

TOWN OF PARKER COUNCIL AGENDA

July 19, 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. SPECIAL PRESENTATIONS

- 3. 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.*

4. REPORTS, ITEMS AND COMMENTS FROM MAYOR AND COUNCIL

5. 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=1753&key=-1&mod=-1&mk=-1&nov=0>

A. *APPROVAL OF MINUTES - July 12, 2021*

B. *North Parker Road Operational Improvements*

Department: Engineering and Public Works, Alex Mestdagh

Second Reading: August 2, 2021

1. *ORDINANCE NO. 9.336 - First Reading*

A Bill for an Ordinance to Approve the Intergovernmental Agreement By and Between the Town of Parker and the Board of County Commissioners of the County of Douglas Regarding Cost Sharing for Parker Road Operational Improvements Project (Lincoln Avenue to Pine Lane)

2. *ORDINANCE NO. 9.337 - 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 Operational Improvements: Lincoln Avenue to Pine Lane (Project # C M039-007 (24455) & MTF M039-009 (24467))

C. *ORDINANCE NO. 9.338 - First Reading*

A Bill for an Ordinance Approving the Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for Upper Jordan Road Tributary at Bradbury Ranch (Agreement No. 21-05.17, Project No. 108522) by and between Urban Drainage and Flood Control District d/b/a Mile High Flood District and the Town of Parker

Department: Engineering and Public Works, Michael Grabczyk

Second Reading: August 2, 2021

D. *ORDINANCE NO. 9.339 - First Reading*

A Bill for an Ordinance Approving the Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for Newlin Gulch at Recreation Drive (Agreement No. 21-05.23, Project No. 108504) by and between Urban Drainage and Flood Control District d/b/a Mile High Flood District and the Town of Parker

Department: Engineering and Public Works, Michael Grabczyk

Second Reading: August 2, 2021

6. **TOWN ADMINISTRATOR**

- **TA Report - Summer 2021**

7. **ORDINANCES**

ORDINANCE NO. 3.193.5 - Second Reading

A Bill for an Ordinance Amending the Parker Auto Plaza Development Guide Pursuant to the Town of Parker Land Development Ordinance

Department: Community Development, Stacey Nerger

8. RESOLUTIONS

A. RESOLUTION NO. 21-032

A Resolution Setting the Date for Consideration of the Annexation Ordinance for the Town Parker North, 1st Amendment, Tract D Property for Second Reading on September 7, 2021

**Department: Community Development, Stacey Nerger
Community Development, BrieAnna Simon**

B. RESOLUTION NO. 21-026.1

A Resolution to Amending Resolution No. 21-026, Series of 2021, to Adopt an Amended Town Council Policy Statement 1-8 Concerning Public Hearing Procedure and Public Comment Policy

Department: Town Attorney, Kristin Hoffmann

9. PUBLIC COMMENTS CONTINUED IF NECESSARY

10. ADJOURNMENT

Parker Town Council

Executive Session Agenda

July 19, 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. HB21-1027 (communal outdoor dining area); HB21-1250 (law enforcement accountability); and SB21-256 (firearms in public buildings)
2. 42 U.S.C. § 2000 (Religious Land Use and Institutional Persons Act – locating a church in a communal area)
3. Resolution No. 19-023, Series of 2019 (partial waiver for the Anthology North Property to allow for the processing of sketch and preliminary plans by segment)

**TOWN OF PARKER COUNCIL
MINUTES
JULY 12, 2021**

Mayor Toborg called the meeting to order at 5:12 p.m. All Councilmembers were present.

Town Attorney Jim Maloney announced the topics for discussion in Executive Session were three (3) items. Under C.R.S. § 24-6-402(4)(b) there was one (1) item which was to hold a conference with the Town's attorney to receive legal advice on specific legal questions regarding H.R. 1319, The American Rescue Plan Act of 2021 (Eligible Projects). Under C.R.S. § 24-6-402(4)(e) there were two (2) 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, and the second item was concerning My Mainstreet proposed purchase of PACE Lot 2 and East Main parcels.

EXECUTIVE SESSION

Joshua Rivero moved and Todd Hendreks seconded to go into Executive Session at 5:13 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).

The motion was approved unanimously.

Todd Hendreks moved and Cheryl Poage seconded to come out of Executive Session at 6:15 p.m.

The motion was approved unanimously.

Joshua Rivero moved and Todd Hendreks seconded to recess the regular Town Council meeting until 7 p.m.

The motion was approved unanimously.

REGULAR MEETING

Mayor Toborg reconvened the meeting at 6:58 p.m.

Alura Wilks led the Pledge of Allegiance.

SPECIAL PRESENTATIONS

Jeff Percival, Creative Pastor with the Southeast Christian Church was recognized for the "Restart" Program. The program has greatly contributed to helping small businesses during COVID-19.

PARKER CHAMBER OF COMMERCE UPDATES

No one was present to provide an update.

DOWNTOWN BUSINESS ALLIANCE UPDATES

(Inaudible name) provided a brief monthly update for the Downtown Business Alliance.

PUBLIC COMMENTS

There were six written general public comments received that will be attached to the approved minutes.

- Kory Nelson, 21398 E. Wanderlust Place, announced he will be running for the Douglas County Clerk and Recorder in the 2022 election.
- Kenneth Ramsey, 3862 Elm Avenue, talked about the protection of wildlife and not using poisons as bait as it contributes to the death of the wildlife population. Mr. Ramsey presented a notebook of information to the Town Clerk.

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 - June 21, 2021

B. ORDINANCE NO. 3.193.5 First Reading

A Bill for an Ordinance Amending the Parker Auto Plaza Development Guide Pursuant to the Town of Parker Land Development Ordinance

Department: Community Development, Stacey Nerger

Second July 19, 2021

Reading:

C. CONTRACTS OVER \$100,000

1. Parker Road (SH83) Multi-Use Trail (West Side) CIP 21-017 Professional Services Agreement

Amount: \$114,685.00

Contractor: Felsburg Holt & Ullevig

Department: Engineering and Public Works, Tom Gill

Joshua Rivero moved to approve Consent Agenda items 7A through 7C.

Todd Hendreks seconded the motion.

The motion was approved unanimously.

ORDINANCES**A. ORDINANCE NO. 3.01.125 - Second Reading (Continued from June 21, 2021)
A Bill for an Ordinance to Amend Section 13.03.030 of the Parker Municipal Code
concerning Planning Department Adjustments****Department: Community Development, John Fussa**

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 December 31, 2021.

Public Comment: None.

Cheryl Poage moved to approve Ordinance No. 3.01.125 on second reading.

Laura Hefta seconded the motion.

The motion was approved unanimously.

**B. ORDINANCE NO. 5.28.26 - Second Reading
A Bill for an Ordinance to Amend Chapter 5.02 of the Parker Municipal Code
Relating to Fines for Violations of Liquor Code Violations****Department: Town Attorney, Jim Maloney**

Prior to the General Assembly's enactment of Senate Bill 20-110, state and local licensing authorities could only impose a fine for liquor code violations if the licensee requested a fine in lieu of revocation or suspension. Ordinance No. 5.28.26 will allow the Special Licensing Authority to impose a fine without suspending or revoking a liquor license. The fines under Senate Bill 20-110 range from \$500.00 to \$100,000.00. The Colorado Department of Revenue has issued regulations to serve as guidance to local licensing authorities in implementing these new fines, including categories of violations; methods of calculating fines; and aggravating and mitigating factors.

Public Comment:

Kory Nelson, 21398 Wanderlust Place, spoke in favor of the ordinance.

Bradley Trede, 6497 Mountain Manor, spoke in favor of the ordinance.

Cheryl Poage moved to approve Ordinance No. 5.28.26 on second reading.

Todd Hendreks seconded the motion.

The motion was approved unanimously.

RESOLUTIONS

RESOLUTION NO. 21-034

A Resolution to Request that the Independent Congressional Redistricting Commission Modify the Preliminary Congressional District Map by Moving the District Boundary for Districts 6 and 7 to Place All of the Town of Parker into District 7 in Order to Preserve the Town of Parker's Whole Community of Interest with Douglas County and the Political Subdivisions Contained Within Douglas County that are All Exclusively Contained within District 7, as Provided by Colorado Constitution Article V, Section 44

Department: Town Council

The Independent Congressional Redistricting Commission prepared a preliminary Congressional District Map that splits the Town into Districts 6 and 7. However, Colorado Constitution Article V, Section 44.3, provides that the Independent Congressional Redistricting Commission "must preserve whole communities of interest and whole political subdivisions, such as counties, cities and towns." The purpose of the Resolution is to request that the Independent Congressional Redistricting Commission modify the preliminary Congressional District Map by (1) putting all of the Town of Parker in one District; (2) putting the Town in District 7 due to the Town's community of interest with Douglas County and the political subdivisions contained within Douglas County which are contained within District 7; and (3) provide a solution to the Independent Congressional Redistricting Commission, which will result in eliminating municipal splits for the Town, Littleton and Bow Mar.

Public Comment:

Kory Nelson, 21398 Wanderlust Place, spoke in favor of the resolution with a change regarding the Judicial District.

Town Attorney Jim Maloney read an amendment to the resolution into the record. He noted it would be the seventh paragraph and would read as follows: "Whereas, in 2025 Douglas County and its communities will no longer be part of the 18th Judicial District, and instead will become part of the new 23rd Judicial District, which will not include Arapahoe County or the City of Aurora."

Joshua Rivero moved to approve Resolution No. 21-034 with the amended language.

Anne Barrington seconded the motion.

The motion was approved unanimously.

ADJOURNMENT

Cheryl Poage moved and Todd Hendreks seconded to adjourn the meeting at 8:00 p.m.

The motion was approved unanimously.

Chris Vanderpool, Acting Town Clerk

Jeff Toborg, Mayor



Request for Town Council Action

Date: July 19, 2021

Submitted By: Alex Mestdagh, Engineering Service Manager

Reviewed By: Michelle Kivela, Town Administrator

Title: **North Parker Road Operational Improvements**
Department: Engineering and Public Works, Alex Mestdagh
Second Reading: **August 2, 2021**

EXECUTIVE SUMMARY

This item proposes to enter into Intergovernmental Agreements (IGA) with CDOT and Douglas County to codify outside funding commitments from these entities for a roadway capital improvement project known the North Parker Road Operational Improvements.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Town is currently in the design phase for the North Parker Road Operational Improvements between Lincoln Avenue and E-470. The main goal of this project is to increase the travel lanes on Parker Road and improve vehicular mobility, which currently experiences heavy congestion during rush hour. Proposed improvements include widening and/or connecting current acceleration/deceleration lanes on Parker Road in both the northbound and southbound directions between Lincoln Avenue and E-470. The project also proposes to repurpose existing dedicated turning lanes to shared thru-turning lanes, providing additional capacity for thru traffic during peak hours. Improvements to pedestrian facilities in the corridor are also proposed, including a multi-use trail/sidewalk on the east side of Parker Road to connect the Baldwin Gulch Trail and the Pine Lane intersection, and expanded sidewalk north of Pine Lane adjacent to the Bowie property to connect to existing sidewalk to the north. Later phases of improvements will be needed to implement additional operational improvements on this stretch of Parker Road.

Staff is proposing to leverage outside funds from several entities in order to fund this project. This project was selected for funding through the Douglas County Subregion of the Denver Regional Council of Governments (DRCOG). The proposed funding is \$1.4M of Federal Congestion Mitigation and Air Quality Improvements (CMAQ) dollars and \$1.1M of state dollars for a total of \$2.5M. The Federal CMAQ funds are part of a national program available to local governments to address congestion issues and improve air quality in accordance with the Clean

Air Act. The state funds are from the FASTER program, which is focused on addressing roadway safety issues, and from the Multi-modal Options Fund (MMOF), which focuses on multi-modal transportation improvements such as the pedestrian improvements proposed with this project. Douglas County has also pledged an additional \$500,000 toward the construction cost, for a grand total of \$3M in outside funding for this project. The construction cost is currently estimated at approximately \$4M.

The IGAs with CDOT and Douglas County are necessary in order to codify these outside funding contributions. The Douglas County IGA is a straightforward document that is in line with previous IGAs agreed to between the Town and County. The CDOT IGA encompasses both the state and federal funding, and thus is much more complicated due to the requirements on a project receiving federal funding. Most of these requirements involve documentation of project elements and contractor policies and practices, some of which can be placed upon the contractor as a condition to the construction contract. Staff plans to utilize the consultant that will perform the construction administration to assist in compiling and tracking the remainder of the information.

This project is proposed to move into the final design phase later this summer. The Town anticipates that construction will begin in summer or fall of 2022, with project completion in 2023.

FINANCIAL IMPACT

The anticipated construction cost of the North Parker Road Operational Improvements is approximately \$4M. Outside funding of \$3M is proposed to be committed to this project (\$1.4M federal, \$1.1M state, \$500K Douglas County). The remainder of the construction cost would be the responsibility of the Town, anticipated to be approximately \$1M.

STRATEGIC GOAL(S)



ENHANCE ECONOMIC
VITALITY



PROMOTE A SAFE AND
HEALTHY COMMUNITY



INNOVATE WITH
COLLABORATIVE
GOVERNANCE



SUPPORT AN
ACTIVE COMMUNITY

ATTACHMENTS

1. Conceptual Project Exhibit
2. Ordinance 9.336
3. Ordinance 9.337

RECOMMENDED MOTION

I move to approve Ordinance No. 9.336 and Ordinance No. 9.337 on first reading and to schedule second readings for August 2, 2021, as part of the consent agenda.



ORDINANCE NO. 9.336, Series of 2021

TITLE: A BILL FOR AN ORDINANCE TO APPROVE THE INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE TOWN OF PARKER AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS REGARDING COST SHARING FOR PARKER ROAD OPERATIONAL IMPROVEMENTS PROJECT (LINCOLN AVENUE TO PINE LANE)

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 Board of County Commissioners of the County of Douglas Regarding Cost Sharing for Parker Road Operational Improvements Project (Lincoln Avenue to Pine Lane), 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

INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF PARKER AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS REGARDING COST SHARING FOR PARKER ROAD OPERATIONAL IMPROVEMENTS PROJECT (LINCOLN AVENUE TO PINE LANE)

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, **2021**, by and between the Town of Parker, Colorado, a Colorado home rule municipality (the "Town"), and the Board of County Commissioners of Douglas County, Colorado (the "County"), hereinafter collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the Parties are legally empowered under Section 29-1-201, et seq., C.R.S. to enter into this Agreement; and

WHEREAS, the County and the Town desire to cooperate in advancing the construction associated with improving safety and traffic operations on Parker Road between Lincoln Avenue and Pine Lane, (the "Project"). Parker Road (State Highway 83) is a critical component of the region's transportation network and this Project will help to reduce congestion, improve safety and mobility for residents of the Town and County. The Project limits are shown in **Exhibit A**, which is attached hereto and incorporated by this reference; and

WHEREAS, the Parties agree to advance the Project in exchange for mutual commitments of the Parties hereto; and the Parties desire to share in the cost of the Project, described herein; and

WHEREAS, the Town is responsible for managing all aspects of Project, including providing project oversight during design, right-of-way acquisition and construction; and

WHEREAS, the Town is responsible for securing all funding necessary to design and construct the Project, except for the County's contribution; and

WHEREAS, through the Transportation Improvement Program (TIP) project selection process for the Douglas County Subregion Transportation Forum, the Denver Regional Council of Governments ("DRCOG") selected this Project to receive partial funding for constructing the Project. The Town estimates the Project will cost \$4 million to construct, and anticipates receiving a total of \$2,500,000 in a combination of State and Federal funds; and

WHEREAS, the County previously indicated their willingness to contribute financially to advance the Project at the time that the Town submitted a TIP application to DRCOG, and

WHEREAS, the County's only responsibility is for its voluntary contribution for a portion of the Project costs as identified in **Section 1**; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties hereto agree as follows:

1. County Contribution and Responsibilities. The County agrees to pay to the Town an amount not to exceed Five Hundred Thousand Dollars and No Cents (\$500,000.00), hereinafter referred to as the “County Contribution” for the purpose of constructing the Project. The County Contribution shall be used solely for paying for a portion of the cost to construct the Project. In no event will the County be liable for paying the Town any amount more than the County Contribution, including for any additional work authorized by the Town or for any unforeseen project costs or claims.

The County agrees to open a Douglas County Purchase Order to the Town within thirty (30) days after execution of this Agreement; and the County agrees to pay the Town the County’s lump sum contribution within thirty (30) days after the County has received a written invoice from the Town containing a statement that the Town has selected a contractor for the Project and the Colorado Department of Transportation (CDOT) concurs with Town staff recommendation to award a construction contract, and intends to seek Town Council approval to award the contract.

If the Town elects to unilaterally increase the Project cost and its Project budget, it may do so; provided it does not include an increase in the County Contribution. The County Contribution may not be increased without both Parties executing an amendment to this Agreement prior to any additional expenditures in which the Town wants the County to participate.

2. Town Contribution and Responsibilities. The Town shall be responsible for managing all phases of the Project. Except as expressly provided in **Section 1**, (County Contribution and Responsibilities), the Town shall be responsible for all other project responsibilities and project costs, including changes to the initial scope of work or adding supplementary tasks in order to further advance the Project. The Town is responsible for completing the Project.

The Town will track Project monthly construction costs and will use this information to provide a summary of the total Project construction costs within thirty (30) days after completion or termination of the Project and provide a copy to County.

If the Project is terminated after construction has been initiated and prior to completion, then the Town will provide written notification to the County; and the Town shall refund the County a portion of the remaining unused construction funding; and this proportional refund amount shall be based on County Contribution being equivalent to twelve percent (12%) of the anticipate \$4 million needed to construct the Project. The Town shall refund the County within forty-five (45) days for the reason stipulated above.

3. Time of Performance. Upon execution of this Agreement, the Town shall diligently pursue award of the construction contract. The Town anticipates awarding a construction before **September 30, 2022** and anticipates the construction will be substantially completed before **October 31, 2023**.

