

AGENDA

CITY COUNCIL MEETING
CITY OF WHEAT RIDGE, COLORADO
7500 WEST 29TH AVENUE, MUNICIPAL BUILDING

October 12, 2015

7:00 p.m.

Individuals with disabilities are encouraged to participate in all public meetings sponsored by the City of Wheat Ridge. Call Heather Geyer, Administrative Services Director, at 303-235-2826 at least one week in advance of a meeting if you are interested in participating and need inclusion assistance.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL OF MEMBERS

APPROVAL OF MINUTES September 28, 2015 and Study Session Notes September 21, 2015

PROCLAMATIONS AND CEREMONIES

Police Department presentation to Police Explorers for skills competition
Wheaties Academy Proclamation

CITIZENS' RIGHT TO SPEAK

- a. Citizens, who wish, may speak on any matter not on the Agenda for a maximum of 3 minutes and sign the Public Comment Roster.
- b. Citizens who wish to speak on Agenda Items, please sign the GENERAL AGENDA ROSTER or appropriate PUBLIC HEARING ROSTER before the item is called to be heard.

APPROVAL OF AGENDA

PUBLIC HEARINGS AND ORDINANCES ON SECOND READING

1. Public Hearing on the proposed 2016 City Budget
2. Council Bill 22-2015 – repealing and reenacting Article II of Chapter 9 and amending Article II of Chapter 17 of the Wheat Ridge Code of Laws to regulate Smoking in Public Places

ORDINANCES ON FIRST READING

3. Council Bill 23-2015 – approving a Zone change from Residential-One (R-1) to Mixed Use-Neighborhood (MU-N) for property located at 10191 W. 38th Avenue (Case No. WZ-15-06/Buck)
4. Council Bill 24-2015 – amending Section 5-38 and Chapter 16 of the Wheat Ridge Code of Laws, to place limits on the hours of private construction activity in the City and providing a remedy for violations of the same

DECISIONS, RESOLUTIONS AND MOTION

5. Resolution No. 41-2015 – adopting the Wadsworth Boulevard Planning and Environmental Linkage Study
6. Resolution No. 43-2015 – approving an Agreement with the Colorado Department of Transportation (CDOT) for the Wadsworth Boulevard Widening Project from 35th Avenue to 48th Avenue
7. Motion to approve payment to Rocky Mountain Recreation, Inc. in the amount of \$50,235.45 for the demolition, site work and installation of new playground equipment in Stites Park
8. Motion to approve payment to Concrete Express, Inc. of Denver, Colorado, in the amount of \$53,386 for the purpose of constructing a parking area at 43rd and Moore Street Trail Head as part of the Clear Creek Trail Construction Project

CITY MANAGER'S MATTERS

CITY ATTORNEY'S MATTERS

ELECTED OFFICIALS' MATTERS

ADJOURNMENT

CITY COUNCIL MINUTES

**CITY OF WHEAT RIDGE, COLORADO
7500 WEST 29TH AVENUE, MUNICIPAL BUILDING**

September 28, 2015

Mayor Jay called the Regular City Council Meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

ROLL CALL OF MEMBERS

Jerry DiTullio	Zachary Urban	Kristi Davis	Bud Starker
Tim Fitzgerald	George Pond	Tracy Langworthy	Genevieve Wooden

Also present: City Clerk, Janelle Shaver; City Attorney, Gerald Dahl; Police Chief Daniel Brennan (sitting in for the City Manager); Community Development Director, Ken Johnstone; other staff and interested citizens.

APPROVAL OF MINUTES OF August 24, 2015 and September 14, 2015

Without objection the minutes of August 24, 2015 and September 14, 2015 were approved as published.

PROCLAMATIONS AND CEREMONIES

CITIZENS' RIGHT TO SPEAK

Thomas Slattery (WR) invited everyone to attend the Election Forum hosted by Wheat Ridge United Neighbors this Wednesday, September 30 at 7pm in City Council Chambers. All candidates that will be appearing on Wheat Ridge ballots will be speaking including those for City races and all the school board races. There will also be speakers for and against Wheat Ridge Question 300, the Library mil levy increase, and state issue BB.

Kim Calomino (WR) In her work with community engagement and residential development she has seen the public and private sectors work together to enhance communities. She believes partnerships with investors and businesses are necessary. She thinks Wheat Ridge has made progress the last ten years in becoming pro-business and forward thinking. She sees passage of Question 300 as sending a message that WR is not open for business and that we will lose opportunities for revenue to our neighbors. She believes it would hurt our ability to expand shopping, dining and employment opportunities - which are all necessary to attract strong, committed households. The

kinds of residents we want to attract will be invested committed partners in our community. He encouraged the Council and citizens to vote no on measure 300.

Tim Rogers (WR) believes initiative 300 is political gridlock spawned by a small group of citizens who haven't shown that damage has been done by the current urban renewal process. He believes if it passes well-thought-out projects serving the majority will be controlled by a small group of voters who don't have the tools to make decisions about large construction projects. ~ He outlined what makes for a good review process by unbiased experts, not voters - one that developers should be able to expect and that the Urban Renewal Authority has the authority to perform. ~ He listed hardships he believes 300 will create for developers and contractors. He thinks it will give other cities a competitive advantage and require citizen motivation and knowledge to choose good projects. ~ He believes the current review process is transparent, and citizens are allowed to participate. He believes the community is being tricked into believing that building a grocery store has ruined the ability of Council, Planning Commission, and the Urban Renewal Authority to forge solutions that will help the long term needs of the City.

Kelly Brooks (WR) is concerns about measure 300. He believes it will damage our ability to attract quality development, strong businesses and revenue. He predicts unintended consequences and doesn't think this shouldn't be in the charter. ~ He doesn't think WR is in high demand for developers. Since the recession ended in 2009 less than a handful of noteworthy commercial developments have located here, and most of them needed financial partnership. He listed a number of projects that will be in jeopardy if 300 passes. He doesn't believe we should tie the hands of City leaders. How we exploit or restrict the TIF mechanism will impact major development for the foreseeable future. He encouraged citizens to vote no on 300.

APPROVAL OF AGENDA

PUBLIC HEARINGS AND ORDINANCES ON SECOND READING

1. Council Bill 20-2015 – approving a zone change from Industrial-Employment (I-E), Commercial-One (C-1) and Agricultural-One (A-1) to Industrial-Employment (I-E) for property located at 4901 Marshall Street

Councilmember Urban introduced Council Bill 20-2015.

This zone change is the first step in the process for redevelopment of this site. All further site plan review and confirmation of compliance will be done by the staff with no additional public hearings required.

Clerk Shaver assigned Ordinance 1582.

Mayor Jay opened the Public Hearing.

Ken Johnstone was sworn in by the Mayor and gave the staff presentation. He entered into the record the contents of the Council packet, the zoning and development code, and the City's Comprehensive Plan.

- Mr. Johnstone described the zoning of neighboring properties, the current zonings on the site, and what is called for in the Comprehensive Plan.
- Much of the site is already zoned I-E, the Comp Plan calls for I-E and surrounding land uses are compatible with I-E.
- I-E allows light manufacturing, storage, warehouse and other industrially related uses. The owner is requesting the entire property be zoned as I-E.

Staff recommends approval because it is consistent with the Comprehensive Plan, it will consolidate disparate zonings, the criteria for rezoning are supported, and the Planning Commission recommends approval.

The applicant was present, but did not speak.

Council questions followed:

Councilmember Starker inquired what the ratio of office to storage would be and if it would be indoor or outdoor storage or both?

- Mr. Johnstone stated that is not part of this application and will be subject to staff review and approval.
- The expectation is a mix of the uses: climate controlled storage, independent one-story storage units, and office-industrial flex space facing Marshall – with flexibility for one or two story buildings for office, manufacturing or warehouse components within multi-tenant units.
- Outdoor storage of things such as boats and RV's is not planned.

Mayor Jay closed the Public Hearing.

Motion by Councilmember Urban to approve Council Bill No. 20-2015 - an ordinance approving a zone change from Industrial-Employment (I-E), Commercial-One (C-1) and Agricultural-One (A-1) to Industrial-Employment (I-E) for property located at 4901 Marshall Street on second reading, and that it take effect 15 days after final publication, for the following reasons:

1. City Council has conducted a proper public hearing meeting all public notice requirements, as required by Section 26-109 of the Code of Laws.
2. The requested zoning has been reviewed by the Planning Commission, which has forwarded its recommendation.
3. The requested rezoning has been found to comply with the "criteria for review" in Section 26-112-E of the Code of Laws.

seconded by Councilmember DiTullio; carried 8-0.

2. Council Bill 21-2015 – An ordinance amending Sections 16-224, 16-225 and 16-226 of the Wheat Ridge Code of Laws, concerning Massage Parlors, to delete references to obsolete State Statutes and clarify Statutory Authority

Councilmember DiTullio introduced Council Bill 21-2015.

Massage Parlors are businesses that provide massage, *excluding* businesses that employ state-licensed massage therapists, training rooms of athletic teams, health care facilities and accredited/approved schools.

This ordinance will delete references to three obsolete state statutes that were repealed as of August 5, 2015. The City will retain its right to license and regulate massage parlors (establishments that employ *non-licensed* massage therapists).

Clerk Shaver assigned Ordinance 1583.

There was no staff presentation.

Mayor Jay opened the Public Hearing.

No one was present to speak.

Mayor Jay closed the Public Hearing

Motion by Councilmember DiTullio to approve Council Bill No. 21-2015 - an ordinance amending Sections 16-224, 16-225 and 16-226 of the Wheat Ridge Code of Laws, concerning Massage Parlors, to delete references to obsolete State Statutes and clarify Statutory Authority, on second reading, and that it take effect fifteen days after final publication; seconded by Councilmember Starker;

Councilmember Urban received clarification from Mr. Dahl that the City currently has no licensed massage parlors. While the state is no longer regulating massage parlors, many cities regulate that type of business the same way they regulate sexually-oriented businesses. Often that serves as a disincentive to locate in those cities. One function of this ordinance will be to provide a tool for the City should that type of business choose to locate in Wheat Ridge. It provides a licensing and enforcement mechanism.

Chief Brennan will be glad to work with any of the councilmembers on this.

Motion carried 8-0.

ORDINANCES ON FIRST READING

3. Council Bill 22-2015 – smoking ordinance repealing and reenacting Article II of Chapter 9 of the Wheat Ridge Code of Laws concerning Smoking in Public Places

Councilmember Wooden introduced Council Bill 22-2015.

This ordinance will bring the City Code into alignment with the Colorado Clear Indoor Air Act (CCIAA) with additions that will:

- Broaden the definition of "smoking" to include vaping and all other means of consumption that release secondhand smoke, vapor or particles into the air
- Prohibit outdoor smoking at City parks, playgrounds, facilities and events (such as the Carnation Festival)
- Prohibit smoking at public transit stops
- Permit smoking on the outdoor patios of restaurants and bars
- Expressly prohibit hookah bars
- Reaffirm and reference the City's existing Code that prohibits the open and public consumption of marijuana and the operation of marijuana clubs

Motion by Councilmember Wooden to approve Council Bill 22-2015, an ordinance repealing and reenacting Article II of Chapter 9 of the Wheat Ridge Code of Laws concerning smoking in public places, on first reading, order it published, Public Hearing set for Monday, October 12, 2015, at 7 p.m. in City Council Chambers, and that it take effect 15 days after final publication, seconded by Councilmember Langworthy; carried 8-0.

DECISIONS, RESOLUTIONS AND MOTIONS

4. Motion to approve the Annual Police Radio System Contract Payment to the City of Lakewood in the amount of \$51,726.34 for Police Radio System Maintenance Services.

Councilmember Fitzgerald introduced Item 4.

The City currently shares use of the Mount Morrison radio site with the City of Lakewood and West Metro Fire. This new IGA provides a contract whereby the City of Lakewood radio technicians will maintain the radio infrastructure and equipment and invoice the City of Wheat Ridge for those services. It also allows West Metro Fire to invoice the City for site lease and utility costs on Mount Morrison.

Chief Brennan spoke about the arrangement we have with Lakewood's radio technicians working on our radios and equipment.

Motion by Councilmember Fitzgerald to approve payment to the City of Lakewood in the amount of \$51,726.34 for police radio system maintenance services; seconded by Councilmember Pond; carried 8-0.

5. Resolution No. 39-2015 – approving an Intergovernmental Agreement between the City of Wheat Ridge, the Urban Drainage and Flood Control District (UDFCD) and the City of Golden regarding funding of a study to modify the Regulatory Hydrology on Clear Creek

Councilmember Starker introduced Resolution 39-2015.

This IGA will allow Wheat Ridge to participate in an effort by the City of Golden and Urban Drainage to modify the regulatory hydrology on Clear Creek. Golden has been collecting historic flow data from USGS gauges on Clear Creek for many years. Following FEMA's recent changes to the floodplain map, which impacted both Golden and Wheat Ridge, Golden evaluated the data and realized the actual gauge readings are lower than the calculated flows. The plan is for Golden, Wheat Ridge, and Urban Drainage to team up and apply for a revision to the floodplain map. The City's share of this project will be \$10,000.

Mr. Dahl stated he reviewed the IGA. Some small corrections he requested have been made.

Mark Westberg said that being able to drop the cfs from 12,000 down to 9,000 in Golden will hopefully mean we can lower our cfs from 15,000 to 12,000. This would have a tremendous impact on the floodplain map. Staff is excited about this – calling it the best \$10,000 we've ever spent on anything related to floodplains. As soon as this is resolved in the spring, an application process with FEMA will begin and hopefully some properties will be removed from the floodplain map. This is a good thing for residents.

Motion by Councilmember Starker to approve Resolution 39-2015 – a resolution approving an Intergovernmental Agreement between the City of Wheat Ridge, the Urban Drainage and Flood Control District (UDFCD) and the City of Golden regarding funding of a study to modify the Regulatory Hydrology on Clear Creek; seconded by Councilmember Wooden; carried 8-0.

6. Resolution No. 40-2015 – amending the Fiscal year 2015 General Fund Budget to reflect the approval of a Supplemental Budget Appropriation in the amount of \$20,000 for the purpose of reserving events at 2015 pricing for the 2016 Carnation Festival

Councilmember Davis introduced Resolution 40-2015.

The Carnation Festival committee has requested this \$20,000 now so they can reserve the fireworks and carnival for next year's festival at 2015 prices. Adequate reserves are available in the General Fund undesignated fund balance.

Motion by Councilmember Davis to approve Resolution No. 40-2015, a resolution amending the Fiscal year 2015 General Fund Budget to reflect the approval of a Supplemental Budget Appropriation in the amount of \$20,000 for the purpose of reserving events at 2015 pricing for the 2016 Carnation Festival; seconded by Councilmember DiTullio; carried 8-0.

CITY MANAGER'S MATTERS

CITY ATTORNEY'S MATTERS

ELECTED OFFICIALS' MATTERS

Clerk Shaver reminded councilmembers and board and commission members to RSVP for the Board and Commission Appreciation Dinner on October 13.

Jerry DiTullio read portions of a letter from a District 1 resident about the City cutting down her 5 large maple trees that bordered her property. This started over two years ago. She was promised the trees would be replaced and was asked to choose replacement trees. She'd like the trees replaced. He asked the Chief, as Acting City Manager, to have staff give her a call; he said they would.

Kristi Davis thanked all the folks who serve on the Boards and Commissions as she will be unable to attend the dinner ~ She thanked the people who are putting on the Election Forum on Wednesday.

Bud Starker thanked Wheat Ridge United Neighborhoods for putting on the Forum and encouraged people to tune in or come watch.

Genevieve Wooden thanked WR2020 for hosting the Mid-Century home tour this last Saturday, and the people who had their homes be part of the tour. ~ She announced a meeting on Tues, Oct 6 from 7-9pm at the Rec Center. A representative from CDOT will be there to give an update on the projects for I-70. ~ She said the Freddie Steinmark movie premieres on Nov. 13. She has given councilmembers Freddie Steinmark #43 t-shirts. The book signing event is this Wednesday, September 30 at the high school, with the author, and Freddie's family and friends on hand. Tickets are available for \$25 on the school website. The next night is the homecoming game.

Tracy Langworthy thanked Zach Urban for running in the Farmer 5000. She said Wilmore Davis had the most students participate. ~ She thanked the homeowners for the Mid-Century home tour.

George Pond added his praise for the home tour; he was not able to attend.

Mayor Jay thanked United Neighborhoods for their work putting on the Candidate/Issues Forum this Wednesday. She also noted the League of Women Voters' forum on Question 300 on Wed, October 7.

ADJOURNMENT

The meeting was adjourned at 7:48 pm.

Janelle Shaver, City Clerk

APPROVED BY CITY COUNCIL ON October 12, 2015

Bud Starker, Mayor Pro tem

The preceding Minutes were prepared according to §47 of Robert's Rules of Order, i.e. they contain a record of what was *done* at the meeting, not what was *said* by the members. Recordings and DVD's of the meetings are available for listening or viewing in the City Clerk's Office, as well as copies of Ordinances and Resolutions.

STUDY SESSION NOTES
CITY OF WHEAT RIDGE, COLORADO
City Council Chambers 7500 W. 29th Avenue

September 21, 2015

Mayor Jay called the Study Session to order at 6:30 p.m.

Council members present: Jerry DiTullio, Bud Starker, Zachary Urban, Kristi Davis, Tim Fitzgerald, Genevieve Wooden, and Tracy Langworthy

Absent: George Pond

Also present: City Clerk, Janelle Shaver; City Manager, Patrick Goff; Administrative Services Director, Heather Geyer; Parks Director, Joyce Manwaring; Police Chief, Daniel Brennan; Public Works Director, Scott Brink; Community Development Director, Ken Johnstone; Court Administrator, Kersten Armstrong; City Treasurer, Larry Schulz; other staff and interested citizens.

PUBLIC COMMENT ON AGENDA ITEMS

Joe DeMott (WR), chair of the Carnation Festival, played a YouTube video about the Carnation festival. They're hearing this year's festival was by far the best. They had good sponsorship -- the City being the largest. 25,000 people attended. There are things that can be done to make it bigger and better. Last year they asked for \$80K and got \$50K. They are again asking for \$80K so they can address some of the issues. Volunteers are just not enough to handle 25,000 people; they had to call in temporary help with security after Friday night. They made money this year, but there are expenses before the festival that can't be recouped. Weather is always a consideration. They'd like a little more from the City to make it better and better every year, but everything costs money. They want to improve the fireworks; a WRHS alum has offered to help with that. There are commitments to be made soon for next year and what they have in the bank will go for that. We're now a regional festival - competing with other festivals.

Gina Hallisey (Arvada), event planner for the Carnation Festival, presented to the City the marketing book and a commemorative signed poster. She read a letter from Sen. Cheri Jahn thanking the City, telling how the Festival now draws crowds from neighboring areas, and how more local and some large businesses have become sponsors. She's done fundraising since 2008 and it is becoming difficult. Community expectations are high now, and volunteers aren't enough. She believes the City should donate a minimum of \$80,000. Ms. Hallisey noted we have surpassed other festivals and are becoming a destination. She referenced the budget provided to Council. Fixed general expenses before the event started totaled \$160K; improvements for next year will make it \$177.5K. Guaranteed pre-event revenue is \$24K in vendor fees -- not counting sponsorships. Funds needed to cover expenses for next year are \$153K and they have \$60K in the bank. The risk is \$93K. She said they think they can come up with \$13K in sponsorships, so \$80K from the City would allow them to continue to grow the festival so it becomes self-sustaining.

Mr. Goff noted that the budget being presented tonight provides \$67.5K, plus \$22.5K for police overtime, and received clarification from Ms. Hallisey that their request tonight is to increase the \$67.5K to \$80K.

APPROVAL OF AGENDA

1. Presentation and Review of Proposed 2016 Budget

Link to the budget is available at <http://www.ci.wheatridge.co.us/1320/2016-Proposed-Budget>

Mr. Goff and the department heads presented the proposed 2016 budget.

Financial Health of the City

~ Revenues have increased steadily since the recession, especially the last three years. 2016 revenue should be slightly over \$30M.

~ Expenditures were kept flat following the recession (when cuts were made), but we've gradually been able to increase expenditures as revenues increased. Increased expenditures in 2014- 2016 have primarily been related to economic development and included large one-time expenditures: paying off the loan at 44th Upham (2013), the \$1M cash incentive for Kipling Ridge (2014), purchasing solar panels (2015), and ESTIP/TIF payments (2016). 2016 expenditures should be a little over \$30M.

~ Capital expenditures have increased steadily since 2010 – made possible with transfers from the General Fund, but the 2016 CIP budget will be about \$2M below 2015.

Short-term Budget Picture The 2016 budget is balanced.

- \$775,000 in department requests were cut.
- Four new position requests and \$261,000 in fleet maintenance were deferred.
- \$983,000 is transferred to reserves and \$2.8M is transferred to CIP.
- \$100,000 is transferred to the Capital Equipment Replacement Fund.
- Projected Reserves of 17% will be maintained.

Long-term Fiscal Challenge

Continued reliance on the General Fund for more infrastructure projects. Grants are helpful, but economic development continues.

