back to electric sub-panel

- Install CDOT S-614-44 Pole
- Install 18" Caisson
- Install 303-8 Cabinet
- Install Wavetronix Radar Unit
- Install conduit tie into new pull box
- Install conduit from new pull box to electric sub-panel

Notes:

- 18" x 5' Caisson (1 ea)
- CDOT S-614-44 Pole (1 ea)
- 303-8 Cabinet (Install only)(1 ea)
- Wavetronix radar (1 ea)
- Conduit (2") (30 LF)
- Pull box (13" x 24" x 12")(1 ea)

Disclaimer: The property boundaries, titles, legends, scale, infrastructure, reference to individual parcels and any and all other data shown or depicted on this map is for visual representation only and may not be accurate. Further studies and surveys, on a site specific basis, are required to verify this data.



0 70 140 Feet

Traffic

- Traffic Signal Pole
- - - Conduit - Fiber (approx)
- - - Conduit - Electrical (approx)

Other Features

- Douglas County Parcels
- Town Boundary



Potential RTOT Project Hilltop Road/Sundown Trail (2 of 7)



Traffic

- Traffic Signal Pole
- - - Conduit - Fiber (approx)
- - - Conduit - Electrical (approx)

Other Features

- Douglas County Parcels
- Town Boundary



Potential RTOT Project Chambers Rd/Happy Canyon Bridge (3 of 7)

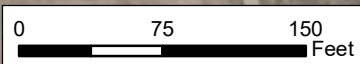
- Install CDOT S-614-44 Pole
- Install 18" Caisson
- Install 303-8 Cabinet
- Install Wavetronix Radar Unit
- Install conduit tie into new pull box
- Install conduit from new pull box to electric sub-panel

- Install conduit to electric sub-panel
- Pull wiring back to electric sub-panel

Notes:

- 18" x 5' Caisson (1 ea)
- CDOT S-614-44 Pole (1 ea)
- 303-8 Cabinet (Install only)(1 ea)
- Wavetronix radar (1 ea)
- Conduit (2") (450 LF)
- Pull box (13" x 24" x 12")(3 ea)

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Traffic

- Traffic Signal Pole
- - - Conduit - Fiber (approx)
- - - Conduit - Electrical (approx)

Other Features

- Douglas County Parcels
- Town Boundary



Potential RTOT Project Chambers Rd/Happy Canyon Bridge (3 of 7)

- Traffic Signal Cabinet

- Install Ethernet Radio Unit
- Pull wire back to Traffic Signal Cabinet

- Install Ethernet Radio Unit
- Pull wire to Cabinet

Notes:

- Install Ethernet Radio Units (2 ea)

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0 110 220 Feet

Traffic

- Traffic Signal Pole
- - - Conduit - Fiber (approx)
- - - Conduit - Electrical (approx)

Other Features

- Douglas County Parcels
- Town Boundary



Potential RTOT Project Lincoln Ave/Riverstone Drive (4 of 7)

- Install CDOT S-614-44 Pole
- Install 18" Caisson
- Install 303-8 Cabinet
- Install Wavetronix Radar Unit
- Install Ethernet Radio Unit
- Install conduit tie into new pull box
- Install conduit from new pull box to electric sub-panel

- Pull wiring back to electric sub-panel

- Install Ethernet Radio Unit
- Pull wire back to Traffic Signal Cabinet

Notes:

- 18" x 5' Caisson (1 ea)
- CDOT S-614-44 Pole (1 ea)
- 303-8 Cabinet (Install only)(1 ea)
- Wavetronix radar (1 ea)
- Ethernet Radio Unit (2 ea)
- Conduit (2") (275 LF)
- Pull box (13" x 24" x 12")(3 ea)

Disclaimer: The property boundaries, titles, legends, scale, infrastructure, reference to individual parcels and any and all other data shown or depicted on this map is for visual representation only and may not be accurate. Further studies and surveys, on a site specific basis, are required to verify this data.



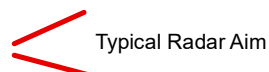
0 110 220 Feet

Traffic

- Traffic Signal Pole
- - - Conduit - Fiber (approx)
- - - Conduit - Electrical (approx)

Other Features

- Douglas County Parcels
- Town Boundary



Potential RTOT Project Mainstreet/Cherry Creek Bridge (5 of 7)

- Install CDOT S-614-44 Pole
- Install 18" Caisson
- Install 303-8 Cabinet
- Install Wavetronix Radar Unit
- Install Ethernet Radio Unit
- Install conduit tie into new pull box
- Install conduit from new pull box to electric sub-panel

- Pull wiring back to electric sub-panel

- Install one 2" conduit

- Install two 2" conduit

- Install Ethernet Radio Unit
- Pull wire back to Traffic Signal Cabinet

Notes:

- 18" x 5' Caisson (1 ea)
- CDOT S-614-44 Pole (1 ea)
- 303-8 Cabinet (Install only)(1 ea)
- Wavetronix radar (1 ea)
- Ethernet Radio Unit (2 ea)
- Conduit (3") (1,200 LF)
- Pull box (13" x 24" x 12")(5 ea)

Disclaimer: The property boundaries, titles, legends, scale, infrastructure, reference to individual parcels and any and all other data shown or depicted on this map is for visual representation only and may not be accurate. Further studies and surveys, on a site specific basis, are required to verify this data.



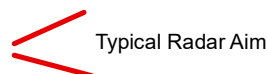
0 140 280 Feet

Traffic

- Traffic Signal Pole
- - - Conduit - Fiber (approx)
- - - Conduit - Electrical (approx)

Other Features

- Douglas County Parcels
- Town Boundary



Potential RTOT Project Hess Rd/Tammy Lane (6 of 7)

- Install CDOT S-614-44 Pole
- Install 18" Caisson
- Install 303-8 Cabinet
- Install Wavetronix Radar Unit
- Install conduit tie into new pull box
- Install conduit from new pull box to electric sub-panel

- Pull wiring back to electric sub-panel

Notes:

- 18" x 5' Caisson (1 ea)
- CDOT S-614-44 Pole (1 ea)
- 303-8 Cabinet (Install only)(1 ea)
- Wavetronix radar (1 ea)
- Conduit (2") (300 LF)
- Pull box (13" x 24" x 12")(2 ea)

Disclaimer: The property boundaries, titles, legends, scale, infrastructure, reference to individual parcels and any and all other data shown or depicted on this map is for visual representation only and may not be accurate. Further studies and surveys, on a site specific basis, are required to verify this data.



0 80 160 Feet

Traffic

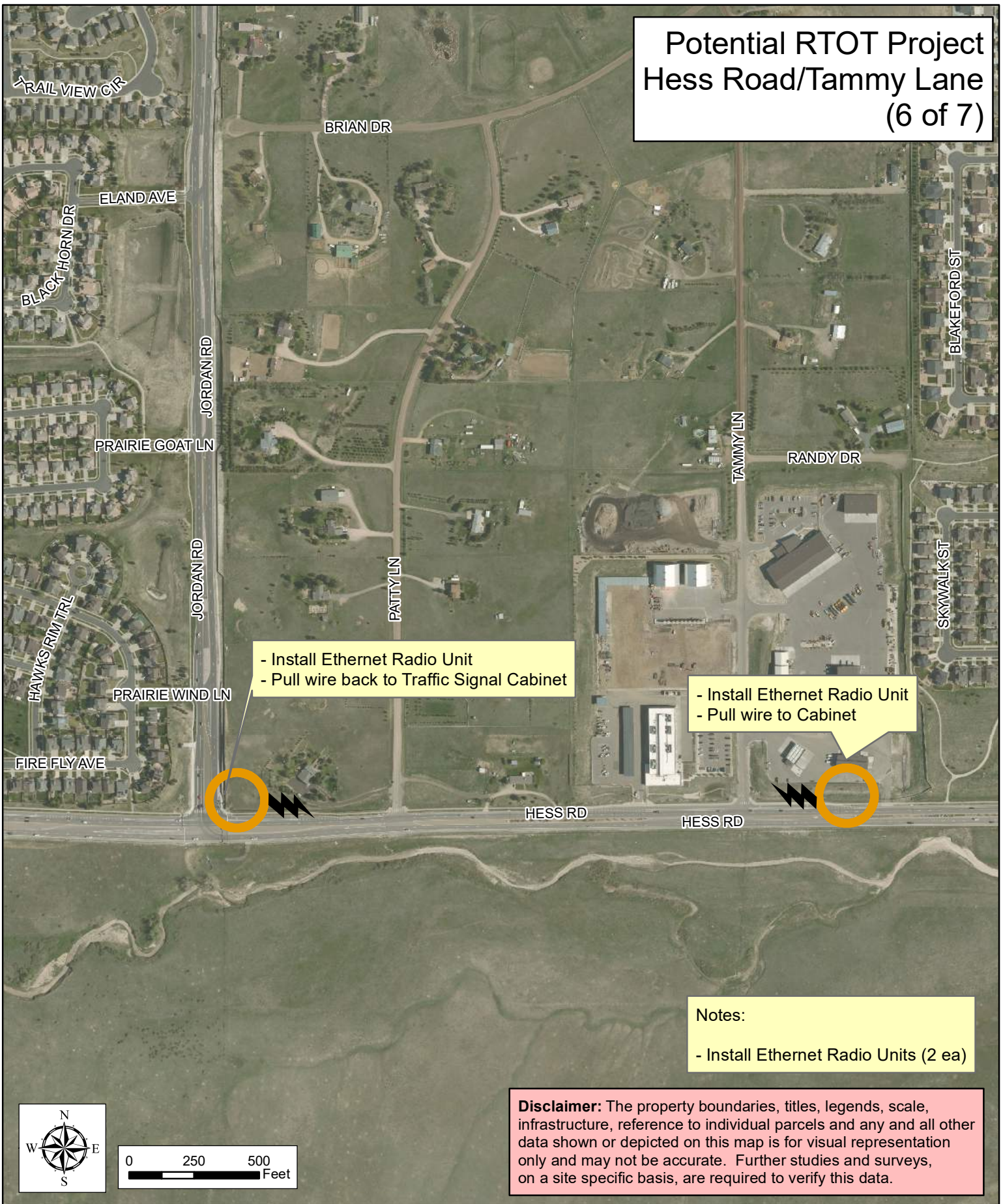
- Traffic Signal Pole
- - - Conduit - Fiber (approx)
- - - Conduit - Electrical (approx)

Other Features

- Douglas County Parcels
- Town Boundary



Potential RTOT Project Hess Road/Tammy Lane (6 of 7)



Traffic

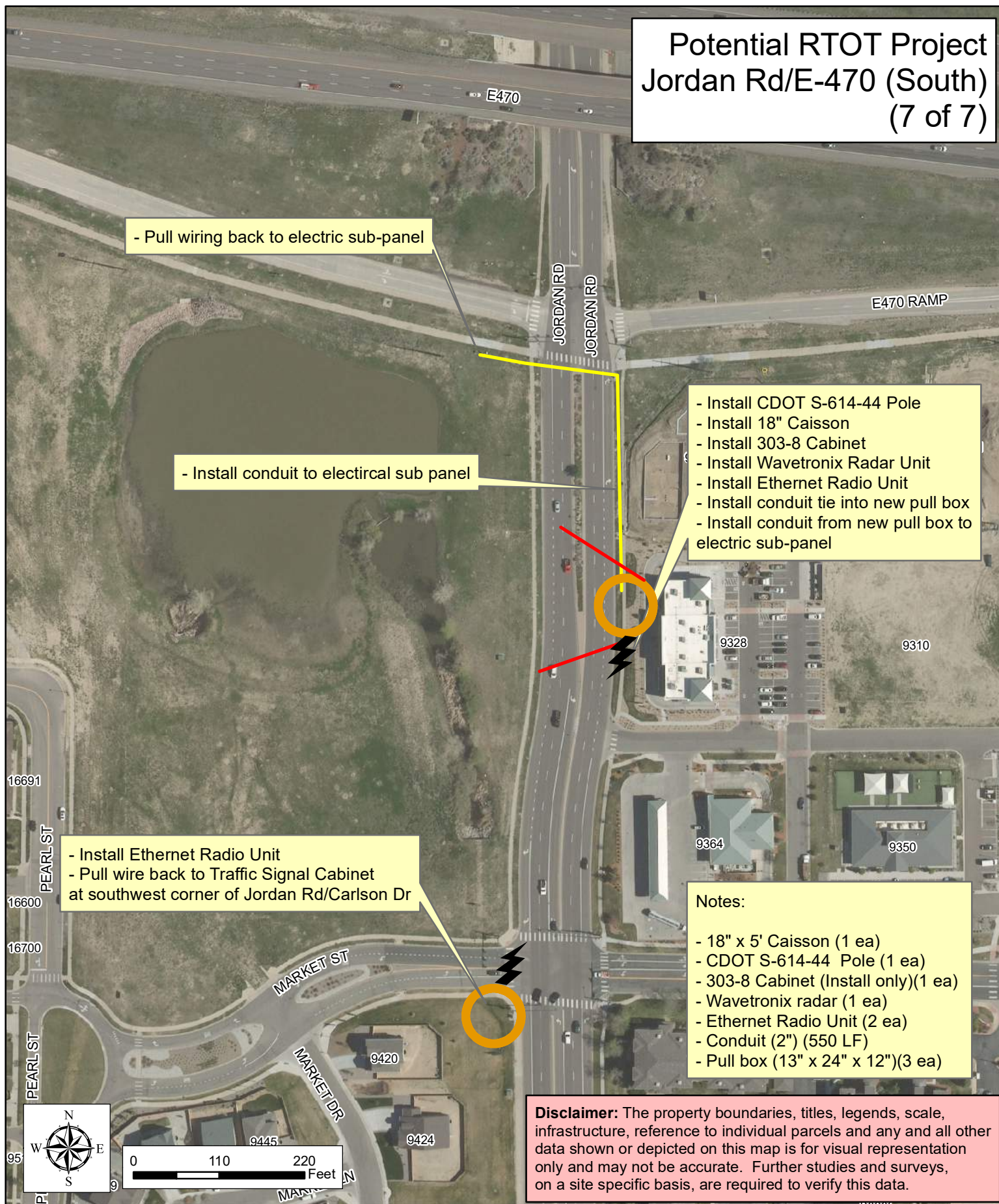
- Traffic Signal Pole
- - - Conduit - Fiber (approx)
- - - Conduit - Electrical (approx)

Other Features

- Douglas County Parcels
- Town Boundary



Potential RTOT Project Jordan Rd/E-470 (South) (7 of 7)



Traffic

- Traffic Signal Pole
- - - Conduit - Fiber (approx)
- - - Conduit - Electrical (approx)

Other Features

- Douglas County Parcels
- Town Boundary



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

EXHIBIT C – FUNDING PROVISIONS

AQC M039-006 (24383)

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be \$500,000.00, which is to be funded as follows:

1. BUDGETED FUNDS				
a. Federal Funds (80.00% of Participating Costs)		\$400,000.00		
b. Local Agency Matching Funds (20.00% of Participating Costs)		\$100,000.00		
TOTAL BUDGETED FUNDS				\$500,000.00
2. OMB UNIFORM GUIDANCE				
a. Federal Award Identification Number (FAIN):				TBD
b. Federal Award Date (also Phase Performance StartDate):				See Below
c. Amount of Federal Funds Obligated:				\$0.00
d. Total Amount of Federal Award:				\$400,000.00
e. Name of Federal Awarding Agency:				FHWA
f. CFDA # Highway Planning and Construction				CFDA 20.205
g. Is the Award for R&D?				No
h. Indirect Cost Rate (if applicable)				N/A
3. ESTIMATED PAYMENT TO LOCAL AGENCY				
a. Federal Funds Budgeted				\$400,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs				\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY				\$400,000.00
4. FOR CDOT ENCUMBRANCE PURPOSES				
a. Total Encumbrance Amount				\$500,000.00
b. Less ROW Acquisition 3111 and/or ROW Relocation 3109				\$0.00
Net to be encumbered as follows:				\$500,000.00
<i>No funds are currently available. Funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.</i>				
WBS Element 24383.20.10	Performance Period Start*/End Date TBD / TBD	Const.	3301	\$0.00

***The Local Agency should not begin work until all three 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 milestones are achieved will not be reimbursable.**

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 80.00% federal-aid funds to 20.00% Local Agency funds, it being understood that such ratio applies only to the \$500,000.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$500,000.00, and additional federal funds are made available for the Work, the Local Agency shall pay 20.00% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$500,000.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$400,000.00 (for CDOT accounting purposes, the federal funds of \$400,000.00 and the Local Agency matching funds of \$100,000.00 will be encumbered for a total encumbrance of \$500,000.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

The maximum amount payable shall be reduced without amendment when the actual amount of the Local Agency's awarded contract is less than the budgeted total of the federal participating funds and the Local Agency matching funds. The maximum amount payable shall be reduced through the execution of an Option Letter as described in Section 7. E. of this contract.

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 C.F.R. 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 AGREEMENT ADMINISTRATION CHECKLIST

COLORADO DEPARTMENT OF TRANSPORTATION LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. AQC M039-006	STIP No.	Project Code 24383	Region R1
Project Location Town of Parker			Date 2/16/2021
Project Description FY21 PARKER TRAFFIC RESPONSIVE PHASE 2			
Local Agency Town of Parker	Local Agency Project Manager David Aden		
CDOT Resident Engineer Ben Kiene	CDOT Project Manager Chris Vokurka		
INSTRUCTIONS: This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i> . 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, a "#" will denote that CDOT must concur or approve. Tasks that will be performed by Headquarters staff will be indicated. 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.			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA CDOT	
TIP / STIP AND LONG-RANGE PLANS			
2.1	Review Project to ensure it is consist 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)		X
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463		X
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement - Project Development - Construction Contract Administration (including Fabrication Inspection Services)	X X	
5.4	Conduct Design Scoping Review Meeting	X	
5.5	Conduct Public Involvement	X	
5.6	Conduct Field Inspection Review (FIR)	X	
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	
5.9	Obtain Utility and Railroad Agreements	X	
5.10	Conduct Final Office Review (FOR)	X	
5.11	Justify Force Account Work by the Local Agency	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	
5.13	Document Design Exceptions - CDOT Form 464	X	
5.14	Prepare Plans, Specifications and Construction Cost Estimates	X	
5.15	Ensure Authorization of Funds for Construction		X
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) 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.) Ben Kiene 2/16/2021 CDOT Resident Engineer (Signature on File) Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances	X	
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	
7.2	Advertise for Bids	X	
7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets UDBE goals		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		X
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor	X	
8.2	Project Safety		X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B) • Fabrication Inspection Notifications	N/A	
	Pre-survey • Construction staking • Monumentation	N/A N/A	
	Partnering (Optional)	N/A	
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	N/A	
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	N/A	
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	N/A	
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	N/A	
8.5	Supervise Construction		

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." <u>David Aden</u> <u>303.805.3202</u> Local Agency Professional Engineer or Phone number CDOT Resident Engineer	N/A	N/A
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	N/A	
	Construction inspection and documentation	N/A	
	Fabrication Inspection and documentation	N/A	
8.6	Approve Shop Drawings	N/A	
8.7	Perform Traffic Control Inspections	N/A	
8.8	Perform Construction Surveying	N/A	
8.9	Monument Right-of-Way	N/A	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates Provide the name and phone number of the person authorized for this task. <u>David Aden</u> <u>303.805.3202</u> Local Agency Representative Phone number	N/A	
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	N/A	
8.12	Prepare and Authorize Change Orders	N/A	
8.13	Submit Change Order Package to CDOT	N/A	
8.14	Prepare Local Agency Reimbursement Requests	X	
8.15	Monitor Project Financial Status	X	
8.16	Prepare and Submit Monthly Progress Reports	X	
8.17	Resolve Contractor Claims and Disputes	N/A	
8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. <u>Ben Kiene</u> <u>303-512-4025</u> CDOT Resident Engineer Phone number		X
MATERIALS			
9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	N/A	
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	N/A N/A N/A	
9.3	Perform Project Acceptance Samples and Tests	N/A	
9.4	Perform Laboratory Verification Tests	N/A	
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	N/A N/A N/A	
9.6	Approve Sources of Materials	N/A	
9.7	Independent Assurance Testing (IAT), Local Agency Procedures ☐ CDOT Procedures ☐ • Generate IAT schedule • Schedule and provide notification • Conduct IAT	N/A N/A N/A	
9.8	Approve mix designs • Concrete • Hot mix asphalt	N/A N/A	
9.9	Check Final Materials Documentation	N/A	
9.10	Complete and Distribute Final Materials Documentation	N/A	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	N/A	
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	N/A	
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	N/A	
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	N/A	
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	N/A	
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	N/A	
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	N/A	
FINALS			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)	X	X
11.2	Write Final Project Acceptance Letter	X	
11.3	Advertise for Final Settlement	X	
11.4	Prepare and Distribute Final As-Constructed Plans	X	
11.5	Prepare EEO Certification	X	
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11.8	Obtain CDOT Form 1419 from the Contractor and Submit to the Resident Engineer	X	
11.9	(FHWA Form 47 discontinued)	X	
11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment	X	
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure	X	
11.14	Retain Final Version of Local Agency Contract Administration Checklist	X	

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;
- (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 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.

