

AGENDA

Regular Meeting

January 19, 2016 - 7:30 p.m.

City Council meeting packets are prepared several days prior to the meetings. This information is reviewed and studied by the Councilmembers, eliminating lengthy discussions to gain basic understanding. Timely action and short discussion on agenda items does not reflect lack of thought or analysis. An informational packet is available for public inspection on our website at www.cityofevans.org and posted immediately on the bulletin board adjacent to the Council Chambers.

1. CALL TO ORDER

2. PLEDGE

3. ROLL CALL

Mayor:	John Morris
Mayor Pro-Tem:	Jay Schaffer
Council:	Laura Brown
	Mark Clark
	Sherri Finn
	Lance Homann
	Brian Rudy

4. AUDIENCE PARTICIPATION

The City Council welcomes you here and thanks you for your time and concerns. If you wish to address the City Council, this is the time set on the agenda for you to do so. When you are recognized, please step to the podium, state your name and address then address City Council. Your comments will be limited to two (2) minutes. The City Council may not respond to your comments this evening, rather they may take your comments and suggestions under advisement and your questions may be directed to the appropriate staff person for follow-up. Thank you!

5. APPROVAL OF AGENDA

6. CONSENT AGENDA

- A. Approval of Minutes of the Regular Meeting of January 5, 2016
- B. Ordinance No. 643-16 – Repealing, Relocating, and Consolidating Provisions of the Evans Municipal Code Relating to Various Economic Incentives (Second Reading)

7. OLD BUSINESS

- A. Ordinance No. 642-16 – Adoption of Adjusted City Impact Fees (Second Reading)

8. NEW BUSINESS

- A. Emergency Ordinance No. 644-16 – Amending Chapter 16.04 of the Evans Municipal Code Regarding Flood Damage Prevention
- B. Emergency Ordinance No. 645-16 – Amending Chapter 1.14 of the Evans Municipal Code Concerning Certain Deadlines Related to the 2016 Evans Regular Municipal Council Election
- C. Resolution No. 08-2016 – Amending Resolution No. 06-2016 – Authorizing the Conduct of a Mail Ballot Election for the Regular Municipal Election
- D. Resolution No. 09-2016 – Approving an Intergovernmental Agreement with the Colorado Department of Transportation (CDOT) Regarding the Widening of 35th Avenue between 37th Street and Prairie View Drive
- E. Resolution No. 10-2016 – Authorizing the Application for a Planning Grant from the Colorado Department of Local Affairs (DOLA) for a Feasibility Study for the Redesign of the Lower Latham Diversion Structure
- F. Approval of the 2016 Operating and Capital Costs for the Greeley Evans Transit (GET)

9. REPORTS

- A. City Manager
- B. City Attorney

10. AUDIENCE PARTICIPATION (general comments)

Please review the Audience Participation section listed at the beginning of the agenda for procedures on addressing City Council.

11. ADJOURNMENT

CITY OF EVANS – MISSION STATEMENT

“To deliver sustainable, citizen-driven services for the health, safety, and welfare of the community.”

COUNCIL COMMUNICATION

DATE: January 19, 2016

AGENDA ITEM: 6.A

SUBJECT: Approval of the Minutes of January 5, 2016 City Council Meeting

PRESENTED BY: City Clerk

AGENDA ITEM DESCRIPTION:

Approval of minutes.

FINANCIAL SUMMARY:

N/A

RECOMMENDATION:

N/A

SUGGESTED MOTIONS:

"I move to approve the minutes as presented."

MEETING MINUTES
EVANS CITY COUNCIL
January 5, 2016

CALL TO ORDER

Mayor Morris opened the public meeting at 7:30 p.m.

PLEDGE

ROLL CALL

Present: Mayor Morris, Mayor Pro-Tem Schaffer, Council Members Brown, Clark, Finn, Homann, and Rudy

AUDIENCE PARTICIPATION

APPROVAL OF AGENDA

Mayor Pro-Tem Schaffer made the motion, seconded by Council Member Rudy, to approve the Agenda. The motion passed with all voting in favor thereof.

CONSENT AGENDA

- A. Approval of Minutes of the Regular Meeting of December 22, 2015
- B. Resolution No. 01-2016 – Designation of Public Place for the Posting of Notices of Public Meetings
- C. Resolution No. 02-2016 – Rescheduling June 21st, 2016 and August 2nd, 2016 City Council Meetings

Mayor Pro-Tem Schaffer made the motion, seconded by Council Member Rudy, to approve the Consent Agenda. The motion passed with all voting in favor thereof.

OLD BUSINESS

- A. Public Hearing – Ordinance No. 642-16 – Adoption of Adjusted City Impact Fees (First Reading)

Mayor Morris re-opened the public hearing at 7:33 p.m.

Scot Krob, City Attorney, stated that the Ordinance would adopt revise current impact fees and adopt new impact fees for future development in the City. Mr. Krob explained that the City Council directed staff to undertake a review of the City's methodology and approach to establishing impact fees ion 2014 and prepare a report and recommendation for possible modifications to the impact fee model.

According to Mr. Krob, the firm of Tischler-Bise was selected to undertake this review. Following several public work sessions, the City Council formally adopted the Impact Fee Study in October, 2015 with a final draft adopted November 16, 2015. That study detailed the assumptions, calculations, methodology and findings to establish amended impact fees for:

- Fire/Rescue Services;
- Parks, Recreation and Trails;
- Transportation; and
- Wastewater Service.

Also, a new fee was being proposed in the study is an impact fee for Police Protection Services. Additionally, two fees could not be updated at this time due to master plans in progress: the Water impact fee and the Storm Water impact fee—according to Mr. Krob.

He explained that the Ordinance repeals certain sections of the existing Municipal Code and establishes a new Chapter 3.20: Impact Fees under Article 3, concerning Revenue and Finance to consolidate all the impact fee provisions in one location of the Code. The ordinance also indicates that annual amendments to the impact fees will be made by resolution and adopted with the fee updates that occur after the budget is approval each year.

Mayor Morris asked if there were any questions from the Council Members.

Council Member Clark asked if the City impact fees where higher than surrounding municipalities.

Sheryl Trent, City Economic Director, and Zach Ratkai, Flood Recovery/Building and Neighborhood Services Manager, discussed how the fees were established according to the study that Tischler-Bise conducted.

Mayor Pro-Tem Schaffer asked about street impact fees.

Council Member Homann asked about the fees were presented at previous work sessions and discussed the authority for the City Manager to apply credits in lieu of impact fees to a developer.

Discussion ensued concerning the City applying credits in lieu of impact fees for capital improvements. Aden Hogan, City Manager, provided a resent example where a credit was given to a developer for certain capital improvements.

Council Member Homann asked about the cost for a single lot owner who wanted to construct a single home, which would cost \$27,000 in new impact fees, and if a single lot owner would be eligible for credits.

Mr. Krob explained that the fees is based on the incremental costs of development and the impact on City services.

Mr. Hogan discussed the need for a legal nexus between the costs of development and the impact fees assessed.

Mr. Ratkai provided some recent examples of costs for single lots and didn't think that a single home would qualify for impact fee credits.

Mayor Morris asked for any testimony in support of the Ordinance—there was none.

Mayor Morris asked for any testimony opposed to the Ordinance.

