AGENDA
1377th Regular Meeting of the
CITY COUNCIL
July 8, 2014
7:00 p.m.

1. CALL TO ORDER

2. INVOCATION - Pastor Walter Coventry, Destiny Outreach Ministries

3. PLEDGE OF ALLEGIANCE

4. ROLL CALL OF COUNCIL

5. APPROVAL OF AGENDA

6. AUDIENCE PARTICIPATION

DURING THIS PORTION OF THE MEETING, ANYONE MAY SPEAK ON ANY SUBJECT WHICH DOES NOT LATER APPEAR ON THE AGENDA AS A PUBLIC HEARING. SPEAKING TIME WILL BE LIMITED TO FIVE MINUTES PER INDIVIDUAL/TOPIC WITH A ONE HOUR LIMIT ON THIS SEGMENT OF THE AGENDA. IF YOU WISH TO SPEAK, PLEASE SIGN UP ON THE REGISTER LOCATED INSIDE THE COUNCIL CHAMBERS, PRIOR TO THE MEETING.

A. Presentations

1) A resolution honoring Private First Class Jacob H. Wykstra for his service and sacrifice during the war in Afghanistan. [220-GE]

2) A resolution recognizing Andrew P. (Andy) Jennings, Parks and Golf Manager, for 25 years of employment with the City of Thornton. [580-GE]

B. Audience Participation

C. Staff Reports

None

7. COUNCIL COMMENTS/COMMUNICATIONS

8. CONSENT CALENDAR

ITEMS OF A ROUTINE AND NON-CONTROVERSIAL NATURE ARE PLACED ON THE CONSENT CALENDAR TO ALLOW THE CITY COUNCIL TO SPEND ITS TIME AND ENERGY ON THE IMPORTANT ITEMS ON A LENGTHY AGENDA. ANY COUNCILMEMBER MAY REQUEST THAT AN ITEM BE "PULLED" FROM THE CONSENT CALENDAR AND CONSIDERED SEPARATELY. AGENDA ITEMS PULLED FROM THE CONSENT CALENDAR WILL BE PLACED ON THE AGENDA AT THE END OF THE MATTERS LISTED UNDER "BUSINESS - ACTION ITEMS."

A. Approval of Minutes - June 10, 2014 Regular City Council Meeting. [220-BC]

8. CONSENT CALENDAR - Continued

C. A resolution approving the granting of a temporary construction easement to the Metro Wastewater Reclamation District for use of property at 128th Avenue and Riverdale Road. [840-AG]

D. A resolution authorizing a Master Intergovernmental Agreement between the City of Thornton and the Colorado Department of Transportation for flood damage repairs caused by the September 2013 floods. [320-AG]

E. An ordinance vacating Cook Street right-of-way, north of 100th Avenue for a distance of approximately 125 feet. (First Reading) [600-PR]

F. A resolution authorizing the City of Thornton to enter into an Intergovernmental Agreement with the Urban Drainage and Flood Control District and the City of Federal Heights regarding funding of Major Drainageway Planning and Digital Flood Hazard Area Delineation for Niver Creek and Tributaries. [700-AG]

G. A resolution authorizing the City of Thornton to enter into an Utility Relocation Agreement with the Regional Transportation District for the North Metro Rail Line. [220-GE]

H. A resolution appointing a member to the Businesses of Thornton Advisory Commission. [600-BC]

9. PUBLIC HEARINGS

IN ORDER TO SCHEDULE THE TIMING AND LENGTH OF PUBLIC HEARINGS FOR THE CONVENIENCE OF THE COUNCIL, THE GENERAL PUBLIC, AND INTERESTED PARTIES, THE FIRST PUBLIC HEARING WILL BEGIN AT OR BEFORE 7:30 P.M., OR AS SOON THEREAFTER AS POSSIBLE. THIS SEGMENT OF THE AGENDA WILL LAST NO MORE THAN 2 HOURS. PROPONENTS AND OPPONENTS WHO WISH TO SPEAK ARE REQUESTED TO SIGN UP, PRIOR TO THE BEGINNING OF THE MEETING, ON THE REGISTER LOCATED INSIDE THE COUNCIL CHAMBERS, AND LIMIT THEIR REMARKS TO 5 MINUTES. GROUPS OF CITIZENS BROUGHT TOGETHER BY A COMMON INTEREST ARE REQUESTED TO CHOOSE A SPOKESPERSON WHOSE TIME TO COMMENT WILL BE EXTENDED TO 10 MINUTES. SPEAKERS MAY BE ASKED TO BE SWORN IN BY THE CITY CLERK IF THEY WISH TO SUBMIT FACTS RATHER THAN OPINIONS.

A. A public hearing regarding an ordinance approving the rezone of approximately 0.0827 acres and amending the Official Zoning Map for property generally located west of Riverdale Road and north of East 130th Avenue (Gleneagle Estates ODP/CSP 1st Amendment). [Public Hearing] [600-PR]

10. ACTION ITEMS

A. An ordinance adopting the fourth amendment to the 2014 Budget amending section one of ordinance 3267, making appropriations for the City of Thornton, Colorado for the fiscal year 2014 for all funds except that appropriations for certain individual projects shall not lapse at year end but continue until the project is completed or cancelled. (First Reading) [380-BD]
11. ADJOURNMENT

Agenda prepared by Nancy A. Vincent, City Clerk for Jack Etfridge, City Manager
## COUNCIL COMMUNICATION

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<tr>
<td>July 8, 2014</td>
<td>6A-1</td>
<td>Presentations</td>
<td>N/A</td>
<td>N/A</td>
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</table>

**Subject:** A resolution honoring Private First Class Jacob H. Wykstra for his service and sacrifice during the war in Afghanistan.

**Recommended by:** City Council  
**Presenter(s):** City Council  
**Approved by:** Jack Ethredge  
**Ordinance previously introduced by:**

### SYNOPSIS:

Thornton resident, Jacob Wykstra, died following an aircraft accident in Kandahar, Afghanistan on May 28, 2014. Jacob was an infantryman assigned to the 1st Battalion, 12th Infantry Regiment, 4th Brigade Combat Team, 4th Infantry Division.

Jacob joined the Army last year. He was based out of Fort Carson and was deployed to Afghanistan in January.

### RECOMMENDATION:

Staff recommends approval of the resolution to honor Jacob Wykstra for his service to our country and ultimate sacrifice while fighting for freedom on foreign soil in Afghanistan; and presentation of a plaque to Jacob’s widow, Katie Wykstra, along with a framed resolution; and a framed resolution to Jacob’s father, Tom Wykstra.

### BUDGET/STAFF IMPLICATIONS:

N/A

### BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY):

(includes previous City Council action)

Jacob’s mother, Heidi Katzenbach, is unable to attend the meeting so a framed resolution will be mailed to her.
RESOLUTION

A RESOLUTION HONORING PRIVATE FIRST CLASS (PFC) JACOB H. WYKSTRA FOR HIS SERVICE AND SACRIFICE DURING THE WAR IN AFGHANISTAN.

WHEREAS, our nation's security continues to rely on patriotic men and women who willingly put themselves in harm's way to protect the freedoms that all United States citizens cherish; and

WHEREAS, thousands of young Americans continue to serve this nation with honor and in keeping with the military traditions of the United States; and

WHEREAS, Private First Class (PFC) Jacob H. Wykstra, grew up in Thornton, Colorado attending Eagleview Elementary, Rocky Top Middle School, Horizon High School all the while enjoying the sports he loved — baseball, football, and rugby; and

WHEREAS, after one and a half years of college, PFC Wykstra decided that his true calling, which he had known from the time he was a teenager, was to serve and defend this country with honor and dignity; and

WHEREAS, PFC Wykstra enlisted in the United States Army in May 2013 and was assigned to the 1st Battalion, 12th Infantry Regiment, 4th Brigade Combat Team, 4th Infantry Division, Fort Carson, Colorado; and

WHEREAS, upon learning of his assignment to Fort Carson, Colorado, prior to graduation from basic training, PFC Wykstra broke out in a celebration of glee, shook his bunk and howled. His teammates stood in silence as PFC Wykstra asked, “He’s behind me, isn’t he?” Knowing that his Drill Sergeant was present, PFC Wykstra dropped to the floor and began doing push-ups as he continued his quiet celebration; and

WHEREAS, in December of 2013 PFC Wykstra married the love of his life and soul mate, Katie, whom he met through service in his local church and who was his biggest supporter and advocate during their life together and his service to this country; and

WHEREAS, PFC Wykstra was deployed to Afghanistan in January 2014 and assigned to the Quick Reactionary Force which specialized in helicopter extraction and support missions with a group of 22 other soldiers who became brothers to each other because of their isolation from the rest of the company; and

WHEREAS, even through the tough environment and circumstances, PFC Wykstra’s sense of humor and love was displayed through all he did including helping others by seeing the good in any situation and caring for stray dogs; and

WHEREAS, PFC Wykstra wanted a career with the Army, aspired to attend Airborne school to become a Ranger, and was on track to be in the top one percent because of his unlimited potential; and
WHEREAS, PFC Wykstra demonstrated a personal commitment to protecting democracy and ensuring the well-being of his fellow man by never missing a mission and volunteering to replace others when needed; and

WHEREAS, PFC Wykstra while out on a special mission, died May 28, 2014 in an aircraft accident in Kandahar, Afghanistan while supporting "Operation Enduring Freedom"; and

WHEREAS, it is important that fallen soldiers are thanked for their selfless service to this nation and honored for their unyielding commitment to protecting the people and ideals of the United States; and

WHEREAS, PFC Wykstra's service to this country is an example of selflessness that the City of Thornton desires to honor and recognize; and

WHEREAS, it is fitting and proper that the sacrifice of this remarkable young American be honored appropriately.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. That the Thornton City Council wishes to honor and recognize PFC Jacob H. Wykstra for his service and sacrifice supporting "Operation Enduring Freedom."

2. That the Thornton City Council conveys its thoughts and prayers to PFC Wykstra's family and friends during this very difficult time.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Thornton, Colorado, on ________________, 2014.

CITY OF THORNTON, COLORADO

_____________________________
Heidi K. Williams, Mayor

ATTEST:

_____________________________
Nancy A. Vincent, City Clerk
COUNCIL COMMUNICATION

Meeting Date: July 8, 2014
Agenda Item: 6A-2
Agenda Location: Presentation
Work Plan #: N/A
Legal Review: N/A

Subject: A resolution recognizing Andrew P. (Andy) Jennings, Parks and Golf Manager, for 25 years of employment with the City of Thornton. [580-GE]

Recommended by: Mike Soderberg
Presenter(s): City Council

SYNOPSIS:

The City of Thornton recognizes employees who have achieved milestones of 20 years and above. Andy Jennings has been employed as a regular full-time employee for 25 years, and the City wishes to convey its appreciation to Andy.

RECOMMENDATION:

Staff recommends approval of the resolution.

BUDGET/STAFF IMPLICATIONS:

The monetary awards are included in the 2014 budget.

BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY): (includes previous City Council action)

Andy Jennings began employment on June 5, 1989 as a Park Superintendent, became a Parks/Forestry/Building Manager in 1998, in 2001 his title changed to Parks and Forestry Manager, and in February 2014 was reclassified to Parks and Golf Manager. Other achievements include:

a) Received a Team Distinguished Service Award in March 1997 for designing and refining the Performance Appraisal System;

b) Received two Team Distinguished Service Awards in February 1999 for serving on the selection committee to re-solicit and evaluate offers from firms to provide in-house fleet services for the City, and for efforts and dedication in making the 1998 Thorntonfest a huge success;

c) Received a Team Distinguished Service Award in February 2000 for the planning and implementation of the 1999 HarvestFest;

d) In February 2001 received a Team Distinguished Service Award for outstanding service in preparation of the Christmas lights for the year 2001;

e) Received a Team Distinguished Service Award in February 2002 for the Citywide implementation of the Hansen Project;

f) Received a Team Distinguished Service Award in February 2002 for extraordinary assistance in the City’s “United We Stand” event following the tragedy of September 11;

g) Received an individual Distinguished Service Award in February 2001 for dedicated and continuous service to the Thornton community, such as his ongoing work with the Concerned Citizens of Thornton, assistance with the cinch-bug infestation, and negotiations in a joint contract between the Southwest Park and Recreation Training Institute and the National Recreation and
Parks Association Western Regional Service Center to provide a curriculum of training opportunities;

h) In February 2003 received two Team Distinguished Service Awards for the preparation and implementation of WinterFest, and for the design and construction of "Santa's Village;"

i) Received two Team Distinguished Service Awards in January 2004 for work on the tree damage clean-up after a major snowstorm, and for exemplary performance in preparing revisions to the City's Parks and Open Space Master Plan;

j) In February 2006 was selected the Citywide Employee of the Year for 2005 for his dedication to the Thornton community, which includes overseeing both the Building Maintenance operation and the Parks Division, creating the City's first Parks Master Plan, and leadership in several ambitious landscape rehabilitation capital projects that have significantly reduced water consumption in several areas around the City;

k) Was selected the 2006 Citywide Team of the Year and received a Team Distinguished Service Award in February 2007, both for the coordination and implementation of the various events that made up the City's 50th Anniversary celebration;

l) Received a Management Services Team Service Excellence Award in March 2008 for 20 years of assistance with planning and implementing the annual City Awards Luncheon;

m) Received two Community Services Team Distinguished Service Awards for outstanding work during the 2006/2007 blizzards, and for the planning and implementation of the Halloween event known as "Trunk or Treat;"

n) In January 2009 received the Community Services 2008 Team of the Year and Distinguished Service Award for planning and displaying the Vietnam Memorial Traveling Award, and also received a Community Services Team Distinguished Service Award for the development of new awards protocol for the Department;

o) Was selected the Community Services December 2009 Team of the Month for the design and construction of a new Santa House and Reindeer Hospital for WinterFest;

p) Received the Community Services Kermit (Green) Award in December 2010 for assistance with EnviroWagg's pick-up and recycling of dog waste to produce compost;

q) Was selected the Management Services 2010 Team of the Year and received a Team Service Excellence Award in January 2011 for the successful implementation of a number of significant improvements in the systems, processes, and operations of the Margaret W. Carpenter Recreation Center that resulted in the achievement of a Leadership in Energy and Environmental Design (LEED) certification for the facility;

r) In January 2013 was named the November 2012 Community Services Team of the Month for the efficient and timely improvements to the Thorrncreek Golf Course;

s) Received a City Development Team Distinguished Service Award in January 2013 for the pick-up, compaction and hauling of approximately two tons of tumbleweeds at the western edge of the Villages at Riverdale Subdivision;

t) Received the Community Services 2012 Team of the Year and Team Distinguished Service Award in February 2013 for renovations to the Thorrncreek Golf Course;

u) Received the Community Services 2013 Team of the Year and Team Distinguished Service Award for hard work and dedication in the design, construction, operation and maintenance of Carpenter Park; and

v) Received numerous other memos and letters of appreciation for his job performance and assistance to citizens.
RESOLUTION

A RESOLUTION CONVEYING THE CITY COUNCIL'S GRATITUDE AND APPRECIATION TO ANDREW P. (ANDY) JENNINGS FOR HIS MANY CONTRIBUTIONS DURING THE PAST TWENTY-FIVE YEARS OF DEDICATED SERVICE TO THE CITY OF THORNTON.

WHEREAS, Andy Jennings has served the City of Thornton as a full-time employee for twenty-five years in a professional and loyal manner; and

WHEREAS, Andy Jennings began his employment with the City of Thornton on June 5, 1989 as a Park Superintendent, became a Parks/Forestry/Building Manager in 1998, in 2001 his title changed to Parks and Forestry Manager, and in February 2014 was reclassified to Parks and Golf Manager; and

WHEREAS, Andy Jennings received a Team Distinguished Service Award in March 1997 for designing and refining the Performance Appraisal System; and

WHEREAS, Andy Jennings received two Team Distinguished Service Awards in February 1999 for serving on the selection committee to re-solicit and evaluate offers from firms to provide in-house fleet services for the City, and for efforts and dedication in making the 1998 Thorntonfest a huge success; and

WHEREAS, Andy Jennings received a Team Distinguished Service Award in February 2000 for the planning and implementation of the 1999 HarvestFest; and

WHEREAS, in February 2001 Andy Jennings received a Team Distinguished Service Award for outstanding service in preparation of the Christmas lights for the year 2001; and

WHEREAS, Andy Jennings received a Team Distinguished Service Award in February 2002 for the Citywide implementation of the Hansen Project; and

WHEREAS, Andy Jennings received a Team Distinguished Service Award in February 2002 for extraordinary assistance in the City’s "United We Stand" event following the tragedy of September 11; and

WHEREAS, Andy Jennings received an individual Distinguished Service Award in February 2001 for dedicated and continuous service to the Thornton community, such as his ongoing work with the Concerned Citizens of Thornton, assistance with the cinch-bug infestation, and negotiations in a joint contract between the Southwest Park and Recreation Training Institute and the National Recreation and Parks Association Western Regional Service Center to provide a curriculum of training opportunities; and

WHEREAS, in February 2003 Andy Jennings received two Team Distinguished Service Awards for the preparation and implementation of WinterFest, and for the design and construction of “Santa’s Village;” and

WHEREAS, Andy Jennings received two Team Distinguished Service Awards in January 2004 for work on the tree damage clean-up after a major snowstorm, and for
exemplary performance in preparing revisions to the City's Parks and Open Space Master Plan; and

WHEREAS, in February 2006 Andy Jennings was selected the Citywide Employee of the Year for 2005 for his dedication to the Thornton community, which includes overseeing both the Building Maintenance operation and the Parks Division, creating the City's first Parks Master Plan, and leadership in several ambitious landscape rehabilitation capital projects that have significantly reduced water consumption in several areas around the City; and

WHEREAS, Andy Jennings was selected the 2006 Citywide Team of the Year and received a Team Distinguished Service Award in February 2007, both for the coordination and implementation of the various events that made up the City's 50th Anniversary celebration; and

WHEREAS, Andy Jennings received a Management Services Team Service Excellence Award in March 2008 for 20 years of assistance with planning and implementing the annual City Awards Luncheon; and

WHEREAS, Andy Jennings received two Community Services Team Distinguished Service Awards for outstanding work during the 2006/2007 blizzards, and for the planning and implementation of the Halloween event known as "Trunk or Treat;" and

WHEREAS, in January 2009 Andy Jennings received the Community Services 2008 Team of the Year and Distinguished Service Award for planning and displaying the Vietnam Memorial Traveling Award, and also received a Community Services Team Distinguished Service Award for the development of new awards protocol for the Department; and

WHEREAS, Andy Jennings was selected the Community Services December 2009 Team of the Month for the design and construction of a new Santa House and Reindeer Hospital for WinterFest; and

WHEREAS, Andy Jennings received the Community Services Kermit (Green) Award in December 2010 for assistance with EnviroWagg’s pick-up and recycling of dog waste to produce compost; and

WHEREAS, Andy Jennings was selected the Management Services 2010 Team of the Year and received a Team Service Excellence Award in January 2011 for the successful implementation of a number of significant improvements in the systems, processes, and operations of the Margaret W. Carpenter Recreation Center that resulted in the achievement of a Leadership in Energy and Environmental Design (LEED) certification for the facility; and

WHEREAS, in January 2013 Andy Jennings was named the November 2012 Community Services Team of the Month for the efficient and timely improvements to the Thorn creek Golf Course; and
WHEREAS, Andy Jennings received a City Development Team Distinguished Service Award in January 2013 for the pick-up, compaction and hauling of approximately two tons of tumbleweeds at the western edge of the Villages at Riverdale Subdivision; and

WHEREAS, Andy Jennings received the Community Services 2012 Team of the Year and Team Distinguished Service Award in February 2013 for renovations to the Thorncreek Golf Course; and

WHEREAS, Andy Jennings received the Community Services 2013 Team of the Year and Team Distinguished Service Award for hard work and dedication in the design, construction, operation and maintenance of Carpenter Park; and

WHEREAS, Andy Jennings received numerous other memos and letters of appreciation for his job performance and assistance to citizens; and

WHEREAS, Andy Jennings has approached his job in a professional, skillful, and dedicated manner, and with a strong commitment to serve the community; and

WHEREAS, the Council wishes to recognize Andy Jennings for the contributions he has made over his years of service to the City of Thornton.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

That the City Council hereby recognizes the commitment, dedication and loyalty of Andy Jennings, and conveys its earnest appreciation and thanks for the many contributions he has made during his twenty-five years as an employee of the City of Thornton.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Thornton, Colorado, on ______________________, 2014.

CITY OF THORNTON, COLORADO

______________________________
Heidi K. Williams, Mayor

ATTEST:

______________________________
Nancy A. Vincent, City Clerk
COUNCIL COMMUNICATION

Meeting Date: July 8, 2014
Agenda Item: 8A
Agenda Location: Consent Calendar
Work Plan #: N/A
Legal Review: __ 1st Reading
__ 2nd Reading

Subject: A Motion approving the Minutes of the June 10, 2014 Regular City Council meeting. [220-BC]

Recommended by: Jack Ethredge
Approved by: Jack Ethredge
Ordinance previously introduced by: Nancy Vincent, City Clerk

SYNOPSIS:
The official Minutes of the June 10, 2014 Regular City Council meeting have been prepared by the City Clerk's Office and are hereby submitted for Council's approval.

RECOMMENDATION:
Staff recommends approval of Minutes as requested.

BUDGET/STAFF IMPLICATIONS:
None

ALTERNATIVES:
1. Approve the minutes as submitted.
2. Approve the minutes with corrections requested by Council.

BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY): (includes previous City Council action)
None
1. CALL TO ORDER – By Mayor Heidi K. Williams at 7:02 p.m. in the Council Chambers of the Thornton City Hall.

2. INVOCATION - By Reverend Bill Moore, Good Shepherd United Methodist Church

3. PLEDGE OF ALLEGIANCE

4. ROLL CALL OF COUNCIL - Those Present were: Mayor Heidi K. Williams, Mayor Pro Tem Val Vigil, and Councilmembers Jenice "JJ" Dove, Mack Goodman, Jan Kulmann, Beth Martinez Humenik, Eric Montoya, Sam Nizam and Eric Tade.

   STAFF MEMBERS PRESENT - Jack Ethredge, City Manager; Joyce Hunt, Assistant City Manager; Margaret Emerich, City Attorney; Jeff Coder, Deputy City Manager for City Development; Mark Koleber, Water Supply Director; Mike Soderberg, Executive Director for Community Services; Tom Manka, Deputy Police Chief; John Staley, Executive Director - Fire Chief; Chuck Seest, Finance Director; Robb Kolstad, Management and Budget Director; Jan Kiehl, Recreation Manager; Nancy Vincent, City Clerk; and Karren Werft, Deputy City Clerk.

5. APPROVAL OF THE AGENDA

   The City Manager requested two executive sessions prior to Adjournment.

   The City Attorney explained that the executive sessions are being called pursuant to C.R.S. 24-6-402-(4)(b) for the purpose of receiving legal advice regarding Xcel Energy; and pursuant to C.R.S. 24-6-402(4)(e) to determine positions relative to matters that are subject to negotiations, develop strategy for negotiations, and instruct negotiators with regard to the Airport Coordinating Committee.

   MOTION WAS MADE BY MAYOR PRO TEM VAL VIGIL AND SECONDED BY COUNCILMEMBER ERIC MONTOYA TO APPROVE THE AGENDA AS AMENDED WITH THE ADDITION OF THE EXECUTIVE SESSIONS PRIOR TO ADJOURNMENT. MOTION PASSED UNANIMOUSLY.

6. AUDIENCE PARTICIPATION

   A. Presentations

      1) A resolution declaring the month of July as National Parks and Recreation Month in Thornton.

         Mike Soderberg, Executive Director for Community Services, explained that this year's theme is "Out is In" to encourage everyone to get outside. He described some of the activities that will take place in July as part of National Parks and Recreation month.
MAYOR PRO TEM VAL VIGIL INTRODUCED, READ IN ITS ENTIRETY
AND MOVED TO APPROVE A RESOLUTION DECLARING THE MONTH
OF JULY AS NATIONAL PARKS AND RECREATION MONTH IN
THORNTON. MOTION WAS SECONDED BY COUNCILMEMBER BETH
MARTINEZ HUMENIK AND PASSED UNANIMOUSLY.

B. Audience Participation

Todd Pitts, 12846 Kearney Street, addressed Council regarding speed cushions
that were supposed to be installed this year in Riverdale Park at approximately
128th and Colorado. He expressed concern about speeding in their neighborhood
and said he had heard they wouldn’t be installed until next year.

Robb Kolstad, Management and Budget Director, stated that three communities
have met all the qualifications of the iwatch program and Riverdale Park is one of
them. He said the speed cushions will be installed this year.

Daniel Imming, 12857 Kearney Street, signed up but declined to speak.

C. Staff Reports


Kim Higgins, Eide Bailly, LLP, presented the results of the 2013 audit and
reviewed the independent auditor’s opinion, the single audit reports and the
letter to governance.

7. COUNCIL COMMENTS/COMMUNICATIONS

Councilmember Martinez Humenik stated that there is a flyer out on community gardens
for anyone who is interested in participating. She noted recent coyote sightings and
reminded everyone to be careful. She said that the Sherwood Hills West and Parkwood
South neighborhoods have recently joined the iwatch program.

Councilmember Montoya reminded everyone of the Ward 2 Ice Cream Social and Concert
in the Park on June 26 at the Carpenter Amphitheater. He also reminded everyone of
Thornton’s 4th of July celebration.

City Manager noted that the City’s external auditor is hired by the Mayor and City Council
and does not work for staff. He said they therefore maintain an independent look at the
financial activities of the City.

8. CONSENT CALENDAR

MOTION WAS MADE BY COUNCILMEMBER BETH MARTINEZ HUMENIK AND
SECONDED BY COUNCILMEMBER ERIC MONTOYA TO APPROVE THE CONSENT
CALENDAR AS PRESENTED. MOTION PASSED UNANIMOUSLY.

THE FOLLOWING COUNCIL DOCUMENTS WERE APPROVED ON THE CONSENT
CALENDAR:
A. Approval of Minutes - May 27, 2014 Regular City Council Meeting.


9. PUBLIC HEARINGS

None

10. ACTION ITEMS

None

MOTION WAS MADE BY COUNCILMEMBER BETH MARTINEZ HUMENIK TO RECESS INTO EXECUTIVE SESSION AND SECONDED BY COUNCILMEMBER JENICE “JJ” DOVE. MOTION PASSED UNANIMOUSLY.

THE MEETING RECESSED INTO EXECUTIVE SESSION AT 7:45 P.M. AND RECONVENED AT 9:29 P.M.

11. ADJOURNMENT

MOTION WAS MADE BY COUNCILMEMBER JENICE “JJ” DOVE AND SECONDED BY COUNCILMEMBER ERIC MONTOYA TO ADJOURN THE MEETING AT 9:29 P.M. MOTION PASSED UNANIMOUSLY.

Respectfully submitted,

Karren Werft, Deputy City Clerk

ATTEST:

Mayor at time of approval

Approved at the July 8, 2014, City Council meeting.
COUNCIL COMMUNICATION

Meeting Date: July 8, 2014
Agenda Item: 8B
Agenda Location: Consent Calendar
Work Plan #: N/A
Legal Review: __ 1st Reading __ 2nd Reading

Subject: Monthly Financial Report for May 2014. [380-RS]

Recommended by: Chuck Seest
Presenter(s): Chuck Seest, Finance Director

Approved by: Jack Ethridge

Ordinance previously introduced by:

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SYNOPSIS:
The financial report for the 5-month period ending May 31, 2014 is attached.

RECOMMENDATION:
For informational purposes only.

BUDGET/STAFF IMPLICATIONS:
None.

ALTERNATIVES:
For informational purposes only.

BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY): (includes previous City Council action)
None.
FINANCIAL REPORT

May 2014

Report Overview

City of Thornton

General Government
Pages 3-8
- General Fund
- Governmental Capital Fund
- Special Revenue Funds

Enterprise
Pages 9-15
- Water Fund
- Sewer Fund
- Environmental Services Fund
- Golf Course Fund

Other Funds
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- Thornton Development Authority (TDA) Funds
- Internal Service Funds
- Debt Service Fund
- Other City Funds
City-Wide Net Position

### General Government Funds

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<th>Budgeted Expenditures</th>
<th>Net Position</th>
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<td>(3,757,311)</td>
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### Special Revenue Funds

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<th>Budgeted Expenditures</th>
<th>Net Position</th>
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<td>2,230,361</td>
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<td>Adams County Open Space Fund</td>
<td>1,375,302</td>
<td>1,061,000</td>
<td>314,302</td>
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<td>Parks Fund</td>
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<td>2,026,821</td>
<td>(247,892)</td>
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<td>1,002,203</td>
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<td>-</td>
<td>57,275</td>
<td>(57,275)</td>
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### Enterprise Funds

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<th>Budgeted Expenditures</th>
<th>Net Position</th>
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<tbody>
<tr>
<td>Water Fund</td>
<td>$ 43,825,048</td>
<td>$ 40,877,181</td>
<td>$ 2,947,867</td>
</tr>
<tr>
<td>Sewer Fund</td>
<td>14,034,449</td>
<td>13,250,916</td>
<td>783,533</td>
</tr>
<tr>
<td>Environmental Services Fund</td>
<td>5,057,755</td>
<td>5,184,261</td>
<td>(126,506)</td>
</tr>
<tr>
<td>Golf Course Fund</td>
<td>1,877,218</td>
<td>2,394,013</td>
<td>(516,795)</td>
</tr>
</tbody>
</table>

### Other Funds

<table>
<thead>
<tr>
<th>Fund</th>
<th>Budgeted Revenues</th>
<th>Budgeted Expenditures</th>
<th>Net Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thornton Development Authority</td>
<td>$ 14,192,885</td>
<td>$ 15,066,031</td>
<td>$(873,146)</td>
</tr>
<tr>
<td>Internal Service Funds</td>
<td>15,299,339</td>
<td>17,381,383</td>
<td>(2,082,044)</td>
</tr>
<tr>
<td>Debt Service Fund</td>
<td>1,806,950</td>
<td>1,804,950</td>
<td>2,000</td>
</tr>
<tr>
<td>Other City Funds</td>
<td>1,098,598</td>
<td>1,098,598</td>
<td>-</td>
</tr>
</tbody>
</table>

**Total Revenues and Expenditures**

<table>
<thead>
<tr>
<th>Budgeted Revenues</th>
<th>Budgeted Expenditures</th>
<th>Net Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ 218,128,242</td>
<td>$ 219,620,007</td>
<td></td>
</tr>
</tbody>
</table>

Information regarding Net Position is included on the individual Fund Summary pages.

Revenue and expenditure numbers are based on the amended budget, which includes all changes outlined in approved budget amendments. Revenue and expenditure forecasts are typically updated in the third quarter, or as needed.
Overview of Funds

**General Fund (page 6)**

*Revenues*

Sales and Use Tax, Property Tax, Charges For Services, Franchise Fees, Licenses and Permits

*Expenditures (Operating)*

Public Safety, Community Services, City Development, Street Maintenance, Legislative, Administration

**Governmental Capital Fund (page 7)**

*Revenues*

Sales and Use Tax, Intergovernmental, Grants

*Expenditures (Capital)*

Contractual Obligations, Maintenance Capital, Expansion Capital

**Special Revenue Funds (page 8)**

*Revenues*

Sales and Use Tax, Adams County Open Space Tax, Adams County Road and Bridge Tax, Lottery Proceeds, Grants

*Expenditures (Capital)*

Parks and Open Space, Adams County Open Space, Adams County Road and Bridge, Conservation Trust, Cash-in-Lieu
Revenue Highlights

<table>
<thead>
<tr>
<th></th>
<th>Budgeted Revenue</th>
<th>Forecasted Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Tax</td>
<td>$51.8 M</td>
<td>$51.8 M</td>
</tr>
<tr>
<td>Vehicle Use Tax</td>
<td>6.9 M</td>
<td>6.9 M</td>
</tr>
<tr>
<td>Building Revenues</td>
<td>5.5 M</td>
<td>5.5 M</td>
</tr>
<tr>
<td>Ambulance Revenues</td>
<td>2.0 M</td>
<td>2.0 M</td>
</tr>
<tr>
<td>Fines and Forfeitures</td>
<td>3.1 M</td>
<td>3.1 M</td>
</tr>
</tbody>
</table>

- Sales Tax revenue budget is based on a 3.9% increase over 2013. YTD performance is up 8.3%, of which a significant portion is due to investment by businesses in technology and facilities.

- Vehicle Use Tax is up 8.9% YTD over very strong 2013 YTD returns. The 2014 Budget assumes that moderate growth will continue as we move through 2014.

- Building Revenues for 2014 are based on 425 single-family permits, 250 multi-family units, and $35M in Commercial/Other development. Residential development through April has been slightly behind 2013 (120 single-family permits in 2014 vs. 123 in 2013); however, overall building revenues are up $956K YTD due to commercial construction.

- Ambulance Revenues are budgeted to rebound in 2014 after a change in billing companies effective January 2014. However, the impact on revenue will not be seen until 3rd Quarter 2014. YTD 2014 revenues are still slightly lagging 2013.

- Fines and Forfeitures are lagging 2013 YTD by 9.6% ($127K) but are expected to rebound during the summer months.
**General Fund**

- The 2014 Budget includes 12.0 new positions in the General Fund that will address span of control issues in the Police Department, improve training capabilities in the Fire Department, and ensure professional and expedient development review services in the City Development Department.
- Due to the popularity of the new Margaret W. Carpenter Park and Open Space, the 2014 Budget includes funding for additional part-time staffing to ensure that the amenity is clean and well-maintained.
- In addition to the staffing additions, the budget invests in new equipment for public safety, including mobile data computers for the Fire Department and a 911 text messaging system for police, fire, and emergency medical services.
- The 2014 Budget includes the continuation of the traffic signal pole testing program and a new guardrail repair program to ensure safety of the traveling public.

**Governmental Capital Fund**

- The Governmental Capital Fund includes funding for a number of transportation improvements, including the widening of Holly Street between 123rd Avenue and Holly Circle, the paving of Quebec Street, and a number of intersection improvements.
- The 2014 Budget funds a number of replacement fleet purchases and facility repairs that were deferred through the recession and makes investments in energy efficiency that will yield a return on the initial investment within five to ten years.

**Special Revenue Funds**

- Special Revenue Fund investments include park improvements at Signal Ditch Park and Open Space, North Creek Farms Park, and Northhaven Park and Greenway.

**Budget Amendments**

- Budget Amendment 1: Includes additional funding in the Parks Fund for the design of improvements at Thorncreek Golf Course.
- Budget Amendment 2: Includes additional funding in the General Fund for project review and management costs related to construction of the Regional Transportation District (RTD) FasTracks North Metro Line.
- Budget Amendment 3: Includes additional funding in the Governmental Capital Fund for replacement of the Hansen software system. The Hansen software system is used by multiple City operations and provides vital services in the areas of utility billing, permitting, inspection, case management, asset management, customer service, and others.
The negative Net Position in the General Fund is based on the use of fund balance to cover one-time costs, such as vehicles, related to construction management of the FasTracks North Metro Line. This was approved in the second amendment to the 2014 Budget.