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SAMPLE

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

Assurances for Local Agencies

DOT Order No. 1050.2A

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

Statutory/Regulatory Authorities

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

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

General Assurances

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

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

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

Specific Assurances

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

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

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

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

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

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

(Name of Recipient)

by _____
(Signature of Authorized Official)

DATED _____

APPENDIX A

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

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

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

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

(HABENDUM CLAUSE)

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

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

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

APPENDIX C

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

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

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

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

APPENDIX D

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

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

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

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

APPENDIX E

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

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures 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.



Request for Town Council Action

Date: June 7, 2021

Submitted By: David Aden, Traffic Engineer

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 9.331 - Second Reading**
A Bill for an Ordinance to Approve the Intergovernmental Agreement By and Between the Town of Parker And The State of Colorado Acting By and Through the Colorado Department of Transportation Concerning SH 83 (Parker Road) Traffic Signal Maintenance
Department: Engineering and Public Works, David Aden

EXECUTIVE SUMMARY

An ordinance is needed to approve an Intergovernmental Agreement (IGA) with the Colorado Department of Transportation (CDOT) for continuation of Town of Parker operation and maintenance of Parker Road traffic signals. CDOT will reimburse the Town for this service at a rate \$49,920 per year. This agreement and the associated maintenance program was discussed with Town Council at a Study Session in April.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

Parker Road is a Colorado state highway under the jurisdiction of CDOT. Due to several factors, including a desire to be more responsive to our citizens, the Town and CDOT entered into an IGA whereby the Town would operate and maintain the 13 traffic signals on Parker Road within the Town limits. This agreement was first approved in 2006.

This agreement is similar to those in other Denver Metro area cities that have state highways within their limits, such as Denver, Aurora, and Lakewood.

Each prior IGA was for a 5-year term. Our current IGA expires in 2021. This IGA is also for a 5-year term. Responsibilities will remain the same as the current arrangement.

FINANCIAL IMPACT

CDOT will reimburse the Town for this service at a rate of \$320 per signal each month. Annually this comes to a total of \$49,920.

STRATEGIC GOAL(S)



INNOVATE WITH
COLLABORATIVE
GOVERNANCE



DEVELOP A VISIONARY
COMMUNITY THROUGH
BALANCED GROWTH

ATTACHMENTS

1. Ordinance No. 9.331

RECOMMENDED MOTION

I move to approve Ordinance No. 9.331 on second reading.

ORDINANCE NO. 9.331, Series of 2021

TITLE: A BILL FOR AN ORDINANCE TO APPROVE THE INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE TOWN OF PARKER AND THE STATE OF COLORADO ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION CONCERNING SH 83 (PARKER ROAD) TRAFFIC SIGNAL MAINTENANCE

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. The Town Council of the Town of Parker hereby approves the Intergovernmental Agreement by and between the Town of Parker and the State of Colorado acting by and through the Colorado Department of Transportation concerning SH 83 (Parker Road) Traffic Signal Maintenance, which is attached hereto as **Exhibit 1** and incorporated herein by this reference, and authorizes the Mayor of the Town to enter into the Agreement on behalf of the Town.

Section 2. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1

PO #: 471001744
Routing #: 21-HA1-ZH-00081

(State \$Traffic Mtce)
TOWN OF PARKER

Rev 10/03
Region: 1 (vjm)

CONTRACT

THIS AGREEMENT is entered into by and between the TOWN OF PARKER (hereinafter called the “Local Agency”), and the STATE OF COLORADO acting by and through the Department of Transportation (hereinafter called the “State” or “CDOT”).

RECITALS:

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number 400, Function: 2300, GL Account: 4541000010, and Cost Center: R1435-010. (Contract Encumbrance Amount: \$49,920.00).
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Section 43-2-102 and 103, C.R.S., require the State to maintain State highways (including where such highways extend through a city or an incorporated town), and Section 43-2-135(1)(i), C.R.S., as amended, requires the State to install, operate, maintain and control, at State expense, all traffic control devices on the State highway system within cities and incorporated towns.
4. The parties desire to enter this contract for the Local Agency to provide some or all of the certain Highway maintenance services on State highways that are the responsibility of the State under applicable law, and for the State to pay the Local Agency a reasonable negotiated fixed rate for such services.
5. The parties also intend that the Local Agency shall remain responsible to perform any services and duties on State highways that are the responsibility of the Local Agency under applicable law, at its own cost.
6. The State and the Local Agency have the authority, as provided in Sections 29-1-203, 43-1-106, 43-2-103, 43-2-104, and 43-2-144, C.R.S., as amended, and if applicable, in an ordinance or resolution duly passed and adopted by the Local Agency, to enter into contract with the Local Agency for the purpose of maintenance of traffic control devices on the State highway system as hereinafter set forth.
7. The Local Agency has adequate facilities to perform the desired maintenance services on State highways within its jurisdiction.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

The Local Agency shall perform all maintenance services for the specified locations located within the Local Agency's jurisdiction and described in **Exhibit A**. Such services and highways are further detailed in Section 5.

Section 2. Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Special Provisions contained in section 22 of this contract
2. This contract
3. **Exhibit A** (Scope of Work)
4. **Exhibit C** (Option Letter)
5. **Exhibit D** (Encumbrance Letter).

Section 3. Term

This contract shall be effective upon the date signed/approved by the State Controller, or designee, or on July 1, 2021, whichever is later. The term of this contract shall be for **a term of FIVE (5) years, expiring on June 30, 2026**. Provided, however, that the State's financial obligation for each subsequent, consecutive fiscal year of that term after the first fiscal year shall be subject to and contingent upon funds for each subsequent year being appropriated, budgeted, and otherwise made available therefor.

Section 4. Project Funding and Payment Provisions

- A. The Local Agency has estimated the total cost of the work and is prepared to accept the State funding for the work, as may be evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and

to complete the work under the project. A copy of any such ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.

- B. Subject to the terms of this contract, for the satisfactory performance of the maintenance services on the Highways, as described in Section 5, the State shall pay the Local Agency on a lump sum basis, payable in monthly installments, upon receipt of the Local Agency's Statements, as provided herein.
- C. The State shall pay the Local Agency for the satisfactory operation and maintenance of traffic control devices under this agreement at the rates described in **Exhibit A**.
- D. The Local Agency will provide maintenance services as described in **Exhibit A**, for a **total maximum amount of \$49,920.00 per State fiscal year, and a maximum contract total shall not exceed the cumulative five-year total of \$249,600.00**. The negotiated rate per location shall remain fixed for the full five-year term of the contract, unless this rate is renegotiated in accord with the procedure set forth herein in Section 17. The total payments to the Local Agency during the term of this contract shall not exceed that maximum amount, unless this contract is amended. The Local Agency will bill the State monthly and the State will pay such bills within 45 days.
- E. The Statements submitted by the Local Agency for which payment is requested shall contain an adequate description of the type(s) and the quantity(ies) of the maintenance services performed, the date(s) of that performance, and on which specific sections of the highways such services were performed, in accord with standard Local Agency billing standards.
- F. If the Local Agency fails to satisfactorily perform the maintenance services or if the Statement submitted by the Local Agency does not adequately document the payment requested, after notice thereof from the State, the State may deduct and retain a proportionate amount from the monthly payment, based on the above rate, for that segment or portion.

Section 5: State & Local Agency Commitments:

- A. The Local Agency shall perform the maintenance services for the certain State highway system locations described herein. Such services and locations are detailed in **Exhibit A**.
- B. The Local Agency shall operate and maintain the specific traffic control devices, and at the particular locations, all as listed on **Exhibit A**, in a manner that is consistent with current public safety standards on State highways within its jurisdictional limits, and in conformance with applicable portions of the "Manual on Uniform Traffic Control Devices" and the "Colorado Supplement" thereto, which are referred to collectively as the "Manual" and which are incorporated herein by reference as terms and conditions of this agreement. The Local Agency shall provide all personnel, equipment, and other services necessary to satisfactorily perform such operation and maintenance.
- C. The Parties shall have the option to add or delete, at any time during the term of this agreement and subject to §17 of this agreement, one or more specific traffic control devices to the list shown in **Exhibit A** and therefore amend the maintenance services to be performed by the Local Agency under this agreement. The State may amend **Exhibit A** by written notice to the Local Agency using an Option Letter substantially equivalent to **Exhibit C**.
- D. The Local Agency may propose, in writing, other potential specific traffic control devices to be operated and maintained by the Local Agency during the term of this agreement, based on the same rates that had been initially agreed to by the Local Agency in **Exhibit A**. If the State determines in writing that operation and maintenance of those other devices by the Local Agency is appropriate, and is desirable to the State, and if the State agrees to add such devices to this agreement, then the State shall, by written Option Letter issued to the Local Agency in a form substantially equivalent to **Exhibit C**, add such devices to this contract.
- E. The Local Agency shall perform all maintenance services on an annual basis. The Local Agency's performance of such services shall comply with the same standards that are currently used by the State for the State's performance of such services, for similar type highways with similar use, in that year, as determined by the State. The State's Regional Transportation Director, or his representative, shall determine the then current applicable maintenance standards for the maintenance services. Any standards/directions provided by the State's representative to the Local Agency concerning the maintenance services shall be in writing. The Local Agency shall contact the State Region office and obtain those standards before the Local Agency performs such services.

Section 6. Record Keeping

The Local Agency shall maintain a complete file of all records, documents, communications, and other written materials that pertain to the costs incurred under this contract. The Local Agency shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The Local Agency shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the State and, if applicable, FHWA to inspect the project and to inspect, review and audit the project

records.

Section 7. Termination Provisions

This contract may be terminated as follows:

- A. This contract may be terminated by either party, but only at the end of the State fiscal year (June 30), and only upon written notice thereof sent by registered, prepaid mail and received by the non-terminating party, not later than 30 calendar days before the end of that fiscal year. In that event, the State shall be responsible to pay the Local Agency only for that portion of the highway maintenance services actually and satisfactorily performed up to the effective date of that termination, and the Local Agency shall be responsible to provide such services up to that date, and the parties shall have no other obligations or liabilities resulting from that termination.

Notwithstanding subparagraph A above, this contract may also be terminated as follows:

- B. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.
- C. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this contract.

Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined.

If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.

- D. Termination Due to Loss of Funding. The parties hereto expressly recognize that the Local Agency is to be paid, reimbursed, or otherwise compensated with federal and/or State funds which are available to the State for the purposes of contracting for the project provided for herein, and therefore, the Local Agency expressly understands and agrees that all its rights, demands and claims to compensation arising under this contract are contingent upon availability of such funds to the State. In the event that such funds or any part thereof are not available to the State, the State may immediately terminate or amend this contract.

Section 8. Legal Authority

The Local Agency warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this contract.

Section 9. Representatives and Notice

The State will provide liaison with the Local Agency through the State's Region Director, Region 1, 2829 West Howard Place. Said Region Director will also be responsible for coordinating the State's activities under this contract and will also issue a "Notice to Proceed" to the Local Agency for commencement of the work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region 1 and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to State

CDOT Region: 1

If to the Local Agency

Town of Parker

Christopher Vokurka, PE, PTOE
Project Manager
2829 W Howard Place
Denver, CO 80204
303-512-4058
christopher.vokurka@state.co.us

David Aden, PE
Traffic Engineer
20120 East Main Street
Parker, CO 80134
303-805-3227
daden@parkeronline.org

Section 10. Successors

Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 11. Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Section 12. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, 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, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

Section 13. Severability

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 14. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Section 15. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed by the parties and approved pursuant to the State Fiscal Rules.

Section 16. Survival of contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

Section 17. Modification and Amendment

This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of

this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

A. Amendment

Either party may suggest renegotiation of the terms of this contract, provided that the contract shall not be subject to renegotiation more often than annually, and that neither party shall be required to renegotiate. If the parties agree to change the provisions of this contract, the renegotiated terms shall not be effective until this contract is amended/modified accordingly in writing. Provided, however, that the rates will be modified in accordance with applicable cost accounting principles and standards (including sections 24-107-101, et seq., C.R.S. and implementing regulations), and be based on an increase/decrease in the "allowable costs" of performing the Work. Any such proposed renegotiation shall not be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved by the State Controller or delegee. Any such rate change will go into effect on the first day of the first month following the amendment execution date.

B. Option Letter

- a. The State may increase/decrease the quantity of goods/services described in **Exhibit A** at the same unit prices (rates) originally established in the contract. The State may exercise the option by written notice to the Local Agency in a form substantially equivalent to **Exhibit C**.
- b. As a result of increasing/decreasing the locations, the State may also unilaterally increase/decrease the maximum amount payable under this contract based upon the unit prices (rates) originally established in the contract and the schedule of services required, as set by the terms of this contract. The State may exercise the option by providing a fully executed option to the Local Agency, in a form substantially equivalent to **Exhibit C**, immediately upon signature of the State Controller or an authorized delegate. The Option Letter shall not be deemed valid until signed by the State Controller or an authorized delegate. Any such rate change will go into effect on the first day of the first month following the option letter execution date.

C. State Encumbrance Letter

The State may encumber the funds up to the maximum amount allowed during a given fiscal year by unilateral execution of an encumbrance letter in a form substantially equivalent to **Exhibit D**. The State shall provide a fully executed encumbrance letter to the Local Agency after execution. Delivery/performance of the goods/services shall continue at the same rate and under the same terms as established in the contract.

Section 18. Disputes

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract, which is not disposed of by agreement, will 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, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the 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, the Local Agency shall proceed diligently with the performance of the contract 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 will 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 contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Section 19. Does not supersede other agreements

This contract is not intended to supersede or affect in any way any other agreement (if any) that is currently in effect between the State and the Local Agency for other "maintenance services" on State Highway rights-of-way within the jurisdiction of the Local Agency. Also, the Local Agency shall also continue to perform, at its own expense, all such activities/duties (if any) on such State Highway rights-of-ways that the Local Agency is required by applicable law to perform.

Section 20. SubLocal Agencies

The Local Agency may subcontract for any part of the performance required under this contract, subject to the Local Agency first obtaining approval from the State for any particular subLocal Agency. The State understands that the Local Agency may intend to perform some or all of the services required under this contract through a subLocal Agency. The Local Agency agrees not to assign rights or delegate duties under this contract [or subcontract any part of the performance required under the contract] without the express, written consent of the State, which shall not be

unreasonably withheld. Except as herein otherwise provided, this agreement shall inure to the benefit of and be binding only upon the parties hereto and their respective successors and assigns.

Section 21. Statewide Contract Management System

If the maximum amount payable to Local Agency under this contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this **§ 21. Statewide Contract Management System** applies.

Local Agency agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of Local Agency performance on state contracts and inclusion of contract performance information in a Statewide contract management system.

Local Agency's performance shall be subject to evaluation and review in accordance with the terms and conditions of this contract, State law, including CRS §24-103.5-101, and State fiscal rules, policies and guidance. Evaluation and review of the Local Agency's performance shall be part of the normal contract administration process and Local Agency's performance will be systematically recorded in the statewide contract management system. Areas of evaluation and review shall include, but shall not be limited to, quality, cost and timeliness. Collection of information relevant to the performance of Local Agency's obligations under this contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Local Agency's obligations. Such performance information shall be entered into the Statewide contract management system at intervals established herein and a final evaluation, review and rating shall be rendered within 30 days of the end of the contract term. Local Agency shall be notified following each performance evaluation and review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance evaluation and review determine that Local Agency demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Transportation, and showing of good cause, may debar Local Agency and prohibit Local Agency from bidding on future contracts. Local Agency may contest the final evaluation, review and rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Local Agency, by the Executive Director, upon showing of good cause.

Section 22. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in *italics*.

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 State, 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.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[*Not applicable to intergovernmental agreements*] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.

[*Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services*] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment

eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

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Section 23. SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

* Persons signing for the Local Agency hereby swear and affirm that they are authorized to act on the Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.

THE LOCAL AGENCY TOWN OF PARKER Name: _____ (print name) Title: _____ (print title) _____ *Signature Date: _____	STATE OF COLORADO Jared S. Polis Department of Transportation By _____ Stephen Harelson, P.E., Chief Engineer (For) Shoshana M. Lew, Executive Director Date: _____
2nd Local Agency Signature if needed Name: _____ (print name) Title: _____ (print title) _____ *Signature Date: _____	STATE OF COLORADO LEGAL REVIEW Philip J. Weiser, Attorney General By _____ Signature – Assistant Attorney General Date: _____

ALL AGREEMENTS REQUIRE APPROVAL 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. The Local Agency 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 A - SCOPE OF WORK

Littleton SB-8 Traffic MTCE FY 22-27

Traffic Maintenance

List of Traffic Signal Locations:

SH 83 (Parker Road) at:

- Stroh Rd
 - J. Morgan Blvd
 - Hess Rd
 - Pine Dr / Indian Pipe Ln
 - Hilltop Rd / Twenty Mile Rd
 - Mainstreet
 - Plaza Dr
 - Lincoln Ave
 - Ponderosa Dr
 - Pine Ln
 - E-470 South Ramp
 - E-470 North Ramp
 - Cottonwood Dr
- (13 signals)

Total number of signals: 13.

Scope of Work:

- The Town shall operate and maintain the traffic signals and associated traffic responsive signal systems at the intersection locations listed above.
- Any reconstruction, modification, or improvement initiated by the Town or performed as a result of a Town project shall be included in the maintenance provided by the Town.
- Any reconstruction, modification, or improvement initiated by the State or performed as a result of a State project shall be paid for separately by the State.
- The Town shall perform inspections of each location, in all directions, and submit documentation to CDOT annually by October 10 for each year of this contract. Inspection shall include, but not be limited to:
 - Each signal lens operating and visible
 - Signal timing is operating as programmed
 - Controller and cabinet are clean and in good repair
 - Communication to signal is connected and operating
 - Vehicle detection is operating properly
 - All luminaires attached to signal structure are operating
 - Backup power testing
 - Signal conflict monitor testing.
- Any defects in the items listed above found at these intersections shall be remedied within 24 hours. Defects and remediation shall be documented and kept on file at the Town and copied to

CDOT. Any defects not remedied will incur a price reduction in the following month's compensation in the amount of \$320.00 per intersection.

- CDOT will perform structural inspection of overhead signal structural elements and their supports on a cycle established by the Staff Bridge Branch Ancillary Structures Inspection Program.
- CDOT will be responsible for remediation of structural defects requiring foundation, pole, or mast-arm replacement of CDOT-standard structures. The Town shall be responsible for remediation of structural defects requiring foundation, pole, or mast-arm replacement of non-CDOT-standard structures as well as remediation of structural defects not requiring foundation, pole, or mast-arm replacement.

Rate/Cost Schedule:

\$320.00 Rate per signal per month

X 13 Signals

\$4,160.00 Total monthly cost to maintain signals

\$4,160.00 Total monthly payment to local agency

X 12 Months

\$49,920.00 Total Annual Not to Exceed Amount

\$49,920.00 Total Annual Not to Exceed Amount

X 5 years of the contract

\$249,600.00 Total Contract Not to Exceed Amount

EXHIBIT B – LOCAL AGENCY RESOLUTION

LOCAL AGENCY
ORDINANCE
or
RESOLUTION
(if applicable)

EXHIBIT C - SAMPLE OPTION LETTER

SAMPLE IGA OPTION LETTER

Highway or Traffic Maintenance

(This option has been created by the Office of the State Controller for CDOT use only)

Date:	State Fiscal Year:	Option Letter No.	Routing #
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Vendor name:

1) SUBJECT:

Change in the amount of goods within current term.

2) REQUIRED PROVISIONS:

In accordance with Section 17 of contract routing number insert FY, agency code & routing #, between the State of Colorado, Department of Transportation, and insert Local Agency name the state hereby exercises the option to an increase/decrease in the amount of goods/services at the same rate(s) specified in Exhibit A.

The amount of the current Fiscal Year contract value (encumbrance) is increased/decreased by \$ amount of change to satisfy services/goods ordered under the contract for the current fiscal year insert fiscal year. The Contract Encumbrance Amount in Recital 1 is hereby modified to \$amount of new annual encumbrance, and Section 4, B, 1 shall also be modified to show the annual not to exceed amount to \$amount of new annual encumbrance and the Contract (five-year term) not to exceed amount shall be modified to \$amount of the new five-year maximum.