Steve Bernardo, from Grapevine Hollow, asked if the fees would only be used for growth and not current infrastructure needs.

Mr. Hogan explained that the fees would not be spent on current maintenance needs, but used for expansion of infrastructure to accommodate the growth.

Mayor Morris closed the public hearing at 7:48 p.m.

Council Member Clark discussed his opposition to the increase in impact fees in the City.

Council Member Finn discussed her concerns with the impact fees, but explained why she is supporting the increase.

Council Member Homann discussed his concern with the increase to impact fees in the City.

Mayor Morris discussed his support to increase the fees in order to meet the infrastructure needs of future growth in the City.

Mayor Pro-Tem Schaffer made the motion, seconded by Council Member Finn, to approve Ordinance No. 642-16 adopting adjusted City impact fees on first reading. The motion passed with a 5-2 roll call vote.

Council Member Brown: Aye
Council Member Clark: Nay
Council Member Finn: Aye
Council Member Homann: Aye
Council Member Rudy: Nay
Mayor Pro-Tem Schaffer: Aye
Mayor Morris: Aye

NEW BUSINESS

- A. Ordinance No. 643-16 – Repealing, Relocating, and Consolidating Provisions of the Evans Municipal Code Relating to Various Economic Incentives (First Reading)**

Ms. Trent discussed the need to adopt Ordinance No. 643-16 to consolidate various economic incentives in the Evans Municipal Code. She explained that implementing the economic incentives covered by the Ordinance would create flexibility and responsiveness when dealing with new development in the City. According to Ms. Trent, a Resolution would adopt the Economic Incentive Policies following the adoption of the Ordinance. She explained that the policies were reviewed in detail by, and includes the collective recommendations of, the City's business consultant and the Evans Economic Development Advisory Committee.

Mayor Morris discussed his support for implementing the economic incentives.

Council Member Clark made the motion, seconded by Council Member Brown, to adopt Ordinance No. 643-16 on first reading.

The motion passed with all voting in favor thereof.

B. Resolution No. 03-2016 – Adopting the City of Evans Economic Incentive Policies

Ms. Trent discussed the need for the Resolution and the origin of the Economic Incentive Policies, which were created to mirror the City's Financial Incentives. Ms. Trent listed the specific types of incentive policies and referred Council to the application that will be provided to businesses in order to request economic incentives.

Ms. Trent talked about the need to incentives: retail businesses, employment providers, and businesses willing to revitalize.

Mayor Morris discussed his support for the economic incentives adopted by the Resolution. .

Council Member Brown made the motion, seconded by Mayor Pro-Tem Schaffer, to adopt Resolution No. 03-2016 adopting the City of Evans economic incentive policies. The motion passed with all voting in favor thereof.

C. Resolution No. 04-2016 – Adopting the City of Evans 2016 Financial Policies

Jacque Troudt, presented the 2016 City Financial Policies, which were reviewed and recommend for adoption by the City Finance Committee.

Mayor Morris thanked Ms. Troudt for updating the City Financial Policies and discussed his support for the Resolution.

Mayor Pro-Tem Schaffer made the motion, seconded by Council Member Rudy, to adopt Resolution No. 04-2016 – adopting the City of Evans 2016 Financial Policies. The motion passed with all voting in favor thereof.

D. Resolution No. 05-2016 – Designating Certain Truck Routes within the City of Evans

Ms. Trent discussed the authority to adopt truck routes by Resolution following the adoption of Ordinance No. 640-15. Ms. Trent discussed the need for a specific truck route in East Evans to address truck traffic on 37th Street surrounding the new Riverside Library and Cultural Center.

Council Member Finn asked about truck traffic in East Evans that was already occurring.

Ms. Trent discussed the areas of East Evans that attract truck traffic and the attempt to re-route some traffic by designating a truck route.

Mayor Morris clarified the truck route that was being requested and suggested other roads in East Evans that may need a truck route while also considering the industrial areas that attract heavy truck traffic.

Council Member Homann asked about other areas near 47th street to address oil and gas traffic.

Ms. Trent agreed that other areas of the City could benefit from designated truck routes that could be added through the adoption of a Resolution.

Council Member Homann made the motion, seconded by Council Member Brown, to adopt Resolution No. 05-2016 designating certain truck routes within the City of Evans. The motion passed with all voting in favor thereof.

E. Resolution No. 06-2016 – Authorizing the Conduct of a Mail Ballot Election for the Regular Municipal Election scheduled for April 12, 2016

Raegan Robb, Evans City Clerk, presented Resolution 06-2016, which authorizes a mail ballot election for the City's Regular Municipal Election and sets the election date for April 12, 2016 according the requirements in the Evans Home Rule Charter.

Mr. Robb explained that, according to Colorado Election law, cities and towns have the option of conducting elections by polling place or mail ballot, with the mail ballot option being authorized though Resolution. According to Mr. Robb, the City has seen larger voter turnout numbers when conducting a mail ballot in past elections compared to a polling place election.

Mayor Morris discussed his support for a mail ballot election for the City Council's spring election.

Mayor Pro-Tem made the motion, seconded by Council Member Brown, to adopt Resolution No. 06-2016 authorizing the conduct of a Mail Ballot Election for the Regular Municipal Election scheduled for April 12, 2016. The motion passed with all voting in favor thereof.

F. Resolution No. 07-2016 – Approval of the South Platte River Restoration Master Plan

Chad Reischl, City Flood Planner, presented the Resolution and introduced Kacey Blum, who has been appointed as the coordinator of the South Platte River Alliance. Mr. Reischl introduced other members of the Alliance who were present.

According to Mr. Reischl, the Colorado Water Conservation Board (CWCB) approached the City of Evans, in mid-2014, with the concept of creating a restoration master plan for a 20+ mile stretch of the South Platte River in Weld County that was most heavily hit by the flooding in 2013. The CWCB wanted a master plan for this portion of the river similar to those it was funding on other nearby, flood affected rivers such as the Big and Little Thompson Rivers. The CWCB agreed to provide the funds for the project if Evans would manage the project and work toward creating a stakeholder alliance that would ultimately oversee the implementation of the plan. Mr. Reischl requested the City Council's support for the master plan.

Council Member Homann, asked about the project description which included improvements to a bridge west of Greeley, and if it should read "east of Greeley."

Mr. Reischl stated that yes, it should read east.

Mayor Morris discussed his support.

Mayor Pro-Tem made the motion, seconded by Council Member Homann, to adopt Resolution No. 07-2016 approving the South Platte River Restoration Master Plan. The motion passed with all voting in favor thereof.

G. Amendment to the Employment Agreement with the City Manager

Mr. Krob discussed the agenda item and distributed a revised version of the City Manager's Employee Agreement.

Mayor Morris discussed the reason the item was on the agenda for discussion under New Business, praised Aden Hogan, City Manager, for all his work, and concluded with remarks about supporting the City Manager through the amendment to his employee agreement.

Mayor Pro-Tem Schaffer made the motion, seconded by Council Member Brown, to approve the amendment to the Employment Agreement with the City Manager. The motion passed with all voting in favor thereof.

REPORTS

A. City Manager

Mr. Hogan, praised David Burns, City Emergency Management Coordinator and provided an update concerning Mr. Burns' 2015 accomplishments for the City's emergency preparedness.