<table>
<thead>
<tr>
<th>General Fund Revenues</th>
<th>YTD 2013</th>
<th>YTD 2014</th>
<th>Budget 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales and Use</td>
<td>$17,652,230</td>
<td>$20,035,437</td>
<td>$58,495,257</td>
</tr>
<tr>
<td>Property</td>
<td>5,118,289</td>
<td>5,401,725</td>
<td>9,200,000</td>
</tr>
<tr>
<td>Franchise</td>
<td>1,911,446</td>
<td>1,964,457</td>
<td>5,422,897</td>
</tr>
<tr>
<td>Other</td>
<td>499,911</td>
<td>601,904</td>
<td>1,456,742</td>
</tr>
<tr>
<td>Licenses and Permits</td>
<td>806,354</td>
<td>1,297,197</td>
<td>2,221,800</td>
</tr>
<tr>
<td>Intergovernmental</td>
<td>1,587,696</td>
<td>1,779,023</td>
<td>5,121,501</td>
</tr>
<tr>
<td>Governmental Grants</td>
<td>200,389</td>
<td>175,429</td>
<td>476,500</td>
</tr>
<tr>
<td>Charges for Services</td>
<td>4,318,486</td>
<td>3,972,061</td>
<td>8,917,833</td>
</tr>
<tr>
<td>Fines and Forfeitures</td>
<td>1,115,705</td>
<td>1,009,125</td>
<td>3,072,000</td>
</tr>
<tr>
<td>Interest</td>
<td>75,563</td>
<td>320,857</td>
<td>267,000</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>624,197</td>
<td>698,644</td>
<td>2,267,062</td>
</tr>
<tr>
<td><strong>General Fund Revenues</strong></td>
<td><strong>$33,910,264</strong></td>
<td><strong>$37,255,858</strong></td>
<td><strong>$96,918,592</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>General Fund Expenditures</th>
<th>YTD 2013</th>
<th>YTD 2014</th>
<th>Budget 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police Department</td>
<td>$10,825,934</td>
<td>$11,407,485</td>
<td>$29,432,764</td>
</tr>
<tr>
<td>Community Services</td>
<td>5,558,558</td>
<td>5,994,000</td>
<td>18,634,124</td>
</tr>
<tr>
<td>Fire Department</td>
<td>4,661,719</td>
<td>5,135,422</td>
<td>13,847,926</td>
</tr>
<tr>
<td>Infrastructure</td>
<td>4,664,108</td>
<td>4,478,186</td>
<td>11,809,075</td>
</tr>
<tr>
<td>City Development</td>
<td>2,528,070</td>
<td>2,725,780</td>
<td>7,035,831</td>
</tr>
<tr>
<td>Management Services</td>
<td>2,282,435</td>
<td>2,435,371</td>
<td>6,210,672</td>
</tr>
<tr>
<td>General Fund Non-Departmental</td>
<td>959,947</td>
<td>936,327</td>
<td>2,725,608</td>
</tr>
<tr>
<td>Finance</td>
<td>835,034</td>
<td>831,864</td>
<td>2,158,418</td>
</tr>
<tr>
<td>Legislative and Legal</td>
<td>751,273</td>
<td>805,530</td>
<td>2,052,152</td>
</tr>
<tr>
<td>City Manager's Office</td>
<td>793,218</td>
<td>835,679</td>
<td>2,010,851</td>
</tr>
<tr>
<td>Economic Development</td>
<td>310,973</td>
<td>469,130</td>
<td>1,012,808</td>
</tr>
<tr>
<td><strong>General Fund Expenditures</strong></td>
<td><strong>$34,171,269</strong></td>
<td><strong>$36,054,774</strong></td>
<td><strong>$96,930,229</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>General Fund Net Position</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fund</strong></td>
</tr>
<tr>
<td>General Fund</td>
</tr>
</tbody>
</table>
The negative Net Position in the Governmental Capital Fund is based on using fund balance for projects that were deferred during the recession (widening of Holly Street, deferred fleet replacement, and deferred facility maintenance). In addition, fund balance is also being used for a project that will invest in energy efficiency improvements with an estimated five to ten year return on the initial investment, and on the Hansen software system replacement project.
**Fund Summary: Special Revenue Funds**

The negative and positive Net Positions in the Special Revenue Funds are based on the specific capital projects approved in the 2014 Budget. The Special Revenue Funds are managed by saving up revenue for planned projects and then spending down fund balance when the project is approved.

### Special Revenue Funds - Revenue Summary

<table>
<thead>
<tr>
<th>Fund</th>
<th>YTD 2013</th>
<th>YTD 2014</th>
<th>Budget 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adams County Road and Bridge Fund</td>
<td>$769,571</td>
<td>$643,571</td>
<td>$2,415,000</td>
</tr>
<tr>
<td>Adams County Open Space Fund</td>
<td>422,834</td>
<td>483,957</td>
<td>1,375,302</td>
</tr>
<tr>
<td>Parks Fund</td>
<td>542,986</td>
<td>666,822</td>
<td>1,778,929</td>
</tr>
<tr>
<td>Open Space Fund</td>
<td>543,319</td>
<td>671,672</td>
<td>2,261,449</td>
</tr>
<tr>
<td>Parks and Open Space Fund</td>
<td>534,899</td>
<td>643,266</td>
<td>1,778,929</td>
</tr>
<tr>
<td>Conservation Trust Fund</td>
<td>339,575</td>
<td>363,059</td>
<td>1,005,000</td>
</tr>
<tr>
<td>Cash In Lieu Fund</td>
<td>1,110</td>
<td>14,938</td>
<td>-</td>
</tr>
<tr>
<td><strong>Special Revenue Funds Revenues</strong></td>
<td>3,154,293</td>
<td>3,487,285</td>
<td>10,614,609</td>
</tr>
</tbody>
</table>

### Special Revenue Funds - Expenditure Summary

<table>
<thead>
<tr>
<th>Fund</th>
<th>YTD 2013</th>
<th>YTD 2014</th>
<th>Budget 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adams County Road and Bridge Fund</td>
<td>$141,350</td>
<td>$116,431</td>
<td>$2,230,361</td>
</tr>
<tr>
<td>Adams County Open Space Fund</td>
<td>22,329</td>
<td>258</td>
<td>1,061,000</td>
</tr>
<tr>
<td>Parks Fund</td>
<td>79,205</td>
<td>76,864</td>
<td>2,026,821</td>
</tr>
<tr>
<td>Open Space Fund</td>
<td>767,559</td>
<td>38,589</td>
<td>1,002,203</td>
</tr>
<tr>
<td>Parks and Open Space Fund</td>
<td>50,326</td>
<td>41,961</td>
<td>552,975</td>
</tr>
<tr>
<td>Conservation Trust Fund</td>
<td>12,130</td>
<td>100,421</td>
<td>1,541,700</td>
</tr>
<tr>
<td>Cash In Lieu Fund</td>
<td>-</td>
<td>-</td>
<td>57,275</td>
</tr>
<tr>
<td><strong>Special Revenue Funds Expenditures</strong></td>
<td>$1,072,898</td>
<td>$374,524</td>
<td>$8,472,335</td>
</tr>
</tbody>
</table>

### Special Revenue Funds Net Position

<table>
<thead>
<tr>
<th>Fund</th>
<th>Budgeted Revenues</th>
<th>Budgeted Expenditures</th>
<th>Net Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adams County Road and Bridge Fund</td>
<td>$2,415,000</td>
<td>$2,230,361</td>
<td>$184,639</td>
</tr>
<tr>
<td>Adams County Open Space Fund</td>
<td>1,375,302</td>
<td>1,061,000</td>
<td>314,302</td>
</tr>
<tr>
<td>Parks Fund</td>
<td>1,778,929</td>
<td>2,026,821</td>
<td>(247,892)</td>
</tr>
<tr>
<td>Open Space Fund</td>
<td>2,261,449</td>
<td>1,002,203</td>
<td>1,259,246</td>
</tr>
<tr>
<td>Parks and Open Space Fund</td>
<td>1,778,929</td>
<td>552,975</td>
<td>1,225,954</td>
</tr>
<tr>
<td>Conservation Trust Fund</td>
<td>1,005,000</td>
<td>1,541,700</td>
<td>(536,700)</td>
</tr>
<tr>
<td>Cash In Lieu Fund</td>
<td>-</td>
<td>57,275</td>
<td>(57,275)</td>
</tr>
</tbody>
</table>

---

The negative and positive Net Positions in the Special Revenue Funds are based on the specific capital projects approved in the 2014 Budget. The Special Revenue Funds are managed by saving up revenue for planned projects and then spending down fund balance when the project is approved.
Overview of Funds

**Water Fund (page 12)**

*Revenues*
Rate Revenue, Tap Fees, Bulk Water Sales, Northern Leases

*Expenditures (Operating and Capital)*
Building, operating, and maintaining the Water Utility

**Sewer Fund (page 13)**

*Revenues*
Rate Revenue, Tap Fees, Federal Heights Revenue

*Expenditures (Operating and Capital)*
Building, operating, and maintaining the Sewer Utility

**Environmental Services Fund (page 14)**

*Revenues*
Solid Waste Revenue, Recycling Revenue

*Expenditures (Operating and Capital)*
Solid Waste and Recycling Services

**Golf Course Fund (page 15)**

*Revenues*
Charges for Services (Green Fees)

*Expenditures (Operating and Capital)*
Operating and maintaining Thorncreek Golf Course
**Revenue Highlights**

<table>
<thead>
<tr>
<th></th>
<th>Budgeted Revenue</th>
<th>Forecasted Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Water Rate Revenue</strong></td>
<td>$ 26.8 M</td>
<td>$ 26.8 M</td>
</tr>
<tr>
<td><strong>Water Tap Fees</strong></td>
<td>10.0 M</td>
<td>10.0 M</td>
</tr>
<tr>
<td><strong>Sewer Rate Revenue</strong></td>
<td>12.2 M</td>
<td>12.2 M</td>
</tr>
<tr>
<td><strong>Solid Waste Revenues</strong></td>
<td>4.8 M</td>
<td>4.8 M</td>
</tr>
<tr>
<td><strong>Recycle Revenues</strong></td>
<td>0.1 M</td>
<td>0.1 M</td>
</tr>
<tr>
<td><strong>Charges for Services (Golf)</strong></td>
<td>1.4 M</td>
<td>1.4 M</td>
</tr>
</tbody>
</table>

**Water Fund**
- May consumption (June revenue) was up 25.3% and consumption is up 13.7% YTD.
- Rate Revenue collected in May for April activity is up 25.2% and is up 5.6% YTD.
- Water Tap Fees collected YTD are up $891K over 2013 YTD.

**Sewer Fund**
- April rate revenue (March flows) is up 2.8% and YTD 2014 is up 4.7% over 2013.
- All billing cycles starting February 2014 reflect a 3.5% increase due to corresponding Metro Wastewater rate increases.
- New Average Winter Consumption (AWC) for 2014 billings are down slightly and are reflected in all billing cycles starting April 2014.

**Environmental Services Fund**
- Solid waste revenue is up less than 1% YTD over 2013.
- Recycling revenue is less than 3% of the overall revenue collected and does not cover the cost of providing the service. For 2014, the Utility is receiving a variable rate which has averaged $15.86/ton YTD.

**Golf Course Fund**
- Revenues from golf course operations are up nearly 11% YTD; however, the spring and summer golf season will largely determine revenue performance.
Water Fund

- The 2014 Budget for the Water Fund continues the audit of park irrigation systems, with the goal of increasing efficiency of water use in City parks.
- In addition to the ongoing repair or replacement of water pipelines, valves, and hydrants, the Water Fund capital improvement budget includes membrane refurbishing at the Wes Brown Water Treatment Plant, gravel lakes rip rap construction at the North Dahlia Reservoir, and the repainting and repair of a clearwell tank at the Thornton Water Treatment Plant.
- The 2014 Water Fund budget continues to invest in the Thornton Northern Project, with continued analysis of permitting requirements and pipeline alignment alternatives.

Sewer Fund

- The largest expense in the 2014 Budget for the Sewer Fund is the annual payment to the Metro Wastewater Reclamation District, the entity that treats City wastewater.
- The Sewer Fund capital improvement budget includes funding for the Todd Creek Interceptor that will connect the Todd Creek Lift Station to the South Platte Interceptor and allow flows to reach the Metro Wastewater Reclamation District Northern Treatment Plant.

Environmental Services Fund

- The 2014 Budget for the Environmental Services Fund includes funding for the replacement of three automated collection trash trucks.

Budget Amendments

- Budget Amendment 1: The first budget amendment of 2014 includes additional funding in the Golf Course Fund for 7.0 additional positions at Thorncreek Golf Course and investments in replacement maintenance equipment.
- Budget Amendment 3: The third budget amendment of 2014 includes additional funding for replacement of the Hansen software system in the Water Fund, Sewer Fund, and Environmental Services Fund. The amendment also includes additional funding for the purchase of golf course maintenance equipment in the Golf Course Fund.
The positive Net Position in the Water Fund is based on the lower level of spending on capital projects approved in the 2014 Budget.

### Water Fund - Revenue Summary

<table>
<thead>
<tr>
<th>Description</th>
<th>YTD 2013</th>
<th>YTD 2014</th>
<th>Budget 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water Rate Revenue</td>
<td>$5,086,558</td>
<td>$5,368,777</td>
<td>$26,800,000</td>
</tr>
<tr>
<td>Bulk Water Sales</td>
<td>852,329</td>
<td>751,680</td>
<td>2,200,000</td>
</tr>
<tr>
<td>Northern Leases</td>
<td>1,375,774</td>
<td>1,367,480</td>
<td>1,325,000</td>
</tr>
<tr>
<td>Water Tap Fees</td>
<td>1,964,719</td>
<td>2,855,627</td>
<td>10,000,000</td>
</tr>
<tr>
<td>Interest Income</td>
<td>484,555</td>
<td>544,280</td>
<td>1,095,000</td>
</tr>
<tr>
<td>Oil and Gas Revenues</td>
<td>2,382</td>
<td>2,875,102</td>
<td>-</td>
</tr>
<tr>
<td>Other Revenue</td>
<td>1,529,130</td>
<td>2,405,048</td>
<td></td>
</tr>
<tr>
<td><strong>Water Fund Revenues</strong></td>
<td>$11,295,446</td>
<td>$15,614,377</td>
<td>$43,825,048</td>
</tr>
</tbody>
</table>

### Water Fund - Expenditure Summary

<table>
<thead>
<tr>
<th>Division</th>
<th>YTD 2013</th>
<th>YTD 2014</th>
<th>Budget 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Utility Billing</td>
<td>$581,697</td>
<td>$467,714</td>
<td>$1,158,657</td>
</tr>
<tr>
<td>Utilities Operations</td>
<td>1,371,560</td>
<td>1,174,890</td>
<td>3,397,410</td>
</tr>
<tr>
<td>Water Resources</td>
<td>2,076,555</td>
<td>2,069,949</td>
<td>4,511,990</td>
</tr>
<tr>
<td>Farm Management</td>
<td>252,454</td>
<td>229,990</td>
<td>963,728</td>
</tr>
<tr>
<td>Water Quality</td>
<td>304,035</td>
<td>378,425</td>
<td>973,655</td>
</tr>
<tr>
<td>Water Treatment</td>
<td>2,091,759</td>
<td>1,548,352</td>
<td>5,134,166</td>
</tr>
<tr>
<td>Real Estate Management</td>
<td>56,808</td>
<td>63,686</td>
<td>194,422</td>
</tr>
<tr>
<td>Water Legal</td>
<td>56,144</td>
<td>58,816</td>
<td>159,748</td>
</tr>
<tr>
<td>Water Operating General Expenses</td>
<td>3,055,751</td>
<td>2,487,372</td>
<td>13,890,287</td>
</tr>
<tr>
<td><strong>Water Operating</strong></td>
<td>$9,846,763</td>
<td>$8,479,194</td>
<td>$30,384,063</td>
</tr>
<tr>
<td>Water Capital</td>
<td>$3,417,039</td>
<td>$1,235,439</td>
<td>$10,493,118</td>
</tr>
<tr>
<td><strong>Water Fund Expenditures</strong></td>
<td>$13,263,802</td>
<td>$9,714,633</td>
<td>$40,877,181</td>
</tr>
</tbody>
</table>

### Water Fund Net Position

<table>
<thead>
<tr>
<th>Fund</th>
<th>Budgeted Revenues</th>
<th>Budgeted Expenditures</th>
<th>Net Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water Fund</td>
<td>$43,825,048</td>
<td>$40,877,181</td>
<td>$2,947,867</td>
</tr>
</tbody>
</table>

**Note:**

The positive Net Position in the Water Fund is based on the lower level of spending on capital projects approved in the 2014 Budget.
### Fund Summary: Sewer Fund

**May 2014**

**Sewer Fund - Revenue Summary**

<table>
<thead>
<tr>
<th>Description</th>
<th>YTD 2013</th>
<th>YTD 2014</th>
<th>Budget 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sewer Rate Revenue</td>
<td>$4,461,163</td>
<td>$4,672,077</td>
<td>$12,175,000</td>
</tr>
<tr>
<td>Tap Fees</td>
<td>$225,817</td>
<td>$261,903</td>
<td>$940,000</td>
</tr>
<tr>
<td>Federal Heights Revenue</td>
<td>$377,874</td>
<td>$275,608</td>
<td>$728,000</td>
</tr>
<tr>
<td>Interest Income</td>
<td>$55,531</td>
<td>$61,390</td>
<td>$135,000</td>
</tr>
<tr>
<td>Other Revenue</td>
<td>$7,248</td>
<td>$44,019</td>
<td>$56,449</td>
</tr>
<tr>
<td><strong>Sewer Fund Revenues</strong></td>
<td>$5,127,633</td>
<td>$5,314,997</td>
<td>$14,034,449</td>
</tr>
</tbody>
</table>

**Sewer Fund - Expenditure Summary**

<table>
<thead>
<tr>
<th>Division</th>
<th>YTD 2013</th>
<th>YTD 2014</th>
<th>Budget 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Utilities Operations</td>
<td>$612,357</td>
<td>$572,328</td>
<td>$1,827,718</td>
</tr>
<tr>
<td>Metro Wastewater Reclamation</td>
<td>$3,585,553</td>
<td>$2,081,182</td>
<td>$8,324,729</td>
</tr>
<tr>
<td>Sewer Operating General Expenses</td>
<td>$998,322</td>
<td>$987,083</td>
<td>$1,805,622</td>
</tr>
<tr>
<td><strong>Sewer Operating</strong></td>
<td>$5,196,232</td>
<td>$3,640,593</td>
<td>$11,958,069</td>
</tr>
<tr>
<td>Sewer Capital</td>
<td>$417,358</td>
<td>$102,223</td>
<td>$1,292,847</td>
</tr>
<tr>
<td><strong>Sewer Fund Expenditures</strong></td>
<td>$5,613,590</td>
<td>$3,742,816</td>
<td>$13,250,916</td>
</tr>
</tbody>
</table>

**Sewer Fund Net Position**

<table>
<thead>
<tr>
<th>Fund</th>
<th>Budgeted Revenues</th>
<th>Budgeted Expenditures</th>
<th>Net Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sewer Fund</td>
<td>$14,034,449</td>
<td>$13,250,916</td>
<td>$783,533</td>
</tr>
</tbody>
</table>

*The positive Net Position in the Sewer Fund is based on the lower level of spending on capital projects approved in the 2014 Budget.*
# Fund Summary: Environmental Services Fund

The negative Net Position in the Environmental Services Fund is based on the use of fund balance to purchase replacement trash and recycling trucks and for the Hansen software system replacement project.

## Environmental Services Fund - Revenue Summary

<table>
<thead>
<tr>
<th>Description</th>
<th>YTD 2013</th>
<th>YTD 2014</th>
<th>Budget 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solid Waste Revenue</td>
<td>$1,780,489</td>
<td>$1,792,307</td>
<td>$4,764,000</td>
</tr>
<tr>
<td>Special Pickups</td>
<td>6,184</td>
<td>8,681</td>
<td>25,000</td>
</tr>
<tr>
<td>Recycling Revenue</td>
<td>31,235</td>
<td>22,462</td>
<td>126,000</td>
</tr>
<tr>
<td>Interest Income</td>
<td>27,017</td>
<td>25,868</td>
<td>65,000</td>
</tr>
<tr>
<td>Other Revenue</td>
<td>14,304</td>
<td>16,399</td>
<td>77,755</td>
</tr>
</tbody>
</table>

**Environmental Services Fund Revenues**

$1,859,229 $1,865,717 $5,057,755

## Environmental Services Fund - Expenditure Summary

<table>
<thead>
<tr>
<th>Division</th>
<th>YTD 2013</th>
<th>YTD 2014</th>
<th>Budget 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental Services</td>
<td>$1,531,131</td>
<td>$1,484,176</td>
<td>$4,381,299</td>
</tr>
<tr>
<td>Environmental Services General Expenses</td>
<td>288,705</td>
<td>264,824</td>
<td>649,737</td>
</tr>
</tbody>
</table>

**Environmental Services Operating**

$1,819,836 $1,749,000 $5,031,036

| Environmental Services Capital | $    | - $ | - $ |
| Environment Services Fund Expenditures | $1,819,836 | $1,749,000 | $5,184,261 |

## Environmental Services Fund Net Position

<table>
<thead>
<tr>
<th>Fund</th>
<th>Budgeted Revenues</th>
<th>Budgeted Expenditures</th>
<th>Net Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental Services Fund</td>
<td>$5,057,755</td>
<td>$5,184,261</td>
<td>($126,506)</td>
</tr>
</tbody>
</table>

The negative Net Position in the Environmental Services Fund is based on the use of fund balance to purchase replacement trash and recycling trucks and for the Hansen software system replacement project.
### Golf Course Fund - Revenue Summary

<table>
<thead>
<tr>
<th>Description</th>
<th>YTD 2013</th>
<th>YTD 2014</th>
<th>Budget 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charges for Services</td>
<td>$397,433</td>
<td>$439,619</td>
<td>$1,350,000</td>
</tr>
<tr>
<td>Interest/Other Revenues</td>
<td>2,317</td>
<td>31,172</td>
<td>527,218</td>
</tr>
<tr>
<td><strong>Golf Course Fund Revenues</strong></td>
<td><strong>$399,750</strong></td>
<td><strong>$470,790</strong></td>
<td><strong>$1,877,218</strong></td>
</tr>
</tbody>
</table>

### Golf Course Fund - Expenditure Summary

<table>
<thead>
<tr>
<th>Division</th>
<th>YTD 2013</th>
<th>YTD 2014</th>
<th>Budget 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Golf Operations</td>
<td>$204,110</td>
<td>$215,652</td>
<td>$723,234</td>
</tr>
<tr>
<td>Golf Maintenance</td>
<td>183,413</td>
<td>622,861</td>
<td>1,670,779</td>
</tr>
<tr>
<td><strong>Golf Course Fund Expenditures</strong></td>
<td><strong>$387,523</strong></td>
<td><strong>$838,513</strong></td>
<td><strong>$2,394,013</strong></td>
</tr>
</tbody>
</table>

### Golf Course Fund Net Position

<table>
<thead>
<tr>
<th>Fund</th>
<th>Budgeted Revenues</th>
<th>Budgeted Expenditures</th>
<th>Net Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Golf Course Fund</td>
<td>$1,877,218</td>
<td>$2,394,013</td>
<td>$(516,795)</td>
</tr>
</tbody>
</table>

The negative Net Position in the Golf Course Fund is based on the use of fund balance to subsidize a portion of operational costs and replace a number of aged and malfunctioning equipment. This was approved in the first amendment to the 2014 Budget.
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Overview of Funds

Thornton Development Authority (TDA) Funds

Revenues
Sales and Use Tax, Property Tax

Expenditures (Capital)
Three active urban renewal plan areas including: TDA North (Larkridge), TDA 144th (The Grove), and TDA South

Internal Service Funds and Debt Service Fund

Revenues
Charges for Services, Transfers

Expenditures (Operating and Debt Service)
Risk Management, Information Technology, Reprographics, Maintenance Services, Consolidated Service Center (CSC), and Debt Service

Other City Funds (page 23)

Revenues
TASHCO (Thornton Arts, Sciences, and Humanities) Registration and Ticket Fees, Grants, E-911 Authority Tax, 136th General Improvement District (GID) Property Tax

Expenditures (Operating and Transfers)
TASHCO Operational Programming, E-911 Authority Transfer to General Fund, and 136th GID Transfer to General Fund
Thornton Development Authority (TDA) Funds

- Of the 3 active plan areas, only TDA-North and TDA-144th currently have sales tax activity.
  - Overall, TDA sales tax collections are up 24.1% YTD.
  - Sales tax collections in TDA-N are up 8.5% YTD due in large part to positive performance by several large and medium box retailers and restaurants within Larkridge.
  - Beginning in September 2013, sales tax collections include the newly opened Cabela’s store within the TDA-144th area.
- All 3 plan areas are currently reporting property tax collections.

Internal Service Funds and Debt Service Fund

- Revenues for the internal service funds and debt service fund are based on budgeted amounts to be charged to/transferred from various City funds.
- Budgeted charges/transfers occur quarterly for the Internal Service Funds and prior to bond payments for the Debt Service Fund.

Other City Funds

- All revenues YTD are performing according to budgeted expectations.
Thornton Development Authority (TDA) Funds

- The 2014 Budget for the TDA North Fund includes payments for debt service and incentive obligations.
- The TDA North capital improvement budget continues to invest in transportation improvements along the North Washington Street corridor between 152nd Avenue and 160th Avenue.
- The 2014 Budget for the TDA 144th Fund includes revenue sharing payments to Westminster and interest expense from the Water Fund and General Fund loans.

Internal Service Funds and Debt Service Fund

- The Internal Service Funds provide risk management, information technology, reprographics, and maintenance services to the direct service delivery departments and these costs are included in the 2014 Budget for the General Fund, Water Fund, Sewer Fund, and Environmental Services Fund.
- The Maintenance Services Fund budget includes two additional half-time positions responsible for maintaining and cleaning City facilities, 0.5 in Building Maintenance and 0.5 in Custodial Maintenance.

Other City Funds

- The 2014 Budget for TASHCO includes funding for the Full STEAM Ahead and Young Artist Festival programs.

Budget Amendments

- Budget Amendment 3: Includes additional funding in the Risk Management Fund, Information Technology Fund, Reprographics Fund, and Maintenance Services Fund for an inter-fund transfer of unappropriated fund balance. The funds will be transferred to the Government Capital Fund, Water Fund, Sewer Fund, and Environmental Services Fund to offset a portion of the Hansen software system replacement.
The negative Net Position in the Thornton Development Authority Funds is based on the use of fund balance for the capital improvement projects (Washington Street Widening and Sack Creek Drainage Improvements) approved in the 2014 Budget for the TDA-North Fund.
May 2014

OTHER FUNDS

Fund Summary: Internal Service Funds

**Internal Service Funds - Revenue Summary**

<table>
<thead>
<tr>
<th>Fund</th>
<th>YTD 2013</th>
<th>YTD 2014</th>
<th>Budget 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk Management</td>
<td>1,379,145</td>
<td>1,435,511</td>
<td>2,976,816</td>
</tr>
<tr>
<td>Information Technology</td>
<td>2,623,252</td>
<td>2,801,552</td>
<td>5,574,488</td>
</tr>
<tr>
<td>Reprographics</td>
<td>359,698</td>
<td>389,140</td>
<td>763,825</td>
</tr>
<tr>
<td>Consolidated Service Center</td>
<td>340,213</td>
<td>339,126</td>
<td>790,368</td>
</tr>
<tr>
<td>Maintenance Services</td>
<td>2,086,566</td>
<td>2,607,499</td>
<td>5,193,842</td>
</tr>
<tr>
<td><strong>Internal Service Funds Revenues</strong></td>
<td>$ 6,788,874</td>
<td>$ 7,572,828</td>
<td>$ 15,299,339</td>
</tr>
</tbody>
</table>

**Internal Service Funds - Expenditure Summary**

<table>
<thead>
<tr>
<th>Fund</th>
<th>YTD 2013</th>
<th>YTD 2014</th>
<th>Budget 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk Management</td>
<td>372,227</td>
<td>2,902,463</td>
<td>3,613,513</td>
</tr>
<tr>
<td>Information Technology</td>
<td>2,591,927</td>
<td>2,702,985</td>
<td>6,289,017</td>
</tr>
<tr>
<td>Reprographics</td>
<td>291,543</td>
<td>269,052</td>
<td>1,376,717</td>
</tr>
<tr>
<td>Consolidated Service Center</td>
<td>340,003</td>
<td>338,027</td>
<td>790,368</td>
</tr>
<tr>
<td>Maintenance Services</td>
<td>1,342,152</td>
<td>1,531,368</td>
<td>5,311,768</td>
</tr>
<tr>
<td><strong>Internal Service Funds Expenditures</strong></td>
<td>$ 4,937,852</td>
<td>$ 7,743,895</td>
<td>$ 17,381,383</td>
</tr>
</tbody>
</table>

**Internal Service Funds Net Position**

<table>
<thead>
<tr>
<th>Fund</th>
<th>Budgeted Revenues</th>
<th>Budgeted Expenditures</th>
<th>Net Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk Management</td>
<td>$ 2,976,816</td>
<td>$ 3,613,513</td>
<td>(636,697)</td>
</tr>
<tr>
<td>Information Technology</td>
<td>5,574,488</td>
<td>6,289,017</td>
<td>(714,529)</td>
</tr>
<tr>
<td>Reprographics</td>
<td>763,825</td>
<td>1,376,717</td>
<td>(612,892)</td>
</tr>
<tr>
<td>Consolidated Service Center</td>
<td>790,368</td>
<td>790,368</td>
<td>-</td>
</tr>
<tr>
<td>Maintenance Services</td>
<td>5,193,842</td>
<td>5,311,768</td>
<td>(117,926)</td>
</tr>
</tbody>
</table>

The negative Net Position in the Risk Management Fund, Information Technology Fund, Reprographics Fund, and Maintenance Services Fund is based on the planned use of fund balance that has accumulated in each fund over previous years.
### Debt Service Fund - Revenue Summary

<table>
<thead>
<tr>
<th>Description</th>
<th>YTD 2013</th>
<th>YTD 2014</th>
<th>Budget 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest, Transfers, and Other</td>
<td>$871,697</td>
<td>$149,204</td>
<td>$1,806,950</td>
</tr>
<tr>
<td>Debt Service Revenues</td>
<td>$871,697</td>
<td>$149,204</td>
<td>$1,806,950</td>
</tr>
</tbody>
</table>

### Debt Service Fund - Expenditure Summary

<table>
<thead>
<tr>
<th>Fund</th>
<th>YTD 2013</th>
<th>YTD 2014</th>
<th>Budget 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service Fund</td>
<td>$175,075</td>
<td>$145,975</td>
<td>$1,804,950</td>
</tr>
<tr>
<td>Debt Service Fund Expenditures</td>
<td>$175,075</td>
<td>$145,975</td>
<td>$1,804,950</td>
</tr>
</tbody>
</table>

### Debt Service Fund Net Position

<table>
<thead>
<tr>
<th>Fund</th>
<th>Budgeted Revenues</th>
<th>Budgeted Expenditures</th>
<th>Net Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service Fund</td>
<td>$1,806,950</td>
<td>$1,804,950</td>
<td>$2,000</td>
</tr>
</tbody>
</table>
## Fund Summary: Other City Funds

### Other City Funds - Revenue Summary

<table>
<thead>
<tr>
<th>Description</th>
<th>YTD 2013</th>
<th>YTD 2014</th>
<th>Budget 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>TASHCO</td>
<td>15,219</td>
<td>6,467</td>
<td>93,598</td>
</tr>
<tr>
<td>136th Avenue GID</td>
<td>5,249</td>
<td>5,322</td>
<td>5,000</td>
</tr>
<tr>
<td>E-911 Authority</td>
<td>342,740</td>
<td>358,446</td>
<td>1,000,000</td>
</tr>
<tr>
<td><strong>Other City Funds Revenues</strong></td>
<td>$363,208</td>
<td>$370,235</td>
<td>$1,098,598</td>
</tr>
</tbody>
</table>

### Other City Funds - Expenditure Summary

<table>
<thead>
<tr>
<th>Fund</th>
<th>YTD 2013</th>
<th>YTD 2014</th>
<th>Budget 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>TASHCO</td>
<td>$39,644</td>
<td>$36,540</td>
<td>$93,598</td>
</tr>
<tr>
<td>136th Avenue GID</td>
<td>-</td>
<td>-</td>
<td>5,000</td>
</tr>
<tr>
<td>E-911 Authority</td>
<td>-</td>
<td>-</td>
<td>1,000,000</td>
</tr>
<tr>
<td><strong>Other City Funds Expenditures</strong></td>
<td>$39,644</td>
<td>$36,540</td>
<td>$1,098,598</td>
</tr>
</tbody>
</table>

### Other City Funds Net Position

<table>
<thead>
<tr>
<th>Fund</th>
<th>Budgeted Revenues</th>
<th>Budgeted Expenditures</th>
<th>Net Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>TASHCO, 136th Avenue GID, E-911</td>
<td>$1,098,598</td>
<td>$1,098,598</td>
<td>-</td>
</tr>
</tbody>
</table>
COUNCIL COMMUNICATION

Meeting Date: July 8, 2014
Agenda Item: 8c
Agenda Location: Consent Calendar
Work Plan #: 
Legal Review: MAE

1st Reading
2nd Reading

Subject: A resolution approving the granting of a temporary construction easement to the Metro Wastewater Reclamation District for use of property at 128th Avenue and Riverdale Road.

Recommended by: Bud Elliot
Approved by: Jack Ethridge
Presenter(s): Bud Elliot, Deputy City Manager - Infrastructure

SYNOPSIS:

Metro Wastewater Reclamation District ("Metro") is planning to build a new metering facility at their property on 128th Avenue and Riverdale Road to facilitate operation of Metro's South Platte Interceptor ("SPI") sanitary sewer line. The planned facility is adjacent to a City-owned parcel and Metro is requesting a Temporary Construction Easement from the City to allow easier access for deep excavations.

RECOMMENDATION:

Staff recommends Alternative No. 1, approval of the resolution. Granting the temporary easement to Metro will allow Metro to construct the improvements and save on construction costs.

BUDGET/STAFF IMPLICATIONS:

Metro will be paying the City $1,000 for the easement.

ALTERNATIVES:

1. Approve the resolution and proceed with granting the Temporary Construction Easement.
2. Direct staff to reject the request, whereby Metro would have to make other arrangements to construct the required improvements.

BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY): (includes previous City Council action)

The City has previously cooperated with Metro in its construction of the SPI by entering into an Intergovernmental Agreement to allow its alignment adjacent to certain of Thornton's water storage reservoirs and providing temporary and permanent easements on City property associated therewith.

The temporary construction easement would allow Metro to install the new metering facility, which will measure Thornton's flows into the SPI.

The temporary construction easement requires Metro to indemnify the City from claims and liability associated with the use of property.
RESOLUTION

A RESOLUTION APPROVING THE GRANTING OF A TEMPORARY CONSTRUCTION EASEMENT TO THE METRO WASTEWATER RECLAMATION DISTRICT FOR USE OF PROPERTY AT 128TH AVENUE AND RIVERDALE ROAD.

WHEREAS, City Charter Section 4.22, requires that City Council pass a resolution by majority vote to sell or otherwise dispose of City property; and

WHEREAS, the City of Thornton ("City") owns property as depicted in Exhibit A attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Metro Wastewater Reclamation District ("Metro") desires to use and occupy the Property for purposes of constructing a metering facility on Metro’s property immediately adjoining the Property to facilitate operation of Metro’s South Platte Interceptor ("SPI") sanitary sewer line; and

WHEREAS, the City desires to cooperate with Metro in its construction of the SPI; and

WHEREAS, the subject temporary construction easement is provided as Exhibit 1 and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. That the granting of the temporary construction easement to Metro is hereby approved in accordance with City Charter Section 4.22.

2. That the City Manager is hereby authorized to execute and the City Clerk to attest said Temporary Construction Easement and any associated exhibits, attachments and other documents necessary to facilitate the granting of the Temporary Construction Easement.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Thornton, Colorado, on_______________, 2014.

CITY OF THORNTON, COLORADO

____________________________________
Heidi K. Williams, Mayor

ATTEST:

____________________________________
Nancy A. Vincent, City Clerk
EXHIBIT 1

TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT is executed this ______ day of __________________, 2014, between the City of Thornton, a Colorado municipal corporation, located at 9500 Civic Center Drive, Thornton, Colorado 80229 ("Grantor"), and the Metro Wastewater Reclamation District, a metropolitan sewage disposal district organized under the Metropolitan Sewage Disposal Districts Act, C.R.S. §§ 32-4-501, et seq., ("Grantee"). Grantor and Grantee may be individually referred to as a “Party” and collectively referred to herein as “Parties.”

WITNESSETH

WHEREAS, the Grantor owns certain property located within Adams County, Colorado and more particularly described in and shown as the cross-hatched area on Exhibit “A” (dated May 27, 2014 and labeled ESPI07A-Temporary Easement 2 (1 page) attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, the Grantee requires temporary access to, in, on and over the Property for purposes related to the construction of Grantee’s sanitary sewer line, known as the South Platte Interceptor (“SPI”) (the “Project”).