2016 Total Projected Revenue (All Funds) are expected to be fairly status quo.

\$38,427,846 Projected revenues
+\$11,490,671 Beginning fund balance
\$49,918,517 Total available funds

2016 Total Proposed Expenditures

\$42,212,869 - includes General Fund (72%), CIP (16%), and 8 special revenue funds

(Rec Center 6%, Open Space 3%, Conservation Trust Fund 1%, other special funds 2%)
This is about a 5% decrease compared to 2015. In 2015 Open Space had money for the Clear Creek trail and the Parks storage facility; Public Works had the Kipling Trail and did more preventative maintenance than is planned for 2016.

General Fund Budget

Projected General Fund Revenues

\$31,980,290	Projected Revenues (1.2% increase from 2015)
+ \$ 8,271,981	Beginning Fund balance
<u>\$40,252,271</u>	Total Available Funds

Revenue sources: Sales tax 60%, Use tax 11%, other taxes 8%, Intergov. 6%, Licenses 5%, Services 4%, Fines 2%, Property tax 2%, other 2%

Proposed General Fund Expenditures

\$30,997,144	Projected Expenditures (0.4% increase from 2015)
<u>\$31,980,290</u>	Projected Revenue
\$983,146	Maintain Fund Balance

Unrestricted fund balance is \$5,282,127 (17%)

Expenditures by department: Police 32%, Public Works 15%, Parks 15%, Admin Services 11%, Central Charges 10%, General Govt (incl. City Council, Clerk, Treasurer, City Manager, Econ Dev, City Attorney) 10%, Community Development 4%, Court 3%

Breakdown of expenses by Council goals:

Goal 1: Economically viable commercial areas

Urban renewal projects (annual contribution) - **\$300,000**

ESTIP/TIF payments - **\$802,000**

- ESTIP (CO Plus, Green Herb, W 29th Ave Restaurant),
- TIF (Kipling Ridge, Wheat Ridge Corners and WR Cyclery)

Ridge at 38 public events (4): -**\$120,000** (increased from 2015)

Ridgefest, Tree Lighting, Criterium, Trunk/Treat)

Citywide public relations and marketing efforts (contract w/ public relations firm) - **\$43,500**

WR Business District (WRBD) grant program (for exterior improvements) - **\$45,000**

Live Local events (WR2020) - **\$50,000** (small increase)

Building Up Business Loan program (BUBL) (WR2020) - **\$25,000**

Realtor, new resident and developer positioning tours (WR2020) - **\$20,000**

44th Ave Corridor marketing - **\$5,000**

29th Ave Marketplace marketing - **\$5,000**

Ridger at 38 banners and lights program - **\$25,000**

Ward Road Gold Line opening party - **\$20,000**

Goal 2: Financially sound / Providing exceptional services

Preventative street maintenance - **\$1.9M**

Fleet acquisition and replacement - **\$564,200**

Employee compensation – 3% projected pay-for-performance - **\$450,000**

Firewall electronic security software - **\$230,000**

Continued regionalization of RMS (Police records) - **\$139,000**

Lakewood crime lab services - **\$63,000**

Regional crime lab - **\$31,280**

Employee safety and wellness programs - **\$29,680**

Priority Based Budgeting (year 5) - **\$15,000**

Goal 3: Desirable neighborhoods

Prospect Park improvements - **\$700,000**

Outdoor pool maintenance - **\$155,000**

Rec Center maintenance - **\$236,150**

Active Adult Center parking lot replacement - **\$50,000**

TLC program (neighborhood Traffic safety, Life quality and Crime reduction) - **\$40,000**

Discovery Park cameras - **\$20,000**

Traffic signal upgrades - **\$16,600**

Home Investment Loan Program (HIP) (WR2020) - **\$25,000**

Police Dept community-oriented neighborhood programs - **\$17,655**

Police Dept greenbelt patrol - **\$30,000**

Police Dept special events overtime - **\$15,000**

Goal 4: More Attractive WR

Kipling St multi-use path and lighting - **\$835,000** (part grant funded)

Discovery Park ADA accessibility playground - **\$80,000**

Parks & trail maintenance projects - **\$75,000**

Citywide right-of-way maintenance - **\$59,530**

Open Space improvements - **\$50,000**

Bus shelter and bench maintenance and cleaning - **\$16,000**

Large-item pickup program - **\$5,000**

Other notable budget items:

Carnation Festival/Circus - **\$67,500** (up \$17,500 from last year; plus in-kind services of \$22,500) (Mr. Goff noted additional request made earlier during public comment.)

Seniors Resource Center (SRC) circulator bus - **\$35,000** (\$5,000 increase from 2015)

Carnation Festival Battle of the Bands - **\$2,500**

Arvada Food Bank - **\$15,000**

Feed the Future backpack program - **\$10,000**

Outside agency requests **\$11,500**

- Action Center - \$1,600
- Arapaho House - \$1,300
- CASA of Jeffco - \$1,000
- Family Tree - \$1,000
- Glass Hearts - \$400
- Jefferspon Center for Mental Health - \$1,100
- Ralston House - \$1,000
- Seniors' resource Center - \$1,400
- Wheat Ridge Optimists Club - \$1,200

Regional Air Quality Council (RAQC) - **\$4,000**

Kite Festival - **\$2,000**

Exempla Lutheran Leaves of Hope event - **\$2,500**

Jefferson Center for Mental Health – **\$2,500**

WRHS Farmers 5000 - **\$2,500**

Wheat Ridge Active Transportation Advisory Committee (ATAT) - **\$1,500**

Outdoor Lab foundation - **\$19,940**

Socrata Open Budget transparency software - **\$7,500** (Helps citizens get information)

Contractual services for specialize sales and use tax audits - **\$41,250** (Should bring in \$130K in direct revenues and prompt more diligent compliance for use tax.)

Fleet Replacement (based on age and mileage/hours): **\$564,200**

Jet-Vac (to keep drainage and storm sewer lines open) - **\$251,000**

Active Adult Center Mini-bus - **\$82,000**

Police vehicles (2 for code enforcement) - **\$135,000**

Public Works vehicles (truck) - **\$34,500**

Parks & Rec vehicles (2 small trucks) - **\$61,500**

- Anticipated needs for fleet replacement the next four years include:
 - 2017 \$1,000,000 (includes street sweeper deferred from 2016)
 - 2018 \$ 998,000
 - 2019 \$775,000
 - 2020 \$823,000

CIP Budget

Total Available Funds: **\$5,907,560 disbursement**

Distribution: Street improvement projects 61%, preventative maintenance 29%, drainage projects 5%, NTMP (traffic calming) 2%, gateway signs 2%, bike/ped improvements 1%

CIP Major Projects ~ Scott Brink

Preventative street maintenance projects - **\$1.9M**

Wadsworth EA project (environmental assessment) - **\$1.5M**

Completion of Kipling trail improvements - **\$835,000** (part grant funded)

Gold Line Station street improvements (Tabor Street) - **\$740,000** (grant funded)

29th & Fenton intersection improvements - **\$350,000** (pending completion of reservoir)

Drainage improvement projects - **\$279,821** Reconstruction of outfalls into Clear Creek
(near Balsam; near Marshall)

Public improvement projects related to development - **\$100,000**

Neighborhood Traffic Management Program - **\$50,000**

Entryway signs - **\$50,000**

ADA transition plan for improving sidewalk accessibility - **\$50,000**

Bike/Pedestrian Master Plan - **\$25,000**

CIP – 2016 and beyond (Needs)

- We transfer \$3M a year from the general Fund for CIP projects.
- We will need \$5.5M from the General Fund in 2019 for Wadsworth reconstruction

Open Space Fund (from Jeffco Open Space tax) ~ Joyce Manwaring

Revenues \$1,058,000	Total Available Funds \$1,717,239
Expenditures \$1,629,337	Ending Fund Balance: \$87,902

Project Highlights

- Open Space improvements – replace Bass Lake retaining wall \$50K
- Improvements to Public Works and Parks Ops facility (add covered shelter to protect equipment \$150K)
- Improvements to Prospect Park (Biggest project for 2016; improve drainage on softball field; add a soccer field; new shelter)
- Complete masterplan design for renovation/improvements to Prospect Park \$80K (budgeted in 2015)
- Outdoor pool maintenance (2015 project; resurfacing of leisure pool; repair toys)
- Parks maintenances projects (several; water table at Hopper Hollow; shade structures at Discovery Park; other)
- Trail replacement and repair (Johnson Park)
- Matching funds for the Jeffco Open Space River Corridor signage project (\$25K)

Conservation Trust Fund (Lottery Funds) ~ Joyce Manwaring

Revenues \$300,500	Total available funds: \$515,878
Expenditures \$493,150	Ending Fund Balance: \$22,728

Project Highlights

- Rec Center maintenance projects (variety) – \$236K
- Rec Center pool facility improvements and replace frog slide
- Active Adult Center parking lot replacement
- Discovery Park ADA accessibility for the playground (per new federal law)
- Parks maintenance projects
- Resurfacing of tennis and basketball courts

2016 Staffing changes – overall net increase of 0.5 FTE's

- New Position: 1.0 FTE maintenance worker II (Public Works)
- Previously grant funded : (grant requires to keep position for one extra year)
1.0 FTE Vice/Intelligence Detective (Police Officer II) Massage parlors, prostitution, human trafficking, gambling, liquor/marijuana enforcement training, gangs, etc. (Will allow us to be more proactive, not reactive)
- Position FTE increases: 0.5 FTE Recreation coordinator, Act Adult Ctr (Parks)
- Position FTE decrease: 1.0 FTE School Resource Officer (Police)

2016 Staffing by Fund – General Fund 210.875, Rec Center 11.5, Crime Prevention 4.5
Open Space 5

2016 Staffing by Department – Police 107, Parks/Rec 47.125, Public Works 30, Admin Services 21.5, Community Development 12, Municipal Court 10.25, General Gov 4

Employee Benefits Highlights ~ Heather Geyer

- Year 4 of new Pay-for-Performance Plan
- \$450,000 ~ 3% increase (comparable to the market)

- 2015 Market Study – average 3% increase in both sworn and civilian pay plans
- Medical benefits – 8.3% increase to be absorbed by employees (negotiated down from 12%; still much less than market)
- Employees are very engaged in the wellness program activities

Public Hearing on the budget - October 12

Discussion and questions followed.

- The Vice/Intelligence position was grant funded , so not considered a new FTE.
- The ESTIP and TIF payments of \$802,000 come from sales tax that is collected.
- The four new positions that were NOT funded are 1 maintenance worker, 1 human resources tech, 1 SRO and 1 senior liaison.
- Right-of-way maintenance does include some work with CDOT on I-70.
- We subsidize the Carnation Festival. It contracts with the Circus.
- The request for funds for Outdoor Lab is from the School District (for WR kids).
- Fleet replacement is replacement of existing units.
- ADA transition plan funds will finish the 2015 plan and allow for some projects. Would be possible to coordinate with the bike/ped master plan.
- NTMP: In 2015 will not use all the \$50K budgeted. Program going well.
- Elimination of the SRO? We aren't at full strength; 1 granted position eliminated
- Discussion of permanent speed boards on Harlan.
- Discussion of the Carnation Festival budget as it relates to the Circus: If they want the extra \$20K they have to replace the Circus as a main attraction.

Councilmember DiTullio received consensus to increase the Carnation Festival contribution by \$20K, with the condition that they get rid of the Circus.

Councilmember Langworthy excused herself at 8:34pm.

- Further discussion about the Festival
- Discussion about reducing money for Battle of the Bands to \$1,000 and giving the savings to some of the outside agencies.

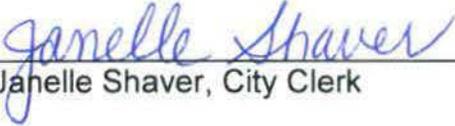
Consensus by Councilmember Wooden to amend the funding for the Battle of the Bands to \$1,500 and transfer the remaining \$1,000 to the other outside agencies.

- The \$5.5M for Wadsworth reconstruction in 2019 is only the City's share.
- Discussion of credits for the solar garden.
- Discussion of funding for WR2020: 2016 funding is \$421K (\$67,000 less than they asked for, but \$40K more than 2015). \$120,000 is for the 4 main events (up from \$80K in 2015; \$140K was requested for the events). Could they get other funding sources? They are important events – the personality of WR. We have no budget from them like the Carnation Festival provides.

- Marketing money for 44th Av and 29th St is not WR2020 money; it's in the Economic Development budget.
- 38th Ave Lighting and Banner program is WR2020's program (City installs).
- Discussion of the Gold Line grand opening party: Funded by the City. Nov 2016. Events Th, Fr and Sat are being coordinated with Arvada. RTD will fund some. Would be good to have a budget about this.
- Discussion about removing \$10,000 from the bus tours (\$20K; up \$5K from 2015) and using the money for commercial marketing (44th & 29) rather than residential. Mr. Goff indicated a line item budget and narrative is available and he will get it to Council.
- Discussion of budget for gateway sign at 26th & Kipling as it redevelops. Mr. Brink indicated the funding is adequate.

ADJOURNMENT

The Study Session adjourned at 9:03 p.m.



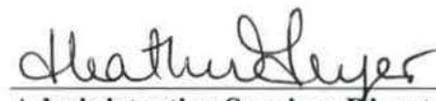
Janelle Shaver, City Clerk

APPROVED BY CITY COUNCIL ON October 12, 2015

Bud Starker, Mayor Pro Tem

REQUEST FOR CITY COUNCIL ACTION**TITLE: PUBLIC HEARING ON THE PROPOSED 2016 CITY BUDGET**

- | | |
|--|---|
| <input checked="" type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCES FOR 1 ST READING |
| <input type="checkbox"/> BIDS/MOTIONS | <input type="checkbox"/> ORDINANCES FOR 2 ND READING |
| <input type="checkbox"/> RESOLUTIONS | |

QUASI-JUDICIAL: YES NO

Administrative Services Director

City Manager**ISSUE:**

Sections 10.7 and 10.9 of the Wheat Ridge City Code require that a public hearing on the proposed budget be conducted before its final adoption and that the budget be adopted by resolution on or before the final day (December 15, 2015) established by state statute for the certification of the next year's tax levy to the county. A public hearing to receive input from citizens on the budget is scheduled for October 12, 2015. Adoption of the 2016 Budget has been scheduled for October 26, 2015 at the City Council meeting. Staff will provide a short presentation on the proposed 2016 budget during the public hearing portion of the meeting.

Overall, the proposed 2016 budget includes the following:

- \$7.3 million in proposed expenditures directly linked to City Council strategic goals
- A balanced General Fund budget in the amount of \$30,997,144
- A transfer of \$983,000 to reserves to maintain 17 % minimum reserve level
- A General Fund transfer of \$2,800,000 to the Capital Investment Program (CIP)
- A General Fund transfer of \$100,000 to the Capital Equipment Replacement Fund
- A .4% increase in the General Fund budget compared to the adjusted 2015 Budget
- Proposed CIP Fund in the amount of \$5,879,821
- Special Revenue Funds in the amount of \$5,335,904
- Proposed budget (all funds) in the amount of \$42,212,869

PRIOR ACTION:

- *July 13, 2015* – first public meeting to provide opportunity for citizens to comment on the budget
- *July 27, 2015* – second public meeting to provide opportunity for citizens to comment on the budget
- *September 14, 2015* – proposed 2015 budget books were distributed to City Council and made available for public review
- *September 21, 2015* – City Manager made a budget presentation to City Council during the Study Session
- *October 12, 2015* – as required by Section 10.7 of the Wheat Ridge City Charter a public hearing was conducted to provide an additional opportunity for citizens to comment on the proposed budget prior to its adoption. Notification of the public hearing was made on the City Website, City Facebook page, and in the Wheat Ridge Transcript.
- The proposed budget was made available for review by the public at the following location:

Wheat Ridge City Hall
City Clerk's Office
7500 West 29th Avenue

The 2016 proposed budget was also available for purchase from the City Clerk's Office, based on the City's fee schedule. Additionally, the proposed budget and PowerPoint presentation from the budget retreat and public hearing were made available to the public at www.ci.wheatridge.co.us.

FINANCIAL IMPACT:

A total budget of \$42,212,869 (all funds) is proposed.

BACKGROUND:

At the September 21, 2015 Study Session, City Council provided staff with consensus to bring the proposed budget to public hearing and adoption, based on the following direction:

- *Carnation Festival* – reduce the City's contribution to \$60,000 and request the Festival bring back information on a new main event.
- *Outside Agency Contribution Program* – reduce the City's contribution of \$2,500 for the Battle of the Bands at the Carnation Festival to \$1,000 and reallocate the \$1,500 reduction amount to the Outside Agency Contribution program. *An updated funding breakdown for the program is included in Attachment 1.*
- *WR2020* – requested detailed information on WR2020 budget and an updated narrative with justification for each funding request. *The requested additional information is included in Attachment 2.*

Pending further direction on the proposed budget from City Council, any changes requiring number updates to the budget will be included in the October 26th Council packet.

The 2016 proposed budget message, found on pages 1 – 10 of the budget book, is included below:

OVERALL SUMMARY

Wheat Ridge's total proposed General Fund operating budget for 2016 is \$30,997,144 excluding transfers. The City's total 2016 operating budget represents a .4% increase compared to the adjusted 2015 Budget. The projected 2016 General Fund ending fund balance is \$6,355,127. Of this amount, \$5,282,127, or 17% of expenditures, is considered the unrestricted fund balance. The City's financial policies require that the City maintain a minimum unrestricted fund balance of at least two months or approximately 17% of its General Fund operating expenditures, as recommended by the Government Finance Officers Association.

The total adopted City Budget for 2015, which includes the General Fund, CIP and Special Revenue Funds, is \$42,212,869. The CIP Budget is at \$5,879,821 and the eight Special Revenue Funds' proposed budgets total \$5,335,904.

Sales tax, the City's largest revenue source, is projected to increase by 7% for 2016, compared to the 2015 estimated revenue. Sales tax revenue is projected to increase by 8% compared to 2015 adjusted revenue. Overall, total General Fund revenues for 2015 are projected to increase by .2% compared to 2014 actual revenue (3.3% when one-time audit revenue in 2014 are excluded) and increase by 10% compared to 2015 adjusted revenue.

However, 2016 proposed total General Fund revenues are projected to increase by 3.9% compared to 2015 estimated revenues (excluding one-time loan proceeds in 2015 for solar panels).

The estimated 2015 Budget ending fund balance is \$8,271,981, of which \$6,991,485 or 23.8%, of operating expenditures is considered the unrestricted fund balance. The proposed 2016 Budget ending unrestricted fund balance is projected to decrease to \$5,282,127, or 17% of operating expenditures, to allow for a \$2.8 million transfer to the CIP Budget.

LONG-TERM FISCAL CHALLENGES

Long-term fiscal sustainability remains one of the City's greatest challenges. The City's 2016 – 2024 Capital Investment Program (CIP) budget demonstrates the severity of our funding gap in regard to unfunded capital needs. The 2016 Proposed Budget includes a transfer of \$2,800,000 from General Fund undesignated reserves to the CIP budget. Beyond 2016, funding the CIP will continue to be difficult unless new dedicated revenue sources are identified.