He discussed a letter from CDPHE / CDOT concerning a joint program conducted by the School District.

Mr. Hogan also spoke about a proposed 700+ unit development scheduled for the summer of 2016.

Lastly, he talked about his recent vacation and thanked the City Council for their support during 2015.

B. City Attorney

Provided an update on new election requirements being implemented by the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which provides that mail ballots be mailed 45 days prior to an election. Mr. Krob discussed the need for an Ordinance to align City Code with UOCAVA if that is the direction provided by City Council.

The Council Members agreed to have Mr. Krob draft an Ordinance to comply with the requirements under UOCAVA.

AUDIENCE PARTICIPATION

There was no audience participation.

EXECUTIVE SESSIONS

- A. For a Conference with the City Attorney for the Purpose of Receiving Legal Advice on Specific Legal Questions, Pursuant to C.R.S. 24-6-402(4)(b); and for the Purpose of Determining Positions Relative to Matters Subject to Negotiations, Developing Strategy for Negotiations, and Instructing Negotiators, Pursuant to C.R.S. 24-6-402(4)(e)**

Mayor Pro-Tem made the motion, seconded by Council Member Finn, to adjourn into executive session for the purpose of determining positions relative to matters subject to negotiations, developing strategy for negotiations, and instructing negotiators, pursuant to C.R.S. 24-6-402(4)(e).

The motion passed with all voting in favor thereof.

The executive session convened at 8:29 p.m.

The executive session adjourned at 8:44 p.m.

Mr. Krob entered into the record that the reason for the Executive Session was satisfied according to the referenced state law and covered under attorney client privilege.

ADJOURNMENT

The regular meeting adjourned at 8:45 p.m.


Raegan Robb, City Clerk

COUNCIL COMMUNICATION

DATE: January 19, 2016

AGENDA ITEM: 6.B

SUBJECT: ORDINANCE NO. 643-16 – AMENDING THE EVANS CITY CODE BY REPEALING, RELOCATING, AND CONSOLIDATING THE PROVISIONS RELATING TO VARIOUS ECONOMIC INCENTIVES

PRESENTED BY: Sheryl Trent, Economic Development Director

AGENDA ITEM DESCRIPTION:

As a part of our Evans Municipal Code Update as well as our continued improvements in working with our business community, staff is proposing that incentives be adopted by Resolution, which will create flexibility and responsiveness when dealing with new location and development in Evans. To create that responsiveness, the sections of the Evans Municipal Code that deal with economic incentives must be repealed, and then placed into the Economic Incentives Policy, and finally adopted by Resolution.

This Ordinance is the first step of repealing the three sections of the code that specifically address economic incentives: 3.17, 3.30 and 3.31. These sections were written into the proposed Economic Incentives Policy which is also on the agenda this evening.

A full copy of the code sections to be repealed is attached to this report.

Should the City Council approve this Ordinance a Resolution has also been proposed to adopt the Economic Incentive Policies. The Incentive Policies were reviewed in detail by both our business consultant and the Evans Economic Development Advisory Committee and includes the collective recommendations of these individuals. As a part of our business survey, several questions were asked around the issue of incentives and that feedback has also been incorporated.

FINANCIAL SUMMARY:

N/A

RECOMMENDATION:

Staff recommends approval of the Ordinance.

SUGGESTED MOTIONS:

I move to adopt Ordinance No. 643-16 on second reading.

I move to deny adoption of Ordinance No. 643-16.

CHAPTER 3.17 - Development Revenue Bonds

3.17.010 - Declaration of policy.

It is declared to be the policy of the City to encourage the location, relocation, or expansion of manufacturing, industrial, or commercial enterprises within the corporate limits of the City, and to that end to issue development revenue bonds pursuant to the 1967 County and Municipality Development Bond Act, as set forth in Section 29-3-101, et seq., C.R.S. This policy is adopted in furtherance of the primary objectives to mitigate the serious threat of extensive unemployment, to secure and maintain a balanced and stable economy, to ameliorate pollution and other environmental problems, and to provide for the public welfare. All such action provided under this policy, as set forth in Sections 3.17.020 and 3.17.030 below, shall be taken only when the same is exercised for the benefit of the inhabitants of the City and for the promotion of their safety, welfare, convenience and prosperity. In furtherance of the policy set forth in this Section, the City Council declares that:

- A. The City Council will make all necessary determinations of the desirability of projects and will not delegate this determination to any agent, contractor, or employee of the City.
- B. The City will not employ the provisions of the 1967 County and Municipality Development Revenue Bond Act to industries presently located in other parts of the State if the result of such act is to induce removal of these industries from their present location.
- C. The City will require information and proof of such matters necessary to establish the bona fide purposes of the applicant, while not unnecessarily divulging information to the competitive disadvantage of the applicant.
- D. The City Council will, in performing its duties, seek to protect and enlarge the good fiscal reputation of the City.
- E. Material supplied under the following sections of this Chapter shall become the property of the City and shall be public records.

(Ord. 605 85, 1985)

3.17.020 - City planning criteria.

- A. All proposed projects shall be in accordance with and shall meet the goals, concepts, and objectives for development as set forth in the City's comprehensive master plan.
- B. The property on which any such project is to be located must be within the corporate boundaries of the City, and such property must have affixed thereto a zoning district classification of the City which permits the proposed project use.
- C. The plans for the proposed project shall be in strict compliance with appropriate zoning and subdivision regulations of the City.
- D. The City Council will review and determine the adequacy of water and sewer services prior to approval.
- E. The proposed project plans shall be reviewed and analyzed by the City Council to determine necessary off site capital improvements including, but not limited to, streets, curbs, gutters, sidewalks, utility easements, water and sewer lines, and traffic control devices. Such analysis is for the purpose of determining the impact of such development upon other municipal services and

facilities. The determination of which parties shall bear the cost of any required off-site improvements shall be set forth in an agreement between all parties in interest prior to the consideration by the City Council of a resolution of intent to issue bonds for the project.

(Ord. 605 85, 1985)

3.17.030 - Application requirements.

In order to properly process and consider applications to issue bonds for projects set forth in this Chapter, certain criteria, procedures, guidelines, and requirements shall be followed and submitted by the applicants as set forth below:

- A. A written legal opinion directed to the City Council from an attorney who is a qualified municipal bond counsel, stating that the applicant's proposal falls within the intent and meaning of the Economic Development Revenue Bond Act. Bond counsel shall be selected by the applicant with the final approval of the City Council.
- B. Evidence that the proposed bond issue can be sold through an acceptable underwriter or to an experienced investor or group of investors.
- C. A written application containing the following information:
 1. A history of the applicant, including a description of its operations;
 2. Historical financial statistics of applicant for the last five (5) years or for the entire time it has conducted business. If the applicant is proposing co-signers or guarantors of the bond issue, this same historical financial data must be supplied for the co-signers or guarantors.
 3. A written report from the applicant's principal banker concerning the applicant's financial position and ability to meet the expense of the proposed bond issue. The applicant should also provide a Dunn and Bradstreet Report or other equivalent national rating of its financial position;
 4. Major customers of applicant and the annual sales to each for the preceding two (2) years;
 5. A resume of principals and key employees of applicant, including directors and officers, if the applicant is a corporation;
 6. The applicant's pro forma balance sheets, income statements, and cash flow projections for the next five (5) years, reflecting the proposed revenue bond issue;
 7. The applicant's prepared financial statements dated within sixty (60) days of the application date;
 8. Copies of the applicant's financial statements, either audited or otherwise satisfactory to the City Council, for the preceding five (5) years or the entire time during which the applicant has conducted business;
 9. Complete list of assets to be purchased or constructed and expenses incidental to the acquisition, including costs of the sale of the revenue bonds;
 10. A payment schedule or formula for retirement of the bonds and payment in lieu of taxes and cost of maintaining the project in good repair and properly insured;
- D. An initial application fee of five hundred dollars (\$500.00) to defray the costs of the City's analysis of the proposal as set forth in Section 3.17.040 below shall be tendered with the application.
- E. Other information specifically desired by the City Council not set forth above.