NOW THEREFORE, in consideration of the sum of One Thousand ($1,000.00) Dollars and the promises and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Grantor hereby grants to the Grantee a Temporary Construction Easement to, in, on and over the Property for the purpose of constructing a metering facility on Grantee’s property immediately adjoining the Property for operation of Grantee’s Project (“Improvements”) upon the following terms and conditions:

1. This Temporary Construction Easement shall commence upon the date of execution and shall automatically expire and be of no further force and effect after December 31, 2015 (the “Termination Date”). Grantee agrees that in the event that it has completed installation of the Improvements prior to the Termination Date, it shall, upon the written request of Grantor, execute a written termination of this Temporary Construction Easement.

2. As a condition to the grant of this Temporary Construction Easement, the Grantee covenants and agrees to remain within the limits of the Temporary Construction Easement, and to restore the Temporary Construction Easement, including landscaping, fences, or other improvements to a condition comparable to its condition prior to construction.

3. During the term of this Temporary Construction Easement, Grantor shall neither erect nor construct, nor allow any other person to erect or construct any building
or other structure within the Property, which may interfere with Grantee’s full enjoyment of the rights granted herein.

4. To the extent permitted by law, and without waiving any of its rights under the Colorado Governmental Immunity Act, Grantee shall indemnify and save and hold harmless Grantor against all claims and liability for damages, loss or expense caused by any injury or death to any person or damage to property to the extent resulting from the acts of the Grantee if the same shall in any way be connected with or result from the use of the Temporary Construction Easement.

5. Neither Party has made or authorized any agreement with respect to the subject matter of this instrument other than as expressly set forth herein, and no oral representation, promise, or consideration different from the terms herein contained shall be binding on either party, its agents or employees.

6. All of the covenants herein contained shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

7. In the event any provision of this Temporary Construction Agreement is found to be invalid, void, or otherwise unenforceable by a court of competent jurisdiction or by operation of applicable law, such invalid, void, or unenforceable provision shall not affect the validity of this Temporary Construction Agreement as a whole, and the remainder of the Temporary Construction Agreement shall be given full force and effect.

8. The signatories hereto warrant that they have full and lawful authority to make the grant hereinabove contained as Grantor and the covenants and promises hereinabove made as Grantee.

9. The Parties hereto agree that this Temporary Construction Easement is temporary in nature and shall not be recorded at any County Clerk and Recorder’s Office.

IN WITNESS WHEREOF, the Parties hereto have executed this Temporary Construction Easement to be effective as of the date first-above written.
GRANTOR

CITY OF THORNTON, COLORADO
a Colorado municipal corporation

__________________________________________
Jack Ethredge, City Manager

ATTEST:

_____________________________________
Nancy Vincent, City Clerk

APPROVED AS TO FORM:

_____________________________________
Margaret Emerich, City Attorney
GRANTEE

METRO WASTEWATER RECLAMATION DISTRICT, a Metropolitan Sewage Disposal District

By: __________________________
    Catherine R. Gerali, District Manager

APPROVED AS TO FORM:
Mickey Conway

__________________________
District General Counsel

STATE OF COLORADO    )
                      ) ss.
COUNTY OF ____________ )

Subscribed and acknowledged before me this _____ day of ________________, 2014, by Catherine R. Gerali, as District Manager of Metro Wastewater Reclamation District, a metropolitan sewage disposal district.

WITNESS my hand and official seal.

My commission expires: ______________________

__________________________
Notary Public
TRACT C
GLENEAGLE ESTATES SUBDIVISION
AMENDMENT NO. 1
RECEPTION No. 20041220001288660
12/20/2004
(SPI-002)

This exhibit does not represent a monumented survey and is intended only to depict a temporary easement.

**EXHIBIT "A"**
ESPI07A - TEMPORARY EASEMENT 2
SOUTH PLATTE INTERCEPTOR

**TITLE:**

**DESCRIPTION REVISION**

**REVISED**

**DRAWN**

**DATE** 5/27/2014

**REVISION**

**DRAWING NO.**

**NTP-SPI-002-TE2.dwg**

**SHEET NO.**

1 of 1
COUNCIL COMMUNICATION

Meeting Date: July 8, 2014
Agenda Item: 8D
Agenda Location: Consent Calendar
Work Plan #
Legal Review:

Subject: A resolution authorizing a Master Intergovernmental Agreement between the City of Thornton and the Colorado Department of Transportation for flood damage repairs caused by the September 2013 floods.

Recommended by: Bud Elliot
Approved by: Jack Ethredge
Presenter(s): Bud Elliot, Deputy City Manager - Infrastructure

SYNOPSIS:

This Master Intergovernmental Agreement (Master IGA) between the City of Thornton and the Colorado Department of Transportation (CDOT) provides federal funding assistance and reimbursements for transportation costs related to the September 2013 flood and the damage impacts related to the flooding and its aftermath. The City incurred damages and costs related to the flooding on two roadway segments: 1) 128th Avenue from Riverdale Road to Valenta Street and 2) McKay Road from 104th Avenue to the South Platte River.

RECOMMENDATION:

Staff recommends Alternative #1, approval of the resolution to approve the Master IGA providing federal funding assistance related to the damage and repair caused by the floods of September 2013.

BUDGET/STAFF IMPLICATIONS:

The floods of September 2013 caused damage to several facilities of the City of Thornton. Two roadways are eligible for reimbursement by the Federal Highway Administration (FHWA). The costs to perform repairs on the road were: 1) 128th Avenue - $7,640 in permanent repairs and $3,894 in emergency repairs. 2) McKay Road - $17,221 in emergency repairs. FHWA will reimburse 100% of emergency repairs and 80% of permanent repairs. Total expected reimbursement from FHWA is approximately $27,226.

Other facilities damaged during the September 2013 floods are eligible for reimbursement by Federal Emergency Management Agency (FEMA) but are not part of this agreement.

ALTERNATIVES:

1. Approve the resolution authorizing a Master IGA between the City and CDOT.
2. Do not approve the resolution and fund transportation costs related to the September 2013 flood at the City's expense.

BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY): (includes previous City Council action)

The President of the United States declared certain Colorado counties as disaster areas and available for federal assistance. This engaged the Federal Assistance Program ("Program") which allocates federal funds for transportation projects requested by the State and Local Agencies. The
Colorado Governor declared disaster emergency due to flooding in certain Colorado counties. 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. The purpose of this Master IGA is to disburse Federal and/or other funds to the Local Agency pursuant to the presidential declaration and governor's order in accordance with the procedures in this Master IGA.

The work performed under this Master IGA shall be related to the flood damaged areas within Thornton designated as eligible for federal disaster relief funding under the presidential declaration and other locations as designated under the Colorado Governor’s declaration.

The work was performed only on flood-damaged areas and consisted of elements to return the areas back to their condition before the flood as identified by the FHWA.
RESOLUTION

A RESOLUTION AUTHORIZING A MASTER INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF THORNTON AND THE COLORADO DEPARTMENT OF TRANSPORTATION FOR FLOOD DAMAGE REPAIRS CAUSED BY THE SEPTEMBER 2013 FLOODS.

WHEREAS, the City of Thornton (“City”) and the Colorado Department of Transportation (“CDOT”) desire to enter into an Master Intergovernmental Agreement (“Master IGA”), hereinafter jointly referred to as the “Contract” and made a part hereof by this reference; and

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

WHEREAS, the Thornton City Council, pursuant to Section 4.18 of the Thornton City Charter, may by resolution enter into agreements with other governmental entities; and

WHEREAS, starting on September 12, 2013 several inches of rain fell on the City and the resulting flooding causing damage to two City maintained transportation routes; and

WHEREAS, the City would like to receive the available Federal Highway Administration federal funds for reimbursement and repair to Thornton’s streets; and

WHEREAS, the City Council is desirous of entering into a Master IGA authorizing participation in the receiving of federal funds to repair the damage or be reimbursed for repairs already made which occurred due to the September 2013 flooding.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. That the attached Master IGA between the City of Thornton and the Colorado Department of Transportation pertaining to funding of streets that were damaged due to the floods of September 2013, is hereby approved.

2. That the City Manager is hereby authorized to execute and the City Clerk to attest the Master IGA.
PASSED AND ADOPTED at a regular meeting of the City Council of the City of Thornton, Colorado, on ____________________, 2014.

CITY OF THORNTON, COLORADO

______________________________
Heidi K. Williams, Mayor

ATTEST:

______________________________
Nancy A. Vincent, City Clerk
STATE OF COLORADO
Department of Transportation
Master Intergovernmental Agreement
with the
City of Thornton, Colorado

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1. PARTIES

THIS MASTER INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into by and between the City of Thornton (hereinafter called the "Local Agency"), and the STATE OF COLORADO acting by and through the Department of Transportation (hereinafter called the "State" or "CDOT").

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or their designee (hereinafter called the "Effective Date"). Except as provided in §8.F, the State shall not be liable to pay or reimburse the Local Agency for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, And Approval

Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment and the required approval, clearance and coordination have been accomplished from and with appropriate agencies.

i. Federal Authority

The President of the United States declared certain Colorado counties as disaster areas and available for federal assistance and engaging the federal assistance program and procedures (dated September 12, 2013), and as was amended by the Federal Emergency Management Administration on September 14, 15, and 24, 2013 and October 1 and 15, 2013 and as may be amended in the future (collectively, the "Presidential Declaration"). Also, pursuant to the Emergency Relief Program for Federal-Aid Highways under 23 CFR 668.20, 23 CFR 668.205 (a) and Title 23, United States Code, Sections 120 and 125, or FEMA emergency procedures under 44 CFR 9, 10, 13, 14 and 206, as amended, and the Stafford Act, as amended, and Moving Ahead for Progress in the 21st Century Act (MAP 21), as amended, (collectively, the "Federal Provisions"), federal funds have been allocated for transportation projects requested by the State and the Local Agency.

ii. State Authority

The Colorado Governor declared disaster emergency due to flooding in certain Colorado counties pursuant to Executive Order D 2013-026 (dated September 13, 2013), and as amended by Executive Orders D 2013-027 (dated September 19, 2013), D 2013-028 (dated September 23, 2013), and C 2013-030 (dated October 8, 2013), and as may be amended in the future (collectively, the "Governor's Order"). Also, 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 further 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.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.

C. Purpose

The purpose of this Agreement is to disburse Federal and/or other funds to the Local Agency pursuant to the Presidential Declaration and Governor's Order in accordance with the procedures in this Agreement.

D. References

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.
4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Agreement or Contract

"Agreement" or "Contract" means this Agreement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Agreement, and any future modifying agreements, exhibits, attachments or references that are incorporated pursuant to Colorado State Fiscal Rules and Policies.

B. Agreement Funds

"Agreement Funds" means funds payable by the State to Local Agency pursuant to this Agreement, which are authorized and encumbered through Task Orders and specified on each Task Order Budget.

C. Budget

"Budget" means the aggregate budgets specified in Task Order Budgets for the Work described in the associated Task Order Scopes.

D. Consultant and Contractor

"Consultant" means a professional engineer or designer hired by Local Agency to design the Work and "Contractor" means the general construction contractor hired by Local Agency to construct the Work.

E. DBE

"DBE" means Disadvantaged Business Enterprise.

F. DBE Program

"DBE Program" means CDOT’s DBE program, which has been developed in accordance with 49 CFR Part 26 and approved by the appropriate federal government operating agency.

G. Evaluation

"Evaluation" means the process of examining the Local Agency’s Work and rating it based on criteria established in §6 and in executed Task Orders.

H. Exhibits and Other Attachments

The following exhibit(s) are attached hereto and incorporated by reference herein: Exhibit A (Master Agreement Scope of Work), Exhibit B (List of Authorized Local Agency Signatories), Exhibit C (Form of Funding Provisions), Exhibit D (Form of Task Order), Exhibit E (Form of Local Agency Contract Administration Checklist), Exhibit F (Certification for Federal-Aid Funds), Exhibit G (Disadvantaged Business Enterprise), Exhibit H (Local Agency Procedures), Exhibit I (Federal-Aid Contract Provisions), Exhibit J (Federal Requirements), Exhibit K (Supplemental Federal Provisions), Exhibit L (Form of Detailed Damage Inspection Report – Form FHWA 1547), Exhibit M (Form of Option Letter), Exhibit N (Assurance of Non-Discrimination by Local Agency), Exhibit O (Form of Local Agency Offer), and Exhibit P (Form of Local Agency Offer Amendment).

I. Federal Funds

"Federal Funds" means the funds provided by the FHWA to the State to fund performance of the Work by the Local Agency pursuant to any Task Order under this Agreement.

J. FHWA

"FHWA" means the Federal Highway Administration.

K. Goods

"Goods" means tangible material acquired, produced, or delivered by the Local Agency either separately or in conjunction with the Services the Local Agency renders hereunder.

L. Local Agency Offer

"Local Agency Offer" means any Local Agency offer executed by the Local Agency in the form substantially in conformance with Exhibit O, which shall each include a Task Order Scope, a completed Task Order Budget, a completed Local Agency Contract Administration Checklist substantially in the form of Exhibit E, a completed Damage Inspection Report substantially in the form of Exhibit L, contact information for the Local Agency for the specified Task Order.
M. Local Agency Offer Amendment
"Local Agency Offer Amendment" means any Local Agency offer amendment to an existing Task Order, which is executed by the Local Agency in the form substantially in conformance with Exhibit P and shall each include all relevant information.

N. Local Funds
"Local Funds" means the funds provided by the Local Agency to fund performance of the Work as required by the FHWA to match the Federal Funds pursuant to any Task Order under this Agreement.

O. Option Letter
"Option Letter" means any option letter executed by CDOT in the form substantially in conformance with Exhibit M in compliance with the terms of this Agreement.

P. Oversight
"Oversight" means the term as it is defined in the Stewardship Agreement between CDOT and the FHWA and as it is defined in the Local Agency Manual.

Q. Participating Funds
"Participating Funds" means the aggregate of Federal Funds plus Local Funds plus State Funds (if required by the FHWA).

R. Payable Participating Percentage
"Payable Participating Percentage" means the aggregate percentage of Participating Costs for Federal Funds and State Funds (as identified in a Task Order Budget).

S. Party or Parties
"Party" means the State or the Local Agency and "Parties" means both the State and the Local Agency

T. Review
"Review" means examining Local Agency's Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in §6 and in the Task Orders.

U. Services
"Services" means the required services to be performed by the Local Agency pursuant to this Agreement.

V. State Funds
"State Funds" means the funds provided by the State to fund performance of the Work, which may be required by the FHWA to match the Federal Funds pursuant to any Task Order under this Agreement or may be a voluntary contribution by the State.

W. Task Order
"Task Order" means any task order executed by CDOT in the form substantially in conformance with Exhibit D in compliance with §7, which shall each include either (i) a completed Local Agency Offer with all required attachments or, (ii) for existing Task Orders, a Local Agency Offer Amendment with all required attachments.

X. Task Order Budget
"Task Order Budget" means the budget attached to an approved Task Order which details the budget for the Work to be performed by the Local Agency under the specified Task Order, which shall be substantially in the form of Exhibit C. Each Task Order Scope must be within the scope of work in Exhibit A.

Y. Task Order Scope
"Task Order Scope" means the scope of work attached to an approved Task Order which details the Work to be performed by the Local Agency under the specified Task Order. Each Task Order Scope must be within the scope of work in Exhibit A.
Z. Work
"Work" means the tasks and activities the Local Agency is required to perform to fulfill its obligations under this Agreement, in the individual Task Orders, including the performance of the Services and delivery of the Goods.

AA. Work Product
"Work Product" means the tangible or intangible results of the Local Agency's Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM
A. Initial Term/Work Commencement
The Parties' respective performances under this Agreement shall commence on the Effective Date. This Agreement shall terminate after five (5) years of state controller's signature in section 27, unless sooner terminated or completed as demonstrated by final payment and final audit.

B. State's Option to Extend
At its sole discretion, the State, upon written notice to Local Agency by Option Letter, may unilaterally require continued performance of this Agreement for up to one additional year at the same rates and terms specified in the Agreement. The State shall exercise the option by written notice to the Local Agency within 30 days prior to the end of the current Agreement term. If exercised, the provisions of the Option Letter shall become part of and be incorporated into the Agreement. The total duration of this Agreement, including the exercise of any options, shall not exceed six (6) years.

6. SCOPE OF WORK
A. Completion
The Local Agency shall complete the Work and other obligations as described herein in Exhibit A and any authorized Task Orders. Except as provided in §8.F, Work performed prior to the Effective Date or after final acceptance shall not be considered part of the Work.

B. Goods and Services
The Local Agency shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Agreement Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees
All persons employed hereunder by the Local Agency, or any Consultants or Contractors shall be considered the Local Agency's, Consultants' or Contractors' employee(s) for all purposes and shall not be employees of the State for any purpose.

D. State and Local Agency Commitments
i. Design
If the Work includes preliminary design or final design or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the Local Agency shall comply with and be 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 produced by a Colorado Registered Professional Engineer.
   f) Provide final assembly of Plans and all other necessary documents.
   g) Be responsible for the Plans' accuracy and completeness.
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 shall be incorporated herein.

ii. Local Agency Work

a) Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document “ADA Accessibility Requirements in CDOT Transportation Projects”.

b) Local Agency shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.

c) Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or of 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 the 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, the 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 Center for Procurement and Contracting Services.

(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 the 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 the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this 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 the 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, the Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with Exhibit E for the authorized Task Order. 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 the Local Agency Contract Administration Checklist.

a) If the Local Agency is performing the Work, the State may, after providing written notice of the reason for the suspension to the Local Agency, suspend the Work, wholly or in part, due to the failure of the 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) The Local Agency shall be responsible for the following:

   (1) Appointing a qualified professional engineer, licensed in the State of Colorado, as the 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.

   (2) For the construction of the Work, advertising the call for bids upon approval by the State and awarding the construction contract(s) to the low responsible bidder(s).

      (a) All advertising and bid awards, pursuant to this Agreement, by the Local Agency 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 the Local Agency and its Contractor shall incorporate FHWA Form 1273 (Exhibit I) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefor, as required by 23 C.F.R. 633.102(e).

      (b) The Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. The Local Agency must accept or reject such bid within three (3) working days after they are publicly opened.

      (c) As part of accepting bid awards, the Local Agency shall provide additional funds, subject to their availability and appropriation, necessary to complete the Work if no additional federal-aid funds are available.

   (3) The requirements of this §6(D)(iii)(b)(2) also apply to any advertising and awards made by the State.

   (4) If all or part of the Work is to be accomplished by the Local Agency’s personnel (i.e. by force account) rather than by a competitive bidding process, the Local Agency shall perform such work in accordance with pertinent State specifications and requirements of 23 C.F.R. 635, Subpart B, Force Account Construction.

      (a) Such Work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency, the State and FHWA in advance of the Work, as provided for in 23 C.F.R. 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.
(b) An alternative to the preceding subsection is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 C.F.R. Part 31.

(c) If the State provides funds under this Agreement, rental rates for publicly owned equipment shall be determined in accordance with the State’s Standard Specifications for Road and Bridge Construction §109.04.

(d) All Work being paid under force account shall have prior approval of the State and/or FHWA and shall not be initiated until the State has issued a written notice to proceed.

E. State’s Commitments
   a) 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.
   b) 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 major structures designed by, or that are the responsibility of, the Local Agency as identified in the Local Agency Contract Administration Checklist for the authorized Task Order.

F. ROW and Acquisition/Relocation
   a) If the Local Agency purchases a right of way for a State highway, including areas of influence, the Local Agency shall immediately convey title to such right of way to CDOT after the Local Agency obtains title.
   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 and 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 compliance responsibilities depend on the level of federal participation; provided however, that the State always retains Oversight responsibilities.
   d) The Parties’ respective responsibilities under each level in CDOT’s Right of Way Manual (located at http://www.dot.state.co.us/ROW_Manual/) and reimbursement for the levels will be under 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 incidental, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

G. Utilities
   If necessary, the Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company which may become involved in the Work. Prior to the Work being advertised for bids, the Local Agency shall certify in writing to the State that all such clearances have been obtained.
   a) Railroads
      If the Work involves modification of a railroad company’s facilities and such modification will be accomplished by the railroad company, the Local Agency shall make timely application to the Public Utilities commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The 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.
   b) Execute an agreement setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
c) Obtain the railroad’s detailed estimate of the cost of the Work.
d) Establish future maintenance responsibilities for the proposed installation.
e) Prescribe future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
f) Establish future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

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

I. Maintenance Obligations
The 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, and the Local Agency shall provide for such maintenance and operations obligations each year. Such maintenance and operations shall be conducted 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.

7. TASK ORDERS
A. Task Orders - General
The Work under this Agreement shall consist of “As Needed” design/construction services at various flood-damaged locations throughout the City of Thornton. This Agreement will enable Task Orders to be written for specific locations/projects as designated under Form FHWA 1547. Neither CDOT nor the Local Agency has any obligation under the Agreement until and unless a Task Order is issued pursuant to this Agreement. The CDOT Project Manager for a specific location/project will coordinate with the appropriate Local Agency contact person to initiate a Task Order. The Local Agency shall be responsible to perform the Work authorized under the Task Order, as well as comply with all applicable terms and conditions of this Agreement.

The Local Agency shall perform the Work in accordance with directives and authorizations by the State’s representative and pursuant to the terms and conditions of this Agreement and the authorized Task Order. Any Task Order issued pursuant to this Agreement shall incorporate the terms of this Agreement by reference and shall also contain the items listed in the Task Order definition in §4.W.

B. Task Order Procedures
a) The Local Agency will notify CDOT of work needed under this Agreement.
b) The Local Agency will coordinate with the CDOT Project Manager to gather the information necessary for the items listed in the Local Agency Offer definition in §4.L.
c) When all items have been gathered, Local Agency shall submit a Local Agency Offer to CDOT for Work. Local Agency’s Offer shall be signed by a representative of the Local Agency listed on Exhibit B, who is authorized to contractually bind the Local Agency. The Local Agency Offer shall constitute a firm offer to provide the Work and Local Funds, if specified, on the basis set forth in the Local Agency Offer. The Local Agency Offer shall reference this Agreement between the Parties.
d) The State’s issuance of a Task Order based on a Local Agency Offer shall constitute an acceptance of the Local Agency Offer and no further signature shall be required on the part of Local Agency. Task Orders shall not be effective or enforceable until they are approved and signed by the Colorado State Controller or its designee. Except as provided in §8.F, the State shall not be liable to pay or reimburse Local Agency for any performance hereunder or under a Task Order including, but not limited to, costs or expenses incurred, prior to execution of a Task Order for the specified Work. Upon execution of the Task Order, the Local Agency shall successfully complete the Work within the price identified in the Task Order.
e) Except as provided in §8.F, the Local Agency shall begin performance of the Work if, and only to the extent that, the State specifically authorizes the Work by executing a Task Order, and the State’s representative(s) issues and the Local Agency receives a written communication by e-mail, from the CDOT Project Manager for a specific location/project setting forth the Work to be performed under the Task Order and giving authorization to begin performance of the Task Order.

f) Each Task Order shall specify a performance period for the Work authorized; however, all Work authorized on the Task Order must be completed within the performance period of the Task Order. All Task Orders must be completed by the end of the Agreement term specified in §5.A, including any extensions.

Changes to an executed Task Order require Local Agency to submit a Local Agency Offer Amendment to CDOT for changes to such Task Order. Local Agency’s Offer Amendment shall be signed by a representative of the Local Agency listed on Exhibit B, who is authorized to contractually bind the Local Agency. The Local Agency Offer Amendment shall constitute a firm offer to provide the Work and Local Funds, if specified, on the basis set forth in the Local Agency Offer Amendment. The Local Agency Offer Amendment shall reference the Task Order to be modified and this Agreement between the Parties. The State’s issuance of a Task Order based on a Local Agency Offer Amendment shall constitute an acceptance of the Local Agency Offer Amendment and no further signature shall be required on the part of Local Agency. Amendments to Task Orders shall not be effective or enforceable until they are approved and signed by the Colorado State Controller or its designee. The Local Agency shall be allowed to modify performance under a Task Order if, and only to the extent that, the State specifically authorizes the modification by executing a Task Order, and the State’s representative(s) issues and the Local Agency receives a written communication by e-mail, from the CDOT Project Manager for a specific location/project setting forth the changes to the Task Order and giving authorization to modify performance of the Task Order.

8. PAYMENTS

The State shall, in accordance with the provisions of this §8, pay the Local Agency in the amounts and using the methods set forth below:

A. Maximum Amount

The cumulative "not to exceed" amount for all Agreement Funds in all Task Orders issued under this Agreement shall be $37,100.00. The Local Agency shall accept no Task Orders which result in a cumulative Agreement Funds value that exceeds the "not to exceed" value. The maximum amount payable under each Task Order will be set forth in a completed Task Order Budget, as determined by the State from available funds. CDOT’s financial obligation to the Local Agency are limited to the unpaid encumbered balance of Agreement Funds in approved Task Orders. Local Agency agrees to provide any additional funds required for successful completion of the Work.

i. Increase Not to Exceed Amount

At its sole discretion, the State, upon written notice to the Local Agency by Option Letter, may unilaterally increase/decrease the not to exceed amount payable under this Agreement specified in §8.A. The State shall exercise the option by providing a fully executed Option Letter to the Local Agency. Delivery/performance of the Goods/Services shall continue at the same rates and under the same terms as established in this Agreement and specified through Task Orders.

ii. Phased Performance

The State may require the Local Agency to begin performance on each phase of Work as outlined in a Task Order Budget and at the same terms and same conditions stated in the Agreement. If the State exercises this option, it will provide written notice to the Local Agency prior to authorizing such phase of Work by unilaterally executing a revised Task Order. If exercised, the provisions of the revised Task Order shall become part of and be incorporated into this original Agreement and the applicable original Task Order. Except as provided in
§8.F. Local Agency shall not commence Work on any phase until it receives a notice to proceed from the State; such notice to proceed shall not be issued without a fully executed Task Order for such phase.

B. Payment
   i. Advance, Interim and Final Payments
   Any advance payment allowed under this Agreement or in any Task Order shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement. The Local Agency shall initiate any payment requests by submitting invoices to the State in the form and manner, approved by the State.

   ii. Interest
   The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by the Local Agency previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. The Local Agency shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

   iii. Available Funds-Contingency-Termination
   The State is prohibited by law from making commitments beyond the term of the State’s current fiscal year. Therefore, the Local Agency’s compensation beyond the State’s current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. The State’s performance hereunder is also contingent upon the continuing availability of federal funds. Payments pursuant to this Agreement shall be made only from available funds encumbered for this Agreement through Task Orders and the State’s liability for such payments shall be limited to the amount remaining of such Agreement Funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may terminate this Agreement immediately, in whole or in part, without further liability in accordance with the provisions hereof.

   iv. Erroneous Payments
   At the State’s sole discretion, payments made to the Local Agency in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by the Local Agency, may be recovered from the Local Agency by deduction from subsequent payments under this Agreement or other contracts, grants or agreements between the State and the Local Agency or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

C. Use of Funds
   Agreement Funds shall be used only for eligible costs identified herein.

D. Local Funds
   The Local Agency shall provide Local Funds as specified in Task Order Budget(s). The Local Agency shall have raised the full amount of Local Funds prior to the effective date of the authorized Task Order and shall report to the State regarding the status of such funds upon request. The Local Agency’s obligation to pay all or any part of any Local Funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of the Local Agency and paid into the Local Agency’s treasury. The Local Agency represents to the State that the amount designated “Local Funds” in an authorized Task Order Budget has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. The 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 the Local Agency. The 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 the Local Agency’s laws or policies.
E. Reimbursement of Local Agency Costs
The State shall reimburse the Local Agency’s allowable costs, not exceeding the maximum total amount described in the Task Order Budget. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the State’s obligation to reimburse all costs incurred by the Local Agency and submitted to the State for reimbursement hereunder, and the Local Agency shall comply with all such principles. The costs will be estimated and preapproval for federal funding will be recorded on Form FHWA 1547 (Exhibit L). To accept subsequent revisions to this form, the Parties will need to comply with §7.B.g to amend the associated Task Order. The CDOT Project Manager, in cooperation with the Local Agency, will complete and submit the form to FHWA. The State shall reimburse the Local Agency for the federal-aid share of properly documented costs related to the Work for a Task Order after review and approval thereof, subject to the provisions of this Agreement and the Task Order. However, any costs incurred by the Local Agency prior to the date of FHWA authorization for the Work and prior to the effective date of the Task Order shall not be reimbursed absent specific FHWA and State Controller approval thereof. Costs shall be:

i. Reasonable and Necessary
 Reasonable and necessary to accomplish the Work and for the Goods and Services provided.

ii. Net Cost
 Actual net cost to the Local Agency (i.e. the price paid minus any items of value received by the Local Agency that reduce the cost actually incurred).

F. Retroactive Payments
The State shall pay Local Agency for costs or expenses incurred or performance by the Local Agency prior to the Effective Date, only if (1) the Agreement Funds involve federal funding and (2) federal laws, rules and regulations applicable to the Work provide for such retroactive payments to the Local Agency. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement, its Exhibits and the applicable Task Order. Local Agency shall initiate any payment request by submitting invoices to the State in the form and manner set forth herein and approved by the State. As authorized by the FHWA, Agreement Funds may include costs or expenses incurred or performance by the Agreement Funds prior to the Effective Date.

9. ACCOUNTING
The 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:

A. Local Agency Performing the Work
If Local Agency is performing the Work, all allowable costs, including any approved services contributed by the Local Agency or others, shall be documented using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

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

C. State-Administrative Services
The State may perform any necessary administrative support services required hereunder. The Local Agency shall reimburse the State for the costs of any such services from the Task Order Budget(s). If funding is not available or is withdrawn, or if the Local Agency terminates this Agreement or any Task Order prior to the Work being approved or completed, then all actual incurred costs of such services and assistance provided by the State shall be the Local Agency’s sole expense.
D. Local Agency-Invoices
The Local Agency’s invoices shall describe in detail the reimbursable costs incurred by the Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and shall not be submitted more often than monthly.

E. Invoicing Within 60 Days
The State shall not be liable to reimburse the Local Agency for any costs unless CDOT receives such invoices within 60 days after the date for which payment is requested, including final invoicing. Final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or the State may offset them against any payments due from the State to the Local Agency.

F. Reimbursement of State Costs
CDOT shall perform Oversight and the Local Agency shall reimburse COOT for its related costs. The Local Agency shall pay invoices within 60 days after receipt thereof. If the Local Agency fails to remit payment within 60 days, at CDOT’s request, the State is authorized to withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to CDOT. Interim funds shall be payable from the State Highway Supplementary Fund (400) until CDOT is reimbursed. If the Local Agency fails to make payment within 60 days, it shall pay interest to the State at a rate of one percent per month on the delinquent amounts until the billing is paid in full. CDOT’s invoices shall describe in detail the reimbursable costs incurred, the dates incurred and the amounts thereof, and shall not be submitted more often than monthly.

10. REPORTING - NOTIFICATION
Reports, Evaluations, and Reviews required under this §10 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §18, if applicable.

A. Performance, Progress, Personnel, and Funds
The State shall submit a report to the Local Agency upon expiration or sooner termination of this Agreement, containing an Evaluation and Review of the Local Agency’s performance and the final status of the Local Agency’s obligations hereunder.

B. Litigation Reporting
Within 10 days after being served with any pleading related to this Agreement, in a legal action filed with a court or administrative agency, the Local Agency shall notify the State of such action and deliver copies of such pleadings to the State’s principal representative as identified herein. If the State or its principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of CDOT.

C. Noncompliance
The Local Agency’s failure to provide reports and notify the State in a timely manner in accordance with this §10 may result in the delay of payment of funds and/or termination as provided under this Agreement.

D. Documents
Upon request by the State, the Local Agency shall provide the State, or its authorized representative, copies of all documents, including contracts and subcontracts, in its possession related to the Work.

11. LOCAL AGENCY RECORDS
A. Maintenance
The 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. The Local Agency shall maintain such records until the last to occur of the following: (i) a period of three years after the date this Agreement is completed or terminated, or (ii) three
years after final payment is made hereunder, whichever is later, or (iii) for such further period as may be necessary to resolve any pending matters, or (iv) if an audit is occurring, or the Local Agency has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

B. Inspection
The Local Agency shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe the Local Agency’s records related to this Agreement during the Record Retention Period to assure compliance with the terms hereof or to evaluate the Local Agency’s performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Agreement, including any extension. If the Work fails to conform to the requirements of this Agreement, the State may require the Local Agency promptly to bring the Work into conformity with Agreement requirements, at the Local Agency’s sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require the Local Agency to take necessary action to ensure that future performance conforms to Agreement requirements and may exercise the remedies available under this Agreement at law or in equity in lieu of or in conjunction with such corrective measures.

C. Monitoring
The Local Agency also shall permit the State, the federal government or any other duly authorized agent of a governmental agency, in their sole discretion, to monitor all activities conducted by the Local Agency pursuant to the terms of this Agreement using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All such monitoring shall be performed in a manner that shall not unduly interfere with the Local Agency’s performance hereunder.

D. Final Audit Report
If an audit is performed on the Local Agency’s records for any fiscal year covering a portion of the term of this Agreement, the Local Agency shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

12. CONFIDENTIAL INFORMATION-STATE RECORDS
The Local Agency shall comply with the provisions of this §12 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals. Nothing in this §12 shall be construed to require the Local Agency to violate the Colorado Open Records Act, C.R.S. §§ 24-72-1001 et seq.

A. Confidentiality
The Local Agency shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of the Local Agency shall be immediately forwarded to the State’s principal representative.

B. Notification
The Local Agency shall notify its agents, employees and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention
Confidential information of any kind shall not be distributed or sold to any third party or used by the Local Agency or its agents in any way, except as authorized by the Agreement and as approved by the State. The Local Agency shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by the Local Agency or its agents, except as set forth in this Agreement and approved by the State.
D. Disclosure-Liability
Disclosure of State records or other confidential information by the Local Agency for any reason may be cause for legal action by third parties against the Local Agency, the State or their respective agents. The Local Agency is prohibited from providing indemnification to the State pursuant to the Constitution of the State of Colorado, Article XI, Section 1, however, the Local Agency shall be responsible for any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, or assignees pursuant to this §12.

13. CONFLICT OF INTEREST
The Local Agency shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of the Local Agency's obligations hereunder. The Local Agency acknowledges that with respect to this Agreement even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, the Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Local Agency's obligations to the State hereunder. If a conflict or appearance exists, or if the Local Agency is uncertain whether a conflict or the appearance of a conflict of interest exists, the 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 apparent conflict constitutes a breach of this Agreement.

14. REPRESENTATIONS AND WARRANTIES
A. Agreement Representations and Warranties
The Local Agency makes the following specific representations and warranties, each of which was relied on by the State in entering into this Agreement:

i. Standard and Manner of Performance
The Local Agency shall perform its obligations hereunder, including in accordance with the highest professional standard of care, skill and diligence and in the sequence and manner set forth in this Agreement and specified in Task Order(s).

ii. Legal Authority – The Local Agency and the Local Agency's Signatory
The Local Agency warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement, or any part thereof, and to bind the Local Agency to its terms. If requested by the State, the Local Agency shall provide the State with proof of the Local Agency's authority to enter into this Agreement or any Task Order within 15 days of receiving such request.

iii. Licenses, Permits, Etc.
The Local Agency represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. The Local Agency warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Agreement, without reimbursement by the State or other adjustment in Agreement Funds. Additionally, all employees and agents of the Local Agency performing Services under this Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. The Local Agency, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for the Local Agency to properly perform the terms of this Agreement shall be deemed to be a material breach by the Local Agency and constitute grounds for termination of this Agreement.
B. Local Agency Offer/Local Agency Offer Amendment Representation and Warranty

By submission of the Local Agency Offer and/or Local Agency Offer Amendment, the Local Agency represents and warrants that it possesses the legal authority to make the Local Agency Offer and/or Local Agency Offer Amendment and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its signatory to execute the Local Agency Offer and/or Local Agency Offer Amendment and to bind the Local Agency to its terms. If requested by the State, the Local Agency shall provide the State with proof of the Local Agency's authority to enter into the Local Agency Offer and/or Local Agency Offer Amendment within 15 days of receiving such request. The Parties agree that the State will rely upon this representation and warranty when entering into the associated Task Order.