The total contract value to include all previous amendments, option letters, etc. is \$insert accumulated/total encumbrance amount.

3) EFFECTIVE DATE:

The effective date of this Option Letter is upon approval of the State Controller or delegate, whichever is later.

APPROVALS:

State of Colorado:

JARED S. POLIS, GOVERNOR

By: _____ Date: _____
Stephen Harelson, P.E., Chief Engineer, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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

State Controller
Robert Jaros, CPA, MBA, JD

By: _____

Date: _____

Form date: August 16, 2013

EXHIBIT D – SAMPLE ENCUMBRANCE LETTER

ENCUMBRANCE LETTER

Date:	State Fiscal Year:	Encumbrance Letter No.	Routing #:
		Orig. IGA:	PO:

1) **Encumber fiscal year funding in the contract.**

2) **PROVISIONS:** In accordance with Section 4 and Exhibit C of the original Contract routing number Orig Routing # between the State of Colorado, Department of Transportation, and Contractor's Name, covering the term July 1, Year through June 30, Year, the State hereby encumbers funds for the goods/services specified in the contract for fiscal year .

The amount to be encumbered by this Encumbrance Letter is \$ amount of change. The Total contract (encumbrance) amount, including all previous amendments, option letters, etc. is \$ Insert New \$ Amt.

3) **EFFECTIVE DATE.** The effective date of this Encumbrance Letter is upon approval of the State Controller.

STATE OF COLORADO Jared S. Polis, GOVERNOR Department of Transportation By: _____ Stephen Harelson, P.E., Chief Engineer (For) Shoshana M. Lew, Executive Director Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract 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 Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Department of Transportation Date: _____



Request for Town Council Action

Date: June 7, 2021

Submitted By: Tom Gill, Associate Project Manager

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 9.333 - Second Reading**
A Bill for an Ordinance Approving the Intergovernmental Agreement By and Between the Town of Parker and The State of Colorado Acting By and Through the Colorado Department of Transportation Concerning Parker Road (SH 83) Multi-Use Trail/Sidewalk: Sulphur Gulch Trail to Parker Square
Department: Engineering and Public Works, Tom Gill

EXECUTIVE SUMMARY

This item is for an ordinance to approve an intergovernmental agreement (IGA) with the Colorado Department of Transportation (CDOT) to receive state multi-modal funding for the construction of a trail/sidewalk and pedestrian bridge on the east side of Parker Road from Sulphur Gulch Trail to Parker Square Drive. This item was discussed at a previous Town Council Study Session.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Town of Parker is proposing to construct a trail/sidewalk and pedestrian bridge on the east side of Parker Road from Sulphur Gulch Trail to just south of Parker Square Drive in 2023. This would be completed in two segments, with the first starting at Sulphur Gulch Trail to Clubhouse Drive, and the second being from Hilltop Road to south of Parker Square. Although some portions of this trail/sidewalk exist along this section of Parker Road, the vast majority of Parker Road does not have an improved walkway.

Through the Denver Regional Council of Governments (DRCOG), the Town was approved to receive partial state/federal, or both, multi-modal funding for construction of this trail/sidewalk and pedestrian bridge. An IGA with CDOT is required to receive these funds. The proposed IGA is for direct construction funding being reimbursed up to \$3,200,000. The Town will be required to fund the remaining \$800,000 of the estimated cost of \$4,000,000 of the direct construction cost. The funding cannot be used for non-direct construction expenses like design, material testing or construction administration and the Town will be responsible for these costs. The funding comes with considerable administration, including increased documentation and environmental clearances that must be submitted/approved with CDOT oversight.

The Town's consultant is just starting to work on preliminary design for this section of trail/sidewalk and pedestrian bridge. The Town is intending to competitively bid and award the construction contract in late 2022 or early 2023 with construction occurring during the 2023 construction season. Approximately three years ago, the Town constructed a federally funded section of trail/sidewalk on the east side of Parker Road between Plaza Drive and the Sulphur Gulch Trail. The project was successfully funded and completed with a similar IGA with CDOT. In addition, another similarly funded section of trail/sidewalk on the west side of Parker Road between Twenty Mile Road to Hess Road is nearing construction.

FINANCIAL IMPACT

As with any new sidewalk and bridge construction, long-term maintenance should be anticipated. Given typical use and proper initial construction, the sidewalk/bridge should last for 30 years. Snow removal is not typically the Town's responsibility unless the Town is the adjacent property owner. While this sidewalk/bridge will be predominately on CDOT property, CDOT does not own or maintain sidewalks and the Town will be responsible for any damage and/or replacement.

STRATEGIC GOAL(S)



SUPPORT AN
ACTIVE COMMUNITY



INNOVATE WITH
COLLABORATIVE
GOVERNANCE

ATTACHMENTS

1. Parker Road Multi-Use Sidewalk Gap Connection Vicinity Map
2. Ordinance No. 9.333

RECOMMENDED MOTION

I move to approve Ordinance No. 9.333 on second reading.

Parker Road Multi-Use Sidewalk Gap Connection Vicinity Map



ORDINANCE NO. 9.333, Series of 2021

TITLE: A BILL FOR AN ORDINANCE TO APPROVE THE INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE TOWN OF PARKER AND THE STATE OF COLORADO ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION CONCERNING PARKER ROAD (SH 83) MULTI-USE TRAIL/SIDEWALK: SULPHUR GULCH TRAIL TO PARKER SQUARE

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. The Town Council of the Town of Parker hereby approves the Intergovernmental Agreement by and between the Town of Parker and the State of Colorado acting by and through the Colorado Department of Transportation concerning Parker Road (SH 83) Multi-Use Trail/Sidewalk: Sulphur Gulch Trail to Parker Square, which is attached hereto as **Exhibit 1** and incorporated herein by this reference, and authorizes the Mayor of the Town to enter into the Agreement on behalf of the Town.

Section 2. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1

OLA #: 331002451
Routing #: 21-HA1-XC-00093

State \$LAWRK
PROJECT: C M039-008 (24457),
Parker Road (SH83) Multi-Use Trail/Sidewalk:
Sulphur Gulch Trail to Parker Square

REGION: 1
DZ

CONTRACT

THIS CONTRACT made this ____ day of _____, 20____, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation hereinafter referred to as the State and TOWN OF PARKER hereinafter referred to as the "Contractor" or the "Local Agency."

RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number MTF or 400, GL Acct: 4511000010.
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Pursuant to 43-2-104.5 C.R.S. as amended, the State may contract with Local Agencies to provide maintenance and construction of highways that are part of the state (or local agency) highway system.
4. Local Agency anticipates a project for Parker Road (SH83) Multi-Use Trail/Sidewalk: Sulphur Gulch Trail to Parker Square and by the date of execution of this contract, the Local Agency and/or the State has completed and submitted a preliminary version of CDOT form #463 describing the general nature of the Work. The Local Agency understands that before the Work begins, the Local Agency must receive an official written "Notice to Proceed" prior to commencing any part of the Work. The Local Agency further understands, before the Work begins, the form #463 may be revised as a result of design changes made by CDOT, in coordination with the Local Agency, in its internal review process. The Local Agency desires to perform the Work described in form #463, as it may be revised.
5. The Local Agency has requested that State funds be made available for project C M039-008 (24457), Parker Road (SH83) Multi-Use Trail/Sidewalk: Sulphur Gulch Trail to Parker Square referred to as the "Project" or the "Work." Such Work will be performed in Parker, Colorado, specifically described in **Exhibit A**.
6. The State has funds available and desires to provide 80.00% of the funding for the work. Local Agency will provide the other 20.00%. State funds may be awarded pursuant to Multimodal Transportation Options Funding ("MMOF"), as applicable. MMOF means money transferred from the general fund to the fund pursuant to C.R.S. §§24-75-219 (5)(a)(III) and (5)(b)(III) and any other money that the general assembly may appropriate or transfer to the fund. These funds are subject to an expiration date. Currently, the MMOF expiration date is June 30, 2023. If the funds are extended the State will notify the Local Agency of the new expiration date.
7. The Local Agency desires to comply with all state and other applicable requirements, including the State's general administration of the project through this contract, in order to obtain state funds for the project.
8. The Local Agency has estimated the total cost of the work and is prepared to accept the state funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the work under the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.
9. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144, C.R.S. and **Exhibit B**.
10. The Local Agency is adequately staffed and suitably equipped to undertake and satisfactorily complete some or all of the Work.
11. The Local Agency can more advantageously perform the Work.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

The Project or the Work under this contract shall consist of the Parker Road (SH83) Multi-Use Trail/Sidewalk: Sulphur Gulch Trail to Parker Square, in Parker, Colorado, as more specifically described in **Exhibit A**.

Section 2. Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Special Provisions contained in **Section 27** of this contract
2. This contract
3. **Exhibit A** (Scope of Work)
4. **Exhibit B** (Local Agency Resolution)
5. **Exhibit C** (Funding Provisions)
6. **Exhibit D** (Option Letter)

Section 3. Term

This contract shall be effective upon approval of the State Controller or designee, or on the date made, whichever is later. It shall terminate on April 25, 2031, or sooner if any of the State's funding expires, or is sooner terminated or unless performance is extended in accordance with this Contract.

Section 4. Project Funding Provisions

- A. The Local Agency has estimated the total cost of the work and is prepared to accept the state funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the work under the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.
- B. The parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from state sources, as applicable. Should these sources fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.
- C. Funding will be detailed in **Exhibit C** of the funding provisions.

Section 5. Project Payment Provisions

- A. The State will reimburse the Local Agency for incurred costs relative to the project following the State's review and approval of such charges, subject to the terms and conditions of this Contract. Provided however, that charges incurred by the Local Agency prior to the date this contract is executed by the State Controller will not be charged by the Local Agency to the project, and will not be reimbursed by the State.
- B. The State will reimburse the Local Agency's reasonable, allocable, allowable costs of Performance of the Work, not exceeding the maximum total amount described in **Exhibit C**. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the allowability and allocability of costs under this contract. The Local Agency shall comply with all such principles. To be eligible for reimbursement, costs by the Local Agency shall be:
 1. In accordance with the provisions of **Section 5** and with the terms and conditions of this contract;
 2. Necessary for the accomplishment of the Work;
 3. Reasonable in the amount for the goods and services provided;
 4. Actual net cost to the Local Agency (i.e. the price paid minus any refunds, rebates, or other items of value received by the Local Agency that have the effect of reducing the cost actually incurred);
 5. Incurred for Work performed after the effective date of this contract;
 6. Satisfactorily documented.
- C. The Local Agency shall establish and maintain a proper accounting system in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme) to assure that project funds are expended and costs accounted for in a manner consistent with this contract and project objectives.
 1. All allowable costs charged to the project, including any approved services contributed by the Local Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in detail the nature of the charges.
 2. Any check or order drawn up by the Local Agency, including any item which is or will be chargeable against the project account shall be drawn up only in accordance with a properly signed voucher then on file in the office of the Local Agency, which will detail the purpose for which said check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents.

- D. If the Local Agency is to be billed for CDOT incurred costs, the billing procedure shall be as follows:
1. Upon receipt of each bill from the State, the Local Agency will remit to the State the amount billed no later than 60 days after receipt of each bill. Should the Local Agency fail to pay moneys due the State within 60 days of demand or within such other period as may be agreed between the parties hereto, the Local Agency agrees that, at the request of the State, the State Treasurer may withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to the State. Interim funds, until the State is reimbursed, shall be payable from the State Highway Supplementary Fund (400).
 2. If the Local Agency fails to make timely payment to the State as required by this section (within 60 days after the date of each bill), the Local Agency shall pay interest to the State at a rate of one percent per month on the amount of the payment which was not made in a timely manner, until the billing is paid in full. The interest shall accrue for the period from the required payment date to the date on which payment is made.
- E. The Local Agency will prepare and submit to the State, no more than monthly, charges for costs incurred relative to the project. The Local Agency's invoices shall include a description of the amounts of services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in accordance with the State's standard policies, procedures and standardized billing format to be supplied by the State. If the project is funded by MMOF, then billing for all work must be submitted 30 days prior to end of State fiscal year. The State fiscal year ends June 30th. MMOF projects must submit final billing for all work 30 days prior to the end of the State fiscal year that funds expire. If MMOF are used, and the State knows that the funds will expire, the State shall promptly notify Local Agency of the expiration date. The State will promptly notify the Local Agency if that expiration date changes.
- F. To be eligible for payment, billings must be received within 60 days after the period for which payment is being requested and final billings on this contract must be received by the State within 60 days after the end of the contract term.
1. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds, encumbered for the purchase of the described services. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds.
 2. In the event this contract is terminated, final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit.
 3. Incorrect payments to the Local Agency due to omission, error, fraud or defalcation shall be recovered from the Local Agency by deduction from subsequent payment under this contract or other contracts between the State and Local Agency, or by the State as a debt due to the State.
 4. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or offset against current obligations due by the State to the Local Agency, at the State's election.

Section 6. Option Letter Modification

An option letter may be used to authorize the Local Agency to begin a phase without increasing total budgeted funds, increase or decrease the encumbrance amount as shown on Exhibit C, and/or transfer funds from one phase to another. Option letter modification is limited to the specific scenarios listed below. The option letter shall not be deemed valid until signed by the State Controller or an authorized delegate.

- A. Option to begin a phase and/or increase or decrease the encumbrance amount.
- The State may authorize the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original Agreement, with the total budgeted funds as shown on **Exhibit C** remaining the same. The State may increase or decrease the encumbrance amount for a particular phase by replacing the original funding exhibit (**Exhibit C**) in the original Agreement with an updated **Exhibit C-1** (subsequent exhibits to Exhibit C-1 shall be labeled C-2, C-3, etc.). The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the Agreement will be considered to include this option provision.
- B. Option to transfer funds from one phase to another phase.
- The State may permit the Local Agency to transfer funds from one phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another as a result of changes to state, federal, and local match.

The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc.) and attached to the option letter. The funds transferred from one phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**.

C. Option to do both Options A and B.

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

Section 7. State and Local Agency Commitments

The Scope of Work in **Exhibit A** describes the Work to be performed and assigns responsibility of that Work to either the Local Agency or the State. The “Responsible Party” referred to in this contract means the Responsible Party as identified in the Scope of Work in **Exhibit A**.

A. Design [if applicable]

1. If the Work includes preliminary design or final design (the “Construction Plans”), or design work sheets, or special provisions and estimates (collectively referred to as the “Plans”), the responsible party shall comply with the following requirements, as applicable:
 - a. perform or provide the Plans, to the extent required by the nature of the Work.
 - b. prepare final design (Construction Plans) in accord 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 CDOT.
 - c. prepare special provisions and estimates in accord with the State’s Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by CDOT.
 - 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 produced by a Colorado Registered Professional Engineer.
 - f. provide final assembly of Plans and contract documents.
 - g. be responsible for the Plans being accurate and complete.
 - h. make no further changes in the Plans following the award of the construction contract except by agreement in writing between the parties. The Plans shall be considered final when approved and accepted by the parties hereto, and when final they shall be deemed incorporated herein.
2. If the Local Agency is the responsible party:
 - a. The local agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document “ADA Accessibility Requirements in CDOT Transportation Projects”.
 - b. It shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with State requirements.
 - c. It may enter into a contract with a consultant to do all or any portion of the Plans and/or of construction administration. Provided, however, that if federal-aid funds are involved in the cost of such work to be done by a consultant, that consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 CFR Part 172 and with any procedures implementing those requirements as provided by the State. If the Local Agency does enter into a contract with a consultant for the Work:
 - (1) it shall submit a certification that procurement of any design consultant contract complied with the requirements of 23 CFR 172.5(1) prior to entering into contract. The State shall either approve or deny such procurement. If denied, the Local Agency may not enter into the contract.
 - (2) it shall ensure that all changes in the consultant contract have prior approval by the State. Such changes in the contract shall be by written supplement agreement. As soon as the contract with the

consultant has been awarded by the Local Agency, one copy of the executed contract shall be submitted to the State. Any amendments to such contract shall also be submitted.

- (3) it shall require that all consultant billings under that contract shall comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
- (4) it (or its consultant) shall use the CDOT procedures described in **Exhibit A** to administer that design consultant subcontract, to comply with 23 CFR 172.5(b).
- (5) it may expedite any CDOT approval of its procurement process and/or consultant contract by submitting a letter to CDOT from the certifying Local Agency's attorney/authorized representative certifying compliance with 23 CFR 172.5(b).
- (6) it shall ensure that its consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
 - (a) "The design work under this contract shall be compatible with the requirements of the contract between the 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 contract 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 discretion, will review construction plans, special provisions and estimates and will cause the Local Agency to make changes therein that the State determines are necessary to assure compliance with State requirements.

B. Construction [if applicable]

1. If the Work includes construction, the responsible party shall perform the construction in accordance with the approved design plans and/or administer the construction all in accord with the Scope of Work in **Exhibit A**. Such administration shall include project 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 contractor claims; construction supervision; and meeting the Quality Control requirements as described in the Scope of Work in **Exhibit A**.
2. The State shall have the authority to suspend the Work, wholly or in part, by giving written notice thereof to the Local Agency, due to the failure of the Local Agency or its contractor to correct project 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.
3. If the Local Agency is the responsible party:
 - a. it shall appoint a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform that administration. The LAPE shall administer the project in accordance with this contract, the requirements of the construction contract and applicable State procedures.
 - b. if bids are to be let for the construction of the project, it shall advertise the call for bids upon approval by the State and award the construction contract(s) to the low responsible bidder(s) upon approval by the State.
 - (1) The Local Agency has the option to accept or reject the proposal of the apparent low bidder for work on which competitive bids have been received. The Local Agency must declare the acceptance or rejection within 3 working days after said bids are publicly opened.
 - (2) By indicating its concurrence in such award, the Local Agency, acting by or through its duly authorized representatives, agrees to provide additional funds, subject to their availability and appropriation for that purpose, if required to complete the Work under this project if no additional federal-aid funds will be made available for the project. This paragraph also applies to projects advertised and awarded by the State.
 - c. If all or part of the construction work is to be accomplished by Local Agency personnel (i.e. by force account), rather than by a competitive bidding process, the Local Agency will ensure that all such force

account work is accomplished in accordance with the pertinent State specifications and requirements with 23 CFR 635, Subpart B, Force Account Construction.

- (1) Such work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency and the State in advance of the Work, as provided for in 23 CFR 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.
- (2) An alternative to the above is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 CFR Part 31.
- (3) Rental rates for publicly owned equipment will be determined in accordance with the State's Standard Specifications for Road and Bridge Construction § 109.04.
- (4) All force account work shall have prior approval of the State and shall not be initiated until the State has issued a written notice to proceed.

C. State's obligations

1. The State will perform a final project inspection prior to project acceptance as a Quality Control/Assurance activity. When all Work has been satisfactorily completed, the State will sign a final acceptance form.
2. Notwithstanding any consents or approvals given by the State for the Plans, the State will not be liable or responsible in any manner for the structural design, details or construction of any major structures that are designed by or are the responsibility of the Local Agency as identified in the Scope of Work in **Exhibit A**, within the Work of this contract.

Section 8. ROW Acquisition and Relocation

If the Project includes right of way, prior to this project being advertised for bids, the Responsible Party will certify in writing to the State that all right of way has been acquired in accordance with the applicable state and federal regulations, or that no additional right of way is required.

Any acquisition/relocation activities must 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 (P.L. 91-646) and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 CFR Part 24); CDOT's Right of Way Manual; and CDOT's Policy and Procedural Directives.

Allocation of Responsibilities are as follows:

- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) activities, if any, and right of way incidentals (expenses incidental to acquisition/relocation of right of way – 3114 charges);
- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or
- No federal participation in right of way acquisition (3111 charges) and relocation activities (3109 expenses).

Regardless of the option selected above, the State retains oversight responsibilities. The Local Agency's and the State's responsibilities for each option is specifically set forth in CDOT's Right of Way Manual. The manual is located at http://www.dot.state.co.us/ROW_Manual/.

If right of way is purchased for a state highway, including areas of influence of the state highway, the local agency shall immediately convey title to such right of way to CDOT after the local agency obtains title.

Section 9. Utilities

If necessary, the Responsible Party will be responsible for obtaining the proper clearance or approval from any utility company, which may become involved in this Project. Prior to this Project being advertised for bids, the Responsible Party will certify in writing to the State that all such clearances have been obtained.

Section 10. Railroads

In the event the Project involves modification of a railroad company's facilities whereby the Work is to be accomplished by railroad company forces, the Responsible Party shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Responsible Party shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 CFR 646, subpart B, concerning federal-aid projects involving railroad facilities, including:

- A. Executing an agreement setting out what work is to be accomplished and the location(s) thereof, and that the costs of the improvement shall be eligible for federal participation.
- B. Obtaining the railroad's detailed estimate of the cost of the Work.