WHEAT RIDGE FIVE-YEAR GOALS

The Mayor, City Council and staff work together annually to develop and update a strategic plan that includes a vision, goals and action agenda. Staff used these goals as a guide to develop strategies and prioritize projects for the 2016 Budget

The Mayor and Council identified four key strategic goals for the next five years:

1. Economically Viable Commercial Areas
2. Financially Sound City Providing Quality Service
3. Choice of Desirable Neighborhoods
4. More Attractive Wheat Ridge

In addition, the Mayor and City Council agreed to the following 2015/2016 Action Agenda:

- Revenue enhancement
- Engage development and redevelopment opportunities
- Community / neighborhood building
- Code enforcement
- 38th Avenue Corridor implementation
- Targeted housing incentive policies
- Multi-modal transportation

The proposed 2016 Budget includes the following expenditures to address the Five-Year Goals and the 2015/2016 Action Agenda: (Division #)

Goal 1: Economically Viable Commercial Areas

- Urban renewal funding for Renewal Wheat Ridge (RWR) projects \$300,000 (105 to RWR)
- Enhanced Sales Tax Incentive Program (ESTIP)/Tax Increment Financing (TIF) \$802,000 (105)
- Ridge at 38 public events \$120,000 (105)
- Citywide public relations and marketing efforts \$43,500 (105 & 113)
- Wheat Ridge Business District (WRBD) grant program \$45,000 (105 to WRBD)
- Live Local events \$50,000 (105 to WR2020)
- Building up Business Loan Program (BUBL) \$25,000 (105 to WR2020)
- Realtor, new resident and developer positioning tours \$20,000 (105 to WR2020)
- 44th Avenue Corridor marketing efforts \$5,000 (105)
- 29th Avenue Marketplace marketing efforts \$5,000 (105)
- Ridge at 38 banners and lights program \$25,000 (105)
- Ward Road Gold Line Opening Party \$20,000 (113)

Goal 2: Financially Sound City Providing Quality Service

- Preventative street maintenance \$1.9 million (CIP Fund)
- Fleet acquisition and replacement \$564,200 (303)
- Employee compensation – 3% projected Pay-for-Performance \$450,000 (610)
- Firewall electronic security software – \$230,000 (Fund 57)
- Funding for continued regionalization of RMS \$139,000 (Fund 57)
- Lakewood crime lab services \$63,000 (212)
- Regional crime lab \$31,280 (212)
- Employee safety and wellness programs \$29,680 (112)
- Priority Based Budgeting (year 5) \$15,000 (111)

Goal 3: Choice of Desirable Neighborhoods

- Prospect Park improvements \$700,000 (OS Fund)
- Outdoor pool maintenance \$155,000 (OS Fund)
- Recreation Center maintenance \$236,150 (CT Fund)
- Active Adult Center parking lot replacement \$50,000 (CT Fund)
- Traffic Safety, Life Quality and Crime Reduction (TLC) Program \$40,000 (105 to WR2020)
- Discovery Park Cameras \$20,000 (603)
- Traffic signal upgrades \$16,600 (303)
- Home Investment Loan Program (HIP) \$25,000 (105 to WR2020)
- Police Department community-oriented neighborhood programs \$17,655 (211)
- Police Department greenbelt patrol \$30,000 (211)
- Police Department special events overtime \$15,000 (211)

Goal 4: More Attractive Wheat Ridge

- Kipling Street multi-use path and lighting \$835,000 (CIP Fund) – partially grant funded
- Discovery Park ADA Accessibility Playground-\$80,000 (CTF)
- Parks & trails maintenance projects \$75,000 (CTF and OS Funds)
- Open Space improvements \$50,000 (OS Fund)
- Citywide right-of-way maintenance \$59,530 (603)
- Bus shelter and bench maintenance and cleaning \$16,000 (303)
- Large-item pickup program \$5,000 (303)

Additionally, the following budget expenditures are not directly related to any one of the City Council goals, but are worthy of noting and are included in the proposed 2016 Budget:

- City sponsorships/community partnerships:
 - Carnation Festival/Zoppe Family Circus \$67,500 and in-kind assistance \$22,500 (102) increased request by \$17,500. *City Council provided consensus to reduce this amount to \$60,000.*
 - Senior Resource Center (SRC) circulator bus \$35,000 (102) **increased request by \$5,000**
 - Carnation Festival Battle of the Bands \$2,500 (102). *City Council provided consensus to reduce this amount to \$1,000 and reallocate the \$1,500 to the Outside Agency Program.*
 - Arvada Food Bank \$15,000 (102)
 - Feed the Future Backpack Program \$10,000 (102)
 - Outside agency requests \$11,500 (102)
 - Regional Air Quality \$4,000 (102)
 - Kite Festival \$2,000 (102)
 - Exempla Lutheran Leaves of Hope event \$2,500 (102)
 - Jefferson Center for Mental Health \$2,500 (102)
 - Wheat Ridge High School Farmers 5000 \$2,500 (102)
 - Wheat Ridge Active Transportation Advisory Committee \$1,500 (102)
 - Outdoor Lab Foundation \$19,940 (102)

- Socrata Open Budget transparency software \$7,500 (101)
- Contractual services for specialized sales and use tax audits \$41,250 (115)

A TRADITION OF EXCELLENCE IN A.C.T.I.O.N!

The City of Wheat Ridge has earned a reputation for repositioning itself and becoming a community of choice. In 2015, the City celebrates the 10th anniversary of the development of the Neighborhood Revitalization Strategy (NRS) plan. This grassroots, community-driven planning document has guided the transformation the City has experienced over the past ten years. The City has received numerous state and national awards for its local partnerships and innovative approaches to service delivery. The City's reputation was created by the excellent stewardship provided by past City Councils and staff at all levels.

An Engaged Community

A commitment to excellence has helped position the City to respond and plan for the needs of the future. The City prudently responded to the fiscal challenges of the recent recession by making cuts and deferring expenses while minimizing impacts to the levels of service. As the recessionary period winds down, the City is seeing a positive shift in community engagement. The demand for services, amenities, and community events that provide opportunities for citizens to come together has increased. Participation in educational academies, involvement on boards and commissions, and overall, participation in community and neighborhood planning efforts has also increased. The City has an extremely engaged community, focused not only on the short-term viability of the City, but more importantly, on the long-term sustainability of the City.

An Engaged Organization

City staff, at all levels, continually approach their jobs looking for ways to improve the level of service, contain costs, improve efficiency, leverage partnerships and generate innovative ideas so the community receives the best possible service. The City actively pursues grant opportunities and has a solid track record of success in receiving grants. For example, the City received a \$25 million grant from DRCOG in 2015 for the reconstruction of Wadsworth Boulevard. City staff is empowered to continue to look for additional cost-effective opportunities to partner with local and regional organizations, to explore and expand the use of alternative service delivery opportunities, to continue to use volunteers where feasible, to increase cost recovery, and to discontinue or reduce service standards for those programs that are that are less of a priority.

Priority Based Budgeting

In 2015, the City embarked on year four of the Priority Based Budgeting (PBB) process. The City has received national recognition and interest from other local governments who are considering switching to a priority-driven budget. The City engaged the Center for Priority Based Budgeting in 2012 to facilitate the transition from a more traditional incremental budgeting process to a priority-driven budgeting process. The Center's mission is to "lead communities to fiscal health and wellness." Priority Based Budgeting is another tool that will allow the City's management team to improve the programs and services provided by aligning resource allocation with the results the City is working to achieve.

The primary area that we continue to integrate into the budget process is the focus on budget variances. Budget variances generally occur because certain line items must be budgeted based on projected use such as staffing, fuel, and utilities. However, circumstances such as employee turnover, the weather or the economy dictate what those true expenditures will be on an annual basis. For example, if we experience an unusually bad winter or fuel prices skyrocket, mid-year supplemental budget appropriations may be required.

In addition to continuing the variance exercise for development of the 2016 Budget, staff added a contingency reduction exercise. Included in the City Manager's Budget is a management contingency fund in the amount of \$75,000. This is the result of a consolidation of City-wide contingency funds in 2014 which enabled staff to cut approximately \$70,000 from the 2014 proposed budget. In the past, contingency funds have been budgeted for carrying out policy direction by City Council that may not be planned for at the time of budget development. An example of this would be engineering or design work required for a public project. Contingency funds were used in 2015. However, those items placed on the contingency fund list were not re-budgeted in 2016.

Overall, for the 2016 Budget, departmental budget requests were reduced by approximately \$775,000 in order to fund those expenses that were considered critical to meeting the City's defined results. Collectively, the variance and contingency fund tools have played an important role in the continued integration of a priority-driven budget system. This process has enabled staff to look at the budget data through a different lens.

REVENUES AND EXPENDITURES

The total 2016 Proposed Budget is \$42,212,869. The Budget is based on projected revenues of \$38,427,846. In addition, the beginning fund balance for 2016 is projected at \$11,490,671 which brings the total available funds to \$49,918,517. This will provide for a projected ending fund balance of \$7,705,648, which is a .4% decrease compared to the 2015 Adopted Budget. Detailed revenue and expenditure tables are presented in the Revenue and Expenditure Summary section of this Budget.

GENERAL FUND

General Fund revenue is projected at \$31,980,290, which is a 1% increase compared to 2015 estimated revenues. In addition, the beginning fund balance for 2015 is projected at \$8,271,981, which brings the total available funds for the General Fund to \$40,252,271.

General Fund expenditures total \$30,997,144, excluding transfers. General Fund expenditures represent a .4% increase compared to the adjusted 2015 Budget and a 5% increase compared to the estimated 2015 Budget. This will provide for a projected ending fund balance of \$6,355,127, of which \$5,282,127 (17% of operating expenditures) is considered unrestricted.

CAPITAL INVESTMENT PROGRAM FUND

CIP Fund revenue is projected at \$5,264,228 (\$2,800,000 transferred from the General Fund) which is a 10% decrease compared to the 2015 estimated revenue of \$5,861,145. In addition, the

beginning fund balance for 2016 is projected at \$643,332 which brings the total available funds for the CIP Fund to \$5,907,560.

The proposed 2016 CIP includes the following major projects:

- \$1.9 million for preventative street maintenance projects
- \$1.5 million for Wadsworth environmental assessment project
- \$835,000 for completion of the Kipling Street pedestrian trail improvements – partially grant funded
- \$740,000 for Gold Line Station street improvements – fully grant funded
- \$350,000 for 29th Avenue and Fenton Street intersection improvements
- \$279,821 for drainage improvement projects (rehabilitation and replacement of two major storm sewer outfalls to Clear Creek, Maple Grove Reservoir emergency planning, Sloans Lake Master Drainage and Flood Hazard Area Delineation, and Clear Creek CLOMR and LOMR)
- \$100,000 for public improvement development-related projects
- \$50,000 for Neighborhood Traffic Management Program
- \$50,000 for entryway signage
- \$50,000 for ADA transition plan for improving sidewalk accessibility Citywide
- \$25,000 for Bike/Pedestrian trail improvements

CIP expenditures total \$5,879,821 which is a 36% decrease compared to the adjusted 2015 Budget and an 18% decrease compared to the estimated 2015 Budget. This will provide for a projected ending fund balance of \$27,739.

Typically the CIP Budget is funded primarily with General Fund undesignated reserves. The City Council adopted a General Fund reserve policy in 2011 setting the minimum reserve level at 17%.

In order to maintain this minimum reserve balance in the General Fund in 2016 and beyond, limited funds will be available to transfer to the CIP Budget. To continue funding CIP projects at a more sustainable level, City Council will need to consider substantial cuts in the City's operating budget or find new revenue sources for CIP projects.

The proposed CIP Budget for 2017 to 2024 projects a \$3 million annual transfer from the General Fund for CIP projects. However, in 2019, the City will need to transfer a total of \$5.5 million to fund the City's match for the Wadsworth Boulevard reconstruction project and to continue to minimally fund street preventative maintenance projects.

OPEN SPACE FUND

Open Space revenue is projected at \$1,058,000 which is a 21% decrease compared to the 2015 estimated revenue of \$1,332,036. The large decrease is primarily due to Jefferson County grants received in 2015. In addition, the beginning fund balance for 2016 is projected at \$659,239, which brings the total available funds for the Open Space Fund to \$1,717,239.

Open Space projects for 2016 include:

- Open Space improvements – Bass Lake retaining wall

- Improvements to the Public Works and Parks Operations Facility
- Improvements to Prospect Park
- Completing the master plan design for the renovation and improvements to Prospect Park
- Outdoor pool maintenance
- Parks maintenance projects
- Trail replacement and repair
- Matching funds for the Jefferson County Opens Space River Corridor signage project

Funding is also appropriated for five Parks maintenance workers. Open Space expenditures total \$1,629,337 which is a 37% decrease compared to the adjusted 2015 Budget and a 23% decrease compared to the estimated 2015 Budget. These expenditure decreases are due to construction of Hopper Hollow Park in 2015 and completion of the Parks Operations storage facility. This will provide for a projected ending fund balance of \$87,902.

The future five-year Open Space Budget proposes the continuation of miscellaneous open space improvements, parks maintenance projects, trail replacement and repair, Prospect Park improvements, improvements to the new public works and parks operations facility, and funding for five Parks positions.

CONSERVATION TRUST FUND

Conservation Trust revenue is projected at \$300,500, which is equal to the 2015 estimated revenue. In addition, the beginning fund balance for 2015 is projected at \$215,378, which brings the total available funds for the Conservation Trust Fund to \$515,878.

Conservation Trust projects for 2016 include:

- Recreation Center maintenance projects
- Recreation Center swimming pool facility improvements and replacement of frog slide
- Active Adult Center parking lot replacement
- Discovery Park ADA accessibility playground
- Parks maintenance projects
- Resurfacing of tennis and basketball courts

Conservation Trust expenditures total \$493,150, which is an 18% increase compared to the adjusted 2015 Budget and a 20% increase compared to the estimated 2015 Budget. This will provide for a projected ending fund balance of \$22,728. The future Five-Year Conservation Trust Budget proposes to provide funds for Recreation Center maintenance needs, Anderson Building replacement, parks maintenance projects, resurfacing of tennis/basketball courts, playground replacement, and Anderson Building replacement.

RECREATION CENTER OPERATIONS FUND

Recreation Center Operations revenue for 2016 is projected at \$2,176,828, which is an increase of .6% compared to the 2015 estimated revenue of \$2,164,850. In addition, the beginning fund

balance for 2016 is projected at \$796,583 which brings the total available funds for the Recreation Center Operations Fund to \$2,973,411.

Recreation Center expenditures total \$2,382,401, which is a .4% increase compared to the adjusted 2015 Budget and a 2.7% increase compared to the estimated 2015 Budget. This will provide for a projected ending fund balance of \$591,010.

OTHER SPECIAL REVENUE FUNDS

Several other Special Revenue Funds are also included in this Budget to track revenues and expenditures that are designated by law to be used for specific purposes or are used to simplify the budgeting process. Those funds include the Public Art, Police Investigation, Municipal Court, Equipment Replacement, and Crime Prevention/Code Enforcement funds. Detailed revenue and expenditure information for these funds can be found in the Special Revenue Funds and the Line Item Accounts sections of the Budget.

DEBT

The City currently has no debt. However the City does have the following long-term financial obligations:

Renewal Wheat Ridge

The City's Urban Renewal Authority (Renewal Wheat Ridge), is a component of the City and does have a loan in the amount \$390,000 from the City for the purchase of an environmentally contaminated property at 38th and Yukon Court. This loan will be paid-off with the sale of the property at 38th and Yukon in 2015 or 2016. Additionally, the Urban Renewal Authority provided a loan in the amount of \$2.4 million for the Kipling Ridge commercial center development. The term of this loan is for 10 years and will be paid from sales and property tax incremental revenue from the Kipling Ridge project.

Community Solar Garden

On March 23, 2015, the City entered into an agreement to purchase electric generating capacity in a solar garden. The agreement was funded on April 13, 2015 with a lease agreement for \$800,000. The solar power capacity is recorded as capital assets in the amount of \$776,628. A portion of the loan proceeds was used to pay issuance costs of \$23,372. Annual payments of \$80,167.08, including principal and interest accruing at 5.75%, are due on June 1, 2015 to May 1, 2030. As of December 31, 2015, the City has a capital lease outstanding amount of \$1,155,742.07. For its participation, the City receives energy credits from Xcel to be used to pay this lease and against energy consumption at various facilities.

COMPENSATION, BENEFITS AND STAFFING

Personnel-related expenses account for the largest portion of the City's Budget; therefore, maintaining this investment is a high priority. In 2013, the City launched a new compensation plan for full-time/part-time benefited employees that is financially sustainable and is a plan that

will help the City recruit and retain top talent. Additionally, the compensation plan is market-based and fully aligned with the Performance Management Project (PMP) that has culminated in the full implementation of a pay-for-performance system. The City's pay-for-performance model is consistent with the culture and commitment to A.C.T.I.O.N! – the City's core values of Accountability – Change – Teamwork – Integrity – Opportunity – Now!. It is important for the City to reward employees who exemplify these core values and who help achieve the City's strategic results.

The new compensation plan consists of two sub plans 1) a pay-for-performance open range plan, which includes civilian and police sergeants and higher ranks, and 2) a sworn step plan, which includes Police Officer I and II positions. Employees will be eligible for a performance increase on January 1, 2016, based on how well they meet the core values and competencies of the new PMP system.

The pay-for-performance budget is determined on an annual basis according to what comparable organizations are providing and what the City can afford for that fiscal year. The City conducted a biennial market review in 2014. For 2015, the market shift in compensation was 3% for the City plans noted above. The proposed 2016 budget includes \$450,000 in the Central Charges budget to fund performance increases for both sub plans.

The City continues to provide a competitive benefits package to employees that includes medical, dental, life and disability benefits. Throughout the year, staff works closely with the City's benefit broker, IMA, to ensure that the City is controlling benefit costs while still providing a competitive benefits package to its employees, which is a vital part of the City's total compensation approach to pay.

The City currently provides Kaiser Permanente plans for employee medical benefits. Medical premiums will increase by 8.3% for 2015. There are several key factors that play a role in calculating the City's health care premium renewal. Participation in the Wellness Program is a positive contributing factor to the minimal premium increase. Historically, the City's premium increases ranged from 10 – 15%, which is the market average. The 8.3% increase for 2016 is just below that average. The City will continue to encourage enrollment and active participation in the Wellness Program. There is minimal increase to the dental premium, but the life and short-term disability premiums will remain constant.

In 2016, the City will continue to offer the High Deductible Health Plan (HDHP). This plan was added in 2013 and is a consumer model of health care paired with a Health Savings Account (HSA). The City will also continue to offer the traditional HMO plan. The premiums for both the employee and the City are lower for a HDHP but the out-of-pocket costs to the employee are higher. The goal of the consumer-driven HDHP is to encourage employees to manage costs through effective use of health care.

The 2016 staffing level will increase by a net of 0.5 FTE's for a total of 231.875 FTE's in all funds. Staffing levels continue to remain below the 233.755 FTE's authorized in 2002 before the budget reduction program and elimination of positions in 2003 and 2004.

New Positions:

1.0 FTE Maintenance Worker II – Public Works

- This position will support ongoing maintenance and repair services required to maintain City infrastructure to include: streets, sidewalks, traffic signals, bus benches and shelters. This position will support in the maintenance of LED street and pedestrian lights within the City's newer residential and commercial areas. Additionally, maintenance of street banners, traffic control devices and preparation of streets for special events. Most importantly, the position will assist with snow removal and provide for scheduling symmetry to the 3-8-hour shift rotations which will increase the safety of staff.

Previously Grant Funded Positions:

1.0 FTE Vice/Intelligence Detective (Police Officer II) – Police Department

- In 2011, the City received a COPS grant to fund this position and funding has expired. The City was required to fund this position for one year after the completion of the grant. The City recommends maintaining this position as demand continues to grow in the area of intelligence issues, liquor investigations and human trafficking. The regulatory processes and monitoring of businesses such as massage establishments, liquor, and marijuana is increasing. The IACP Study recommendations completed in August 2015 support the funding of this position.

Position FTE Increases:

0.5 FTE Recreation Coordinator, Active Adult Center – Parks and Recreation

- This is a 0.5 FTE increase to an existing part-time position at the Active Adult Center. This FTE increase will allow for additional programming to better serve older adults through recreational programming. The position currently programs special events, drop-in activities and a variety of classes. The position also supervises the Center's volunteer activities. The FTE increase results in a decrease in temporary hourly by \$17,000 and an increase in projected revenue by \$10,000.

RECOMMENDATIONS:

Conduct the scheduled public hearing on the 2016 proposed budget. No formal action is required. The adoption of the budget is schedule for Monday, October 26, 2015.

REPORT PREPARED/REVIEWED BY:

Heather Geyer, Administrative Services Director
Patrick Goff, City Manager

ATTACHMENTS:

1. Revised Outside Agency Award recommendations
2. WR2020 Additional Budget Information

Proposed 2016 Outside Agency Contribution Program Funding for Social Services							Attachment A
Organization	2016 Requested Amount	Received in 2015	Added	Recommended Contributions	Type of Assistance Provided	Estimated Number of WR Citizens Served in 2014-2015	Estimated Number of WR Citizens Served in 2016
Action Center	\$2,000			\$1,600	Providing general health and human services assistance to persons in crisis and assist in gaining and maintaining self-sufficiency	In 2015 4,400 WR residents were served, 3200 WR residents used the Food Rescue and Grocery Program, which provides food for clinics.	5,000
Arapahoe House	\$5,000	\$1,300	\$300	\$1,600	Detoxification Program funding gap	In 2014-2015 500 WR residents were served in the social model detoxification program	1,402 WR citizens ↑ 402 from 2015
CASA of Jeffco	\$4,800	\$1,600	\$200	\$1,200	Recruiting, training and management of volunteers to be advocates for abused or neglected children	In 2014 - served abuse and neglect cases involving 44 children from WR and 1 case involving truancy from WR. In 2015: 25 WR victims were served and 2 cases involving truancy. WR is 12% of costs.	>60 WR children ↑ 31 from 2015
Family Tree	\$3,000	\$1,500	\$200	\$1,200	Providing crises services for victims of homelessness, domestic violence & child abuse and helping them achieve stability and self-sufficient.	As of May 2015 the homelessness program provided approx. \$34,437 in rent and utility assistance to WR residents.	250 WR individuals ↓ 270 from 2015
Glass Hearts	\$2,500	\$400	\$100	\$500	Providing group and individual counseling, mentoring, and general support sessions for young dads (ages 16-24) and offering lessons in fathering and life skills.	5 young dads (ages 16-24) from Wheat Ridge were served in the program in 2015	5 young dads from WR = to 2015
Jefferson Center for Mental Health	\$2,500	\$1,600	\$500	\$1,600	Sole community mental health center serving Wheat Ridge; provided school counselors, promoting health, safety, welfare and quality of life.	JCMH served approximately 12,191 people in 2014. They estimate providing services to 1,100 Wheat Ridge citizens by the end of 2015. *Also requested \$2,500 for table sponsorship	1,210 WR citizens ↑ 131 from 2015
Ralston House	\$1,000	\$1,000		\$1,000	Assisting sexually, physically & emotionally abused children & teens or children who have witnessed a violent crime.	In 2014 - 983 served, with 43 children and families from Wheat Ridge; In 2015 so far 12 children from Wheat Ridge have been served. *Also requested \$7,500 from Police Department	50 WR children ↑ 7 from 2015
Seniors' Resource Center	\$5,000	\$1,600	\$200	\$1,600	Comprehensive care management for Seniors, including calls, referrals, care plans, home visits, follow through for health and mental services, minor home repairs and utilities, and safety and emergency assistance	As of May 2015, they had served 239 WR seniors. WR is the city receiving the most services for residents (of the 10 cities served). *Also requested \$35,000 for Senior Transportation Program	1,620 WR seniors *690 from 2015
Wheat Ridge Optimist Club	\$750	\$500		\$1,200	Supports youth in WR. Funds will be used to support needy families at Christmas.	They estimate serving 1,300 WR residents	>1,300 WR children ↑ 100 from 2015
Total:	\$26,550	\$9,500	\$1,500	\$11,500			

City Budget Considerations for Wheat Ridge 2020 – 2016 Budget

Thank you for the continued partnership of the City of Wheat Ridge in advancing Wheat Ridge as a vibrant and sustainable community. The five-year goals of the City of Wheat Ridge align well with many areas of Wheat Ridge 2020’s mission and strategic plan.