15. INSURANCE

The Local Agency shall obtain and maintain insurance as specified in this section at all times during the term of this Agreement: The Local Agency's Contractors, Consultants and subcontractors shall obtain and maintain insurance as specified in this section at all times during their employment on any Task Orders. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the Local Agency and the State.

A. The Local Agency

i. Public Entities

If the Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then the Local Agency 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. The Local Agency shall show proof of such insurance satisfactory to the State, if requested by the State. The Local Agency shall require each Agreement with their Consultant and Contractor, that are providing Goods or Services hereunder, to include the insurance requirements necessary to meet Consultant or Contractor liabilities under the GIA.

ii. Non-Public Entities

If the Local Agency is not a "public entity" within the meaning of the Governmental Immunity Act, the Local Agency shall obtain and maintain during the term of this Agreement insurance coverage and policies meeting the same requirements set forth in §15(B) with respect to subcontractors that are not "public entities".

B. Contractors, Consultants and Subcontractors

The Local Agency shall require each contract with Contractors, subcontractors, or Consultants, other than those that are public entities, providing Goods or Services in connection with this Agreement, to include insurance requirements substantially similar to the following:

i. Worker's Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of the Local Agency's Contractor's, subcontractor's, or Consultant's employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket 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 one 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. Additional Insured

The Local Agency and the State shall be named as additional insured on the Commercial General Liability policies (leases and construction contracts require additional insured
coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. Primacy of Coverage
Coverage required of the Consultants, subconsultants or Contractors shall be primary over any insurance or self-insurance program carried by the Local Agency or the State.

vi. Cancellation
The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Local Agency and the State by certified mail.

vii. Subrogation Waiver
All insurance policies in any way related to this Agreement and secured and maintained by the Local Agency’s Consultants, subconsultants or Contractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against the Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates
The Local Agency shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Agreement. All Contractors, subcontractors, or Consultants shall provide certificates showing insurance coverage required hereunder to the Local Agency 5 business days prior to work commencing by the Contractor, subcontractor, or Consultant. No later than 15 days prior to the expiration date of any such coverage, the Local Agency and each Contractor, subcontractor, or Consultant shall deliver to the State or the Local Agency certificate of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Agreement or any subcontract, the Local Agency and each Contractor, subcontractor, or Consultant shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provision of this §15.

16. DEFAULT-BREACH
A. Defined
In addition to any breaches specified in other sections of this Agreement, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach.

B. Notice and Cure Period
In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §18. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §17. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Agreement in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

17. REMEDIES
If the Local Agency is in breach under any provision of this Agreement, the State shall have all of the remedies listed in this §17 in addition to all other remedies set forth in other sections of this Agreement following the notice and cure period set forth in §16(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach
If the Local Agency fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Agreement and in a timely manner, the State may notify the Local Agency of such non-performance in accordance with the provisions herein. If the Local Agency thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Agreement or such part of this Agreement as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder.
The Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

i. Obligations and Rights
To the extent specified in any termination notice, the Local Agency shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, the Local Agency shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Agreement's terms. At the sole discretion of the State, the Local Agency shall assign to the State all of the Local Agency's right, title, and interest under such terminated orders or subcontracts. Upon termination, the Local Agency shall take timely, reasonable and necessary action to protect and preserve property in the possession of the Local Agency in which the State has an interest. All materials owned by the State in the possession of the Local Agency shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by the Local Agency to the State and shall become the State's property.

ii. Payments
The State shall reimburse the Local Agency only for accepted performance received up to the date of termination. If, after termination by the State, it is determined that the Local Agency was not in default or that the 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 the same as if this Agreement had been terminated in the public interest, as described herein.

iii. Damages and Withholding
Notwithstanding any other remedial action by the State, the Local Agency also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Agreement by the Local Agency and the State may withhold any payment to the 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 the Local Agency is determined. The State may withhold any amount that may be due to the Local Agency as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. The Local Agency shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest
The State is entering into this Agreement for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Agreement in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Agreement by the State for cause or breach by the Local Agency, which shall be governed by §17(A) or as otherwise specifically provided for herein.

i. Method and Content
The State shall notify the Local Agency of the termination in accordance with §18, specifying 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, the Local Agency shall be subject to and comply with the same obligations and rights set forth in §17(A)(i).

iii. Payments
If this Agreement is terminated by the State pursuant to this §17(B), the Local Agency shall be paid an amount which bears the same ratio to the total reimbursement under this Agreement as the Services satisfactorily performed bear to the total Services covered by this Agreement, less payments previously made. Additionally, if this Agreement is less than 60% completed, the State may reimburse the Local Agency for a portion of actual out-of-pocket
expenses (not otherwise reimbursed under this Agreement) incurred by the Local Agency which are directly attributable to the uncompleted portion of the Local Agency’s obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to the Local Agency hereunder.

C. Remedies Not Involving Termination

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance
Suspend the Local Agency’s performance with respect to all or any portion of this Agreement pending necessary corrective action as specified by the State up to the Local Agency at an adjustment in price/cost or performance schedule. The Local Agency shall promptly cease performance and incurring costs in accordance with the State’s directive and the State shall not be liable for costs incurred by the Local Agency after the suspension of performance under this provision.

ii. Withhold Payment
Withhold payment to the Local Agency until corrections in the Local Agency’s performance are satisfactorily made and completed.

iii. Deny Payment
Deny payment for those obligations not performed that due to the Local Agency’s actions or inactions cannot be performed or, if performed, would be of no value to the State; provided that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal
Demand removal of any of the Local Agency’s employees, agents, or contractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Agreement is deemed to be contrary to the public interest or not in the State’s best interest.

v. Intellectual Property
If the Local Agency infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Agreement, the Local Agency shall, at the State’s option (a) obtain for the State or the Local Agency the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

18. NOTICES and REPRESENTATIVES

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

A. State:

<table>
<thead>
<tr>
<th>William E. Vaupel, Jr., P.E.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incident Command Center, Local Agency Coordinator</td>
</tr>
<tr>
<td>CDOT IRF ICC</td>
</tr>
<tr>
<td>2695 Rocky Mountain Avenue, Suite 300</td>
</tr>
<tr>
<td>Loveland, Colorado 80538</td>
</tr>
<tr>
<td>(719) 291-5512</td>
</tr>
<tr>
<td><a href="mailto:bill.vaupel@jacobs.com">bill.vaupel@jacobs.com</a></td>
</tr>
</tbody>
</table>
B. Local Agency:

<table>
<thead>
<tr>
<th>Robb Kolstad</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management and Budget Director</td>
</tr>
<tr>
<td>City of Thornton</td>
</tr>
<tr>
<td>9500 Civic Center Drive</td>
</tr>
<tr>
<td>Thornton, Colorado 80229</td>
</tr>
<tr>
<td>(303) 538-7693</td>
</tr>
<tr>
<td><a href="mailto:robb.kolstad@cityofthornton.net">robb.kolstad@cityofthornton.net</a></td>
</tr>
</tbody>
</table>

19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE
Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by the Local Agency in the performance of its obligations under this Agreement shall be the exclusive property of the State and all Work Product shall be delivered to the State by the Local Agency upon completion or termination hereof. The State’s exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. The Local Agency shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of the Local Agency’s obligations hereunder without the prior written consent of the State.

20. GOVERNMENTAL IMMUNITY
Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees and of the Local Agency is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.

21. STATEWIDE CONTRACT MANAGEMENT SYSTEM
If the maximum amount payable to the Local Agency under this Agreement is $100,000 or greater, either on the Effective Date or at anytime thereafter, this §21 applies.

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

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

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

22. FEDERAL REQUIREMENTS
The 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 listing of certain federal and state laws that may be applicable are described in Exhibits I, J, and Exhibits K and N.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)
The Local Agency will comply with all requirements of Exhibit G and the Local Agency Contract Administration Checklist for each Task Order regarding DBE requirements for the Work, except that if the 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 DOT-approved DBE program to the State for review and enter into a Memorandum of Understanding with the State regarding DBE responsibilities prior to the execution of this Agreement.

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, the 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, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of 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.

25. GENERAL PROVISIONS
A. Assignment
The Local Agency’s rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior written consent of the State. Any attempt at assignment, transfer, or subcontracting without such consent shall be void. All assignments and subcontracts approved by the Local Agency or the State are subject to all of the provisions hereof. The Local Agency shall be solely responsible for all aspects of subcontracting arrangements and performance.

B. Binding Effect
Except as otherwise provided in §25(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties’ respective heirs, legal representatives, successors, and assigns.

C. Captions
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.

D. Counterparts
This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.
E. Entire Understanding
This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous addition, deletion, or other amendment hereto shall not have any force or affect whatsoever, unless embodied herein.

F. Indemnification - General
If Local Agency is not a “public entity” within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., the Local Agency shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, subcontractors or assignees pursuant to the terms of this Agreement. This clause is not applicable to a Local Agency that is a “public entity” within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq.

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

H. Limitations of Liability
Any and all limitations of liability and/or damages in favor of the Local Agency contained in any document attached to and/or incorporated by reference into this Agreement, whether referred to as an exhibit, attachment, schedule, or any other name, are void and of no effect. This includes, but is not necessarily limited to, limitations on (i) the types of liabilities, (ii) the types of damages, (iii) the amount of damages, and (iv) the source of payment for damages.

I. Modification
i. By the Parties
Except as specifically provided in this Agreement, modifications of this Agreement shall not be effective unless agreed to in writing by both parties in an amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF AGREEMENTS - TOOLS AND FORMS.

ii. By Operation of Law
This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein.

J. Order of Precedence
The provisions of this Agreement shall govern the relationship of the State and the Local Agency. In the event of conflicts or inconsistencies between this Agreement and its exhibits and attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

i. Exhibit K (Supplemental Federal Provisions),
ii. Exhibit I (Federal-Aid Contract Provisions) and Exhibit J (Federal Requirements),
iii. Colorado Special Provisions,
iv. The provisions of the main body of this Agreement,
v. Exhibit A (Master Agreement Scope of Work),
vi. Authorized Task Orders,
rv. Authorized Local Agency Offers and Local Agency Offer Amendments,
viii. Task Order Scope(s),
ix. Task Order Budget(s),
x. Completed Damage Inspection Report(s) substantially in the form of Exhibit L for Task Order(s),
x. Completed Local Agency Contract Administration Checklist(s) substantially in the form of Exhibit E for Task Order(s), and
x. Other exhibits in descending order of their attachment.
K. Severability
Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

L. Survival of Certain Agreement Terms
Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if the Local Agency fails to perform or comply as required.

M. Taxes
The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. The Local Agency shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing the Local Agency for them.

N. Third Party Beneficiaries
Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. 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
Waiver of any breach of a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

P. CORA Disclosure
To the extent not prohibited by federal law, this Agreement and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK
26. COLORADO SPECIAL PROVISIONS
   The Special Provisions apply to all Agreements except where noted in italics.

1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).
   This Agreement shall not be deemed valid until it has been approved by the Colorado State
   Controller or designee.

2. FUND AVAILABILITY. CRS §24-30-202(5.5).
   Financial obligations of the State payable after the current fiscal year are contingent upon funds
   for that purpose being appropriated, budgeted, and otherwise made available.

3. GOVERNMENTAL IMMUNITY.
   No term or condition of this Agreement shall be construed or interpreted as a waiver, express or
   implied, of any of the immunities, rights, benefits, protections, or other provisions, of the
   Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act,
   28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. INDEPENDENT CONTRACTOR.
   The Local Agency shall perform its duties hereunder as an independent contractor and not as
   an employee. Neither the Local Agency nor any agent or employee of the Local Agency shall be
   deemed to be an agent or employee of the State. The Local Agency 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 the Local
   Agency or any of its agents or employees. Unemployment insurance benefits shall be available
   to the Local Agency and its employees and agents only if such coverage is made available by
   the Local Agency or a third party. The Local Agency shall pay when due all applicable
   employment taxes and income taxes and local head taxes incurred pursuant to this Agreement.
   The Local Agency shall not have authorization, express or implied, to bind the State to any
   Agreement, liability or understanding, except as expressly set forth herein. The Local Agency
   shall (a) provide and keep in force workers' compensation and unemployment compensation
   insurance in the amounts required by law, (b) provide proof thereof when requested by the
   State, and (c) be solely responsible for its acts and those of its employees and agents.

5. COMPLIANCE WITH LAW.
   The Local Agency shall strictly 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.

6. CHOICE OF LAW.
   Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the
   interpretation, execution, and enforcement of this Agreement. Any provision included or
   incorporated herein by reference which conflicts with said laws, rules, and regulations shall be
   null and void. Any provision incorporated herein by reference which purports to negate this or
   any other Special Provision in whole or in part shall not be valid or enforceable or available in
   any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered
   null and void by the operation of this provision shall not invalidate the remainder of this
   Agreement, to the extent capable of execution.

7. BINDING ARBITRATION PROHIBITED.
   The State of Colorado does not agree to binding arbitration by any extra-judicial body or person.
   Any provision to the contrary in this contact or incorporated herein by reference shall be null and
   void.

8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.
   State or other public funds payable under this Agreement shall not be used for the acquisition,
   operation, or maintenance of computer software in violation of federal copyright laws or
   applicable licensing restrictions. The Local Agency hereby certifies and warrants that, during the
   term of this Agreement and any extensions, the Local Agency has and shall maintain in place
   appropriate systems and controls to prevent such improper use of public funds. If the State
   determines that the Local Agency is in violation of this provision, the State may exercise any
remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

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 Agreement. The Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the Local Agency's services and the Local Agency shall not employ any person having such known interests.

10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.
[Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.
[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] The Local Agency certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Agreement and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), the Local Agency shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to the Local Agency that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Local Agency (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if the Local Agency has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If the Local Agency participates in the State program, the Local Agency shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that the Local Agency has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If the Local Agency fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, the Local Agency shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.
The Local Agency, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Agreement.

SPs Effective 1/1/09
THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

---

**THE LOCAL AGENCY**
City of Thornton, Colorado

By: Jack Ethredge  
Title: City Manager

*Signature*

Date: __________________________

**STATE OF COLORADO**
John W. Hickenlooper, GOVERNOR  
Colorado Department of Transportation  
Donald E. Hunt, Executive Director

By: Scott McDaniel, P.E., Acting Chief Engineer

Date: __________________________

---

**ATTEST:**

Nancy A. Vincent, City Clerk  
Margaret Emerich, City Attorney  

**APPROVED AS TO FORM:**

---

**ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate. Except as provided in §8.F, the Local Agency is not authorized to begin performance until such time. Except as provided in §8.F, if the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

---

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

By: __________________________

Colorado Department of Transportation

Date: __________________________
28. EXHIBIT A – MASTER AGREEMENT SCOPE OF WORK

The Work to be performed under this Agreement shall be related to the flood damaged areas within the counties designated as eligible for federal disaster relief funding under the Presidential Declaration, as amended, and other locations as designated under the Colorado Governor’s declaration, as amended (collectively, the “Flood Damaged Areas”).

The Work shall be performed only on Flood-Damaged Areas. The Work shall consist of elements to return the Flood-Damaged Areas back to their condition before the flood as identified and pre-approved by the FHWA on Form FHWA 1547 for each authorized Task Order. The Work shall be specified in each Task Order and may include, but not be limited to:

- General Engineering Services
- Bridge and Structural Design
- Roadway Design
- Hydrology Activities
- Hydraulics Design
- Traffic Engineering
- Rockfall Assessment and Mitigation
- Environmental Services
- Construction Management

Any Work requested outside of the Flood Damaged Areas will not be eligible for federal or state reimbursement under this Agreement.

Any items that will improve a Flood-Damaged Area to a better condition than it was before the flood (each a “Betterment”) may not be eligible for federal reimbursement. Prior to any expenditures related to a betterment, the FHWA must approve the Betterment and a Task Order must be approved by the State for such Work in accordance with §7.B.e.

Task Orders will be created for each Flood-Damaged Area. The Work for each Flood-Damaged Area will be identified and detailed in a specific Task Order Scope dedicated to the specific Flood Damaged Area.
29. EXHIBIT B – LIST OF AUTHORIZED LOCAL AGENCY SIGNATORIES

Robb Kolstad  
Budget Manager  
(303) 538-7693  
robb.kolstad@cityofthornton.net

Joyce Hunt  
Assistant City Manager  
(303) 538-7333  
joyce.hunt@cityofthornton.net

The persons and/or positions identified on this Exhibit B cannot be further delegated.
30. EXHIBIT C – SAMPLE FUNDING PROVISIONS

A. Estimated Cost of Work
The estimated total cost the Work is as follows:

1. **BUDGETED FUNDS**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>a. Federal Funds</strong></td>
<td>$0.00</td>
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<tr>
<td>( % of Participating Costs)</td>
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<td><strong>b. Local Funds</strong></td>
<td>$0.00</td>
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<tr>
<td>( % of Participating Costs)</td>
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<tr>
<td><strong>c. State Funds</strong></td>
<td>$0.00</td>
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<tr>
<td>( % of Participating Costs)</td>
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<tr>
<td><strong>TOTAL BUDGETED FUNDS</strong></td>
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2. **ESTIMATED PAYMENT TO LOCAL AGENCY***

<p>| | |</p>
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<td><strong>b. State Funds Budgeted (1c)</strong></td>
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<td><strong>TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY</strong>*</td>
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3. **FOR CDOT ENCUMBRANCE PURPOSES**

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</tr>
</tbody>
</table>

*The "Total Estimated Payment to Local Agency" amount assumes that the entire budgeted amount in Section 1 will be encumbered. Local Agency is not entitled to payment for any amounts that are not encumbered.**

**The Agreement Funds payable by the State to Local Agency pursuant to this Agreement is limited to the aggregate amount of encumbered funds identified in Section 3 above multiplied by the Payable Participating Percentage for Federal Funds or State Funds identified in Section 3.

Single Audit Act
All state and local government and non-profit organizations receiving more than $500,000 from all funding sources defined as federal financial assistance for Single Audit Act of 1984, as amended (PL 98-
502; PL 104-156) (collectively the “Single Audit Act”), purposes shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) and OMB Circular A-133 Compliance Supplement, as amended. See also, 49 CFR 18.20 through 18.26. The Single Audit Act requirements applicable to the Local Agency receiving Federal Funds are as follows:

i. **Expenditure less than $500,000**
   If the Local Agency expends less than $500,000 in Federal Funds (all federal sources, not just highway funds) in its fiscal year then this requirement does not apply.

ii. **Expenditure exceeding than $500,000-Highway Funds Only**
    If the Local Agency expends more than $500,000 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 exceeding than $500,000-Multiple Funding Sources**
    If the Local Agency expends more than $500,000 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.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK
### 31. EXHIBIT D – SAMPLE TASK ORDER

<table>
<thead>
<tr>
<th>Date:</th>
<th>Task Order #</th>
<th>Master Agreement CMS #</th>
<th>Task Order CMS #</th>
</tr>
</thead>
</table>

In accordance with §7 of the Master Agreement ("Master Agreement") (routing number 14 HA4 00000) between the State of Colorado, Department of Transportation ("State" or "CDOT"), and the City of ("Local Agency"), beginning beginning agreement date and ending on ending agreement date, the provisions of the Master Agreement, and any amendments thereto affected by this task order ("Task Order") are modified as follows:

1) **Task Order Description.**
   All terms not defined in this Task Order shall have the meaning given in the Master Agreement. The State accepts the Local Agency Offer dated ______________ attached hereto. Local Agency shall perform the Work authorized in this Task Order at location in accordance with the Master Agreement and the attached Local Agency Offer.

2) **PRICE/COST**
   Funding for each phase of Work (as identified on the attached Task Order Budget) shall be encumbered as each phase is authorized pursuant to a unilateral Task Order amendment by State authorized pursuant to §8.A.ii of the Master Agreement. The maximum amount payable by the State to Local Agency for performance of this Task Order is limited to the amount of Agreement Funds identified on the attached Local Agency Budget, as determined by the State from available funds. Local Agency agrees to provide any additional funds required for successful completion of the Work. Payments to the Local Agency are limited to the unpaid Agreement Funds balance set forth in the attached Local Agency Budget.

3) **PERFORMANCE PERIOD**
   Local Agency shall complete its obligations under this Task Order on or before ______________.

4) **EFFECTIVE DATE**
   This Task Order shall not be effective or enforceable until it is approved and signed by the Colorado State Controller, or their designee, ("Effective Date").

5) **APPROVALS**

STATE OF COLORADO:
John W. Hickenlooper, Governor

By:_________________________________________________________
Timothy J. Harris, Chief Engineer
Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER
CRS §24-30-202 requires the State Controller to approve all State contracts. This Task Order is not valid until signed and dated below by the State Controller, or delegate. Except as provided in §8.F of the Master Agreement, the Local Agency is not authorized to begin performance until such time. Except as provided in §8.F of the Master Agreement, if the Local Agency begins performing prior to the date below, the State of Colorado is not obligated to pay for such performance or for any goods and/or services provided.

State Controller
Robert Jaros, CPA, MBA, JD

By:_________________________________________________________

Date:_____________________________________________________

Page 1 of 1
# 32. EXHIBIT E – SAMPLE LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

## Colorado Department of Transportation

### Local Agency Contract Administration Checklist

<table>
<thead>
<tr>
<th>Project No.</th>
<th>STIP No.</th>
<th>Project Code</th>
<th>Region</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Project Location</th>
<th>Date</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Project Description</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Local Agency</th>
<th>Local Agency Project Manager</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>CDOT Resident Engineer</th>
<th>CDOT Project Manager</th>
</tr>
</thead>
</table>

### Instructions:

This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the CDOT Local Agency Manual.

Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform 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.

### NO. DESCRIPTION OF TASK RESPONSIBLE PARTY

<table>
<thead>
<tr>
<th>LA</th>
<th>CDOT</th>
</tr>
</thead>
</table>

### TIP / STIP and Long-Range Plans

2.1 Review Project to ensure it is consistent with STIP and amendments thereto

### Federal Funding Obligation and Authorization

4.1 Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)

### Project Development

5.1 Prepare Design Data - CDOT Form 493
5.2 Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)
5.3 Conduct Consultant Selection/Execute Consultant Agreement
5.4 Conduct Design Scoping Review Meeting
5.5 Conduct Public Involvement
5.6 Conduct Field Inspection Review (FIR)
5.7 Conduct Environmental Processes (may require FHWA concurrence/involvement)
5.8 Acquire Right-of-Way (may require FHWA concurrence/involvement)
5.9 Obtain Utility and Railroad Agreements
5.10 Conduct Final Office Review (FOR)
5.11 Justify Force Account Work by the Local Agency
5.12 Justify Proprietary, Sole Source, or Local Agency Furnished Items
5.13 Document Design Exceptions - CDOT Form 494
5.14 Prepare Plans, Specifications and Construction Cost Estimates
5.15 Ensure Authorization of Funds for Construction

CDOT Form 1243 09/96 Page 1 of 4

Previous editions are obsolete and may not be used.
<table>
<thead>
<tr>
<th>NO.</th>
<th>DESCRIPTION OF TASK</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1</td>
<td>Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)</td>
</tr>
<tr>
<td>6.2</td>
<td>Determine Applicability of Davis-Bacon Act. This project 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.)</td>
</tr>
<tr>
<td>6.3</td>
<td>Set On-the-Job Training Goals. Goal is zero if total construction is less than $1 million (CDOT Region EEO/Civil Rights Specialist)</td>
</tr>
<tr>
<td>6.4</td>
<td>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)</td>
</tr>
<tr>
<td>7.1</td>
<td>Obtain Approval for Advertisement Period of Less Than Three Weeks.</td>
</tr>
<tr>
<td>7.2</td>
<td>Advertise for Bids</td>
</tr>
<tr>
<td>7.3</td>
<td>Distribute &quot;Advertisement Set&quot; of Plans and Specifications</td>
</tr>
<tr>
<td>7.4</td>
<td>Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement</td>
</tr>
<tr>
<td>7.5</td>
<td>Open Bids</td>
</tr>
<tr>
<td>7.6</td>
<td>Process Bids for Compliance</td>
</tr>
<tr>
<td>7.7</td>
<td>Concurrence from CDOT to Award</td>
</tr>
<tr>
<td>7.8</td>
<td>Approve Rejection of Low Bidder</td>
</tr>
<tr>
<td>7.9</td>
<td>Award Contract</td>
</tr>
<tr>
<td>7.10</td>
<td>Provide &quot;Award&quot; and &quot;Record&quot; Sets of Plans and Specifications</td>
</tr>
</tbody>
</table>

**CONSTRUCTION MANAGEMENT**

| 8.1 | Issue Notice to Proceed to the Contractor |
| 8.2 | Project Safety |
| 8.3 | Conduct Conferences: |
|     | Pre-Construction Conference (Appendix B) |
|     | Pre-survey |
|     | - Construction staking |
|     | - Monumentation |
|     | Partnering (Colo) |
|     | Structural Concrete Pre-Pour (Agenda is in CDOT Construction Manual) |
|     | Concrete Pavement Pre-Paving (Agenda is in CDOT Construction Manual) |
|     | HMA Pre-Paving (Agenda is in CDOT Construction Manual) |
| 8.4 | Develop and distribute Public Notice of Planned Construction to media and local residents |
| 8.5 | Supervise Construction |

A Professional Engineer (PE) registered in Colorado, who will be in responsible charge of construction supervision.

Local Agency Professional Engineer or CDOT Resident Engineer
<table>
<thead>
<tr>
<th>NO.</th>
<th>DESCRIPTION OF TASK</th>
<th>RESPONSIBLE PARTY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>LA</td>
</tr>
<tr>
<td></td>
<td></td>
<td>CDOT</td>
</tr>
<tr>
<td>8.1</td>
<td>Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications.</td>
<td></td>
</tr>
<tr>
<td>8.6</td>
<td>Approve Shop Drawings</td>
<td></td>
</tr>
<tr>
<td>8.7</td>
<td>Perform Traffic Control Inspections</td>
<td></td>
</tr>
<tr>
<td>8.8</td>
<td>Perform Construction Surveying</td>
<td></td>
</tr>
<tr>
<td>8.9</td>
<td>Monument Right-of-Way</td>
<td></td>
</tr>
<tr>
<td>8.10</td>
<td>Prepare and Approve Interim and Final Contractor Pay Estimates</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Provide the name and phone number of the person authorized for this task.</td>
<td></td>
</tr>
<tr>
<td>8.11</td>
<td>Prepare and Approve Interim and Final Utility and Railroad Billings</td>
<td></td>
</tr>
<tr>
<td>8.12</td>
<td>Prepare Local Agency Reimbursement Requests</td>
<td></td>
</tr>
<tr>
<td>8.13</td>
<td>Prepare and Authorize Change Orders</td>
<td></td>
</tr>
<tr>
<td>8.14</td>
<td>Approve All Change Orders</td>
<td></td>
</tr>
<tr>
<td>8.15</td>
<td>Monitor Project Financial Status</td>
<td></td>
</tr>
<tr>
<td>8.16</td>
<td>Prepare and Submit Monthly Progress Reports</td>
<td></td>
</tr>
<tr>
<td>8.17</td>
<td>Resolve Contractor Claims and Disputes</td>
<td></td>
</tr>
<tr>
<td>8.18</td>
<td>Conduct Routine and Random Project Reviews</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Provide the name and phone number of the person responsible for this task.</td>
<td></td>
</tr>
</tbody>
</table>

**MATERIALS**

| 9.1 | Conduct Materials Pre-Construction Meeting |
| 9.2 | Complete CDOT Form 260 - 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 |
| 9.3 | Perform Laboratory Verification Tests |
| 9.4 | Perform Project Acceptance Samples and Tests |
| 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 |
| 9.6 | Approve Sources of Materials |
| 9.7 | Independent Assurance Testing (IAT), Local Agency Procedures ☐ CDOT Procedures ☐ |
|     | * Generate IAT schedule |
|     | * Schedule and provide notification |
|     | * Conduct IAT |
| 9.8 | Approve mix designs |
|     | * Concrete |
|     | * Hot mix asphalt |
| 9.9 | Check Final Materials Documentation |
| 9.10| Complete and Distribute Final Materials Documentation |

Previous editions are obsolete and may not be used.
<table>
<thead>
<tr>
<th>CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.1 Fulfill Project Bulletin Board and Pre-Construction Packet Requirements</td>
</tr>
<tr>
<td>10.2 Process CDOT Form 205 - Sublet Permit Application</td>
</tr>
<tr>
<td>10.3 Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280</td>
</tr>
<tr>
<td>10.4 Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the &quot;Commercially Useful Function&quot; Requirements</td>
</tr>
<tr>
<td>10.5 Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire</td>
</tr>
<tr>
<td>10.6 Check Certified Payrolls. Contact the Region EEO/Civil Rights Specialists for training requirements.</td>
</tr>
<tr>
<td>10.7 Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report</td>
</tr>
<tr>
<td>11.1 Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation)</td>
</tr>
<tr>
<td>11.2 Write Final Project Acceptance Letter</td>
</tr>
<tr>
<td>11.3 Advertise for Final Settlement</td>
</tr>
<tr>
<td>11.4 Prepare and Distribute Final As-Constructed Plans</td>
</tr>
<tr>
<td>11.5 Prepare EEO Certification</td>
</tr>
<tr>
<td>11.6 Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications</td>
</tr>
<tr>
<td>11.7 Check Material Documentation and Accept Final Material Certification (See Chapter 9)</td>
</tr>
<tr>
<td>11.8 Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer</td>
</tr>
<tr>
<td>11.9 Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor</td>
</tr>
<tr>
<td>11.10 Complete and Submit CDOT Form 1212 - Final Acceptance Report (by CDOT)</td>
</tr>
<tr>
<td>11.11 Process Final Payment</td>
</tr>
<tr>
<td>11.12 Complete and Submit CDOT Form 950 - Project Closure</td>
</tr>
<tr>
<td>11.13 Retain Project Records for Six Years from Date of Project Closure</td>
</tr>
<tr>
<td>11.14 Retain Final Version of Local Agency Contract Administration Checklist</td>
</tr>
</tbody>
</table>

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

Previous editions are obsolete and may not be used

CDOT Form 1243  09/06 Page 4 of 4
33. 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 or 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 or 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 Local Agency also agrees by signing this Agreement that it 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.

Required by 23 CFR 635.112
34. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE

1. Program Objective and Assurance:

It is the objective of the State to create a level playing field upon which Disadvantaged Business Enterprises (DBEs) can compete fairly for DOT-assisted contracts. By entering into this Agreement, the Local Agency hereby agrees to the following:

The Local Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of the DBE program or the requirements of 49 CFR part 26. The Local Agency shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Each contract the Local Agency signs with a subcontractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

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

2. DBE Contract Goals:

Each scope of work prepared to procure consultant services or construction of the Work shall be evaluated by the CDOT Regional Civil Rights Office to determine a contract goal. The Local Agency shall be responsible for ensuring that the contract goal is incorporated into the procurement advertisement and accompanied by either:

a. For consultant services, CDOT’s then current process for evaluating the Consultant’s proposed DBE participation; or an alternative proposed by the local agency and approved by CDOT.

b. For construction, the CDOT DBE Standard Special Provision and all related forms.

The Local Agency shall submit the Statement of Interest (consultants) and/or DBE Forms (Construction) to the CDOT Civil Rights and Business Resource Center for review and concurrence prior to award.

3. Compliance:

With the assistance of the Local Agency, the CDOT Regional Civil Rights Office shall oversee the subcontractor’s performance toward the contract goal.

Revised 11/2013
35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

THE LOCAL AGENCY SHALL USE THESE PROCEDURES TO IMPLEMENT FEDERAL-AID PROJECT AGREEMENTS WITH PROFESSIONAL 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 request for consultant services should include the scope of work, the evaluation factors and their relative importance, the method of payment, and the goal for Disadvantaged Business Enterprise (DBE) participation for the project.

5. 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.

6. 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.

7. 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.

8. Each of the steps listed above is to be documented in accordance with the provisions of 49 CFR 18.42, which provide for records to be kept at least three years from the date that the local agency submits its final expenditure report. Records of projects under litigation shall be kept at least three years after the case has been settled.

CRS §§24-30-1401 through 24-30-1408, 23 CFR Part 172, and P.D. 400.1, provide additional details for complying with the preceding eight (8) steps.
36. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General

II. Nondiscrimination

III. Non-Discrimination 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 Governmentwide Suspension and Debarment Requirements

XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materiels 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 supervision 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 convicted labor for any purposes within the limits of a construction project on a Federal-aid highway unless it is later 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 29 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 29 CFR Part 200 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 22 USC Section 1631, 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, 25, and 29, and 23 CFR Parts 220, 221, and 230.

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

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 1626-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 149, 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, 25 and 29, 23 CFR Parts 220, 221, and 230.

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 take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 25, 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 US.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 opportunities 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 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 settling 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 methods.

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 prejudiced 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 to 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, and 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. Upon completion of each investigation, the contractor will inform each complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minority and women who are
In the collective bargaining agreement, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

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

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

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor’s association acting as an 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 that will reduce the reliance of these contractors upon 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 each 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 unions 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 11249, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

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

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, 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 48 CFR 25.13(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 25 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 the 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, upgrading minorities and women; and

b. The contractor 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-112. 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

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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 pay 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 FWWA-1213 format and FWWA 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 contract provisions 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 confirmed 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 any 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;

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

(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...
Iha wages plan or Secretary anticipated thereof may 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-assigned 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 on the premises 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)(3)(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(f)(3)(ii) 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)(3)(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 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(f)(3)(ii), 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 W-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/whd/forms/w347.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

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

(i) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5(f)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5(b)(3)(ii) 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; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
(2) 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 1095 of title 16 and section 551 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3 e. 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 dismissal 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 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 applicable) 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 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 journeymen'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 shall 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 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 journeymen 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 journeymen 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 Federally-assisted 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 program. 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 subcontract and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontract. 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: debenture. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debenture 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 dispute 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 employers 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 to be awarded a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).


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 shall be required to work in excess of forty hours in such workweek unless such contractor or subcontractor responsible therefor 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 in a territory, to such District or in 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.

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

4. Subcontracts. The contractor or subcontractor shall insert in any subcontract the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.
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 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 work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the area 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 1026.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any area 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. Witness 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.

18 U.S.C. 1020 reads as follows:
“Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation or

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 505), 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 set out below shall 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 contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to 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.

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, 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 must, but is not required to, check the Excluded Parties List System website (https://www.epds.gov), which is compiled by the General Services Administration.

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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 (i) 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 F/AWA 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 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 these 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 contractor). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a 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 Transactions,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $22,000 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 debarred, suspended, 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 it is not required to, check the Excluded Parties List System website (http://www.esd.dla.mil), 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 the participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
   i. Except for transactions authorized under paragraph (e) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the
department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**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 26).

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 or 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 the 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 understanding 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 (a) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (b) 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 the 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 (a) above.

5. The provisions of 23 CFR 632.207(a) 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.
37. EXHIBIT J – FEDERAL REQUIREMENTS

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

A. Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule)
The Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions. The requirements of 49 CFR 18 include, without limitation: the Local Agency/Subcontractor shall follow applicable procurement procedures, as required by section 18.36(d); the Local Agency/Subcontractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30; the Local Agency/Subcontractor shall comply with section 18.37 concerning any subcontracts; to expedite any CDOT approval, the Local Agency/Subcontractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Subcontractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 subcontract procedures, as applicable; the Local Agency/Subcontractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

B. 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 subcontractors or the Local Agencies).

C. Copeland "Anti-Kickback" Act

D. 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 Agency when required by Federal agreement program legislation. This act requires that all laborers and mechanics employed by contractors or subcontractors 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).

E. 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 in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers).

F. Clear Air Act

G. 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).

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

I. 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.

J. Nondiscrimination
42 USC 6101 et seq, 42 USC 2000d, 29 USC 794, and implementing regulation, 45 CFR Part 80 et seq. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.

K. ADA

L. 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 Local Agency contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

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

N. Age Discrimination Act of 1975

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

P. 23 C.F.R Part 633

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

R. FHWA Emergency Relief Manual
The FHWA's "Emergency Relief Manual (Federal-Aid Highways)" from the Office of Infrastructure, Office of Program Administration, as amended.