4. Remedies. The Parties hereto acknowledge and agree that each Party may exercise all rights and remedies in law or in equity, by a decree in specific performance, or such other legal or equitable relief as may be available, including a return of the funds described in **Section 1** of this Agreement in the event of a default by the other Party. In the event that the construction contract is delayed and does not commence before **May 31, 2023**, unless an extension is agreed to in writing by both Parties prior to **May 15, 2023**, the County may terminate this Agreement and the Town will give a full refund of any County Contribution received. This Section shall survive the termination of this Agreement.

5. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given, at the address set forth below, or at such other address as has been previously furnished in writing, to the other party. Such notice shall be deemed to have been given when deposited in the United States mail.

Town of Parker: Town of Parker
 Attn: Director of Engineering / Public Works
 20120 E. Mainstreet
 Parker, Colorado 80138

Douglas County: Douglas County
 Attn: Director of Engineering Services
 100 Third Street
 Castle Rock, Colorado 80104

With electronic copy sent to: attorney@douglas.co.us

6. Appropriation. Pursuant to C.R.S. § 29-1-110, the financial obligations of the Town and the County contained herein which are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available.

7. No Waiver of Governmental Immunity Act. The Parties hereto understand and agree that the Parties, their Commissioners, Councilmembers, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the County.

8. Additional Documents. The Parties agree to execute any additional documents or take any additional action that is necessary to carry out the intent of this Agreement.

9. Colorado Law. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Douglas, State

of Colorado, and the Parties waive any right to remove any action to any other court, whether state or federal.

10. Separate Entities. The Parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout.

11. No Third-Party Beneficiaries. The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. Any beneficiary of the terms and conditions of this Agreement are not intended beneficiaries but are incidental beneficiaries only.

12. Severability. It is understood and agreed by the Parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

13. Recitals. The Recitals to this Agreement are incorporated herein by this reference.

146. Entirety. This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties hereof and constitutes the entire agreement between the Parties concerning the subject matter hereof.

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto as of the date first written above.

TOWN OF PARKER, COLORADO

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Acting Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

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BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY

_____, Chair

ATTEST:

APPROVED AS TO CONTENT:

Kristin Randlett,
Clerk to the Board

Douglas J. DeBord,
County Manager

APPROVED AS TO FORM:

APPROVED AS TO FISCAL CONTENT:

Chris Pratt,
Senior Assistant County Attorney

Andrew Copland,
Director of Finance

ORDINANCE NO. 9.337, 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 OPERATIONAL IMPROVEMENTS: LINCOLN AVENUE TO PINE LANE (PROJECT # C M039-007 (24455) & MTF M039-009 (24467))

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 Operational Improvements: Lincoln Avenue to Pine Lane (Project # C M039-007 (24455) & MTF M039-009 (24467)), 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 #: 331002488
Routing #: 21-HA1-XC-00123**STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT****Signature and Cover Page**

State Agency Department of Transportation		Agreement Routing Number 21-HA1-XC-00123	
Local Agency TOWN OF PARKER		Agreement Effective Date The later of the effective date or June 03, 2021	
Agreement Description Operational Improvements: Lincoln Ave. to Pine Ln.		Agreement Expiration Date June 02, 2031	
Project # C M039-007 (24455) & MTF M039-009 (24467)	Region # 1	Contract Writer DZ	Agreement Maximum Amount \$3,450,000.00

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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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 June 02, 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)
Michael Kania, PE 1
CDOT Region 1
400 Inverness Pkwy, Suite 400
Englewood, CO 80112
303-512-5404
Michael.Kania@state.co.us

For the Local Agency

TOWN OF PARKER
Alex Mestdagh, Engineering Services Manager
20120 E. Main Street
Parker, CO 80138
303-805-3204
amestdagh@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
STATEMENT OF WORK

Parker Road (SH83) -- Operational Improvements: Lincoln Ave. to Pine Ln.
Project: C-M039-007 & MTF-M039-009 - MMOF
SubAccount #: 24455 & 24467

This project is for the construction of intersection and roadway improvements including striping, signal modifications, construction and modification of multi-use paths, and lane adjustments from south of Lincoln Ave to north of Pine Lane.

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EXHIBIT B

SAMPLE IGA OPTION LETTER

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

Vendor Name: _____

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

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

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

Option to unilaterally extend the 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**C M039-007 (24455)
MTF M039-009 (24467) - MMOF****A. Cost of Work Estimate**

The Local Agency has estimated the total cost the Work to be \$3,450,000.00, which is to be funded as follows:

1. BUDGETED FUNDS	
C M039-007 (24455)	
a. Federal Funds (80.00% of Participating CMAQ Funds)	\$1,400,000.00
b. Local Agency Matching Funds (20.00% of Participating CMAQ Funds)	\$350,000.00
c. State Funds (FASTER) (100%)	\$500,000.00
MTF M039-009 (24467) - MMOF	
d. State Funds (50.00% of MMOF Funds)	\$600,000.00
e. Local Agency Matching Funds (50.00% of MMOF Funds)	\$600,000.00
TOTAL BUDGETED FUNDS	
	\$3,450,000.00
2. OMB UNIFORM GUIDANCE	
a. Federal Award Identification Number (FAIN):	TBD
b. Federal Award Date:	See Below
c. Amount of Federal Funds Obligated:	\$0.00
d. Total Amount of Federal Award:	\$1,400,000.00
e. Name of Federal Awarding Agency:	FHWA
f. CFDA Number	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	\$1,400,000.00
b. State Funds Budgeted	\$1,100,000.00
c. Less Estimated Federal Share of CDOT-Incurred Costs	\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY	
	\$2,500,000.00
4. FOR CDOT ENCUMBRANCE PURPOSES	
C M039-007 (24455)	
a. Total Encumbrance Amount	\$2,250,000.00
b. Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$0.00
MTF M039-009(24467)	
c. Total Encumbrance Amount (Only CDOT funds are encumbered)	\$600,000.00
d. Less ROW Acquisition 3111 and/or ROW Relocation 3109	
Net to be encumbered as follows:	
	\$2,850,000.00
<i>Note: Design and Construction funds are currently not available. Design and Construction funds will become available after execution of an Option Letter (Exhibit B) or formal amendment.</i>	

WBS Element 24455.10.30	Performance Period Start*/End Date TBD	Design	3020	\$0.00
WBS Element 24455.20.10	Performance Period Start*/End Date TBD	Const.	3301	\$0.00
WBS Element 24467.10.30	Performance Period Start**/End Date N/A	Design	3020	\$0.00
WBS Element 24467.20.10	Performance Period Start**/End Date N/A	Const.	3301	\$0.00

*** C M039-007 (24455) the Local Agency should not begin work until all three (3) of the following are in place: 1) Phase Performance Period Start Date; 2) the execution of the document encumbering funds for the respective phase; and 3) Local Agency receipt of the official Notice to Proceed. Any work performed before these three milestones are achieved will not be reimbursable.**

**** MTF M039-009 (24467) 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

C M039-007 (24455)

The matching ratio for the federal participating funds for this Work is 80% federal-aid funds to 20% Local Agency matching CMAQ funds, and 100% state funds for FASTER-S funds, it being understood that such ratios apply only to the \$2,250,000.00 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 \$2,250,000.00 and additional federal funds are made available for the Work, the Local Agency shall pay 20% 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 \$2,250,000.00, 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.

MTF M039-009 (24467)

The matching ratio for the federal participating funds for this Work is 50% MMOF State funds to 50% Local Agency matching funds, it being understood that such ratios apply only to the \$1,200,000.00 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 \$1,200,000.00, and additional State funds are made available for the Work, the Local Agency shall pay 50% 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 \$1,200,000.00, then the amounts of Local Agency and State funds will be decreased in accordance with the funding ratio described herein.

C. Maximum Amount Payable

C M039-007 (24455)

The maximum amount payable to the Local Agency under this Agreement shall be \$1,900,000.00 (For CDOT accounting purposes, the federal funds of \$1,400,000.00, the Local Agency matching funds of \$350,000.00, and the state FASTER funds of \$500,000.00 will be encumbered for a total encumbrance of \$2,250,000.00), 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.

MTF M039-009 (24467)

The maximum amount payable to the Local Agency under this Agreement shall be \$600,000.00 (For CDOT accounting purposes, the State funds of \$600,000.00 will be encumbered, but the Local Agency matching funds of \$600,000.00 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 \$1,200,000.00. 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 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. C-M039-007 / MTF-M039-009	STIP No. SDR6744/SR1550	Project Code 24455/24467	Region 01
Project Location Parker Rd. approx 500ft south of Lincoln Ave north to approx 1500ft north of Pine Lane			Date 5/14/2021
Project Description Construct pedestrian and traffic operational improvements, including a multiuse path			
Local Agency Town of Parker	Local Agency Project Manager Alex Mestdagh		
CDOT Resident Engineer David Herzog	CDOT Project Manager Michael Kania		

INSTRUCTIONS:

This checklist shall be used to establish the contractual administrative responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency Agreement. Section numbers (NO.) correspond to the applicable chapters of the *CDOT Local Agency Desk Reference (Local Agency Manual)*. LAWR numbers correspond to the applicable flowchart in the Local Agency Web Resource.

The checklist shall be prepared by placing an X under the responsible party, opposite each of the tasks. The X denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, # will denote that CDOT must concur or approve.

Tasks that will be performed by Headquarters staff are indicated with an X in the CDOT column under Responsible Party. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.

The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.

Note:

Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.

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

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
4	5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	#
5	5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
3	5.9	Obtain Utility and Railroad Agreements	X	
3	5.10	Conduct Final Office Review (FOR)	X	X
3A	5.11	Justify Force Account Work by the Local Agency	X	#
3B	5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	#
3	5.13	Document Design Exceptions - CDOT Form 464	X	#
3	5.14	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	X	
	5.15	Ensure Authorization of Funds for Construction		X
	5.16	Electronic Signatures	X	
	5.17	Records Management	X	
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE				
3	6.1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist).		N/A
	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.) David J Herzog CDOT Resident Engineer (Signature on File) 5/14/2021 Date		X
	6.3	Set On-the-Job Training Goals (CDOT Region EEO/Civil Rights Specialist) "NA", if Not Applicable		N/A
3	6.4	Title VI Assurances	N/A	N/A
6,7		Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)	N/A	N/A
ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS				
6,7	7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	#
7	7.2	Advertise for Bids	X	#
7	7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7	7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7	7.5	Open Bids	X	
7	7.6	Process Bids for Compliance		
		Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals. <i>Please write in "NA", if Not Applicable.</i>		X
		Evaluate CDOT Form 1416 - Good Faith Effort Report and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals. <i>"NA", if Not Applicable.</i>		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
7,8	7.9	Award Contract	X	#
8	7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT				
8	8.1	Issue Notice to Proceed to the Contractor	X	#
8	8.2	Project Safety	X	
8	8.3	Conduct Conferences:		
		Pre-construction Conference (Appendix B) • Fabrication Inspection Notifications	X	
		Pre-survey • Construction staking • Monumentation	X X	
		Partnering (Optional)	N/A	N/A
		Structural Concrete Pre-Pour (Agenda is in CDOT Construction Manual)	X	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
		Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	x	
		HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	x	
8	8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	x	
9	8.5	Supervise Construction		
		A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Alex Mestdagh, Town of Parker 303-805-3204 Local Agency Professional Engineer or Phone number CDOT Resident Engineer	x	
		Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	x	
		Construction inspection and documentation	x	
		Fabrication Inspection and documentation	x	
9	8.6	Approve Shop Drawings	x	#
9	8.7	Perform Traffic Control Inspections	x	
9	8.8	Perform Construction Surveying	x	
9	8.9	Monument Right-of-Way	x	
9,9A	8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent) Provide the name and phone number of the person authorized for this task. Alex Mestdagh, Town of Parker 303-805-3204 Local Agency Representative Phone number	x	#
9	8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	x	#
9B	8.12	Prepare and Authorize Change Orders	x	#
9B	8.13	Submit Change Order Package to CDOT	x	
9A	8.14	Prepare Local Agency Reimbursement Requests	x	
9	8.15	Monitor Project Financial Status	x	#
9	8.16	Prepare and Submit Monthly Progress Reports	x	#
9	8.17	Resolve Contractor Claims and Disputes	x	#
	8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. David Herzog 303-512-5402 CDOT Resident Engineer Phone number		x
9	8.19	Ongoing Oversight of DBE Participation		
MATERIALS				
9,9C	9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	N/A	N/A
9,9C	9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	x x	x
9C	9.3	Perform Project Acceptance Samples and Tests	x	
9C	9.4	Perform Laboratory Verification Tests	x	
9C	9.5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	x x x	

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

(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 bylaw.

(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: July 19, 2021

Submitted By: Michael Grabczyk, Project Engineer

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 9.338 First Reading**
A Bill for an Ordinance Approving the Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for Upper Jordan Road Tributary at Bradbury Ranch (Agreement No. 21-05.17, Project No. 108522) by and between Urban Drainage and Flood Control District d/b/a Mile High Flood District and the Town of Parker
Department: Engineering and Public Works, Michael Grabczyk
Second Reading: August 2, 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 Upper Jordan Road 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 (IGA).

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Town of Parker and MHFD have partnered previously to design and construct several major drainageway projects within the Town. This reach is located within the Bradbury Ranch development and has been identified as an area of concern for flood conveyance and long-term maintenance. The reach contains two in-line stormwater ponds and has experienced aggradation or sediment accumulation overtime as well as an immense growth of cattails causing a reduction in flood conveyance. Additionally, the elevation and design of the contributing storm outfalls are not conducive to long-term maintenance. This project is anticipated to propose the installation of channel improvements such as outfall forebays, channel widening for increased flood conveyance, selective relocation and dredging of cattail areas, and retrofitting of existing concrete storm structures. This IGA will fund the final design in 2021 and contribute partially 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. Additional funds remaining from a 2007 joint project between the Town and MHFD will be contributed to this project as a special fund transfer. The Town and MHFD will amend this IGA to provide additional funding in 2022 necessary to meet the estimated construction costs as determined during final design.

2021 Design:

Town of Parker	\$300,000.00
MHFD	\$300,000.00
Special Fund Transfer	\$46,350.16

STRATEGIC GOAL(S)



**INNOVATE WITH
COLLABORATIVE
GOVERNANCE**



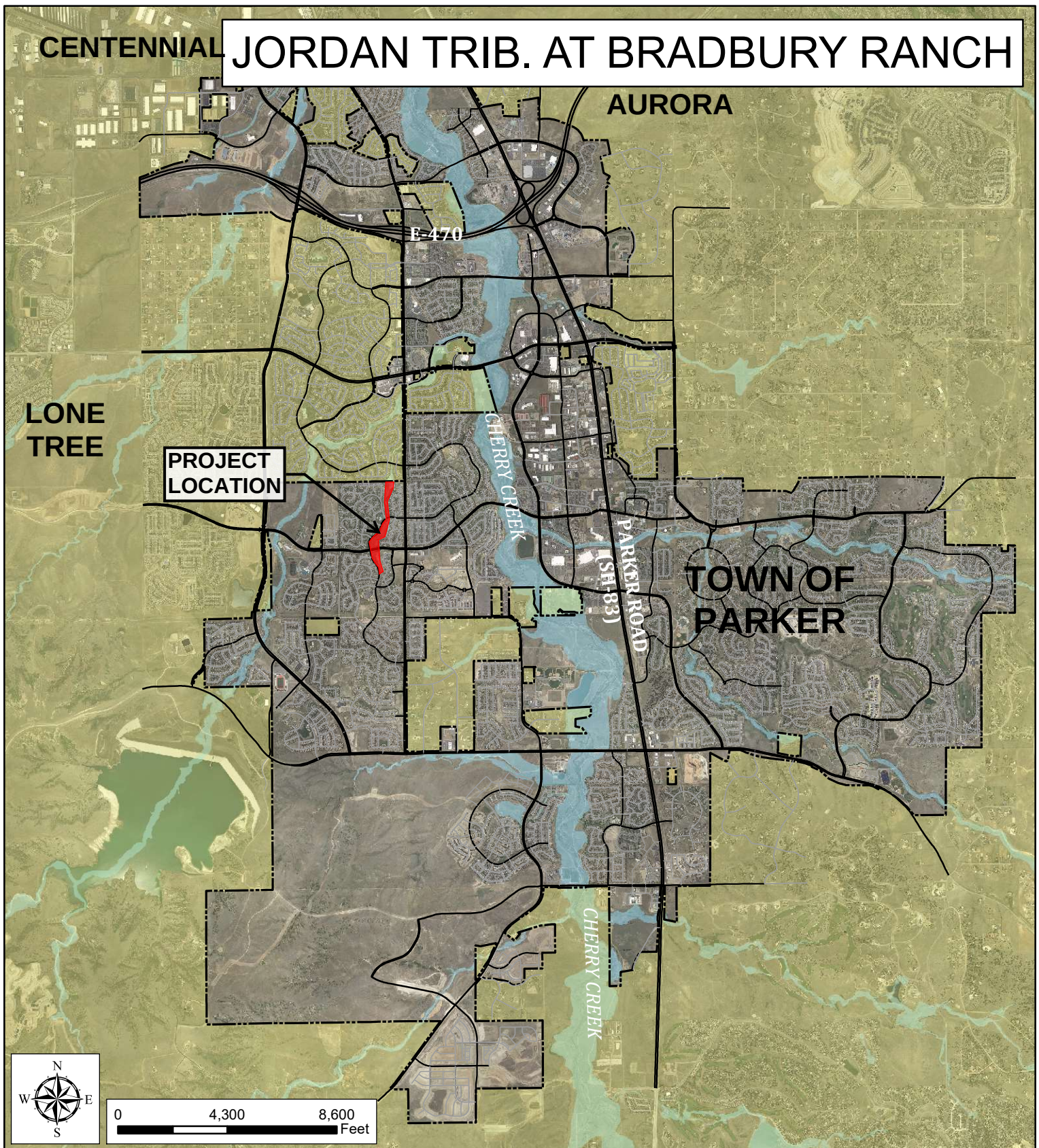
**PROMOTE A SAFE AND
HEALTHY COMMUNITY**

ATTACHMENTS

1. Vicinity Map
2. Ordinance No. 9.338

RECOMMENDED MOTION

I move to approve Ordinance No. 9.338 on first reading and to schedule second reading for August 2, 2021, as part of the consent agenda.