- F. The City Council, by majority vote, may waive specific information required in the written application for new concerns that have not been in operation for the last five (5) years. The City Council, however, may request additional information in lieu of the information waived.

(Ord. 605 85, 1985)

3.17.040 - Council review of application.

At such time as the applicant has provided all of the required information and met all of the above stated requirements, the City shall conduct an analysis of the information and the suitability of the proposal for implementation under this Chapter.

- A. A City review team shall be responsible for analyzing the application and making recommendations to the City Council concerning the advisability of proceeding with the proposed bond issue. The review team shall consist of the City Manager, the City Planner, and the City Attorney. In addition, the review team may engage outside counsel for the purpose of rendering opinions and doing research on the proposed bond issue.
- B. The recommendation of the review team shall include an analysis of the impact of the development upon the City and upon any other interested city or county governments. The form of agreement for any required off-site improvements shall also be recommended by the review team of the City Council. The review team may recommend that certain conditions be placed upon the applicant to further insure the repayment of the bonds and may recommend that the applicant provide a guaranteed construction contract or a completion bond prior to undertaking the proposed project.
- C. At such time that the review team has presented its recommendation, impact analysis, and off-site improvement agreement to the City Council and to the applicant, the City Council shall schedule a public hearing for the purpose of discussing the application and considering public comment on the proposed bond issue. At the close of such public hearing, the City Council may determine whether or not to proceed to issue the bonds and shall adopt a resolution formally declaring its intent.
- D. If the City Council has considered the application and the report from the review team, has conducted a public hearing on the application, and has adopted a resolution of intent to issue the proposed bonds, it shall direct the review team to prepare the bond issue. The review team will work with the applicant and with an investment banker and bond counsel suitable to the applicant and to the City.

(Ord. 605 85, 1985)

3.17.050 - Additional fees upon adoption of resolution of intent to issue.

- A. Upon adoption of the resolution of intent to issue the bonds, a fee in addition to the fees provided in Section 3.17.030.D above shall be assessed in the amount of one-half of one percent (0.5%) of the total face amount of the bond issue. Such fee shall be paid to the City within thirty (30) days of the date of such resolution to defray the cost of processing of the bond issuance and legal counsel.
- B. The minimum charge pursuant to Subsection A above shall be two thousand five hundred dollars (\$2,500.00) and the maximum charge shall be the sum of ten thousand dollars (\$10,000.00), and such fees shall be assessed regardless of whether or not such bonds are ever issued or sold.
- C.

If the City Council desires to engage a bond counsel in addition to the one engaged by the applicant, for the purpose of reviewing any documents, the fee of such bond counsel shall be payable by the applicant.

- D. The City Council may engage other outside experts for purposes of reviewing the application. The applicant shall be responsible for paying any fees charged by such outside experts for their services.

(Ord. 605 85, 1985)

CHAPTER 3.30 - Economic Development Incentive Plans

3.30.010 - Economic development incentive plan established - calendar year basis.

- A. An economic development incentive plan is hereby established to encourage the location of new businesses and the expansion of existing businesses within the city, thereby stimulating the general economic well-being of the City, providing the foundation of funding required for the provision of City services and the direct general public welfare by benefiting every public and private sector through the generation of employment opportunities with the attendant increase of disposable income.
- B. The incentives described below shall be available to any new or expanding manufacturing, processing, distribution, retail, or research and development business, as defined in Subsection D of this Section that meets the following criteria and exclusions:
1. New or expanding business shall not include any corporate reorganization, sale of an existing business or resumption of business activities unless such business has been closed for at least the previous twelve (12) months.
 2. Eligible new or expanding business shall derive its principal source of income from manufacturing, processing, distribution, retail, and/or research and development activities.
 3. Eligible new or expanding business shall invest a minimum of one hundred thousand dollars (\$100,000.00) in a new or replacement building and/or equipment/machinery during the calendar year in which application is made for incentives.
 4. Eligible existing or new business shall employ or add a minimum of five (5) full-time or full-time equivalent employees during the first full year of operation in which application is made for incentives.
- C. The incentives described below shall be available to any new or expanding manufacturing, processing, distribution, retail, or research and development business, as defined in Subsection D below, that meets the following criteria and exclusions:
1. New or expanding business shall not include any corporate reorganization, sale of an existing business or resumption of business activities unless such business has been closed for at least the previous twelve (12) months.
 2. Eligible new or expanding business shall derive its principal source of income from manufacturing, processing, distribution, retail, and/or research and development activities.
 3. Eligible new or expanding business shall invest a minimum of one million dollars (\$1,000,000.00) in a new or replacement building and/or equipment/machinery during the calendar year in which application is made for incentives.
 4. Eligible existing or new business shall employ or add a minimum of forty (40) full-time or full-time equivalent employees during the first full year of operation in which application is made for incentives.

- D. The following definitions shall apply in determining the eligibility of companies for the economic development incentive plan:

Development fees include fees such as planning and zoning fees, building permit fees, drainage fees, and other similar fees.

Distribution means the temporary storage of tangible personal property for later dissemination.

Full-time employee means an employee of the firm which is expected in the normal course of employment to provide at least two thousand eighty (2,080) hours of compensation service during any consecutive twelve month period.

Full-time equivalent means any combination of seasonal or part-time employees whose compensated hours during a consecutive twelve-month period equals two thousand eighty (2,080) hours.

Machinery and equipment means those articles of tangible machinery or personal property exclusively used in the industrial manufacturing process, research and development, or computer hardware not used for word processing.

Manufacturing or processing means the operation of producing, in an industrial use, an item of tangible personal property different from and having a distinctive name, character, or use from raw or prepared materials.

Research and development shall mean those activities directly related to the development of an experimental or pilot model, a plant process, a product, a formula, an invention or similar property, and the improvement of already existing property of the type mentioned. Research and development shall not include ordinary testing or inspection of materials or products for quality control or those for efficiency surveys, management studies, consumer surveys, advertising, promotions or research related to literary, historical or similar projects.

Retail shall mean any business devoted primarily to the sale (as defined in Section 39-26-102 (11), C.R.S.) of tangible personal property or services to the general public.

- E. Incentives shall be available to businesses each calendar year in which the business constructs or expands, if such construction or expansion meets with the criteria, exclusions and definitions established in Subsections B and C above.

(Ord. 418-07; Ord. 294-04; Ord. 980-95; Ord. 777 90)

3.30.020 - Economic development incentive - waiver of fees.