S. 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.

T. 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 Local Agency, for itself, its assignees and successors in interest, agree as follows:

i. Compliance with Regulations
The Local Agency 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 Local Agency, 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 Local Agency 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 Local Agency for work to be performed under a subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the Local Agency of the Local Agency'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 Local Agency 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 Local Agency is in the exclusive possession of another who fails or refuses to furnish this information, the Local Agency 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 Local Agency'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 Local Agency under the Agreement until the Local Agency complies, and/or b. Cancellation, termination or suspension of the Agreement, in whole or in part.

U. **Incorporation of Provisions §22**
The Local Agency will include the provisions of paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Local Agency 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 Local Agency becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Local Agency may request the State to enter into such litigation to protect the interest of the State and in addition, the Local Agency may request the FHWA to enter into such litigation to protect the interests of the United States.
38. EXHIBIT K – 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;

   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 §8 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at [http://www.colorado.gov/dpc/dfp/oa/FFATA.htm](http://www.colorado.gov/dpc/dfp/oa/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 are 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.
39. EXHIBIT L – SAMPLE DETAILED DAMAGE INSPECTION REPORT (FORM FHWA 1547)

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<th>U.S. Department of Transportation Federal Highway Administration</th>
<th>Report Number</th>
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<tr>
<td>DETAILED DAMAGE INSPECTION REPORT (Title 23, Federal-aid Highways)</td>
<td>Inspection Date</td>
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<tr>
<td>Location (Name of Road and Milepost)</td>
<td>FHWA Disaster Number</td>
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<td>Route at Mile Post to</td>
<td>Federal-aid Route Number</td>
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<tr>
<td>Description of Damage</td>
<td>State County</td>
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### Description of Work to Date

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<th>Quantity</th>
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### Method

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### Environmental Assessment Recommendation

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### Concurrence

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<th>No</th>
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FHWA USE ONLY
FEMA Eligible

Yes Yes No No

Page 1 of 1
40. EXHIBIT M – FORM OF AN OPTION LETTER

OPTION LETTER

Date: | State Fiscal Year: | Option Letter #: | Routing #: 

1) OPTIONS: Choose all applicable options listed in §1 and in §2 and delete the rest.
   a. Option to renew only (for an additional term)
   b. Change in the amount of the maximum not to exceed amount

2) Option to initiate next phase of a contract

REQUIRED PROVISIONS. All Option Letters shall contain the appropriate provisions set forth below:
   a. For use with Option 1(a): In accordance with Section 5.B of the Master Agreement routing number ______ between the State of Colorado, Department of Transportation, and Local Agency's Name, the State hereby exercises its option for an additional term beginning Insert start date and ending on Insert ending date at the same rates and same terms specified in the Master Agreement, as amended. Unless specified in this Option Letter, there shall be no change to the current agreement value as a result of this extension to the term.
   b. For use with Option 1(b): In accordance with Section 8.A(i) of the Master Agreement routing number ______ between the State of Colorado, Department of Transportation, and Local Agency's Name, the State hereby exercises its option to increase/decrease the not to exceed amount payable in the Master Agreement, as amended, by $________ for a new not to exceed value of $________ as consideration for Services/Goods ordered under the Master Agreement, as amended. The first sentence of Section 8.A is hereby modified accordingly. The total agreement value including all previous amendments, option letters is $________.

3) Effective Date. The effective date of this Option Letter is upon approval of the State Controller or Date, whichever is later.

STATE OF COLORADO
John W. Hickenlooper GOVERNOR
Department of Transportation

(For) Donald E. Hunt, Executive Director
Date: 

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State contracts. This Option Letter is not valid until signed and dated below by the State Controller or delegate. Except as provided in §8.F of the Master Agreement, Local Agency is not authorized to begin performance until such time. Except as provided in §8.F of the Master Agreement, if Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay Local Agency for such performance or for any goods and/or services provided hereunder.

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

Date: 

Page 1 of 1
41. EXHIBIT N – ASSURANCE OF NON-DISCRIMINATION BY LOCAL AGENCY

The Local Agency HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the Department of Transportation it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the "Act"), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the "Regulations") and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, 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 Local Agency receives Federal financial assistance from the Department of Transportation, including the Federal Highway Administration, and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a)(1) of the Regulations, a copy of which is attached.

More specifically, and without limiting the above general assurance, the Local Agency hereby gives the following specific assurances with respect to its (Name of Appropriate Program):

1. That the Local Agency agrees that each "program" and each "facility" as defined in subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.

2. That the Local Agency shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with (Name of Appropriate Program) and, in adapted form in all proposals for negotiated agreements:

The Local Agency, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full 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 an award.

3. That the Local Agency shall insert the clauses of Appendix A of this assurance in every contract subject to the Act and the Regulations.

4. That the Local Agency shall insert the clauses of Appendix B of this assurance, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereron, or interest therein.

5. That where the Local Agency receives Federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where the Local Agency receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over or under such property.
7. That the Local Agency shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Local Agency with other parties: (a) for the subsequent transfer of real property acquired or improved under (Name of Appropriate Program); and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under (Name of Appropriate Program).

8. That this assurance obligates the Local Agency 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 Local Agency 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 Local Agency retains ownership or possession of the property.

9. The Local Agency shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he delegates specific authority to give reasonable guarantee that it, other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.

10. The Local Agency agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Local Agency under the (Name of Appropriate Program) and is binding on it, other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest and other participants in the (Name of Appropriate Program). The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Local Agency.

Dated __________________________
(Local Agency)

by __________________________
(Signature of Authorized Official)
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 shall comply with the Regulation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall 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 shall 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 B of the Regulations.

(3) Solicitations for Subcontractors, 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 shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the (Name of Local Agency) or FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the (Name of Local Agency) or FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the (Name of Local Agency) shall impose such contract sanctions as it or 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.

(6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract, or procurement as the (Name of Local Agency) or FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a 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 (Name of Local Agency) to enter into such litigation to protect the interests of the
(Name of Local Agency), and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
A. The following clauses shall be included in any and all deeds effecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the Department of Transportation, as authorized by law, and upon the condition that the (Name of Local Agency) will accept title to the lands and maintain the project constructed thereon, in accordance with FHWA, the Regulations for the Administration of (Name of Appropriate Program) and the policies and procedures prescribed by FHWA of the Department of Transportation and, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter referred to as the Regulations) 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 (Name of Local Agency) all the right, title and interest of the 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 (Name of 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 shall be binding on the (Name of Local Agency), its successors and assigns. The (Name of Local Agency), in consideration or 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 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 with regard to any facility located wholly or in part on over or under such lands hereby conveyed and (2) that the (Name of Local Agency) shall 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, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have a right to re-enter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction.
APPENDIX C to Exhibit N

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the (Name of Local Agency) pursuant to the provisions of Assurance 6(a).

The (grantee, licensee, lessee, perimitee, etc., as appropriate) for himself, his 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 in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, perimitee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]

That in the event of breach of any of the above nondiscrimination covenants, (Name of Local Agency) shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [licenses, lease, permit, etc.] had never been made or issued.

[Include in deed.]  

That in the event of breach of any of the above nondiscrimination covenants, (Name of Local Agency) shall have the right to re-enter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of (Name of Local Agency) and its assigns.
42. EXHIBIT O – FORM OF LOCAL AGENCY OFFER

Local Agency Offer

Project Number

In accordance with Section 7 of the Master Agreement, \( yr/region/CMS\# \) ("Master Agreement") between the State of Colorado, Department of Transportation ("CDOT") and \( \text{Local Agency} \), the authorized person signing below for Local Agency hereby submits this Local Agency Offer to CDOT for creation of a Task Order under the Master Agreement for the purpose of authorizing Local Agency for perform Work in the Flood Damaged Area identified below and receive reimbursement for such Work.

All terms not defined in this Local Agency Offer shall have the meanings given in the Master Agreement.

The Local Agency hereby approves the attached documents and incorporates them by reference for the creation of a Task Order for the Flood Damaged Area in \( \text{Project Location(s)} \) ("Project Location"):

- Task Order Scope
- Task Order Budget
- Local Agency Contract Administration Checklist
- Damage Inspection Report (Form FHWA 1547)

Completion of the Work under this Local Agency Offer is estimated to be \# of weeks/months.

Pursuant to \$4.L of the Master Agreement, the Local Agency contact information for the project specified in this Local Agency Offer is:

\( \text{name, title} \)
\( \text{address} \)
\( \text{email address} \)
\( \text{phone number} \)

Local Agency hereby requests the creation of a Task Order for the Project Location.

* Person signing for the Local Agency hereby swears and affirms that he/she are authorized to act on the Local Agency's behalf (as indicated in Exhibit B of the Master Agreement) and acknowledge that the State is relying on his/her representation to that effect.

Signature of Authorized Person (Local Agency)

\( \text{Title} \)

\( \text{Date} \)
43. EXHIBIT P – LOCAL AGENCY OFFER AMENDMENT

Local Agency Offer Amendment
Project Number

In accordance with Section 7 of the Master Agreement yr/region/CMS# ("Master Agreement") between the State of Colorado, Department of Transportation ("CDOT") and _________ ("Local Agency"), the authorized person signing below for Local Agency hereby submits this Local Agency Offer Amendment to CDOT for modification of Task Order No. _____ ("Original Task Order") under the Master Agreement for the Flood Damaged Area in project location(s) ("Project Location").

All terms not defined in this Local Agency Offer Amendment shall have the meanings given in the Master Agreement and/or Original Task Order.

The Local Agency hereby requests that the Original Task Order, and all prior amendments thereto, if any, be modified as follows:

In connection with this Local Agency Offer Amendment, the Local Agency approves the attached documents and incorporates them by reference, if applicable:

• Task Order Scope
• Task Order Budget
• Local Agency Contract Administration Checklist
• Damage Inspection Report (Form FHWA 1547)

Local Agency hereby requests modification of the Original Task Order for the Project Location.

* Person signing for the Local Agency hereby swears and affirms that he/she are authorized to act on the Local Agency’s behalf (as indicated in Exhibit B of the Master Agreement) and acknowledge that the State is relying on his/her representation to that effect.

Signature of Authorized Person (Local Agency)

Title

Date
COUNCIL COMMUNICATION

Meeting Date: July 8, 2014
Agenda Item: 8E
Agenda Location: Consent Calendar
Work Plan #: ______ Legal Review: __

1st Reading
2nd Reading

Subject: An ordinance vacating Cook Street right-of-way, north of 100th Avenue for a distance of approximately 125 feet.

Recommended by: Bud Elliot
Approved by: Jack Ethredge
Presenter(s): Bud Elliot, Deputy City Manager - Infrastructure

Ordinance previously introduced by: ______

SYNOPSIS:
Currently the single-family residence at 3381 East 100th Avenue, a.k.a. Lot 4, Riverdale Heights Subdivision (Residence), has no vehicle access to the Residence. Cook Street right-of-way (ROW) currently extends approximately 150' north of 100th Avenue on the east side of the Residence. The ROW is not needed by the City for any transportation uses.

RECOMMENDATION:
Staff recommends Alternative 3, approval of the ordinance to eliminate a City responsibility for ROW that is no longer necessary for public use, and to provide access to the Residence.

BUDGET/STAFF IMPLICATIONS:
None

ALTERNATIVES:
1. Do not vacate the ROW and require the owner of the Residence to obtain access by other means.
2. Grant access to the Residence in the existing ROW by way of a Revocable Permit or other similar method.
3. Approve the Ordinance to eliminate the ROW that is no longer necessary for public use.

BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY): (includes previous City Council action)

Cook Street Right-of-Way, was granted to Adams County on June 24, 1953, as Part of the Riverdale Heights Subdivision Amendment #1; and was subsequently annexed into the City of Thornton. In 1979 a Building Permit was issued for the construction of a detached garage to service the Residence. The detached garage was constructed on the adjacent property owned by the Intercession Episcopal Church (Church) and was leased to the prior owner of the Residence.

Recently the Residence sold and the Church was not willing to lease the detached garage to the new Residence owner. This resulted in the new Residence owner having no access to the Residence.
Staff considered several options to provide access to the Residence. As part of the evaluation, staff met with the Church Reverend and confirmed that the Church did not oppose the ROW vacation. This consultation was held since the other half of the vacated ROW may revert to the Church property.

The owner of the Residence was kept apprised during the process and is in agreement with the recommendation to vacate the ROW.
Vicinity Map – 3381 E. 100th Avenue
AN ORDINANCE VACATING COOK STREET RIGHT-OF-WAY, NORTH OF 100\textsuperscript{th} AVENUE FOR A DISTANCE OF APPROXIMATELY 125 FEET.

WHEREAS, Cook Street Right-of-Way, was granted to Adams County on June 24, 1953, as Part of the Riverdale Heights Subdivision Amendment #1; and was subsequently annexed into the City of Thornton; and

WHEREAS, a portion of Cook Street right-of-way described in Exhibit A attached hereto and incorporated by this reference (“ROW”) is no longer necessary for City use.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. The right-of-way described in Exhibit A located within the City of Thornton, County of Adams, State of Colorado, is hereby vacated.

2. The City Council of the City of Thornton finds that:
   a. The right-of-way hereby vacated is no longer necessary for the public use and convenience.
   b. No land adjoining the right-of-way to be vacated will be left without an established access connecting said land with another established public road.

3. That the City Clerk is directed to record this Ordinance with the County of Adams once the Ordinance becomes effective.

4. This Ordinance shall take effect on the date of final passage.

INTRODUCED, READ, PASSED on first reading, ordered posted in full, and title ordered published by the City Council of the City of Thornton, Colorado, on ________________, 2014.
PASSED AND ADOPTED on second and final reading on ____________, 2014.

CITY OF THORNTON, COLORADO

Heidi K. Williams, Mayor

ATTEST:

Nancy A. Vincent, City Clerk

THIS ORDINANCE IS ON FILE IN THE CITY CLERK'S OFFICE FOR PUBLIC INSPECTION.

APPROVED AS TO LEGAL FORM:

Margaret Emerich, City Attorney

PUBLICATION:

Posted in six (6) public places after first and second readings.

Published in the Northglenn-Thornton Sentinel after first reading on ____________, 2014, and after second and final reading on ________________, 2014.
EXHIBIT A

LEGAL DESCRIPTION

A PORTION OF RIGHT-OF-WAY AS DEDICATED BY THE RIVERDALE HEIGHTS SUBDIVISION, AS RECORDED IN FILE 10 AT MAP 2, IN THE ADAMS COUNTY CLERK AND RECORDERS' OFFICE, ALL IN THE NORTHEAST ONE-QUARTER OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF THORNTON, COUNTY OF ADAMS AND STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHEAST ONE-QUARTER, THENCE COINCIDENT WITH THE SOUTH LINE OF SAID NORTHEAST ONE-QUARTER, SOUTH 89° 38' 39" EAST A DISTANCE OF 730.09 FEET, TO A POINT ON THE WEST LINE OF SAID RIGHT-OF-WAY, EXTENDED;

THENCE DEPARTING SAID SOUTH LINE AND COINCIDENT WITH SAID WEST LINE, NORTH 00° 21' 21" EAST A DISTANCE OF 55.00 FEET, TO A POINT ON THE EAST LINE OF LOT 4 OF SAID SUBDIVISION AND THE NORTH LINE OF 100TH AVENUE RIGHT-OF-WAY;

THENCE DEPARTING SAID NORTH LINE AND CONTINUING COINCIDENT WITH SAID WEST LINE AND WITH SAID EAST LINE, NORTH 00° 21' 21" EAST A DISTANCE OF 125.00 FEET, TO THE NORTH EAST CORNER OF SAID LOT 4 AND THE NORTHWEST CORNER OF SAID RIGHT-OF-WAY;

THENCE DEPARTING SAID EAST AND WEST LINES AND COINCIDENT WITH THE NORTH LINE OF SAID RIGHT-OF-WAY, SOUTH 89° 38' 39" EAST A DISTANCE OF 60.00 FEET TO THE NORTHEAST CORNER OF SAID RIGHT-OF-WAY;

THENCE DEPARTING SAID NORTH LINE AND COINCIDENT WITH THE EAST LINE OF SAID RIGHT-OF-WAY, SOUTH 00° 21' 21" WEST A DISTANCE OF 125.00 FEET TO THE NORTH LINE OF 100TH AVENUE RIGHT-OF-WAY;

THENCE DEPARTING SAID EAST LINE AND COINCIDENT WITH SAID NORTH LINE, NORTH 89° 38' 39" WEST A DISTANCE OF 60.00 FEET, TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 7,500 SQUARE FEET (0.172 ACRES) MORE OR LESS.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE SOUTH LINE OF SAID NORTHEAST ONE-QUARTER OF SAID SECTION 13 AND IS ASSUMED TO BEAR SOUTH 89° 38' 39" EAST.

PREPARED BY TOM STARKWEATHER UNDER THE DIRECT SUPERVISION OF STEVEN A. DYNES, PLS 24949, FOR AND ON BEHALF OF THE CITY OF THORNTON.

THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED SURVEY BY THE CITY OF THORNTON SURVEY SECTION. IT IS INTENDED ONLY TO DEPICT THIS DESCRIPTION.
EXHIBIT A
EXHIBIT MAP

SOUTHWEST CORNER
NORTHEAST ONE-QUARTER
SECTION 13
POINT OF COMMENCEMENT

SOUTHEAST CORNER
NORTHEAST ONE-QUARTER
SECTION 13
POINT OF BEGINNING

PREPARED BY TOM STARKWEATHER UNDER THE DIRECT SUPERVISION OF STEVEN A. DYNES, PLS 24949. FOR AND ON
BEHALF OF THE CITY OF THORNTON

CITY OF THORNTON
12450 No. Washington
Thornton, CO 80241
SURVEY SECTION 720-977-6210

THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED SURVEY BY THE CITY OF THORNTON SURVEY SECTION. IT IS INTENDED ONLY TO DEPICT THIS DESCRIPTION.

SCALE: 1" = 100'

FILE: COOK STREET VACATION.DWG
DATE: 2014-05-30 PAGE 2 OF 2
COUNCIL COMMUNICATION

Meeting Date: July 8, 2014
Agenda Item: 8F
Agenda Location: Consent Calendar
Work Plan #: Legal Review:

1st Reading

Subject: A resolution authorizing the City of Thornton to enter into an Intergovernmental Agreement with the Urban Drainage and Flood Control District and the City of Federal Heights regarding funding of Major Drainageway Planning and Digital Flood Hazard Area Delineation for Niver Creek and Tributaries.

Recommended by: Bud Elliot
Approved by: Jack Ethredge
Presenter(s): Bud Elliot, Deputy City Manager - Infrastructure

SYNOPSIS:

The current drainage master plan for Niver Creek was completed in 1997 and needs updating to reflect current conditions in the watershed. The Intergovernmental Agreement (IGA) between Urban Drainage and Flood Control District (UDFCD) and the cities of Thornton and Federal Heights (Sponsors) identifies scope and funding levels for the project, which includes a Major Drainageway Planning (MDP) Study and a Digital Flood Hazard Area Delineation (DFHAD) for Niver Creek and Tributaries.

UDFCD will contribute 50 percent of the cost of the MDP; the Sponsors will contribute the other 50 percent. Thornton will contribute 2/3 of the Sponsors' cost (33.33% total), and Federal Heights the remaining cost of the MDP (16.67% total). UDFCD will fund 100 percent of the cost of the DFHAD.

RECOMMENDATION:

Staff recommends Alternative No. 1, approval of the IGA.

BUDGET/STAFF IMPLICATIONS:

Funding for the City's share of this study is $60,000, which was appropriated in the Governmental Capital Fund in the 2014 budget.

ALTERNATIVES:

1. Approve the IGA in order to allow the City to participate in updating the MDP and DFHAD for this area.
2. Do not approve the IGA, which would effectively cancel the master plan update. UDFCD will not complete the project without local agency participation.

BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY):

Niver Creek generally drains southwest Thornton, south of 100th Avenue, west of I-25, and adjoining areas of Federal Heights. West of I-25, there are small areas of unincorporated Adams County south of 84th Avenue, and Northglenn south of 99th Avenue, which are also tributary. There are no drainageways in these tributary areas to master plan; only street flows. This drainage passes through the North Valley Technical Center site, from 84th Avenue and Grant Street, to Washington Street and Coronado Parkway.

The current master plan was completed in 1997 and used mapping from 1995. While much of the area in the basin was developed at that time, there has been additional development and redevelopment within the watershed. Also, the current study did not master plan the area upstream of Huron Street.
Several stream/detention improvements recommended in the earlier study have now been completed. The proposed study will account for all these variables and provide a more complete, current master plan for the area.

Updating the MOP will identify projects that are needed for the drainageways to convey the one percent annual probability (100-year) storm runoff. The MOP will identify improvements, which would then be eligible for UDFCD participation of up to 50 percent of the cost to design, acquire right-of-way, and construction.
RESOLUTION

A RESOLUTION AUTHORIZING THE CITY OF THORNTON TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE URBAN DRAINAGE AND FLOOD CONTROL DISTRICT AND THE CITY OF FEDERAL HEIGHTS REGARDING FUNDING OF MAJOR DRAINAGEWAY PLANNING AND DIGITAL FLOOD HAZARD AREA DELINEATION FOR NIVER CREEK AND TRIBUTARIES.

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

WHEREAS, the Thornton City Council, pursuant to Section 4.18 of the Thornton City Charter, may by resolution enter into agreements with other governmental entities; and

WHEREAS, the City of Thornton, City of Federal Heights, and Urban Drainage and Flood Control District (UDFCD), collectively Parties, desire to fund a Major Drainageway Plan (MDP) and a Digital Flood Hazard Area Delineation (DFHAD) report for Niver Creek, Tributary M and Tributary L (hereinafter called Project); and

WHEREAS, the Parties desire to acquire mapping needed to conduct the engineering studies for Project; and

WHEREAS, the Parties desire to engage an engineer to render certain technical and professional advice and to compile information, evaluate, study, and recommend design solutions to such drainage problems for the Project, which is in the best interest of the Parties.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. That the Agreement between the Parties pertaining to the Project, a copy of which is attached hereto and incorporated herein by reference, is hereby approved.

2. That the City Manager is hereby authorized to execute and the City Clerk to attest this Agreement in substantially the same form as attached hereto, and any amendments thereto.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Thornton, Colorado, on ________________, 2014.

CITY OF THORNTON, COLORADO

_________________________________________________________________
Heidi K. Williams, Mayor

ATTEST:

_________________________________________________________________
Nancy A. Vincent, City Clerk
AGREEMENT REGARDING FUNDING OF
MAJOR DRAINAGEWAY PLANNING AND
FLOOD HAZARD AREA DELINEATION FOR
NIVER CREEK AND TRIBUTARIES

Agreement No. 14-05.03

THIS AGREEMENT, made this ______ day of ________________, 2014, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT"), CITY OF THORNTON, a Colorado home rule municipality (hereinafter called THORNTON) and CITY OF FEDERAL HEIGHTS, a Colorado home rule municipality (hereinafter called "FEDERAL HEIGHTS"); (hereinafter THORNTON and FEDERAL HEIGHTS shall be collectively known as "PROJECT SPONSORS" and DISTRICT and PROJECT SPONSORS shall be collectively known as "PARTIES");

WITNESSETH THAT:

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

WHEREAS, DISTRICT has previously established a Work Program for 2014 (Resolution No. 53, Series of 2013) which includes master planning; and

WHEREAS, PARTIES now desire to proceed with development of a drainageway master plan and a digital flood hazard area delineation (DFHAD) report for Niver Creek, Tributary M and Tributary L (hereinafter called "PROJECT"); and

WHEREAS, PARTIES desire to acquire mapping needed to conduct the engineering studies for PROJECT; and

WHEREAS, PARTIES desire to engage an engineer to render certain technical and professional advice and to compile information, evaluate, study, and recommend design solutions to such drainage problems for PROJECT which are in the best interest of 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. PROJECT AREA
DISTRICT shall engage an engineer and obtain mapping as needed to perform or supply necessary services in connection with and respecting the planning of PROJECT of the area and watershed shown on the attached Exhibit A dated May 2014 (hereinafter called "AREA").

3. SCOPE OF PROJECT
The purpose of PROJECT is to develop a drainageway master plan and DFHAD, including hydrologic information and the locations, alignments, and sizing of storm sewers, channels,
detention/retention basins, and other facilities and appurtenances needed to provide efficient stormwater drainage within AREA. The proposed work shall include, but not be limited to, mapping; compilation of existing data; necessary field work; and development and consistent evaluation of all reasonable alternatives so that the most feasible drainage and flood control master plan can be determined and justified for AREA. Consideration shall be given to costs, existing and proposed land use, existing and proposed drainage systems, known drainage or flooding problems, known or anticipated erosion problems, stormwater quality, right-of-way needs, existing wetlands and riparian zones, open space and wildlife habitat benefits, and legal requirements. Conceptual alternate plans shall be developed such that comparison with other alternates can be made.

Drainage system planning shall be done in two phases by the engineer engaged by DISTRICT, culminating in a drainage master plan report. During the first phase, the selected engineer shall perform all studies and data gathering needed to prepare an alternatives analysis report containing a brief PROJECT description, study history, schematics of alternatives developed, their costs, and a discussion of the pros and cons of each alternative. A single alternative will be selected by PARTIES after the review and evaluation of the alternatives analysis report. The DFHAD report preparation and submittal will be concurrent with the first phase of the master plan. During the second phase, the engineer shall be directed to prepare a preliminary design for the selected alternative, which shall be included in the final drainage master plan report.

4. 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.

5. PROJECT COSTS

PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of, and be limited to, mapping, master planning, DFHAD and related services and contingencies mutually agreeable to PARTIES. Project costs are estimated not to exceed $180,000.

6. FINANCIAL COMMITMENTS OF PARTIES

PARTIES shall each contribute the following percentages and maximum amounts for PROJECT costs as defined in Paragraphs 5:

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<th>Master Plan Contribution</th>
<th>FHAD Contribution</th>
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<tr>
<td>FEDERAL HEIGHTS</td>
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<td>TOTAL</td>
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7. MANAGEMENT OF FINANCES

Payment by DISTRICT of $140,000, by THORNTON of $60,000 and by FEDERAL HEIGHTS of $30,000 shall be made to DISTRICT subsequent to execution of this Agreement by all PARTIES
and within thirty (30) calendar 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 PROJECT SPONSORS 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 and will not require an amendment to this Agreement.

In the event that it becomes necessary and advisable to change the scope of work to be performed, the need for such changes shall first be discussed with PARTIES, and their general concurrence received before issuance of any amendments or addenda. No changes shall be approved that increase the costs beyond the funds available in the PROJECT fund unless and until the additional funds needed are committed by PARTIES by an amendment to this Agreement.

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or dispersed, each party shall receive a share of such monies, which shares shall be computed as were the original shares.

8. PROJECT MAPPING
Upon execution of this Agreement DISTRICT will solicit priced proposals for mapping services and engage the mapping firm submitting the lowest priced proposal that is also judged by DISTRICT to be responsible and qualified to perform the work. DISTRICT reserves the right to reject any proposal and to waive any formal requirements during the evaluation of the proposals. DISTRICT will administer the contract with the mapping firm. The mapping services contracted by DISTRICT will provide for topographic mapping at a two-foot contour interval and a scale of 1-inch = 100-feet.

9. MASTER PLANNING AND DFHAD
Upon execution of this Agreement, PARTIES shall select an engineer mutually agreeable to PARTIES. DISTRICT, with the approval of PROJECT SPONSORS, shall contract with the selected engineer, shall administer the contract, and shall supervise and coordinate the planning for the development of alternatives and of preliminary design.

10. PUBLISHED REPORTS AND PROJECT DATA
DISTRICT will provide to each of PROJECT SPONSORS access to the draft and final electronic DFHAD report files, the draft and final electronic alternatives analysis report files, and the draft and final conceptual design report in electronic plan (ePlan) format.
Upon completion of PROJECT, electronic files of all mapping, drawings, and hydrologic and hydraulic calculations developed by the engineer contracted for PROJECT shall be provided to any PROJECT SPONSORS requesting such data.

11. TERM OF THE AGREEMENT
The term of this Agreement shall commence upon final execution by all PARTIES and shall terminate two years after the final master planning report is delivered to DISTRICT and the final
accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 7 herein.

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 THORNTON shall be the City Manager, 9500 Civic Center Drive, Civic Center, Thornton, Colorado 80229.

B. The contracting officer for FEDERAL HEIGHTS shall be the City Manager, 2380 West 90th Avenue, Federal Heights, Colorado 80260.

C. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.

D. The contracting officers for PARTIES each agree to designate and assign a PROJECT representative to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT or PROJECT SPONSOR. 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 PROJECT SPONSORS the information developed by the various consultants hired by DISTRICT and for obtaining all concurrences from PROJECT SPONSORS needed to complete PROJECT in a timely manner. PROJECT SPONSORS agree to review all draft reports and to provide comments within 21 calendar days after the draft reports have been provided by DISTRICT to PROJECT SPONSORS. PROJECT SPONSORS also agree to evaluate the alternatives presented in the alternatives analysis report, to select an alternative, and to notify DISTRICT of their decision(s) within 30 calendar days after the alternatives analysis report is provided to PROJECT SPONSORS by DISTRICT. This PROJECT will produce a final planning study report containing recommendations for drainage, flood control and stormwater management infrastructure and practices. PROJECT SPONSORS agree to refer to these recommendations whenever planning future drainage and flood control efforts, reviewing land development, or designing and constructing infrastructure covered by this report. PROJECT SPONSORS further agree to notify DISTRICT when the recommendations in the final planning study report are not followed such that the consequences may be evaluated.
15. **AMENDMENTS**
This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

16. **SEVERABILITY**
If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

17. **APPLICABLE LAWS**
This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Jurisdiction for any and all legal actions regarding this Agreement shall be in the State of Colorado and venue for the same shall lie in the County where the 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 PROJECT SPONSOR’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 PROJECT SPONSOR as needed and appropriate.

23. **GOVERNMENTAL IMMUNITIES**
The PARTIES hereto intend that nothing herein shall be deemed or construed as a waiver by any PARTY of any rights, limitations, immunities or protections afforded to them under the Colorado
Governmental Immunity Act (Section 24-10-1-1, C.R.S., et seq.) as now or hereafter amended or otherwise available at law or equity.

24. **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 on the basis of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability and further agrees to insert the foregoing provision in all subcontracts hereunder.

25. **APPROPRIATIONS**

Notwithstanding any other term, condition, or provision herein, each and every obligation of PROJECT SPONSORS 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 each PROJECT SPONSOR and/or DISTRICT.

26. **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 PROJECT SPONSORS or DISTRICT receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

27. **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: "The Consultant or Contractor shall not and by signing this Agreement certifies that it does not knowingly employ or contract with an illegal alien to perform work under this Agreement. Consultant or Contractor shall not enter into a subcontract with a subcontractor that fails to certify to the Consultant or Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services. Consultant or Contractor affirms that they have verified through participation in the Colorado Employment Verification program established pursuant to 8-17.5-102 (5)(c) C.R.S. or the Electronic Employment Verification Program administered jointly by the United States Department of Homeland Security and the Social Security Administration that Consultant or Contractor does not employ illegal aliens. Consultant or Contractor is prohibited from using these procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed. In the event that the Consultant or Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Consultant or Contractor shall be required to:
A. Notify the subcontractor and PARTIES within three days that the Consultant or Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

B. Terminate the subcontract with the subcontractor if within three days of receiving the notice required the Subcontractor does not stop employing or contracting with the illegal alien; except that the Consultant or Contractor shall not terminate the contract with the Subcontractor if during such three days the Subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Consultant or Contractor is required under this Agreement to comply with any reasonable request by the Colorado Department of Labor and Employment (DEPARTMENT) made in the course of an investigation DEPARTMENT is undertaking pursuant to its legal authority. Violation of this section of this Agreement shall constitute a breach of this Agreement and may result in termination by PARTIES. Consultant or Contractor shall be liable to PARTIES for actual and consequential damages to PARTIES resulting from such breach pursuant to §8-17.5-101(3) C.R.S. PARTIES shall also report any such breach to the Office of the Secretary of State. Consultant or Contractor acknowledges that DEPARTMENT may investigate whether Consultant or Contractor is complying with the provision of the Agreement. This may include on-site inspections and the review of documentation that proves the citizenship of any person performing work under this Agreement and any other reasonable steps necessary to determine compliance with the provisions of this section."

28. EXECUTION IN COUNTERPARTS
This Agreement shall be executed by PARTIES in counterparts and only upon execution of the responsible counterparts by everyone listed herein shall this Agreement be treated as executed by PARTIES.

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

URBAN DRAINAGE AND FLOOD CONTROL DISTRICT

(SEAL) By________________________

ATTEST: Title_ Executive Director________________________

________________________________________________________

________________________
ATTEST:

Patti K. Lowell, City Clerk

Joyce Thomas, Mayor

APPROVED AS TO FORM:

CITY OF FEDERAL HEIGHTS, COLORADO

CITY OF THORNTON, COLORADO

Jack Ethredge, City Manager

ATTEST:

Nancy Vincent, City Clerk

Margaret Emerich, City Attorney

Assistant City Attorney
AGREEMENT REGARDING FUNDING OF MAJOR DRAINAGEWAY PLANNING AND FLOOD HAZARD AREA DELINEATION FOR NIVER CREEK AND TRIBUTARIES

Agreement No. 14-05.03

EXHIBIT A
NIVER CREEK
Major Drainageway Plan and FHAD
May 2014
COUNCIL COMMUNICATION

Meeting Date: July 8, 2014
Agenda Item: 8C
Agenda Location: Consent Calendar
Work Plan #: MAC
Legal Review: __ 1st Reading __ 2nd Reading

Subject: A resolution authorizing the City of Thornton to enter into an Utility Relocation Agreement with the Regional Transportation District for the North Metro Rail Line.

Recommended by: Bud Elliot
Approved by: Jack Ethridge
Presenter(s): Bud Elliot, Deputy City Manager - Infrastructure

SYNOPSIS:

This Utility Relocation Agreement ("Agreement") provides for the scheduling and timely performance of Utility Relocations necessitated by Regional Transportation District's ("RTD") implementation of the North Metro Rail Line Project and prescribes the process for determining, among other things, the Party responsible for the cost of relocation.

RECOMMENDATION:

Staff recommends Alternative No. 1, approval of the Agreement, in order to establish the understanding between the parties related to the relocation of City Utilities required for the construction of the North Metro Rail Line.

BUDGET/STAFF IMPLICATIONS:

This Agreement does not commit any present funding by either party and is subject to future budgeting, authorization and appropriation processes, as applicable, and is to be implemented through a work-order process.

Each relocation for the project will be implemented by a work order to be negotiated and agreed by the parties and which shall serve as the documentation binding the parties as to responsibility for costs and performance of utility work.

ALTERNATIVES:

1. Approve the Agreement in order to establish the understanding between the parties related to the relocation of City utilities required for the construction of the North Metro Rail Line. The Agreement will provide prompt performance of such utility relocation work within an adopted plan schedule and will reduce delays and costs of construction for both RTD and the City.

2. Do not approve the Agreement, which could create project delays and increase cost of construction for both RTD and the City.
BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY):

On December 3, 2013, City Council approved a resolution approving an Intergovernmental Agreement by and between the City of Thornton and RTD, regarding the rights and responsibilities of each party associated with the construction of the North Metro Rail Line within the City's boundaries.

The Agreement presented here further defines the coordination procedures with RTD for City-owned utilities. As defined in Paragraph 6.2.2 of the IGA, the cost of relocation shall be presumed to be borne by RTD except in the following circumstances, in which cases, cost of relocation shall be borne by the City of Thornton ("Owner").

i) where the Utility is located in RTD right-of-way or other RTD property pursuant to an Operating Rights Agreement held by, acquired by, or assigned to RTD that is revocable or requires Owner to pay the cost of relocation;

ii) where the Utility is located in project right-of-way or other RTD property, but Owner can provide no Operating Rights Agreement or competent Documentary Evidence of its right to operate Utilities in the location in question;

iii) where the Utility is located in property not owned by Owner pursuant to an Operating Rights Agreement that is revocable or requires Owner to relocate at Owner's cost and the holder of such Operating Rights Agreement exercises its rights in accordance with the Operating Rights Agreement; or

iv) where federal, state or local law requires that Owner pay the cost of relocation.