Stormwater

- Inlet
- Inlet - by Others
- Outfall
- Outfall - by Others
- Manhole
- Manhole - by Others
- Storm Pipe
- Storm Pipe - by Others
- Culvert
- Culvert - by Others
- Channel or Swale
- 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. 9.338, Series of 2021

TITLE: A BILL FOR AN ORDINANCE APPROVING THE AGREEMENT REGARDING DESIGN AND CONSTRUCTION OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR UPPER JORDAN ROAD AT BRADBURY RANCH (AGREEMENT NO. 21-05.17, PROJECT NO. 108522) BY AND BETWEEN URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT 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 the Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for Upper Jordan Road Tributary at Bradbury Ranch (Agreement No. 21-05.17, Project No. 108522) by and between Urban Drainage and Flood Control District d/b/a Mile High Flood District 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, 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 UPPER JORDAN ROAD TRIBUTARY AT BRADBURY RANCH TOWN OF PARKER

Agreement No. 21-05.17
Project No. 108522

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 "Newlin Gulch Major Drainage Plan" by Muller Engineering, dated 2015 (hereinafter called "PLAN"); and

WHEREAS, PARTIES now desire to proceed with design and construction of drainage and flood control improvements for Upper Jordan Road Tributary at Bradbury Ranch, Town of Parker (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. 40, Series of 2021); and

WHEREAS, the TOWN Commissioners 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 E. Mainstreet to Stonegate Parkway, 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 \$646,350.16 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	\$ 246,350.16
2. Construction *	\$ 400,000.00
3. Contingency	\$ -0-
Grand Total	\$ 646,350.16

* 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. At the request of TOWN, the following TOWN funds may be transferred to PROJECT from a separate special fund held by DISTRICT:
- Transfer from: Cherry Creek at Mainstreet
 Agreement No. 07-01.19 Amount: \$46,350.16

- D. 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	46.4%	\$300,000.00
TOWN	53.6%	\$300,000.00
Special Fund Transfer		\$ 46,350.16
TOTAL	100.00%	\$646,350.16

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 - \$346,350.16; DISTRICT - \$300,000) 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 Upper Jordan Road 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 Upper Jordan Road 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 East Mainstreet, 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

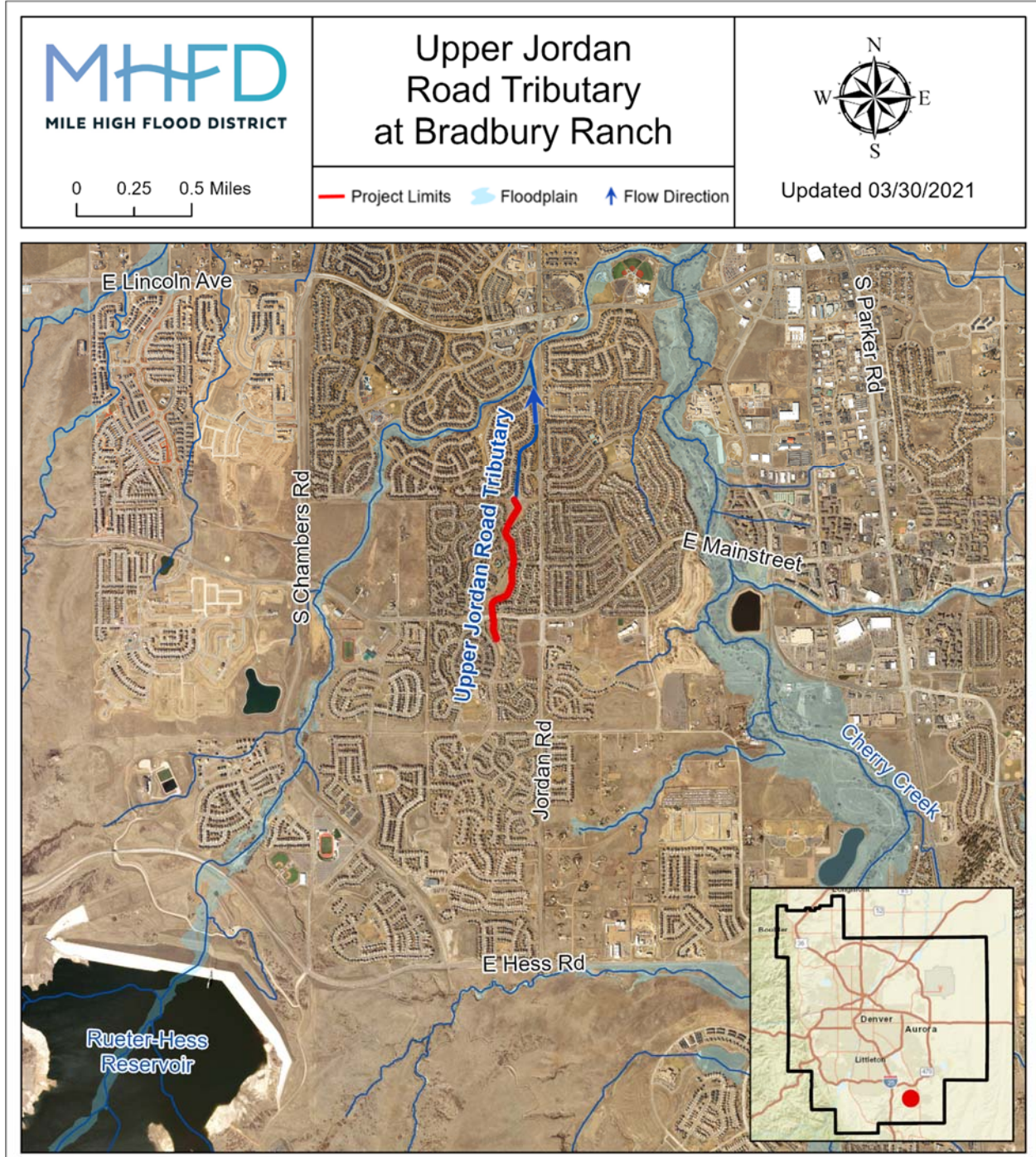
APPROVED AS TO FORM AND SUFFICIENCY:

Town Attorney's Office

AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
UPPER JORDAN ROAD TRIBUTARY AT BRADBURY RANCH
TOWN OF PARKER

Agreement No. 21-05.17

Exhibit A





Request for Town Council Action

Date: July 19, 2021

Submitted By: Michael Grabczyk, Project Engineer

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 9.339 First Reading**
A Bill for an Ordinance Approving the Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for Newlin Gulch at Recreation Drive (Agreement No. 21-05.23, Project No. 108504) by and between Urban Drainage and Flood Control District d/b/a Mile High Flood District and the Town of Parker
Department: Engineering and Public Works, Michael Grabczyk
Second Reading: August 2, 2021

EXECUTIVE SUMMARY

The Town of Parker, the Mile High Flood District (MHFD - formerly the Urban Drainage and Flood Control District), and Douglas County have identified Newlin Gulch at Recreation Drive as a reach of major drainageway requiring repair and rehabilitation to support existing and future Town growth. The Town, MHFD, and Douglas County intend to partner in funding and managing the conceptual design of improvements for this reach by executing an intergovernmental agreement.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Town of Parker and the MHFD have partnered previously to design and construct several major drainageway projects within the Town. This reach is adjacent to both the Parker Recreation Center and Challenger Park and includes the existing stream crossing of Recreation Drive. The reach is prone to flooding the surrounding parks, drive aisles, and parking lots during minor storm events due to a bottleneck downstream of the roadway crossing. This bottleneck has been exasperated as the system has aggraded over time, reducing the already limited capacity. A conceptual design will allow the Town, County, and MHFD to appropriately budget final design and construction dollars for future years in an effort to mitigate the bottleneck and expand the channel's capacity for conveyance.

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 the conceptual design and any remaining funds will be utilized towards final design. Once conceptual design has been completed, this IGA will be amended to provide funding from the County and additional funding from the Town and MHFD for final design and construction.

2021 Design:

Town of Parker \$100,000

MHFD \$100,000

STRATEGIC GOAL(S)



INNOVATE WITH
COLLABORATIVE
GOVERNANCE



PROMOTE A SAFE AND
HEALTHY COMMUNITY

ATTACHMENTS

1. Vicinity Map
2. Ordinance 9.339

RECOMMENDED MOTION

I move to approve Ordinance No. 9.339 on first reading and to schedule second reading for August 2, 2021, as part of the consent agenda.

NEWLIN GULCH AT RECREATION DR.

CENTENNIAL

AURORA

MERIDIAN

LONE TREE

PROJECT
LOCATION

CHERRY CREEK

PARKER ROAD
(SH-83)

TOWN OF
PARKER

CHERRY CREEK



0 4,300 8,600 Feet

Stormwater

- Inlet
- Inlet - by Others
- Outfall
- Outfall - by Others
- Manhole
- Manhole - by Others
- Storm Pipe
- Storm Pipe - by Others
- Culvert
- Culvert - by Others
- Channel or Swale
- 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. 9.339, Series of 2021

TITLE: A BILL FOR AN ORDINANCE APPROVING THE AGREEMENT REGARDING DESIGN AND CONSTRUCTION OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR NEWLIN GULCH AT RECREATION DRIVE (AGREEMENT NO. 21-05.23, PROJECT NO. 108504) BY AND BETWEEN URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT 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 the Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for Newlin Gulch at Recreation Drive (Agreement No. 21-05.23, Project No. 108504) by and between Urban Drainage and Flood Control District d/b/a Mile High Flood District 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, 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 NEWLIN GULCH AT RECREATION DRIVE

Agreement No. 21-05.23

Project No. 108504

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 "Newlin Gulch Major Drainageway Plan" by Muller Engineering, dated 2015 (hereinafter called "PLAN"); and

WHEREAS, PARTIES now desire to proceed with design and construction of drainage and flood control improvements for Newlin Gulch at Recreation Drive (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 2021) which includes funds for PROJECT; and

WHEREAS, DISTRICT'S Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 41, Series of 2021); and

WHEREAS, the TOWN Commissioners 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 at Newlin Gulch as Recreation Drive, 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 \$200,000 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	\$ 200,000
2. Construction *	\$ -0-
3. Contingency	\$ -0-
Grand Total	\$ 200,000

* 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	50%	\$100,000
TOWN	50%	\$100,000
TOTAL	100%	\$200,000

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 - \$100,000; DISTRICT - \$100,000) 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 Newlin Gulch 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 Newlin Gulch 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.
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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_____

Checked By

Name Ken A. MacKenzie

Title Executive Director

Date _____

TOWN OF PARKER

Jeff Toborg, Mayor

Date _____

ATTEST:

Town Clerk's Office

APPROVED AS TO FORM AND SUFFICIENCY:

Town Attorney's Office

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS

By: _____
DOUGLAS J. DEBORD, County Manager

APPROVED AS TO FISCAL CONTENT:

ANDREW COPLAND, Director of Finance

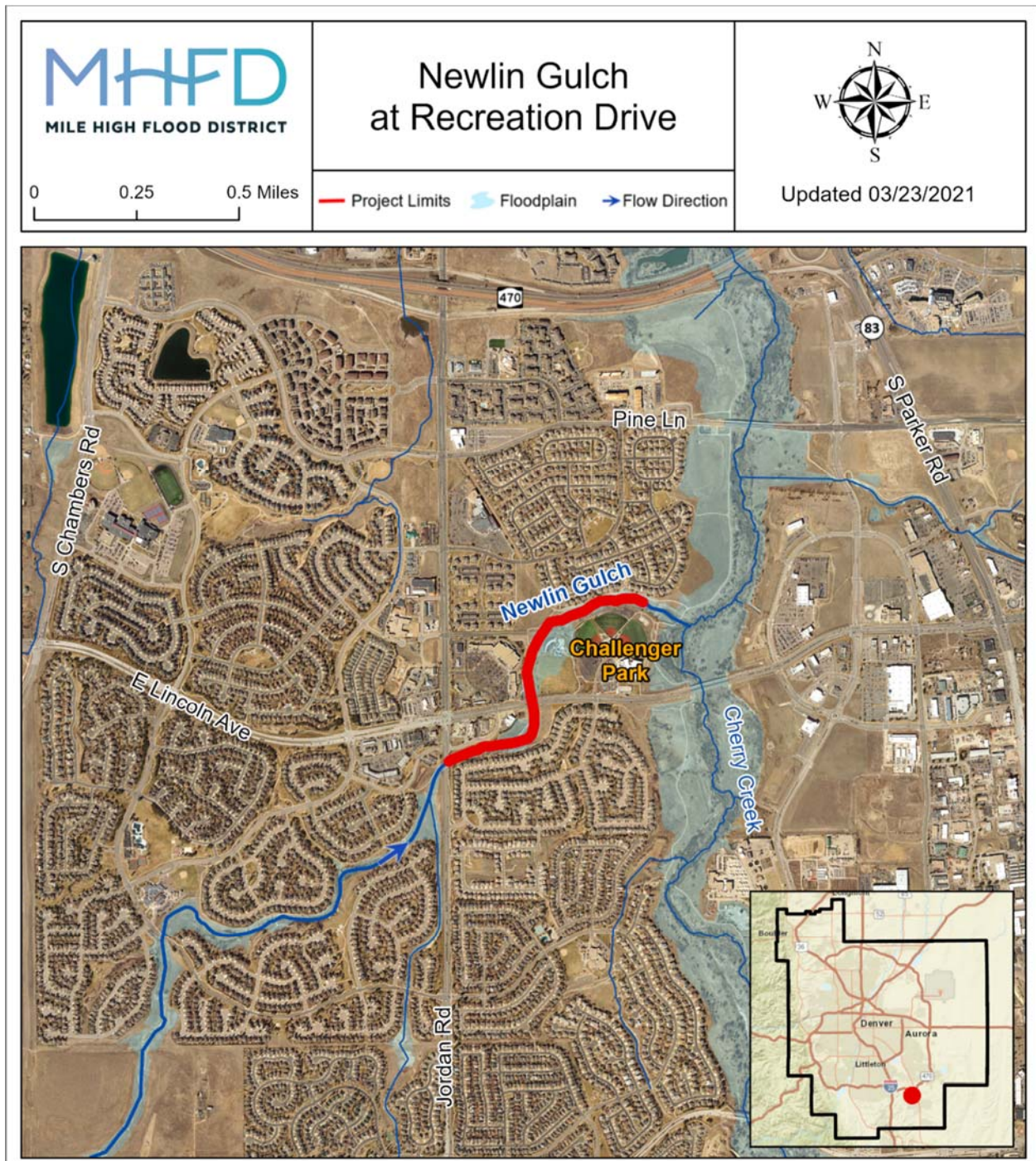
APPROVED AS TO LEGAL FORM:

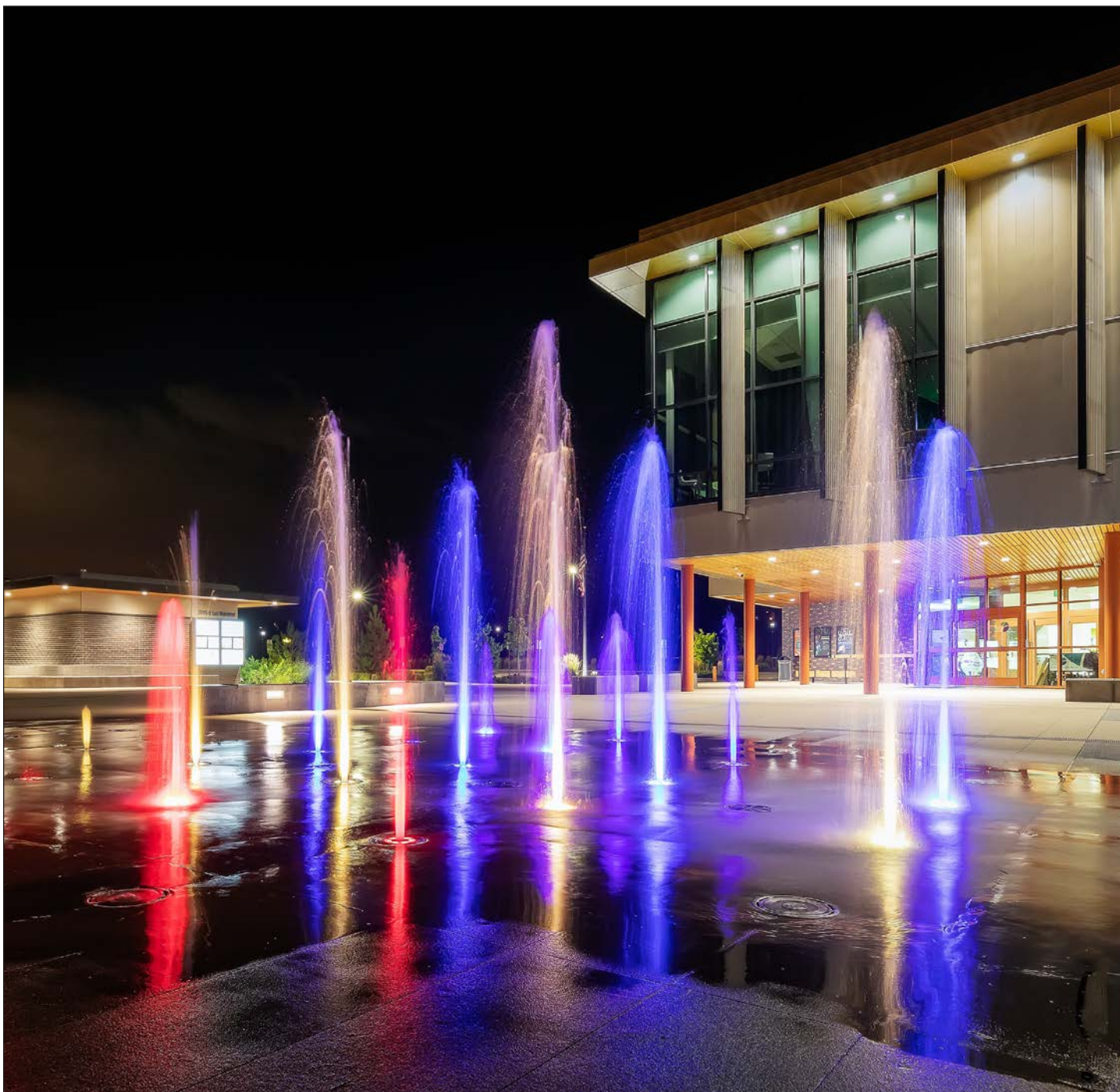
CHRIS PRATT, Assistant County Attorney

AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
NEWLIN GULCH AT RECREATION DRIVE

Agreement No. 21-05.23

Exhibit A





Town Administrator's Report

Summer 2021



PARKER
C O L O R A D O

Town of Parker
20120 E. Mainstreet
Parker, CO 80138

Tel: 303.841.0353
Fax: 303.805.3153
townadministrator@parkeronline.org



Communications

Department Updates

Community Survey

The Town's 2021 Community Survey is underway! The official survey was mailed to 3,000 randomly selected households in early June and an online version will be available to all residents in mid-July. The survey is conducted every three years to gauge resident satisfaction with Town services and amenities, as well as to ask a select number of timely policy questions. Visit www.ParkerOnline.org/CommunitySurvey for more details.