- C. Establishing future maintenance responsibilities for the proposed installation.
- D. Proscribing future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- E. Establishing future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

Section 11. Environmental Obligations

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

Section 12. Maintenance Obligations

The Local Agency will maintain and operate the improvements constructed under this contract at its own cost and expense during their useful life, in a manner satisfactory to the State. The Local Agency will make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations which define the Local Agency's obligations to maintain such improvements. The State will make periodic inspections of the project to verify that such improvements are being adequately maintained.

Section 13. Record Keeping

The Local Agency shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this contract. The Local Agency shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The Local Agency shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the State to inspect the project and to inspect, review and audit the project records.

Section 14. Termination Provisions

This contract may be terminated as follows:

- A. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.
- B. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this contract.
Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined.
If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.
- C. Termination Due to Loss of Funding. The parties hereto expressly recognize that the Local Agency is to be paid, reimbursed, or otherwise compensated with federal and/or State funds which are available to the State for the purposes of contracting for the Project provided for herein, and therefore, the Local Agency expressly understands and agrees that all its rights, demands and claims to compensation arising under this contract are contingent upon availability of such funds to the State. In the event that such funds or any part thereof are not available to the State, the State may immediately terminate or amend this contract.

Section 15. Legal Authority

The Local Agency warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this contract.

Section 16. Representatives and Notice

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

If to State

If to the Local Agency

CDOT Region: 1	Town of Parker
Michael Kania	Thomas Gill
Project Manager	Project Manager
400 Inverness Pkwy, Suite 400	20120 E. Main Street
Englewood, CO 80112	Parker, CO 80138
303-365-7762	303-805-3190

Section 17. Successors

Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 18. Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Section 19. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, 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, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

Section 20. Severability

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 21. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Section 22. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless

embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

Section 23. Survival of Contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

Section 24. Modification and Amendment

This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

Section 25. Disputes

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement will 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, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the 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, the Local Agency shall proceed diligently with the performance of the contract 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 will 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 contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Section 26. Statewide Contract Management System

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this **§Statewide Contract Management System** applies. Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Transportation and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

Section 27. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3).

These Special Provisions apply to all contracts except where noted in italics.

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 State, 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.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

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Section 28. SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

*** Persons signing for the Local Agency hereby swear and affirm that they are authorized to act on the Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.**

THE LOCAL AGENCY TOWN OF PARKER Name: _____ (print name) Title: _____ (print title) _____ *Signature Date: _____	STATE OF COLORADO Jared S. Polis Department of Transportation By _____ Stephen Harelson, P.E., Chief Engineer (For) Shoshana M. Lew, Executive Director Date: _____
2nd Local Agency Signature if needed Name: _____ (print name) Title: _____ (print title) _____ *Signature Date: _____	STATE OF COLORADO LEGAL REVIEW Philip J. Weiser, Attorney General By _____ Signature – Assistant Attorney General Date: _____

ALL AGREEMENTS REQUIRE APPROVAL 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. The Local Agency 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 A

SCOPE OF WORK

Parker Road (SH83) Multi-Use Trail/Sidewalk: Sulphur Gulch Trail to Parker Square C M039-008 (24457) - SMS

A 3,100 LF multi-use trail/sidewalk and pedestrian bridge project will be constructed on the east side of Parker Road (SH83) to fill in critical sidewalk gaps that will improve safety and travel time predictability for people walking, biking and rolling within Parker's central commercial corridor.

This multimodal safety project will be completed in two segments:

Segment 1 trail/sidewalk and pedestrian bridge portion will begin south of milepost 60 at Sulphur Gulch (south of the Main Street intersection), crosses Sulphur Gulch with a pedestrian bridge and connects to an existing sidewalk, which ends at Hilltop Road.

Segment 2 portion will begin at Hilltop Road and connect to an existing sidewalk located south of milepost 59 between the Hilltop Road and Pine Drive intersections.

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EXHIBIT B
LOCAL AGENCY RESOLUTION (IF APPLICABLE)

EXHIBIT C – FUNDING PROVISIONS

C M039-008 (24457)

A. Cost of Work Estimate

The Local Agency has estimated the total cost of the Work to be \$4,000,000.00, which is to be funded as follows:

1. BUDGETED FUNDS				
a. State Funds (80.00% of Participating Costs)				\$3,200,000.00
b. Local Agency Matching Funds (20.00% of Participating Costs)				\$800,000.00
TOTAL BUDGETED FUNDS				\$4,000,000.00
2. ESTIMATED PAYMENT TO LOCAL AGENCY				
a. State Funds Budgeted				\$3,200,000.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY				\$3,200,000.00
3. FOR CDOT ENCUMBRANCE PURPOSES				
a. Total Encumbrance Amount (Only CDOT Funds are encumbered)				\$3,200,000.00
b. Less ROW Acquisition 3111 and/or ROW Relocation 3109				\$0.00
Net to be encumbered as follows:				\$3,200,000.00
NOTE: No funds are currently available. Design and Construction funds will become available after execution of an Option letter (Exhibit D) or formal Amendment.				
WBS Element 24457.10.30	Performance Period Start*/End Date N/A / N/A	Design	3020	\$0.00
WBS Element 24457.20.10	Performance Period Start*/End Date N/A / N/A	Const.	3301	\$0.00

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

B. Matching Funds

The matching ratio for this Work is 80.00% State funds to 20.00% Local Agency funds, it being understood that such ratios applies only to the \$4,000,000.00 that is eligible for State participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$4,000,000.00, and additional State funds are made available for the Work, the Local Agency shall pay 20.00% of all such costs eligible for State participation and 100% of all non-participating costs; if additional State funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$4,000,000.00, then the amounts of Local Agency and State funds will be decreased in accordance with the funding ratio described herein.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$3,200,000.00 (for CDOT accounting purposes, the State Funds of \$3,200,000.00 will be encumbered, but the Local Agency matching funds of \$800,000.00 will NOT be encumbered), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. The total budget of this project is \$4,000,000.00. It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

The maximum amount payable shall be reduced without amendment when the actual amount of the Local Agency's awarded contract is less than the budgeted total of the State participating funds and the Local Agency matching funds. The maximum amount payable shall be reduced through the execution of an Option Letter as described in Section 6 of this contract.

Exhibit D
OPTION LETTER

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)

*NOTE: This option is limited to the specific contract scenarios listed below AND may
be used in place of exercising a formal amendment.*

Date:	State Fiscal Year:	Option Letter No.	Option Letter CMS Routing #
			Option Letter SAP #
Original Contract CMS #		Original Contract SAP #	

Vendor name: _____

SUBJECT:

Option to unilaterally authorize the Local Agency to begin a phase which may include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (*does not apply to Acquisition/Relocation or Railroads*) and to update encumbrance amounts (*a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.*).

Option to unilaterally transfer funds from one phase to another phase (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

Option to unilaterally do both A and B (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

REQUIRED PROVISIONS:

Option A (*Insert the following language for use with the Option A*):

In accordance with the terms of the original Agreement (*insert CMS routing # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to authorize the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*) and to encumber previously budgeted funds for the phase based upon changes in funding availability and authorization. The encumbrance for (*Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*) is (*insert dollars here*). A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only, please delete when using this option. Future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.*).

Option B (*Insert the following language for use with Option B*):

In accordance with the terms of the original Agreement (*insert CMS # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) 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**. (*The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.*).

Option C *(Insert the following language for use with Option C):*

In accordance with the terms of the original Agreement (*insert CMS routing # of original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to 1) release the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*); 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) 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**. (*The following is a NOTE only so please delete when using this option: future changes for this option for **Exhibit C** shall be labeled as follows: C-2, C-3, C- 4, etc.*).

(The following language must be included on ALL options):

The total encumbrance as a result of this option and all previous options and/or amendments is now (*insert total encumbrance amount*), as referenced in **Exhibit (C-1, C-2, etc., as appropriate)**. The total budgeted funds to satisfy services/goods ordered under the Agreement remains the same: (*indicate total budgeted funds*) as referenced in **Exhibit (C-1, C-2, etc., as appropriate)** of the original Agreement.

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

APPROVALS:

State of Colorado:

Jared S. Polis, Governor

By: _____ Date: _____

Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. 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 Controller Robert Jaros, CPA, MBA, JD

By: _____ Date: _____



Request for Town Council Action

Date: June 7, 2021

Submitted By: Michael Grabczyk, Project Engineer

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 9.334 - Second Reading**
A Bill for an Ordinance Approving the Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for Cherry Creek at Dransfeldt Road (Agreement No. 21-05.04 Project No. 108515) by and between Urban Drainage and Flood Control District d/b/a Mile High Flood District, the Town of Parker and Cherry Creek Basin Water Quality Authority
Department: Engineering and Public Works, Michael Grabczyk

EXECUTIVE SUMMARY

The Town of Parker, the Mile High Flood District (MHFD - formerly the Urban Drainage and Flood Control District), and the Cherry Creek Basin Water Quality Authority (CCBWQA) have identified Cherry Creek at Dransfeldt Road as a reach of major drainageway requiring repair and rehabilitation to support existing and future Town growth. The Town, MHFD, and CCBWQA intend to partner in funding and managing the design and construction of the improvements by executing an intergovernmental agreement (IGA).

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Town of Parker, the MHFD, and the CCBWQA have partnered previously to design and construct several major drainage projects within the Cherry Creek Corridor. This reach has been identified as unstable with various locations of bank erosion, undefined flow paths, receding surface flows, and die-back of vegetation. A portion of the reach will also require a minor realignment to accommodate a future roadway crossing of Dransfeldt Road. This project is anticipated to propose the installation of channel improvements such as boulder drop and riffle structures, hard and soft bank stabilization, redefining the active channel, wetland reestablishment, and revegetation efforts. A preliminary design for several reaches of Cherry Creek, including this project, was completed in 2017. The Town, MHFD, and CCBWQA intend to fund a final engineering design in 2021 and follow-up with a modification to the IGA to encumber construction funding in 2022.

FINANCIAL IMPACT

This project has been identified in the Stormwater Capital Improvements Projects 10-year plan and is included within the 2021 budget approved by Town Council. A preliminary design of this reach was completed under a 2017 intergovernmental agreement with MHFD. The Town, MHFD, and CCBWQA will provide additional funding to complete final design of the project as shown below:

2021 Design:

Town of Parker	\$250,000
MHFD	\$60,000
CCB WQA	\$60,000

STRATEGIC GOAL(S)



INNOVATE WITH
COLLABORATIVE
GOVERNANCE



PROMOTE A SAFE AND
HEALTHY COMMUNITY

ATTACHMENTS

1. MHFD Vicinity Map
2. Ordinance No. 9.334

RECOMMENDED MOTION

I move to approve Ordinance No. 9.334 on second reading.



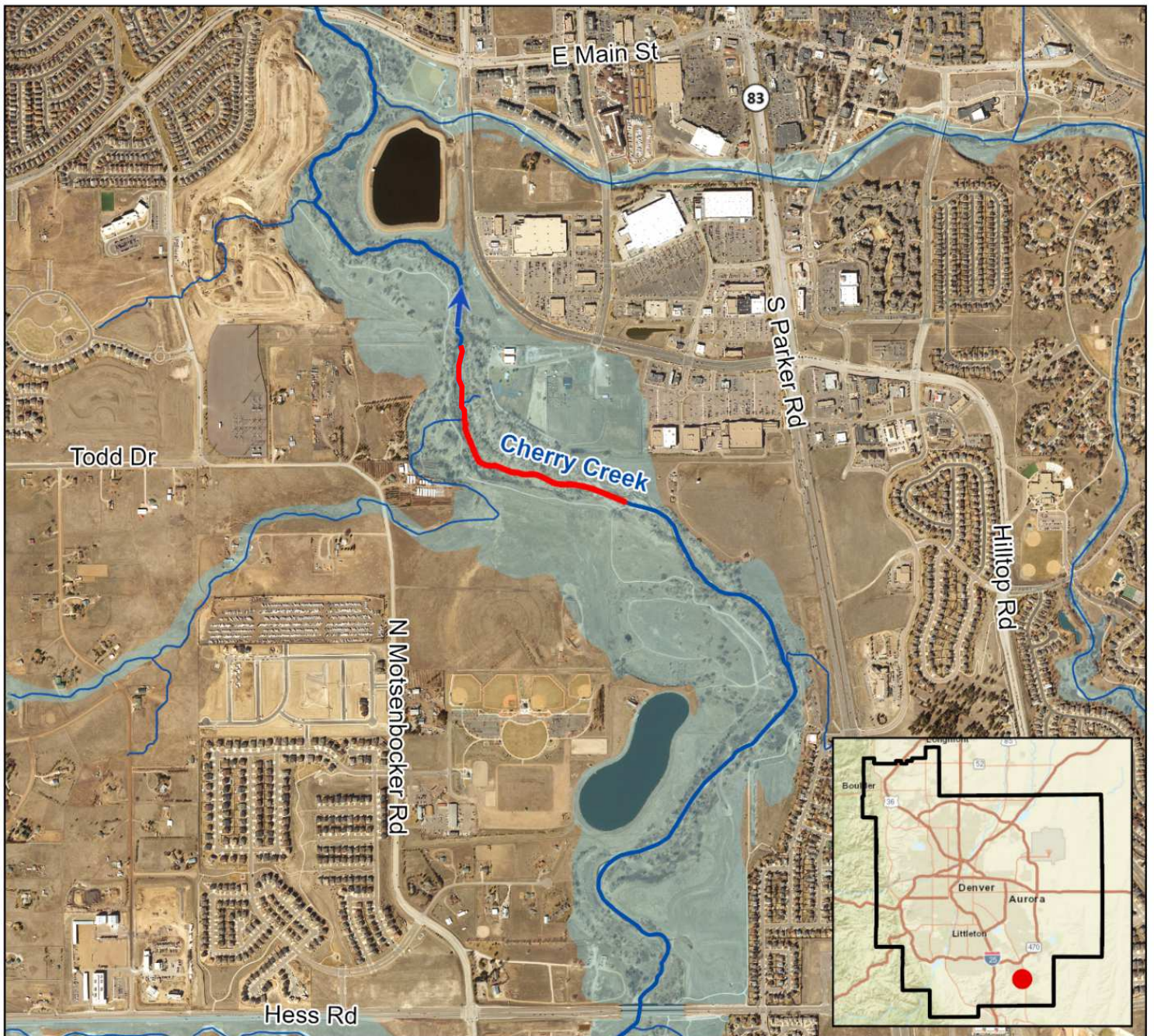
Cherry Creek at Dransfeldt



0 0.13 0.25 Miles

— Project Limits Floodplain ↑ Flow Direction

Updated 03/04/2021



ORDINANCE NO. 9.334, Series of 2021

TITLE: A BILL FOR AN ORDINANCE APPROVING THE AGREEMENT REGARDING DESIGN AND CONSTRUCTION OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR CHERRY CREEK AT DRANSFELDT ROAD (AGREEMENT NO. 21-05.04 PROJECT NO. 108515) BY AND BETWEEN URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT, THE TOWN OF PARKER AND CHERRY CREEK BASIN WATER QUALITY AUTHORITY

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. The Town Council of the Town of Parker hereby approves the Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for Cherry Creek at Dransfeldt Road (Agreement No. 21-05.04 Project No. 108515) by and between Urban Drainage and Flood Control District d/b/a Mile High Flood District, the Town of Parker and Cherry Creek Basin Water Quality Authority, which is attached hereto as **Exhibit 1** and incorporated herein by this reference, and authorizes the Mayor of the Town to enter into the Agreement on behalf of the Town.

Section 2. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1

AGREEMENT REGARDING DESIGN AND CONSTRUCTION OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR CHERRY CREEK AT DRANSFELDT ROAD TOWN OF PARKER

Agreement No. 21-05.04
Project No. 108515

THIS AGREEMENT, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT"), TOWN OF PARKER (hereinafter called "TOWN"), and CHERRY CREEK BASIN WATER QUALITY AUTHORITY (hereinafter called "CCBWQA") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, DISTRICT, in a policy statement previously adopted, (Resolution No. 14, Series of 1970 and Resolution No. 11, Series of 1973) expressed an intent to assist public bodies which have heretofore enacted floodplain regulation measures; and

WHEREAS, DISTRICT desires to work with CCBWQA to incorporate, when practical, water quality improvements into the drainage and flood control improvements; and

WHEREAS, PARTIES participated in a joint planning study titled "Cherry Creek Corridor – Reservoir to Scott Road, Major Drainageway Planning Preliminary Design Report" by URS Corporation, dated January 2004 (hereinafter called "PLAN"); and

WHEREAS, PARTIES are participating in a Major Drainageway Plan for Cherry Creek upstream of Cherry Creek Reservoir with Muller Engineering Company (hereinafter called "UPDATED PLAN"); and

WHEREAS, PARTIES now desire to proceed with design and construction of drainage and flood control improvements for Cherry Creek at Dransfeldt Road (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT has adopted at a public hearing a Five-Year Capital Improvement Program (Resolution No.67, Series of 2020) for drainage and flood control facilities in which PROJECT was included in the 2021 calendar year; and

WHEREAS, DISTRICT has heretofore adopted a Special Revenue Fund Budget for calendar year 2021 subsequent to public hearing (Resolution No. 64, Series of 2020) which includes funds for PROJECT; and

WHEREAS, DISTRICT's Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 37, Series of 2021); and

WHEREAS, the Town Council of TOWN, Board of Directors of CCBWQA, and Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. SCOPE OF AGREEMENT

This Agreement defines the responsibilities and financial commitments of PARTIES with respect to PROJECT.

2. SCOPE OF PROJECT

- A. Final Design. PROJECT shall include the final design of improvements in accordance with the recommendations defined in PLAN and UPDATED PLAN. Specifically, the final design of facilities shall extend along Cherry Creek from approximately the KOA Tower Property upstream to 2,400 feet downstream, as shown on Exhibit A.
- B. Construction. PROJECT shall include construction by DISTRICT of the drainage and flood control improvements as set forth in the final design including vegetation establishment.

3. PUBLIC NECESSITY

PARTIES agree that the work performed pursuant to this Agreement is necessary for the health, safety, comfort, convenience, and welfare of all the people of the State, and is of particular benefit to the inhabitants of PARTIES and to their property therein.

4. PROJECT COSTS AND ALLOCATION OF COSTS

- A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:
1. Final design services;
 2. Construction of improvements;
 3. Contingencies mutually agreeable to PARTIES.
- B. It is understood that PROJECT costs as defined above are not to exceed \$370,000 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

<u>ITEM</u>	<u>AMOUNT</u>
1. Final Design	\$ 370,000
2. Construction *	\$ -0-
3. Contingency	\$ -0-
Grand Total	\$ 370,000

* It is anticipated that funds for construction shall be added to this Agreement at a future time by a Contract Amendment executed by all Parties.

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest, if applicable.

- C. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

	<u>Percentage Share</u>	<u>Maximum Contribution</u>
DISTRICT	16%	\$60,000
TOWN	68%	\$250,000
CCBWQA	16%	\$60,000
TOTAL	100%	\$370,000

- D. DISTRICT and TOWN acknowledge that (i) CCBWQA does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) It is understood and agreed that notwithstanding any other provision contained herein to the contrary, any additional contribution obligation of CCBWQA hereunder, whether direct or contingent, shall extend only to funds duly and lawfully appropriated and encumbered by the Board of Directors of CCBWQA for the purposes of the Agreement, and paid into the Treasury of CCBWQA, and shall under no circumstances exceed \$60,000 without CCBWQA's prior express written consent.

5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's one-half share may come from its own revenue sources or from funds received from state, federal or other sources of funding without limitation and without prior DISTRICT approval.

Payment of each party's full share (TOWN - \$250,000; CCBWQA - \$60,000 DISTRICT - \$60,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to TOWN AND CCBWQA of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares; or, at TOWN AND CCBWQA request, TOWN AND CCBWQA share of remaining monies shall be transferred to another special fund held by DISTRICT.

6. FINAL DESIGN

The contracting officers for PARTIES, as defined under Paragraph 13 of this Agreement, shall select an engineer mutually agreeable to both PARTIES. DISTRICT shall contract with selected

engineer and shall supervise and coordinate the final design including right-of-way delineation subject to approval of the contracting officer for TOWN. Payment for final design shall be made by DISTRICT as the work progresses from the PROJECT fund established as set forth above.

Final design services shall consist of, but not be limited to, the following:

- A. Preparation of a work plan schedule identifying the timing of major elements in the design;
- B. Preparation of detailed construction plans and specifications;
- C. Preparation of an estimate of probable construction costs of the work covered by the plans and specifications;
- D. Preparation of an appropriate construction schedule.

DISTRICT shall provide any written work product by the engineer to TOWN AND CCBWQA.