In 2016 we request funding for specific programs that aid us in leveraging community volunteers, local business support and our professional expertise to achieve goals for our organizations.

Core Wheat Ridge 2020 Programs (\$199,000)

\$50,000 - **BUBL and HIP loan fund**. This low-interest loan fund continues to support property improvements to residential properties between Sheridan and Wadsworth and was recently expanded to commercial properties throughout the City of Wheat Ridge. These investments are leveraged by private dollars, equity from the property owner and other program dollars, such as the Wheat Ridge Business District Revitalization Incentive Program for commercial property applicants.

City Goal 1: Economically Viable Commercial Areas

City Goal 3: Choice of Desirable Neighborhoods

Loan Administration	3,000
Marketing	1,500
BUBL and HIP Loans	45,500

\$50,000 – **Live Local Wheat Ridge** events and program support for Live Local Active, Harvest, Dines and community building events. The Live Local Wheat Ridge program continues to connect residents to one another and to local businesses. The small increase sought is to expand marketing and advertising these opportunities and to help support expansion to additional activities brought forward by community members, such as additional winter programming.

City Goal 1: Economically Viable Commercial Areas

Program and Volunteer Management	25,000
Event Costs	12,000
Printed Materials	6,000
Ads, refreshments, supplies, other costs	7,000

\$35,000 – **Community Outreach and Education** – leadership capacity building and Wheaties Academy. With 16 new graduates of the Wheaties Academy in 2015, we have pioneered a new leadership program. In 2016 we would like to create additional programs to keep these graduates engaged along with over 200 graduates from our Planning and Development Academy. We look to improve and to execute a second Wheaties Academy in 2016. We will look to the City of Wheat Ridge and elected officials to aid us in recruiting the class of 2016. The increase in this item acknowledges the intensive

Wheaties Academy that is planned along with additional ongoing engagement for graduates and community members. This program helps us identify and develop leaders working together to improve the community.

NRS Goal: Change the way the city and residents manage change.

Program and Volunteer Management	20,000
Retreat, facilitation, speakers, training	9,000
Materials	1,600
Rentals, refreshments, other costs	4,400

\$20,000 – **Community Marketing and Positioning Tours** - Realtor Tour, Welcome to Wheat Ridge Tour, Explore Wheat Ridge Tour. Coming off the success of our Mid Century and Modern Tour, we are planning for next year’s positioning tours. The increase sought includes time and preparation for outreach meetings to specific realty broker companies to showcase what is happening in the Wheat Ridge community as requested by the city.

City Goal 1: Economically Viable Commercial Areas

Personnel and Volunteer Management	10,000
Event Costs	4,000
Printed Materials	4,000
Refreshments, supplies, other costs	2,000

\$40,000 – **TLC Wheat Ridge**– Continue to implement small grant program for block improvements and clean ups in continued partnership with the WRPD and includes expansion to new areas in the city as targeted by WRPD. Also seeking to add recycling and electronics recycling to clean up days and exploring a hazardous waste pick up.

Goal 3: Choice of Desirable Neighborhoods

Personnel and Volunteer management	15,000
Event Costs	20,000
Printed Materials, supplies, other costs	5,000

4,000 – Facility rental for Wheat Ridge 2020 programs like Live Local

specific events: 3 Food and Film series meetings in Active Adult Center, 3 Yoga/Pilates in the Park events at city parks, community input meetings (at Active Adult or WR Rec Center), community potlucks at park shelters, Wheaties Academy and new events, and possibly a few LL, TLC or RA38 meetings where a larger facility is needed.

Strategic Plan Program Investments and City Priority Support (\$25,000)

\$25,000 – **Community Engagement and Communications** – We want to help better position Wheat Ridge as a community of choice and provide support for City of Wheat Ridge priorities like Neighborhood Identification and Improvement. The WR2020 strategic plan for 2014-2016 puts additional emphasis on engaging the community and communicating results. In particular we want to expand our mailing marketing to publicize events to residents in postcard form. This will help better reach residents not active in social media and give bite size information that can be put on the fridge rather than relying on hunting through larger publications. We put together one postcard in 2015 and would like to expand based on positive community feedback.

Personnel	8,000
Printed Materials, design and mailing costs	17,000
Ads, refreshments, supplies, other costs	8,000

Ridge at 38 - (\$97,000)

We will continue to provide staffing for Ridge at 38 Leadership Committee priorities and staff their committees. The Ridge at 38 has been covered in The Denver Post, 5280 Magazine, Westword, The Denver Business Journal, Clear Channel Radio including KBCO and other local and online publications.

Project and Volunteer management	10,000
Banners and Lights – now expanded west of Harlan	25,000
Business outreach and Leadership Committee	12,000
Marketing materials and plan implementation	30,000
Website, app, social media, online ads	10,000

RA38 Events (\$120,000)

- Ridge at 38 Criterium
- Friday Night Live with outdoor movies (x3)
- Ridgefest
- Trunk or Treat
- Holiday Celebration on Ridge at 38

The increase in this line is acknowledging the city's desire for outdoor movies as we would expand our Friday Night Live to have a series of first Friday events with outdoor movies on Ridge at 38. This is also

acknowledging the community desire for more impactful (and expensive) communication like road side electronic message boards for large events (\$14,000). We also recognize the feedback that the community really likes the large events and would like to see them even larger. This will take more capacity, more amenities and more marketing. If the city agrees, we would like to push our events to the next level and assess results. Your investment will help us take on the risk of some of these major investments while still leaving us motivated to close the gap on these events and seek additional income from vendors and sponsors.

While we don't have decades of track record with these events, we do have a couple years under our belts and have seen healthy increases in attendance. We have found ways to reduce costs like hiring part-time staff and cutting back on contractors for events (a certified technical race director is still required for the criterium, though we have limited the scope). We spent over 1500 staff hours on Ridge at 38 events in 2014. We continue to work to find sponsors who are attracted to the Ridge at 38 brand and complement it. If we are able to find significant sponsors, we have additional investments we would like to make to improve the events for guests and the impacted businesses and community. For Ridgefest we would add more bluegrass acts, add bistro lighting in the main seating area and add more tents for seating and shade. For the Criterium we would look at adding sound so folks can tune into the race commentary from any spot around the course. Additionally, we have been asked to submit a bid to host the Bicycle Racing Association of Colorado's Criterium Championship. This event currently attracts a regional audience and the championship would have an even larger draw.

And we would add additional marketing to all our events as we are able to afford it.

These events continue to help define the Ridge at 38 and bring people out to celebrate what makes Wheat Ridge unique. Sales tax collections are up in the 38th Avenue main street corridor and businesses report increased sales from events.

City Goal 1: Economically Viable Commercial Areas

See attachment with detail on Ridge at 38 events.

If all requests were fully funded, the total is \$431,000.

Wheat Ridge 2020 has over 200 active volunteers, over 1,000 members and produces over 50 events a year. Trends across events include an increase in attendance. We see increased sponsor interest and with our additional event track record and more time dedicated to development, we plan to see increases in event income. While the first several years of events are a bigger investment, with ongoing stewardship we hope to see steady progress toward breaking even and then revenue generation.

This item was previously cut, but based on city council comments, I am adding for consideration. \$10,000 – Capacity Building and Accountability – Purchase Results.com software and consulting support. Translate the WR2020 strategic plan to software that helps us track progress on goals, allocate staff hours and better report results and success. Interactive for staff and volunteers and valuable reports to share with WR2020 Board and City Council and leadership.

Ridge at 38 Events Requested detail

The City of Wheat Ridge grants in the course of a calendar year budget

2014 Ridge at 38 Events	\$	70,000	
2015 Ridge at 38 Events	\$	88,600	city request to add outdoor movie with additional budget

Wheat Ridge 2020 runs on a fiscal year of July 1-June 30

FY13-14	RA38 Events Expenses	\$	123,663
FY14-15	RA38 Events Expenses	\$	123,560

Or as broken down by event to align with City of Wheat Ridge calendar year

2014 RA38 Events Expenses	\$	120,512	Additional Income	\$	20,350
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Event	Income	Expenses	Staffing	net by event	Attendance
2013 Wheat Fest	\$ 3,278	\$ 18,289	\$ 8,856	\$ (23,866)	1,200
2013 Trunk or Treat	\$ 50	\$ 935	\$ 1,045	\$ (1,930)	600
2013 Holiday Celebration	\$ 2,281	\$ 13,272	\$ 7,474	\$ (18,466)	1,200
2014 Criterium	\$ 13,400	\$ 54,638	\$ 7,902	\$ (49,139)	1,500
2014 Friday Night Live		\$ 7,420	\$ 3,834	\$ (11,253) 2 nights	750
2014 Ridgefest	\$ 4,450	\$ 22,699	\$ 8,066	\$ (26,315)	3,000
2014 Trunk or Treat		\$ 849	\$ 1,874	\$ (2,723)	2,000
2014 Holiday Celebration	\$ 2,500	\$ 8,730	\$ 7,550	\$ (13,779)	2,500
2015 Criterium	\$ 23,008	\$ 51,484	\$ 13,639	\$ (42,116)	3,500
2015 Friday Night Live		\$ 3,597	\$ 2,023	\$ (5,620) 1 night	450
2015 Ridgefest					5,500

2016 Items for increased budget

- \$ 11,000 variable message boards for 1 week for Criterium
- \$ 3,000 variable message boards for 1 day event - Ridgefest
- \$ 7,400 costs for 2 more outdoor movie/Friday Night Live events for a total of 3 in series
- \$ 10,000 additional staffing for seeking sponsors, marketing, additional FNL events

REQUEST FOR CITY COUNCIL ACTION**TITLE: COUNCIL BILL NO. 22-2015 – AN ORDINANCE REPEALING AND REENACTING ARTICLE II OF CHAPTER 9 AND AMENDING ARTICLE II OF CHAPTER 17 OF THE WHEAT RIDGE CODE OF LAWS TO REGULATE SMOKING IN PUBLIC PLACES**

- | | |
|--|---|
| <input checked="" type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCES FOR 1 ST READING (9/28/2015) |
| <input type="checkbox"/> BIDS/MOTIONS | <input checked="" type="checkbox"/> ORDINANCES FOR 2 ND READING (10/12/2015) |
| <input type="checkbox"/> RESOLUTIONS | |

QUASI-JUDICIAL: YES NO

City Attorney

City Manager**ISSUE:**

The current City Code expressly allows smoking in many public places where smoking is prohibited by the Colorado Clean Indoor Air Act (CCIAA). Because this state law prohibits local smoking regulations that are “less stringent,” many of the current City laws concerning smoking are therefore without legal effect. This ordinance aligns the City Code with the CCIAA with several local amendments, including:

- Broadening the definition of “smoking” to include vaping and all other means of consumption that release secondhand smoke, vapor or particles into the air
- Prohibiting outdoor smoking at City parks, playgrounds and facilities and at City events, such as the Carnation Festival
- Prohibiting smoking at public transit stops
- Permitting smoking within all areas of outdoor patios of restaurants and bars
- Expressly prohibiting hookah bars
- Reaffirming and referencing the City’s existing Code sections that prohibit the “open and public” consumption of marijuana and the operation of marijuana clubs

PRIOR ACTION:

The Council discussed this issue and draft ordinances at its July 20th and August 17th study sessions and at its September 14th regular Council meeting. Amendments to prior drafts of the ordinance were directed and prepared after each discussion, with this ordinance reflecting all Council-directed changes to date.

One addition was made to the ordinance after Council's consideration of it on first reading. A new section 2 of the ordinance was added to cross-reference these smoking prohibitions within the City Park Rules set forth in the Code. Those Park Rules are set forth under Article II of Chapter 17.

Source notes indicate that most of Article II of Chapter 9 (the City's smoking regulations) has remained the same since at least 1977. The penalty section (Section 9-23) was amended in 1998. The CCIAA was adopted by the state legislature in 2006.

FINANCIAL IMPACT:

The financial impact to the City is projected to be nominal. There may be an increase in municipal court fines collected for violations of the new Code provisions prosecuted in the Wheat Ridge Municipal Court.

BACKGROUND:

As a result of a general review of the City Code, the City Attorney's Office and Police Department noted that Article II of Chapter 9 of the Code, concerning smoking in public places, conflicts with the CCIAA. This Article expressly allows smoking in many public places where smoking is prohibited by CCIAA. Public places where smoking is permitted under the existing City Code include bars, smoking sections of smaller restaurants, designated smoking areas in workplaces and designated common areas of buildings. The CCIAA authorizes local smoking regulations to supplement the CCIAA, but generally prohibits local regulations that are "less stringent than the [CCIAA]." C.R.S. § 25-14-207. Several provisions of Article II of Chapter 9 of the Code are less stringent than the CCIAA and therefore do not have any legal effect. As a result, the issue was brought to the Council for review and direction.

Upon reviewing the topic of public smoking generally, the Council determined that it was desirable to prohibit not only smoking, in the traditional sense of the word, but vaping and all methods of consumption that release second-hand smoke, vapor and other particles into the air of non-smokers.

The list of places where smoking is prohibited under this ordinance generally matches the list set forth in the CCIAA and includes most indoor locations to which the general public has access. Additionally, Council directed that smoking be prohibited in outdoor areas belonging to the City, such as parks, pools, trails, greenbelt areas, etc., and at City events. The CCIAA prohibits smoking in outdoor areas within fifteen feet of doorways. This ordinance includes this general "fifteen foot" rule; however, it exempts all areas of the outdoor patios of restaurants and bars. Under this ordinance, the smoking of tobacco is permitted on such patios without regard to how

close the smoker is to the doorway(s). This local amendment arose out of Council’s desire to permit all restaurants and bars to permit smoking on their patios if they wish, regardless of how large or small the patio may be.

The CCIAA permits smoking in “tobacco businesses,” defined as those businesses that primarily engage in the sale or promotion of tobacco or tobacco products at retail locations. The Council directed that this ordinance allow smoking in such businesses, but to expressly prohibit smoking in “retail smoking accessory businesses.” That term is defined as businesses that primarily engage in the sale or promotion of smoking devices, accessories or paraphernalia, such as vape pens, pipes, hookahs, e-cigarettes and similar devices. Smoking within such businesses is expressly prohibited under this ordinance. Finally, the ordinance reiterates and cross-references the City’s existing Code prohibition against the open and public consumption of marijuana and the operation of marijuana clubs within the City.

OPTIONS FOR COUNCIL ACTION:

1. Approve the ordinance as presented on second reading;
2. Approve the ordinance on second reading with amendment(s); or
3. Postpone consideration of the ordinance indefinitely.

RECOMMENDED MOTIONS:

“I move to approve Council Bill No. 22-2015, an ordinance repealing and reenacting Article II of Chapter 9 and amending Article II of Chapter 17 of the Wheat Ridge Code of Laws to regulate smoking in public places, on second reading, and that it take effect fifteen days after final publication.”

Or,

“I move to postpone indefinitely Council Bill No. 22-2015, an ordinance repealing and reenacting Article II of Chapter 9 and amending Article II of Chapter 17 of the Wheat Ridge Code of Laws to regulate smoking in public places, for the following reason(s)

_____.”

REPORT PREPARED BY:

Carmen Beery, City Attorney’s Office
Patrick Goff, City Manager

ATTACHMENTS:

1. Council Bill No. 22-2015

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER WOODEN
Council Bill No. 22
Ordinance No. _____
Series of 2015

TITLE: AN ORDINANCE REPEALING AND REENACTING ARTICLE II OF CHAPTER 9 AND AMENDING ARTICLE II OF CHAPTER 17 OF THE WHEAT RIDGE CODE OF LAWS TO REGULATE SMOKING IN PUBLIC PLACES

WHEREAS, the City of Wheat Ridge, Colorado (the "City"), is a Colorado home rule municipality, duly organized and existing pursuant to Section 6 of Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and C.R.S. § 31-15-401, the City, acting through its City Council (the "Council"), is authorized to adopt rules and regulations prohibiting certain conduct and defining general offenses that harm or pose a threat to the public health, safety or welfare; and

WHEREAS, the Council finds that the smoking of tobacco or of any other plant or substance in certain areas is a form of air pollution that threatens the public health, safety and welfare, and that secondhand smoke is a cause of disease, including lung cancer, heart disease, respiratory infection and decreased respiratory function and, as such, there is no safe level of exposure to secondhand smoke; and

WHEREAS, the Council finds that the legislature of the State of Colorado (the "State") adopted the Colorado Clean Indoor Air Act in Part 2 Article 14 of Title 25, Colorado Revised Statutes (the "Act"), and that the Act authorizes local jurisdictions to adopt local smoking regulations that are no less stringent than the Act's provisions; and

WHEREAS, the Council desires to prohibit smoking in most areas within the City that are open to the public in a manner that is not less stringent than the provisions in the Act; and

WHEREAS, pursuant to its home rule authority, its police power, C.R.S. § 25-14-207 and Section 16, Article XVIII of the Colorado Constitution ("Amendment 64"), the City possesses the authority to regulate and prohibit the indoor smoking of marijuana and the consumption of marijuana that is conducted openly and publicly or in a manner that endangers others; and

WHEREAS, the Council finds that it is prudent to include marijuana smoking and marijuana consumption generally within any prohibition of smoking in public places to minimize the exposure of citizens to secondhand environmental smoke, vapor, fumes and odor; to minimize the opportunities of minor children to observe marijuana consumption; and to remain consistent with the explicit prohibition of open and public consumption of marijuana as set forth in Amendment 64.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Article II of Chapter 9 of the Wheat Ridge Code of Laws, concerning smoking in public places, is hereby repealed and reenacted, to read in its entirety as follows:

ARTICLE II – SMOKING IN PUBLIC PLACES

Sec. 9-21. Legislative intent.

The City Council finds, determines and declares that it is in the best interest of the people of this City to protect nonsmokers from involuntary exposure to environmental smoke in most areas open to the public, public meetings, food service establishments, and places of employment. The City Council further finds, determines and declares that a balance should be struck between the health concerns of nonconsumers of tobacco and marijuana products and the need to minimize unwarranted governmental intrusion into, and regulation of, private spheres of conduct and choice with respect to the use or nonuse of tobacco and marijuana products in certain designated public areas and in private places. Therefore, the City Council hereby declares that the purpose of this Article is to preserve and improve the health, comfort, and environment of the people of this City by limiting exposure to tobacco and marijuana smoke.

Sec. 9-22. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Auditorium means the part of a public building where an audience gathers to attend a performance, and includes any corridors, hallways, or lobbies adjacent thereto.

Bar means any area that is operated and licensed under Article 47 of Title 12, C.R.S., primarily for the sale and service of alcohol beverages for on-premises consumption and where the service of food is secondary to the consumption of such beverages.

Cigar-tobacco bar means a bar that, in the calendar year ending December 31, 2005, generated at least five percent or more of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors shall not be defined as a "cigar-tobacco bar" and shall not thereafter be included in the definition regardless of sales figures.

Employee means any person who, regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by any other designation or title, either: (I) performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or (II) provides uncompensated work or services to a business or nonprofit entity.

Employer means any person, partnership, association, corporation, or nonprofit entity that employs one (1) or more persons. *Employer* includes, without limitation, the legislative, executive, and judicial branches of state government; any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, special district, authority, commission or agency; or any other separate corporate instrumentality or unit of state or local government.

Entryway means the outside of any doorway leading into the indoor area of any building or facility that is not exempted from this Article under Section 9-24. *Entryway* also includes the area of public or private property within fifteen (15) feet of the doorway.

Environmental smoke or secondhand smoke means gases, particles and vapors released into the air as a result of the combustion, electrical ignition, vaporization or heating of any substance, including but not limited to tobacco, nicotine or a marijuana product, also known as "sidestream smoke," and such gases, particles and vapors that are exhaled by the smoker.