Let's Talk, Parker!

Stop by the Town's Let's Talk Parker booth at the Parker Farmer's Market on Sunday, July 18 and Sunday, Aug. 15 from 8 a.m. to 1 p.m. for a fun and informal conversation with Town Council and staff! This event gives our residents a chance to connect with elected officials and staff to ask questions, voice concerns or just meet

some of the people that help keep Parker a great place to live, work and play! We hope you'll join us!



Town Videos

New additions to the Town's educational video services are now available on the Town's YouTube channel at www.YouTube.com/TownofParkerCO. Videos in this series include information about Town programs and services, annexations, open space, traffic signals and more.

Open Budget Parker

The Finance Department's Open Budget platform has been updated for 2021 and can be found on the Town website at www.ParkerOnline.org/OpenBudget.

To support transparency, this website allows visitors to easily access and browse the Town of Parker budget, find immediate answers to questions and share insights with others. The charts, graphs and tables throughout the platform are all highly interactive and we invite our residents to explore!



Town Events



Fireworks on the Fourth

The Town of Parker was happy to welcome our community back to in-person events in 2021 at our Fourth of July event at Parker's Salisbury Park.

Although this event was a bit different than our traditional Parker Stars and Stripes Celebration, it was a great time for the community to gather and enjoy live music, walk-around entertainment and our traditional fireworks show.

Attendees had three options to choose from for their fireworks viewing experience: drive-in only in the north Salisbury parking lot, tailgating in the main polo field parking lot, or viewing from the multi-purpose field. These zones allowed us to welcome our guests back to events at a level with which they were comfortable, while also providing the necessary event and attendance flexibility to accommodate still fluctuating health guidelines.

We look forward to returning to our traditional Parker Stars and Stripes Celebration in 2022!

Communications - cont'd

2nd Quarter Digital Marketing Report

Social Media

The following statistics were collected from the Town of Parker's and Parker Parks and Recreation's Facebook, Twitter and Instagram accounts between April 1 and June 30.

Account Followers

Town Facebook: 19,282 to 19,639; +2%
Town Twitter: 4,610 to 4,617; +0.2%
Town Instagram: 6,949 to 7,088; +2%
Parks and Recreation Facebook: 8,748 to 8,910; +2%
Parks and Recreation Twitter: 2,070 to 2,081; +0.5%
Parks and Recreation Instagram: 2,344 to 2,421; +3%

Post Engagement

(number of likes, comments, shares, link clicks)

Town Social Media Accounts: 50,429
Parks and Recreation Social Media Accounts: 14,516

Post Impressions (number of views)

Town Social Media Accounts: 924,239
Parks and Recreation Social Media Accounts: 269,177

Follow the Town of Parker (@TownofParkerCO) and Parker Parks and Recreation (@ParkerRec) with the same username on each platform.

Website Statistics

The following statistics demonstrate activity for the Town of Parker (www.ParkerOnline.org) and Parker Parks and Recreation (www.ParkerRec.com) website between April 1 and June 30.

Website Visits

Town of Parker: 107,113
Parks and Recreation: 171,384

Page Views

Town of Parker: 201,837
Parks and Recreation: 272,279



Town Facebook:
22,493 impressions; 1,665 reactions, comments and shares
May 11th greetings from Parker, Colorado



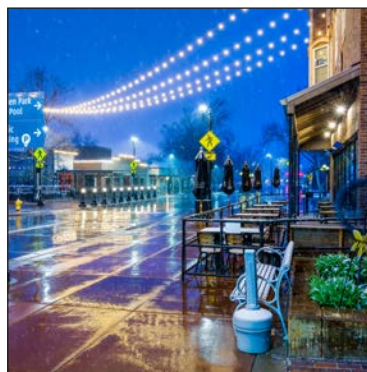
Town Facebook:
19,090 impressions; 1,678 reactions, comments and shares
When we say spring in Colorado, this is what we mean



Parks and Recreation Facebook:
14,252 impressions; 698 reactions, comments and shares
Grab your cowboy hat because the Cattle Crossing 5K & Family Fun Trek with RNK Running & Walking is going to make ya'll shout YEEHAW on Saturday, June 1.



Parks and Recreation Facebook:
7,931 impressions; 1,187 reactions, comments and shares
A large turtle was found along one of our trails ... we found that it was a mamma snapping turtle who laid eggs on the edge of one of the trails.



Town Instagram:
251 likes
Rain on Main — and some snow, too



Parks and Recreation Instagram:
96 likes
Today we gave away seedling trees, ate pancakes and enjoyed gorgeous weather at the annual #ArborDay event.



Community Development

Building Division Statistics - 2nd Quarter 2021

Single-Family Permits: 140 \$54,301,614 Q2 valuation ----- 321 total in 2021 \$122,448,895 total valuation ----- 120 / \$42,762,231 End Q2 2020	Commercial Permits (New): 3 \$2,977,633 Q2 valuation ----- 6 total in 2021 \$6,223,842 total valuation ----- 10 / \$23,398,033 End Q2 2020
Multi-Family Permits: 9 \$55,000 Q2 valuation ----- 0 apartment units in 2021 0 condo units 9 townhome units \$55,000 total valuation ----- 5 / \$1,336,514 End Q2 2020	Commercial Permits (Remodel): 246 \$5,426,957 Q2 valuation ----- 435 total in 2021 \$8,572,446 total valuation ----- 391 / \$11,565,646 End Q2 2020
Other Permits: 727 \$5,603,491 Q2 valuation ----- 1,390 total in 2021 \$10,438,524 total valuation ----- 1,498 / \$12,142,389 End Q2 2020	Total Permits Valuation: \$68,309,695 Q2 ----- \$147,738,707 2021 Total Valuation ----- \$91,204,813 / End Q2 2020 Total Valuation
Inspections: 10,324 in Q2 ----- 18,902 total in 2021 ----- 14,195 / End Q2 2020	Total Permits: 1,116 in Q2 ----- 2,161 total in 2021 ----- 2,024 / End Q2 2020

Planning Division

2021 Community Development Work Program

The annual Community Development Work Program is now available for review at www.ParkerOnline.org/CDWorkProgram. The Work Program identifies ongoing work tasks and special projects that the Planning and Building Divisions desire to accomplish for the year. Many of the special projects are long-term, multi-year projects that include community outreach and may be carried over from previous years until completed. Other projects are added to the annual Work Program to ensure seamless, continued planning of our community. Challenges such as changes in funding or staffing may delay completion or the start of a project.

Three-Mile Area Plan

Staff is preparing the annual update of the Town of Parker's Three-Mile Area Plan. This Plan was developed in 2006 to comply with the Municipal Annexation Act of 1965 that ensures municipalities have a plan in place for annexations within a three-mile area of their boundaries. The Plan ensures municipalities are able to service newly annexed areas and is required to be updated annually. The update highlights all Parker annexations and any annexations in other jurisdictions within the three-mile buffer area, as well as any changes to transportation facilities, zoning, water and sanitation districts, and parks or natural areas.

Bike and Pedestrian Plan

Planning staff, in coordination with the Engineering/Public Works, Parks and Recreation, Communications and GIS/IT Departments, is working on a new Bike and Pedestrian Plan that will be a supplement to the Town of Parker Transportation Master Plan. This Plan will analyze the Town's current bicycle, pedestrian and trail network, identify gaps in the existing infrastructure, and make recommendations for new and/or improved facilities to create an enhanced multi-modal network for all Parker users.

RTD Route 483 Reinstated / FlexRide Service

The Regional Transportation District (RTD) that provides transit service to the Town of Parker and the Denver metro is restoring service that was reduced or suspended due to COVID-19. In June, RTD reinstated the Route 483 bus service that connects Parker to regional transit system. Information about the service, including schedule, may be found at www.RTD-Denver.com.

Residents can also take advantage of RTD's Parker FlexRide shuttle that provides "curb-to-curb" transportation services within many areas of our community. For more details, visit www.RTD-Denver.com/FlexRide.

Community Development - con't

Development Review - Project Updates

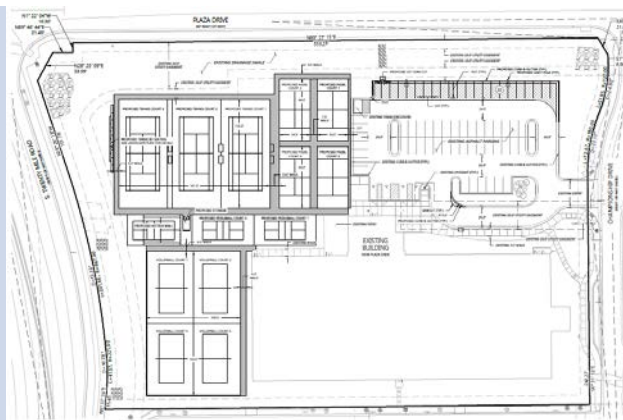
Development Projects of Interest - Under Review

See the Development Tour Map at www.ParkerOnline.org/Development for information on all projects in Town.

<i>Project Description</i>	<i>Project Type</i>	<i>Case #</i>
Newlin Crossing <i>* NE corner of Chambers Road and Mainstreet</i> <i>* 290 single-family lots along with parks and open space</i>	Sketch Plan Preliminary Plan	SUB20-041 SUB20-042
Parker and Pine Lane Multi-Family Development <i>* SW corner of Parker Road and Pine Lane</i> <i>* 186 multi-family housing units</i>	Site Plan	SP20-084
Olde Town/Senderos Creek North <i>* S of Mainstreet, E of Jordan Road</i> <i>* 122 townhomes along with parks</i>	Sketch Plan Preliminary Plan	SUB20-038 SUB20-039
Olde Town/Senderos Creek Office and Commercial <i>* S of Mainstreet, E of Jordan Road</i> <i>* Two 24,761 sq. ft. two-story commercial/office buildings</i>	Site Plan	SP19-131
Lincoln Professional Park (Peaslee) Commercial <i>* SE corner of Lincoln Avenue and Dransfeldt Road</i> <i>* Future commercial uses</i>	Annexation Zoning	ANX20-006 Z20-019
Clarke Commercial, Oralabs Addition <i>* N of Plaza Drive, E of Twenty Mile Road</i> <i>* 27,174 sq. ft. addition to existing Oralabs facility</i>	Site Plan	SP20-111
Kime Ranch Annexation and Zoning <i>* N of Mainstreet at Willow Park Drive</i> <i>* 150 single family home lots with parks and open space</i>	Annexation Zoning	ANX21-005 Z21-007
Anthology North <i>* S of Hess Road, W of Motsenbocker Road</i> <i>* 496 lots, future development tracts, parks and open space on 1,099 acres</i>	Sketch Plan Preliminary Plan	SUB20-005 SUB20-006
Townhomes at Pine Drive <i>* NE corner of Pine Drive and Summerset Lane</i> <i>* 85 attached townhome lots, along with parks, trails and open space</i>	Sketch Plan Preliminary Plan	SUB20-043 SUB20-044
Looking Glass (Hess Ranch) Segment 2A <i>* SW of Crowfoot Valley Road and Stroh Road</i> <i>* 905 residential lots, future development and commercial tracts, parks and open space on 342.86 acres</i>	Sketch Plan Preliminary Plan	SUB20-010 SUB20-011

Project Focus: Parker Racquet Club Outdoor Courts

Currently under review on the southwest corner of Twenty Mile Road and Plaza Drive are additional outdoor facilities at the Parker Racquet Club. The project proposes three tennis courts, four padel courts, two pickleball courts, one hitting wall/pickleball court and four sand volleyball courts. The proposed expansion will include an additional 22 parking spaces.

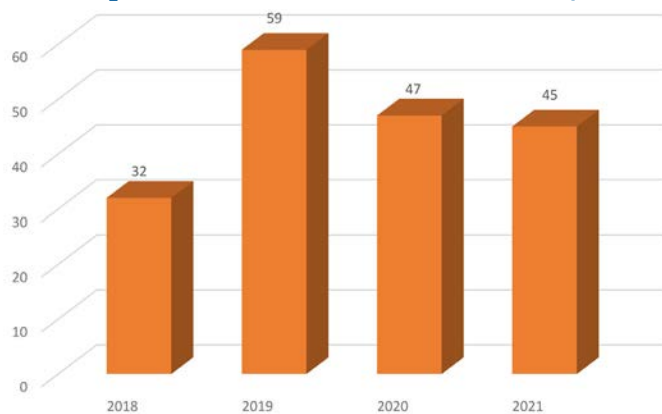


Community Development - con't

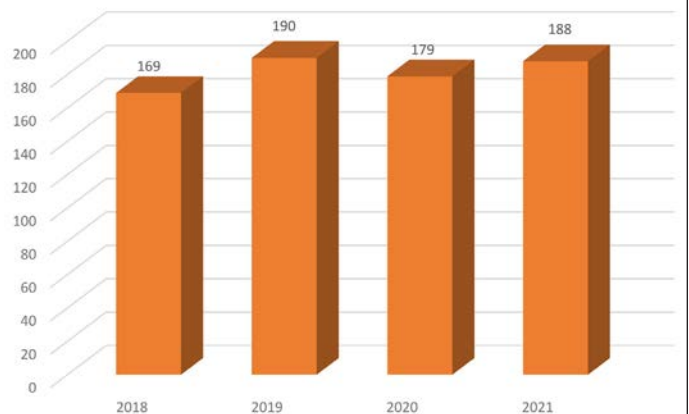
Major Administrative Approvals - 2nd Quarter 2021

Proposal	Applicant	Case #	Approval Date
Crown Point Multi-tenant Retail * NE of Parker Road and E-470 * 19,700 sq. ft. multi-tenant retail building	Roth Engineering	SUB20-108	April 6
Hess Ranch Filing No. 2 * W of Crowfoot Valley Road, S of Stroh Road * 81 single family lots with parks and open space	Front Range Communities	SP19-034	May 10
Hess Ranch Filing No. 3 * W of Crowfoot Valley Road, S of Stroh Road * 51 single family lots with parks and open space	Lutheran High School	SP19-035	May 10
Chase Bank * SW corner of Mainstreet and Parker Road * 3,470 sq. ft. bank	Leon Capital	SP19-003	May 10
Carousel Farms Filing No. 3 * NE corner of Mainstreet and Newlin Gulch Boulevard * 52 single family lots with open space and landscaping	Century Communities	SP19-044	May 14
New Horizons * SW corner of Mainstreet and Newlin Gulch Boulevard * 6,200 sq. ft. classroom expansion	Grace Lutheran Church	SP20-095	June 10
Hess Ranch Filing No. 7 * West of Crowfoot Valley Road, S of Stroh Road * 120 single family lots with parks and open space	Front Range Communities	SP19-041	June 17

Development Review Submittals - 2nd Quarter

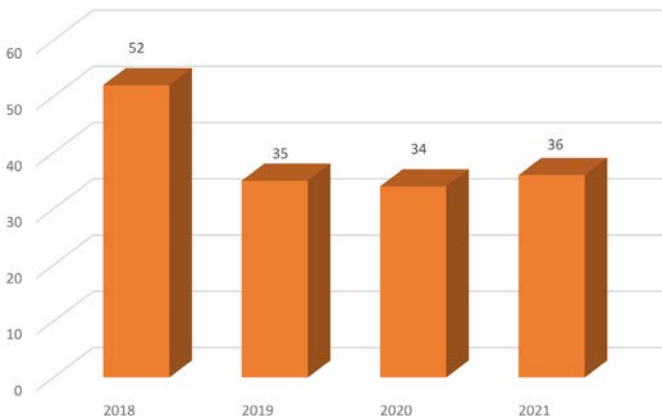


Development Review Submittals* - Year Total



* Figure is the annual projection for the year 2021

Development Review Approvals - 2nd Quarter



See the Development Tour Map at www.ParkerOnline.org/Development for information on all projects in Town.



Cultural Department

Education

- Parker Arts held the 5th Annual Portfolio Day virtually on Friday, April 9. Students from Lutheran and Douglas County High Schools participated in this year's event by discussing and reviewing their portfolios with art professionals and peers in an online setting. Thirty-one pieces of student art were selected and installed in the PACE Center art gallery and shared in an online gallery at www.ParkerArts.org, while two students were awarded \$1,000 scholarships from the Parker Artist Guild (PAG). Hosting Portfolio Day virtually proved beneficial in so many ways that now future Portfolio Day programming will include virtual components.
- Parker Arts Lectures restarted in spring offering interactive virtual lectures on Zoom and Vimeo platforms. Lecture topics included: climate change, Coronavirus data analysis, Alferd Packer, foster parenting, and hiking in Douglas County. Each lecture was well attended from the comfort and safety of home.
- Parker Arts contracted and programmed 68 individual enrichment camps with local and national education vendors. We kicked off summer with a full lineup of camps from Pokémon Engineering using LEGOs to a new Shakespeare in the Park held outdoors at the PACE Center. As of July 2, a total of 977 kids have participated in Parker Arts enrichment camps.