RTD acquired all Operating Rights Agreements from Union Pacific when they purchased the right-of-way in 2009. As design progresses, staff will learn which, if any, City-owned utilities need to be relocated.
RESOLUTION

A RESOLUTION AUTHORIZING THE CITY OF THORNTON TO ENTER INTO AN UTILITY RELOCATION AGREEMENT WITH THE REGIONAL TRANSPORTATION DISTRICT FOR THE NORTH METRO RAIL LINE.

WHEREAS, the City of Thornton ("City") and the Regional Transportation District ("RTD") desire to enter into an Utility Relocation Agreement ("Agreement"), hereinafter jointly referred to as the "Contract", and made a part hereof by this reference; and

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

WHEREAS, the Thornton City Council, pursuant to Section 4.18 of the Thornton City Charter, may by resolution enter into agreements with other governmental entities; and

WHEREAS, RTD is authorized under C.R.S. § 32-9-101, et seq. to develop, maintain and operate a mass transportation system for the benefit of the inhabitants of the district; and

WHEREAS, under C.R.S. § 32-9-119(e) RTD is authorized to enter into any contract or agreement not inconsistent with its enabling act; and

WHEREAS, RTD is authorized to implement a multimodal public transportation expansion plan ("FasTracks Plan") that was adopted by the RTD Board of Directors ("Board"), approved by voters on November 2, 2004, and approved by the Denver Regional Council of Governments, as per the requirements of C.R.S. § 32-9-107.7; and

WHEREAS, RTD proposes to construct certain projects identified in the FasTracks Plan, which will require certain utility relocation work; and

WHEREAS, increased coordination between RTD and the City and prompt performance of such utility relocation work within an adopted plan schedule is in the public interest and will reduce delays and costs of construction for both RTD and Owner; and

WHEREAS, to accomplish these purposes, RTD and the City now desire to enter into this Agreement, which is one of the fixed guideway corridor utility relocation agreements contemplated by C.R.S. § 32-9-119.1; and

WHEREAS, this Agreement does not commit any present funding by either Party and is subject to future budgeting, authorization and appropriation processes, as applicable, and is to be implemented through a work-order process.
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. That the Agreement between the City of Thornton and RTD pertaining to the project, a copy of which is attached hereto and incorporated herein by reference, is hereby approved.

2. That the City Manager is hereby authorized to execute and the City Clerk to attest this agreement in substantially the same form as attached, and any amendments thereto.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Thornton, Colorado, on _________________, 2014.

CITY OF THORNTON, COLORADO

________________________________________
Heidi K. Williams, Mayor

ATTEST:

________________________________________
Nancy A. Vincent, City Clerk
RTD FASTRACKS
UTILITY RELOCATION AGREEMENT
FOR
THE NORTH METRO RAIL LINE

This UTILITY RELOCATION AGREEMENT ("URA") is made and entered into, effective as of the date of RTD's signature (the "Effective Date"), by and between the Regional Transportation District, a political subdivision of the State of Colorado organized pursuant to the Regional Transportation District Act, C.R.S. § 32-9-101, et seq., ("RTD" or "District") and City of Thornton, a municipal corporation of the State of Colorado ("Owner"). RTD and Owner may hereinafter be referred to collectively as "Parties" or individually as "Party."

RECITALS

WHEREAS, RTD is authorized under C.R.S. § 32-9-101, et seq. to develop, maintain and operate a mass transportation system for the benefit of the inhabitants of the district;

WHEREAS, under C.R.S. § 32-9-119(e) RTD is authorized to enter into any contract or agreement not inconsistent with its enabling act;

WHEREAS, RTD is authorized to implement a multimodal public transportation expansion plan ("FasTracks Plan") that was adopted by the RTD Board of Directors ("Board"), approved by voters on November 2, 2004, and approved by the Denver Regional Council of Governments, as per the requirements of C.R.S. § 32-9-107.7;

WHEREAS, RTD proposes to construct certain of the projects identified in the FasTracks Plan, as more particularly described below, which will require certain utility relocation work;

WHEREAS, increased coordination between RTD and Owner and prompt performance of such utility relocation work within an adopted plan schedule is in the public interest and will reduce delays and costs of construction for both RTD and Owner;

WHEREAS, to accomplish these purposes, RTD and Owner now desire to enter into this URA, which is one of the fixed guideway corridor utility relocation agreements contemplated by C.R.S. § 32-9-119.1; and

WHEREAS, this URA does not commit any present funding by either Party and is subject to future budgeting, authorization and appropriation processes, as applicable, and is to be implemented through a work-order process.

NOW THEREFORE, the Parties hereto agree as follows:
AGREEMENTS

1) DEFINITIONS. Unless the context otherwise requires, initially capitalized terms shall have the meanings prescribed to them:

Abandonment means (i) the relinquishment by Owner of all right, title, claim and possession of a Utility and (ii) the Utility Work, as governed by Owner, RTD, and industry procedures, that is necessary to retire a Utility from service but not physically remove the Utility from its installed location.

Betterment means the upgrading of a Utility being Relocated that is not attributable to construction of the Project (defined below) and is made solely for the benefit of and at the election of Owner. Without limiting the generality of the foregoing, none of the following will result in a “Betterment” for the purpose of this URA, irrespective of whether the applicable Utility Work results in a Utility operating at an increased capacity: (a) the use of new materials or (b) a technological improvement which permits Owner to achieve increases in capacity, in each case so long as costs are equal to or less than the costs of a ‘like-for-like’ replacement or Relocation or (c) compliance with current, written Owner standards as of the Effective Date in the performance of the Relocation; provided, however, that Owner also adheres to such standards.

Buy America Requirements means the provisions of the Buy America Acts applicable to Federally funded projects incorporated at 49 USC 5323(j) and 49 C.F.R. Part 661 (for Federal Transit Administration (FTA) funding) and 23 USC 313 and 23 C.F.R. § 635.410 (for Department of Transportation (DOT) funding), which provide, inter alia, that Federal funds may not be obligated unless steel, iron, and manufactured products permanently incorporated into FTA- or DOT-funded projects are produced in the United States, unless a waiver has been granted by the Secretary of Transportation or the product is subject to a general waiver.

Constructing Party means the Party designated on the Work Order as being responsible for construction of a Relocation.

Construction Staking has the meaning given to it in Article 13(b).

Contractor(s) means the contractors, consultants, and subcontractors, whether hired by RTD or Owner, undertaking the design or construction of a Relocation, including the RTD Project Contractor(s).

Cost of Relocation means the entire amount to be paid for Utility Work that is properly attributable to the Relocation after deducting from that amount the cost of any Incidental Utility Work, Betterments, Excluded Environmental Work, Depreciation Value, and/or Salvage Value, as applicable and if and to the extent set forth in a fully executed Work Order.

Depreciation Value means the amount of credit to the Project required for the accrued depreciation of a Utility based upon the ratio between the period of actual length of service and total life expectancy applied to the original cost. For the purposes of
Depreciation Value, “Utility” shall not be construed to include a segment of Owner’s service, distribution and/or transmission lines.

*Designing Party* means the Party designated on the Work Order as being responsible for design of Relocation.

*Discovery* means the physical discovery of an undocumented utility communicated by RTD or its contractors, agents, or employees verbally or in writing to Owner’s designated Party representative identified in Article 18, or if no representative has been designated, then to Owner’s chief engineer or equivalent.

*Documentary Evidence* means all documentation, including without limitation, photographs, maps, or Owner’s records, showing installation, maintenance or operation of facilities by Owner or its predecessors in interest that is provided by Owner to support Owner claims of rights by prescription, adverse possession or other legal theory established by use.

*Environmental Laws* means all federal, state, county, municipal, local and other statutes, laws, ordinances, and regulations that relate to or deal with human health and the environment, as may be amended from time to time, and which govern handling of materials necessary for or generated by Utility Work and/or mandate removal of materials as a result of conditions discovered at the Utility site.

*Environmental Work* means tasks, duties and obligations necessary to comply with Environmental Laws.

*Excluded Environmental Work* has the meaning prescribed to it in Article 7(d)(iii).

*Force Majeure* means fire; explosion; action of the elements; strike; interruption of transportation; rationing; shortage of labor, equipment or materials; court action; illegality; unusually severe weather; act of God; act of war; terrorism; or any other cause that is beyond the control of the Party performing Utility Work on a Relocation (including the failure of the other Party (including its Contractors), a relevant permitting authority, or any other third-party contractor, to perform any task that is prerequisite to the Party claiming Force Majeure timely performing under this URA) so long as that cause could not have been prevented by that Party while exercising reasonable diligence.

*Hazardous Materials* means petroleum products and fractions thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls, medical waste, radioactive materials, solid waste, and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, substances and wastes listed or identified in, or regulated by all applicable Environmental Laws, and any excavated soil, debris, or groundwater that is contaminated with such materials.

*Incidental Utility Work* means (a) verification by survey, potholing or otherwise that a Utility is, or is not, in conflict with the Project; provision of survey coordinate data and field surveys; and Construction Staking performed by RTD in accordance with Article 13(b) and (b) tasks performed by any Party that (i) are duplicative of Utility Work undertaken by
the Designing or Constructing Party’s Contractors (such as design review where the Designing Party’s Contractor has created the design), including without limitation, each of the items referenced in (ii); or (ii) are staff or consultant time expended on: exchange and review of documentation with respect to identifying Utilities or unidentified utilities; meetings, whether internal or with the other Party or other affected utility owners, jurisdictions, federal and state agencies, organizations or special districts or other affected third parties; procurement of and coordination with Contractors; coordination and interfacing of Owner’s Relocation schedule with Project design and construction schedules; cooperation with one another’s staff or Contractors or with other Project stakeholders (including other affected utility owners, jurisdictions, federal and state agencies, organizations or special districts); preparation, negotiation and execution of Work Orders and Work Order exhibits; exchange and review of documentation with respect to prescriptive rights under Article 7(a) and with respect to property acquisitions to be accomplished by RTD under Article 8(c); review and acceptance of Relocation Plans; and construction inspection and acceptance.

*Operating Rights Agreement* means any license, permit, lease, easement, franchise or other use agreement issued by a party having jurisdiction over or ownership of the location in question and pursuant to which Owner operates its facilities in real property not owned in fee by Owner.

*Permission* means any permission, including without limitation, temporary construction permissions, construction permits, regulatory permission, and/or local agency utility permit that may be necessary to construct, operate, and maintain Owner’s utility facilities, including any appurtenances thereto, in any particular location.

*Project* means any portion of the North Metro Rail Line, to the extent that such portion of the Project is being constructed by RTD.

*Project Commencement* means the commencement of design, construction or design/build activities on the Project by an RTD Contractor.

*Project Plans* means the detailed maps, drawings, plans, and profiles of the Project supplied to Owner by RTD.

*Project Right-of-Way or Project ROW* means the real property (which term is inclusive of all estates and interests in real property, including Public Lands, but exclusive of temporary construction permissions) owned or controlled by RTD that is necessary for operation of the Project after the Project has been constructed.

*Project Site* means the land, spaces and surfaces, including Project ROW, that are owned by RTD or controlled by RTD through temporary construction easements, licenses, permits or similar land rights, whether held by RTD or its Contractors.

*Protection in Place or Protect in Place* means protective measures to be taken by RTD during construction of the Project that are necessary to ensure the safe operation and structural integrity of a Utility that is not in conflict with the Project and that will not be removed or transferred to another location, including without limitation, Construction
Staking to be performed by RTD in accordance with Article 13(b), installing temporary steel plating, shoring, and installing temporary physical barriers.

*Public Lands* means, solely for purposes of this URA, real property dedicated to or created as public right-of-way or dedicated as a park and/or real property owned in fee by the United States or the State of Colorado, including any local government thereof.

*Relocate or Relocation* means the adjustment of a Utility that is necessary for the continuous operation of Utility service, Project economy, sequencing of Project construction, or to bring the Utility into compatibility with the implementation of the Project, including without limitation: Removal and reinstallation, including necessary temporary facilities; transfer or modification of location (including raising or lowering the Utility in its existing location); acquiring necessary right-of-way at a new location; moving, rearranging, or changing the type of Utility (exclusive of Betterments); Abandonment; installing permanent steel plating or concrete slabs; encasement of the Utility; temporarily de-energizing power lines; installing permanent physical barriers; and construction of a replacement utility that is functionally equivalent.

*Relocation Plans* means the preliminary and final Utility Relocation design plans and construction documents.

*Relocation Standards* means the written design, construction or operating standards, procedures, and criteria in effect as of the execution date of the Work Order that are utilized by Owner, RTD or third parties impacted by or having jurisdiction over the Relocation (e.g., Colorado Department of Transportation, the municipality in which the Relocation will occur, the Colorado Public Utilities Commission and any affected railroad).

*Removal* means the removal of Utility materials, including the demolishing, dismantling, removing, transporting, or otherwise disposing of Utility materials and cleaning up to leave the Relocation site in a neat and presentable condition, all in accordance with federal, state, and local law.

*Responsible Party* means the Party responsible for the Cost of Relocation.

*RTD Project Contractor* means the organization hired by RTD to perform the construction of the Project.

*Salvage Value* means the amount received from the sale of Utility material that has been removed or the amount at which the recovered material is charged to Owner’s accounts if retained by Owner for use, in accordance with 23 C.F.R. 645.

*Utility or Utilities* means a facility or facilities, including necessary appurtenances, owned and/or operated by Owner that has been identified as potentially posing a conflict with the implementation of the Project. Utility shall also refer to any such facility during and after Relocation. Notwithstanding the foregoing the term “Utilities” shall specifically exclude stormwater and irrigation facilities.
Utility Work means tasks, obligations and duties, exclusive of Incidental Utility Work and Excluded Environmental Work, required to either accomplish Relocation or confirm that no Relocation is required for a Utility, whether performed by RTD or Owner, including:

a) design of the Relocation, including the creation of Relocation Plans;

b) construction of the Relocation, including labor, materials and equipment procurement, temporary Relocations, and Relocation of existing service lines connecting to any Utility, regardless of the ownership of such service lines or of the property served by such service lines; and

c) activities undertaken to effectuate the Relocation, hereinafter collectively referred to as “Utility Coordination,” including without limitation:

   i) verification by survey, potholing or otherwise that a Utility is, or is not, in conflict with the Project;

   ii) Construction Staking by Owner off of the Project Site, subject to Article 13(b);

   iii) provision of survey coordinate data and field surveys for the construction of a Relocation;

   iv) acquisition of Permissions and property interests;

   v) public information and traffic control;

   vi) resurfacing and restriping of streets and reconstruction of curb and gutter and sidewalks as may be required by any relevant authority;

   vii) development of and delivery to the non-Constructing Party of as-builts (or, in the alternative, drawings marked to show changes in the field) showing each Relocation that will remain within Project ROW; and

   viii) quality control activities performed to ensure and document that Utility Work is in accord with Relocation Plans, including, without limitation, materials handling; construction procedures; calibrations and maintenance of equipment; document control; production process control; and any sampling, testing, and inspection done for these purposes.

Work Order means the document under which all Relocations shall be implemented and the Responsible Party designated, in accordance with Article 10.

2) LIST OF EXHIBITS. The following exhibits are attached hereto and incorporated herein by reference:

Exhibit A  Form of No-Conflict Close-Out Form

Exhibit B  Form of Work Order ("Work Order")

Exhibit C  Form of Design of Relocation Acceptance Letter ("DRAL")
3) SCOPE OF AGREEMENT.

a) This URA provides for the scheduling and timely performance of Relocations necessitated by RTD’s implementation of the Project and prescribes the process for determining, among other things, the Party responsible for the Cost of Relocation. Owner acknowledges and agrees that where a portion of the Project is implemented by a party other than RTD (e.g., Colorado Department of Transportation or Burlington Northern Santa Fe Railway Company), this URA shall not apply to such portion of the Project.

b) This URA does not commit funding by either Party nor bind any Party to responsibility for the cost or performance of any Relocation. Each Relocation for the Project will be implemented by a Work Order to be negotiated and agreed by the Parties and which shall serve as the documentation binding the Parties as to responsibility for costs and performance of Utility Work. Until a Work Order is executed by a Party, that Party is not bound with respect to any matters represented therein, including responsibility for cost or performance of any Utility Work.

c) RTD and/or Owner, as applicable, will ensure that funds have been budgeted, authorized and appropriated for all Utility Work specified on the Work Order for which it is the Responsible Party prior to execution of the Work Order. Neither Party will authorize any Work Order which will cause the cost shown on any Work Order to increase, unless the Responsible Party first makes sufficient funds available for the new Utility Work. Execution of a Work Order by a Party is a representation that it has sufficient funds available for the Utility Work.

d) For each Relocation, RTD will issue Project-specific Work Order that shall be consistent with this URA and that shall identify, among other things, the Parties, the Project, the relevant Utility (by Project-specific identification number and general description) and the Relocation schedule.

4) FEDERAL/STATE/LOCAL REQUIREMENTS.

a) This URA is a fixed guideway corridor utility relocation agreement within the meaning of C.R.S. § 32-9-119.1. The Parties intend that this URA be interpreted in a manner consistent with the legislative declaration set forth in such statute. Further, the provisions of such statute, as may be amended from time to time, are expressly incorporated into this URA and the Parties agree to comply with C.R.S. § 32-9-119.1. However, if and to the extent that any provision of this URA is specifically acknowledged by the Parties to vary from any provision of such statute (including any definitions
contained in C.R.S. § 32-9-103 that are required for construction of such statute), the terms of this URA shall govern.

b) RTD has advised Owner that it may seek reimbursement from agencies of the United States of America for various costs associated with the Project, including certain costs and obligations of RTD with respect to utility relocations. Notwithstanding any provision of this URA that may be to the contrary, all Relocation Plans, Relocation Standards, Cost of Relocation estimates, and billings for Relocations for which RTD is the Responsible Party shall comply with the requirements of 23 C.F.R. 645, as may hereafter be amended, which is incorporated herein by this reference.

c) In the event that Federal funds are received for the Project, in the performance of construction of Utility Relocations for the North Metro Rail Line for which RTD is the Responsible Party and Owner is the Constructing Party, Owner shall comply with, and ensure that its lower tier contractors and subcontractors comply with, Buy America Requirements. Owner shall provide RTD with a certification of compliance with Buy America Requirements in the form attached hereto as Exhibit F. RTD shall have sole discretion as to whether to request a waiver from Buy America Requirements and if such a waiver is to be sought, RTD shall be responsible to request such waivers from the Secretary of Transportation, provided Owner shall provide supporting materials reasonably requested by RTD or the Secretary of Transportation necessary to submit and defend such waiver requests. The provisions of this Article 4(c) shall not apply to Relocations for which Owner’s total construction costs are less than $100,000.1 Relocations of a single Utility that has multiple points of conflict as described in Article 6 shall be treated as one Relocation for purposes of determining whether the $100,000 threshold (as described in the preceding sentence) has been met.

d) The Parties shall at all times in the performance of Utility Work, Incidental Utility Work and Excluded Environmental Work strictly adhere to, and comply with, all other applicable federal and state and local laws and their implementing regulations as each currently exists and may hereafter be amended.

5) COORDINATION AND COOPERATION

a) The Parties each agree to coordinate and cooperate with one another and with their respective Contractors in order to ensure that Utility Work, Incidental Utility Work, and any Excluded Environmental Work are performed promptly, and in close coordination with Project implementation.

b) Owner acknowledges that, except as specifically provided in this URA, RTD may contractually delegate RTD’s obligations under this URA to its Contractors; provided, however, that RTD’s delegation to its Contractors shall not relieve RTD of its duties under this URA or under any statute and RTD may not delegate to its Contractors the obligation to acquire replacement real property interests described in Article 8 of this URA or to collect from or make payments to Owner, as applicable.

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1 See FTA Circular 4220.1F at §3(b) of Part IV; 60 Fed. Reg. 14,178; and 49 C.F.R. 1836(d).
6) RTD shall provide Owner with notice of Project Commencement.

7) IDENTIFICATION OF UTILITIES.

a) RTD shall provide Owner with Project Plans in electronic format at the conclusion of 60% preliminary engineering, conclusion of final design, and at such other times that RTD receives a formal design submittal from its design Contractor. In addition, RTD shall provide Owner, in hard-copy format, those portions of the Project Plans that show the location of Owner’s Utilities. All Project elements shown in the Project Plans, including corridor alignments, station locations and right-of-way plans are subject to receipt of the environmental decision documents and any mitigation measures specified therein. The Parties acknowledge that the provision of Project Plans as contemplated by this URA varies from that required by C.R.S. § 32-9-119.1(6)(a) and that it is the intent of the Parties that this URA provision shall govern the interpretation of this URA. RTD shall provide Owner with written notice of Owner’s affected Utilities for each Project in accordance with C.R.S § 32-9-119.1.

b) Owner and RTD will meet to confirm the conflict status of each of Owner’s Utilities. The Relocation Standards and the applicable Project Plans shall be utilized in determining whether a Utility is in conflict with the Project. If a Utility is confirmed to be in conflict with the applicable Project, RTD and Owner shall coordinate to determine the nature of the Relocation required based upon the Relocation Standards and the applicable Project Plans, and RTD shall update the Utility Matrix to reflect the recommended action and issue a Work Order. If RTD, the RTD Project Contractor and Owner each agree that a Utility is not in conflict with the Project, the RTD Project Contractor and Owner shall execute a document for each such Utility affirming that the Utility is not in conflict (“No Conflict Close-Out Form”), the form of which is attached as Exhibit A.

c) RTD, in coordination and cooperation with Owner, shall identify and track the Relocation status of Owner’s Utilities on a Utility matrix (“Utility Matrix”). Utility Matrices shall be updated by RTD as Utilities are identified and Relocated and will reflect changes, clarifications, corrections or developments with respect to each Utility’s conflict status. Updated Owner-specific Utility Matrices will be provided to Owner. If at any time a Utility Matrix provided to Owner fails to identify Owner utilities that Owner knows or should reasonably know may be in conflict with the Project, Owner shall notify RTD of such unidentified Owner utility and provide all documentation with respect thereto, and the Owner utility will be added to the Utility Matrix. All other utility matrices created by RTD related to the Project will be made available to the Owner through the current file management system.

d) Any Discovery shall be handled in accordance with C.R.S. § 32-9-119.1(6)(d)(III)-(V). Verbal communication of a Discovery shall be followed by written confirmation.

e) Populated Utility Matrices are informational documents utilized for RTD’s Utility tracking purposes only. Information contained in the Utility Matrix is non-binding until reflected on either an executed No-Conflict Close-Out Form or on an executed, mutually-agreed Work Order, which, in conjunction with this URA, serves as the binding documentation governing a Utility’s Relocation status. All information contained in the Utility Matrix is subject to RTD’s receipt and review of documentation related to the Utilities and receipt of any applicable environmental clearance process.
8) COST OF RELOCATION.

a) As soon as is reasonably possible following confirmation that a Utility is in conflict with the Project, the Parties shall, to the extent they have not already done so, exchange all documentation, including Operating Rights Agreements and/or Documentary Evidence, governing the location in question in order to determine the Responsible Party. Each Party shall have an obligation to update and/or supplement all such documentation until the date of execution of the applicable Work Order. If Owner submits Documentary Evidence to RTD, RTD shall have the right to utilize and have considered any additional documentation with respect to the claim that it obtains or has in its possession. The Parties shall mutually agree as to the nature of Owner's rights or, failing such agreement, shall treat the claim as a Dispute under Article 19.

b) The Cost of Relocation shall be presumed to be borne by RTD except in the following circumstances, in which cases, Cost of Relocation shall be borne by Owner:

i) where the Utility is located in Project ROW or other RTD property pursuant to an Operating Rights Agreement held by, acquired by, or assigned to RTD that is revocable or requires Owner to pay the Cost of Relocation;

ii) where the Utility is located in Project ROW or other RTD property but Owner can provide no Operating Rights Agreement or competent Documentary Evidence of its right to operate Utilities in the location in question;

iii) where the Utility is located in property not owned by Owner pursuant to an Operating Rights Agreement that is revocable or requires Owner to relocate at Owner's cost and the holder of such Operating Rights Agreement exercises its rights in accordance with the Operating Rights Agreement; or

iv) where federal, state or local law requires that Owner pay the Cost of Relocation.

c) Notwithstanding anything in this URA which may be interpreted to the contrary, if a Relocation of a Utility is required based upon information, surveys, Project Plans, Relocation Plans, Relocation Standards, Construction Staking or other information which is provided by a Party and the information is incorrect, incomplete or subsequently revised causing additional design or construction of Relocation of the same Utility (or any part thereof), the Cost of Relocation and any additional costs incurred for the second and each subsequent Relocation will be paid by the Party that provided the incorrect information or caused the revisions necessitating the subsequent Relocation unless such information could have been identified as apparently incorrect or discovered as incorrect with minimal investigation by the Party that provided such information. Notwithstanding the foregoing, all record drawings supplied by the Owner shall be field verified by RTD. Environmental Work.

   i) If Hazardous Materials contamination unrelated to Owner's utility facilities is discovered by the Constructing Party in the Project Site, the Constructing Party shall promptly notify the other Party of such Hazardous Materials contamination and, if Owner is the Constructing Party, Owner shall cease all construction of Relocation at the location in question until such time as Environmental Work at that location has been completed. Owner shall not be responsible to conduct or
pay the costs of Environmental Work, except as specifically prescribed in this Article 7(d).

ii) The previous paragraph notwithstanding, the Responsible Party is responsible for the cost of, and the Constructing Party shall perform, any Environmental Work necessitated by the removal of intact Owner Utility materials that contain or are comprised of Hazardous Materials.

iii) In addition, to the extent that any Environmental Work is required to remediate Hazardous Materials contamination caused by (A) the construction, operation, or maintenance of Owner’s Utility in its existing location and/or (B) negligent or willful acts or omissions of Owner or its Contractors in constructing the Relocation (“Excluded Environmental Work”), Owner shall be responsible for the costs of all such Excluded Environmental Work and may be required to undertake such Excluded Environmental Work.

iv) RTD shall extend the deadline for completion of Relocations affected by Hazardous Materials contamination while Environmental Work is undertaken. Owner shall make reasonable efforts to redistribute its Relocation crews to other Relocation sites while unable to perform at any contaminated location.

d) Credits

i) If RTD seeks Depreciation Value credit pursuant to 23 C.F.R. 645 for a Utility Relocation for which RTD is the Responsible Party, Owner shall furnish evidence of the period of actual length of service and total life expectancy of the Utility as well as evidence of the original cost to install the Utility. Based upon the submitted evidence, the Cost of Relocation shown on any Work Order shall reflect the Depreciation Value credit due.

ii) Owner shall furnish RTD with evidence of any Salvage Value received for a Utility Relocation for which RTD is the Responsible Party, as required by 23 C.F.R. 645. Based upon the submitted evidence, the Cost of Relocation shown on the Work Order shall reflect the Salvage Value credit due. Where RTD is also the Constructing Party, salvageable Utility property or material removed during Relocation that is not reused shall become the property of RTD, unless otherwise noted in the Work Order.

e) Where possible, the Cost of Relocation shall be negotiated on a “lump-sum” rather than on an “actual cost” basis. However, no lump-sum arrangement will be entered into for any Relocation if such arrangement would preclude federal reimbursement pursuant to 23 CFR 645. If the Cost of Relocation is negotiated on a lump-sum basis, each Party’s financial obligation (if any) for the Relocation shall be limited to the lump-sum amount expressly stated and itemized in the Work Order issued for that Relocation. If the Cost of Relocation is negotiated on an actual cost basis, the amount shown on the Work Order shall be an estimated cost, which estimate shall not be exceeded without written amendment of the Work Order. Responsibility for the Cost of Relocation shall not bind the Parties until the Work Order is fully executed. Reimbursement, as necessary, is governed by Article 16.

f) Notwithstanding Article 7(b), Protection in Place shall be paid for by RTD. It is understood, however, that Protection in Place shall be limited to actions or temporary improvements during construction of the Project. The installation of a long-term
improvement (e.g., an improvement intended to remain in place during operation of the Project), permanent raising or lowering of the Utility, or the installation of a barrier that will not be removed after construction of the Project is considered a Relocation not Protection in Place. In addition, a Party who would be the Responsible Party in connection with a Relocation that requests an adjustment of Project Plans, such as, by way of example and not limitation, changing the grade in the Project ROW or adjusting the Project bridge’s length, in order to avoid Relocation of a Utility, will be responsible for all costs incurred in connection with adjusting the Project Plans. Such changes and cost allocation shall be documented on a fully executed Work Order.

8) REAL PROPERTY INTERESTS.

a) Utilities Located By Operating Rights Agreement

Any Owner Utilities currently located or anticipated to be located in Project ROW or other RTD property shall be permitted only by an Operating Rights Agreement, which shall have been executed prior to commencement of construction of Relocation. If Owner currently holds an Operating Rights Agreement for Owner’s facilities in Project ROW or other RTD property, the terms and conditions of that Operating Rights Agreement, as may be amended by mutual agreement of the parties thereto, shall continue to govern Owner’s facilities at that location, until that Operating Rights Agreement is terminated. If the Parties reasonably agree, the Operating Rights Agreement assigned to RTD in connection with the conveyance of Project ROW or RTD property shall be converted into an RTD Operating Rights Agreement, provided that both RTD and Owner shall enjoy substantially the same rights and obligations contained in the assigned Operating Rights Agreement.

b) Permission to Perform Utility Work

i) Owner may not Abandon Utilities within Project ROW or other RTD property without RTD’s consent, as evidenced by RTD’s signature on the Work Order. Owner shall not install any new facilities in Project ROW or RTD property without first obtaining an RTD Operating Rights Agreement.

ii) If Owner’s Utilities are located in Project ROW or other RTD property pursuant to an effective Operating Rights Agreement, Owner’s Relocation and permission to enter upon Project ROW or other RTD property to undertake Relocation shall be governed by, and in accordance with, the terms of such Operating Rights Agreement. If the location of the Relocated Utility is materially changed, Owner’s current Operating Rights Agreement shall be amended to reflect the revised location.

iii) If Owner’s Utilities are located in Project ROW or other RTD property without an effective Operating Rights Agreement, Owner shall not commence construction of Relocation on Project ROW or other RTD property without first obtaining an RTD Operating Rights Agreement from RTD.

iv) Notwithstanding (i) through (iii), above, RTD’s signature on a Work Order shall constitute permission for Owner and its employees, agents, and Contractors to enter upon Project ROW or other RTD property for the sole purpose of performing activities necessary to design the Relocation, including without limitation, surveying and potholing, but excluding boring, sampling or other testing, all subject to each of the terms and conditions...
contained in this URA. Permission for Owner or its Contractors to traverse the property of any other property owners or interest-holders is the sole responsibility of Owner.

c) Property Acquisition and Reimbursement

i) The Parties shall use reasonable efforts, including by Protecting In Place, raising or lowering, covering with permanent steel plating or concrete slabs, or encasing, to leave in their existing location any Utilities that are located within Public Lands. Where a Utility is located in Public Lands and must be Relocated out of Public Lands, the Parties shall initially attempt to Relocate into Public Lands. If the Parties cannot so Relocate, replacement property interests or possessory rights, as applicable, shall be acquired in accordance with Article 8(c)(iv).

ii) If Owner’s Utility occupies real property pursuant to fee interest (including a fee interest acquired by adverse possession as mutually agreed pursuant to Article 7(a)) held by Owner (“Owner Property”) and RTD requires Owner Property for Project ROW or Project construction, the Parties shall use reasonable efforts to leave Utilities in their existing location, including by Protecting In Place, raising or lowering in the existing location, covering with permanent steel plating or concrete slabs, or encasing the Utility so that it will not be in conflict with the applicable Project. However, if the Parties cannot avoid Relocation of the Utility from the Owner Property, replacement property interests shall be acquired in accordance with Article 8(c)(iv) hereof and RTD shall reimburse Owner for the Cost of Relocation of all Owner facilities which are required to be Relocated because of RTD’s need to acquire the Owner Property or a portion thereof, including Owner facilities that may be located on adjacent property not owned in fee by Owner. Once the Utility has been Relocated and is in service, Owner shall convey to RTD the Owner Property that is required for the applicable Project. At the election of Owner, RTD shall either reimburse Owner for the value of the Owner Property conveyed to RTD plus any other amounts Owner is entitled to recover under applicable law or shall pay the costs to acquire replacement property interests for Owner.

iii) If Owner’s Utility occupies real property pursuant to a permanent easement (including an easement interest acquired by prescriptive rights as mutually agreed pursuant to Article 7(a)) held by Owner (“Owner Easement”) and RTD requires the Owner Easement for Project ROW or Project construction, the Parties shall use reasonable efforts to leave in their existing location any Utilities that are located within Owner’s Easement, including by Protecting In Place, raising or lowering in the existing location, covering with permanent steel plating or concrete slabs, or encasing the Utility so that it will not be in conflict with the applicable Project. However, if the Parties cannot Protect the Utility in Place or Relocate within the Owner Easement, replacement property interests shall be acquired in accordance with Article 8(c)(iv). RTD shall pay the cost of the replacement property interests in accordance with § 32-119.1(7)(a)(I) – (II), and RTD shall reimburse Owner for the Cost of Relocation of all Owner facilities that are required to be Relocated because of RTD’s need to acquire the Owner Easement or any portion thereof, including Owner facilities that may be located on adjacent property not subject to an Owner Easement. RTD shall be entitled to offset the cost of replacement property interests or the Cost of Relocation by the amount that Owner receives as compensation from any source other than RTD for the transfer of rights in the Owner Easement. If Owner receives compensation for an Owner Easement in connection with the RTD’s acquisition of the Owner Easement or of fee ownership of the property traversed by the Owner Easement.
and, in addition, RTD has paid both the cost of acquisition of replacement property interests and the Cost of Relocation in connection with same Owner Easement, or portion thereof, Owner shall be required to pay the cost of acquisition of replacement property interests to RTD in an amount not to exceed the acquisition cost of replacement property interests paid by RTD.

iv) If it has been determined in accordance with Article 8(c)(i) through (iii) that replacement property interests or possessory rights must be acquired, the Parties shall meet to determine a suitable Relocation location and a schedule and plan to acquire the property interests necessary for the Utility’s Relocation. Owner shall acquire property interests to be acquired in fee or easement and shall replace, amend, update, or extend possessory rights, such as licenses or crossing permits, or interests acquired through prescriptive rights or adverse possession, in each case at RTD’s cost, subject to the terms of this URA. RTD shall have the right to examine and approve the property acquisition transaction contemplated for the new Utility location in order to confirm that a ‘like-for-like’ replacement of property interests or possessory rights is to be acquired. Property interests or possessory rights necessary for any Relocation must be obtained prior to commencement of construction of the Relocation.

v) This URA is not intended to waive Owner’s rights to be paid just compensation in the event that RTD should require Owner Property or Owner Easement for any portion of the Project. If no agreement is reached with respect to any particular Owner Property or Owner Easement needed for the Project, RTD may bring an action to condemn if permitted by, and in accordance with, applicable law, and Owner retains all its rights under applicable law, including without limitation, its rights to bring an action for inverse condemnation.

vi) If necessary, Work Orders shall be revised to reflect the impact of property acquisition on the construction completion date shown on the Work Order. All real property acquired for the Project by RTD, including for Utility Relocations, must be and shall be acquired pursuant to the Uniform Acquisition and Relocation Act, 42 U.S.C.A. § 4601 and applicable right-of-way procedures in 23 C.F.R. 710.203.

9) PERMISSIONS. Owner shall obtain all Permissions for which Owner is required to be the named permittee, including any Operating Rights Agreements not based in fee or easement. The Constructing Party shall obtain all other Permissions. The Parties agree to cooperate with one another in obtaining any Permission and to exchange copies promptly after obtaining any Permission.