- A. For businesses qualifying under Section 3.30.010 above, City development fees may be waived in an amount to be determined by the City Council, up to a maximum of twenty-five percent (25%) of the total development fee paid.
- B. The following fees shall not be waived: water and sewer plant investment fees, drainage fees, fire impact fees, street impact fees, park impact fees and that portion of the City sales and use tax collected that is dedicated for public safety (currently this rate is one-half percent (0.5%).

(Ord. 294-04; Ord. 980-95; Ord. 777 90)

3.30.030 - Economic development incentive - waiver of sales and use taxes.

City sales and use taxes for businesses qualifying under Section 3.30.010.B shall be waived, for the period of construction or expansion only, as follows:

- A. City sales and use taxes on construction materials, fixed equipment and machinery installation, or facilities lease may be waived up to twenty-five percent (25%) of the total paid to the City, up to a maximum waived of three hundred thousand dollars (\$300,000.00).
- B. City sales and use taxes on equipment and machinery, research equipment, and computer hardware not used for word processing, when the business investment for such equipment reaches a minimum of one hundred thousand dollars (\$100,000.00), may be waived up to twenty-five percent (25%) of the total paid to the City, up to a maximum waived of three hundred thousand dollars (\$300,000.00).

(Ord. 418-07; Ord. 294-04; Ord. 777 90)

3.30.035 - Economic development incentive - waiver of sales and use taxes.

City sales and use taxes for businesses qualifying under Section 3.30.010.C of this Chapter shall be waived, for the period of construction or expansion only, as follows:

- A. City sales and use taxes on construction materials, fixed equipment and machinery installation, or facilities lease may be waived up to twenty-five percent (25%) of the total paid to the City, up to a maximum waived of five hundred thousand dollars (\$500,000.00).
- B. City sales and use taxes on equipment and machinery, research equipment, and computer hardware not used for word processing, when the business investment for such equipment reaches a minimum of one hundred thousand dollars (\$100,000.00), may be waived up to twenty-five percent (25%) of the total paid to the City, up to a maximum waived of five hundred thousand dollars (\$500,000.00).

(Ord. 418-07; Ord. 294-04; Ord. 777 90)

3.30.040 - Documentation required - appeals.

- A. Businesses wishing to apply for the benefits of the economic development incentive plan shall submit to the City Manager all documentation necessary for determination of qualification for the plan. All plans must have final approval of the City Council.
- B. Any business aggrieved by a decision of the City Manager concerning eligibility or computation of waivers may submit in writing a request for hearing before the City Council. Such request must be filed with the City Clerk within ten (10) days after the mailing date of the City Manager's decision. Failure to submit a request within ten days shall be deemed a waiver of the right to a hearing. The decision of a majority of the entire City Council shall be final.

(Ord. 294-04; Ord. 777 90, 1990)

3.30.050 - Incentive payments.

The City Manager may negotiate for an incentive payment with any entity that establishes a new business facility, as defined in Section 39-22-508.2(3), C.R.S., but excluding the requirements in paragraph (b) of said subsection (3); or with any taxpayer who expands a facility, as defined in Section 39-22-508.2(2)(a), C.R.S. Such negotiations shall be within the guidelines of Section 31-15-903, C.R.S. In no instance shall any such negotiations result in an annual incentive payment or credit that is greater than fifty percent (50%) of the amount of taxes levied by the City upon the taxable personal property

directly attributable to such new construction or expansion at or within such new or expanded facility and used in connection with the operation of such new or expanded facility for the current property tax year. The term of any agreement made pursuant to the provisions of this Section shall not exceed ten (10) years. The County and local school district shall be informed of any such negotiations.

(Ord. 294-04; Ord. 980-95; Ord. 777 90)

3.30.060 - Limitation.

No waiver of fees shall be permitted under the provisions of this Chapter unless the City Council first determines, by resolution, that the establishment or expansion of the particular business is expected to generate, within a reasonable period of time, but in no event greater than five (5) years, increased revenues to the City, in the form of taxes or otherwise, in an amount equal to or greater than the amount of the fees to be waived. The City Council may condition any such waiver of fees upon the provision of adequate security to ensure return.

(Ord. 294-04; Ord. 777 90)

3.30.070 - No entitlement established.

The provisions of this Chapter shall not be construed as establishing any right or entitlement to the waiver of fees on the part of any applicant and the granting of any such waiver shall be entirely discretionary with the City Council.

(Ord. 294-04; Ord. 777 90)

CHAPTER 3.31 - Enhanced Sales Tax Incentive Program ("ESTIP")

3.31.010 - Title.

There is hereby established within the City an Enhanced Sales Tax Incentive Program ("ESTIP").

(Ord. 294-04; Ord. 927-94)

3.31.020 - Purpose.

The purpose of the ESTIP created hereby is to encourage the establishment and/or substantial expansion of retail sales tax generating businesses within the City, thereby stimulating the economy of and within the City, thereby providing employment for residents of the City and others, thereby further expanding the goods available for purchase and consumption by residents of the City, and further increasing the sales taxes collected by the City, which increased sales tax collections will enable the City to provide expanded and improved municipal services to and for the benefit of the residents of the City, while at the same time providing public or public-related improvements at no cost, or at deferred cost, to the City and its taxpayers and residents.

(Ord. 294-04; Ord. 927-94)

3.31.030 - Definitions.

As used in this Chapter and all Sections thereof, the following phrases shall have the following meanings:

Owner or proprietor shall mean the record owner of the property or operator of an individual business, or, in the case of a shopping center, the owner of the real property upon which more than one business is operated, provided that said owner (whether an individual, corporation, partnership or other entity) is the owner or lessor of the individual businesses operated thereon.

Sales tax shall mean the amount of City sales tax collected from the applicant.

(Ord. 294-04; Ord. 927-94)

3.31.040 - Participation.

Participation in ESTIP shall be based upon approval by the City Council of the City of Evans, exercising its legislative discretion in good faith. Any owner or proprietor of a newly established or proposed retail sales tax generating business or location, or the owner or proprietor of an existing retail sales tax generating business or location which is proposed to expand substantially, may apply to the City for inclusion within the ESTIP provided that the new or expanded business is reasonably likely to generate sales taxes of at least ten thousand dollars (\$10,000.00) in the first year of operation or expansion.

(Ord. 294-04; Ord. 927-94)

3.31.050 - City Council approval.

Approval by the City Council of an agreement implementing this ESTIP shall entitle the successful applicant to share in City sales taxes derived from applicant's property or business in an amount which shall not in any event exceed twenty-five percent (25%) of the City sales taxes; provided, however, that applicant may use said amounts only for public and/or public-related purposes such as those specified herein and which are expressly approved by the City Council at the time of consideration of the application. The time period in which said sales taxes may be shared shall not commence until all public or public-related improvements are completed, and shall be limited by the City Council, in its discretion, to a specified time, or until a specified amount is reached.

(Ord. 294-04; Ord. 927-94)

3.31.060 - Uses for revenue to be public-related.

The uses to which said shared City sales taxes may be put by an applicant shall be strictly limited to those which are public or public-related in nature. For the purposes of this Chapter, public or public-related purposes shall mean public improvements, including but not limited to streets, sidewalks, curbs, gutters, pedestrian malls, street lights, drainage facilities, landscaping, decorative structures, statuary, fountains, identification signs, traffic safety devices, bicycle paths, off-street parking facilities, benches, restrooms, information booths, public meeting facilities, and all necessary, incidental, and appurtenant structures and improvements, together with the relocation and improvement of existing utility lines, and any other improvements of a similar nature which are specifically approved by the City Council and upon the City Council's finding that said improvements are public or public-related improvements.