Development

- In June, Parker Arts members enjoyed attending the Season Announcement Party, where they learned first which acts would be coming in 2021-2022. Over 200 members enjoyed a night of music, magic, food and the exclusive benefit of purchasing tickets prior to the general public.
- We welcomed Parker Hair Xpress as a new sponsor to our Family Discovery Series.
- Over 40 members also enjoyed a Wine and Chip pairing event. The All Dressed Chips were a favorite and new to everyone in attendance. Members also enjoyed a presentation and special lesson from our current Artist in Residence, Carm Fogt, who taught a lesson on ink painting.
- Parker Arts received a grant from Western States Arts Federation (WESTAF) for the second year in a row.

Facility Rentals

During second quarter, Parker Arts facilities hosted:

- Nine weddings between the PACE Center, Schoolhouse and Ruth Memorial Chapel
- Three graduation parties
- A 50th birthday celebration and vocal recital
- The return of the Douglas County Cotillion along with the Douglas County Youth Orchestra PLAY-A-THON

With restrictions lifting, most of our regularly scheduled HOA meetings are picking back up and many more rentals are moving in.

Volunteer/Outreach

Second quarter volunteer and outreach efforts included:

- We attended 11 community outreach events between May 1 and June 30.
- As part of our community engagement, we spoke to 480 patrons about Parker Arts. Over 70 of these patrons actively filled out a link from a QR code to receive our weekly patron newsletter or other information from Parker Arts.
- Parker Arts hosted the inaugural Parker Science Day in partnership with the Council of Arts, Science and Culture. Over 1,000 people attended this event.
- Parker Arts gained 15 new volunteers since May 1.

Box Office

We reached maximum (or near-maximum) "COVID capacity" (25%-30% at PACE) for the following presented performances: Top Hogs Show (154); Colorado Jazz Repertory Orchestra - Nothing but The Blues (129); Parker Chorale: Music That Moves Us, Broadway to Big Screen (144); and The Blues Brothers Bootleg Roadshow (125).



Business News and Resources

Need to Recruit New Employees or Find Employment?

The Arapahoe/Douglas Works! Workforce Center is a member of the Colorado Department of Labor and Employment's statewide network of workforce centers, which provide a variety of no-cost services to job seekers and businesses. Arapahoe/Douglas Works! serves as a critical resource to connect people and businesses in Arapahoe and Douglas Counties, and throughout the Denver/Aurora metropolitan region. Visit www.ADWorks.org for more information.

Consumer Spending Fell Flat in May After Robust Spring

Consumer spending in the United States stayed flat in May, according to data released by the Commerce Department in late June. But the details underlying the report point to a strong summer season for retailers, the travel industry and entertainment venues, as consumers pivot away from spending on furniture and home office equipment and toward restaurant meals and vacations. **#shop_parker #buylocal**

Are You Confused About How to Use Social Media?

Join Aurora South Metro Small Business Development Center and the Town of Parker via a webinar to help you develop a social media marketing plan in three sessions. This introductory social media class will help you develop a basic digital marketing strategy for your existing business. To participate, visit <http://bit.ly/3z3sY7K>.

Economic Development

Economic Outlook

With each passing month, we continue to see our economy coming back. We still have a long way to go, but we are moving full steam ahead. The U.S. economy is poised to rebound sharply in 2021, with GDP likely to grow at its fastest pace in decades. Business applications are growing, even in the most affected sectors, and aggregate job openings continue to outpace hirings due to labor supply constraints, especially in low wage industries such as restaurants, retail and hospitality.

Many arrows are pointed in the right direction. We see increases in new jobs and companies hiring, a decrease in the unemployment rate and more passengers flowing through Denver International Airport. In Parker, we continue to see a lot of interest from businesses looking to expand, new-to-market concepts looking to open and existing businesses continuing to ramp up.

- Parker has 1.3M square feet (SF) of office space with a vacancy rate of 8.3%, compared to 12.6% for Douglas County.
- Parker has 4.5M SF of retail space with a vacancy rate of 2.1%, compared to 2.5% for Douglas County.
- Parker has 896,000 SF of industrial space with a vacancy rate of 9.4%, compared to 8.2% for Douglas County.
- Parker's unemployment rate is 5.3%, compared to 5% for Douglas County and 5.6% for the State.

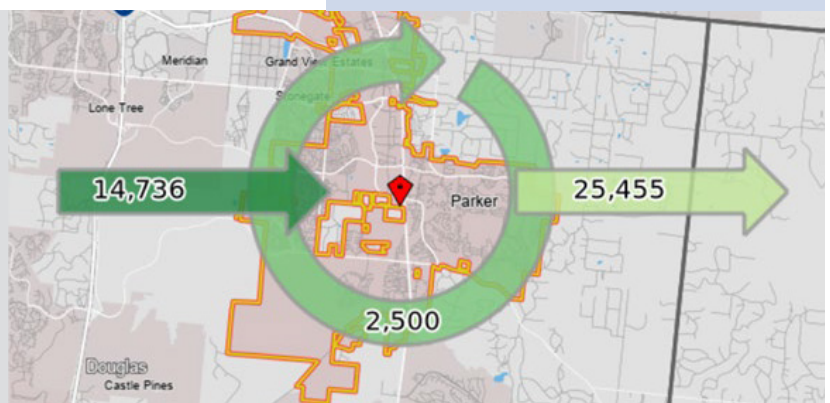
(Source: CoStar)

For more details about the economic outlook for the southeast region of the greater Denver metro area, view the 2021 Arapahoe and Douglas Counties Economic Profile at www.ParkerOnline.org/2021ADDCProfile.

Did You Know?

Every day, according to the US Census Longitudinal Employer Household Dynamics, 14,736 people commute into Parker to work. An additional 2,500 live and work in Parker, while 25,455 residents commute elsewhere to work, with the majority traveling to Denver.

(source Arapahoe/Douglas Workforce Development Board).





Engineering and Public Works

Roadway Capital Improvement Projects

Cottonwood Drive Widening

- *Jordan Road to Cottonwood Way*

Construction for this project is underway with much of the new Cherry Creek bridge (south of the existing bridge) being completed over the winter and spring. The lane widening is moving along with paving operations planned for late July. The project is anticipated to be completed in late 2021.

Parker Road Sidewalk Project - South

- *Installation of a multi-use trail/sidewalk on the west side of Parker Road between Twenty Mile Road and Hess Road, along with a spur to the Cherry Creek Trail*

This project has been awarded and is planned to start in July with a late fall completion date. The Town has received approval for partial State multi-modal funding.

North Parker Road Operational Improvements

- *Traffic and multi-modal operational improvements on Parker Road between Lincoln Ave and E-470*

Preliminary design work is complete. A project kickoff meeting with CDOT was held in June, and the project is preparing to enter the final design phase.

Motsenbocker/Hess Intersection Improvements

- *Improvements at the Motsenbocker/Hess intersection and widening south*

Project design has been completed and is out for bid with construction anticipated to begin in the fall and be completed late in the year.

Responsive Signal System Expansion

- *Installation of seven new count stations and monitoring equipment, as well as creation of new Traffic Responsive control signal programming*

Design work is complete. Staff is working with CDOT on an agreement for funding. Public bidding of the project is expected for this summer, with the system fully operational by spring 2022.

Nate' Drive Reconstruction

- *Removal and replacement of concrete surface between Hess Road and J Morgan Boulevard with composite section, including base and asphalt surface, in addition to removal and replacement of damaged curb, gutter and sidewalk*

Work began in April. The project is 40% complete with west side base and asphalt in place. Work is currently being performed on the east side, performing reconditioning and base import.

Parks and Recreation Projects

Jordan Road Undercrossing

- *Construction of an undercrossing along the East-West Regional Trail at Jordan Road*

Construction of Phase 2 is underway and primarily consists of constructing the east half of the concrete box culvert and corresponding utility relocates while shifting traffic to the west lanes. Upon completion of Phase 2, the contractor will begin work on the west half of the concrete box culvert and corresponding utility relocates while shifting traffic to the east lanes. The overall project is anticipated to be completed in late 2021.

Downtown Circulation Improvements

- *Pedestrian safety and circulation improvements on Victorian Drive and Mainstreet, including a traffic signal at the Mainstreet/Victorian Drive (west) intersection*

The project is out for bid with an anticipated completion date of late 2021.

Southwest Parker Road/Mainstreet Improvements

- *Widening of turn lane at the southwest corner of Parker Road/Mainstreet*

The project is underway and should be completed by early fall.

Parker Road Sidewalk - East Side Connection Project

- *Installation of a multi-use trail/sidewalk on the east side of Parker Road from Sulphur Gulch Trail to just south of Parker Square Drive with a pedestrian bridge over Sulphur Gulch*

Design is underway. The Town received approval for partial State multi-modal funding. Project bidding is anticipated to occur in late 2022, with construction to take place in 2023.

Engineering and Public Works - con't

Stormwater Projects

Cherry Creek at KOA

- Channel and bank stabilization from McCabe Meadows Trailhead Parking lot to a point approximately 1,000 feet north

This project has been substantially completed and is currently under revegetation monitoring.

Lemon Gulch at Meadowlark

- Channel and bank stabilization from Crowfoot Valley Road to the Meadowlark property boundary

This project has been substantially completed and is currently under revegetation monitoring.

Lemon Gulch at Looking Glass

- Channel and bank stabilization from the Looking Glass property boundary west of Crowfoot Valley Road to a point along Lemon Gulch approximately 4,000 feet southwest

This project is under construction with substantial completion anticipated by the fourth quarter of 2021.

West Stroh Gulch at Anthology North

- Channel and bank stabilization from an existing drop structure immediately upstream of French Creek Loop to a point along West Stroh Gulch approximately 5,100 feet southwest

This project is under final design and permitting with construction anticipated for the first or second quarter of 2022.

Brandy Gulch at Looking Glass

- Channel and bank stabilization from the confluence point with Lemon Gulch to a point along Brandy Gulch approximately 2,700 feet west

This project is under construction with substantial completion anticipated by the end of the summer of 2021. Additional revegetation efforts will be employed as necessary in the spring and beyond until permit close-out is achieved.

Cherry Creek at Dransfeldt

- Channel and bank stabilization from PSCo transmission lines to a point approximately 2,500 feet south

This project is within the preliminary design phase. Final design is anticipated for 2021 with construction anticipated to begin in summer 2022.

Green Acres Tributary at Compark Village South

- Channel and bank stabilization from a Culvert under E-470 to a point along Green Acres Tributary approximately 4,200 feet southwest

This project is under construction with substantial completion anticipated for the fourth quarter of 2021. Temporary and structural stabilization shall be implemented upon substantial completion. Full stabilization, including seeding and plantings, will be installed in early spring 2022.

Jordan Tributary at Bradbury Ranch

- Channel and bank stabilization from an existing stormwater pond immediately upstream of Mainstreet to a point along Jordan Tributary approximately 3,600 feet north

This project is within the final design and permitting phase with construction anticipated to begin in first/second quarter 2022.

Cottonwood Meadows Tributary

- Channel and bank stabilization from an existing stormwater pond immediately upstream of Jordan Road to the confluence with Cherry Creek approximately 1,200 feet east

This project is within the final design and permitting phase with construction anticipated to begin in second/third quarter 2022.

Cimarron Middle School Pond

- Structure retrofits and improvements to a regional stormwater pond adjacent to Cimarron Middle School

This project is within the final design/permitting phase and is anticipated to begin in fourth quarter 2021.

Annual Roadway Maintenance

Roadway Resurfacing

- Roto-milling and resurfacing Twenty Mile Road from Mainstreet to Lincoln, Lincoln Meadows Pkwy from Lincoln to Dransfeldt, and Mainstreet from Riva Ridge to east Town boundary

This project began in June. Mainstreet and Idillywilde resurfacing is complete, with work on Twenty Mile and Lincoln Meadows to begin in July.

Concrete Repair

- Misc. sidewalk, concrete pavement and curb and gutter repairs

This project began in May and is 5% complete.

Parking Lot Maintenance

- Concrete repairs and asphalt preservation, Parker Police Department, Town Recreation Center, Dog Park

The Police Department parking lot work is 90% complete. The other projects will be completed by October.

Asphalt Rejuvenation

- Application of asphalt rejuvenator to surface to extend pavement life, Cottonwood Highlands and Salisbury Heights

This project is scheduled to begin in August.

Townwide Pavement Preservation

- Microsurfacing, slurry seal and chip seal on local, collector and arterial streets

This project began in May and is 90% complete. Remaining minor slurry seal will be completed in September/October.



Parks and Recreation

Special Events

- **Egg Splash and Dash** (April 3)
– Nearly 100 children enjoyed a twist on the traditional egg hunt as kiddos splashed and dashed for tons of plastic, fun-filled eggs at the Recreation Center Indoor pool.
- **Arbor Day Celebration** (May 1) –
Due to event restrictions, Arbor Day participants were required to pre-register this year. More than 200 registrants celebrated Arbor Day at Discovery Park with seedling tree giveaways, goodie bags and pancakes from Flippin' Flapjacks.
- **Senior Stroll** (May 26) – More than 150 active older adults celebrated National Senior Health & Fitness Day at O'Brien Park (pictured top right) with a one-mile fun walk, delicious refreshments, socializing with friends, exciting prize giveaways and interacting with local business vendors that put an emphasis on senior health and wellness.
- **Princess Ball** (June 4) – Held at the PACE Center, 116 princes and princesses danced the night away and enjoyed crafts and refreshments with friends and special guest princesses (pictured center right).
- **Cattle Crossing 5K & Family Fun Trek** (June 19) – Between the professionally timed 5K and the laid-back, one-mile Fun Trek with duck hunt, 212 participants celebrated the beginning of summer and Parker's rich rural history at Tallman Meadow Park (pictured bottom right).



Therapeutic Recreation/Active Aging Adults

A Therapeutic Recreation testimonial from Carole (74 years young):

"My journey both before and during COVID was a bit more involved with a couple of major surgeries and the need for some serious rehabilitation. Parker Rec provided me with the perfect remedy for recovery with Deni Jacobs' Arthritis Therapy classes in the Rec Center therapy pool. I'm thrilled to say that with the availability of the Arthritis Therapy classes and my ongoing commitment to the program, I'm back to great mobility and even better health!"

Parks

The Parks Division is heavy into summer activities, including athletic field preps, continued general maintenance operations and various safety inspections, Town events support, plant material installation and maintenance, irrigation management and mowing operations.

Forestry/Open Space

Forestry/Open Space summer responsibilities include integrated pest management practices in native areas, tree work and open space mowing operations.

Parks and Recreation - con't

By the Numbers Parks

Sports

20

Teams in the Men's Basketball League

5

Teams in our new Spikeball League

18

Teams in our new Grass Volleyball League

32

Kids enrolled in two Fencing Camps

Aquatics

1,013

Participants enrolled in Group Swim Lessons

205

Participants enrolled in Private and Adaptive Lessons

H2O'Brien Pool

10,494

Paid daily admissions from May 29 to June 30

1,906

Pass entries from May 29 to June 30

88

Season pass entries from May 29 to June 30

12,488

Total number of entries from May 29 to June 30

Kids' Zone

116

Registrants at the June 4 Princess Ball event

Facilities

2,722

Memberships sold at all facilities in the second quarter



4,556

Annual flowers planted so far this year

16

Adopted flowerbed locations in the Adopt-a-Flowerbed program

3

Large flowerpots replaced on Mainstreet that were hit in vehicle accidents

70

Completed athletic field preps for team play (including 3/4-mile per field of infield dragging with a 4-foot drag)

22

Miles painted of athletic field layout lines per week (foul lines, soccer and lacrosse boundaries)

1

Miles of chalked baseball/softball infield base lines each week

5

Newly installed art pieces in downtown, removing previous pieces at the same time

28-4-4

Conducted 28 playground, 4 Norwell Fitness, and 4 Harmony Garden safety inspections

88

Completed irrigation system mainline activations

1,289

Activated and checked irrigation zones' valves and heads

88

Annual backflow protection assembly tests completed in-house, including filing of findings reports with Parker Water and Sanitation District for each assembly

4

Prepped horse arenas for separate equestrian events, including 1/3-mile total of dragging the surfaces with an 8-foot harrow

2

Employees who completed their Parks-based, in-house CDL training and successfully acquired their CDL Class "A" Licenses

Forestry/Open Space

54

New tree replacements planted by contractors

78

Acres mowed at the Salisbury North property in preparation for 4th of July fireworks

23

Miles of trail shoulder mowing in each direction (out and back)

Therapeutic Recreation/ Active Aging Adults



40%

Increase of participation for the TR Program compared to 2020



Parker Police

Community Outreach and Classes

- Nearly 50 Parker residents completed our first Online Citizen's Police Academy. The class culminated with a graduation open house at the police department in June. Our fall Citizen's Police Academy Class will begin Aug. 19 and will be hosted in-person.
- Parker residents joined hundreds of attendees for Weather Spotter Certification Training. The virtual class taught residents what to look for so they can assist the National Weather Service with real-time reports during severe weather. Our final virtual outreach program was "Living with Wildlife" where residents learned how to peacefully coexist with Parker wildlife.
- More than 520 cars passed through our Shred-A-Thon event at Salisbury Park on April 3. We filled two Shred-It trucks, and collected more than \$5,400 in donations to support the Parker Senior Center. Protecting your information is critical to preventing fraud. We were thrilled to see so many join us for this important event.
- We created a Father's Day Dad Joke video with the assistance of the Parker Parks and Recreation Department. Six officers told jokes to eight different kids at the Recreation Center. We're pretty sure the officers enjoyed it just as much as the kids (maybe more). The video can be seen on our Facebook and YouTube pages.
- The Parker Dancing Dads took on Parker first responders, including four Parker Police officers. Chief Jim Tsurapas, Deputy Chief Ron Combs, Commander Chris Peters and Officer Dillon Schneebeck helped the Dancing Dads celebrate National EMS Week and showed off their moves.