Food service establishment means any indoor or outdoor area or portion thereof in which the principal business is the sale of food for on-premises consumption. The term includes, without limitation, restaurants, cafeterias, coffee shops, diners, sandwich shops, and short-order cafes.

Hookah bar is an establishment where patrons by themselves or by sharing with others smoke tobacco, marijuana or similar products from a communal hookah or nargile or similar device.

Indoor area means any enclosed area or portion thereof. The opening of windows or doors, or the temporary removal of wall panels, does not convert an indoor area into an outdoor area.

Marijuana means all parts of the plant of the genus *cannabis*, whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin, including marijuana concentrate. It does not include industrial hemp, fiber produced from the stalks, oil or cake made from the seeds of the plant, or sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral

administrations, food, drink, or other product, if these items exist apart from any other item defined as marijuana.

Marijuana products means products that are comprised of marijuana and other ingredients and are intended to be consumed by smoking or inhalation.

Place of employment means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.

Public building means any building owned or operated by:

(1) The state, including the legislative, executive, and judicial branches of state government;

(2) Any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, a special district, an authority, a commission, or an agency of any of the same; or

(3) Any other separate corporate instrumentality or unit of state or local government.

Public meeting means any meeting open to the public pursuant to Part 4 of Article 6 of Title 24, C.R.S., or any other law of the state.

Retail smoking accessory business means a sole proprietorship, corporation, partnership or other enterprise engaged primarily in the sale or promotion of smoking devices, accessories or paraphernalia, such as but not limited to vaporizing devices, pipes, chillums, bong, hookahs and electronic cigarettes and products intended for use in connection with such devices, and in which the sale, manufacture or promotion of other products is merely incidental.

Retail tobacco business means a sole proprietorship, corporation, partnership or other enterprise engaged primarily in the sale or promotion of tobacco or tobacco products at retail, and in which the sale, manufacture or promotion of other products is merely incidental.

Smoke-free work area means an indoor area in a place of employment where smoking is prohibited under this Chapter.

Smoking means the burning, heating, electrical ignition or vaporization of a cigarette, cigar, pipe, or any other similar product, matter or substance that contains tobacco, nicotine, marijuana, any other substance, or any combination thereof, and the inhaling and exhaling of environmental smoke created thereby.

Tobacco means cigarettes, cigars, cheroots, stogies, and periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking. *Tobacco* also includes cloves and any other plant matter or product, excluding marijuana and marijuana products, that is packaged for smoking.

Work area means an area in a place of employment where one or more employees are routinely assigned and perform services for or on behalf of their employer.

Sec. 9-23. General smoking restrictions.

(a) Except as provided in Section 9-24, and in order to reduce the levels of exposure to environmental smoke, smoking shall not be permitted and no person shall smoke in any indoor area, including but not limited to:

- (1) Public meeting places;
- (2) Elevators;
- (3) Government-owned or operated means of mass transportation, including, but not limited to, buses, vans, and trains;
- (4) Taxicabs and limousines;
- (5) Grocery stores;
- (6) Gymnasiums;
- (7) Jury waiting and deliberation rooms;
- (8) Courtrooms;
- (9) Child day care facilities;
- (10) Health care facilities including hospitals, health care clinics, doctor's offices, and other health care related facilities;
- (11) (A) Any place of employment that is not exempted;
(B) In the case of employers who own facilities otherwise exempted from this Article, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe environmental

tobacco smoke. Every employee shall have a right to work in an area free from environmental tobacco smoke;

(12) Food service establishments;

(13) Bars;

(14) Limited gaming facilities and any other facilities in which any gaming or gambling activity is conducted;

(15) Indoor sports arenas;

(16) Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;

(17) Restrooms, lobbies, hallways, and other common areas in hotels and motels, and in at least seventy-five percent (75%) of the sleeping quarters within a hotel or motel that are rented to guests;

(18) Bowling alleys;

(19) Billiard or pool halls;

(20) Facilities in which games of chance are conducted;

(21) The common areas of retirements facilities, publicly owned housing facilities, and, except as specified in section 9-24(6), nursing homes, not including any resident's private residential quarters or areas of assisted living facilities specified in Section 9-24(6);

(22) Public buildings;

(23) Auditoria;

(24) Theatres;

(25) Museums;

(26) Libraries;

(27) To the extent not otherwise provided in Section 25-14-103.5, C.R.S., public and nonpublic schools;

(28) Other educational and vocational institutions;

(29) Retail smoking accessory businesses;

(30) The entryways of all buildings and facilities listed in paragraphs (a)(1) through (a)(29) of this Section.

(b) Except as provided in Section 9-24, and in order to reduce the levels of exposure to environmental smoke, smoking shall not be permitted and no person shall smoke in the following outdoor areas:

(1) The following facilities and areas of any public property within the City:

a. Parks, playgrounds, swimming pools, recreation facilities, skate parks, athletic fields, picnic shelters, tennis courts, greenbelts, trails and open space and similar locations; and

b. Outdoor locations to which the general public has access to participate in City events, such as the Carnation Festival and other City events.

(2) Transit stops, including light-rail platforms and bus stops, with or without benches and/or shelters.

(c) Nothing herein shall be deemed to permit the consumption of marijuana that is conducted openly and publicly, in a manner that endangers others or otherwise violates state law.

Sec. 9-24. Exceptions to smoking restrictions.

(a) This Article shall not apply to:

(1) Private homes, private residences, and private automobiles; except that Section 9-23 of this Article shall apply if any such home, residence, or vehicle is being used for child care or day care or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation;

(2) Limousines under private hire;

(3) A hotel or motel room rented to one (1) or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent (25%);

(4) The smoking of tobacco in a cigar-tobacco bar;

(5) The smoking of tobacco within outdoor seating and patio areas provided by food service establishments and bars;

(6) The smoking of tobacco within the outdoor area of any business not specified under subsection (5) above, except to the extent that the outdoor area of such business is within fifteen (15) feet of an entryway;

(7) A place of employment that is not open to the public and that is under the control of an employer that employs three or fewer employees;

(8) A private nonresidential building on a farm or ranch, as defined in Section 39-1-102, C.R.S., that has annual gross income of less than five hundred thousand dollars (\$500,000);

(9) A. The areas of assisted living facilities:

- (i) That are designated for smoking for residents;
- (ii) That are fully enclosed and ventilated; and
- (iii) To which access is restricted to the residents or their guests; or

(10) The smoking of tobacco in a retail tobacco business.

B. As used in this subparagraph (a)(9), "assisted living facility" means a nursing facility, as that term is defined in 25.5-4-103, C.R.S., and an assisted living residence, as that term is defined in section 25-27-102, C.R.S.

Sec. 9-25. Optional prohibitions.

(a) The owner or manager of any place not specifically listed in Section 9-23, including a place otherwise exempted under Section 9-24, may choose to prohibit smoking in such place or restrict smoking to certain designated areas only by posting signs that provide notice of the same. Where signs are posted that prohibit smoking, whether in all areas or only in certain designated non-smoking areas, such posting shall have the effect of including such place or the designated nonsmoking portion thereof, in the places where smoking is prohibited or restricted pursuant to this Article.

(b) If the owner or manager of a place not specifically listed in Section 9-23, including a place otherwise exempted under Section 9-24, is an employer and receives a request from an employee to create a smoke-free work area, the owner or manager shall post a sign or signs in the smoke-free work area as provided in subsection (a) of this Section.

Sec. 9-26. Other applicable regulations of smoking.

This Article shall not be construed to permit smoking where it is otherwise restricted by any other applicable law, including, but not limited to Section 11-404(e) of this Code, prohibiting marijuana clubs, and Section 16-131(c) of this Code, prohibiting the open and public consumption of marijuana products, marijuana, cannabis, or cannabis concentrate.

Sec. 9-27. Hookah bars prohibited.

Hookah bars are prohibited within the City.

Sec. 9-28. Unlawful acts.

(a) It is unlawful for a person who owns, manages, operates, or otherwise controls the use of property subject to the provisions in this Article to violate or to knowingly permit the violation of any provision of this Article.

(b) It is unlawful for a person to smoke in an area where smoking is prohibited pursuant to this Article.

Sec. 9-29. Reserved.

Section 2. Article II of Chapter 17 of the Wheat Ridge Code of Laws, concerning Park Rules, is hereby amended by the addition of a new Section 17-56, to read in its entirety as follows:

Sec. 17-56. Smoking.

It shall be unlawful to engage in smoking, as defined by Section 9-22 of this Code, within or upon any park, parkway, trail, pathway, recreational facility or recreational building, as defined by Section 17-1 hereof.

Section 3. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Wheat Ridge, that it is promulgated for the health, safety, and welfare of the public and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 4. Severability; Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 5. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of 8 to 0 on this 28th day of September, 2015, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge and Public Hearing and consideration on final passage set for October 12, 2015, at 7:00 o'clock p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of _____ to _____, this _____ day of _____, 2015.

SIGNED by the Mayor on this _____ day of _____, 2015.

Joyce Jay, Mayor

ATTEST:

Janelle Shaver, City Clerk

Approved As To Form

Gerald E. Dahl, City Attorney

First Publication: October 1, 2015

Second Publication:

Wheat Ridge Transcript

Effective Date:

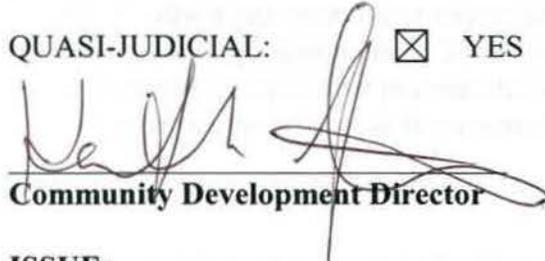
REQUEST FOR CITY COUNCIL ACTION



TITLE: COUNCIL BILL NO. 23-2015 – AN ORDINANCE APPROVING A ZONE CHANGE FROM RESIDENTIAL-ONE (R-1) TO MIXED USE-NEIGHBORHOOD (MU-N) FOR PROPERTY LOCATED AT 10191 W. 38th AVENUE (CASE NO. WZ-15-06/BUCK)

- | | |
|---|---|
| <input type="checkbox"/> PUBLIC HEARING | <input checked="" type="checkbox"/> ORDINANCES FOR 1 ST READING (10/12/2015) |
| <input type="checkbox"/> BIDS/MOTIONS | <input type="checkbox"/> ORDINANCES FOR 2 ND READING (11/9/2015) |
| <input type="checkbox"/> RESOLUTIONS | |

QUASI-JUDICIAL: YES NO


Community Development Director


City Manager

ISSUE:

This application is for approval of a zone change from Residential-One (R-1) to Mixed Use-Neighborhood (MU-N) for property located at 10191 W. 38th Avenue.

The zone change is the first step of the process for approval for redevelopment of this site under MU-N zoning. If approved, and prior to any construction, a site plan review will be required to confirm compliance with the City zoning code and the Architectural and Site Design Manual. This review would be administrative with no additional public hearings required.

PRIOR ACTION:

Planning Commission heard the request at a public hearing on September 17, 2015. The Planning Commission recommended approval of this request. The staff report and meeting minutes from the Planning Commission public hearing will be included with the ordinance for second reading.

FINANCIAL IMPACT:

Fees in the amount of \$880 were collected for the review and processing of Case No. WZ-15-06. If the proposed rezoning is approved, there could be an advancement of the City's goals for economic development, including the redevelopment of the site in response to redevelopment in the area of Kipling Ridge, at W. 38th Avenue and Kipling Street.

BACKGROUND:

Subject Property

The property is located in the western portion of the City at 10191 W. 38th Avenue. Per the Jefferson County Assessor, the property is 20,299 square feet (0.47 acres) in size. The primary structure on the property was originally built in 1900 as a single family home and the property also has a detached garage. Lena Gulch is located north of the property, with approximately five feet of the northwestern most corner encumbered by the 100-year floodplain and floodway. The floodplain does not impact the development opportunity on the property. One driveway of roughly 20 feet in width is used for access off of W. 38th Avenue. The residence is currently occupied as a rental.

Surrounding Land Uses

The surrounding properties include a variety of land uses and zoning designations. Zoning along the north side of W. 38th Avenue consists of residential zones to the west and north. A single property immediately east of the subject property is zoned PCD and operating as a dental office. C-1 zoning is prominent along W. 38th Avenue at the intersection with Kipling Street, and west along the south side of W. 38th Avenue. The subject property is across the street from the new Kipling Ridge development.

Current and Proposed Zoning

The property currently is zoned Residential-One (R-1). The R-1 zoning allows large-lot single family homes.

The applicants are requesting the property be rezoned to Mixed Use-Neighborhood, a zone district intended to provide medium density mixed use development. In addition to residential and civic uses, it allows for a more limited range of neighborhood serving commercial and retail uses. The applicant has no specific development plan at this time, and the property is currently listed for sale.

The application has been through the standard referral process with no concerns raised by any outside agencies or City departments. A separate referral process will be required as part of future site redevelopment.

RECOMMENDED MOTION:

"I move to approve Council Bill No. 23-2015, an ordinance approving a zone change from Residential-One (R-1) to Mixed Use-Neighborhood (MU-N) for property located at 10191 W. 38th Avenue on first reading, order it published, public hearing set for Monday, November 9, 2015 at 7 p.m. in City Council Chambers, and that it take effect 15 days after final publication."

Zoning Change at 10191 38th Avenue
October 12, 2015
Page 3

REPORT PREPARED/REVIEWED BY:

Lisa Ritchie, Planner II
Kenneth Johnstone, Community Development Director
Patrick Goff, City Manager

ATTACHMENTS:

1. Council Bill No. 23-2015

CITY OF WHEAT RIDGE
INTRODUCED BY COUNCIL MEMBER _____
COUNCIL BILL NO. 23
ORDINANCE NO. _____
Series of 2015

TITLE: AN ORDINANCE APPROVING A ZONE CHANGE FROM RESIDENTIAL-ONE (R-1) TO MIXED USE-NEIGHBORHOOD (MU-N) FOR PROPERTY LOCATED AT 10191 W. 38th AVENUE (CASE NO. WZ-15-06/BUCK)

WHEREAS, Chapter 26 of the Wheat Ridge Code of Laws establishes procedures for the City's review and approval of requests for land use cases; and,

WHEREAS, a land use application has been submitted for approval of a zone change to Mixed Use-Neighborhood zone district for property located at 10191 W. 38th Avenue; and

WHEREAS, the subject property is in an area currently undergoing change and redevelopment; and

WHEREAS, the proposed zone change is supported by the City's Comprehensive Plan—*Envision Wheat* and the zone change criteria specified in Section 26-112.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Upon application by Michael Buck for approval of a zone change from Residential-One (R-1) to Mixed Use-Neighborhood (MU-N) for property located at 10191 W. 38th Avenue, and pursuant to the findings made based on testimony and evidence presented at a public hearing before the Wheat Ridge City Council, a zone change is approved for the following described land:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF JEFFERSON, STATE OF COLORADO, AND IS DESCRIBED AS FOLLOWS:

A parcel of land located in the Southeast Quarter of the Southeast Quarter of Section 21, Township 3 South, Range 69 West of the Sixth Principal Meridian, County of Jefferson, State of Colorado, being more particularly described as follows:

Commencing at the Southeast corner of the East one half of the Southeast Quarter of the Southeast Quarter of Section 21, whence the South Quarter corner thereof bears South 89 degrees 12 minutes 43 seconds West, a distance of 1981.61 feet; thence North 00 degrees 08 minutes 23 seconds West along the West line of the East half of the Southeast Quarter of the Southeast Quarter of said Section 21, a distance of 30.00 feet to a point on the North right-of-way line of West 38th Avenue, being the point of beginning ;thence continuing North 00 degrees 08 minutes 23 seconds West, a distance

ATTACHMENT 1

of 140.00 feet; thence North 89 degrees 12 minutes 43 seconds to a point on said North right-of-way line, a distance of 145.00 feet to the point of beginning, County of Jefferson, State of Colorado.

Section 2. Vested Property Rights. Approval of this zone change does not create a vested property right. Vested property rights may only arise and accrue pursuant to the provisions of Section 26-121 of the Code of Laws of the City of Wheat Ridge.

Section 3. Safety Clause. The City of Wheat Ridge hereby finds, determines, and declares that this ordinance is promulgated under the general police power of the City of Wheat Ridge, that it is promulgated for the health, safety, and welfare of the public and that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the ordinance bears a rational relation to the proper legislative objective sought to be attained.

Section 4. Severability; Conflicting Ordinance Repealed. If any section, subsection or clause of the ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 5. Effective Date. This Ordinance shall take effect 15 days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of ___ to ___ on this 12th day of October, 2015, ordered it published with Public Hearing and consideration on final passage set for **Monday, November 9, 2015 at 7:00 o'clock p.m.**, in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado, and that it takes effect 15 days after final publication.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of _____ to _____, this _____ day of _____, 2015.

SIGNED by the Mayor on this _____ day of _____, 2015.

Joyce Jay, Mayor

ATTEST:

Janelle Shaver, City Clerk

Approved as to Form:

Gerald Dahl, City Attorney

1st publication:
2nd publication:
Wheat Ridge Transcript:
Effective Date:

REQUEST FOR CITY COUNCIL ACTION

TITLE: COUNCIL BILL NO. 24-2015 – AN ORDINANCE AMENDING SECTION 5-38 AND CHAPTER 16 OF THE WHEAT RIDGE CODE OF LAWS, TO PLACE LIMITS ON THE HOURS OF PRIVATE CONSTRUCTION ACTIVITY IN THE CITY AND PROVIDING A REMEDY FOR VIOLATIONS OF THE SAME

- | | |
|---|---|
| <input type="checkbox"/> PUBLIC HEARING | <input checked="" type="checkbox"/> ORDINANCES FOR 1 ST READING (10/12/15) |
| <input type="checkbox"/> BIDS/MOTIONS | <input type="checkbox"/> ORDINANCES FOR 2 ND READING (10/26/15) |
| <input type="checkbox"/> RESOLUTIONS | |

QUASI-JUDICIAL: YES NO



Director of Community Development

City Manager**ISSUE:**

Many cities place limits on the hours when private construction activity is allowed to occur. This is typically done in order to mitigate nuisance types of impacts (noise, dust, vibration, etc.) on neighboring properties, particularly in residential areas. The City of Wheat Ridge currently has no specified limits on the hours of construction on private property; however, construction in the public rights-of-way are only permitted from 7 am to 7 pm on weekdays and only allowed on weekends with prior approval from the Director of Public Works.

PRIOR ACTION:

At the October 5, 2015, study session, City Council directed staff to draft an ordinance placing limits on the hours of private construction activity in the City. Council generally recommended an ordinance allowing construction from the hours of 7 am to 7 pm and clarifying that interior construction activities, which do not generate unreasonable noise are explicitly exempted from the hours restrictions.

FINANCIAL IMPACT:

None

BACKGROUND:

Staff conducted research on cities in the area. Most place some limits on the hours of construction on private property. Some enforce stricter standards and some enforce more limited hours on weekends. Staff believes the proposal to limit the permissible hours to 7 am to 7 pm is reasonable and in-line with most surrounding jurisdictions. Some jurisdictions also incorporate standards based on noise (decibel) levels. Staff believes that approach is overly complex and enforcement would require new equipment, and training on the proper use of the equipment.

Staff proposes the limitation on hours be located in Chapter 16 – Miscellaneous Offenses. A cross-reference is provided in Chapter 5 (Buildings) for enforcement purposes. Some of the rationale for locating in Chapter 16 is as follows:

- Chapter 16, Article V is titled *Offenses Against the Public Peace* and already includes sections more generally covering unreasonable noise and disturbing the peace
- Chapter 16 provides broader applicability, making the requirement apply broadly to construction activity, much of which may not require building permits. An example of such work would be concrete (flat) work, which generally does not require a permit on private property.

The ordinance includes a broad definition of “construction activities”, but also lists several different pieces of machinery that are covered by the definition and therefore would not be allowed to be used before 7 am and after 7 pm.

If adopted, staff would implement processes to ensure the limitation is clearly communicated to all licensed contractors in the City. Standardized notes, which are added to all approved building permits, will be added. The addition of an acknowledgement of the requirement on all applications for contractor licenses is also proposed.

RECOMMENDATIONS:

Staff is not recommending any additional public process beyond the standard public hearing and notice provided for the ordinance. The proposed ordinance is reasonable and consistent with surrounding cities, and in some cases less restrictive, and therefore staff does not feel additional public outreach is needed.

Staff recommends City Council approve the ordinance to amend the code to limit the hours of private construction in the City.

RECOMMENDED MOTION:

“I move to approve Council Bill No. 24-2015, an ordinance amending Section 5-38 and Chapter 16 of the Wheat Ridge Code of Laws, placing limits on the hours of private construction in the City and providing a remedy for violations of the same, on first reading, public hearing set for Monday, October 26, 2015, at 7 p.m. in City Council chambers and that it take effect 15 days after final publication.”

Or,

“I move to postpone indefinitely Council Bill No. 24-2015, an ordinance amending Section 5-38 and Chapter 16 of the Wheat Ridge Code of Laws, and placing limits on the hours of private construction in the City and providing a remedy for violations of the same, for the following reason(s): _____.”