7. OWNERSHIP OF PROPERTY AND LIMITATION OF USE

PARTIES acknowledge that TOWN owns the property on which PROJECT is constructed either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the right-of-way is being used for drainage and flood control purposes. The properties upon which PROJECT is constructed shall not be used for any purpose that shall diminish or preclude its use for drainage and flood control purposes. TOWN may not dispose of or change the use of the properties to diminish or preclude its use for drainage and flood control purposes without approval of DISTRICT, which shall not be unreasonably withheld.

If, in the future, TOWN disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement; changes the use to diminish or preclude its use for drainage and flood control purposes of any portion or all of the properties upon which PROJECT is constructed pursuant to this Agreement; or modifies any of the improvements located on any portion of the properties upon which PROJECT is constructed to diminish or preclude its use for drainage and flood control purposes pursuant to this Agreement; and TOWN has not obtained the written approval of DISTRICT prior to such action, TOWN shall take any and all action necessary within their legal authority to reverse said unauthorized activity and return the properties and improvements thereon, acquired and constructed pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at no expense to DISTRICT. However, TOWN shall not be responsible for the actions of third parties that would violate the provisions of this Paragraph who may have legal rights in the property as long as TOWN has taken reasonable action to stop those actions. In the event TOWN breaches the terms and provisions of this Paragraph 7 and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against TOWN for specific performance of this portion of the Agreement.

8. MANAGEMENT OF CONSTRUCTION

- A. The following provisions shall become effective at such time as this Agreement is amended to provide funds for construction of the PROJECT.

- B. Costs. Construction costs shall consist of those costs as incurred by the most qualified contractor(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 4 of this Agreement.
- B. Construction Management and Payment
1. DISTRICT, with the concurrence of TOWN AND CCBWQA, shall administer and coordinate the construction-related work as provided herein.
 2. DISTRICT, with concurrence of TOWN AND CCBWQA, shall select and award construction contract(s).
 3. DISTRICT shall require the contractor to provide adequate liability insurance that includes TOWN and CCBWQA. The contractor shall be required to indemnify TOWN and CCBWQA. Copies of the insurance coverage shall be provided to TOWN upon request.
 4. DISTRICT, with assistance of TOWN AND CCBWQA, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct PROJECT. DISTRICT, with assistance of TOWN AND CCBWQA, shall assure that construction is performed in accordance with the construction contract documents including approved plans and specifications and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to TOWN AND CCBWQA on a weekly basis upon request. DISTRICT shall retain an engineer to perform all or a part of these duties.
 5. DISTRICT, with concurrence of TOWN AND CCBWQA, shall contract with and provide the services of the design engineer for basic engineering construction services to include addendum preparation; survey control points; explanatory sketches; revisions of contract plans; shop drawing review; as-built plans; weekly inspection of work; and final inspection.
 6. PARTIES shall have access to the site during construction at all times to observe the progress of work and conformance to construction contract documents including plans and specifications.
 7. DISTRICT shall review and approve contractor billings.. DISTRICT shall remit payment to contractor based on billings.
 8. DISTRICT, with concurrence of TOWN AND CCBWQA, shall prepare and issue all written change or work orders to the contract documents.
 9. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.
 10. DISTRICT shall provide TOWN AND CCBWQA a set of reproducible "as-built" plans.
- C. Construction Change Orders. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under the contract(s), such changes shall be

rejected or approved in writing by the contracting officers. No change orders shall be approved that increase the costs beyond the funds available in the PROJECT fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES.

9. MAINTENANCE

PARTIES agree that TOWN shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at TOWN's request, shall assist TOWN with the maintenance of all facilities constructed or modified by virtue of this Agreement to the extent possible depending on availability of DISTRICT funds. Such maintenance assistance shall be limited to drainage and flood control features of PROJECT. Maintenance assistance may include activities such as keeping flow areas free and clear of debris and silt, keeping culverts free of debris and sediment, repairing drainage and flood control structures such as drop structures and energy dissipaters, and clean-up measures after periods of heavy runoff. The specific nature of the maintenance assistance shall be set forth in a memorandum of understanding from DISTRICT to TOWN, upon acceptance of DISTRICT's annual Maintenance Work Program.

DISTRICT shall have right-of-access to right-of-way and storm drainage improvements at all times for observation of flood control facility conditions and for maintenance when funds are available.

10. FLOODPLAIN REGULATION

TOWN agrees to regulate and control the floodplain of Cherry Creek within TOWN in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum.

PARTIES understand and agree, however, that TOWN cannot obligate itself by contract to exercise its police powers. If TOWN fails to regulate the floodplain of Cherry Creek within TOWN in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum, DISTRICT may exercise its power to do so and TOWN shall cooperate fully.

11. TERM OF AGREEMENT

The term of this Agreement shall commence upon execution and shall terminate three (3) years after the final payment is made to the construction contractor and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 5 herein, except for Paragraph 10. FLOODPLAIN REGULATION, Paragraph 7.C. Ownership of Property and Limitation of Use, and Paragraph 9. MAINTENANCE, which shall run in perpetuity.

12. LIABILITY

Each party hereto shall be responsible for any suits, demands, costs or actions at law resulting from its own acts or omissions and may insure against such possibilities as appropriate.

13. CONTRACTING OFFICERS

A. The contracting officer for TOWN shall be the Public Works of Engineering Director, 20120 East Main Street, Parker, Colorado 80138.

- B. The contracting officer for CCBWQA shall be the Authority Manager, P.O. Box 3166, Centennial, Colorado 80161.
 - C. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.
 - D. The contracting officers for PARTIES each agree to designate and assign a PROJECT representative to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT or TOWN. Said representatives shall have the authority for all approvals, authorizations, notices or concurrences required under this Agreement. However, in regard to any amendments or addenda to this Agreement, said representative shall be responsible to promptly obtain the approval of the proper authority.
14. RESPONSIBILITIES OF PARTIES
- DISTRICT shall be responsible for coordinating with TOWN AND CCBWQA the information developed by the various consultants hired by DISTRICT and for obtaining all concurrences from TOWN AND CCBWQA needed to complete PROJECT in a timely manner. TOWN AND CCBWQA agree to review all concept plans, preliminary design plans, and final plans and specifications; and to provide comments within 21 calendar days after the drafts have been provided by DISTRICT to TOWN AND CCBWQA.
15. AMENDMENTS
- This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.
16. SEVERABILITY
- If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.
17. APPLICABLE LAWS
- This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Jurisdiction for any and all legal actions regarding this Agreement shall be in the State of Colorado and venue for the same shall lie in the county where PROJECT is located.
18. ASSIGNABILITY
- No party to this Agreement shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the nonassigning party or parties to this Agreement.
19. BINDING EFFECT
- The provisions of this Agreement shall bind and shall inure to the benefit of PARTIES hereto and to their respective successors and permitted assigns.

20. ENFORCEABILITY

PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

21. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) days' written notice by any party to this Agreement, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon the cancellation of all contingent, outstanding contracts. All costs associated with the cancellation of the contingent contracts shall be shared between PARTIES in the same ratio(s) as were their contributions.

22. PUBLIC RELATIONS

It shall be at TOWN's sole discretion to initiate and to carry out any public relations program to inform the residents in PROJECT area as to the purpose of PROJECT and what impact it may have on them. Technical information shall be presented to the public by the selected engineer. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist TOWN as needed and appropriate.

23. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this Agreement, PARTIES agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified because of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, gender identity, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

24. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of TOWN AND CCBWQA and/or DISTRICT stated in this Agreement is subject to the requirement of a prior appropriation of funds therefore by the appropriate governing body of TOWN AND CCBWQA and/or DISTRICT.

25. NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to PARTIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of PARTIES that any person or party other than any one of PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

26. ILLEGAL ALIENS

PARTIES agree that any public contract for services executed as a result of this intergovernmental agreement shall prohibit the employment of illegal aliens in compliance with §8-17.5-101 C.R.S. *et seq.* The following language shall be included in any contract for public services:

- A. At the time of execution of this Agreement, CONTRACTOR does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
- B. CONTRACTOR shall participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- C. CONTRACTOR shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- D. CONTRACTOR shall not enter into a contract with a subconsultant or subcontractor that fails to certify to CONTRACTOR that it shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- E. CONTRACTOR shall confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in the E-Verify Program.
- F. CONTRACTOR is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligation under this Agreement, and that otherwise requires CONTRACTOR to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- G. If CONTRACTOR obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contract with an illegal alien, it will notify such subconsultant or subcontractor and PARTIES within three (3) days. CONTRACTOR shall also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three (3) day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
- H. CONTRACTOR shall comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.
- I. CONTRACTOR shall, within twenty days after hiring an employee who is newly hired for employment to perform work under this Agreement, affirms that it has examined the legal work status of such employees, retained file copies of the documents required by 8 U.S.C. Section 1324a, and not altered or falsified the identification documents for such employees. CONTRACTOR shall provide a written, notarized copy of the affirmation to PARTIES.

27. GOVERNMENTAL IMMUNITIES

PARTIES hereto intend that nothing herein shall be deemed or construed as a waiver by any party of any rights, limitations, or protections afforded to them under the Colorado Governmental

Immunity Act (§ 24-10-101, *et seq.*, C.R.S.) as now or hereafter amended or otherwise available at law or equity.

28. INTENT OF AGREEMENT

Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between PARTIES and is not intended to and shall not be deemed to confer rights upon any person or entities not named as PARTIES, nor to limit in any way the powers and responsibilities of TOWN, CCBWQA, and DISTRICT or any other entity not a party hereto.

29. EXECUTION IN COUNTERPARTS – ELECTRONIC SIGNATURES

This Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement, may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. PARTIES approve the use of electronic signatures for execution of this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement. Only the following two forms of electronic signatures shall be permitted to bind PARTIES to this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement.

- A. Electronic or facsimile delivery of a fully executed copy of a signature page; or
- B. The image of the signature of an authorized signer inserted onto PDF format documents.

Documents requiring notarization may also be notarized by electronic signature, as provided above.

All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24-71.3-101 to -121.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first above written.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year written below.

URBAN DRAINAGE AND FLOOD
CONTROL DISTRICT D/B/A
MILE HIGH FLOOD DISTRICT

By _____

Name Ken A. MacKenzie

Title Executive Director

Date _____

Checked By

TOWN OF PARKER

Jeff Toborg, Mayor

Date_____

ATTEST:

Town Clerk's Office

APPROVED AS TO FORM AND SUFFICIENCY:

Town Attorney's Office

CHERRY CREEK BASIN
WATER QUALITY AUTHORITY

By_____

Name_____

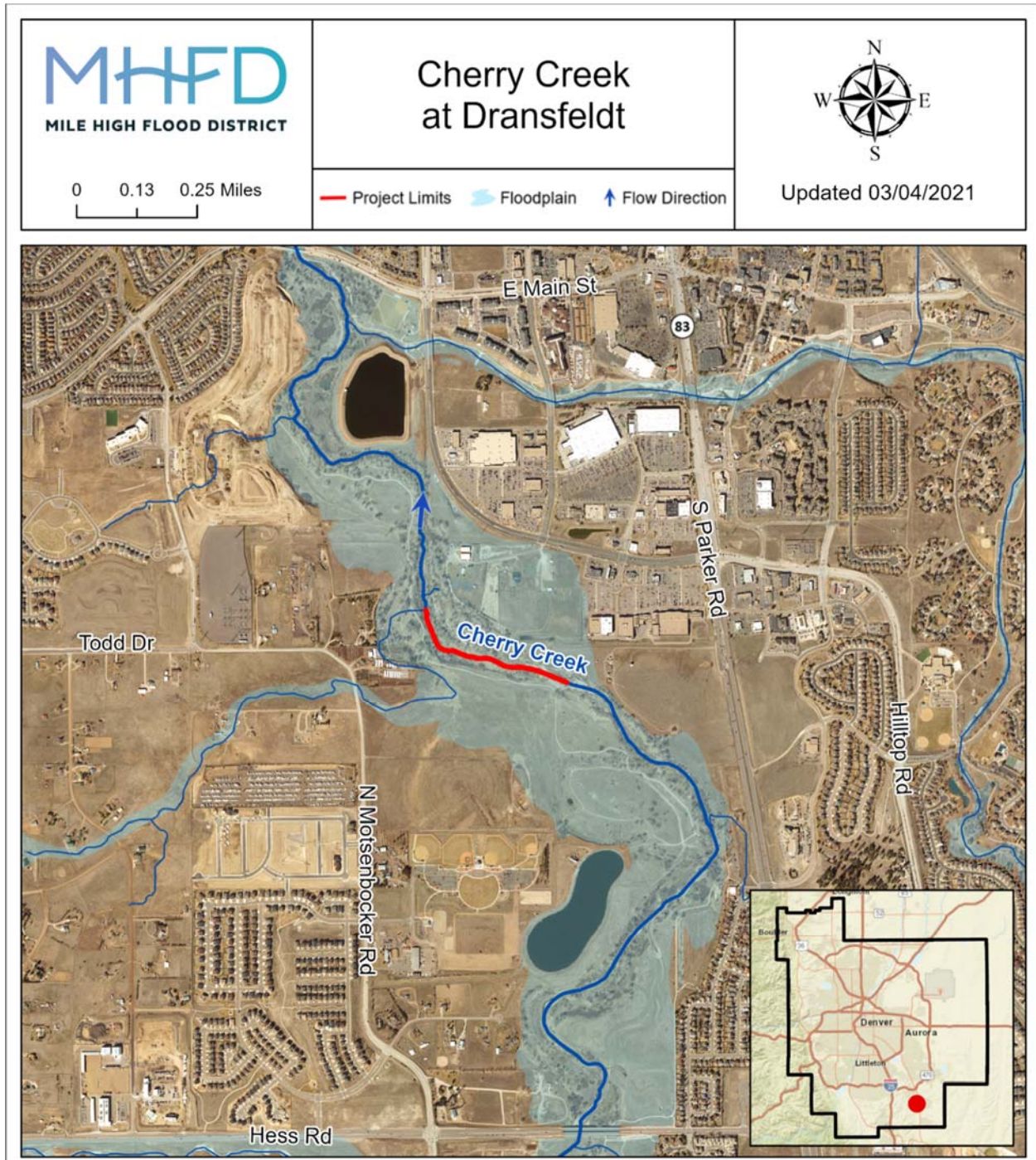
Title_____

Date_____

AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
CHERRY CREEK AT DRANSFELDT ROAD

Agreement No. 21-05.04

Exhibit A





Request for Town Council Action

Date: June 7, 2021

Submitted By: Dennis Trapp, Projects Administrator

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 1.390.1 - Second Reading**
A Bill for an Ordinance to Approve Amendment #2 to Deed of Conservation Easement for the 17 Mile House property by and between the Board of County Commissioners of the County of Arapahoe, State of Colorado and the Town of Parker

EXECUTIVE SUMMARY

The second amendment to the Deed of Conservation Easement for the 17-Mile House property will allow the construction of the High Plains Trail (HPT) overcrossing of Parker Road and connecting to the existing Cherry Creek Trail on the west side of Parker Road. This trail project is a collaborative effort among Arapahoe County, Douglas County, the City of Aurora, the Town of Parker, GOCO (Great Outdoors Colorado), and the E-470 Authority. This trail segment will complete a significant gap in the eastern Denver metro area's trail system.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The second amendment to the Deed of Conservation Easement for the 17-Mile House property will allow the construction of the High Plains Trail (HPT) on the west side of Parker Road. This construction will include the western bridge abutment along with the HPT connection to the Cherry Creek Regional Trail near the western side of the 17-Mile House property. This trail project is a collaborative effort among Arapahoe County, Douglas County, GOCO (Great Outdoors Colorado), the City of Aurora, the Town of Parker, the E-470 Authority, and CDOT, to complete a significant gap in the eastern Denver metro area's trail system. The new one-mile trail segment will begin at the southern end of the High Plains Trail (adjacent to E-470 at the Arapahoe/Douglas County line) continue west across the future King's Point development, cross Parker Road via a grade-separated pedestrian overpass, and then cross the southern edge of the 17 Mile House property to connect with the Cherry Creek Regional Trail. Approximately 1.84 acres of the 17 Mile House property will be affected by the western landing of the overpass and the new connection to the existing trail along the southern edge of the property. See Exhibits A and B to the attachment for the approximate location of the trail and overpass landing, and a rendering of the finished trail overcrossing.

The overpass landing on the 17-Mile House site is designed to minimize impact on the

property's scenic, natural, and open space values. A long trail ramp is required due the height of the bridge landing and the existing grades on site; however, the current design minimizes the overall footprint by creating a looped ramp that also meets ADA requirements. The design of the earthen mound also minimizes visual impacts with a landscape plan that includes xeric, drought-resistant perennials, along with other native plantings, plus strategically placed rock outcroppings. The design also includes a small pull-out/overlook area near the top of the earthen mound with views to the west and the front range. Interpretive signage highlighting the various conservation values of the site along with a short history of the 17 Mile House property will be part of this overlook area.

The HPT is currently going through final design in addition to review and clearance through CDOT since the proposed bridge structure spans Parker Road, a CDOT state highway. It is anticipated that final engineering design and clearances through CDOT will be completed by the end of 2021 with construction of the trail and overcrossing in 2022/23.

FINANCIAL IMPACT

Long-term maintenance of the High Plains Trail, including the bridge structure overcrossing of Parker Road, will be addressed as part of a subsequent intergovernmental maintenance agreement between Arapahoe County, City of Aurora, and the Town of Parker. This maintenance agreement will address not only the actual bridge structure but the full length of the HPT from the E-470 Tollway on the east to the connection to the Cherry Creek Regional Trail on the west, approximately one mile.

The second amendment to the Deed of Conservation Easement for the 17 Mile House does not have any financial impacts. The Town will continue to "hold" this easement as Grantee while Arapahoe County will continue to maintain the property as Grantor consistent with the requirements of the conservation easement. The Town monitors maintenance of the property and reviews any proposed uses on site to ensure consistency with the requirements of the conservation easement. While there are Town of Parker staff resources used in these efforts, there are no direct financial impacts to the Town.

STRATEGIC GOAL(S)



**INNOVATE WITH
COLLABORATIVE
GOVERNANCE**



**SUPPORT AN
ACTIVE COMMUNITY**



**DEVELOP A VISIONARY
COMMUNITY THROUGH
BALANCED GROWTH**

ATTACHMENTS

1. Ordinance No. 1.390.1

RECOMMENDED MOTION

I move to approve Ordinance No. 1.390.1 on second reading.

ORDINANCE NO. 1.390.1, Series of 2021

TITLE: A BILL FOR AN ORDINANCE TO APPROVE AMENDMENT #2 TO DEED OF CONSERVATION EASEMENT (17 MILE HOUSE) BY AND BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPAHOE AND THE TOWN OF PARKER

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. The Town Council of the Town of Parker hereby approves Amendment #2 to Deed of Conservation Easement (17 Mile House) by and between the Board of County Commissioners of the County of Arapahoe and the Town of Parker, which is attached hereto as **Exhibit 1** and incorporated herein by this reference, and authorizes the Mayor of the Town to enter into the Agreement on behalf of the Town.

Section 2. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1

AMENDMENT #2 TO DEED OF CONSERVATION EASEMENT (17 Mile House)

This Amendment #2 to Deed of Conservation Easement is made this _____ day of _____, 2021 by and between the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPAHOE, STATE OF COLORADO ("Grantor"), the TOWN OF PARKER, STATE OF COLORADO ("Grantee"), and collectively referred to as "the Parties."

WHEREAS, Grantor is the sole owner of certain real property containing approximately 29.37 acres, located in Arapahoe County, Colorado, as more particularly described in the attached Exhibit A (the "Property");

WHEREAS, the Property is subject to a "Deed of Conservation Easement" dated March 27, 2001, and recorded at Reception Number B1044531 in the property records of the Arapahoe County Clerk and Recorder ("Conservation Easement");

WHEREAS, pursuant to Section 22.k. of the Conservation Easement, the Conservation Easement may be freely amended by the Parties, with the written approval of the State Board of the Great Outdoors Colorado Trust Fund ("Board");

WHEREAS, the Parties entered into "Amendment #1 to Deed of Conservation Easement" dated July 11, 2011, and recorded on July 29, 2011, at Reception Number D1072094 in the property records of the Arapahoe County Clerk and Recorder;

WHEREAS, the Parties desire to amend the Conservation Easement in order to permit Grantor to install additional trails and other improvements on the Property, in a manner which is consistent with the purposes of the Conservation Easement.