(Ord. 294-04; Ord. 927-94)

3.31.070 - Monthly increments for sales tax.

The City shall use the actual monthly City sales taxes collected by the applicant to determine the amount of shared City sales tax to be provided to the applicant, based upon the agreed terms; but in any event, the amount of the shared City sales tax shall not exceed twenty-five percent (25%) of the actual City sales tax received. The actual City sales taxes collected and used for determining that amount to be shared with the applicant shall not be from any dedicated sales tax such as the public safety sales tax, (currently at the rate of one-half of one percent [0.5%]).

(Ord. 294-04; Ord. 927-94)

3.31.080 - Account created.

It is an overriding consideration and determination of the City Council that existing sources of City sales tax revenues shall not be used, impaired, or otherwise affected by this ESTIP. Therefore, it is hereby conclusively determined that only City sales taxes generated by the properties described in an application shall be subject to division under this ESTIP. It shall be the affirmative duty of the City Treasurer to account for all such "sales taxes" separately from the sales taxes generated by and collected from the other sales tax generating uses and businesses within the City and to provide an accounting system which accomplishes the overriding purpose of this Section. It is conclusively stated by the City Council that this Chapter would not be adopted or implemented but for the provisions of this Section.

(Ord. 294-04; Ord. 927-94)

3.31.090 - Approval criteria.

A decision concerning an application for inclusion in this ESTIP shall be considered by the City Council, at a regularly scheduled City Council meeting, based upon the following criteria:

- A. The amount of City sales taxes that are reasonably to be anticipated to be derived by the City through the expanded or new retail sales tax generating business;
- B. The public benefits provided by the applicant through public works, public improvements, additional employment for City residents, etc.;
- C. The amount of expenditures that may be deferred by the City based upon public improvements to be completed by the applicant;
- D. The conformance of the applicant's property or project with the Comprehensive Plan and zoning ordinances of the City;
- E. The agreement required by Section 3.31.100 below having been reached, which agreement shall contain and conform to all requirements of said Section. Approval shall be by motion adopted by a majority of the entire City Council.

(Ord. 294-04; Ord. 927-94)

3.31.100 - Agreement required.

Each application for approval submitted to the City Council shall be subject to approval by the Council solely on its own merits. Approval of an application shall require that an agreement be executed by the owner and the City, which agreement shall, at a minimum, contain:

- A. A list of those public or public-related improvements that justify the application's approval, and the amount that shall be spent on said improvements by the applicant;
- B.

The maximum amount of City sales taxes to be shared, and the maximum time during which said agreement shall continue, it being expressly understood that any such agreement shall expire and be of no further force and effect upon the occurrence of the earlier to be reached of the maximum time of the agreement (whether or not the maximum amount to be shared has been reached) or the maximum amount to be shared (whether or not the maximum time set forth has expired);

- C. A statement that this is a personal agreement that is not transferable and that does not run with the land;
- D. That this agreement shall never constitute a debt or obligation of the City within any constitutional or statutory provision;
- E. A provision that any City sales taxes subject to sharing shall be escrowed in the event there is a legal challenge to this ESTIP or the approval of any application therefore;
- F. An affirmative statement that the obligations, benefits, and/or provisions of this agreement may not be assigned in whole or in any part without the expressed authorization of the City Council, and further that no third party shall be entitled to rely upon or enforce any provision hereof;
- G. Any other provisions agreed upon by the parties and approved by the City Council.

(Ord. 294-04; Ord. 927-94)

3.31.110 - City Council intentions.

The City Council has enacted this ESTIP as a joint benefit to the public at large and to private owners/business operators for the purposes of: providing the City with increased sales tax revenues generated upon and by properties improved as a result of this Program; public improvements being completed by private owners through no debt obligation being incurred on the part of the City, and allowing applicants an opportunity to improve properties that generate sales activities and make those properties more competitive in the marketplace and further provide to the applicant additional contingent sources of revenues for upgrading said properties. The City Council specifically finds and determines that creation of this ESTIP is consistent with the City's powers as a home rule municipal corporation, and that exercise of said powers in the manner set forth herein is in furtherance of the public health, safety and welfare. Notwithstanding any provision hereof, the City shall never participate in a joint venture with any private entity or activity which participates in this ESTIP, and the City shall never be liable or responsible for any debt or obligation of any participant in ESTIP.

(Ord. 294-04; Ord. 927-94)

CITY OF EVANS, COLORADO

ORDINANCE NO. 643-16

AN ORDINANCE AMENDING THE EVANS CITY CODE BY REPEALING THE PROVISIONS RELATING TO VARIOUS INCENTIVES

WHEREAS, the City Council of the City of Evans, Colorado, pursuant to Colorado statute and the Evans City Charter, is vested with the authority of administering the affairs of the City of Evans, Colorado; and

WHEREAS, the City Council believes that a great city provides a strong and positive foundation for its business community; and

WHEREAS, the City Council strives to work collaboratively with our business community to ensure long-term positive outcomes for all parties; and

WHEREAS, economic incentive policies stimulate the general economic well-being of the City, thus providing the foundation of funding required for the provision of City services that benefit both the public and private sector; and

WHEREAS, economic expansion also generates employment opportunities that lead to higher quality of life and greater economic opportunities for residents of the City; and

WHEREAS, the City Council desires to improve flexibility of the City when working with the business community, and desires to direct City management personnel to follow standards for the prudent investment of City incentives; and

WHEREAS, the City Council concludes that such flexibility can best be accomplished by repealing the provisions of the City Code that relate to incentives and adopting such incentives by resolution rather than ordinance; and

WHEREAS, the City Council desires to provide economic incentive policies for the foundation of the City's long term financial sustainability and to encourage the location of new businesses and the expansion of existing businesses within the City; and

WHEREAS, the City Council finds and determines that the amendments to the Evans City Code as contained herein, are necessary and designed for the purpose of promoting the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of the City of Evans and are consistent with the City's goals, policies and plans, including the City's master plan documents; and

WHEREAS, the City Council finds that the legislative action of adopting the provisions set forth in this ordinance is necessary to protect the health, safety and welfare of the City's residents and visitors.

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

PART 1: AMENDMENT TO CITY CODE. The City Code of the City of Evans, Colorado is hereby amended by repealing the following provisions of the existing City Code:

- a. Chapter 3.17, regarding Development Revenue Bonds;
- b. Chapter 3.30, regarding Economic Development Incentive Plans; and
- c. Chapter 3.31, regarding Enhanced Sales Tax Incentive Program (“ESTIP”).

PART 2: SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City of Evans hereby declares that it would have adopted this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases thereof be declared invalid or unconstitutional.

INTRODUCED AND PASSED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF EVANS ON THIS 5TH DAY OF JANUARY, 2016.

ATTEST:

CITY OF EVANS, COLORADO

Raegan Robb, City Clerk

BY: _____
John L. Morris, Mayor

PASSED AND ADOPTED ON A SECOND READING THIS 19TH DAY OF JANUARY, 2016.