REPORT PREPARED/REVIEWED BY:

Ken Johnstone, Director of Community Development
Patrick Goff, City Manager

ATTACHMENTS:

1. Council Bill No. 24 -2015

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER _____
Council Bill No. 24
Ordinance No. _____
Series of 2015

TITLE: AN ORDINANCE AMENDING SECTION 5-38 AND CHAPTER 16 OF THE WHEAT RIDGE CODE OF LAWS TO PLACE LIMITS ON THE HOURS OF PRIVATE CONSTRUCTION ACTIVITY IN THE CITY AND PROVIDING A REMEDY FOR VIOLATIONS OF THE SAME

WHEREAS, the City of Wheat Ridge, Colorado (the "City"), is a Colorado home rule municipality, duly organized and existing pursuant to Section 6 of Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and C.R.S. § 31-15-401, the City, acting through its City Council (the "Council"), is authorized to adopt rules and regulations prohibiting certain conduct and defining general offenses that harm or pose a threat to the public health, safety or welfare; and

WHEREAS, the Council finds that the conduct of construction activities during certain hours presents a threat to the public welfare by degrading or preventing the quiet enjoyment of properties adjacent to and in the immediate area of the property upon which the construction occurs, particularly during the hours many residents devote to sleep; and

WHEREAS, the Council finds that restricting construction activities to certain hours of the day strikes a fair balance between the competing needs of residents and businesses to perform construction projects and the needs of other residents and businesses to enjoy their respective properties in relative peace and comfort; and

WHEREAS, the Council therefore determines that it is necessary and desirable to impose certain hours restrictions on construction activities and to authorize adverse action against a building permit when work performed under the permit violates those restrictions, all as further set forth herein.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Section 5-38 of the Wheat Ridge Code of Laws, concerning building permit suspension and revocation, is hereby amended as follows:

Sec. 5-38. Revocation and suspension—Generally.

The building inspection division may revoke or suspend any permit or may stop the work for any of the following reasons:

- (1) Whenever there is a violation or suspicion of a violation of any provision of this chapter, or any city ordinance which the division is empowered to enforce OR SECTION 16-115 OF THIS CODE, CONCERNING PERMISSIBLE HOURS OF CONSTRUCTION ACTIVITIES.
- (2) Whenever the continuance of any work becomes dangerous to life or property.

Section 2. Chapter 16 of the Wheat Ridge Code of Laws, concerning general offenses, is hereby amended by the addition of a new section 16-115, to read in its entirety as follows:

Sec. 16-115. Construction activities – hours restricted.

(a) Except as otherwise provided herein, it is unlawful for any person to engage in, or cause or permit any person to be engaged in, construction activities in any residential or commercial district between the hours of seven (7:00) P.M. of one day and seven (7:00) A.M. of the following day. Construction activities required to address an immediate threat to the health, safety or welfare of any person are exempted from the provisions of this section.

(b) As used in this section, "construction activities" includes, by way of illustration only and not by way of limitation: pouring concrete and idling of concrete mixing trucks; operating construction-related equipment; performing outside construction work for the purposes of erection, demolition, excavation, alteration or repair of any building, structure or project; operating a pile driver, power shovel, pneumatic hammer, derrick, power hoist or other construction-type device; and loading and unloading of construction materials or idling of delivery trucks, specifically excluding interior construction activities that do not otherwise violate Section 16-103 of this Code.

Section 3. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Wheat Ridge, that it is promulgated for the health, safety, and welfare of the public and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 4. Severability; Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 5. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of _____ to _____ on this 12th day of October, 2015, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge and Public Hearing and consideration on final passage set for October 26, 2015, at 7:00 o'clock p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of _____ to _____, this _____ day of _____, 2015.

SIGNED by the Mayor on this _____ day of _____, 2015.

Joyce Jay, Mayor

ATTEST:

Janelle Shaver, City Clerk

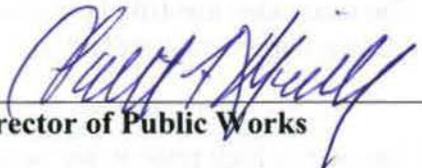
Approved As To Form

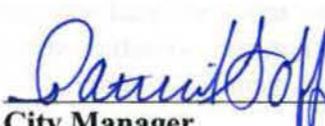
Gerald E. Dahl, City Attorney

First Publication:
Second Publication:
Wheat Ridge Transcript
Effective Date:

REQUEST FOR CITY COUNCIL ACTION**TITLE: RESOLUTION NO. 41-2015 - A RESOLUTION ADOPTING
THE WADSWORTH BOULEVARD PLANNING AND
ENVIRONMENTAL LINKAGE STUDY**

- | | |
|---|---|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCES FOR 1 ST READING |
| <input type="checkbox"/> BIDS/MOTIONS | <input type="checkbox"/> ORDINANCES FOR 2 ND READING |
| <input checked="" type="checkbox"/> RESOLUTIONS | |

QUASI-JUDICIAL: YES NO

Director of Public Works

City Manager**ISSUE:**

The City was awarded funding for a transportation study on Wadsworth Boulevard from 36th Avenue to 46th Avenue through the Denver Regional Council of Governments (DRCOG) Transportation Improvement Program (TIP) in September 2012. The project conducted a Planning and Environmental Linkage Study (PEL) to identify traffic congestion and safety issues, develop multi-modal solutions and related environmental mitigation for future construction improvements to this highway corridor.

The study was commissioned in January 2014 and completed over the course of 18 months with an extensive public process including input from various stakeholders. Through the process, the project limits were expanded to 35th Avenue on the south and to the eastbound I-70 ramps on the north.

Adopting the study is necessary to formally authorize this as a guiding document for future phases of the corridor reconstruction including environmental assessment, design, right-of-way acquisition, and construction.

PRIOR ACTION:

An Intergovernmental Agreement (IGA) with CDOT was approved by resolution on May 13, 2013, to authorize the study. Subsequently, the City Council approved the selection of Parsons Brinckerhoff as the consultant to perform the study on January 14, 2014.

FINANCIAL IMPACT:

The City received a grant from DRCOG in the amount \$636,000 for this project. At this point, the project is expected to be completed for less than \$1,000,000. The City will be responsible for the costs in excess of the grant.

BACKGROUND:

In March 2012, the City applied to the Denver Regional Council of Governments for Federal transportation funds available for fiscal years 2012 through 2017 to help fund a transportation and environmental study on Wadsworth Boulevard from 36th to 46th Avenue. DRCOG awarded the grant application in September of 2012.

This project has resulted in a study and findings which will be utilized for design and the environmental assessment of future transportation improvements. The PEL Study established a purpose and need for a required future highway environmental study, defined the study area for subsequent phases, and developed reasonable alternatives. The study also identified program priorities, timeframes, and potential funding to be used in updating transportation plans and transportation improvement programs (TIPs).

The improvement of this segment of Wadsworth Boulevard has been a high priority for both CDOT and the City of Wheat Ridge for over twenty (20) years. Lack of available funding is the primary reason for postponing improvements. The purpose of this project is to transform Wadsworth Boulevard from 35th Avenue to the eastbound I-70 ramps into a multi-modal facility that enhances regional mobility, provides local accessibility, and supports the vision of a livable, walkable mixed-use corridor. The study identified the improvements needed to widen Wadsworth Boulevard to six (6) travel lanes, including the major intersections at 38th and 44th Avenues, provide additional turn lanes at key congested intersections, and install medians to better manage access. Bicycle and pedestrian facilities have also been proposed as essential components of an improved roadway.

The study kicked off in February 2014. The project team developed a screening process which was built on continuous input from resource agencies, stakeholders, and the public (both general and block-by-block specific public meetings). The screening process consisted of three levels beginning with 55 options that were packaged into 10 concepts that were further narrowed to 3 alternatives and ultimately a final recommended alternative.

The process was designed to consider a wide array of transportation options initially and then systematically identify the alternatives that best addressed the long-term mobility, accessibility, safety needs, and quality of life enhancements. Specific access management examination

included access point analysis, signal timing analysis, signal progression analysis, and transit access coordination with RTD.

Through a systematic process, the study resulted in a final recommended alternative to be explored further toward implementation through the next phases such as an environmental assessment, design, right-of-way acquisition, and construction.

RECOMMENDATIONS:

Staff recommends adopting the study as the guiding document for the future corridor reconstruction.

RECOMMENDED MOTION:

“I move to approve Resolution No. 41-2015, a Resolution adopting the Wadsworth Boulevard Planning and Environmental Linkage Study.”

Or:

“I move to postpone indefinitely Resolution No. 41-2015, a Resolution adopting the Wadsworth Planning and Environmental Linkage Study, for the following reason(s): _____”

REPORT PREPARED/REVIEWED BY:

Mark Westberg, Project Supervisor
Steve Nguyen, Engineering Manager
Scott Brink, Director of Public Works
Patrick Goff, City Manager

ATTACHMENTS:

1. Resolution No. 41-2015
2. Wadsworth PEL Executive Summary

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 41
Series of 2015

**TITLE: A RESOLUTION ADOPTING THE WADSWORTH BOULEVARD
PLANNING AND ENVIRONMENTAL LINKAGE STUDY**

WHEREAS, the City Council authorized a planning and environmental linkage study of the Wadsworth Boulevard corridor from 35th Avenue to the eastbound I-70 ramps; and

WHEREAS, the City was awarded a federal transportation grant by the Denver Regional Council of Governments (DRCOG) to conduct a study for this particular roadway segment; and

WHEREAS, the City negotiated a contract with the Colorado Department of Transportation (CDOT), DRCOG's funding steward, for funding of the study; and

WHEREAS, the study is anticipated to cost under \$1,000,000 and the City will receive reimbursement in the amount of \$636,000 from CDOT; and

WHEREAS, the Wadsworth PEL has successfully been completed in accordance with City, State, and Federal requirements.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheat Ridge, Colorado, that:

Section 1. Study Adopted. The Wadsworth Boulevard Planning and Environmental Linkage Study, Project No. STU1211-081, SA 19488, is hereby adopted and the Mayor and City Clerk are authorized and directed to execute the same.

Section 2. This Resolution shall be effective immediately upon adoption.

DONE AND RESOLVED this _____ day of _____, 2015.

Joyce Jay, Mayor

ATTEST:

Janelle Shaver, City Clerk

REQUEST FOR CITY COUNCIL ACTION

TITLE: RESOLUTION NO. 43-2015 - A RESOLUTION APPROVING AN AGREEMENT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) FOR THE WADSWORTH BOULEVARD WIDENING PROJECT FROM 35TH AVENUE TO 48TH AVENUE

- | | |
|---|---|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCES FOR 1 ST READING |
| <input type="checkbox"/> BIDS/MOTIONS | <input type="checkbox"/> ORDINANCES FOR 2 ND READING |
| <input checked="" type="checkbox"/> RESOLUTIONS | |

QUASI-JUDICIAL: YES NO



Director of Public Works

City Manager**ISSUE:**

In October of 2014 the City was awarded funding through the Denver Regional Council of Governments (DRCOG) Transportation Improvement Program (TIP) to improve the capacity on Wadsworth Boulevard from 35th Avenue to 48th Avenue. The widening and improvement project consists of an environmental assessment, design plan, right-of-way acquisition, and reconstruction of Wadsworth Boulevard. The recently-completed Planning and Environmental Linkage Study (PEL) identified traffic congestion and safety issues, developed multi-modal solutions, identified related environmental issues, and identified related mitigation measures needed for the National Environmental Policy Act (NEPA) environmental assessment, which is the next phase of the project.

The federal grant will provide \$25,280,000 to assist in funding the estimated \$40,000,000 project. CDOT will administer the project's federal funding, and the City will manage the project.

Entering into an Intergovernmental Agreement (IGA) with CDOT is necessary to formally authorize the project. The IGA states that the City will initially finance the cost of the project, and CDOT will reimburse 80% of the costs, not to exceed \$25,280,000.

PRIOR ACTION:

None

FINANCIAL IMPACT:

City staff will administer the project with reimbursement of 80% of all of the costs, not to exceed \$25,280,000 by CDOT. The City's portion is \$6,320,000 at this time. Funding for the first phase of the project has been proposed in the Wadsworth environmental assessment design and construction 2016 Capital Investment Program (CIP) budget in the amount of \$1,500,000. Likewise, the 2016 CIP revenues reflect the expected reimbursements. In 2017, slightly higher expenditures and reimbursements will occur to complete the design and start the right-of-way acquisition phases. Beyond 2017, the additional funding needed to cover the remaining right-of-way acquisition and construction costs for the non-federal share is expected to be covered by a combination of sources, including the City, CDOT, and other sources yet to be determined. The total estimated budget at this time is a little over \$40 million.

BACKGROUND:

In October 2014, the City applied to the DRCOG for federal transportation funds available for fiscal years 2016 through 2021 to help fund a widening and improvement project on Wadsworth Boulevard from 35th Avenue to 48th Avenue. DRCOG awarded the grant application in October 2014.

This project will entail multiple phases which include an environmental assessment, design, right-of-way acquisition, and reconstruction of Wadsworth Boulevard. The recently-completed PEL identified traffic congestion, safety issues and proposed long-term roadway and multimodal improvements, which consider local and regional traffic and land use on the corridor. These findings will serve as guiding principles for all phases of the project.

The improvement of this segment of Wadsworth Boulevard has been a high priority for both CDOT and the City of Wheat Ridge for more than 20 years. The primary reason for postponing the improvements has been the lack of funding. The final recommended alternative from the PEL has identified the improvements needed to widen that segment of Wadsworth Boulevard to six travel lanes, including the major intersections at 38th and 44th Avenues, provide additional turn lanes at key congested intersections, and install medians to help manage access. Bicycle and pedestrian facilities will also be studied.

Although the contract states that the City will provide a match of \$6,320,000, the City will have to fund any excess cost to complete the project.

RECOMMENDATIONS:

Staff recommends approving the IGA with CDOT to proceed with the widening project.

RECOMMENDED MOTION:

"I move to approve Resolution No. 43-2015, a resolution approving a contract with the Colorado Department of Transportation for the Wadsworth Boulevard Widening Project from 35th Avenue to 48th Avenue."

Or,

"I move to postpone indefinitely Resolution No. 43-2015, a resolution approving a contract with the Colorado Department of Transportation for the Wadsworth Boulevard Widening Project from 35th Avenue to 48th Avenue. For the following reason(s): _____."

REPORT PREPARED/REVIEWED BY:

Mark Westberg, Project Supervisor
Steve Nguyen, Engineering Manager
Scott Brink, Director of Public Works
Patrick Goff, City Manager

ATTACHMENTS:

1. Resolution No. 43-2015
2. CDOT Agreement - Project No. NHPP 1211-086, SA 21006

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 43
Series of 2015

TITLE: A RESOLUTION APPROVING A CONTRACT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) FOR THE WADSWORTH BOULEVARD WIDENING PROJECT FROM 35TH AVENUE TO 48TH AVENUE

WHEREAS, the City Council wishes to provide for the widening of Wadsworth Boulevard from 35th Avenue to 48th Avenue; and

WHEREAS, the City has been awarded a federal transportation grant by the Denver Regional Council of Governments (DRCOG) to improve this segment; and

WHEREAS, the City has negotiated an Agreement with the Colorado Department of Transportation, DRCOG's funding steward, for the funding of the Project; and

WHEREAS, project funds are programmed in the 2016 Capital Investment Program budget in the total amount of \$1,500,000 to finance the initial project cost, and the City will seek reimbursement of 80% of the Project costs from CDOT upon Project completion;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheat Ridge, Colorado, that:

Section 1. Agreement Approved. The Agreement between the City and the Colorado Department of Transportation for Project No. **NHPP 1211-086, SA 21006**: Wadsworth Boulevard Widening from 35th Avenue to 48th Avenue, is hereby approved and the Mayor and City Clerk are authorized and directed to execute the same.

Section 2. This Resolution shall be effective immediately upon adoption.

DONE AND RESOLVED this _____ day of _____, 2015.

Joyce Jay, Mayor

ATTEST:

Janelle Shaver, City Clerk

STATE OF COLORADO
Department of Transportation
Agreement
with
City of Wheat Ridge

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1. PARTIES

THIS AGREEMENT is entered into by and between City of Wheat Ridge (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"). 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

Pursuant to Title I, Subtitle A, Section 1108 of the "Transportation Equity Act for the 21st Century" of 1998 (TEA-21) and/or the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU) of 2005 and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the "Federal Provisions"), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by the Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration ("FHWA").

ii. State Authority

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

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 funds to the Local Agency pursuant to CDOT's Stewardship Agreement with the FHWA.

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.

C. Budget

"Budget" means the budget for the Work described in Exhibit C.

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. Evaluation

"Evaluation" means the process of examining the Local Agency's Work and rating it based on criteria established in §6 and Exhibits A and E.

F. Exhibits and Other Attachments

The following exhibit(s) are attached hereto and incorporated by reference herein: **Exhibit A** (Scope of Work), **Exhibit B** (Resolution), **Exhibit C** (Funding Provisions), **Exhibit D** (Option Letter), **Exhibit E** (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) and **Exhibit K** (Supplemental Federal Provisions).

G. 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.

H. Oversight

"Oversight" means the term as it is defined in the Stewardship Agreement between CDOT and the Federal Highway Administration ("FHWA") and as it is defined in the Local Agency Manual.

I. Party or Parties

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

J. Work Budget

Work Budget means the budget described in **Exhibit C**.

K. Services

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

L. Work

"Work" means the tasks and activities the Local Agency is required to perform to fulfill its obligations under this Contract and Exhibits A and E, including the performance of the Services and delivery of the Goods.

M. 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 AND EARLY TERMINATION

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

6. SCOPE OF WORK

A. Completion

The Local Agency shall complete the Work and other obligations as described herein in **Exhibit A**. 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 Contract 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 Agreements Office.
 - (4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in Exhibit H to administer the Consultant contract.
 - (5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from 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**. 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 Form 1273 (**Exhibit I**) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, 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)(c)(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 matching 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, **Exhibit E**.

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 incidentals, 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 and:

 - 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) Proscribe 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. OPTION LETTER MODIFICATION

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

A. Option to add a phase and/or increase or decrease the total encumbrance amount.

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

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

The State may require or permit the Local Agency to transfer funds from one phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another as a result of changes to state, federal, and local match. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc.) and attached to the option letter. The funds transferred from one phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. Any transfer of funds from one phase to another is limited to an aggregate maximum of 24.99% of the original dollar amount of either phase affected by a transfer. A bilateral amendment is required for any transfer exceeding 24.99% of the original dollar amount of the phase affected by the increase or decrease.

C. Option to do both Options A and B.

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

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 maximum amount payable is set forth in **Exhibit C** as determined by the State from available funds. Payments to the Local Agency are limited to the unpaid encumbered balance of the Contract set forth in **Exhibit C**. The Local Agency shall provide its match share of the costs as evidenced by an appropriate ordinance/resolution or other authority letter which expressly authorizes the Local Agency the authority to enter into this Agreement and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as **Exhibit B**.

B. Payment

i. Advance, Interim and Final Payments

Any advance payment allowed under this Contract or in **Exhibit C** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract or such Exhibit. 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 Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract 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 Contract or other contracts, Agreements 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

Contract Funds shall be used only for eligible costs identified herein.

D. Matching Funds

The Local Agency shall provide matching funds as provided in **§8.A.** and **Exhibit C**. The Local Agency shall have raised the full amount of matching funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. The Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of the Local Agency and paid into the Local Agency's treasury. The Local Agency represents to the State that the amount designated "Local Agency Matching Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. 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 Exhibit C and §8. 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 State shall reimburse the Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and Exhibit C. However, any costs incurred by the Local Agency prior to the date of FHWA authorization for the Work and prior to the Effective Date 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).

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 Budget as provided for in Exhibit C. If FHWA funding is not available or is withdrawn, or if the Local Agency terminates this Agreement 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 CDOT 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 Local Agency shall submit a report to the State 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

The Local Agency makes the following specific representations and warranties, each of which was relied on by the State in entering into this Agreement.

A. 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.

B. 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 within 15 days of receiving such request.

C. 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.

15. INSURANCE

The Local Agency and its contractors shall obtain and maintain insurance as specified in this section at all times during the term of this Agreement: 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 sub-contractors that are not "public entities".

B. Contractors

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 Contractors, Subcontractors, 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. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, contractors, subcontractors, and consultants shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Local Agency a certificate or other document satisfactory to the Local Agency showing compliance with this provision.

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 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 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 and all Contractors, subcontractors, or Consultants shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Agreement. 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 certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Agreement or any sub-contract, 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 provisions 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 sub-Agreements 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 sub-Agreements. 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 without entitling the Local Agency to 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. If to State:

CDOT Region: 01
Joy French
Project Manager
2000 S Holly St
Denver, CO 80222
303-757-9528

B. If to the Local Agency:

City of Wheat Ridge
Mark Westberg
Project Manager
7500 West 29th Avenue
Wheat Ridge, CO 80033
303-235-2863

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 any time 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.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The Local Agency will comply with all requirements of **Exhibit G** and the Local Agency Contract Administration Checklist 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 program's requirements to the State for review and approval before the execution of this Agreement. If the Local Agency uses any State- approved DBE program for this Agreement, the Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of the Local Agency's DBE program does not waive or modify the sole responsibility of the Local Agency for use of its program.