NOW, THEREFORE, the Parties mutually agree to amend the Conservation Easement as follows:

1. Section 5 a. of the Conservation Easement is amended to add a new subsection "iii." as follows:

"iii. Other Improvements. Notwithstanding any other language in this Easement to the contrary, the following improvements may be constructed on the Property, all as generally depicted on the attached **Replacement Exhibits B and C**: 1) a portion of an approximately 10' wide hard surface (concrete) trail connecting the Norton Farms property (the parcel immediately to the south of the Property) with the Cherry Creek Regional Trail, to be constructed adjacent to the southern boundary of the Property ("Norton Farms Connection Trail"), 2) a two track soft surface (crusher fines) trail, with each track being approximately 3' wide, connecting the Historic Facade Property to the Norton Farms Connection Trail, to be constructed generally along the alignment of the historic Smokey Hill Trail, 3) an approximately 8' wide soft surface (crusher fines) trail connecting the Historic Facade Property to the Norton Farms Connection Trail at a location near its intersection with the Cherry Creek Regional Trail, 4) the Farm Park

improvements identified in the "17 Mile House Farm Park Master Plan" dated October 2007 that are outside of the boundary of the Historic Facade Property in the "Farm Park Buffer Conservation Zone," the type and general location of which are identified on the attached Replacement Exhibits B and C, and 5) High Plains Trail overpass landing area and High Plains Trail that will connect to the Cherry Creek Regional Trail to be constructed on the southern portion of the Property and will occupy approximately 1.84 acres of the Property (the "High Plains Trail Project"). In addition, all of the improvements described in this subsection shall be maintained in the manner provided by the Management Plan as provided by Paragraph 4."

2. The first sentence of Section 5 h. of the Conservation Easement is amended to state:

"With the exception of the Cherry Creek Regional Trail, a trail connecting the Historic Facade Property to the Cherry Creek Regional Trail, and the portion of the Norton Farms Connection Trail that was constructed on the Property and the portion of the High Plains Trail Project that is to be constructed on the Property, no other portions of the Property shall be paved or otherwise covered with concrete, asphalt, or any other paving material unless written approval as to the location, extent and materials is first obtained from the Grantee pursuant to Section 5 a. iii. above, and the construction shall be done in such a way as to minimize impairment of the Conservation Values of the Property."

3. Except as specifically amended herein, all provisions of the Conservation Easement shall remain in full force and effect. Nothing in this amendment shall be construed as affecting the Conservation Easement's perpetual duration.

IN WITNESS WHEREOF Grantor and Grantee have executed this Amendment #2 to Deed of Conservation Easement on the day and year first above written.

**GRANTOR: THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF ARAPAHOE,
STATE OF COLORADO**

BY: Shannon Carter
Shannon Carter on behalf of the Board of County
Commissioners pursuant to Resolution #190444

ATTEST: 
Deputy Clerk

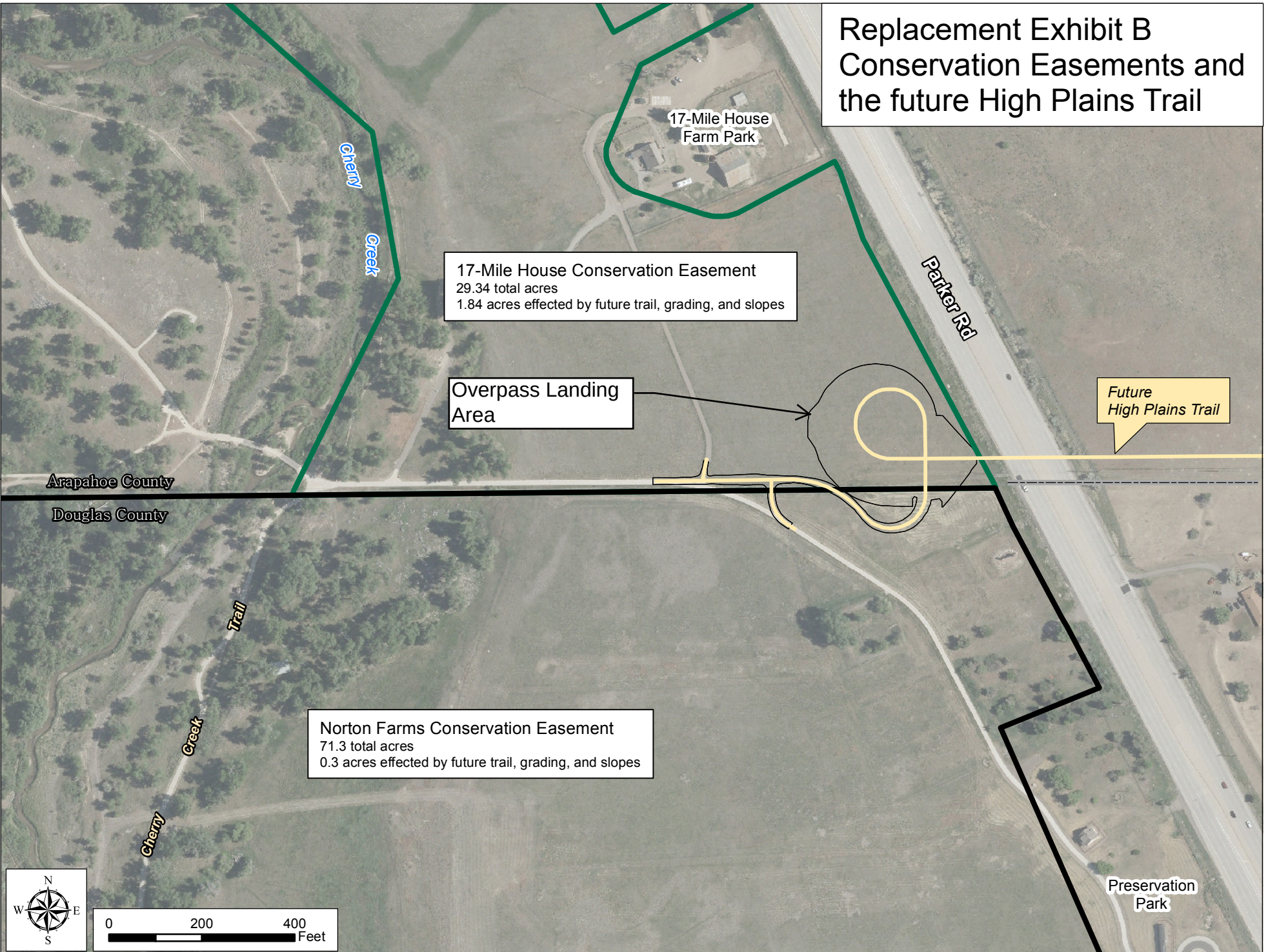
Karl Herrmann, Chief Deputy Clerk and
Recorder

GRANTEE: TOWN OF PARKER

BY: _____
Jeff Toborg, Mayor

ATTEST: _____
Chris Vanderpool, Deputy Town Clerk

Replacement Exhibit B Conservation Easements and the future High Plains Trail



REPLACEMENT EXHIBIT C





Request for Town Council Action

Date: June 7, 2021

Submitted By: Dennis Trapp, Projects Administrator

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 1.264.2 - Second Reading**
A Bill for an Ordinance to Approve the First Amendment to the Second Revised and Restated Deed of Conservation Easement (Norton Property - Douglas County, Colorado) by and between the Town of Parker and Board of County Commissioners of the County of Douglas, State of Colorado

EXECUTIVE SUMMARY

The first amendment to the Deed of Conservation Easement for the Norton property will allow the construction of the High Plains Trail (HPT) overcrossing of Parker Road and connecting to the existing Cherry Creek Trail on the west side of Parker Road. This amendment is necessitated since several new short trail segments of the HPT lie within the boundary of the Norton Conservation Easement. This trail project is a collaborative effort among Arapahoe County, Douglas County, the City of Aurora, the Town of Parker, GOCO (Great Outdoors Colorado), and the E-470 Authority. This trail segment will complete a significant gap in the eastern Denver metro area's trail system.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The proposed amendment to the Deed of Conservation Easement for the Norton property is necessitated to allow the construction of a portion of the HPT on the west side of Parker Road. This construction will include a short 10' wide concrete trail connection loop just south of the County Line on the Norton Property in addition to another short 10' wide concrete trail connection to the existing Preservation Park Trail (see Exhibit A to the attachment).

Approximately 0.3 acres of the Norton Farms Conservation Easement area will be impacted by the HPT segments noted above. This impact includes the actual future trail plus grading and slopes adjacent to the trail. The HPT project is a collaborative effort among Arapahoe County, Douglas County, GOCO (Great Outdoors Colorado), the City of Aurora, the Town of Parker, the E-470 Authority, and CDOT, to complete a significant gap in the eastern Denver metro area's trail system. The new one-mile trail segment will begin at the southern end of the HPT (adjacent to E-470 at the Arapahoe/Douglas County line) continue west across the future King's Point development, cross Parker Road via a grade-separated pedestrian overpass, and then cross the southern edge of the 17 Mile House property to connect with the Cherry Creek Regional

Trail.

FINANCIAL IMPACT

Long-term maintenance of the HPT, including the bridge structure overcrossing of Parker Road, will be addressed as part of a subsequent intergovernmental maintenance agreement between Arapahoe County, City of Aurora, and the Town of Parker. This maintenance agreement will address not only the actual bridge structure but the full length of the HPT from the E-470 Tollway on the east to the connection to the Cherry Creek Regional Trail on the west, approximately one mile.

The amended Norton Conservation Easement for the Norton property does not have any significant financial impacts. Douglas County will continue to "hold" this easement as Grantee while the Town of Parker will continue to maintain the property as Grantor consistent with the requirements of the conservation easement. Douglas County monitors maintenance of the property annually and reviews any proposed uses on-site to ensure consistency with the requirements of the conservation easement. While there are Town of Parker staff resources used in these maintenance efforts, yearly funding is allocated as part of the normal annual budget appropriation process. The main budgetary item for maintenance is weed control and spraying, along with minor boundary fence repair as needed. Annual maintenance costs for the property are approximately \$3,500.

STRATEGIC GOAL(S)



**INNOVATE WITH
COLLABORATIVE
GOVERNANCE**



**SUPPORT AN
ACTIVE COMMUNITY**



**DEVELOP A VISIONARY
COMMUNITY THROUGH
BALANCED GROWTH**

ATTACHMENTS

1. Ordinance No. 1.264.2

RECOMMENDED MOTION

I move to approve Ordinance No. 1.264.2 on second reading.

ORDINANCE NO. 1.264.2, Series of 2021

TITLE: A BILL FOR AN ORDINANCE TO APPROVE THE FIRST AMENDMENT TO THE SECOND REVISED AND RESTATED DEED OF CONSERVATION EASEMENT (NORTON PROPERTY - DOUGLAS COUNTY, COLORADO) BY AND BETWEEN THE TOWN OF PARKER AND BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. The Town Council of the Town of Parker hereby approves the "First Amendment to the Second Revised and Restated Deed of Conservation Easement (Norton Property - Douglas County, Colorado)" between the Town of Parker, State of Colorado, as the "Grantor" and the Board of County Commissioners of the County of Douglas, State of Colorado, which is attached hereto as **Exhibit 1** and incorporated herein by this reference, and authorizes the Mayor of the Town to enter into the Agreement on behalf of the Town.

Section 2. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1

NOTICE: THIS PROPERTY HAS BEEN ACQUIRED IN PART WITH GRANT #00075 ("GRANT") FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND ("BOARD"). THIS DEED OF CONSERVATION EASEMENT CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY WHICH ARE INTENDED TO PROTECT ITS OPEN SPACE AND OTHER CONSERVATION VALUES. THE BOARD HAS FOUND THAT THIS DEED OF CONSERVATION EASEMENT PROVIDES BENEFITS THAT ARE IN THE PUBLIC INTEREST.

FIRST AMENDMENT TO THE SECOND REVISED AND RESTATED DEED OF CONSERVATION EASEMENT (Norton Property – Douglas County, Colorado)

THIS FIRST AMENDMENT TO THE SECOND REVISED AND RESTATED DEED OF CONSERVATION EASEMENT (the "First Amendment") is made this ____ day of _____, 2021, by the **TOWN OF PARKER** whose address is 20120 East Mainstreet, Parker, Colorado 80138 (the "Grantor"), in favor of the **BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO**, whose address is 100 Third Street, Castle Rock, Colorado 80104 (the "Grantee").

RECITALS

A. On June 14, 2011, the Grantor and Grantee entered into the Second Revised and Restated Conservation Easement (the "Conservation Easement").

B. The Grantor and Grantee desire to amend the Conservation Easement to provide for the construction and maintenance of a portion of the High Plains Trail to be located on the Property.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants, terms, conditions, restrictions, and requirements contained herein, the sufficiency of which are mutually acknowledged, the Grantor and Grantee agree to this First Amendment as follows:

Section 1. Section 3., Subsection a)i), and Paragraphs g) and r) of the Conservation Easement are amended to read as follows:

3. Uses of Easement Property. The Property shall be used only for conservation, wildlife habitat, and passive recreational uses, or the other uses permitted herein. Any other activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are permitted or prohibited as expressly stated below:

a) Construction of Buildings and Other Structures. The construction or reconstruction of any building or other structure or improvement is prohibited except as otherwise provided herein. The following structures and improvements are permitted on the Property:

i) Structures, Improvements, Trails. No buildings, structures or improvements shall be constructed on the Property, except fencing, minor

recreational structures, such as picnic tables, small shelters, site furniture, such as benches, informational kiosks and signs, monument signs, and recreational trails. Such minor recreational structures and improvements shall be constructed in such a way as to minimize impairment of the Conservation Values of the Property. Recreational trails shall be located in the areas noted on **Replacement Exhibit B**, Trails and Facilities Norton Farms Open Space Map, which is attached hereto and incorporated herein by this reference. All other minor recreational structures shall be located in the "Visitor area" as designated on **Replacement Exhibit B**. Grantor shall obtain the approval of Grantee for such construction of such structures and improvements, which approval Grantee shall not unreasonably withhold.

* * *

g) Paving and Road and Trail Construction. With the exception of the maintenance access road as described on **Replacement Exhibit B**, no portion of the Property shall be paved or otherwise covered in concrete, asphalt, or any other paving materials. Except for such maintenance access road, Grantor shall not construct any new roads on the property. The following hard-surface trails are allowed on the Property as described on **Replacement Exhibit B**: (1) The Cherry Creek Regional Trail (*existing*); (2) the Norton Farms Trailhead Trail Connection, and (3) High Plains Trail overpass landing area, and High Plains Trail and ancillary improvements that will connect to the Cherry Creek Trail to be constructed on the northern portion of the Property and will occupy 0.3 acre of the Property (the "High Plains Trail Project"). The Norton Farms Trailhead Trail Connection shall be 10' in width, paved with concrete and designed in accordance with the design standards and materials used for the Cherry Creek Regional Trail and constructed in an aesthetically pleasing manner so as to minimize impairment of the Conservation Values of the Property. The Grantor and Grantee acknowledge and agree that a portion of this trail is planned to be constructed in Arapahoe County just outside the northern boundary of this conservation easement. The High Plains Trail Project shall be 10' in width, paved with concrete and designed in accordance with the design standards and materials used for the Cherry Creek Regional Trail and constructed in an aesthetically pleasing manner so as to minimize impairment of the Conservation Values of the Property.

* * *

r) Access Easement. Upon the consent of Grantee, which shall not be unreasonably withheld, Grantor may grant an access easement over the Property to the Urban Drainage and Flood Control District for maintenance of drainage facilities and other facilities related to Cherry Creek and construction of the High Plains Trail Project.

* * *

Section 2. Except as specifically amended herein, all provisions of the Conservation Easement shall remain in full force and effect. Nothing in this amendment shall be construed as affecting the Conservation Easement's perpetual duration.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the date set forth above.

GRANTOR: TOWN OF PARKER

BY: _____
Jeff Toborg, Mayor

ATTEST: _____
Chris Vanderpool, Deputy Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by Jeff Toborg, as Mayor of Town of Parker.

My commission expires: _____.

SEAL

Notary Public

**GRANTEE: THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS,
STATE OF COLORADO**

BY: _____
_____, **Chair**

ATTEST: _____
_____, _____ **Clerk**

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

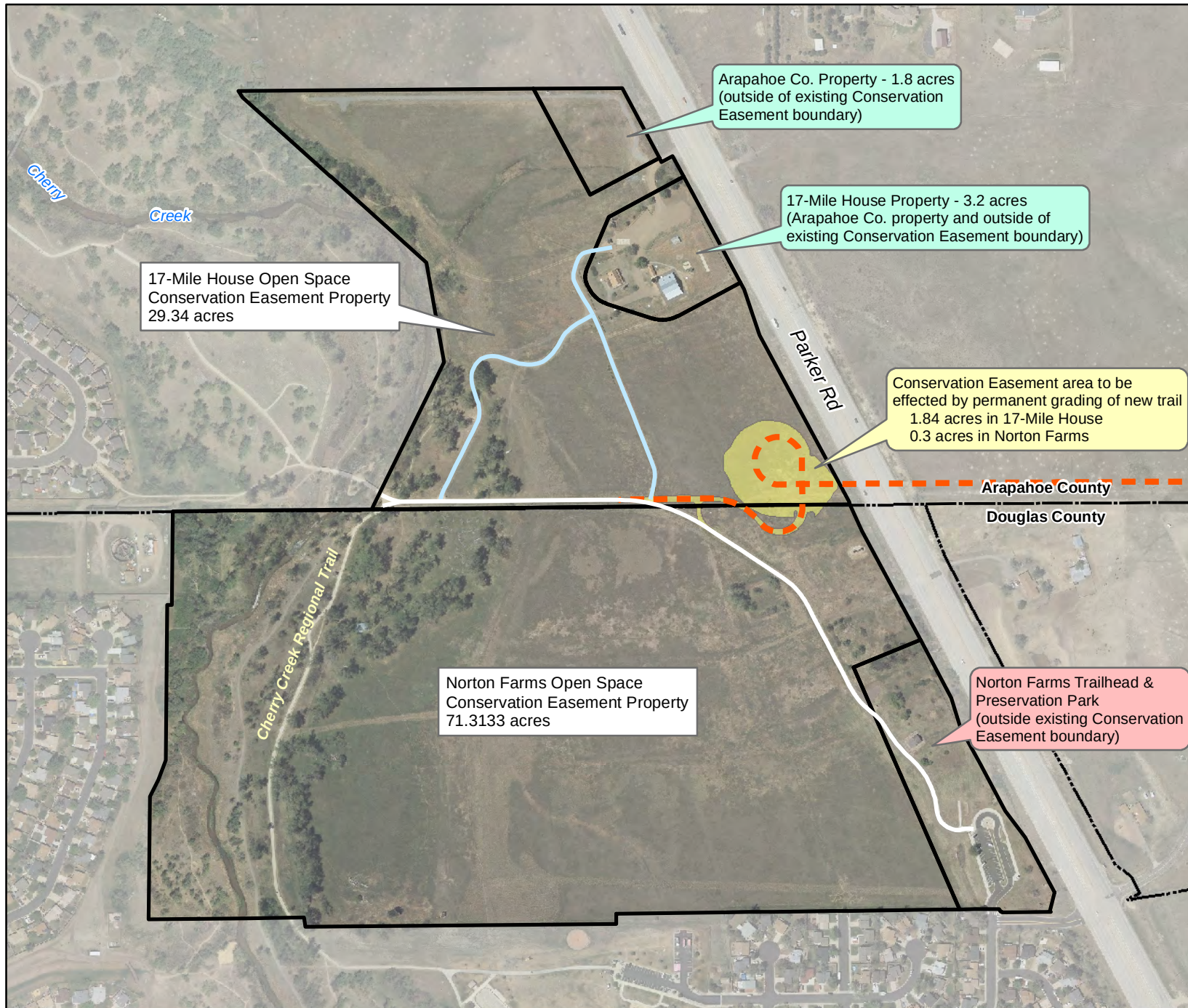
The foregoing instrument was acknowledged before me this ____ of _____, 2021 by _____, as Chair of the Board of County Commissioners of the County of Douglas, Colorado.

My commission expires: _____.

SEAL

Notary Public

Replacement Exhibit B Trails and Facilities Norton Farms Open Space





Request for Town Council Action

Date: June 7, 2021

Submitted By: Dennis Trapp, Projects Administrator

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 9.283.2 - Second Reading**
A Bill for an Ordinance to Approve the Second Amendment to Intergovernmental Agreement Regarding the Design of Improvements to the High Plains Trail by and between the Town of Parker and Arapahoe County Board of County Commissioners

EXECUTIVE SUMMARY

The second amendment to the Intergovernmental Agreement (IGA) regarding the design of improvements to the High Plains Trail (HPT) will memorialize the transfer of monies from Parker to Arapahoe County in the amount of approximately \$1,938,000, which includes prior contributions to the Town from Douglas County and the E-470 Authority. These funds, when combined with other agency contributions, will be used for construction of the High Plains Trail project. This trail project is a collaborative effort among Arapahoe County, Douglas County, City of Aurora, the Town of Parker, GOCO (Great Outdoors Colorado), and the E-470 Authority. This Trail segment will complete a significant gap in the eastern Denver metro area's trail system.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The HPT Partners Group was formed approximately five years ago to coordinate the design, engineering and construction funding of the HPT project. This group consisted of staff representatives from Arapahoe County, Douglas County, Aurora and Parker. In order to more efficiently manage both design and engineering work, including project cost estimating, the one mile length of the HPT was organized into four separate segments, I, II, III, and IV. Exhibit A to this Council Action Form illustrates each of these trail segments. Construction of trail segments I, II, and IV will be funded publicly, while trail segment III will be funded and constructed by the developer of Kings Point, as part of their current conditions of approval imposed by the City of Aurora. The trail within segment III will generally follow along the south side of the future Aurora Parkway as a 10' wide detached concrete surface consistent with the rest of the HPT.