- The Parker Police Department joined Douglas County law enforcement agencies to host a cell phone drive. We collected 88 cell phones (pictured above) that will be refurbished and redistributed to victims of crimes so they will always have access to police aid and intervention.

Summer Kick-Off Celebration

More than 500 Parker residents joined the Parker Police Department for its Summer Kick-Off Celebration at Discovery Park. More than 400 root beer floats were served and 140 coffee mugs handed out. More than 50 Parker kids brought bikes to run the obstacle course, and bike patrol officers checked the fit of each kid's helmet before they took to the track.

Staff Updates



- Officers Darcy Kavalec (above left) and Dave Rosselot (above right) were promoted to the rank of sergeant on May 1. Sergeant Kavalec joined the Parker Police Department in 2013 and has completed several special assignments, including detective with the Douglas County Impact unit. Sergeant Rosselot joined the department in 2015 and most recently served as an officer/police training officer. Officers Troy Brienzo, Ian Drew-Bell and David Herrera are the newest police training officers (PTOs). All new officers must complete the 16-week Police Training Officer program with our PTOs before achieving solo status.
- Officers Branden Litwiller and Leslie Mattern are the newest officers at the Parker Police Department. They graduated from the Highlands Ranch Training Academy on June 6. They now enter our 16-week Police Training Officer program as they work towards solo status.





Request for Town Council Action

Date: July 19, 2021

Submitted By: Stacey Nerger, Senior Planner
John Fussa, Community Development Director

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 3.193.5 - Second Reading**
A Bill for an Ordinance Amending the Parker Auto Plaza Development Guide Pursuant to the Town of Parker Land Development Ordinance
Department: Community Development, Stacey Nerger

EXECUTIVE SUMMARY

The Town of Parker is proposing to amend the Parker Auto Plaza Planned Development (PD) zoning, First Amendment, to support park improvements adjacent to the Baldwin Gulch Trail and Open Space that traverses the area. The proposed zoning amendment will revise the list of permitted uses in the PD zoning to add parks and active recreation as a permitted use.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Town is proposing a rezoning application to revise the list of permitted uses within the Parker Auto Plaza PD, Open Space Planning Area, to allow parks, playgrounds and other outdoor recreation uses. The purpose of the proposed rezoning is to support park improvements along the Baldwin Gulch Trail and Open Space that traverses the area. The planned park improvements would be funded, installed and maintained by the developer of a multi-family residential complex located in the adjacent Eisenberg property within the Parker and Pine Mixed-Use PD at the southwest corner of the intersection of Parker Road and Pine Lane.

For background, the Eisenberg property that is located at southwest corner of Parker Road and Pine Lane was rezoned from Parker Auto Plaza PD to the Parker and Pine Mixed-Use PD in 2020. The approved Parker and Pine Mixed-Use PD zoning permits a range of commercial and residential uses with multi-family residential housing allowed as a use by-right in Planning Area 4. The Development Plan for the PD zoning locates Planning Area 4 in the southwestern section of the property fronting Twenty Mile Road and Baldwin Gulch.

The property owner and their development partner have submitted a site plan application to develop multi-family residential housing consisting of four (4) buildings in Planning Area 4 as permitted by the Parker and Pine Mixed-Use PD. Under Section 13.07.140 of the Land

Development Ordinance (LDO), the development of a residential use requires the dedication of parks, trails, open space and schools. The property owner may address this requirement by dedicating land for parks on-site or, subject to Town Council approval, make a cash in-lieu of land payment of equivalent monetary value or donate recreational facilities if there is insufficient land available in a residential development.

The property owner and their development partner have determined that there is insufficient land available within Planning Area 4 to fully address the LDO park land dedication requirement on-site. As a result, they have proposed and staff has been working with them on a concept to use approximately one (1) acre of Tract A in the adjacent Parker Auto Plaza PD as a supplemental park site. In this concept, the property owner would be required to cover all costs for the design, installation and maintenance of park improvements on Tract A as well as the payment of a fee to the Town for using Tract A. For the reason that the Town will retain ownership of Tract A, the obligation of the property owner and their development partner to construct the park improvements will be incorporated into a subdivision agreement and their obligation to maintain the park improvements will be contained in a license agreement. The concept plan for a park on Tract A is attached for review.

Staff believes that allowing the property owner and their development partner to construct park improvements on one (1) acre of Tract A is preferable to accepting a cash in-lieu of land payment. The reason for this is that the cash in-lieu of land option may not be sufficient to fund the development of a park and even if it was there is no guarantee that a future park would be accessible from the Baldwin Gulch Trail and Open Space or be directly accessible to the multi-family residential housing proposed in Planning Area 4 of the Parker and Pine Mixed-Use PD.

For the reasons discussed above, the Town has therefore submitted the proposed rezoning to allow park improvements to be constructed on adjacent Tract A of the Parker Auto Plaza PD.

The Planning Commission heard this request on July 8, 2021 and unanimously voted to recommend approval.

FINANCIAL IMPACT

None

STRATEGIC GOAL(S)



ATTACHMENTS

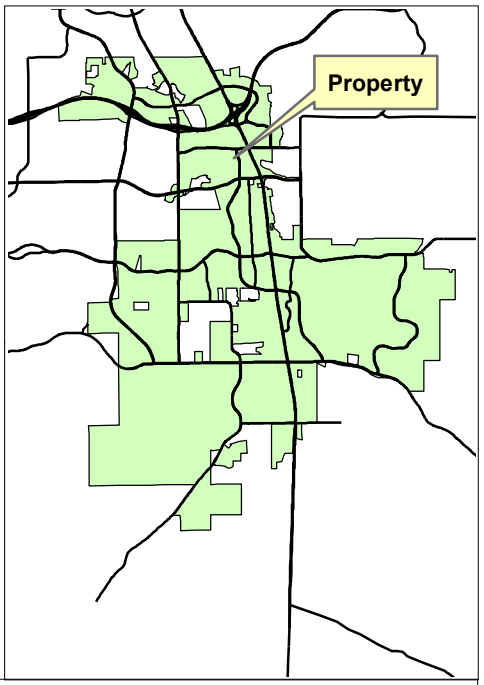
1. Vicinity Map
2. Ordinance No. 3.193.5
3. Planning Commission Staff Report

RECOMMENDED MOTION

I move to approve Ordinance No. 3.193.5 on second reading.

**Parker Auto Plaza Planned Development
Rezoning**

Zoning
Case No. Z21-010



Legend

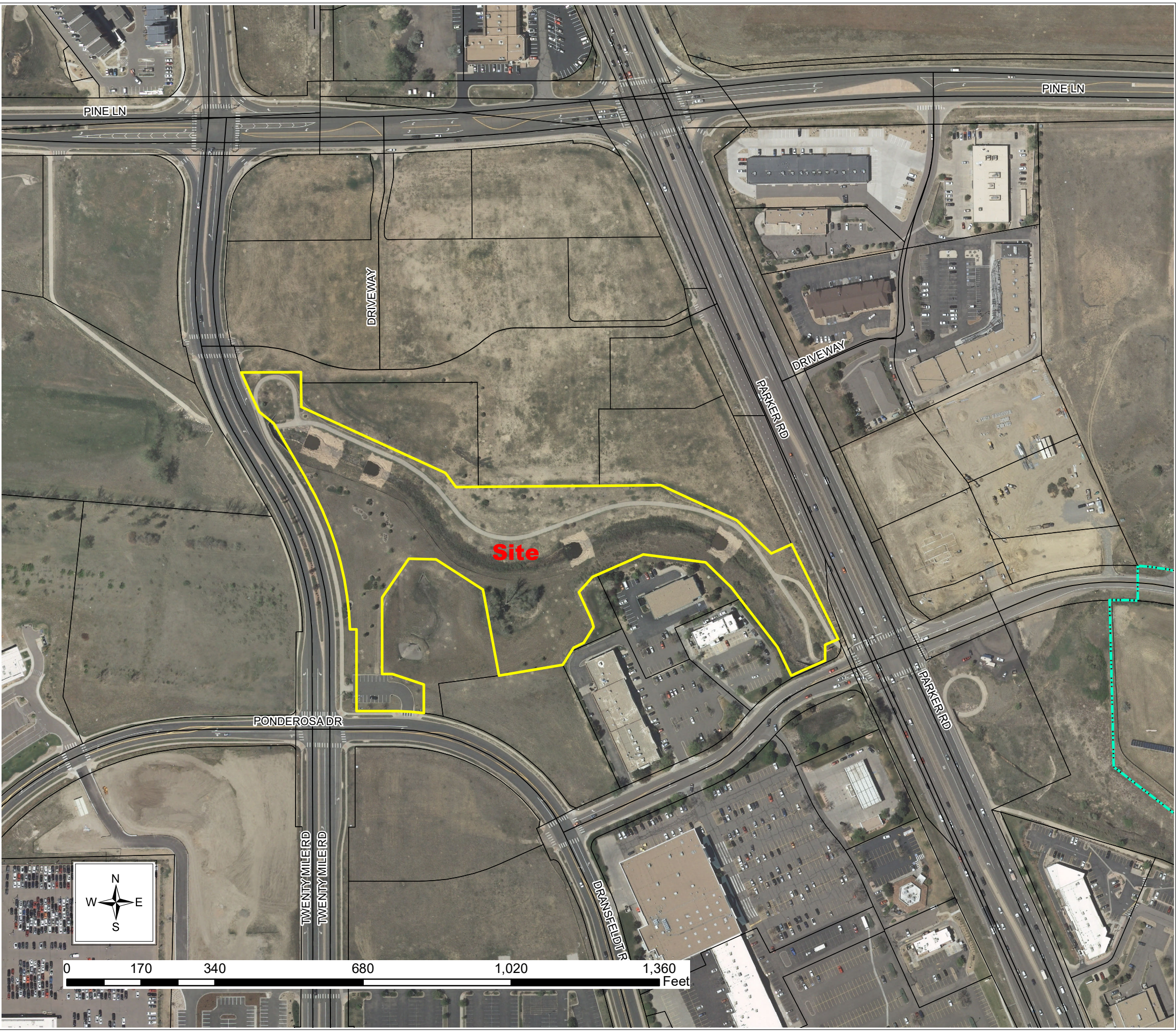
-  Site
-  Roads

Narrative:
Proposed Planned Development Amendment to allow active parks and recreation uses within the open space Planning Area of the Parker Auto Plaza PD.

Planner: Stacey Nerger
Hearing Schedules:

Planning Commission:
July 8, 2021

Town Council:
July 12, 2021 (1st Reading)
July 19, 2021 (2nd Reading)



ORDINANCE NO. 3.193.5, Series of 2021

TITLE: A BILL FOR AN ORDINANCE AMENDING THE PARKER AUTO PLAZA DEVELOPMENT GUIDE PURSUANT TO THE TOWN OF PARKER LAND DEVELOPMENT ORDINANCE

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

Section 1. Finding of Fact.

a. Application has been made for rezoning the Parker Auto Plaza Planned Development as described in Ordinance No. 3.193, Series of 2002, for the property described in the attached **Exhibit A**, within the Town of Parker, Colorado, (the “Property”), pursuant to Town of Parker Land Development Ordinance.

a. Public notice has been given of such rezoning by publication on the Town of Parker’s website, at least fifteen (15) days prior to the public hearing of such rezoning.

b. Written notice was sent by first class mail to all owners of property that abuts the Property, at least fifteen (15) days prior to the public hearing.

d. Notice of such proposed hearing was posted on the Property for fifteen (15) consecutive days prior to said hearing.

e. The factors contained in Section 13.04.240(b)(6)(f) of the Parker Land Development Ordinance for rezoning of the Property have been satisfied.

Section 2. Section IV.B. of the Parker Auto Plaza Development Guide is hereby amended to add a new subparagraph 9) to provide: “9) parks, playgrounds and other recreational uses.”

Section 3. The Zoning Ordinance and Zoning Map are hereby amended to conform with the zoning change to the Property.

Section 4. Approval of this Ordinance does not create a vested property right. Vested property rights may arise and accrue pursuant to the provisions of Ordinance No. 3.65.1 of the Town of Parker.

Section 5. 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 6. 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 7. 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 A

Legal Description

LOT 1 BLOCK 3, PARKER AUTO PLAZA FILING NO. 1, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 1, BLOCK 3, PARKER AUTO PLAZA FILING NO. 1 AS RECORDED AT RECEPTION NO. 2004113377 OF THE DOUGLAS COUNTY RECORDS;

THENCE FOLLOWING THE BOUNDARY OF SAID LOT 1 THE FOLLOWING TWENTY-TWO (22) COURSES:

1. NORTH 89°55'03" EAST, 105.03 FEET TO A POINT OF TANGENT CURVATURE;
2. EASTERLY ALONG THE ARC OF A CURVE TO THE LEFT, THE RADIAL LINE TO THE CENTER POINT BEARS NORTH 00°04'57" WEST A RADIUS OF 5,785.00 FEET, THRU A CENTRAL ANGLE OF 05°27'44", AN ARC LENGTH OF 551.51 FEET, WHOSE CHORD BEARS NORTH 87°11'11" EAST A LENGTH OF 551.29 FEET;
3. SOUTH 05°32'41" EAST, 7.00 FEET TO A POINT OF NONTANGENT CURVATURE;
4. EASTERLY ALONG THE ARC OF A CURVE TO THE RIGHT, THE RADIAL LINE TO THE CENTER POINT BEARS SOUTH 05°32'41" EAST, A RADIUS OF 153.00 FEET, THRU A CENTRAL ANGLE OF 44°14'53", AN ARC LENGTH OF 118.16 FEET, WHOSE CHORD BEARS SOUTH 73°25'14" EAST A LENGTH OF 115.24 FEET;
5. SOUTH 29°43'18" EAST, 66.60 FEET;
6. SOUTH 23°56'20" EAST, 264.14 FEET;
7. SOUTH 10°49'51" EAST, 88.19 FEET;
8. SOUTH 23°56'20" EAST, 553.91 FEET;
9. SOUTH 66°06'54" WEST, 51.46 FEET;
10. NORTH 45°24'20" WEST, 109.52 FEET;
11. NORTH 64°44'06" WEST, 193.03 FEET;
12. SOUTH 89°59'52" WEST, 417.86 FEET;
13. NORTH 00°00'08" WEST, 240.75 FEET;
14. NORTH 89°42'09" WEST, 404.78 FEET;
15. NORTH 00°17'51" EAST, 25.00 FEET;
16. NORTH 89°42'09" WEST, 136.54 FEET TO A POINT OF NONTANGENT CURVATURE;
17. NORTHERLY ALONG THE ARC OF A CURVE TO THE RIGHT, THE RADIAL LINE TO THE CENTER POINT BEARS NORTH 72°03'06" EAST, A RADIUS OF 625.00 FEET, THRU A CENTRAL ANGLE OF 05°51'30", AN ARC LENGTH OF 63.90 FEET, WHOSE CHORD BEARS NORTH 15°01'09" WEST A LENGTH OF 63.88 FEET;
18. SOUTH 86°37'09" WEST, 6.07 FEET TO A POINT OF NONTANGENT CURVATURE;
19. NORTHERLY ALONG THE ARC OF A CURVE TO THE RIGHT, THE RADIAL LINE TO THE CENTER POINT BEARS NORTH 77°59'36" EAST, A RADIUS OF 631.00 FEET, THRU A CENTRAL ANGLE OF 17°27'40", AN ARC LENGTH OF 192.30 FEET, WHOSE CHORD BEARS NORTH 03°16'34" WEST A LENGTH OF 191.56 FEET;
20. NORTH 05°27'16" EAST, 123.41 FEET TO A POINT OF NONTANGENT CURVATURE;
21. NORTHEASTERLY ALONG THE ARC OF A CURVE TO THE RIGHT, THE RADIAL LINE TO THE CENTER POINT BEARS SOUTH 84°33'45" EAST, A RADIUS OF 132.96 FEET, THRU A CENTRAL ANGLE OF 84°26'53", AN ARC LENGTH OF 196.05 FEET, WHOSE CHORD BEARS NORTH 47°40'43" EAST A LENGTH OF 178.76 FEET;
22. NORTH 00°04'57" WEST, 2.00 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS (694,869 SQUARE FEET) 15.9520 ACRES, MORE OR LESS.



Planning Commission Staff Report

Planning Commission Date: 7/8/2021

Town Council Date: 7/19/2021

Hearing Type: Public Hearing
Parker Auto Plaza PD, 2nd Amendment–
TRAKiT No.: Z21-010

Location: Generally located on south of Pine Lane, north of Ponderosa Drive, east of Twenty Mile Road and west of Parker Road

Project Planner: Stacey Nerger, Senior Planner

Applicant(s): Town of Parker

Executive Summary: The Town of Parker is proposing to amend the permitted uses in the Open Space Planning Area of the Parker Auto Plaza Planned Development, 1st Amendment, to add parks and active recreation as a permitted use.

Staff Recommendation: Approval

RECOMMENDED MOTION

"I move the Planning Commission recommend Town Council approve the zoning."

ALTERNATIVE MOTIONS

"I move the Planning Commission recommend Town Council approve the zoning request, subject to the following conditions:"

-List proposed conditions

"I move the Planning Commission recommend Town Council deny the zoning as the request does not meet the following approval criteria:"

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

"I move the Planning Commission vote to continue the zoning to a future date."

I. BACKGROUND/DISCUSSION

The Town is proposing to amend the Parker Auto Plaza Planned Development Guide to expand the permitted uses within the Open Space Planning Area to include “parks, playgrounds, and other outdoor recreation uses.”