24. DISPUTES

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, 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.** Colorado Special Provisions,
- ii.** The provisions of the main body of this Agreement,
- iii.** Exhibit A (Scope of Work),
- iv.** Exhibit B (Local Agency Resolution),
- v.** Exhibit C (Funding Provisions),
- vi.** Exhibit D (Option Letter),
- vii.** Exhibit E (Local Agency Contract Administration Checklist),
- viii.** 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.

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26. COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Agreements except where noted in italics.

A. 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.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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 contract or incorporated herein by reference shall be null and void.

H. 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.

I. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.

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.

J. 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.

K. 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.

L. 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

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27. SIGNATURE PAGE

Agreement Routing Number: **16-HA1-ZH-00035**

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.

<p style="text-align: center;">THE LOCAL AGENCY City of Wheat Ridge</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO John W. Hickenlooper, GOVERNOR Colorado Department of Transportation Shailen Bhatt, Executive Director</p> <p>By: Joshua Laipply, P.E., Chief Engineer</p> <p>Date: _____</p>
<p style="text-align: center;">2nd Local Agency Signature if needed</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">LEGAL REVIEW Cynthia H. Coffman, Attorney General</p> <p>By: _____</p> <p style="text-align: center;">Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

<p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p style="text-align: center;">Colorado Department of Transportation</p> <p>Date: _____</p>

28. EXHIBIT A – SCOPE OF WORK

NHPP 1211-086 (21006)

Wadsworth Widening: 35th to 48th

Scope of Work:

Develop an EA Template and construction plans to widen Wadsworth Boulevard from 4 lanes to 6 lanes with additional turn lanes at key congested intersections and medians to better manage access along the corridor. Included will be a cycle track and sidewalks. Also, included will be new LED street and pedestrian lighting and streetscape improvements with landscaping and street furniture.

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29. EXHIBIT B – LOCAL AGENCY RESOLUTION

LOCAL AGENCY
ORDINANCE
or
RESOLUTION

30. EXHIBIT C – FUNDING PROVISIONS

NHPP 1211-086 (21006)

A. Cost of Work Estimate

The Local Agency has estimated the total cost of the Work to be \$31,600,000.00, which is to be funded as follows:

1 BUDGETED FUNDS				
a. Federal Funds (NHPP @ 80%)				\$25,280,000.00
b. Local Agency Matching Funds (NHPP @ 20%)				\$6,320,000.00
TOTAL BUDGETED FUNDS				\$31,600,000.00
2 ESTIMATED CDOT-INCURRED COSTS				
a. Federal Share (0% of Participating Costs)				\$0.00
b. Local Agency				\$0.00
TOTAL ESTIMATED CDOT-INCURRED COSTS				\$0.00
3 ESTIMATED PAYMENT TO LOCAL AGENCY				
a. Federal Funds Budgeted (1a)				\$25,280,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)				\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY				\$25,280,000.00
FOR CDOT ENCUMBRANCE PURPOSES				
Total Encumbrance Amount				\$31,600,000.00
Less ROW Acquisition 3111 and/or ROW Relocation 3109				
Federal share of \$6,280,000.00 and Local Agency share of \$1,570,000.00				\$7,850,000.00
Net to be encumbered as follows:				\$23,750,000.00
Note: Only Design and Environmental funds are currently available. Construction funds will be encumbered when they become available by an option letter or formal amendment.				
WBS Element 21006.10.10	ROW	3114		\$0.00
WBS Element 21006.10.30	Design	3020		\$2,500,000.00
WBS Element 21006.10.40	Environ	3030		\$750,000.00
WBS Element 21006.20.10	Const	3301		\$0.00

B. Matching Funds

The matching ratio for the federal participating funds of this Work is 80% federal-aid funds (CFDA #20.205) to 20% Local Agency funds, it being understood that such ratio applies only to the \$31,600,000.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$31,600,000.00, and additional federal funds are made available for the Work, the Local Agency shall pay 20% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$31,600,000.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$19,000,000.00 (Total Budgeted Federal Funds of \$25,280,000.00 minus Federal share of ROW Acquisition of \$6,280,000.00) (For CDOT accounting purposes, the federal funds of \$19,000,000.00 and the Local Agency matching funds of \$4,750,000.00 (Total Local Agency Matching Funds of \$6,320,000.00 minus Local Agency share of ROW Acquisition of \$1,570,000.00) will be encumbered for a total encumbrance of \$23,750,000.00), unless such amount is decreased as described in Sections B. and C. 1. of this Exhibit C, or increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. **Note: Only Design and Environmental funds are currently available. Construction funds will be encumbered when they become available by an option letter or formal amendment.** It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

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

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving more than \$750,000 from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 C.F.R. 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$750,000

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

ii. Expenditure exceeding more than \$750,000-Highway Funds Only

If the Local Agency expends more than \$750,000 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 more than \$750,000-Multiple Funding Sources

If the Local Agency expends more than \$750,000 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.

31. EXHIBIT D – OPTION LETTER

SAMPLE IGA OPTION LETTER

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

NOTE: This option is limited to the specific contract scenarios listed below

AND may be used in place of exercising a formal amendment.

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

Vendor name: _____

SUBJECT:

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

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

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

REQUIRED PROVISIONS:

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

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

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

In accordance with the terms of the original Agreement (*insert CMS # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.; and no more than 24.99% of any phase may be moved using this option letter. A transfer greater than 24.99% must be*

made using an formal amendment)..

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

In accordance with the terms of the original Agreement (insert CMS routing # of original Agreement) between the State of Colorado, Department of Transportation and (insert the Local Agency's name here), the State hereby exercises the option to 1) release the Local Agency to begin a phase that will include (describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous); 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from (describe phase from which funds will be moved) to (describe phase to which funds will be moved) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (The following is a NOTE only so please delete when using this option: future changes for this option for **Exhibit C** shall be labeled as follows: **C-2, C-3, C-4, etc.**; and no more than 24.99% of any phase may be moved using this option letter. A transfer greater than 24.99% must be made using an formal amendment).

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

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

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

APPROVALS:

State of Colorado:

John W. Hickenlooper, Governor

By: _____ Date: _____
Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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

**State Controller
Robert Jaros, CPA, MBA, JD**

By: _____

Date: _____

32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

The following checklist has been developed to ensure that all required aspects of a project approved for Federal funding have been addressed and a responsible party assigned for each task.

After a project has been approved for Federal funding in the Statewide Transportation Improvement Program, the Colorado Department of Transportation (CDOT) Project Manager, Local Agency project manager, and CDOT Resident Engineer prepare the checklist. It becomes a part of the contractual agreement between the Local Agency and CDOT. The CDOT Agreements Unit will not process a Local Agency agreement without this completed checklist. It will be reviewed at the Final Office Review meeting to ensure that all parties remain in agreement as to who is responsible for performing individual tasks.

COLORADO DEPARTMENT OF TRANSPORTATION LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. NHPP1211-086	STIP No. SR17012.0018	Project Code 21006	Region 1
Project Location Wadsworth Blvd Widening: 35th Ave to 48th Ave			Date 08/04/2015
Project Description Wads Blvd Widening: 35th Ave to 48th Ave			
Local Agency Wheat Ridge	Local Agency Project Manager Mark Westberg		
CDOT Resident Engineer John Vetterling	CDOT Project Manager Joy French		
<p>INSTRUCTIONS:</p> <p>This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i>.</p> <p>The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.</p> <p>Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.</p> <p>The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.</p>			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2.1	Review Project to ensure it is consistent with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463	X	#
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement	X	#
5.4	Conduct Design Scoping Review Meeting	X	X
5.5	Conduct Public Involvement	X	
5.6	Conduct Field Inspection Review (FIR)	X	X
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	#
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
5.9	Obtain Utility and Railroad Agreements	X	#
5.10	Conduct Final Office Review (FOR)	X	#
5.11	Justify Force Account Work by the Local Agency	X	#
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	#
5.13	Document Design Exceptions - CDOT Form 464	X	#
5.14	Prepare Plans, Specifications and Construction Cost Estimates	X	#
5.15	Ensure Authorization of Funds for Construction		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)	X	X
6.2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) John Vetterling _____ 05/19/2015 _____ CDOT Resident Engineer (Signature on File) Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances		X
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks		X
7.2	Advertise for Bids		X
7.3	Distribute "Advertisement Set" of Plans and Specifications		X
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement		X
7.5	Open Bids		X
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence		X
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract		X
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor		X
8.2	Project Safety		X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)		X
	Pre-survey		
	• Construction staking		X
	• Monumentation		X
	Partnering (Optional)		X
	Structural Concrete Pre-Pour (Agenda is in CDOT Construction Manual)		X
	Concrete Pavement Pre-Paving (Agenda is in CDOT Construction Manual)		X
	HMA Pre-Paving (Agenda is in CDOT Construction Manual)		X
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents		X
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." John Vetterling _____ (303)757-9914 _____ Local Agency Professional Engineer or Phone number CDOT Resident Engineer		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications		X
	Construction inspection and documentation		X
8.6	Approve Shop Drawings		X
8.7	Perform Traffic Control Inspections		X
8.8	Perform Construction Surveying		X
8.9	Monument Right-of-Way		X
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates		X
	Provide the name and phone number of the person authorized for this task.		
	John Vetterling (303)757-9914 Local Agency Representative Phone number		
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings		X
8.12	Prepare Local Agency Reimbursement Requests	X	
8.13	Prepare and Authorize Change Orders		X
8.14	Approve All Change Orders		X
8.15	Monitor Project Financial Status		X
8.16	Prepare and Submit Monthly Progress Reports		
8.17	Resolve Contractor Claims and Disputes		
8.18	Conduct Routine and Random Project Reviews		X
	Provide the name and phone number of the person responsible for this task.		
	John Vetterling 303 757-9914 CDOT Resident Engineer Phone number		
MATERIALS			
9.1	Conduct Materials Pre-Construction Meeting		X
9.2	Complete CDOT Form 250 - Materials Documentation Record		X
	• Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project		X
	• Update the form as work progresses		X
	• Complete and distribute form after work is completed		X
9.3	Perform Project Acceptance Samples and Tests		X
9.4	Perform Laboratory Verification Tests		X
9.5	Accept Manufactured Products		X
	Inspection of structural components:		
	• Fabrication of structural steel and pre-stressed concrete structural components	NA	
	• Bridge modular expansion devices (0" to 6" or greater)	NA	
	• Fabrication of bearing devices	NA	
9.6	Approve Sources of Materials		X
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/>		X
	• Generate IAT schedule		X
	• Schedule and provide notification		X
	• Conduct IAT		X
9.8	Approve mix designs		X
	• Concrete		X
	• Hot mix asphalt		X
9.9	Check Final Materials Documentation		X
9.10	Complete and Distribute Final Materials Documentation		X

CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements		X
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist		X
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280		X
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements		X
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire		X
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)		X
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report		X
FINALS			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter		X
11.3	Advertise for Final Settlement		X
11.4	Prepare and Distribute Final As-Constructed Plans		X
11.5	Prepare EEO Certification		X
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications		X
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)		X
11.8	Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer		X
11.9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor	NA	X
11.10	Complete and Submit CDOT Form 1212 - Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment		X
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure		X
11.14	Retain Final Version of Local Agency Contract Administration Checklist		X

cc: CDOT Resident Engineer/Project Manager
CDOT Region Program Engineer
CDOT Region EEO/Civil Rights Specialist
CDOT Region Materials Engineer
CDOT Contracts and Market Analysis Branch
Local Agency Project Manager

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 of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

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

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

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

Required by 23 CFR 635.112

34. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

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

SECTION 2. DBE Obligation.

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

SECTION 3 DBE Program.

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

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

Business Programs Office
Colorado Department of Transportation
4201 East Arkansas Avenue, Room 287
Denver, Colorado 80222-3400
Phone: (303) 757-9234

revised 1/22/98

Required by 49 CFR Part 26

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 of 10% for Disadvantaged Business Enterprise (DBE) participation as a minimum 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.

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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

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

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

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

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

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

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

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

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

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

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

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

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

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

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

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

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

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

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

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1301. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

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

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

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

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

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

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

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

will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

2. Withholding

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

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

b. Trainees (programs of the USDOL).

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

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

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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

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

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

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

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

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

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

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.5. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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. 355), as amended and supplemented;

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

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

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

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

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general 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).

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

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

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

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

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

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

this transaction originated may pursue available remedies, including suspension and/or debarment.

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

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

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

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

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

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

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 20).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37. EXHIBIT J – FEDERAL REQUIREMENTS

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

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/Contractor shall follow applicable procurement procedures, as required by section 18.36(d); the Local Agency/Contractor 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/Contractor shall comply with section 18.37 concerning any sub-Agreements; to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 sub-Agreement procedures, as applicable; the Local Agency/Contractor 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.

Executive Order 11246

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

Copeland "Anti-Kickback" Act

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

Davis-Bacon Act

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

Contract Work Hours and Safety Standards Act

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

Clear Air Act

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

Energy Policy and Conservation Act

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

OMB Circulars

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

Hatch Act

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

Nondiscrimination

42 USC 6101 et seq. 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. 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.

ADA

The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213 47 USC 225 and 47 USC 611.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

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

Drug-Free Workplace Act

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

Age Discrimination Act of 1975

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

23 C.F.R. Part 172

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

23 C.F.R Part 633

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

23 C.F.R. Part 635

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

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

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

Nondiscrimination Provisions:

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

i. Compliance with Regulations

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

ii. Nondiscrimination

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

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

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

iv. Information and Reports

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

v. Sanctions for Noncompliance

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

Incorporation of Provisions §22

The Contractor will include the provisions of 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 Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

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; and
- 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.

7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

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

7.1.1 Subrecipient DUNS Number;

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

7.1.3 Subrecipient Parent DUNS Number;

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

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

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

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

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

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

8. Exemptions.

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

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

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

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

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

REQUEST FOR CITY COUNCIL ACTION

TITLE: MOTION TO APPROVE PAYMENT TO ROCKY MOUNTAIN RECREATION, INC. IN THE AMOUNT OF \$50,235.45 FOR THE DEMOLITION, SITE WORK AND INSTALLATION OF NEW PLAYGROUND EQUIPMENT IN STITES PARK

- PUBLIC HEARING
 BIDS/MOTIONS
 RESOLUTIONS

- ORDINANCES FOR 1ST READING
 ORDINANCES FOR 2ND READING

QUASI-JUDICIAL: YES NO


Parks and Recreation Director


City Manager

ISSUE:

The playground equipment located on the west side of Stites Park, 29th Avenue and Newland Street, is in need of replacement. The playground, installed in 1999, will be updated to reflect current trends in play structures and to meet the 2010 ADA Standards for Accessible Design. New engineered wood fiber and poured-in-place safety surfacing will also be installed.

The selected playground equipment from Landscape Structures Inc. is available through The Cooperative Purchasing Network (TCPN), a national cooperative procuring service for government entities. As a member of TCPN, the City of Wheat Ridge is eligible for a 6% discount on Landscape Structures playground equipment. Rocky Mountain Recreation, Inc. (RMR) is the only Colorado manufacturer's representative for Landscape Structures equipment. Landscape Structures Inc. is also one of the current playground equipment manufacturers in place in the park system, as described in Attachment 4.

PRIOR ACTION:

Funds for the project were approved in the 2015 adopted budget in the Conservation Trust Fund.

FINANCIAL IMPACT:

The budgeted amount for the playground project is \$85,000. Included in this amount is the purchase of the playground equipment, demolition of the existing equipment, installation of the new equipment, engineered wood fiber playground safety surfacing and poured-in-place rubber playground surfacing.

The demolition, installation, engineered wood fiber and poured-in-place surfacing is to be purchased from RMR in the amount of \$50,235.45.

The playground equipment must be purchased directly from the manufacturer, Landscape Structures Inc., per the terms of the TCPN agreement. The total project cost is not included in the motion as the purchase payment is not all to the same vendor. The cost of playground equipment, \$34,560.53, is below the dollar amount requiring City Council approval.

Total project cost is \$84,795.98.

BACKGROUND:

Following the guidelines of the Consumer Product Safety Commission (CPSC), the existing playground equipment has been inspected on a regular basis by the City's nationally certified playground inspector. Staff recommends replacement due to the high level of use, age of the equipment and current frequency and cost of the maintenance required.

RMR hires subcontractors who will provide the required site work to demolish and haul away the old playground equipment and concrete foundations, remove and replace fall surfacing, and install the new equipment and concrete components, such as sidewalks, ramps and playground edger. As a part of the project, subcontractors will install poured-in-place rubber playground fall surface and will provide for overall work site safety by installing and maintaining a construction fence around the work area.

Contracting with RMR and their subcontractors benefits the City as RMR will coordinate, schedule, and oversee the entire site work process as well as aid City staff in project oversight. Through previous work history, RMR has shown onsite quality control.

RECOMMENDATIONS:

Staff recommends replacement of this playground equipment in Stites Park.

RECOMMENDED MOTION:

"I move to approve payment to Rocky Mountain Recreation Inc. in the amount of \$50,245.35 for the demolition, site work and installation of new playground equipment in Stites Park."

Or,

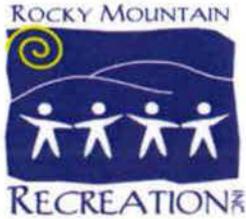
“I move to deny payment to Rocky Mountain Recreation, Inc. in the amount of \$50,235.45 for the demolition, site work and installation of new playground equipment in Stites Park for the following reason(s) _____.”

REPORT PREPARED/REVIEWED BY:

Mark Ruote, Park Project Coordinator
Rick Murray, Parks, Forestry and Open Space Supervisor
Joyce Manwaring, Director of Parks and Recreation
Jennifer Nellis, Purchasing and Contracting Agent
Patrick Goff, City Manager

ATTACHMENTS:

1. Rocky Mountain Recreation Proposals (2)
2. Landscape Structures, Inc. Proposal
3. Stites Park Rendering (2)
4. Justification Memos (3)



ALL PURCHASE ORDERS, CONTRACTS, AND CHECKS TO BE MADE OUT TO:
 ROCKY MOUNTAIN RECREATION INC.
 P.O. BOX 620411
 LITTLETON, CO 80162
 303-783-1452 800-636-0199
 Fax: 303-783-1454

PROPOSAL

September 17, 2015
 DATE

CONTACT: Mark Ruote
PHONE: 303-205-7553 (Office); 720-244-3306 (Cell)
FAX: 303-467-5901
EMAIL: Mruote@ci.wheatridge.co.us

Wheat Ridge, Colorado

F.O.B.

FREIGHT Prepaid Collect

Net 30
 TERMS

SHIP TO: Stites Park
 6601 W. 29th Ave.
 Wheat Ridge, CO 80214

4-6 Weeks A.R.O.
 SHIPPING TIME

BILL TO: City of Wheat Ridge
 9110 W. 44th Ave.
 Wheat Ridge, CO 80033-3005

October 17, 2015
 PROPOSAL GOOD UNTIL

We are pleased to submit this proposal to supply the following items:

QTY	ITEM NO.	DESCRIPTION	UNIT WT	UNIT PRICE	WEIGHT	EXTENDED AMT
1200 Sq. Ft.	PIP	 landscape structures landscape structures landscape structures Poured-In-Place Rubber Playground Surfacing Including Concrete Sub-Base At Appropriate Fall Height Depths. 100% Color, No Design.		\$20.00	-	\$ 24,000.00

Comments: Please include a copy of your tax-exempt certificate to avoid applicable charges. Thank you!