10) WORK ORDER PROCESS. Relocations required by the Project shall be undertaken pursuant to a Work Order (“Work Order”), the form of which is attached as Exhibit B. Once a Utility is confirmed to require Relocation and the Parties have agreed upon the Work Order Content (defined below), the Parties shall negotiate a Work Order. For Relocations to be undertaken prior to Project Commencement, the Work Order shall be executed first by Owner and then by RTD, and shall not require the RTD Contractor’s signature. For Work Orders commenced after Project Commencement, the Work Order shall be executed first by Owner, then by the RTD Contractor and finally by RTD. Work Orders shall not be binding upon any Party until fully executed.
a) **Work Order Content.** Work Orders shall identify: the existing and proposed location of the Utility; concise description of Owner’s property interests or Operating Rights Agreements where currently located; the agreed Relocation and detailed scope of work; the Designing Party; the Constructing Party; the Responsible Party; whether Buy America Requirements are applicable to the Relocation; whether reimbursement, if any, is to be made on a lump sum or actual cost basis; where reimbursement is applicable, the negotiated lump-sum or actual not-to-exceed Cost of Relocation; where reimbursement is applicable, Salvage Value, Depreciation Value and the cost of any Betterments, Incremental Costs, temporary Relocations to be paid by RTD, Environmental Work conducted pursuant to Article 7(e)(ii) and/or Excluded Environmental Work; an indication of whether replacement property interests are required for Relocation and the Party responsible for acquisition thereof; where reimbursement is applicable, the estimated actual not-to-exceed cost, if any, to acquire replacement property interests; the schedule for commencement and completion of both design and construction of the Relocation; the most current RTD Project Plans at the Utility location; the Relocation Standards applicable to the Relocation (hard copy or reference); and any other terms and conditions applicable to the Relocation, such as approved service interruptions or negotiated Betterments and payment arrangements therefor, (collectively, “Work Order Content”). The non-Designing Party shall be solely responsible to provide (hard-copy, electronically, or by reference) the Relocation Standards that it requires the Designing Party to apply to the Relocation covered in the Work Order. If Relocation Standards are not so provided, the Designing Party shall not be responsible for the cost of any corrective Utility Work. The construction completion date identified on any fully executed Work Order shall supersede the time limits identified in any written notice previously delivered to Owner by RTD in accordance with C.R.S. § 32-9-119.1.

b) **Service Continuity.** RTD shall not shutdown or temporarily divert Owner’s Utilities unless agreed by Owner and evidenced in detail on the Work Order. Owner shall have sole responsibility to operate any valves and/or switches, as applicable, unless Owner requests otherwise in writing. Subject to Force Majeure, Owner’s Utilities shall otherwise remain fully operational during all phases of Project construction. Except where due to Force Majeure, and without waiving any claims under applicable law that the Constructing Party may have against the Designing Party, the Constructing Party shall be responsible for the actual documented costs and damages incurred by Owner arising out of any unapproved interruption in Owner’s Utility service resulting from performance of Utility Work or Project construction.

c) **Work Order Preparation.** To the extent such documentation has not previously been exchanged, RTD and Owner shall coordinate the exchange of all information necessary for preparation of the Work Orders and shall promptly meet to resolve through good faith negotiation any comments or disagreements with respect to Work Order Content. If the Parties cannot reach agreement on the Work Order Content, the Work Order shall be handled as a Dispute in accordance with Article 19. Once the Parties have reached agreement on the Work Order Content, the Work Order shall be prepared by RTD for execution by Owner. Work Orders may be delivered by e-mail, facsimile, hand delivery, or by certified or registered first class mail. Owner shall respond within 14 calendar days after receipt of the Work Order either by executing the Work Order or providing comments.
d) **Work Order Conclusive.** Once a Work Order is fully executed, that Work Order shall be conclusive as to all matters represented therein. Any material change to the Work Order scope of work and any change that will result in an increase in the time necessary to complete a Relocation or an increase to the Cost of Relocation above the amount authorized on the Work Order must be shown on a revised duly executed Work Order. Executed Work Orders, as they may be revised from time to time, are incorporated into this URA by this reference.

**11) BETTERMENT.**

a) If Owner requests a Betterment, RTD will determine, in its sole discretion, whether Betterment work at any specific location can be accommodated based upon the following considerations: (i) whether the work is compatible with Project work; (ii) whether the work would delay any Project schedule; and (iii) if RTD is the Responsible Party, whether it is feasible to separate the Betterment work from any related Utility Work being performed by the Constructing Party.

b) If RTD agrees to include a Betterment at any specific location and RTD is either the Constructing Party, Responsible Party or both, Owner and RTD (and, after Project Commencement, the RTD Contractor) shall coordinate to determine the price (lump-sum or actual cost) for said Betterment and shall include the cost and terms of the Betterment in a Work Order. All Betterment work, including the cost to RTD for incremental design, shall be at Owner’s sole cost.

c) Where RTD is the Designing or Constructing Party, upon execution of the Work Order, Owner shall deposit the total price of the Betterment work with RTD. Payment for Betterment work shall not be subject to set-off. If the negotiated price is on an actual cost basis, RTD shall notify Owner whenever the cost of such Betterment work reaches 80% of the negotiated price specified for the Betterment on the Work Order. If the actual costs exceed the negotiated price specified for the Betterment on the Work Order, RTD will not proceed unless the increased cost is agreed by Owner on a revised Work Order and paid by Owner to RTD prior to progressing with the work.

**12) DESIGN AND REVIEW OF RELOCATION PLANS.** Relocation Plans shall comply with the Relocation Standards and with the terms of this URA. Completed Relocation Plans shall be submitted to the non-Designing Party for review, who shall review the Relocation Plans solely for conformance with the URA and with the Relocation Standards provided by the non-Designing Party. Approval or rejection of Relocation Plans shall be returned to the Designing Party by no later than 14 calendar days after its submission, unless a different time period is expressly provided in the respective Work Order. The non-Designing Party’s approval of Relocation Plans shall be evidenced by an executed design of relocation acceptance letter in the form of attached as Exhibit C (“DRAL”). All DRALs shall be prepared by RTD, reviewed by Owner and executed by the non-Designing Party. Rejection of Relocation Plans shall be made in writing and shall specify the grounds for rejection as well as suggestions for correcting non-conformance. The revised Relocation Plans shall be re-reviewed and either approved or rejected not later than 7 calendar days after re-submission to the non-Designing Party. RTD’s Contractor shall review Relocation Plans and execute DRALs for RTD. Prior to Project Commencement, RTD shall review Relocation Plans and shall execute DRALs for RTD. After Project Commencement, the RTD Contractor
shall execute DRALs for RTD. The Constructing Party shall not commence construction of Relocation until a DRAL has been executed by the non-Designing Party for that Relocation. RTD shall prepare draft DRALs and submit them for review and approval by Owner prior to preparing and providing final DRALs for execution by the non-Designing Party.

13) CONSTRUCTION OF RELOCATION; INSPECTIONS.

a) After execution of the DRAL, the Constructing Party shall determine whether all Permissions have been obtained and, if necessary, obtain any Permission that has not been obtained. The Constructing Party shall provide notice to the other Party of its anticipated construction of Relocation commencement date.

b) As set forth in this Article 13(b), RTD shall perform construction staking identifying the location to which Owner’s Utilities are to be Relocated (“Construction Staking”) prior to the scheduled date for commencement of construction of Relocation. Such Construction Staking shall be based on Project Plans and the Relocation Plans. RTD shall provide Construction Staking at no cost to Owner (i) within the Project Site, (ii) off the Project Site where RTD is constructing improvements necessary to complete the Project and (iii) in other situations as the Parties may agree in the Work Order.

c) Completed construction of Relocation shall be inspected immediately following completion for conformance with the URA and Relocation Plans; provided that RTD approval of construction of Relocation performed by Owner shall be limited to Utility Work performed within Project ROW or RTD property. The non-Constructing Party’s approval of construction of Relocation shall be evidenced by an executed CRAL, the form of which is attached as Exhibit D. All CRALs shall be prepared by RTD for execution by the non-Constructing Party. If the construction of Relocation is approved, CRALs shall be executed immediately after inspection. Rejection of construction of Relocation shall be made in writing within 24 hours of inspection and shall specify the grounds for rejection as well as suggestions for correcting non-conformance. The revised Relocation shall be re-inspected for conformance with corrective suggestions immediately following corrective work and either approved or rejected after re-inspection. Provided that the non-Constructing Party approves the re-inspected construction of Relocation, CRALs shall be executed upon completion of re-inspection. A non-Constructing Party’s inspection, approval and acceptance of any construction of Relocation performed shall not be construed as a waiver of any claim that the non-Constructing Party may have under applicable law. The RTD Project Contractor shall execute CRALs for RTD. Prior to Project Commencement, RTD shall inspect construction of Relocation and execute CRALs for an on behalf of RTD. After Project Commencement, the RTD Contractor shall inspect construction of Relocation and execute CRALs for and on behalf of RTD. Any change requested to Utility Work that is the subject of an executed CRAL must be shown on a new, duly executed Work Order.

d) If Relocations and Relocation inspections are directly coordinated with Project construction or are undertaken on the Project Site and the potential for conflicting traffic control operations exists, RTD shall perform the required traffic control, regardless of whether the Relocation is performed by RTD or Owner. RTD shall perform Construction Staking on the Project Site for all Relocations. RTD shall perform Construction Staking on the Project Site for all Relocations.
e) The Constructing Party shall provide the non-Constructing Party as-built plans or drawings marked to show changes in the field not later than 90 calendar days after the execution of the respective CRAL.

14) APPROVALS AND ACCEPTANCES. Approvals and acceptances shall not be unreasonably withheld or delayed. If approval or acceptance is withheld, such withholding shall be in writing and shall state with specificity the reason for withholding such approval or acceptance. Every effort shall be made to identify with as much detail as possible what changes are required for approval and acceptance.

15) OWNERSHIP, OPERATION, AND MAINTENANCE OF UTILITIES.

a) If Owner is the Constructing Party, ownership and all responsibilities for operations and maintenance of the Utility shall be Owner’s. If RTD is the Constructing Party, Owner shall assume ownership and all responsibilities for operation and maintenance of the Utility upon execution of the CRAL.

b) If Owner Utilities remain located within Project ROW after all Utility Work has been completed, Owner’s access for maintenance and servicing of the Utilities after rail operations commence shall be allowed exclusively pursuant to and in accordance with the Operating Rights Agreement governing that location.

16) REIMBURSEMENT.

a) The Responsible Party shall be identified on the Work Order. The Designing or Constructing Party (if not the same as the Responsible Party) may invoice the Responsible Party no more than monthly for the Cost of Relocation incurred on or subsequent to the effective date of this URA utilizing the form of invoice attached as Exhibit E. Invoices shall cover all Utility Work performed since the prior invoice submission. The previous sentence notwithstanding, any costs incurred to acquire replacement property interests for Owner’s utilities under this URA must be invoiced separately and must have been identified as a cost on the Work Order.

b) The Responsible Party shall make payment within 60 calendar days of receipt of invoice. If the Responsible Party disputes any portion of the invoice, it may withhold payment for the disputed portion while timely remitting payment on the undisputed portion. All invoices for Utility Work must be submitted not later than one year after execution of the corresponding CRAL for that Utility Work. All invoices submitted to RTD for reimbursement shall be reviewed for compliance with the cost eligibility and reimbursement standards contained in 23 CFR 645.101, et seq.

c) The Responsible Party will ensure that it has budgeted, authorized, and appropriated funds for all Utility Work costs specified in a Work Order. Neither Party will authorize any Work Order or Work Order revision that will cause the lump-sum or estimated not-to-exceed actual cost shown to increase beyond the previously appropriated amounts, unless the Responsible Party appropriates additional funds. Execution of a Work Order or Work Order revision by the Responsible Party is a representation that it has sufficient funds available for the Utility Work identified in the Work Order.
17) DEADLINES AND DELAYS.
a) RTD shall be liable to Owner for actual damages suffered by Owner as a direct result of RTD’s delay in the performance of any Utility Work, except where such delay is caused by Force Majeure. RTD agrees to provide Owner notice of such Force Majeure.

b) Where Owner has elected to perform Utility Work, Owner shall be liable to RTD for actual damages suffered by RTD as a direct result of Owner’s delay in the performance of any Utility Work or as a direct result of Owner’s interference with the performance of Project construction by other contractors, except where such delay or interference is caused by Force Majeure. Owner agrees to provide RTD notice of such Force Majeure.

c) In addition to, and without limiting any rights or remedies available under this URA or otherwise, if Owner has elected to perform the Relocation Utility Work described in a Work Order and Owner fails to complete that Utility Work on or before the deadline established in the applicable Work Order, or if RTD reasonably determines that Owner will be unable to timely complete such Utility Work, RTD shall, after providing Owner 14 calendar days to cure or provide a plan to cure, issue a Dispute Notice in accordance with Article 19. If the Parties are unable to resolve the Dispute, RTD may proceed to court in accordance with C.R.S § 32-9-119.1(5)(b). Owner shall be responsible for damages to RTD in accordance with Article 17(b).

d) In the event of a Dispute, the Parties agree that they will each continue their respective performance as required hereunder, including paying invoices, and that such continuation of efforts and payment of invoices shall not be construed as a waiver of any legal right or power: (a) of any Party under this URA, any Work Order, or any other agreement executed pursuant hereto; or (b) otherwise available pursuant to applicable law.

18) NOTICES; REPRESENTATIVES AND AUTHORITY.
a) Notices. Any and all notices required to be given by RTD or Owner pursuant to this URA must be provided in writing, deliverable by e-mail, facsimile, hand delivery, or by certified or registered first class mail, to the Party representatives identified herein. Notice shall not be deemed given if not provided in the manner prescribed in this Article 18. All notices to RTD shall be provided to the following persons:

Jim Kelley  
RTD Utility Representative  
1560 Broadway, FAS-71  
Denver, Colorado 80202  
Phone: 303-299-6975  
Fax: 303-299-2452  
e-mail: James.Kelley@rtd-denver.com

All notices to Owner shall be provided to the following person:

Bud Elliot, Deputy City Manager - Infrastructure  
City of Thornton Representative  
12451 Washington Street  
Thornton, CO 80241

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b) Party Representatives. For the purpose of this URA, the individuals identified below are hereby-designated representatives of RTD and Owner. Either Party may from time to time designate in writing new or substitute representatives.

FOR RTD:

Pranaya Shrestha
Senior Manager, Program Management
1560 Broadway, FAS-51
Denver, Colorado 80202
Phone: 303-299-2461
Fax: 303-299-8799
e-mail: Pranaya.Shretha@rtd-denver.com

FOR OWNER:

Jim Kaiser
Senior Civil Engineer
12451 Washington Street
Thornton, CO 80241
Phone: 720-977-6266
e-mail: jim.kaiser@cityofthornton.net

c) Authority. Party representatives shall each have the authority to negotiate, approve and execute Work Orders, DRALs, CRALs, Work Order revisions, and, where applicable, No-Conflict Close-Out Forms; review and approve or reject Relocation Plans; inspect and approve or reject construction of Relocation; review invoices for payment; and otherwise act for the Party represented. Either Party may limit the signature authority of its Party representative by submission to the other Party of written notice specifically identifying the extent of and limitations of the Party representative’s authority.

19) DISPUTE RESOLUTION.

a) Dispute Notice. In the event of any dispute, claim, or controversy arising out of or relating to this URA, any Work Order, or any Utility Work involving or otherwise relating to the Project or the Utility Work ("Dispute"), the complaining Party shall provide a notice of Dispute ("Dispute Notice") to the other Party except where the non-complaining Party waives the requirement to receive a Dispute Notice in writing. The Dispute Notice shall describe the facts surrounding the Dispute in sufficient detail to apprise the other Party of the nature of the complaint. The complaining Party may, but will not be required to, aggregate the Dispute with other Disputes into one Dispute Notice.

b) Good Faith Negotiation. RTD and Owner shall attempt to settle all Disputes. Disputes will be initially resolved between the project liaisons. The project liaison for RTD is Jim Kelley, and the project liaison for the Owner is Pete Brezall. If the project liaisons are unable to resolve the dispute, they will document the basis for dispute, either independently or together, and forward such information to senior management in accordance with the following escalation process: (i) RTD’s Senior Manager, Program Management and the City’s FasTracks
Coordinator; (ii) RTD’s Assistant General Manager for Capital Programs and the City’s Deputy City Manager-Infrastructure; and (iii) RTD’s General Manager and the City Manager.

c) Legal Remedies. If RTD and Owner fail to resolve a Dispute in accordance with Article 19(b), either Party may proceed to district court in accordance with C.R.S. § 32-9-119.1(5) and may pursue any other remedies that may be available to it at law or in equity.

20) DAMAGE TO PROPERTY. RTD and Owner shall each require its Contractors, employees and agents to exercise due precaution and care to avoid causing damage, including environmental damage, to any property, including Project ROW or other RTD Property, Owner Property, adjacent property, utilities, adjacent structures, third persons and other third party real property. Owner and RTD shall notify one another of any such damage and any potential claims arising out of such damage.

21) INSURANCE.

a) RTD shall obtain a Rolling Owner Controlled Insurance Program (ROCIP) for the construction phase of each portion of the Project to be constructed by RTD. The ROCIP provides coverage for RTD, the RTD Project Contractor and enrolled subcontractors for: General Liability with limits of liability of no less than $2,000,000 per occurrence and aggregate; Workers Compensation as required by statute; Employers Liability; and an excess or Umbrella policy. RTD shall also procure coverage for Builder’s Risk, Contractor’s Pollution Liability and, if necessary, Railroad Protective Liability, each with limits of liability not less than $1,000,000 per occurrence and aggregate. Owner, its officers and employees shall be named an additional insured on the ROCIP General Liability policy for any construction of Relocation that Owner elects to have RTD perform.

b) By Owner.

i) Whenever Owner is the Constructing Party and it (or its Contractor) will be present on the Project Site, or on any RTD property to carry out Owner’s obligations under this URA, and whether or not a Work Order has been executed, Owner shall maintain (and/or require any Contractors performing activities on behalf of Owner to maintain): (a) Commercial General Liability (Bodily Injury and Property Damage) insurance with limits of liability of not less than $1,000,000 per occurrence and aggregate, including the following coverages (or the equivalent, if in a policy form reasonably acceptable to RTD): i) Contractual Liability to cover liability assumed under this URA and ii) Product and Completed Operations Liability Insurance; (b) automobile liability insurance covering owned, non-owned and hired automobiles in an amount not less than $1,000,000; and (c) Workers’ Compensation insurance as required by law. Owner shall cause RTD, its governing body, and their respective officers, employees and authorized agents to be named as additional insured on the above general liability insurance.

ii) Whenever Owner is the Designing Party of a Relocation to be constructed in or on the Project Site, Owner shall also maintain (and/or cause any Contractors performing design of Relocation to maintain) professional liability coverage for design professionals in a form reasonably acceptable to RTD and with limits of liability not less than $1,000,000 per occurrence and aggregate.
iii) Where Owner or its Contractor is required to obtain insurance under Article 21(b)(i) or (ii), Owner shall cause a certificate (or certificates) evidencing the insurance required to be delivered to RTD as a condition precedent to commencement of Utility Work by Owner and by each other party required to provide such insurance, and shall cause such insurance to be maintained in full force and effect until all such Utility Work is completed. Should any of the described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Owner shall at least annually provide RTD with verification by a properly qualified representative of the insurer that Owner’s and/or its Contractors’ insurance complies with this paragraph and shall cause all other parties required to provide insurance pursuant to this paragraph to do the same. All commercial insurance required to be maintained by Owner’s Contractors shall be issued by a provider with a Best’s A- rating.

iv) Without in any way limiting any applicable indemnification under Article 22, Owner shall have the right to comply with and satisfy any or all of its insurance obligations under this URA in lieu of obtaining the applicable insurance policy(ies) by notifying RTD of Owner’s election to be self-insured as to the applicable insurance coverage. The same coverages and limitations prescribed by Article 21(b) shall apply. If requested by RTD at any time, Owner shall provide RTD with a letter of such self-insurance in a form reasonably acceptable to RTD.

22) INDEMNIFICATION.

Each Party shall require its Contractor(s) to indemnify, save, and hold harmless the other Party, its directors, employees, Contractors, and agents against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the indemnifying Contractor, or its employees, agents, subcontractors, or assignees, and arising out of the terms of this URA or any Work Order executed pursuant hereto to the same extent and limits to which the indemnifying Contractor indemnifies the contracting Party. If Owner performs design or construction of Relocation with force account labor, Owner shall indemnify RTD, its directors, employees, Contractors and agents to the same extent that Owner’s Contractors are required to indemnify RTD under this Article 22. RTD shall not perform any construction activities for Owner Relocations with force account labor.

23) TERMINATION FOR CONVENIENCE.

a) RTD may terminate any Utility Work required by a Work Order at any time that RTD determines that the purposes of the distribution of funds under that Work Order would no longer be served by completion of the Utility Work (“Termination for Convenience”). RTD shall provide Owner written notice of Termination for Convenience, identifying the terminated Work Order by Work Order number and Relocation location, via certified U.S. post. Notice of Termination for Convenience shall be effective on the date that Owner receives notice thereof (“Termination Effective Date”). RTD and Owner shall meet in order to determine whether any further Utility Work is required to be performed in order to maintain Owner’s continuity of operations and the Work Order shall be revised accordingly. In the event of a Termination for Convenience, RTD will reimburse Owner for (i) all Utility Work for which RTD is the Responsible Party that is duly performed by Owner or its Contractors prior to the Termination Effective Date, in accordance with the terms of
this URA, and (ii) Utility Work that is required to be performed in order to maintain Owner's continuity of operations. Further, if Owner is designated the Responsible Party on a Work Order solely due to the exercise of terms included in any franchise agreement governing the location covered by the Work Order and that Work Order is Terminated for Convenience, RTD will reimburse Owner for all Utility Work performed by Owner under the Work Order.

b) Subject to the preceding paragraph, all provisions of this URA that create rights or provide responsibilities for either Party after any Termination for Convenience shall survive such Termination for Convenience.

c) All data, studies, surveys, maps, models, photographs and reports or other materials relating to Utilities or property rights or interests or rights of Owner that are provided to RTD by Owner under this URA shall be returned to Owner.

24) SETTLEMENT OF CLAIMS. Neither Owner nor RTD shall be entitled to reimbursement for any Utility Work covered by this URA, including costs with respect to real property interests (either acquired or relinquished), except as set forth in this URA and in the Work Order. The terms and conditions of this paragraph shall prevail over any statutory, common law, regulatory or administrative provisions governing the subject matter hereof. This URA, including all executed Work Orders, is intended as a full settlement of all claims regarding RTD's and Owner's responsibility for the Cost of Relocations. Except for obligations undertaken by RTD and Owner pursuant to this URA, Owner and RTD each waives, releases, and forever discharges the other Party, its members, officers, directors, agents, employees, successors and assigns from any and all claims for reimbursement, whether known or unknown, which either Party ever had or now has, regarding liability for the cost of the Utility Work necessitated by the Project and identified in the Work Order. This paragraph is intended to address only the issue of responsibility for the Cost of Relocation and does not extend to any tort claims that might arise out of the performance of the Utility Work.

25) NO LIENS. Each Party shall keep the applicable Project Site and any other RTD or Owner property free from any statutory or common law lien arising out of any Utility Work performed by it, materials furnished to it, or obligations incurred by it, its agents, or Contractors.

26) RETENTION OF RECORDS.

a) Each Party shall keep and maintain all books, papers, records, accounting records, files, reports and other material relating to the Utility Work it performs (or has performed) pursuant to this URA for which it has been reimbursed or is entitled to reimbursement by the other Party, including detailed records to support all invoices submitted by each Party, for a period of three years after the date of acceptance of the completed Utility Work. Each Party and any other party or agency providing funding to RTD (including their respective auditors) shall have access to and shall be entitled to audit all such records during normal business hours upon reasonable notice to the Party maintaining such records.

b) RTD and Owner shall mutually agree upon any financial adjustments found necessary by any audit undertaken.
c) Parties shall insert subparagraph (a) into any contracts entered for performance of Utility Work and shall also include in such contracts a clause requiring all Contractors to include subparagraph (a) in any subcontracts or purchase orders.

27) TERM. This URA is effective as of the date of RTD’s signature below and will continue to govern each Project until acceptance by RTD and Owner of all Utility Work shown on the Work Order(s) for the applicable Project and final payment owing from either Party for the applicable Project has been made, whichever is later. Notwithstanding the foregoing, if RTD’s board of directors has not appropriated funds for the Project or a portion of the Project on or before December 31, 2021, this URA shall automatically terminate with respect to that Project or portion thereof, as applicable. Expiration or termination of this URA will not affect any rights and obligations under this URA accrued as of the expiration or termination date or any continuing rights and obligations of the Parties under applicable federal, state or local law or under Articles 15 (Ownership, Operation, and Maintenance of Utilities), 22 (Indemnification), 23 (Termination for Convenience), 25 (No Liens) and 26 (Retention of Records) of this URA.

28) Appropriations. RTD’s obligations under this URA or any renewal shall extend only to monies appropriated for the purpose of this URA by RTD’s board of directors and encumbered for the purposes of this URA. RTD does not by this URA irrevocably pledge present cash reserves for payments in future fiscal years, and this URA is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of RTD.

29) Legal Authority. Each Party warrants that it possesses the legal authority to enter into this URA and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this URA and to be bound to its terms. The person(s) executing this URA on behalf of each Party warrant(s) that such person(s) have full authorization to execute this URA.

30) Severability. If any provision or provisions of this URA shall be held to be invalid, illegal, unenforceable or in conflict with federal or Colorado state law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, unless the deletion of invalid, illegal or unenforceable provision or provisions would result in such a material change as to cause completion of the transactions contemplated herein to be unreasonable.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
In witness whereof, Owner and RTD have executed this URA.

FOR THE REGIONAL TRANSPORTATION DISTRICT:

By: 
Name: Pranaya Shrestha
Title: Senior Manager, Program Management
Date: 4/18/14

Approved as to legal form for RTD:

By: 
Associate General Counsel

CITY OF THORNTON

Jack Ethredge, City Manager

ATTEST:

Nancy A. Vincent, City Clerk

APPROVED AS TO FORM:

Margaret Emerich, City Attorney
FasTracks Project

EXHIBIT A

UTILITY NO-CONFLICT CLOSEOUT FORM

This Utility No-Conflict Closeout Form ("No-Conflict Form") is executed by Owner and the RTD Project Contractor in connection with that FasTracks Project Utility Relocation Agreement ("URA") entered by Owner and RTD. Unless the context clearly otherwise requires, initially capitalized terms shall have the meaning prescribed to them in the URA.

A fully-executed No-Conflict Form indicates the parties’ concurrence that, as of the Project plans current at the date of Owner’s execution hereof, no Relocation is required for Owner’s Utility referenced herein. Owner and the RTD Project Contractor acknowledge that future modifications to the Project may require Relocation of the referenced Utility in accordance with the URA.

<table>
<thead>
<tr>
<th>Owner</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>FasTracks Project</td>
<td></td>
</tr>
<tr>
<td>Utility Identification No.:</td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td></td>
</tr>
<tr>
<td>Comments (attach pages as necessary)</td>
<td></td>
</tr>
</tbody>
</table>

FOR OWNER

By: __________________________ Date: __________________________

Name:
Title:

FOR RTD PROJECT CONTRACTOR

By: __________________________ Date: __________________________

Name:
Title:

If this form is not signed by Owner, Owner shall state below its basis for disagreement with the No-Conflict designation for this Utility:

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

(attach pages as necessary)
EXHIBIT B
FORM OF UTILITY WORK ORDER

Owner: FasTracks
URA No.: __________________ Utility Identification No.: __________________

Work Order No.: __________________ Work Order Revision No.: __________________
Work Breakdown Structure No.: __________________

LOCATION:

DESCRIPTION:

OPERATING RIGHTS:

**DESIGN**

- [ ] No Design Required

<table>
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<tr>
<th>Performing Party</th>
<th>RTD</th>
<th>Owner:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible Party</td>
<td>RTD</td>
<td>Owner:</td>
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</table>

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<th>RTD pays Owner</th>
<th>Lump Sum:</th>
<th>Actual Cost Not to Exceed:</th>
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<tr>
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<td>Actual Cost Not to Exceed:</td>
</tr>
<tr>
<td>RTD pays Contractor</td>
<td>Lump Sum:</td>
<td>Actual Cost Not to Exceed:</td>
</tr>
</tbody>
</table>

Comments

**CONSTRUCTION**

- [ ] No Construction Required

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<tbody>
<tr>
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<td>Actual Cost Not to Exceed:</td>
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<tr>
<td>RTD pays Contractor</td>
<td>Lump Sum:</td>
<td>Actual Cost Not to Exceed:</td>
</tr>
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Comments

**CONSTRUCTION INSPECTION**

- [ ] No Construction Inspection Required

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<tbody>
<tr>
<td>Responsible Party</td>
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<td>Actual Cost Not to Exceed:</td>
</tr>
<tr>
<td>RTD pays Contractor</td>
<td>Lump Sum:</td>
<td>Actual Cost Not to Exceed:</td>
</tr>
</tbody>
</table>

Comments

**PROPERTY ACQUISITION**

- [ ] No Property Acquisition Required

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<th>RTD</th>
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<tbody>
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Comments
SCHEDULE

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<td>Completion Date:</td>
<td>Completion Date:</td>
</tr>
<tr>
<td>Comments:</td>
<td></td>
</tr>
</tbody>
</table>

CHANGE ORDER

If this section is signed by the RTD representative, then this Work Order will function as a Change.

RTD Representative Date

WORK ORDER TERMS AND CONDITIONS

SCOPE OF WORK ORDER. This Work Order is entered into by and among Owner and RTD, and, where applicable, the RTD Project Contractor in order to implement in part the URA identified herein, as the same may be amended from time to time, and which is incorporated herein by this reference. All work undertaken pursuant to this Work Order shall be performed in accordance with the requirements of the URA, which shall govern to the extent of any conflict between its terms and the terms of this Work Order. Relocation Standards specifically identified in the URA are incorporated herein by this reference. Unless otherwise defined herein, all initially capitalized terms and conditions shall have the meaning prescribed to them in the URA.

WORK ORDER ATTACHMENTS. This Work Order and any attachments hereto contain information specific to the Relocation to be performed hereunder. Attached and/or referenced Relocation Standards are incorporated herein by this reference and shall be considered a part of this Work Order. This Work Order governs only the Utility Work specifically identified herein and shall be conclusive as to all matters represented herein.

ORDER OF EXECUTION. This Work Order shall be executed first by Owner, then by the RTD Project Contractor (if applicable) and finally by RTD.

IN WITNESS WHEREOF, RTD, the Owner, and where applicable, the RTD Project Contractor have executed this Work Order, which shall be effective as of the date of the RTD's signature.

Owner:

By:

Print Name:

Title:

Date:

RTD Project Contractor:

By:

Print Name:

Title:

Date:

RTD:

Regional Transportation District

By:

Print Name:

Title:

Date:

EXHIBIT B
## FORM OF UTILITY WORK ORDER (cont.)

**SECTION A**  
**SCOPE**  

**SECTION B**  
**REQUIRED PERMITS**

<table>
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<tr>
<th>Permit Type</th>
<th>Permit Responsibility</th>
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</thead>
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</tbody>
</table>

**SECTION C**  
**LIST OF ATTACHMENTS**

- □ Exhibit 1: Owner Design Sheet
- □ Exhibit 2: RTD Design Sheet
- □ Exhibit 3: Cost Estimate
- □ Exhibit 4: Property Rights
- □ Exhibit 5: Other

**Utility Identification No.**
FasTracks Project

EXHIBIT C
FORM OF DESIGN OF RELOCATION ACCEPTANCE LETTER

THIS DESIGN OF RELOCATION ACCEPTANCE LETTER ("DRAL") is executed by the non-Designing Party in connection with that FasTracks Project Utility Relocation Agreement ("URA"), entered into by the Parties. Execution of this DRAL indicates the non-Designing Party's acceptance and approval of the design of Relocation, as attached to this DRAL, performed and completed by the Designing Party. Unless otherwise defined herein, initially capitalized terms shall have the meaning prescribed to them in the URA.

Owner: ________________________________________________________________

FT Project: ____________________________________________________________

Utility Identification No.: ______________________________________________

Work Order No.: ________________ Work Order Date: ________________

Work Order Rev. No.: ________________ Rev. Date: ________________

Designing Party: _______________________________________________________

Now, therefore, the non-Designing Party executes this DRAL to indicate that it has reviewed the design of Relocation completed by the Designing Party and has found the design of Relocation to have been designed in accordance with the non-Designing Party's Relocation Standards duly provided to the Designing Party:

Non-Designing Party

By: _________________________________________________________________

Name: ______________________________________________________________

Title: ______________________________________________________________

Date: ______________________________________________________________

☐ The non-Designing Party declines execution of this DRAL at this time for the following reasons:

________________________________________________________________________

(attach pages as necessary)

RTD OFFICIAL USE ONLY

☐ The Constructing Party may proceed with construction of the Relocation on the Project Site.

By: _________________________________________________________________

Name: ______________________________________________________________

Title/Company: _______________________________________________________

Date: _______________________________________________________________
FasTracks URA

EXHIBIT D
FORM OF CONSTRUCTION OF RELOCATION ACCEPTANCE LETTER

THIS CONSTRUCTION OF RELOCATION ACCEPTANCE LETTER ("CRAL") is executed by the non-Constructing Party in connection with that FasTracks Project Utility Relocation Agreement ("URA") entered by the Parties. Execution of this CRAL indicates the non-Constructing Party's inspection and acceptance of the construction of Relocation performed and completed by the Constructing Party. Unless otherwise defined herein, initially capitalized terms shall have the meaning prescribed to them in the URA.

The construction of Relocation inspected and accepted by execution hereof is described below:

Owner: ____________________________

FT Project: __________________________

Utility Identification No.: ________________

Work Order No.: ________________ Work Order Date: ________________

WO Revision No.: ________________ WO Revision Date: ________________

Constructing Party: __________________________

Now, therefore, the non-Constructing Party executes this CRAL to indicate that it has inspected the construction of Relocation completed by the Constructing Party and has found the construction of Relocation has been performed in accordance with the Relocation Plans:

FOR NON-CONSTRUCTING PARTY

By: ____________________________

Name: ____________________________
Title/Company: ____________________________
Date: ____________________________

☐ The non-Constructing Party declines execution of this CRAL at this time for the following reasons:

________________________________________

________________________________________

(attach pages as necessary)
### EXHIBIT E
### FORM OF INVOICE

<table>
<thead>
<tr>
<th>Owner:</th>
<th>This Invoice No. ____________________</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attn:</td>
<td>FT Project: ________________________</td>
</tr>
<tr>
<td>Address:</td>
<td>URA No. ________________________</td>
</tr>
<tr>
<td>FEIN #:</td>
<td>Work Order No. ____________________</td>
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</table>

Estimated percentage of work completed under the Work Order:

*Please complete for either Lump Sum or Actual Cost*

<table>
<thead>
<tr>
<th>LUMP SUM</th>
<th>ACTUAL COST</th>
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<tbody>
<tr>
<td>Lump Sum:</td>
<td>Actual Cost (estimated cost not-to-exceed):</td>
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<tr>
<td>$</td>
<td>$</td>
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<tr>
<td>Previously Billed:</td>
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<td>This Invoice:</td>
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<tr>
<td>Remaining:</td>
<td>Remaining:</td>
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</table>

Comments (add pages as necessary):

Reimbursement for replacement property acquisition costs shall be invoiced separately.

I, the undersigned, certify on behalf of Owner that: 1) the payment requested under this invoice is true and correct and complies with the terms of the URA and applicable Work Order; and 2) all attached documentation supporting this invoice comply with 23 CFR 645, including applicable credits for salvage and/or depreciation, if any.

**FOR OWNER**

By: ____________________________  ____________________________

Name: ____________________________

Title: ____________________________

Date: ____________________________

RTD has reviewed and approved the costs identified in this invoice and in the attached pages.

**FOR RTD**

By: ____________________________  ____________________________

Name: ____________________________

Title: ____________________________

Date: ____________________________
EXHIBIT F

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA REQUIREMENTS – FTA FUNDING

[_____________________________________] ("Contractor") hereby certifies that it will meet the requirements of 49 U.S.C. § 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5 in the performance of construction of Utility Relocations performed by Owner and to be reimbursed by RTD pursuant to the URA.

By: ________________________________________

Name of Contractor: ________________________________________

Name and Title of Signatory: ________________________________________

Date: __________________________

Exhibit F to the URA
Buy America Certification
COUNCIL COMMUNICATION

<table>
<thead>
<tr>
<th>Meeting Date:</th>
<th>Agenda Item:</th>
<th>Agenda Location:</th>
<th>Work Plan #:</th>
<th>Legal Review:</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 8, 2014</td>
<td>8H</td>
<td>Consent Calendar</td>
<td>N/A</td>
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</tr>
</tbody>
</table>

Subject: A resolution appointing a member to the Businesses of Thornton Advisory Commission.