The property immediately north of the subject property, generally located at the southwest corner of Parker Road and Pine Lane, was rezoned from Parker Automotive Plaza PD to Parker and Pine Mixed Use PD in 2020. The Parker and Pine Development Guide permits multifamily as a use by right in Planning Area 4.

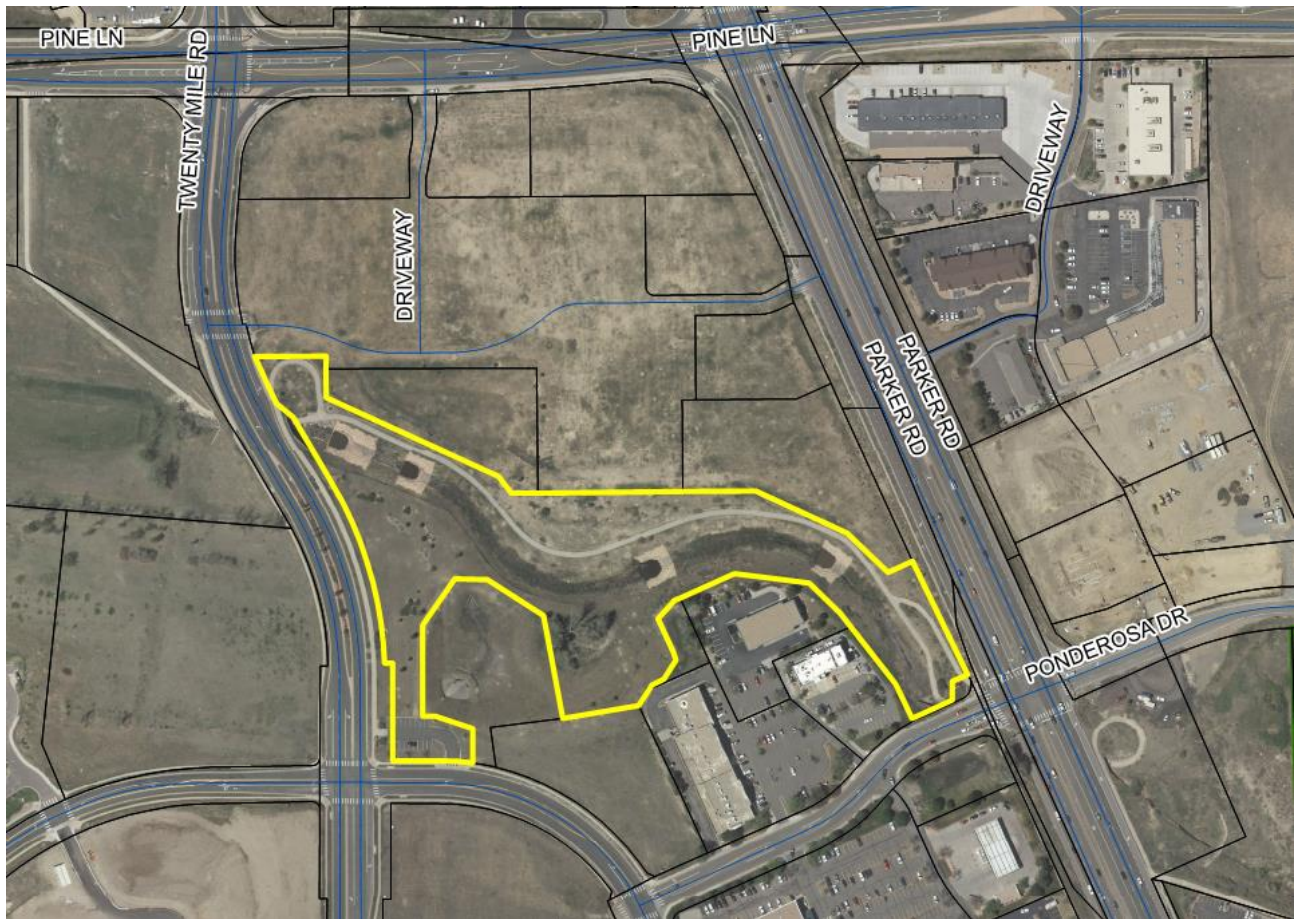
The proposal would allow improvements on a portion of Tract A including the development of a park that would be open to the public and directly accessible from the Baldwin Gulch Trail. This park would be constructed in association with a proposed development of four (4) buildings, for a total of 168 units. Under Section 13.07.140 of the Parker Land Development Ordinance (the “LDO”), the development of residential uses requires dedication of parks, trails, open space and schools. The property owner, subject to Town Council approval, has the option to:

- dedicate land for parks; or
- Pay cash in lieu of land if “no suitable land is available in a residential development...”

Town staff has been working with the property owner to use approximately one (1) acre of Tract A adjacent to the multifamily property as a park site. In order to achieve this, the property owner will be required:

- to pay all costs associated with construction of required park improvements on Tract A;
- payment a usage fee to the Town;
- Make all park improvements available to the public; and
- Maintain all park improvements.

Vicinity Map



II. PRIOR ACTIONS

Date	Action
April 1, 2002	Town Council approved the Parker Automotive Plaza PD Guide and Plan.
April 15, 2004	Town Council approved the Parker Automotive Plaza PD, 1 st Amendment
June 19, 2004	Town Council approved the final plat for the Parker Automotive Property. Tract A of the Final Plat was dedicated to the Town as “Open Space,” as defined under the Parker Automotive PD-Guide.

III. CURRENT SITE DATA

Existing Zoning	PD – Planned Development
Overlay District	N/A
PD & Plan Area	Parker Auto Plaza
Master Plan Area	Central Commercial
Site Acreage	4.37 acres
Subdivision	Parker Auto Plaza Tract A
Existing Use	Baldwin Gulch Open Space

Surrounding Uses			
	Master Plan Land Use	Zoning	Existing Use
North	Central Commercial	PD – Planned Development	Under Development for the Parker and Pine Planned Development
South	Central Commercial	PD - Planned Development	Parker Marketplace II Shopping Center
East	Central Commercial	Modified Commercial	Peakview Shopping Center
West	Central Commercial	PD - Planned Development	Vacant and Global Village Academy

IV. **PARKER 2035 MASTER PLAN**

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

MASTER PLAN CONSISTENCY	
Master Plan Designation	Central Commercial ☒ Consistent ☐ Inconsistent
Master Plan Character Discussion	<u>Central Commercial District:</u> This is the commercial core of the Town. Growth should focus on core retail, services, offices, lodging, restaurants, entertainment, and to a lesser extent, higher density residential uses. Vertical mixed use is highly encouraged where appropriate.
Consistent Goals/Strategies	<u>Open Space and Recreation 1</u>
Staff Analysis	The subject property is located west of Parker Road and south of Pine Lane within a commercial corridor area as designated by the Parker 2035 Master Plan. This area is intended to provide commercial uses which focus on retail, services, lodging, restaurants and entertainment. The requested rezoning will allow for active uses to be installed along the Baldwin Gulch Open Space to serve the residential property to the north as well as the visitors of the commercial and traveling along the trail. Strategy 1 in <i>Chapter 13 – Open Space and Recreation</i>, of the Parker 2035 Master Plan recommends providing adequate parks and recreational facilities and programs to serve the diverse and changing needs of the community. Based on this analysis, staff has determined that the request is consistent with the Parker 2035 Master Plan.

V. LAND DEVELOPMENT ORDINANCE

DEVELOPMENT POTENTIAL (Rezoning)			
Provisions	As recommended by the Master Plan	Proposed	Analysis
Units Per Acre	N/A	N/A. The proposed zoning is to allow for park amenities within the open space planning area only.	☐ Consistent ☐ Inconsistent ☐ No Change ☒ N/A
Allowed Uses	Primary uses include conservation and open space.	Active amenities including parks.	☒ Consistent ☐ Inconsistent ☐ No Change
Height/Stories	None	None	☐ Consistent ☐ Inconsistent ☒ No Change
Staff Analysis	As detailed in the analysis above, the requested rezoning is consistent with the Parker 2035 Master Plan.		

VI. APPROVAL CRITERIA REZONING

Title 13.04.240.f. Approval Considerations for Rezoning Requests:

1. A need exists for the proposal.

In order for a park to be constructed on Parker Auto Plaza Tract A, the zoning must be amended to clearly state that parks are a permitted use within the Open Space planning area.

Based on this analysis, staff has determined that this criterion has been met.

2. The particular parcel of ground is indeed the correct site for the proposed development.

The proposed park site is easily accessible by the Baldwin Gulch Regional Trail, an existing trailhead on Twenty Mile Road, nearby commercial areas and the residential development to be developed with the park.

Based on this analysis, staff has determined that this criterion has been met.

3. There has been an error in the original zoning; or
N/A

4. There have been significant changes in the area to warrant a zone change.

New and ongoing commercial and residential development are significant changing the area and the development will add employees, visitors and residents that will create a demand for the park.

Based on this analysis, staff has determined that this criterion has been met.

5. Adequate circulation exists and traffic movement would not be impeded by development; and

Roadway infrastructure exists around the property. No additional transportation improvements are anticipated with the property's rezoning.

Based on this analysis, staff has determined that this criterion has been met.

6. Additional municipal service costs will not be incurred which the Town is not prepared to meet.

The Town does not anticipate significant municipal service costs with the proposed zoning that it is not prepared to meet. The proposed park will be maintained by a private entity.

Based on this analysis, staff has determined that this criterion has been met.

7. There are minimal environmental impacts or impacts can be mitigated.

The proposed construction of a park will have minimal environmental impacts. The construction will include the revegetation of this area along the Baldwin Gulch Trail and will not be located within the floodplain.

Based on this analysis, staff has determined that this criterion has been met.

8. The proposal is consistent with the Town Master Plan, maps, goals, and policies.

As detailed in Section IV. of this staff report, the proposed rezoning to allow for the construction of a park is consistent with the Parker 2035 Master Plan including the Central Commercial Character Area.

Based on this analysis, staff has determined that this criterion has been met.

9. There is adequate waste and sewage disposal water, schools, parks and recreation, and other services to the proportional degree necessary due to the impacts created by the proposed land uses.

The property is located within Parker Water and Sanitation District and infrastructure exists serving adjoining properties.

Based on this analysis, staff has determined that this criterion has been met.

VII. CONCLUSION

This zoning request is being processed to allow for the construction of additional active amenities to be installed within the Baldwin Gulch Open Space. The park amenities will be installed as part of the developer's obligations for park space as it relates to multifamily development. The park amenities will be installed, maintained and replaced by the private multifamily development. However, with the park will be located on public property, open and accessible to the public. The proposed rezoning allows for an additional public park for this area of Parker. The application has been determined to meet the zoning approval criteria of the Parker Land Development Ordinance.

Based on the analysis contained in this staff report, staff recommends that Planning Commission recommends Town Council approve the zoning request.

RECOMMENDED CONDITIONS

Staff recommends that the Planning Commission recommend that the Town Council approve the Parker Auto Plaza Planned Development Guide, 2nd Amendment.

VIII. ATTACHMENTS

Ordinance No. 3.193.5

Report Approved By: Bryce Matthews, Planning Manager



Request for Town Council Action

Date: July 19, 2021

Submitted By: John Fussa, Community Development Director
Stacey Nerger, Senior Planner
BrieAnna Simon, Associate Planner

Reviewed By: Michelle Kivela, Town Administrator

Title: **RESOLUTION NO. 21-032**
A Resolution Setting the Date for Consideration of the Annexation Ordinance for the Town Parker North, 1st Amendment, Tract D Property for Second Reading on September 7, 2021

Department: Community Development, Stacey Nerger
Community Development, BrieAnna Simon

EXECUTIVE SUMMARY

The Town of Parker is proposing to annex and zone a 0.27 acre property it acquired from Douglas County in 2020 to construct a multi-use sidewalk on the east side of Parker Road (the "Town Property"). The Town Property, also known as Tract D, is located in unincorporated Douglas County south of Lincoln Avenue and north of Parkglenn Drive on the east (northbound) side of Parker Road. Proposed Resolution No. 21-032 will set the date for annexation on September 7, 2021 at second reading of the Annexation Ordinance.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Town Property to be annexed is located on the east (northbound) side of Parker Road, north of Parkglenn Way and south of Lincoln Avenue. The Property is approximately 0.27 acres in size and is used as a drainage swale. It is contiguous to the Town boundary to the north, west and south with an unincorporated Douglas County residential neighborhood known as Parker North to the east.

As required, the Town is also processing a Rezoning application that is being processed concurrently with the proposed annexation. The Town Property is proposed to be zoned to PF – Public Facilities, which will allow for the construction of a multi-use sidewalk along Parker Road. This will update the zoning from the Douglas County designation of SR - Suburban Residential. The Town Property is located within the Planning Area of the Parker 2035 Master

and is contiguous to the Town. The proposed annexation is consistent with the Master Plan which supports annexation within the Planning Area and the proposed zoning to PF - Public Facilities for future construction of a multi-use sidewalk.

The proposed annexation, if approved, would also result in the Town surrounding unincorporated land in Douglas County located on the west (southbound) side of Parker Road to the south of Walgreen's and NAPA Auto Parts. This creates an enclave that may be annexed by the Town under State Statute after it has been surrounded by the Town for a period of not less than three (3) years.

For the reason the Town Property is municipally owned, the Town Council under State Statute may annex the Town Property by Ordinance without notice or as part of a public hearing. The purpose of Resolution No. 21-032 is to schedule the Annexation Ordinance for second reading on September 7, 2021 in accordance with the above.

FINANCIAL IMPACT

None.

STRATEGIC GOAL(S)



**SUPPORT AN
ACTIVE COMMUNITY**



**PROMOTE A SAFE AND
HEALTHY COMMUNITY**



**DEVELOP A VISIONARY
COMMUNITY THROUGH
BALANCED GROWTH**

ATTACHMENTS

1. Annexation Map
2. Vicinity Map
3. Resolution 21-032

RECOMMENDED MOTION

I move to approve Resolution No. 21-032.

PARKER NORTH 1ST AMENDMENT TRACT D ANNEXATION MAP TO THE TOWN OF PARKER

A PARCEL LOCATED IN THE NORTHWEST QUARTER OF SECTION 15,
TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN
COUNTY OF DOUGLAS, STATE OF COLORADO



VICINITY MAP
SCALE: 1" = .300

LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF BALDWIN AVENUE AS SHOWN ON THE PLAT OF PARKER HEIGHTS FILING NO. 1, RECORDED AT RECEPTION NO. 113057 AND A PORTION OF TRACT D, PARKER NORTH, 1ST AMENDMENT, RECORDED AT RECEPTION NO. 9461273, BOTH IN THE OFFICIAL RECORDS OF THE CLERK AND RECORDER'S OFFICE OF DOUGLAS COUNTY, COLORADO, LYING WITHIN THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, SAID COUNTY AND STATE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT D, WHENCE THE SOUTHERLY BOUNDARY OF SAID TRACT D BEARS SOUTH 68°59'26" EAST, A DISTANCE OF 342.09 FEET, BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 5830.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 81°35'32" WEST;

THENCE ALONG THE WESTERLY BOUNDARY OF SAID TRACT D, NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°08'04", AN ARC LENGTH OF 115.43 FEET TO THE NORTHERLY BOUNDARY OF SAID TRACT D AND THE SOUTHERLY RIGHT-OF-WAY OF SAID BALDWIN AVENUE;

THENCE ALONG THE NORTHERLY BOUNDARY OF SAID TRACT D AND THE SOUTHERLY RIGHT-OF-WAY OF SAID BALDWIN AVENUE, SOUTH 68°59'26" EAST, A DISTANCE OF 17.05 FEET;

THENCE DEPARTING THE NORTHERLY BOUNDARY OF SAID TRACT D AND THE SOUTHERLY RIGHT-OF-WAY OF SAID BALDWIN AVENUE, NORTH 07°54'31" WEST, A DISTANCE OF 68.55 FEET TO THE NORTHERLY RIGHT-OF-WAY OF SAID BALDWIN AVENUE AND THE SOUTHERLY BOUNDARY OF LOT 2, PARKER KEYSTONE MINOR DEVELOPMENT AMENDMENT NO. 2, RECORDED AT RECEPTION NO. 2018007786 IN SAID RECORDS;

THENCE ALONG THE NORTHERLY RIGHT-OF-WAY OF SAID BALDWIN AVENUE AND THE SOUTHERLY BOUNDARY OF SAID LOT 2, SOUTH 68°59'11" EAST, A DISTANCE OF 49.82 FEET TO THE SOUTHEAST CORNER OF SAID LOT 2;

THENCE DEPARTING THE NORTHERLY RIGHT-OF-WAY OF SAID BALDWIN AVENUE AND THE SOUTHEAST CORNER OF SAID LOT 2, SOUTH 00°29'15" EAST, A DISTANCE OF 64.48 FEET TO THE SOUTHERLY RIGHT-OF-WAY OF SAID BALDWIN AVENUE AND THE NORTHERLY BOUNDARY OF SAID TRACT D;

THENCE ALONG THE SOUTHERLY RIGHT-OF-WAY OF SAID BALDWIN AVENUE AND THE NORTHERLY BOUNDARY OF SAID TRACT D, SOUTH 68°59'26" EAST, A DISTANCE OF 62.23 FEET;

THENCE DEPARTING THE SOUTHERLY RIGHT-OF-WAY OF SAID BALDWIN AVENUE AND THE NORTHERLY BOUNDARY OF SAID TRACT D, SOUTH 21°07'08" WEST, A DISTANCE OF 99.98 FEET TO THE SOUTHERLY BOUNDARY OF SAID TRACT D;

THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID TRACT D, NORTH 68°59'26" WEST, A DISTANCE OF 61.7 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 0.270 ACRES, (11,744 SQUARE FEET), MORE OR LESS

GENERAL NOTES

1. BASIS OF BEARINGS

BEARINGS ARE BASED ON THE SOUTHERLY BOUNDARY OF TRACT D, PARKER NORTH, 1ST AMENDMENT
RECORDED AT RECEPTION NUMBER DC9461273 IN THE OFFICIAL RECORDS OF THE CLERK AND RECORDER'S
OFFICE OF DOUGLAS COUNTY, COLORADO, ASSUMED TO BEAR SOUTH 68°59'26" EAST.