ATTEST:

CITY OF EVANS, COLORADO

Raegan Robb, City Clerk

BY: _____
John L. Morris, Mayor

COUNCIL COMMUNICATION

DATE: January 19, 2016

AGENDA ITEM: 7.A

SUBJECT: Ordinance No. 642-16 – Adoption of Adjusted City Impact Fees
(2nd Reading)

PRESENTED BY: Scott Krob, City Attorney
Sheryl Trent, Economic Development Director
Jessica Gonifas, Deputy City Manager

AGENDA ITEM DESCRIPTION:

In 2014, in the context of reviewing the proposed budget, the City Council directed staff to undertake a review of the City's methodology and approach to establishing impact fees and prepare a report and recommendation for possible modifications to the impact fee model. After a Request for Proposal process, the firm of Tischler-Bise was selected to undertake this review. Following several public work sessions, the City Council formally adopted the Impact Fee Study in October of 2015. A few changes have been made to that Study, and the final draft, dated November 16, 2015, is attached to and incorporated as a part of this Ordinance.

That study detailed the assumptions, calculations, methodology and findings to establish amended impact fees for:

- Fire/Rescue Services;
- Parks, Recreation and Trails;
- Transportation; and
- Wastewater Service.

One new fee is being proposed in the study: a Police Protection Services impact fee. Additionally, two fees could not be updated at this time due to master plans in progress: the Water impact fee and the Storm Water impact fee. At such time as those studies are completed we will update those fees with the City Council. Although the Tischler/Bise study addressed Waste Water impact fees, those fees are not included in this ordinance, but are being addressed by separate resolution, as Waste Water is an enterprise.

The Ordinance repeals certain sections of the existing Municipal Code and establishes a new Chapter 3.20: Impact Fees under Article 3: Revenue and Finance to consolidate all the impact fee provisions in one location. The ordinance also indicates that annual amendments to the impact fees will be made by resolution and adopted with the fee updates that occur after budget approval by the City Council.

While a red line of the old ordinance sections has been provided for your review, due to the large number of changes, the redline may be of limited use. This project entailed two main areas of focus:

- 1) Consolidating into one area repetitive language such as purpose, collection of fees, appropriate uses of fees, and so on. This eliminated redundancies and makes the code easier to read and more consistent for each fee.
- 2) Eliminating outdated or unnecessary sections of the code. As the Council has directed, staff is working on the code to make it more responsive to the needs of our business owners, and more adaptable and flexible where appropriate. Therefore some sections of the code that went into great detail are now less restrictive and the City Manager and City Council have a greater ability to discuss the needs of the developer.

FINANCIAL SUMMARY:

The adoption of this ordinance also amends the code to reflect the fees as recommended in the study. In some cases those fees are higher and in some cases they are lower than current fees. The newly recommended Police Impact Fee will be an additional fee.

In general, Development Impact Fees continue to be a major source in support of the City's capital improvement plan, with several million in costs identified for specific projects and tens of millions in additional potential improvements. The annual budget does not anticipate annual impact fee revenues until they are received and audited. These revenues may be revised as the City re-assesses its growth plans, related infrastructure requirements and impact fee structure.

RECOMMENDATION:

Staff recommends the following to City Council:

Approve Ordinance No. 642-16 adopting the new impact fees to be implemented when Ordinance No. 642-16 goes into effect and amended annually thereafter during the budget process by Resolution.

SUGGESTED MOTIONS:

"I move to approve Ordinance No. 642-16 on second reading."

"I move to deny Ordinance No. 642-16 on second reading."

"I move to deny the approval of Ordinance No. 516-11 on first reading."

~~CHAPTER 15.50 – Fire/Rescue Impact Fees~~

~~15.50.010 – Fire Stations and Apparatus – City Council authority.~~

The ~~City~~ Council may acquire, accept dedications and gifts of, develop and maintain fire stations and apparatus.

Commented [ST1]: This is general language that we kept, but not unique to each fee.

~~Need to add something about how the City can collect impact fees on behalf of the Fire District per the Service Agreement dated xxxxx~~

(Ord. 168-02)

~~15.50.020 – Purpose.~~

In order to provide or to assist in providing the financing required to acquire, develop and maintain fire stations and apparatus, the fire/rescue impact fees shall be established by the City Council by ordinance to be paid by property owners desiring to develop property with improvements.

Commented [ST2]: The purpose is now standard across all fees and not separated by each fee

(Ord. 168-02)

~~15.50.030 – Fire/rescue impact fee study.~~

The City commissioned a study in ~~July, 2002~~ dated November 16, 2015 to update the amounts charged by the Fire/Rescue Impact Fee.

Commented [ST3]: Council will note that the Impact Fee Study is referenced for all the fees now!

(Ord. 168-02)

~~15.50.040 – Calculation of fees.~~

The fees calculated in the ~~2002-2015~~ study are directly related to the capital requirements likely to be imposed on the Fire ~~Department~~ District in order to serve new growth at service levels consistent with those currently found in the community.

Commented [ST4]: Some version of this is standard across all the fees and is referenced by CRS.

(Ord. 168-02)

~~15.50.050 – Paid with building permit.~~

Fire/rescue impact fees shall be due when the building permit fee is paid.

Commented [ST5]: This is standard across all the fees, so you will note this language is included

(Ord. 168-02)

~~15.50.060 – Waiver authorized when.~~

The City Council may waive the requirement of the fire/rescue impact fees otherwise payable by any property owner who is willing to transfer to the City a parcel of land, if the City Council determines:

Commented [ST6]: Waiver are now addressed in general, not specifically to any impact fee.

- A. That the parcel of land is suitable for fire station location purposes;

- B. That the person otherwise obligated to pay the fire/rescue impact fee is the fee simple owner of the parcel and has marketable title thereto; and
- C. That the market value of the parcel exclusive of all liens and encumbrances is equal to or greater than the total fire/rescue impact fee that otherwise would be payable.

D. That the Fire District Board has taken formal action to approve of the waiver and has made a recommendation in writing to the City Council to do so.

(Ord. 168-02)

~~15.50.070~~ Disposition of funds.

- A. Except as hereinafter provided, all fire department impact fees shall be credited to a separate fund, to be known as the "Fire/Rescue Impact Assessment Fund."
- B. Nothing in this Chapter shall prohibit the City Council from appropriating funds from the general revenues of the City for acquisition, development and maintenance of fire stations and apparatus.

(Ord. 168-02)

~~15.50.080~~ Applicability of new fee amounts.

This fee shall apply to all building permits issued and paid for after the effective date of this ordinance. Any building permit application shall not be considered complete unless and until (1) all of the required information and submittal materials, in the amounts and dimensions required by this code, have been submitted to and received by the city department or official specified in this code; and (2) the Planning Division has certified the application as complete. The decision of the Planning Division with respect to completeness and applicability of submittal requirements shall be final.

(Ord. 168-02)

~~15.50.090~~ Eligibility for impact fee credits.

If developers construct or provide any fire/rescue facilities or equipment which would serve new growth within the City's impact fee study area ~~commissioned in July 2002~~ per the study dated November 16, 2015, they may apply to receive an appropriate credit equal to the dollar amount of the facilities or equipment provided, not to exceed the total amount of impact fees they would have been required to pay under the existing fee schedule.