Recommended by: Jack Ethredge

Presenter(s): Nancy Vincent, City Clerk

Approved by: Jack Ethredge

Ordinance previously introduced by: 

**SYNOPSIS:**

This resolution appoints Amanda Pedrianes to the Businesses of Thornton Advisory Commission for a four-year term which began March 1, 2014 and will end March 1, 2018.

Ms. Pedrianes is a 13-year resident of the City. She is currently employed as a Manager at All Climate Systems located in Thornton. She is particularly interested in helping Thornton remain a business friendly City and continue to have a growing local economy.

**RECOMMENDATION:**

Staff recommends approval of the Resolution appointing Amanda Pedrianes to the Businesses of Thornton Advisory Commission for a four-year term which began March 1, 2014 and will end March 1, 2018.

**BUDGET/STAFF IMPLICATIONS:**

None

**ALTERNATIVES:**

1. Approve the resolution as recommended.
2. Do not approve the resolution.

**BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY):** (includes previous City Council action)

The Businesses of Thornton Advisory Commission interviewed Ms. Pedrianes on June 11, 2014 and unanimously recommends that she be appointed to the Commission.
RESOLUTION

A RESOLUTION APPOINTING A MEMBER TO THE BUSINESSES OF THORNTON ADVISORY COMMISSION.

WHEREAS, vacancies exist on the Businesses of Thornton Advisory Commission (BTAC); and

WHEREAS, on June 11, 2014, BTAC interviewed Amanda Pedrianes and unanimously recommended that she be appointed to the Commission; and

WHEREAS, City Council has determined that Amanda Pedrianes is highly qualified and will be committed to effectively serving on the Businesses of Thornton Advisory Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

That Amanda Pedrianes is hereby appointed to the Businesses of Thornton Advisory Commission for a four-year term which began March 1, 2014 and will end March 1, 2018.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Thornton, Colorado, on ________________, 2014.

CITY OF THORNTON, COLORADO

______________________________
Heidi K. Williams, Mayor

ATTEST:

______________________________
Nancy A. Vincent, City Clerk
COUNCIL COMMUNICATION

Meeting Date: July 8, 2014  
Agenda Item: 9A  
Agenda Location: Public Hearing  
Work Plan #: N/A  
Legal Review: MAE  
1st Reading  
2nd Reading

Subject: An ordinance approving the rezone of approximately 0.0827 acres and amending the Official Zoning Map for property generally located west of Riverdale Road and north of East 130th Avenue (Gleneagle Estates Subdivision ODP/CSP 1st Amendment).

Recommended by: Jeff Coder  
Approved by: Jack Ethridge  
Presenter(s): Chris Molison, Development Director

SYNOPSIS:

The rezone of approximately 0.0827 acres of land known as Gleneagle Estates Subdivision ODP/CSP 1st Amendment will modify the planning boundaries of a portion of Lot 5A of Gleneagle Estates Subdivision Amendment 1, and a portion of Lot 2B of Gleneagle Estates Subdivision Amendment No. 3 as the applicant is also proposing to re-subdivide the properties. Currently, Lot 5A is zoned Residential Estate (RE), and Lot 2B to the south is zoned Planned Development (PD). Lot 5A is acquiring a small amount of square footage from Lot 2B at the southeast corner of the site, thus resulting in the modifications of the planning boundaries from PD to RE. The applicant has requested the rezone due to the fact that the property owner of Lot 5A landscaped a portion of Lot 2B.

RECOMMENDATION:

Staff recommends Alternative No. 1, approval of the requested zoning for the property because the proposed zoning meets all of the requirements of the Development Code.

BUDGET/STAFF IMPLICATIONS:

None.

ALTERNATIVES:

1. Approve the Zoning Ordinance.
2. Deny the Zoning Ordinance.
3. Approve the Rezone with conditions based upon specific Council direction.

BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY) (includes previous City Council action)

This proposal meets the following Thornton City Code criteria for change in zoning:

Growth and other development factors in the community support changing the zoning.

The applicant has requested the rezone of the planning boundaries between Lot 5A of Gleneagle Estates Amendment 1 and Lot 2B Gleneagle Estates Amendment 3, due to the fact that the property owner of Lot 5A landscaped a portion of Lot 2B.
The applicant has requested the rezone of the planning boundaries between Lot 5A of Gleneagle Estates Amendment 1 and Lot 2B Gleneagle Estates Amendment 3, due to the fact that the property owner of Lot 5A landscaped a portion of Lot 2B.

The change in zoning represents orderly development of the City and there are, or are planned to be, adequate services and infrastructure to support the proposed zoning change and existing uses in the area.

An existing single-family detached home on Lot 5A was constructed in 2007, while Lot 2B is vacant. The applicant, Coenen Homes, plans to submit permits for construction on Lot 2B for single-family detached homes within the Gleneagle Subdivision once the rezone has been approved. Adequate services and infrastructure currently serves the Gleneagle Subdivision to support future development of single-family detached homes.

The change in zoning provides for an appropriate use of the property.

The modifications to the planning boundaries of Gleneagle Subdivision Amendment 1 and Gleneagle Subdivision Amendment 3 are an appropriate zoning application, and will not modify any of the uses currently permitted.

The change in zoning is in substantial conformance with the goals and policies of the Comprehensive Plan and other adopted plans and policies of the City.

The portions of the lots being affected by the rezone are in conformance with the existing Residential Estate (RE), and Gleneagle Estates Planned Development (PD) standards.

The proposed zoning is sensitive to and compatible with the existing and planned use and development of adjacent properties.

The minor modifications to the planning boundaries of the existing Residential Estate (RE) and Planned Development (PD) zoning districts are compatible with the existing and planned uses of the adjacent properties.

**Zoning and Land Use:** The proposed zoning meets or exceeds all standards specified in Chapter 18 of the Thornton City Code, and the Gleneagle Planned Development. This proposal provides an effective complement to the existing and approved development in the area.

**PUBLIC NOTICE AND RESPONSE:**

**Public Notification:** All residents within at least 1,500 feet of this site were sent notice of the public hearing ten days prior to July 8, 2014. A public notice of the hearing was advertised in the Northglenn-Thornton Sentinel on June 26, 2014. Notification of the City Council hearing was posted on the property for ten days prior to the July 8, 2014 public hearing.

**Public Response:** A community meeting was held on June 19, 2014, and no residents attended the meeting.
HISTORY

The Gleneagle Estates Subdivision was annexed on September 9, 1991 as part of Ordinance No. 2109, and zoned R-1, R-1-C, R-3, and C-3.

The property was categorically zoned Single-Family Detached (SFD) on January 25, 1993 by Ordinance 2230.

The properties were rezoned from Single-Family Detached (SFD) to Residential Estates (RE), and a Preliminary Plan to subdivide the property into one-acre single family detached residential lots was approved on January 27, 1997.

The Final Plat for Gleneagle Estates was approved on January 9, 2003.

On May 10, 2005 approximately 30 acres of the Gleneagle Estates Subdivision was rezoned from Residential Estate (RE) to Planned Development (PD) for Phase III. This rezone allowed 40 single-family detached lot size to be restricted to .50 acres rather than the approved RE zone district which restricted the lots’ size to 1 acre. The rezone allowed for a more diversified lot size mix within the development, and Lot 2B of this application was included as part of this rezone.

The Gleneagle Estates Subdivision Amendment No. 1 was approved on November 28, 2005, and the Gleneagle Estates Subdivision Amendment No. 3 was approved on March 19, 2007. These plat amendments reconfigured the lots, streets, and easements within parts of the Gleneagle Estates Subdivision.
GLENEAGLE ESTATES SUBDIVISION
ODP/CSP 1ST AMENDMENT
CASE NO. Z 2014-004
A PART OF GLENEAGLE ESTATES SUBDIVISION, AMENDMENTS NO. 1 AND 3
LOCATED IN THE SE 1/4 OF SECTION 28, TOWNSHIP 1 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL
MERIDIAN, CITY OF THORNTON, COUNTY OF ADAMS, STATE OF COLORADO
SHEET 1 OF 2

LEGAL DESCRIPTION
LOTS 2A, BLOCK 8, GLENEAGLE ESTATES SUBDIVISION, AMENDMENT NO. 3, RECORDED
AT RECEPTION NO. 2007000028852 AND LOT 5, BLOCK 14, GLENEAGLE ESTATES
SUBDIVISION, AMENDMENT NO. 1, RECORDED AT RECEPTION NO. 2004122001288660 IN
THE ADAMS COUNTY CLERK AND RECORDER'S OFFICE, LOCATED IN THE SOUTH-EAST
QUARTER OF SECTION 28, TOWNSHIP 1 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL
MERIDIAN, CITY OF THORNTON, COUNTY OF ADAMS, STATE OF COLORADO.
CONTAINING 68,195 SQUARE FEET OR 1.566 ACRES MORE OR LESS.

PROJECT CONTACTS:
OWNER(S)
LOT 2A, BLOCK 8, GLENEAGLE ESTATES SUBDIVISION, AMENDMENT NO. 3
COHEN HOMES/COHEN LAND COMPANY LLC
2554 COUNTRY CLUB COURT, WESTMINSTER, CO 80234

LOT 5, BLOCK 14, GLENEAGLE ESTATES SUBDIVISION, AMENDMENT NO. 1
aka 8220 EAST 130TH CIRCLE, THORNTON, CO 80602
BRADLEY & KIMBERLY K. HAWPE
LAND SURVEYING:
B&J SURVEYING, INC.
WILLIAM J. GIBBS
6841 S. YOSEMITE STREET, SUITE 100, CENTENNIAL, CO 80112
PHONE: 303.850.0559
FAX: (303) 850-0711
EMAIL: info@bjsurvey.net

LAND USE TABLE
1. PROPOSED LAND USE: SINGLE FAMILY RESIDENTIAL (DETACHED).
2. GROSS AREA OF PROPERTIES IS: 1.565 ACRES OR 68,195 SQUARE FEET.
3. NET AREA OF PROPERTY IS (LOTS): 1.565 ACRES OR 68,195 SQUARE FEET.
4. PD MINIMUM LOT SIZE: 0.5 ACRE (21,780 SQUARE FEET)
RE MINIMUM LOT SIZE: 1.0 ACRE (43,560 SQUARE FEET)
5. NUMBER OF BUILDABLE LOTS: 2
6. GROSS DENSITY: 2 / 68,195 ACRES = 0.03 DU/AC.
7. ZONING
EXISTING ZONE: PD AND RE
SURROUNDING ZONING: RE AND PD

PREPARATION DATE: 3/27/14
1. FIRST SUBMITTAL 3/21/14
2. SECOND SUBMITTAL 3/23/14

6841 South Yosemite Street
Centennial, CO 80112 USA
PHONE: (303) 850-0559
FAX: (303) 850-0711
EMAIL: info@bjsurvey.net
INTRODUCED BY: _________________

AN ORDINANCE APPROVING THE REZONE OF APPROXIMATELY 0.0827 ACRES AND AMENDING THE OFFICIAL ZONING MAP FOR PROPERTY GENERALLY LOCATED WEST OF RIVERDALE ROAD AND NORTH OF EAST 130TH AVENUE (GLENEAGLE ESTATES SUBDIVISION ODP/CSP 1ST AMENDMENT)

WHEREAS, Bradley B. Hawpe and Kimberly K. Hawpe and Coenen Land Company LLC ("Owners") of certain real property ("Property") within the City of Thornton ("City"), described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, an application has been submitted to modify the Residential Estate and Planned Development planning boundaries within the Gleneagle Estates Subdivision; and

WHEREAS, the Owners has submitted to the City an application for consideration of the Gleneagle Estates Subdivision ODP/CSP 1st Amendment; and

WHEREAS, the proposed zoning application is consistent with the goals and desires of the City, provides for orderly growth within the City and provides for a beneficial and efficient use of the Property; and

WHEREAS, the aforesaid zoning application and all supporting documents are hereby incorporated as if fully set forth herein; and

WHEREAS, the application for zoning is a matter of public record in the custody of the City Development Department, and is available for public inspection during business hours of the City; and

WHEREAS, on July 8, 2014, the City Council of the City of Thornton conducted a public hearing on said application, pursuant to the procedural and notice requirements of Chapter 18 of the Thornton City Code, and the Council having considered the evidence presented in support of and in opposition to the application, the applicable zoning, the City’s Comprehensive Plan, and staff recommendations and so having considered the record and given appropriate weight to the evidence.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. That it is found that the Owners and the City have complied with the provisions of Section 18-41 of the Thornton City Code pertaining to Zoning Amendments:
   a. Growth and other development factors in the community support changing the zoning.
b. The change in zoning represents orderly development of the City and there are, or are planned to be, adequate services and infrastructure to support the proposed zoning change and existing uses in the area.

c. The change in zoning provides for an appropriate use of the properties.

d. The change in zoning is in substantial conformance with the goals and policies of the Comprehensive Plan and other adopted plans and policies of the City.

e. The proposed zoning is sensitive to and compatible with the existing and planned use and development of adjacent properties.

3. The Council finds that the application for the rezone and amending the Official Zoning Map has been considered in accordance with the provisions of Chapter 18 of the Thornton City Code.

4. The Gleneagle Estates Subdivision ODP/CSP 1st Amendment is hereby approved with the following condition:

a. Approval of the ODP/CSP 1st Amendment does not waive any additional requirements of the development as established with the Subdivision Plat, Developer's Agreement, or any Development Permits associated with the Properties.

5. This ordinance shall take effect upon final passage.

INTRODUCED, READ, PASSED on first reading, ordered posted in full, and title ordered published by the City Council of the City of Thornton, Colorado, on _________________, 2014.

PASSED AND ADOPTED on second and final reading on _____________. 2014.

CITY OF THORNTON, COLORADO

____________________________
Heidi K. Williams, Mayor

ATTEST:

____________________________
Nancy A. Vincent, City Clerk
THIS ORDINANCE IS ON FILE IN THE CITY CLERK'S OFFICE FOR PUBLIC INSPECTION.

APPROVED AS TO LEGAL FORM:

________________________________________
Margaret Emerich, City Attorney

PUBLICATION:

Posted in six (6) public places after first and second readings.

Published in the Northglenn-Thornton Sentinel after first reading on __________, 2014, and after second and final reading on _____________, 2014.
EXHIBIT A

LOTS 2A, BLOCK 8, GLENEAGLE ESTATES SUBDIVISION, AMENDMENT NO.3, RECORDED AT RECEPTION NO. 2007000028852 AND LOT 5, BLOCK 14, GLENEAGLE ESTATES SUBDIVISION, AMENDMENT NO.1 RECORDED AT RECEPTION NO. 2004122001288660 IN THE ADAMS COUNTY CLERK AND RECORDER'S OFFICE, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 1 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF THORNTON, COUNTY OF ADAMS, STATE OF COLORADO.
COUNCIL COMMUNICATION

Meeting Date: July 8, 2014
Agenda Item: 10A
Agenda Location: Work Plan
Legal Review: MAC

Subject: An ordinance adopting the fourth amendment to the 2014 Budget amending section one of Ordinance 3267, making appropriations for the City of Thornton, Colorado for the fiscal year 2014 for all funds except that appropriations for certain individual projects shall not lapse at year end but continue until the project is completed or cancelled.

Recommended by: Robb Kolstad
Approved by: Mack Ethridge
Presenter(s): Robb Kolstad, Management and Budget Director

SYNOPSIS:

This ordinance is for the fourth amendment to the 2014 Budget and authorizes additional funding for grant funded projects and risk management costs.

RECOMMENDATION:

The 2014 Budget, which authorizes expenditures of $203,455,378, is proposed to increase by $872,460. The amended budget will be $204,327,838. This amendment will accomplish the following:

1. Appropriate $121,682 in the Governmental Capital Fund for additional Community Development Block Grant (CDBG) projects. The 2014 Budget authorized $485,220 in total CDBG funding, $400,000 for projects and $85,220 for administrative costs. The final 2014 CDBG award, $606,902, was higher than anticipated. The additional CDBG funding will cover projects included in the Annual Action Plan approved by City Council in December 2013.

2. Appropriate $387,000 in the Adams County Open Space Fund to recognize a grant awarded by Adams County for the Restrooms at Sports Venues project. The funding will provide for the construction of additional flush toilet restrooms at Northern Lights Ball Fields, which will be built in concurrence with the project at Thornton Sports Complex that was already budgeted.

3. Appropriate $150,000 in the Adams County Open Space Fund to recognize a grant awarded by Adams County. The City received $798,228 from Adams County for the design and construction of trail connections and concrete replacement projects and $648,228 of that grant will reimburse the City for work in progress or already completed. The remaining $150,000 provides additional funding for improvements that were not previously budgeted, including a new trail along the south side of Riverdale Road between Colorado Boulevard and the South Platte River Greenway Trail, repairs along the Signal Ditch Trail, and basketball court replacement at Aspen Park.

4. Appropriate $213,778 in the Risk Management Fund for additional costs related to an enhanced safety program, additional liability coverage, and unanticipated contractual insurance costs. The funding covers the salary and benefit costs for a new contract Risk Management Technician position and reclassification of the Risk Management Director. The funding also covers a security assessment, cyber liability coverage, and unanticipated increase to the worker’s compensation and CIRSA premium.
BUDGET/STAFF IMPLICATIONS:

The source of funding for the additional park and open space improvements comes from Adams County Open Space grant funding. The source of funding for the additional CDBG funding comes from CDBG awards above the anticipated 2014 Budget. The source of funding for the additional Risk Management costs comes from unappropriated fund balance in the Risk Fund.

ALTERNATIVES:

1. Approve the ordinance amending the 2014 Budget.
2. Do not approve the ordinance amending the 2014 Budget.

BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY):

City Council approved Ordinance 3267 making appropriations for the 2014 Budget on September 24, 2013.

City Council approved Ordinance 3284 adopting the first amendment to the 2014 Budget on January 28, 2014; Ordinance 3287 adopting the second amendment to the 2014 Budget on March 18, 2014; and Ordinance 3301 adopting the third amendment to the 2014 Budget on May 27, 2014.
AN ORDINANCE ADOPTING THE FOURTH AMENDMENT TO THE 2014 BUDGET AMENDING SECTION ONE OF ORDINANCE 3267, MAKING APPROPRIATIONS FOR THE CITY OF THORNTON FOR THE FISCAL YEAR 2014 FOR ALL FUNDS EXCEPT THAT APPROPRIATIONS FOR CERTAIN INDIVIDUAL PROJECTS SHALL NOT LAPSE AT YEAR END BUT CONTINUE UNTIL THE PROJECT IS COMPLETED OR CANCELLED.

WHEREAS, the City Council is required to adopt a budget for fiscal year 2014; and

WHEREAS, the City Council has adopted a budget for fiscal year 2014 and desires to amend the budget to appropriate additional funds.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. That Section 1 of Ordinance 3267 is hereby amended as follows:

<table>
<thead>
<tr>
<th></th>
<th>2014 Budget</th>
<th>2014 Amended Budget</th>
<th>Change</th>
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<tr>
<td>General Fund</td>
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<td>Subtotal</td>
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<td>Internal Service Funds</td>
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<td>Risk Management Fund</td>
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<td>Debt Service Fund</td>
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<td>Special Revenue Funds</td>
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<td>Adams County Open Space Fund</td>
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<td>Sewer Fund</td>
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<td>Environmental Services Fund</td>
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<td>Golf Course Fund</td>
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<tr>
<td>Subtotal</td>
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<td>TOTAL ALL FUNDS</td>
<td>$203,455,378</td>
<td>$204,327,838</td>
<td>$872,460</td>
</tr>
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</table>
2. If any portion of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the constitutionality or validity of the remaining portions of this ordinance. City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared unconstitutional or invalid.

3. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

4. The repeal or amendment of any provision of the Code by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

5. This ordinance shall take effect upon final passage.

INTRODUCED, READ, PASSED on first reading, ordered posted in full, and title ordered published by the City Council of the City of Thornton, Colorado, on ________________, 2014.

PASSED AND ADOPTED on second and final reading on ________________, 2014.

CITY OF THORNTON, COLORADO

__________________________________________
Heidi K. Williams, Mayor

ATTEST:

__________________________________________
Nancy A. Vincent, City Clerk
THIS ORDINANCE IS ON FILE IN THE CITY CLERK'S OFFICE FOR PUBLIC INSPECTION.

APPROVED AS TO LEGAL FORM:

________________________________________
Margaret Emerich, City Attorney

PUBLICATION:

Posted in six (6) public places after first and second readings.

Published in the Northglenn-Thornton Sentinel after first reading on _____________, 2014, and after second and final reading on _____________, 2014.
AGENDA
THORNTON DEVELOPMENT AUTHORITY (T.D.A.)
SPECIAL MEETING
July 8, 2014

1. CALL TO ORDER
2. ROLL CALL OF AUTHORITY
3. APPROVAL OF AGENDA
4. AUDIENCE PARTICIPATION

DURING THIS PORTION OF THE MEETING, ANYONE MAY SPEAK ON ANY ITEM ON THE AGENDA. SPEAKING TIME WILL BE LIMITED TO FIVE MINUTES PER INDIVIDUAL/TOPIC WITH A ONE HOUR LIMIT ON THIS SEGMENT OF THE AGENDA. IF YOU WISH TO SPEAK, PLEASE SIGN UP ON THE REGISTER LOCATED IN THE LOBBY OF THE COUNCIL CHAMBERS, PRIOR TO THE MEETING.

5. APPROVAL OF MINUTES - March 18, 2014
6. BUSINESS

A. A resolution approving the first amendment to cross parking agreement among Plaza Las Americas Investment, LLC, a Colorado limited liability company (“PLA”); SFP-E, LLC, an Oregon limited liability company (“SFP”); Thornton Development Authority, a Colorado urban renewal authority (“TDA”); and Washington Box LLC, a Colorado limited liability company (“WB”). [760-BD]

7. ADJOURNMENT

Agenda prepared by Nancy A. Vincent, City Clerk,
for Jack Ethridge, Secretary

CITY OF THORNTON
1. CALL TO ORDER - By Chairperson Heidi K. Williams at 8:43 p.m.

2. ROLL CALL OF AUTHORITY - Those present were: Chairperson Heidi K. Williams, Vice-Chairperson Val Vigil, and Commissioners Jenice “JJ” Dove, Mack Goodman, Jan Kulmann, Beth Martinez Humenik, Eric Montoya, Sam Nizam and Eric Tade.

   STAFF MEMBERS PRESENT - Jack Ethredge, City Manager; Margaret Emerich, City Attorney; Charles Long, Deputy City Manager for Management Services; Jeff Coder, Deputy City Manager for City Development; John Cody, Economic Development Director; Bud Elliot, Deputy City Manager for Infrastructure; Nancy Vincent, City Clerk; and Karren Werft, Deputy City Clerk.

3. APPROVAL OF AGENDA

   MOTION WAS MADE BY VICE-CHAIRPERSON VAL VIGIL AND SECONDED BY COMMISSIONER JENICE “JJ” DOVE TO APPROVE THE AGENDA AS PRESENTED. MOTION PASSED UNANIMOUSLY.

4. AUDIENCE PARTICIPATION

   None


   MOTION WAS MADE BY COMMISSIONER BETH MARTINIEZ HUMENIK AND SECONDED BY COMMISSIONER ERIC MONTOYA TO APPROVE THE MAY 28, 2013, SEPTEMBER 10, 2013, SEPTEMBER 24, 2013, OCTOBER 1, 2013, AND OCTOBER 29, 2013 THORNTON DEVELOPMENT AUTHORITY MINUTES AS PRESENTED. MOTION PASSED UNANIMOUSLY EXCEPT THAT COMMISSIONERS JAN KULMANN AND SAM NIZAM ABSTAINED SINCE THEY WERE NOT ON THE BOARD AT THAT TIME.

6. BUSINESS

   A. 2013 Thornton Development Authority Annual Meeting and Report.

      John Cody, Economic Development Director, presented highlights of the 2013 Annual Report.

7. OTHER MATTERS

   None
8. ADJOURNMENT

MOTION WAS MADE BY VICE-CHAIRPERSON VAL VIGIL AND SECONDED BY COMMISSIONER JENICE “JJ” DOVE TO ADJOURN THE MEETING AT 8:50 P.M. MOTION PASSED UNANIMOUSLY.

Respectfully submitted,

Karren Werft, Deputy City Clerk,
for Jack Ethridge, Secretary

ATTEST:

_________________________________________
Chairperson Heidi K. Williams

Approved at the July 8, 2014, TDA meeting.
**TDA COMMUNICATION**

<table>
<thead>
<tr>
<th>Meeting Date:</th>
<th>Agenda Item:</th>
<th>Agenda Location:</th>
<th>Work Plan #:</th>
<th>Legal Review:</th>
<th>1st Reading</th>
<th>2nd Reading</th>
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<td>July 8, 2014</td>
<td>6A</td>
<td>Business</td>
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Subject: A resolution approving the first amendment to cross parking agreement among Plaza Las Americas Investment, LLC, a Colorado limited liability company ("PLA"); SFP-E, LLC, an Oregon limited liability company ("SFP"); Thornton Development Authority, a Colorado urban renewal authority ("TDA"); and Washington Box LLC, a Colorado limited liability company ("WB").

Recommended by: John Cody
Approved by: Jack Ethridge
Presenter(s): Mark Heller, Redevelopment Administrator

**SYNOPSIS:**

Washington Box-LLC has purchased lot 5A4 of the Northlands Redevelopment Project (the Wal-Mart Neighborhood Grocery project at the corner of Washington Street and 88th Avenue) and will construct a retail location for T-Mobile on the site.

This First Amendment to Cross Parking Agreement would allow the TDA-owned parcel known as “Tract A” to be used by the new purchaser and tenant (Washington Box and T-Mobile) of Lot 5A4 for paved parking and drive areas. This Amendment would be consistent with the intent of the original Cross Parking Agreement and the benefits that Agreement conferred on the former owner of Lot 5A4.

The lots and tracts on the Project are illustrated in Figure 1 on Page 2 of this Communication.

**RECOMMENDATION:**

Staff recommends Alternative #1 that the TDA approve the First Amendment to Cross Parking Agreement in order to facilitate the ongoing redevelopment of the Northland Redevelopment Project.

**BUDGET/STAFF IMPLICATIONS:**

None

**ALTERNATIVES:**

1. Approve the First Amendment to Cross Parking Agreement.
2. Do not approve the First Amendment to Cross Parking Agreement.

**BACKGROUND:**

In July 2007, the Thornton Development Authority entered into a redevelopment and purchase agreement with Plaza Las Americas, LLC for the development of a commercial shopping center at the Northland Redevelopment Project (88th Avenue and Washington Street).

In February 2008, Plaza Las Americas, LLC executed a Declaration of Easements, Covenants, Conditions and Restrictions for the Northland Redevelopment Project site that included a “Minimum Parking Space Allocation.”
In January 2012, as part of a sale of a portion of the redevelopment site to Wal-Mart, Plaza Las Americas, LLC executed the First Amendment to the Declaration of Easements, Covenants, Conditions and Restrictions that put a new and increased "Minimum Parking Space Allocation" requirement on the owners of the remaining undeveloped lots.

As part of negotiation of the sale of one of the remaining undeveloped lots known as Lot 5A3, Plaza Las Americas, LLC requested and obtained approval of a cross parking agreement between them, the purchaser and TDA to allow the purchaser to use the TDA-owned parcel known as Tract A to meet the "Minimum Parking Space Allocation" requirements as defined in the First Amendment to the Declaration of Easements, Covenants, Conditions and Restrictions.

This proposed First Amendment to Cross Parking Agreement is intended to provide similar benefits and parking compliance for the development of lot 5A4 into a T-Mobile retail store.
RESOLUTION

A RESOLUTION APPROVING A FIRST AMENDMENT TO CROSS PARKING AGREEMENT AMONG PLAZA LAS AMERICAS INVESTMENT, LLC, A COLORADO LIMITED LIABILITY COMPANY (“PLA”); SFP-E, LLC, AN OREGON LIMITED LIABILITY COMPANY (“SFP”); THORNTON DEVELOPMENT AUTHORITY, A COLORADO URBAN RENEWAL AUTHORITY (“TDA”); AND WASHINGTON BOX LLC, A COLORADO LIMITED LIABILITY COMPANY (“WB”), (COLLECTIVELY THE “PARTIES”).

WHEREAS, the Northland site is approximately 13.4 acres generally located south of 88th Avenue, north of Sheldon Drive, east of Washington Street, and west of Corona Street within the City of Thornton, excluding the McDonald’s properties; and

WHEREAS, in 1999, the Thornton Development Authority designated the Northland site as a Redevelopment Project Area; and

WHEREAS, PLA, SFP, and TDA entered into a Cross Parking Agreement effective the 12th day of June 2013, and recorded on June 25, 2013, reception number 2013000054350 in the offices of the Adams County Clerk and Recorder; and

WHEREAS, WB is the owner of the parcel of real property located in Adams County, Colorado that is legally described on Exhibit D attached hereto ("Lot 5A4"), which is contiguous to Lot 5A5 and previously owned by PLA ("Lot 5A5, Lot 5A3, Tract A and Lot 5A5, are collectively the “Subject Lots”); and

WHEREAS, the Parties desire to amend the Cross Parking Agreement to among other things, include WB as a Party thereto as owner of Lot 5A4; and

WHEREAS, the TDA believes it is in the best interest of the TDA to enter into this Cross Parking Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE THORNTON DEVELOPMENT AUTHORITY, AS FOLLOWS:

The First Amendment to Cross Parking Agreement ("First Amendment") attached hereto and incorporated herein is hereby approved and the Secretary is hereby authorized and directed to execute, and the City Clerk to attest the First Amendment.
PASSED AND ADOPTED at a special meeting of the Thornton Development Authority of the City of Thornton, Colorado, on ____________, 2014.

THORNTON DEVELOPMENT AUTHORITY

_______________________________
Heidi K. Williams, Chairperson

ATTEST:

_______________________________
Nancy A. Vincent, City Clerk
FIRST AMENDMENT TO CROSS PARKING AGREEMENT

THIS FIRST AMENDMENT TO CROSS PARKING AGREEMENT (this “First Amendment”) is entered into this ___ day of ________________, 2014, among PLAZA LAS AMERICAS INVESTMENT, LLC, a Colorado limited liability company (“PLA”), SFP-E, LLC, an Oregon limited liability company (“SFP”), THORNTON DEVELOPMENT AUTHORITY, a Colorado Urban Renewal Authority (“TDA”), and WASHINGTON BOX LLC (“WB”) a Colorado limited liability company (collectively (the “Parties”)

RECITALS:

A. PLA is the owner of a parcel of real property located in Adams County, Colorado that is legally described on Exhibit A attached hereto as (“Lot 5A5”);

B. SFP is the owner of a parcel of real property located in Adams County, Colorado that is legally described on Exhibit B attached hereto (“Lot 5A3”), which is contiguous to Lot 5A5;

C. TDA is the owner of a parcel of real property located in Adams County, Colorado that is legally described on Exhibit C attached hereto (“Tract A”), which is contiguous to Lot 5A5;

D. WB is the owner of the parcel of real property located in Adams County, Colorado that is legally described on Exhibit D attached hereto (“Lot 5A4”), which is contiguous to Lot 5A5 and previously owned by PLA (“Lot 5A5, Lot 5A3, Tract A and Lot 5A5, are collectively the “Subject Lots”);

E. PLA, SFP, and TDA entered into a Cross Parking Agreement entered into effective the 12th day of June 2013, and recorded on June 25, 2013, reception number 2013000054350 in the offices of the Adams County Clerk and Recorder (“CPA”).

F. The Parties desire to amend the CPA to among other things, include WB as a Party thereto as owner of Lot 5A4.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to amend the CPA as follows:

1. WB, owner of Lot 5A4, is included as a party to the CPA effective as of the effective date of this First Amendment and agrees to be subject to the terms and conditions contained therein.

2. The last sentence of Section 3.0 TDA Consent is deleted in its entirety and replaced with the following:
“The Parties hereto understand that under the terms of the separate voluntary clean-up Agreement, or at its sole discretion, the TDA may remediate soils and/or groundwater under any parking areas over Tract A and nothing in this Agreement will limit the TDA's ability to fulfill any such potential activity.”

3. Paragraph 7.0 Notices is amended to include the following:

   “Washington Box LLC
   496 S. Broadway
   Denver, CO 80209”

4. Exhibit A to the PCA is deleted and replaced with Exhibit A attached hereto.

5. Exhibit D attached hereto is added to the CPA.

6. PLA, SFP, and TDA consent to this First Amendment as required by Section 10.0 of the CPA.

7. The Parties agree that once fully executed, this First Amendment shall be recorded in the offices of the Adams County Clerk and Recorder.

8. All other provisions of the CPA remain in effect and are ratified by the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment effective as of the date first above written.
PLAZA LAS AMERICAS INVESTMENT, LLC
A Colorado limited liability company

By: United Properties Investment, LLC
Its: Manager

By: __________________________
Name: KEVIN KELLEY
Title: __________________________

STATE OF (COLORADO )
COUNTY OF DENVER )

The foregoing instrument was signed before me this 11th day of JUNE, 2014,
by KEVIN KELLEY, the VICE PRESIDENT, of United Properties Investment LLC,
a Minnesota limited liability company, the Manager of Plaza Las Americas Investment LLC, a
Colorado limited liability company, for and on behalf of such limited liability company.

WITNESS my hand and official seal.

My commission expires 1/17/2016.

COURTNEY COLBERT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20094031471
MY COMMISSION EXPIRES JANUARY 17, 2016
SFP-E, LLC
An Oregon limited liability company

By: [Signature]
Name: Cordell J. Parks
Title: Secretary

STATE OF Oregon  
COUNTY OF Deschutes

The foregoing instrument was signed before me this 3rd day of June, 2014
by Cordell J. Parks, the Secretary of SFP-E, LLC, an Oregon limited liability company, on behalf of the limited liability company.

WITNESS my hand and official seal.

My commission expires 1/10/2015.

Notary Public

[Stamp]
THORNTON DEVELOPMENT AUTHORITY

By: __________________________________________
Name: Jack Ethredge
Title: Secretary to TDA

ATTEST:

__________________________________________
Nancy Vincent, City Clerk

APPROVED AS TO FORM:

__________________________________________
MARGARET EMERICH, TDA ATTORNEY

STATE OF __________ )
COUNTY OF __________

The foregoing instrument was signed before me this _______ day of __________, 20__,
by ____________________, the ____________________, of the Thornton Development
Authority, a Colorado Urban Renewal Authority, for and on behalf of such Authority.

WITNESS my hand and official seal.

My commission expires ________________________.

__________________________________________
Notary Public
WASHINGTON BOX LLC
a Colorado limited liability company

By: Drake Developments LLC, a Colorado limited liability company, Manager

By: Drake Real Estate Services, Inc., a Colorado corporation, Manager

By: Jon Hauser, General Manager

STATE OF COLORADO

CITY AND COUNTY OF DENVER

The foregoing instrument was signed before me this 12th day of June, 2014, by Jon Hauser as General Manager of Drake Real Estate Services, Inc., a Colorado corporation, as Manager of Drake Developments LLC, a Colorado limited liability company, as Manager of Washington Box LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires 10/28/16.

JEANNE M. ROONEY
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 1996401833
MY COMMISSION EXPIRES OCTOBER 28, 2016

Notary Public
EXHIBIT A

Legal Description of PLA Lot

Lot 5A5, City View Heights Subdivision, Filing No. 1, Amendment No. 4, County of Adams, State of Colorado.
EXHIBIT B

Legal Description of SFP Lot

Lot 5A3, City View Heights Subdivision, Filing No. 1, Amendment No. 4, County of Adams, State of Colorado.
EXHIBIT C

Legal Description of Tract A

Tract A, City View Heights Subdivision, Filing No. 1, Amendment No. 2, County of Adams, State of Colorado.
EXHIBIT D

Legal Description of WB Lot

Lot 5A4, City View Heights Subdivision, Filing No. 1, Amendment No. 4, County of Adams, State of Colorado.