Current, construction cost estimates for segments I, II, and IV, as of March 31, 2021, are shown

below. These estimates include contingencies, construction management, and potential minor contract revisions. Segment I, which includes the actual bridge overcrossing, is the most expensive trail segment.

Segment I	\$6,251,000
Segment II	\$474,000
Segment IV	<u>\$712,000</u>
TOTAL	\$7,437,000

Current funding commitments for the HPT project from other local governmental agencies are listed below.

City of Aurora	\$500,000
Douglas County	\$750,000
Town of Parker	\$750,000
E-470 Authority	\$438,000
Arapahoe County	\$750,000
GOCO Trail Grant	\$2,000,000
DRCOG Funding	<u>\$2,375,000</u>
TOTAL	\$7,563,000

Ultimately, Arapahoe County will serve as the lead agency overseeing the construction of the HPT project, including bidding the project out, contractor selection, permitting, plus construction management oversight. As such a number of funds shown above will need to be transferred to Arapahoe County. The Town of Parker is currently holding both the Douglas County and E-470 Authority contributions. These funds will be combined with Parker's contribution and transferred to Arapahoe County. This totals \$1,938,000 plus accruing interest from the original E-470 Authority contribution. The attached Second Amendment to the IGA Regarding the Design of Improvements to the HPT memorializes the transfer of these funds.

FINANCIAL IMPACT

The Town Council has previously approved our HPT contribution of \$750,000 as part of its annual budget appropriation process.

Long-term maintenance of the High Plains Trail, including the bridge structure overcrossing of Parker Road, will be addressed as part of a subsequent intergovernmental maintenance agreement between Arapahoe County, City of Aurora, and the Town of Parker. This maintenance agreement will address not only the actual bridge structure, but the full length of the HPT from the E-470 Tollway on the east to the connection to the Cherry Creek Regional Trail on the west, approximately one mile.

STRATEGIC GOAL(S)



**INNOVATE WITH
COLLABORATIVE
GOVERNANCE**



**DEVELOP A VISIONARY
COMMUNITY THROUGH
BALANCED GROWTH**



**SUPPORT AN
ACTIVE COMMUNITY**

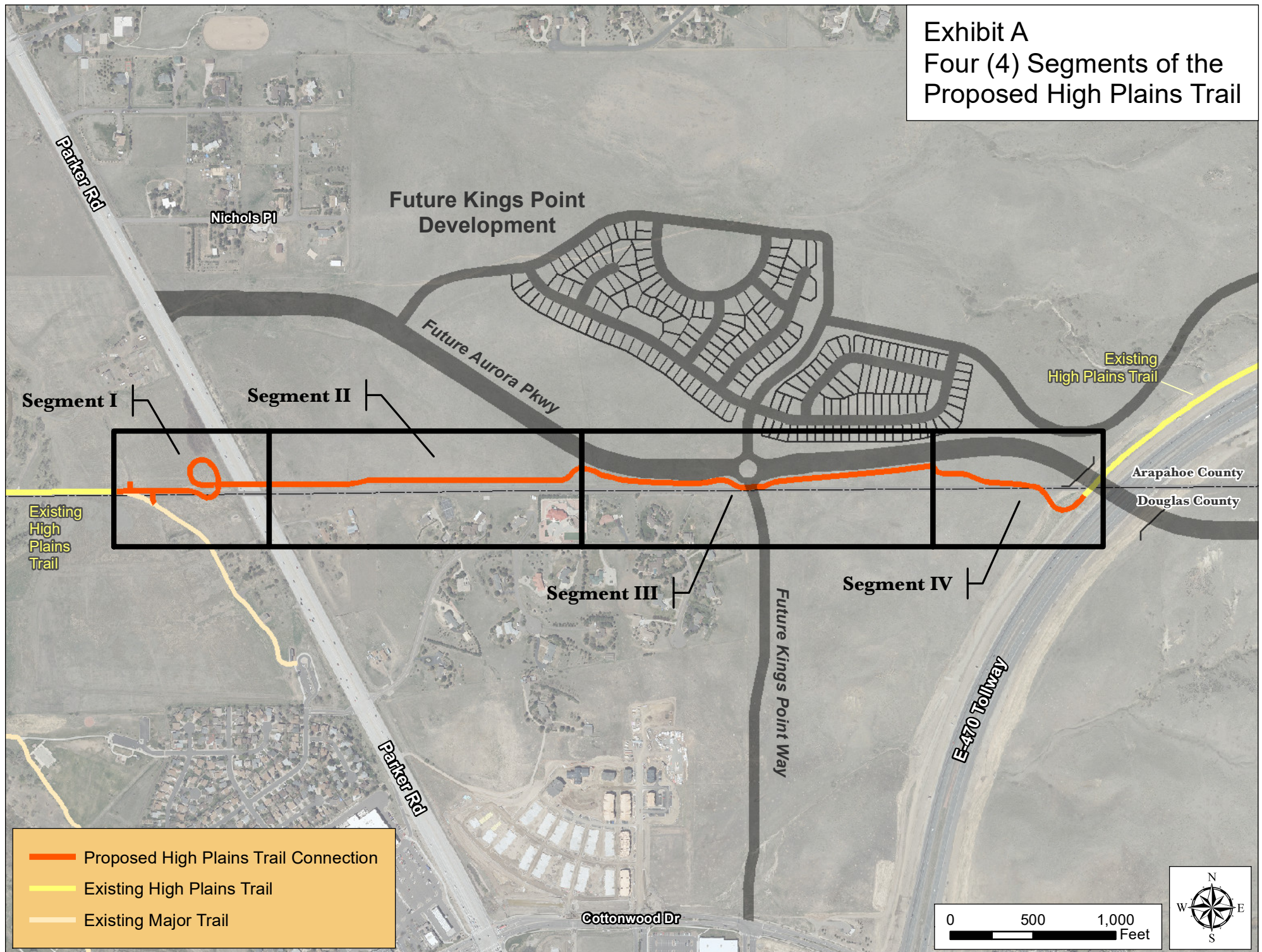
ATTACHMENTS

1. Exhibit A - HPT Segment Map
2. Ordinance No. 9.283.2

RECOMMENDED MOTION

I move to approve Ordinance No. 9.283.2 on second reading.

Exhibit A
Four (4) Segments of the
Proposed High Plains Trail



ORDINANCE NO. 9.283.2, Series of 2021

TITLE: A BILL FOR AN ORDINANCE TO APPROVE THE SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT REGARDING THE DESIGN OF IMPROVEMENTS TO THE HIGH PLAINS TRAIL BY AND BETWEEN THE TOWN OF PARKER AND THE ARAPAHOE COUNTY BOARD OF COUNTY COMMISSIONERS

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. The Town Council of the Town of Parker hereby approves the Second Amendment to Intergovernmental Agreement by and between the Town of Parker and the Arapahoe County Board of County Commissioners concerning the High Plains Trail, which is attached hereto as **Exhibit 1** and incorporated herein by this reference, and authorizes the Mayor of the Town to enter into the Agreement on behalf of the Town.

Section 2. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2021.

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1

SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT REGARDING THE DESIGN OF IMPROVEMENTS TO THE HIGH PLAINS TRAIL

THIS SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT (the “First Amendment”) is made and entered into this _____ day of _____, 2021, by and between the Town of Parker, a Colorado home rule municipality (“Parker”), and the Arapahoe County Board of County Commissioners (“Arapahoe”) (collectively, the “Parties”).

RECITALS:

A. Parker and Arapahoe entered into the Intergovernmental Agreement Regarding the Design of Improvements to the High Plains Trail on January 2, 2019 (the “Agreement”).

B. Parker and Arapahoe entered into the First Amendment to the Agreement on February 3, 2020 (the “First Amendment”).

C. The Agreement, in part, provides for the management of finances and construction of Segments I, II, and IV of the Project described in the Agreement.

D. Paragraph 6 of the Agreement provides for the management of finances.

E. Paragraph 9.A. of the Agreement provides that “[c]onstruction costs, and those items and services included in this cost, will be determined by future amendment to this Agreement . . .”

F. Parker and Arapahoe desire to enter into this Second Amendment to memorialize the process for the management of finances and the allocation in construction costs for the funding contributed by Parker, Douglas County and E-470 Public Highway Authority for Segments I, II, and IV of the Project described in the Agreement.

G. Parker budgeted and appropriated Seven Hundred Fifty Thousand Dollars (\$750,000) of the Total Project Contribution (the “Parker Contribution”).

H. E-470 Public Highway Authority and Parker entered into an intergovernmental agreement on November 21, 2016, whereby the Authority paid Four Hundred Thirty-Eight Thousand Dollars (\$438,000) of the Total Project Contribution to the Town, which has been accruing interest, subject to certain conditions and limitations contained in that intergovernmental agreement (the “470 Contribution”).

I. Douglas County and Parker entered into an intergovernmental agreement on February 16, 2021, whereby Douglas County paid Seven Hundred Fifty Thousand Dollars (\$750,000) of the Total Project Contribution to the Town (the “Douglas County Contribution”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Parties hereto agree to this Second Amendment as follows:

Section 1. Paragraph 6. of the Agreement is hereby amended to provide as follows:

6. MANAGEMENT OF FINANCES.

A. Conceptual and Initial Design. The cost sharing shall be calculated after any state, federal, or other funding from third-party sources are deducted. Payment of each Party's full share (Parker: \$100,000; Arapahoe: \$100,000) for Conceptual and Initial Design of Segments I, II and IV shall be made to Parker subsequent to execution of this Agreement and within thirty (30) days of request for payment by Parker. The payments by the Parties shall be held by Parker in a reserved fund to pay for increments of the Project as authorized by the Parties, and as defined herein. Parker shall provide Arapahoe with a periodic accounting of the Project funds as well as a periodic notification of any unpaid obligations. Any interest earned by the monies contributed by the Parties shall be accrued to the reserved fund established by Parker for the Project and such interest shall be used only for the Project upon approval by the contracting officers identified in Paragraph 14. Within one (1) year of completion of the Project, each party shall receive a share of any remaining monies, including interest earned, that are not committed, obligated, or disbursed. These shares shall be computed as were the original shares. Any disbursement from remaining Project funds must define the reserve fund from which the disbursement will be paid.

B. Final Design Services. The cost sharing shall be calculated after any state, federal, or other funding from third-party sources are deducted. Payment of each Party's full share (Parker: \$180,000; Arapahoe: \$180,000) for Final Design of Segments I, II and IV shall be made to Parker subsequent to execution of this Agreement and within thirty (30) days of request for payment by Parker. The payments by the Parties shall be held by Parker in a reserved fund to pay for increments of the Project as authorized by the Parties, and as defined herein. Parker shall provide Arapahoe with a periodic accounting of the Project funds as well as a periodic notification of any unpaid obligations. Any interest earned by the monies contributed by the Parties shall be accrued to the reserved fund established by Parker for the Project and such interest shall be used only for the Project upon approval by the contracting officers identified in Paragraph 14. Within one (1) year of completion of the Project, each party shall receive a share of any remaining monies, including interest earned, that are not committed, obligated, or disbursed. These shares shall be computed as were the original shares. Any disbursement from remaining Project funds must define the reserve fund from which the disbursement will be paid.

C. Parker/Douglas County/E-470 Public Highway Authority Contributions for the Construction of the Project. The Town shall transfer the Parker Contribution, Douglas County Contribution and 470 Contribution (collectively referred to as the "Parker Construction Contribution") to Arapahoe, upon the satisfaction of the following conditions prior to November 21, 2023 (the "Performance Date"):

(1) The construction contracts to complete the construction of the Project have been signed by Arapahoe, which contracts contain definitive dates for both construction commencement and final completion of the Project.

(2) Arapahoe, Aurora and Parker have expressly allocated, by written agreement, the responsibility for the perpetual maintenance of the Project once completed.

In the event that these two (2) conditions are not satisfied by the Performance Date, Parker shall be released from the obligations contained in this Second Amendment, and Parker will return the Douglas County Contribution to Douglas County and the 470 Contribution to the E-470 Public Highway Authority.

In the event that these two (2) conditions are satisfied by the Performance Date, Parker shall pay Arapahoe the Parker Construction Contribution, within thirty (30) calendar days of Parker's receipt of the invoice from Arapahoe for the Parker Construction Contribution.

The Parker Construction Contribution shall be held by Arapahoe in a reserved fund as provided by Paragraph 9.A.2) of this Second Amendment.

Section 2. Paragraph 9.A. of the Agreement is hereby amended and restated to provide as follows:

9. MANAGEMENT OF CONSTRUCTION.

A. Costs. Construction costs, and those items and services included in this cost, shall consist of those costs incurred by the most qualified contractor(s), including, but not limited to, detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 5 of this Agreement.

1) The Parker Construction Contribution represents the maximum dollar contribution by Parker, Douglas County and the E-470 Public Highway Authority for the construction costs of the Project.

2) The Parker Construction Contribution shall be held by Arapahoe in a reserved fund to pay for increments of the Project construction costs. Arapahoe shall provide Parker with a periodic accounting of the Project funds.

B. Cost Overruns.

1) If Project costs are exceeded any time during the Project, despite Arapahoe's efforts to contain these costs within the available funding and the Parties' contributions under the Agreement, but excluding any Upgrade addressed in Paragraph 9.D. of this Agreement, Arapahoe and Parker will each share equally in the cost overruns. Upon request by Parker, and upon Arapahoe providing documentation as to the cause for the cost overruns, Parker shall pay

to Arapahoe one-third of the cost overruns from time-to-time as they have been incurred or as they are projected to be incurred, subject to appropriation, as provided in Subparagraph 9.B.2.

2) Arapahoe and Parker shall endeavor, in good faith, but neither legally binds itself by this Agreement, to appropriate and make available their proportionate share of the funds needed for said cost overruns exceeding Project costs. If funds are not made available as needed to cover said cost overruns, Arapahoe reserves the right to terminate this Agreement at Arapahoe's sole discretion. Upon such termination, the Parties shall have no further rights or obligations under this Agreement, and Arapahoe shall have no obligations to Parker with respect to the Project. In the alternative and at its discretion, Arapahoe may suspend performance under this Agreement until adequate funds are made available to Arapahoe to cover the cost overruns.

C. Cost Underruns. The County shall share pro-rata Project cost savings with Parker in accordance with the percentage contribution.

D. Upgrade. If any Party or Parties should desire to have additional improvements not identified in the original Agreement to be included in the design and made as part of the Project; and, if the cost of the revised design and these additional improvements should cause the Project to exceed the Project cost (an "Upgrade"), then said Party or Parties desiring the Upgrade shall be responsible for obtaining the approval of the other Party or Parties, and if necessary, approval of CDOT, for the Upgrade. No Upgrade shall be approved or constructed unless both Parties agree to such Upgrade. If the other Party agrees to the Upgrade but does not agree to the Upgrade costs, then the Party desiring the Upgrade shall be solely responsible for paying the cost of the Upgrade. Arapahoe shall have no obligation to prepare designs based on an Upgrade or undertake construction for any Upgrade until all funds for such Upgrade are delivered by the responsible Party to Arapahoe.

Section 3. Parker and Arapahoe acknowledge and agree that the Agreement has not been amended, except as provided in the First Amendment and this Second Amendment.

IN WITNESS WHEREOF, this Second Amendment is executed by the Parties hereto as of the date first written above.

TOWN OF PARKER, COLORADO

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Deputy Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

**BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF ARAPAHOE**

Shannon Carter

Digitally signed by Shannon Carter
DN: cn=Shannon Carter, o=Arapahoe County Government,
ou, email=scarer@arapahoe.gov, c=US
Date: 2021.05.06 14:50:56 -06'00'

Shannon Carter, Director, Intergovernmental
Relations and Open Spaces, pursuant to
Resolution No. 21-062

ATTEST: ,


Deputy Clerk

Karl Herrmann, Chief Deputy Clerk and
Recorder



Request for Town Council Action

Date: June 7, 2021

Submitted By: Bryce Matthews, Planning Manager
John Fussa, Community Development Director

Reviewed By: Michelle Kivela, Town Administrator

Title: **RESOLUTION NO. 21-029**
A Resolution to Appoint the Chair and to Appoint Members and Alternates to the Town of Parker Planning Commission
Department: Community Development, Bryce Matthews

EXECUTIVE SUMMARY

The Planning Commission has a total of 10 members, seven (7) regular and three (3) alternates, with terms of varying length. The Commission currently has openings for two (2) regular and three (3) alternate members because of term expirations. The purpose of this Resolution is to appoint recommended applicants to fill the openings prior to June 30, 2021, so the Planning Commission may continue to operate without interruption.

The current openings on the Planning Commission arise from the following:

1. Regular Planning Commissioners Eliana Burke and Erik Frandsen have terms that will expire June 30, 2021.
2. Alternate Planning Commissioners Susan Caudill, Tracie Manske and Anthony Matthews have terms that will expire June 30, 2021.

This action is taken in accordance with the Parker Land Development Ordinance which provides that the Town Council appoint candidates to the Planning Commission including the Chair, regular members and alternate members.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The duties of the Planning Commission as defined by the Town Charter and the Parker Land Development Ordinance are to prepare the Master Plan, review applications for certain development proposals and make recommendations on land use matters to the Town Council.

The Charter also requires the appointment of Planning Commission members satisfying the following requirements:

1. Each person appointed to the Planning Commission shall reside within the Town limits for at least one (1) year immediately preceding the date of appointment.
2. Each person appointed to the Planning Commission shall be registered to vote.

The Town Council is charged with appointing Regular Planning Commission members to three (3) year overlapping terms. Alternates are appointed to one (1) year terms. The Council will need to appoint two (2) Regular and three (3) Alternate Planning Commission members to fill positions with expiring terms.

Commissioners Eliana Burke and Erik Frandsen have requested reappointment as Regular Planning Commission members. Alternate Anthony Matthews has requested reappointment as a Regular or Alternate Planning Commission member. Alternates Susan Caudill and Tracie Manske are not requesting reappointment. It is the general practice of the Town to reappoint incumbent Commissioners who have met the requirements for service, attended meetings regularly and performed competently in their duties.

Five (5) candidates meeting the requirements for service applied for appointment to the Planning Commission and they were interviewed on Wednesday, May 12, 2021. The review committee consisted of Town Council Members John Diak and Laura Hefta, Community Development Director John Fussa and Planning Manager Bryce Matthews. The review committee recommends the following for appointment to the Planning Commission:

Appointment of two (2) regular members for a 3-year term:

- Eliana Burke
- Erik Frandsen

Appointment of three (3) alternate members for a 1-year term:

- Anthony Matthews
- Abbas Udawala
- Roxy Colette

The terms will commence on July 1, 2021, following Town Council approval of the recommended appointments.

FINANCIAL IMPACT

None

STRATEGIC GOAL(S)



DEVELOP A VISIONARY
COMMUNITY THROUGH
BALANCED GROWTH



FOSTER COMMUNITY
CREATIVITY AND
ENGAGEMENT

ATTACHMENTS

1. Resolution No. 21-029

RECOMMENDED MOTION

I move to approve Resolution No. 21-029

RESOLUTION NO. 21-029, Series of 2021

TITLE: A RESOLUTION TO APPOINT THE CHAIR AND TO APPOINT MEMBERS AND ALTERNATES TO THE TOWN OF PARKER PLANNING COMMISSION

WHEREAS, the terms for two (2) regular members of the Planning Commission expire June 30, 2021;

WHEREAS, the terms for three (3) alternate members of the Planning Commission expire June 30, 2021;

WHEREAS, the Town Council of the Town of Parker desires to appoint new regular and alternate members, as described herein; and

WHEREAS, the Town Council of the Town of Parker desires to appoint the Chair of Planning Commission, as described herein.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, AS FOLLOWS:

Section 1. The Town Council of the Town of Parker hereby appoints Gary Poole as Chairperson of the Planning Commission.

Section 2. The Town Council of the Town of Parker hereby appoints the following regular members to the Planning Commission for the term ending June 30, 2024, as described in **Exhibit A**, which is attached hereto and incorporated by this reference.