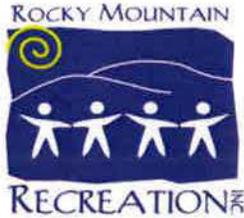
SUBTOTAL MATERIALS	\$24,000.00
INSTALLATION	INCLUDED
FREIGHT	SEPARATE PR
SALES TAX	Exempt
TOTAL	\$24,000.00

ACCEPTED BY CUSTOMER _____ DATE _____

PRINT NAME
Brenna Christie 9/17/15

PROPOSED BY RMR REPRESENTATIVE _____ DATE _____

Brenna Christie
 PRINT NAME



ALL PURCHASE ORDERS, CONTRACTS, AND
CHECKS TO BE MADE OUT TO:
ROCKY MOUNTAIN RECREATION INC.
P.O. BOX 620411
LITTLETON, CO 80162
303-783-1452 800-636-0199
Fax: 303-783-1454

PROPOSAL

September 17, 2015
DATE

CONTACT: Mark Ruote
PHONE: 303-205-7553 (Office); 720-244-3306 (Cell)
FAX: 303-467-5901
EMAIL: Mruote@ci.wheatridge.co.us

Wheat Ridge, Colorado
F.O.B. FREIGHT Prepaid Collect

SHIP TO: Stites Park
6601 W. 29th Ave.
Wheat Ridge, CO 80214

Net 30
TERMS

BILL TO: City of Wheat Ridge
9110 W. 44th Ave.
Wheat Ridge, CO 80033-3005

4-6 Weeks A.R.O.
SHIPPING TIME

October 17, 2015
PROPOSAL GOOD UNTIL

We are pleased to submit this proposal to supply the following items:

QTY	ITEM NO.	DESCRIPTION	UNIT WT	UNIT PRICE	WEIGHT	EXTENDED AMT
1	FENCE	<i>Mr Mr Mr</i> landscape landscape landscape structures structures structures Fencing to Secure Site During Install		\$1,300.00	-	\$ 1,300.00
1	DEMO-EQUIP	Demolition and Disposal of Existing Playground Equipment		\$2,500.00	-	\$ 2,500.00
1	DEMO-BLOCK	Demolition and Disposal of Existing Concrete Blocks (7)		\$600.00	-	\$ 600.00
125 Lineal Feet	CURB	Concrete Curbing For South and West Sides of Play Pit		\$32.00	-	\$ 4,000.00
1	DEMO-PG	Removal and Disposal of Existing Pea Gravel		\$4,800.00	-	\$ 4,800.00
3257 Sq. Ft.	EWF	Engineered Wood Fiber Playground Safety Surfacing		\$1.85	-	\$ 6,025.45
1	INSTALL	Installation of Playground Equipment Per LSI Drawing 85573-1-4		\$7,010.00	-	\$ 7,010.00

Comments: Please include a copy of your tax-exempt certificate to avoid applicable charges. Thank you!

ACCEPTED BY CUSTOMER _____ DATE _____

PRINT NAME _____

Brenna Christie 9/17/15

PROPOSED BY RMR REPRESENTATIVE _____ DATE _____

Brenna Christie

PRINT NAME _____

SUBTOTAL MATERIALS	SEPARATE PR
INSTALLATION	SEE ABOVE
FREIGHT	SEPARATE PR
SALES TAX	Exempt
TOTAL	\$26,235.45



ALL PURCHASE ORDERS, CONTRACTS, AND CHECKS TO BE MADE OUT TO:
 LANDSCAPE STRUCTURES, INC.
 601 7TH STREET SOUTH
 DELANO, MN 55328 U.S.A.
 763-972-3391 800-328-0035
 Fax: 763-972-3185

PROPOSAL



TCPN Contract #R5202

Customer Information

CONTACT: Mark Ruote
 PHONE: 303-205-7553 (Office); 720-244-3306 (Cell)
 FAX: 303-467-5901
 EMAIL: Mruote@ci.WheatRidge.Co.Us

SHIP TO: Stites Park
6601 W. 29th Ave.
Wheat Ridge, CO 80214

BILL TO: City of Wheat Ridge
9110 W. 44th Ave.
Wheat Ridge, CO 80033-3005

DATE 9/21/15
Wheat Ridge, Colorado
 F.O.B. _____
 FREIGHT Prepaid Collect
Net 30 days upon credit approv., deposit may be required
 TERMS (Subject To Credit Approval By LSI)
4-6 Weeks A.R.O.
 SHIPPING TIME _____

Pricing Good for 60 days from Date of Proposal

We are pleased to submit this proposal to supply the following items:

QTY	ITEM NO.	DESCRIPTION	UNIT WT	UNIT PRICE	WEIGHT	EXTENDED AMT
		Stites Park, Drawing 85573-1-4:				
1	85573-1-4	PlayBooster for Ages 5-12	2472	26,207.00	2,472	\$ 26,207.00
1	3408	2-Bay 5" Arch Swing With 2 Belt Seats, 2 Full Bucket Seats, and ProGuard Chains	372	4,685.00	372	\$ 4,685.00
3	155077A	Stand-Up Spinner	60	1,385.00	180	\$ 4,155.00
1	182503C	Welcome Sign For Ages 5-12	24	-	24	\$ -

Standard Terms and Conditions for Installation Apply

SIGNATURE BELOW ACCEPTING THIS PROPOSAL WILL CONSTITUTE A PURCHASE ORDER ONLY UPON APPROVAL BY LANDSCAPE STRUCTURES, INC. CUSTOMER RECEIPT OF AN ORDER ACKNOWLEDGEMENT CONSTITUTES SUCH APPROVAL

Total Weight	3,048
SUBTOTAL MATERIAL	\$ 35,047.00
TCPN DISCOUNT	\$ (2,102.82)
INSTALLATION	Not Included
FREIGHT	\$ 1,616.35
SALES TAX	Exempt
TOTAL	\$ 34,560.53

ACCEPTED BY CUSTOMER _____ DATE _____
 PRINT NAME
Brenna Christie 9/21/2015
 PROPOSED BY LSI REPRESENTATIVE _____ DATE _____
Brenna Christie
 PRINT NAME

Taxable: Freight No Installation No

Stites Park

Wheat Ridge, Colorado July 23, 2015

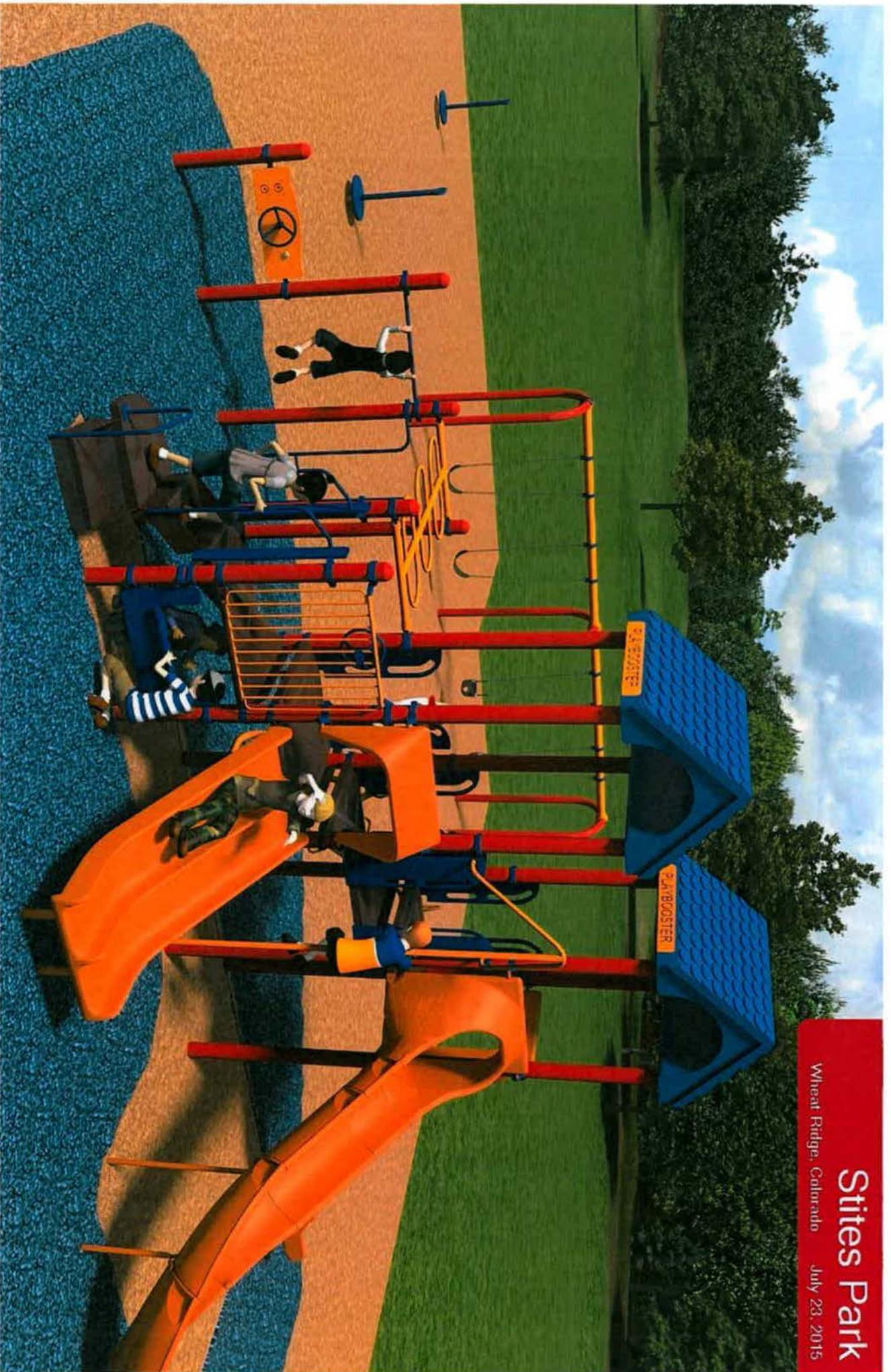


**Better playgrounds.
Better world.®**

playsi.com

Proudly presented by:





Sites Park

Wheat Ridge, Colorado

July 23, 2015

**Better playgrounds.
Better world.®**

playlsi.com



Proudly presented by:





Memorandum

TO: Jennifer Nellis, Purchasing Agent
FROM: Mark Ruote, Parks Project Coordinator
DATE: 9/18/15
SUBJECT: Stites Park Playground Replacement

The existing Stites Park playground has reached its useful lifespan and has been identified to be in need of immediate replacement by the Parks Division playground maintenance standards.

The City of Wheat Ridge Parks Division would like to recommend Rocky Mountain Recreation and Landscape Structures Inc. as the provider of the new 2015 playground for Stites Park. Landscape Structures Inc. is one of the current brands in place in the park system.

By the addition of another Landscape Structures playground, staff will be able to work from existing parts inventory and familiarity with ordering/delivery systems to conduct maintenance operations. Landscape Structures is a quality playground equipment brand that complies with CPSC playground recommendations and current ADA requirements. Landscape Structures Inc. playground equipment has proven to be durable, easily serviced and popular with playground users. Rocky Mountain Recreation is a full service design/build vendor allowing their staff and Contractors to conduct all phases of playground design/installation.

Parks staff involvement will be limited to project coordination/construction oversight. Many playground vendors do not offer full design/build services. This situation may require part of a playground construction project to be partially completed by City staff which can interfere with planned day to day operations.

Rocky Mountain Recreation also uses the national bid cooperative to purchase playground Equipment. The City is a member of the TCPN cooperative. This will assure the City is receiving negotiated pricing for the playground equipment it has purchased through Rocky Mountain Recreation.

Memorandum

TO: Jennifer Nellis, Purchasing Agent
FROM: Mark Ruote, Parks Project Coordinator
DATE: 9/18/15
SUBJECT: Stites Park Playground Replacement Site work

The City of Wheat Ridge Parks Division recommends that Rocky Mountain Recreation and their site work sub-contractors be used to do all the required site work for the Stites Park playground replacement project. See below.

During any playground replacement project a varying amount of site work will have to be done to complete the project. Site work could include-

- Demolition/ haul away of the old playground, concrete foundations, playground edger and adjacent concrete sidewalks and ramps.
- Removal of existing wood or pea gravel fall surfacing.
- Site safety including site construction fence erection and maintenance.
- Install of new playground equipment and concrete foundations.
- Install of concrete ramps, sidewalks and playground edger.
- General site restoration
- Install of Engineered Wood fiber fall surfacing.

By using RMR and their sub-contractors for this project the City will benefit by the following:

- RMR coordinates, schedules and oversee the entire site work process
- Minimizes City staff time to project oversight.
- RMR through previous work history and on site quality control with assures that the site work will be high quality and as proposed.

Warranty

- Concrete Work: Will be subcontracted by Slater Concrete, Inc. This company has more than 10 years of experience in the concrete industry, and has been working with Rocky Mountain Recreation, Inc. for the past 5-6 years therefore we can attest to their skills and abilities to perform the proposed work.
- Playground Equipment Installation: Redwoods Precision Landscaping, Inc. will be performing the installation of the playground equipment and has more than 11 years of experience installing commercial playgrounds. We have worked with them for 3-4 years and look forward to many more years of working together given their exceptional quality of work and attention to detail.
- Engineered Wood Fiber: This will be subcontracted by Ground Solutions, Inc., who will also be performing the removal of the existing pea gravel. They have been in business for more than 10 years and have worked with Rocky Mountain Recreation for 3 years during which time we have completed many successful projects.
- Warranty offered: A 5-year warranty is offered by Rocky Mountain Recreation, Inc. for the above services. This will be in addition to the Landscape Structures warranty for the materials (please see attached).

Memorandum

TO: Jennifer Nellis, Purchasing Agent
FROM: Mark Ruote, Parks Project Coordinator
DATE: 9/18/15
SUBJECT: Stites Park Playground Replacement/ Poured in Place fall surfacing

The City of Wheat Ridge Parks Division recommends that Rocky Mountain Recreation and their poured- in- place rubber fall surfacing sub-contractor will be used to install the Stites Park playground fall surfacing as part of the Stites Park playground 2015 replacement.

Poured- in- place rubber fall surfacing, when installed in a playground, allows increased ADA compatible access to the playground by users with disabilities. Poured in place rubber fall surfacing installation contractors are specialized due to the PIP install process being very involved. Advantages to the City of Wheat Ridge using RMR and their sub-contractor to install the poured in place are;

- RMR has previous work history with the sub-contractor assuring that the quality of work will be high and the finished product will be as proposed.
- RMR coordinates the scheduling and install of the PIP by their sub-contractor.
- RMR will oversee the PIP install process and conduct on site quality control inspections.
- Minimizes City staff time to project oversight.

Poured-In-Place Surfacing:

- Will be sub-contracted by Quality Surfacing, Inc., who has 12 years of experience performing rubber playground safety surfacing. Rocky Mountain Recreation has also worked with Quality Surfacing for the past 5-6 years, therefore we are both familiar with and confident in their ability to provide accessible surfacing to the play area.

Warranty offered:

- A 5-year warranty is offered by Rocky Mountain Recreation, Inc. for the above services. This will be in addition to the Landscape Structures warranty for the materials (please see attached).

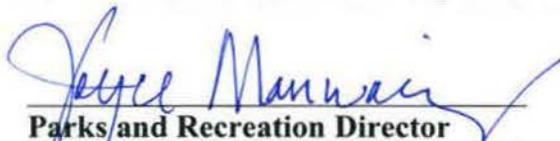
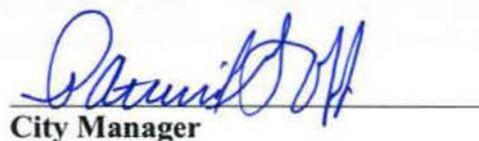
REQUEST FOR CITY COUNCIL ACTION

TITLE: MOTION TO APPROVE PAYMENT TO CONCRETE EXPRESS, INC., OF DENVER, COLORADO, IN THE AMOUNT OF \$53,386 FOR THE PURPOSE OF CONSTRUCTING A PARKING AREA AT 43rd AND MOORE STREET TRAIL HEAD AS PART OF THE CLEAR CREEK TRAIL CONSTRUCTION PROJECT

- PUBLIC HEARING
 BIDS/MOTIONS
 RESOLUTIONS

- ORDINANCES FOR 1ST READING
 ORDINANCES FOR 2ND READING

QUASI-JUDICIAL:

 YES NO
Parks and Recreation Director
City Manager**ISSUE:**

The original trail project contract was awarded to Concrete Express, Inc. in July 2015. The scope included the relocation of the segment of the Clear Creek Trail that is currently located on 41st Avenue, west of Kipling. The trail is being relocated to the open space property at approximately 42rd and Kipling, and will tie into the existing trail south of 43rd and Moore Street.

Approval of an additional scope of work is requested to construct a parallel parking area at the 43rd and Moore Street trailhead. This scope of work includes construction of one parallel ADA parking space, five parallel parking spaces, one ADA concrete ramp, a new ADA accessible concrete sidewalk connection to the trail, new concrete curb/gutter, asphalt parking area, all parking area striping and relocation of the existing fencing

PRIOR ACTION:

A contract was awarded to Concrete Express in the amount of \$388,659 in July 2015, funded from the Open Space budget. The Public Works Department completed design drawings and specifications for the additional scope of work. Pricing is based on these specifications and the bid schedule/unit pricing from the original contract award. Concrete Express Inc. was the low bidder on the project.

FINANCIAL IMPACT:

Funds for the additional scope of work are available in the project budget. Also available are surplus matching grant funds for this work. The original contract award was \$388,659, and the additional scope of work change order is \$53,386, for a new contract total of \$442,045.

BACKGROUND:

The improvements associated with this project are intended to provide a more direct and simpler route for users of the Clear Creek Trail and to minimize exposure of trail users to vehicular traffic. The additional scope of work will provide a formal, hard-surface parking area at the 43rd and Moore Street greenbelt and trail entrance. This will provide not only an aesthetic improvement to the area, but a hard-surface parking area, access for maintenance and snow removal, and a safe, ADA compliant sidewalk that connects to the trail.

City Council approval is required for this change order as the amount is more than 10% of the contract.

RECOMMENDATIONS:

Staff recommends approval of the change order.

RECOMMENDED MOTION:

“I move to approve payment to Concrete Express Inc., of Denver, Colorado, in the amount of \$53,386 for the purpose of constructing a parking area at the 43rd and Moore Street trail head as part of the Clear Creek Trail Construction project.”

Or,

“I move to deny payment to Concrete Express, of Denver, Colorado, in the amount of \$53,386 for the purpose of constructing a parking area at the 43rd and Moore Street Trail Head as part of the Clear Creek Trail Construction project for the following reason(s) _____.”

REPORT PREPARED/REVIEWED BY:

Joyce Manwaring, Parks and Recreation Director
Patrick Goff, City Manager

ATTACHMENTS:

1. Change order pricing sheet
2. 43rd and Moore Street Trailhead improvement area photo



Project: Clear Creek Trail Improvements Date: 9/30/2015
 Work requested By: Matthew Krueger, CEI Project Manager

Description of work requested:
 Moore St. Parking Lot.

Description	Quantity	Unit	Unit price	Subtotal
Moore St. Parking Lot				
See Second Sheet				
Sheet 2 Total				\$53,386.00

Change Order Total	\$53,386.00
Previous Contract Amount	\$388,659.16
New Contract Amount	\$442,045.16

Prepared by *Matthew Krueger*

Contract Days Added	10
New Contract Day Total	100

Attachment 1

Approval _____ Title _____ Date _____

Project

CIP #

Item #	Item	Quantity	Unit	Unit Cost	Item Cost
Construction					
201	Clearing & Grubbing				
	Clearing & Grubbing	1	LS	2,800 ⁻	2,800 ⁻
203	Excavation & Embankment				
	Earthwork - Rough Grade	310	SY	9 ⁻	2,790 ⁻
	Potholing	10	HR	225 ⁻	
208	Erosion Control				
	Sweeping	15	HR	220	3,300 ⁻
	Sediment Removal & Disposal	10	HR	200 ⁻	2,000 ⁻
	Check Dams	0	Each	-	-
	Storm Drain Inlet Protection	1	Each	285 ⁻	285 ⁻
	Aggregate Bags	25	LF	12 ⁻	300 ⁻
	Concrete Washout Structure	1	Each	850 ⁻	850 ⁻
210	Reset Structures				
	Reset Fence (Split Rail)	188	LF	16 ⁻	3,008 ⁻
306	Reconditioning				
	Reconditioning & Proofrolling	310	SY	5 ⁻	1,550 ⁻
403	Hot Mix Asphalt				
	Hot Mix Asphalt (Grading SX)(2")	7	Ton	-	-
	Hot Mix Asphalt (Grading S)(4")	13	Ton	-	-
	Hot Mix Asphalt (Patching - 9")		SY		
412	Portland Cement Concrete Pavement				
	Concrete Pavement (6")	130.86	SY	53 ⁻	6,890 ⁻
608	Sidewalks & Bikeways				
	Concrete Sidewalk (6")	250	SY	53 ⁻	13,250 ⁻
609	Curb & Gutter				
	Vertical Curb	27	LF	19 ⁻	513 ⁻
	Vertical Curb & Gutter	178	LF	25 ⁻	4,450 ⁻
620	Field Facilities				
	Sanitary Facility	1	Each	130 ⁻	130 ⁻
625	Construction Surveying				
	Construction Surveying	1	LS	1,500 ⁻	1,500 ⁻
626	Mobilization				
	Mobilization	1	LS	3,500 ⁻	3,500 ⁻
627	Pavement Marking				
	Epoxy Pavement Marking (6") (White)	80	LF	12 ⁻	960 ⁻
	Pavement Marking Tape (12")(WHITE)	30	LF	32 ⁻	960 ⁻
	Preformed Pavement Marking (Handicap - 9 SF)	1	Each	300 ⁻	300 ⁻
630	Construction Zone Traffic Control				
	Traffic Control Management	1	LS	1,800 ⁻	1,800 ⁻
720	Materials Sampling & Testing				
Construction Sub-total					
	Contingencies	10%			
Construction Total					53,386 ⁻
Land Acquisition					
	Permanent Easement		SF		
	Acquisition		SF		
Land Acquisition Sub-total					
	Engineering	0%			
Land Acquisition Total				\$	-
Project Total				\$	-

Concrete instead of Asphalt