2. DISTANCES SHOWN HEREON ARE GROUND DISTANCES IN U.S. SURVEY FEET UNITS

3. THE WORD "CERTIFY" AS USED HEREON MEANS AN EXPRESSION OF PROFESSIONAL OPINION AND DOES NOT CONSTITUTE A WARRANTY OR GUARANTEE, EXPRESSED OR IMPLIED.

4. THIS ANNEXATION MAP HAS BEEN PREPARED FROM RECORD INFORMATION AND DOES NOT REPRESENT A MONUMENTED LAND SURVEY.

TOWN COUNCIL ACCEPTANCE

ACCEPTED BY THE PARKER TOWN COUNCIL THIS _____ DAY OF _____, 2021

MAYOR, TOWN OF PARKER

ATTEST: TOWN CLERK

SURVEYOR'S CERTIFICATE

I, GERALD E. BOYSEN JR., A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THIS ANNEXATION MAP WAS PREPARED UNDER MY DIRECT SUPERVISION; THAT, TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THIS MAP ACCURATELY DELINEATES THE PARCEL OF LAND TO BE ANNEXED TO THE TOWN OF PARKER, COLORADO; AND THAT AT LEAST ONE SIXTH (1/6) OF THE BOUNDARY OF SAID PARCEL IS CONTIGUOUS TO THE PRESENT TOWN OF PARKER, COUNTY OF DOUGLAS, STATE OF COLORADO.

GERALD E. BOYSEN JR.
COLORADO LICENSED PROFESSIONAL LAND SURVEYOR No. 32428
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.

NOTICE:
ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

NOTICE:
PER THE STATE OF COLORADO BOARD OF LICENSURE FOR ARCHITECTS, PROFESSIONAL ENGINEERS, AND
PROFESSIONAL LAND SURVEYORS RULE 1.6.B.2 THE WORD "CERTIFY" AS USED HEREON MEANS AN EXPRESSION
OF PROFESSIONAL OPINION AND DOES NOT CONSTITUTE A WARRANTY OR GUARANTEE, EXPRESSED OR IMPLIED.
THE SURVEY REPRESENTED HEREON HAS BEEN PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION IN
ACCORDANCE WITH APPLICABLE STANDARDS OF PRACTICE AND IS BASED UPON MY KNOWLEDGE, INFORMATION
AND BELIEF.

CLERK AND RECORDER'S CERTIFICATE

STATE OF COLORADO)
) ss
COUNTY OF DOUGLAS)

I HEREBY CERTIFY THAT THIS ANNEXATION MAP WAS FILED IN MY OFFICE ON THIS _____ DAY OF _____, 20____.

2021 A.D., AT _____ A.M./P.M. AND WAS RECORDED AT _____

RECEPTION NO. _____

COUNTY CLERK AND RECORDER

LEGEND

CONTIGUITY
TOTAL PERIMETER = 539.23'
CONTIGUOUS PERIMETER = 250.84'
1/6 TOTAL PERIMETER = 89.87'
TOTAL AREA = 0.270 ACRES±

	ANNEXATION BOUNDARY
	CONTIGUOUS BOUNDARY
	LOT OR PARCEL LINE

LOT 2
PARKER KEYSTONE
MINOR DEVELOPMENT
AMENDMENT NO. 2
REC. NO. 2018007786

TOWN OF PARKER ANNEXATIONS
ORDINANCE 2.243
RECEPTION NO. 2016031273
STATE PARCEL NO.
2233-152-99-037

S. ALCORN ST.
(60' WIDE PUBLIC ROW)
REC. NO. 113057

LOT 2
BLOCK 2
PARKER HEIGHTS
FILING NO. 1
REC. NO. 113057

LOT 1
BLOCK 2
PARKER HEIGHTS
FILING NO. 1
REC. NO. 113057

TOWN OF PARKER ANNEXATIONS
ORDINANCE 2.75
RECEPTION NO. 9002842
STATE PARCEL NO.
2233-152-99-014

NW 1/4 SEC. 15,
T.6S., R.66W.,
SIXTH P.M.

BALDWIN AVE.
(60' WIDE PUBLIC ROW)
REC. NO. 113057

SOUTH PARKER ROAD (HWY. 83)
(PUBLIC ROW WIDTH VARIES)

POINT OF BEGINNING
SOUTHWEST CORNER OF TRACT D,
PARKER NORTH, 1ST AMENDMENT

PARCEL CONTAINS
11,744 (SQ.FT.)
0.270 ACRES
MORE OR LESS

TRACT D
PARKER NORTH,
1ST AMENDMENT
REC. NO. DC9461273

LOT 1
PARKGLENN SUBDIVISION
FILING NO. 8
REC. NO. DC9650572

SOUTHERLY BOUNDARY OF TRACT D, 568°59'26"E 342.09'

Scale: 1" = 20'

North Arrow

Bearings and Distances:
S68°59'11"E 49.62'
N07°54'31"W 68.55'
S68°59'26"E 17.05'
S00°29'15"E 64.48'
S68°59'26"E 62.23'
S21°07'08"W 99.98'
N68°59'26"W 61.70'
S81°35'32"W (RADIAL)
L=108.04" R=5630.00' L=115.43'

[illegible]

Littleton, Colorado 80122
Phone: (303) 713-1898
Fax: (303) 713-1897
www.aztecconsultants.com

AZIEC
CONSULTANTS, INC.

PARKER NORTH 1ST AMENDMENT
 TRACT D ANNEXATION MAP TO THE TOWN OF PARKER
 DOUGLAS COUNTY, COLORADO
 PREPARED FOR
 TOWN OF PARKER
 20120 EAST MAINSTREET PARKER, CO 80138

SHEET
ONE
1 SHEET

920-06

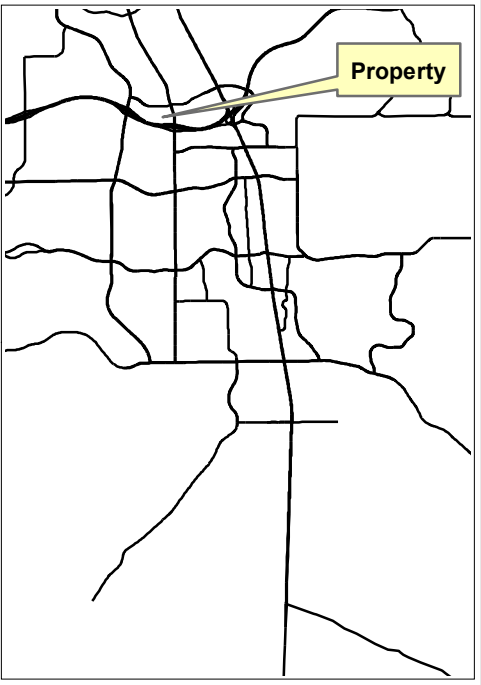


PARKER
COLORADO

Tract D Annexation

Annexation

Case No. ANX21-003



Legend

-  Site
-  Roads

Narrative:
Proposed annexation
of a portion of right of way.
Parcel is currently in
Douglas County.

Planner: Krista Flynt
Hearing Schedules:

Town Council:
July 19, 2021
September 7, 2021



RESOLUTION NO. 21-032, Series of 2021

TITLE: A RESOLUTION SETTING THE DATE FOR CONSIDERATION OF THE ANNEXATION ORDINANCE FOR THE TOWN PARKER NORTH, 1ST AMENDMENT, TRACT D PROPERTY FOR SECOND READING ON SEPTEMBER 7, 2021

WHEREAS, the Town of Parker is the sole owner of certain real property in Douglas County, which is described on attached **Exhibit A** (the "Property");

WHEREAS, the Town Council, sitting as the governing body of the Town of Parker, Colorado, hereby determines that the Property is eligible for annexation, as set forth in C.R.S. §§ 31-12-104(1)(a) and 31-12-105; and

WHEREAS, pursuant to C.R.S. § 31-12-106(3), the Town of Parker, as the sole owner of the Property which is eligible for annexation, may, by ordinance, annex the Property to the Town of Parker without notice and hearing, as provided by C.R.S. § 31-12-106(3).

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, AS FOLLOWS:

Section 1. The ordinance to annex the Property will be considered on second reading by the Town Council on September 7, 2021, at the Town of Parker Town Hall, which is located at 20120 East Mainstreet, Parker, Colorado 80138.

RESOLVED AND PASSED this ____ day of _____, 2021.

TOWN OF PARKER, COLORADO

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Acting Town Clerk

EXHIBIT A

Legal Description

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BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT D, WHENCE THE SOUTHERLY BOUNDARY OF SAID TRACT D BEARS SOUTH 68°59'26" EAST, A DISTANCE OF 342.09 FEET, BEING THE BEGINNING OF A NONTANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 5830.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 81°35'32" WEST;

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THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID TRACT D, NORTH 68°59'26" WEST, A DISTANCE OF 61.70 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 0.270 ACRES (11,744 SQUARE FEET), MORE OR LESS.



Request for Town Council Action

Date: July 19, 2021

Submitted By: Kristin Hoffmann, Deputy Town Attorney

Reviewed By: Michelle Kivela, Town Administrator

Title: **RESOLUTION NO. 21-026.1**
A Resolution to Amending Resolution No. 21-026, Series of 2021, to Adopt an Amended Town Council Policy Statement 1-8 Concerning Public Hearing Procedure and Public Comment Policy

Department: Town Attorney, Kristin Hoffmann

EXECUTIVE SUMMARY

This resolution revises Policy Statement 1-8 to provide for public comment to be made electronically through the Town's website.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

Policy Statement 1-8 establishes procedures for public hearings and public comment periods. During the pandemic, public comment could be provided by the public electronically through the Town's website and those comments received by 5 p.m. on the day of the Town Council meeting were provided to the Town Council and included in the minutes. This revision provides for this practice to continue.

FINANCIAL IMPACT

None.

STRATEGIC GOAL(S)



FOSTER COMMUNITY
CREATIVITY AND
ENGAGEMENT

ATTACHMENTS

1. Resolution No. 21-026.1

RECOMMENDED MOTION

I move to approve Resolution No. 21-026.1.

RESOLUTION NO. 21-026.1, Series of 2021

TITLE: A RESOLUTION AMENDING RESOLUTION NO. 21-026, SERIES OF 2021, TO ADOPT AN AMENDED TOWN COUNCIL POLICY STATEMENT 1-8 CONCERNING PUBLIC HEARING PROCEDURE AND PUBLIC COMMENT POLICY

WHEREAS, the Town Council approved Resolution No. 18-054, Series of 2018, on August 20, 2018, to adopt the Town of Parker Policy Manual;

WHEREAS, the Town Council approved Resolution No. 19-065, Series of 2019, on August 5, 2019, to amend Policy Statement 1-8;

WHEREAS, the Town Council approved Resolution No. 21-026, Series of 2021, on May 17, 2021, to amend Policy Statement 1-8; and

WHEREAS, the Town Council desires to replace the Town of Parker Town Council Public Hearing Procedure and Public Comment Policy that was adopted on August 5, 2019, with Town Council Policy Statement 1-8, which is attached hereto as **Exhibit A** and incorporated by this reference ("Town Council Policy Statement 1-8").

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 adopts the amended Town Council Policy Statement 1-8.

Section 2. The previous Policy Statement 1-8 adopted by Resolution No. 21-026 shall be of no further force or effect.

RESOLVED AND PASSED this _____ day of _____, 2021.

TOWN OF PARKER, COLORADO

Jeff Toborg, Mayor

ATTEST:

Chris Vanderpool, Acting Town Clerk

EXHIBIT A

Town of Parker, Colorado

POLICY STATEMENT

TITLE Town Council Public Hearing Procedure and Public Comment Policy	PAGE 1 of 2	POLICY NUMBER 1-8
EFFECTIVE DATE August 20, 2018	REVISED DATE May 17 <u>July 19</u> , 2021	
APPROVED BY COUNCIL ACTION Resolution No. 21-026. <u>1</u>		

PURPOSE

The purpose of this policy statement is to establish procedures for public hearings and public comment periods that are held by the Town Council.

POLICY STATEMENT

In order to provide due process for public hearings held before the Town Council, the following procedure will be used:

TOWN COUNCIL PUBLIC HEARING PROCEDURE

ACTOR	ACTION
1. Mayor	Open public hearing and specify time. Brief explanation of: 1) purpose of public hearing; and 2) the order of business, which should be as follows: a) staff presentation; b) applicant presentation; c) public testimony; d) closing comments, applicant; e) closing comments, staff f) close public hearing and specify time; g) open for Town Council deliberation; and h) request Town Council motion/decision.
2. Mayor	Request presentation from staff.
3. Mayor/ Councilmembers	Address questions to staff.
4. Mayor	Applicants are requested to come to podium (if presenting in person), state their name and address, make presentation, and

ACTOR	ACTION
	respond to questions from the Mayor/Councilmembers (30 minutes allocated).
5. Mayor/ Councilmembers	Address questions to Applicant/staff that are directly related to the application(s).
6. Mayor	Request members of the public interested in the application to come to the podium (if speaking in person), state their name and address, and speak and respond to questions from the Mayor/Councilmembers (3 minutes allocated per speaker).
7. Mayor	Provides an opportunity for the Applicant to respond to any testimony or other evidence received during the public hearing. May request further information from staff and/or Applicant if needed or requested by any Councilmember.
8. Mayor	Closes the hearing to the public and specify the time and open for debate and discussion of the evidence among Mayor/Councilmembers.
9. Mayor	Closes debate among Councilmembers.
10. Mayor	Requests Town Council motion/decision on the matter.
11. Mayor	States the Town Council's decision or states that the Town Council's decision will be rendered within a specified time or reasonable time, as provided by the applicable ordinance.

PUBLIC COMMENT RULES OF PARTICIPATION

- a. All Town Council meetings are open to the public, but the public's participation, through public comment periods, is permitted only at regular and special Town Council meetings, during the time and in the manner set forth in these rules. Public participation is generally not permitted during study sessions, although the public is encouraged to express comments in writing or other communication prior to those sessions. The intent of these rules is to:
 1. Provide a safe and secure setting for Councilmembers and the public to attend to the Town's business.
 2. Enable Town Council to conduct its deliberative process without interruption, in a manner that can be heard and viewed by all in attendance or watching via video feed.
 3. Ensure that the public has a full opportunity to be heard during public hearings and public comment periods of Town Council meetings.
 4. Promote transparency in the conduct of Council meetings so that all persons have the opportunity to observe and hear all of the Town Council discussion and votes.

5. Facilitate Town Council meetings as business meetings by limiting interruptions, unreasonable delay, or comments, presentations, and discussion that does not relate to the business of the Town.
 6. Develop an atmosphere of civility that is respectful of diverse opinions and allows presentation of positions that vary from the position of others at the meeting.
- b. During all times a meeting of the Town Council is being conducted, the following rules shall apply:
1. The public comment period in a Town Council regular or special meeting is 30 minutes. Town Council will accommodate as many speakers as it can within that timeframe. If all speakers are not able to address Town Council during that timeframe, additional time will be made available at the end of the Town Council meeting. Public comment may be made in person, or electronically via Zoom. All members wishing to address the Town Council in person must sign up. Sign up begins 30 minutes prior to the start of the meeting. The Mayor shall determine the order of speakers, with priority given to those attending in person and Town residents.
 2. All remarks to the Town Council shall be at a microphone and only after the speaker is acknowledged by the presiding officer.
 3. While in attendance at a Town Council meeting, no attendee (whether in person or electronically) shall disrupt, disturb, or otherwise impede the orderly conduct of the meeting by any means or in a manner that obstructs the business of the meeting. Disorderly conduct also includes failing to obey any lawful order of the presiding officer to be seated, leave the meeting room, mute themselves on Zoom, or refrain from addressing the Town Council.
 4. No attendee (whether in person or electronically) shall make threats or other forms of intimidation against any person in the Council chambers or meeting room.
 5. To maintain the fire code occupancy limits and allow for safe exit, unless addressing the Town Council or entering or leaving the Council chambers or meeting room, all persons in the audience shall remain seated in the seats provided. No person shall stand or sit in the aisles, nor shall the doorways be blocked.
 6. All persons in the Council chambers or other meeting rooms, including, without limitation, Councilmembers, staff, and attendees shall silence all cell phones and other electronic devices to prevent disruption at the meeting.
 7. No sign shall be displayed in Council chambers in a manner that blocks the view of another person or in a manner that would violate subsection 5 above.
 8. Public comment may also be made electronically through the Town's website at <http://www.parkeronline.org/FormCenter/Town-Council-Meetings-Public-Comment-26/Town-Council-Meetings-General-Public-Com-65>. Public comments received through this 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 included in the minutes of the Town Council meeting.
- c. The Mayor or other presiding officer, with the assistance of any Town police officers in attendance, shall be responsible for maintaining the order and decorum of meetings.

1. The Mayor or presiding officer may interrupt any speaker who is violating these rules of participation or disrupting a meeting.
2. The Mayor or presiding officer may order the removal of any person, who fails to observe these rules of participation, from the Council chambers or other room in which a meeting of the Town Council is occurring. The Mayor or presiding officer shall attempt to provide a verbal warning to any attendee or particular speaker that may be violating these rules or participation, but such verbal warning shall not be required as a condition of removing such person from the Council chambers or meeting room.
3. These enforcement provisions are in addition to the authority held by any police officer in attendance, to maintain order pursuant to that officer's lawful authority.
4. Any person who has been removed from a meeting may be charged with violation of applicable provisions of the Parker Municipal Code.
5. In addition to any other authority of the Mayor or presiding officer, the Mayor or presiding officer may call a recess to restore order to the meeting.
6. If necessary for the safety of the Town Council and public, the Mayor or presiding officer may order the Council chambers or meeting room cleared of all attendees. In such event, the meeting may continue only as long as the proceedings are televised or otherwise recorded so that the proceedings of the meeting are available to the public.