Section 4. The Town Council of the Town of Parker hereby appoints the following alternate members to the Planning Commission for the term ending June 30, 2022, as described in Exhibit A.

RESOLVED AND PASSED this _____ day of _____, 2021.

TOWN OF PARKER, COLORADO

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Acting Town Clerk

EXHIBIT A

1. Appointment of two (2) regular members to the Parker Planning Commission, for a term up to and including June 30, 2022.

- a. Gary Poole
- b. Ruth Ann Nelson

2. Appointment of three (3) regular members to the Parker Planning Commission, for a term up to and including June 30, 2023.

- a. Richard Foerster
- b. John Howe
- c. Kimberly Rodell

3. Appointment of two (2) regular member to the Parker Planning Commission, for a term up to and including June 30, 2024.

- a. Eliana Burke
- b. Erik Frandsen

4. Appointment of three (3) alternates to the Parker Planning Commission, for a term up to and including June 30, 2022.

- a. Roxy Colette
- b. Anthony Matthews
- c. Abbas Udawala



Request for Town Council Action

Date: June 7, 2021

Submitted By: Kristin Hoffmann, Deputy Town Attorney

Reviewed By: Michelle Kivela, Town Administrator

Title: **RESOLUTION NO. 21-030**
A Resolution Concerning Certain Application Materials Submitted as Part of, and Included as a Condition of Approval for, the Use By Special Review for Lot 3 of the Blair Industrial Park Replat of Tract 3 Subdivision

Department: Town Attorney, Kristin Hoffmann

EXECUTIVE SUMMARY

This resolution authorizes the amendment of a condition of a Use By Special Review approval for Lot 3 of the Blair Industrial Park Replat of Tract 3 subdivision, to replace the "Camp Bow Wow Operations Manual" and "Camp Bow Wow Camper Healthcare and Cleaning Guide" with a summary.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

In late 2019, the Town Council approved a Use by Special Review for Lot 3 of the Blair Industrial Park Replat of Tract 3. One of the conditions of approval was: "3. Operations shall comply with the "Camp Bow Wow Operations Manual" and the "Camp Bow Wow Camper Healthcare and Cleaning Guide" uploaded on November 6, 2019. Additionally all subsequent versions of these manuals shall be adhered to."

Recently, an attorney for Camp Bow Wow notified the Town that the "Camp Bow Wow Operations Manual" and the "Camp Bow Wow Camper Healthcare and Cleaning Guide" (collectively, the "Guides") were confidential proprietary information. This resolution would authorize the amendment to Condition No. 3 to provide: "3. Operations shall comply with the summary attached as Exhibit 1 to Resolution No. 21-021, Series of 2021;" It also would remove the Guides from the public record and replace them with the summary that is attached to this resolution.

FINANCIAL IMPACT

None

STRATEGIC GOAL(S)



PROMOTE A SAFE AND
HEALTHY COMMUNITY

ATTACHMENTS

1. Resolution No. 21-030

RECOMMENDED MOTION

I move to approve Resolution No. 21-030.

RESOLUTION NO. 21-030, Series of 2021

TITLE: A RESOLUTION CONCERNING CERTAIN APPLICATION MATERIALS SUBMITTED AS PART OF, AND INCLUDED AS A CONDITION OF APPROVAL FOR, THE USE BY SPECIAL REVIEW FOR LOT 3 OF THE BLAIR INDUSTRIAL PARK REPLAT OF TRACT 3 SUBDIVISION

WHEREAS, an application was made for approval of a Use By Special Review for Lot 3 of Blair Industrial Park Replat of Tract 3 Subdivision (Z19-020);

WHEREAS, as part of the application for the Use By Special Review, the applicant submitted a “Camp Bow Wow Operations Manual” and “Camp Bow Wow Camper Healthcare and Cleaning Guide” (collectively the “Guides”);

WHEREAS, Condition No. 3 of the Use By Special Review approval references the Guides;

WHEREAS, according to the applicant, the Guides contain confidential proprietary information, which the Town has been asked to remove from the public record;

WHEREAS, the applicant has submitted a nonconfidential summary of the relevant information contained in the Guides, which is attached hereto as **Exhibit A**, and has requested the summary replace the Guides referenced in Condition No. 3, and in the public record;

WHEREAS, the Town has reviewed the Guides and summary and determined it is in the Town’s best interest to replace the Guides with the summary and revise Condition No. 3 accordingly;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, AS FOLLOWS:

Section 1. Condition No. 3 of the Use By Special Review for Lot 3 of the Blair Industrial Park Replat of Tract 3 Subdivision is hereby amended and restated as follows:

“3. Operations shall comply with the summary attached as Exhibit 1 to Resolution No. 21-21, Series of 2021;”

Section 2. The Guides shall be removed from the public record and replaced with the summary, attached hereto as Exhibit 1.

RESOLVED AND PASSED this _____ day of _____, 2021.

TOWN OF PARKER, COLORADO

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Acting Town Clerk

CONSENT OF THE PROPERTY OWNER

The Property Owner hereby consents to and agrees to be bound by Resolution No. 21-021, Series of 2021.

**PROPERTY OWNER: 10325 S.
PROGRESS WAY, LLC**

By: DeAnn Krauss
Member [Name/title]

STATE OF Ohio)
)ss.
COUNTY OF Seneca)

The foregoing instrument was acknowledged before me this 2 day of June, 2021, by DeAnn Krauss, as member of 10325 S. Progress Way, LLC.

My commission expires: May 28, 2023.

SEAL

Stacy Wilson
Notary Public Stacy Wilson

EXHIBIT A



ZONING PRESENTATION

IMPORTANT NOTICE

The information in this document is property of Camp Bow Wow Franchising, Inc. All Rights Reserved. This document is being provided to you for your bona fide use in approving site plans for a Camp Bow Wow® business, and for no other purpose.

Hours of Operation

- Camp Bow Wow's service is unique in that the Camps are open 365 days a year. Pickup and drop off occurs anytime during the normal hours of operation, which are typically:
 - Monday – Saturday 7AM - 7PM.
 - Sunday and Holidays 7AM - 10AM and 4PM - 7PM.
- Day Camp must be offered Monday through Friday and is optional on weekends. Camp Bow Wow® strongly recommends that franchised locations offer Day Camp and conduct interviews Monday through Saturday, at a minimum.
- Boarding is offered seven days per week.
- Camp staff is on site from 7:00 AM to 7:00 PM. One staff member per 25 dogs minimum. Minimum 2 Certified Camp Counselors® on site during business hours.
- Camp must be open for Camper play/care a minimum of six hours on the weekends and holidays (three hours in the morning and three hours in the afternoon) and open to the public for a minimum of four hours on those days (two hours in the morning and two hours in the afternoon).
- Overnight Campers cannot be left in cabins for more than twelve hours. Boarding Campers are housed in individual indoor secured cabins overnight. CBW does not have indoor/outdoor runs and all overnight boarding is within the enclosed building.
- Camp Bow Wow® Dog Training may occur during Camp hours or on a schedule determined by the Camp. Hours for In-Home Services by Camp Bow Wow® and behavior training that occurs at the pet parent's home are negotiated between the Pet Parent and Camp management.

General Camp Operations Information

- Other services offered: overnight boarding, training, grooming, retail for purchase (pet related supplies).
- The video cameras (Camper Cams) are available to the public during open hours, but they are on 24 hours a day. They can be accessed via the web or mobile phone apps.
- All facilities have fire and security systems connected directly to the fire and police departments for monitoring. The temperature is climate controlled and maintained at a constant 64-78 degrees year-round.
- The outdoor play area is used sporadically for relief and fresh air. Staff is present at all times when dogs are outside. Staff are trained to utilize specific dog training methods to keep noise to a minimum. Dogs bark when they are bored and left alone. This is not the case at Camp.
- Dog waste is immediately and continually cleaned up as it occurs and disposed via local municipality approved methods.

Safety

- CBW provides the safest dog daycare and boarding experience for our Campers. Every area in Camp is designed to maintain a safe environment for our Campers and staff to prevent injury or illness. Once the dogs are behind the check in area in our lobby the Camper has little potential for escape.
- All of our staff must pass our Certified Camp Counselor® training and also be pet first aid and CPR trained. Campers are never left unsupervised when together in our open play environment.
- All of our Camps have two emergency veterinary hospitals relationships secured so that in the event of an injury or health issue a Camper can immediately be seen and treated.

- All of our Camps work with their local jurisdiction to create emergency evacuation protocols in the event the building must be evacuated short or long term. Our staff is trained on how to implement these protocols following CBW operations standards.
- All of our Camps adhere to our proven cleaning and maintenance processes to ensure a clean and safe environment for staff and Campers. Every surface in Camp is cleaned daily with our hospital grade environmentally safe cleaning products.
- All of our Camps maintain appropriate coverage for business, building and incident insurance complying with federal, state and local law as well as our franchise requirements.

Noise Concerns?

- Barking is not a major issue as our staff are well trained and constantly monitor the dogs inside and outside. We can use a myriad of soundproofing materials depending on the Camp design and sound impact anticipated at the location.
- Campers mainly spend their time inside taking brief breaks outside when they need to relieve themselves. With a pack mentality, Campers tend to follow the Counselors (they are the alpha) in the yards making controlling indoor and outdoor egress with the dogs easier.
- Our Certified Camp Counselors® utilize pack management and individual behavior training techniques to keep barking at an absolute minimum. If necessary, overly disruptive Campers will be placed in a cabin for a time out or the guardian will be called to pick them up.
- The outside break yard is constructed with solid vinyl fencing to act as a noise buffer. Fence height is a mandatory 8 feet to insure dog and neighborhood safety.
- The yard is situated at each site on the back or side of the property away from any residential properties, using the building as a buffer.

Waste or Smell Concerns?

- We utilize specialized bio-degradable cleaners and disinfectants – the same that are used in hospitals, childcare centers, and gyms. These products keep our facilities (indoor and out) smelling fresh and clean year-round.
- CBW provides all franchisees a set daily cleaning schedule. Franchisor site visits occur year-round and regular web camera evaluations are conducted to ensure proper maintenance of CBW facilities and that brand standards are being followed. Secret shopper programs are also used for additional review.
- We target a very upscale clientele that requires our facilities are kept spotless.
- The Camp Bow Wow® waste removal routine includes constant play area patrol so that waste is picked up and deposited in a galvanized steel trash can with lid and a 3-mil trash can liner. The liner is removed, sealed and deposited in the facility dumpster daily as needed. A typical CBW produces approximately the equivalent to one large lawn/leaf garbage bag of waste per day. Dumpster pick-up is scheduled for once to twice a week.

Drainage Concerns?

- In our facilities we never spray anything down to clean it – we use a light foaming device along with mops and squeegees to clean our facilities.

- We also use a professional auto-scrubber to clean the floors which intakes any excess water into the machine, minimizing water consumption as well as maximizing cleanliness.
- When cleaning the yards daily, the amount of water used is the equivalent to a 5-minute human shower.
- Our disinfectants are pet safe and environmentally friendly and do not require rinsing.

Traffic or Parking Concerns?

- The services of Camp Bow Wow attract high end customers that are in a hurry and on their way to and from work or travel. Camp Bow Wow operates efficiently so that the dog drop off and pick up is quick and easy for our clients:
 - Pre-Purchased Day Camp Packages keep front lobby transactions short.
 - Customers are able to drop off or pick up quickly without having to make a payment each time. This keeps the average drop/off and pick up time to 5 minutes or less.
- We do not have typical parking needs of retail businesses since our pickup and drop off for services are quick transactions. On average we require 10-15 parking spaces minimum to accommodate client and employee parking.

Cleaning and Disinfecting Guidelines Given to Camps

- Cleaners and disinfectants are not the same. Cleaning uses detergents and products that break down soils on surfaces, but disinfectants kill or inactivate microorganisms and pathogens, which is how we minimize the risk of disease transmission. We have several types of disinfectants that we use at Camp, and you may hear the term “deep clean” which, for Camp, will also mean disinfect.
- Cleaning Products and Proper Dilution Ratios
 - Please refer to the Cleaning Products Dilution Ratio instructions for appropriate product and dilution information for each product. Note: California Camps have a separate document.
 - If the Safety Data Sheet for any product used in Camp differs from Camp Bow Wow’s stated requirements, the stricter requirement shall control.
 - Post the Cleaning Products Dilution Ratios and Tip Chart in the chemical utility area.
 - Maintain a complete Safety Data Sheet (SDS) notebook with all chemicals.
 - Required safety equipment needed in Camp includes safety goggles, rubber gloves and an eyewash station. Your state regulations may require additional equipment, it is your responsibility to know and meet those requirements.
 - Label all spray bottles with appropriate chemical labeling that are available from the distributors. Non-diluted stickers should go on the yard sprayers, and spray bottles should have a diluted chemical label.
 - Chemical solutions must be in contact with surfaces for a minimum of 10 minutes. Keep the Campers away from all wet surfaces until they are dry.
 - Always use cold water with Chemicals.
 - DO NOT USE BLEACH! NO BLEACH IS ALLOWED IN CAMP FOR ANY REASON.
 - Bleach is harmful to Campers, humans, and the various surfaces found in Camp.
 - Camp Cleaning products are designed to kill all pathogens, are safer for Campers and humans alike, and are not corrosive to the various surfaces in Camp.
- Common Areas.

- Lobby. Your front lobby's clean, neutral smell and appearance is a pet parent's first impression.
 - Ensure windows and glass doors are sparkling clean and streak-free
 - Ensure that the desk is dusted and clutter-free
 - Dust and clean computer equipment
 - Empty trash cans regularly
 - Vacuum lobby floor mats and have them cleaned regularly
 - Make sure that the floors are swept and mopped
 - Prepare mop buckets using the correct ratio of appropriate Chemicals
 - Refill buckets, as necessary, to ensure that disinfecting is done with clean water and solution
 - Do not allow Campers to drink out of the mop buckets
 - Sanitize mop heads in the washing machine on a daily/nightly basis using hot water cycle
 - Disinfect weekly with a spray bottle and correct ratio of appropriate Chemicals.
- Offices.
 - Keep the offices clean and clutter free
 - Dust office furniture
 - Dust and clean computer equipment
 - Empty trash cans regularly
 - Dry Mop & Wet mop at least twice a week
 - Disinfect weekly with a spray bottle and correct ratio of appropriate Chemicals
- Aisles.
 - Dry mop daily
 - Ensure there is no hair buildup
 - Mop daily with correct ratio of appropriate Chemicals
- Groom Room.
 - Clean the grooming/bathing areas and remove hair from drains, floors, and corners per the AM/PM checklist daily, and disinfect weekly
- Training Room.
 - Dry mop daily to remove hair build up
 - Disinfect weekly with correct ratio of appropriate Chemicals
 - Disinfect before and after any puppy class or play time
- Break Room.
 - Clean the break room per the AM/PM checklist, and disinfect weekly
- Restroom.
 - Clean the break room and restrooms per the AM/PM checklist, and disinfect weekly
- Camp Systems.
 - Smoke Detectors
 - Vacuum and test all smoke detectors at least once every 6 months and follow all other recommended service guidelines.
 - Ensure smoke detector is free of debris, hair, or other build up.
 - HVAC System
 - You must change your filters at least monthly or as required by the property owner or landlord.
 - Alarm System

- Have periodic alarm system inspections per the alarm company's or the fire inspector's recommendations.
 - Ensure alarm system is free of debris, hair, or other build up.
 - Temperature Control System
 - Ensure this system is operating at all times, and conduct weekly temperature control system inspections (or more frequently, if recommended by the manufacturer).
 - Temperature control system should be free of debris, hair, or other build up.
 - Dryer Vents
 - Internal dryer vents must be cleaned at each used. External dryer vents should be checked monthly and cleaned at least quarterly.
- Play Yards
 - Play Equipment
 - Scrub and disinfect the top, sides and bottom surfaces of the play equipment with appropriate Chemicals.
 - Fencing
 - Scrub and disinfect the fencing and privacy panels that separate the play areas as well as the fence tops with appropriate Chemicals.
 - Use the proper spray nozzle.
 - Use a brush to scrub the fencing, refrigeration flaps and privacy slats.
 - "Poop Patrol"
 - Do not allow feces to accumulate in the play yards. Pick it up immediately so it is not visible on the Camper Cams and cannot be consumed by another Camper.
 - Use compactor bags in your poop cans because they are sturdy and they will not break if used properly. Do not fill the poop cans more than 1/2 full. Place them in an area where Campers cannot use them to escape from the play area.
 - Artificial Turf
 - Please refer to the manufacturer's instructions for proper care of your synthetic grass. All artificial turf must be kept in good condition, free of hair build-up and worn out areas must be replaced as necessary. Outdoor yards are to be sprayed daily using the foam gun.
 - Pea Gravel
 - Pea gravel develops a moat-like appearance after use, so rake it evenly throughout the outdoor play yards. It must also be raked evenly as it may build up against the fencing, making it easier for Campers to escape. Outdoor yards are to be sprayed daily using the foam gun.
 - Indoor Play Yards
 - Clean all urine and feces promptly and mop to disinfect with appropriate Chemicals
 - Dust all surfaces (red mailbox, top of fencing, hose reel, etc.).
 - Dry mop all aisles and play areas per the AM/PM checklist to cut down on the amount of hair that collects.
 - During evening mealtime:
 - Dry mop the play yards
 - Shop Vacuum all wall, fencing edges, and play equipment
 - Scrub and disinfect walls, fencing, and refrigeration flaps with appropriate Chemicals
 - Wet mop or auto scrub the floors

- Cabins
 - Disinfecting Instructions
 - Disinfect the Cabins after a Camper checks out with appropriate Chemicals
 - Disinfect Day Camp Cabins weekly
 - Ensure Cabin has been deep cleaned prior to new boarding check in
 - Remove any water and food bowls
 - Dust all surfaces of the Cabin inside and out
 - Sweep or vacuum the cabin to remove any fur prior to wet cleaning
 - Disinfect all cabin surfaces thoroughly, including the top, sides and floor both inside and outside from the top to the bottom
 - Use the brush to scrub all walls and doors
 - Scrub the cot
 - Scrub the floor with a floor brush and then mop out the cabin
 - Allow the cabin and floor to dry before use
 - After Breaks
 - After feeding the Campers breakfast, and after any rest periods in cabins, each cabin should be given a quick clean.
 - Sweep and mop the cabin.
 - Remove and change the water bowls.
 - Set up the Camper cot.
 - Organize any Camper belongings.
 - Teacup Condos
 - Campers may not be in Cabins during any disinfecting routines
 - Use a spray-and-wipe technique to clean the condos, diluting the appropriate Chemicals per the dilution ratio in the Chemical Dilution Ratio Sheet.
 - If the Cabins have removable flooring, remove the flooring and disinfect it over the mop sink. Do the same for the Potty Park or whatever approved apparatus you are using.
 - Walls should be spot-cleaned as needed and thoroughly cleaned weekly.
- A Pet Parent's first impression will always be on the cleanliness of your Camp. The Pet Parent should not smell any cleaner, disinfectant, or Campers.
- Your Staff will be doing a lot of cleaning, including but not limited to removing hair from floors and corners, and wiping down glass around the front door to make sure that the exterior is spotless.
- Your Staff should complete the duties listed in the AM Shift Duties and PM Shift Duties supporting tools.
- Supervisors should monitor this list to ensure that all tasks are completed daily.

Maintenance Guidelines Given to Camps

Camp Bow Wow® expects you to keep everything in Camp functioning and operational. The following are a few general tips:

- If you are unable to repair something, hire a professional.
- Install child protectors into electrical outlets to protect Campers.
- Maintain an appropriate height ladder for repairing lighting, HVAC, and access to the ceiling and roof.

- Adjust the tension on the front door to ensure that it does not easily open from either wind or a Camper pushing against it.
- Inspect cabins regularly to ensure that they are in proper working condition.
- Inspect the play equipment regularly. Check for cracks, sharp edges or loose bolts and make sure that all connectors are in place.
- Pup Pools - Camp Bow Wow® only allows “One Dog, One Bone” branded pools in white.
 - Do not store your pools outside during the colder months.
 - Empty pools regularly and refill with fresh water.
 - Monitor the pools closely when in use.
 - Sanitize the pools daily after use, and
 - Properly store pools when not in use by hanging, removing from yard or placing flat, right-side up.
- Fencing
 - Inspect your fencing daily. Ensure that there are no gaps, holes, loose bolts, or wires.
 - Inspect gates to ensure that they are tight and do not drag on the floor.
 - Ensure that gate clips are working and installed on all required gates.
 - Replace any chewed or missing privacy slats.
- Indoor Play Yards
 - Inspect your floors regularly and reseal any spots as needed.
 - Inspect wall surfaces and floors for cracks or any other damages.