(Ord. 168-02)

~~15.50.100~~ Fire/Rescue Department Impact Fees.

~~Effective January 1, 2014, the Fire/Rescue Impact Fees shall be as follows:~~

~~Fire/Rescue Department Impact Fees~~

Each residential unit other than a motel or hotel.	\$805.00 per dwelling unit
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Commented [ST7]: Again, the new language groups all the fees into their separate funds.

Commented [ST8]: Credits have been streamlined and made more responsive and adaptable to situations as posed by the developer. They are no longer unique to each fee,.

Commented [ST9]: Each fee is pulled out as listed in the new Impact Fee Study.

Nonresidential uses, but including a motel or hotel.*	\$0.46 per square foot of each floor level of the building area
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I'm thinking we just want to reference the study instead of list them in the ordinance? I don't really care.....

*Exception: any detached accessory structure related to a single-family residential use.

Annually, the fees will be updated by Resolution to reflect inflation, as reflected in the Engineering News Record Construction Index.

(Ord. 577-13 §2; Ord. 529-11: 504-10: 477-09: 458-08: 417-07: 389-06: 357-05: 303-04: 245-03: 168-02; Ord. 544-12 §2)

Commented [ST10]: This is also common to all the Impact Fees, although the index might be different for each one as specified in the new ordinance.

~~15.50.110~~ Violation; penalty.

Any person who violates any of the provisions of this chapter is guilty of a violation of this chapter and shall be punished as provided in Section 1.16.010 of this Code.

Commented [ST11]: Violations are all grouped and not unique.

(Ord. 168-02)

~~CHAPTER 15.52~~ Park Development Impact Fees

~~15.52.010~~ Parks and playgrounds — City Council authority.

The City Council may acquire, accept dedications and gifts of, develop and maintain areas for City parks, trails and open space.

(Ord. 181-02: 361-77)

~~15.52.020~~ Park fees - purpose.

In order to provide or to assist in providing the financing required to acquire, develop and maintain City parks, trails and open space, Park Impact Fees are established by the City Council by Ordinance REsolution to be paid by property owners desiring to develop property.

Commented [ST12]:

Commented [ST13R12]:

Formatted: Highlight

(Ord. 181-02: 1109-98: 901-94: 596-84: 361-77)

15.52.030 - Park impact fee study.

The City commissioned a Parks and Recreation Master Plan, which included an impact fee study in March of 2000, and an Impact Fee Study dated November 16, 2015 to update the amounts charged for the Park Development Impact Fee.

(Ord. 181-02)

~~15.52.040~~ Calculation of fees.

The fees calculated in the ~~2000-2015~~ study are directly related to the capital requirements likely to be imposed on the Parks and Recreation ~~Department services~~ in order to serve new growth at service levels consistent with those currently found in the community.

(Ord. 181-02)

15.52.045 - Park Development Impact Fees - schedule of amounts.

~~Effective January 1, 2014, the Park Development Impact Fees shall be as follows:~~

- ~~A. For each single-family dwelling, four thousand six hundred four dollars (\$4,604.00);~~
- ~~B. For each dwelling unit in a duplex, apartment building, or in any other residential structure other than a motel or hotel, four thousand six hundred four dollars (\$4,604.00);~~
- ~~C. For each space in a mobile home park or community, four thousand five hundred sixteen dollars (\$4,516.00);~~
- ~~D. Exception: Any detached accessory structures related to residential uses described in Subsections A through C as listed above shall be exempt from this fee.~~

~~Again, should we list them here? Or refer to the study?~~

(Ord. 577-13 §3; Ord. 544-12 §3; Ord. 529-11: 477-09: 458-08: 417-07: 391-06: 359-05: 302-04: 240-03: 183-02)

~~15.52.050~~ Park fees - paid with building permit.

~~Park fees shall be due when the building permit fee is paid.~~

(Ord. 181-02: 361 77)

~~15.52.060~~ Waiver authorized when.

~~The City Council may waive the requirement of park fees otherwise payable by any property owner who is willing to transfer to the city a parcel of land, if the City Council determines:~~

- ~~A. That the parcel of land is suitable for park purposes;~~
- ~~B. That the parcel of land is above and beyond the required park land dedication requirements as stipulated in Chapter 16.42 of this Code.~~
- ~~C. That the person otherwise obligated to pay the park impact fee is the fee simple owner of the parcel and has marketable title thereto; and~~
- ~~D. That the market value of the parcel exclusive of all liens and encumbrances is equal to or greater than the total park impact fee that otherwise would be payable.~~

(Ord. 181-02: 361 77)

15.52.070 - Disposition of funds.

- A. Except as hereinafter provided, all park fees shall be credited to a separate fund, to be known as the "Park Development Impact Fund."
- B. Nothing in this Chapter shall prohibit the City Council from appropriating funds from the general revenues of the City for acquisition, development and maintenance of parks, trails and open space.

(Ord. 181-02: 361 77)

~~15.52.080~~ Applicability of new fee amounts.

This fee shall apply to all building permits issued and paid for after the effective date of this fee adoption. Any building permit application shall not be considered complete unless and until (1) all of the required information and submittal materials, in the amounts and dimensions required by this code, have been submitted to and received by the city department or official specified in this code; and (2) the Planning Division has certified the application as complete. The decision of the Planning Division with respect to completeness and applicability of submittal requirements shall be final.

(Ord. 181-02)

~~15.52.090~~ Eligibility for impact fee credits.

If developers construct or provide any park facilities or equipment, utilizing acceptable design and construction methods approved by the Director of Parks and Recreation and adhering to any applicable sections of Chapter 16.42 of the Evans Municipal Code, which would serve new growth within the City, they may apply to receive an appropriate credit equal to the dollar amount of the facilities or equipment provided, not to exceed a total amount of a calculated percentage of impact fees they would have been required to pay under the existing fee schedule.

(Ord. 181-02)

~~15.52.100~~ Updating fees for inflation.

Annually, the fees will be updated and adjusted, by ordinanceresolution, to reflect inflation utilizing the most recent factor in the most recent period for which figures are available from the Consumer Price Index for the Denver-Boulder-Greeley area.

(Ord. 181-02)

~~15.52.110~~ Violation; penalty.

Any person who violates any of the provisions of this chapter is guilty of a violation of this Chapter and shall be punished as provided in Section 1.16.010 of this Code.

(Ord. 181-02: 842-92: 361-77)

~~CHAPTER 16.40—Parks~~

~~16.40.010—Administration of public parks by Director of Parks and Recreation—appointment.~~

The construction, development, planning, operation and maintenance of public parks in the City shall be under the administration of the Director of Parks and Recreation. The Director of Parks and Recreation shall be appointed by the City Manager.

~~(Ord. 1150-99; Ord. 768-90; Ord. 595-84)~~

~~16.40.020 Closed hours of parks designated.~~

~~All public parks within the City shall be closed to the public between the hours of 10:00 p.m. and 5:00 a.m.~~

~~(Ord. 652-86; Ord. 595-84)~~

~~16.40.030 Closed hours of parks posting notices.~~

~~The Director of Parks and Recreation shall post notices at the entrances of all City parks in conspicuous places therein in conformity with the provisions of this Chapter as to closing hours, sufficient to inform the public of the closing hours in such parks.~~

~~(Ord. 369-06; Ord. 595-84)~~

~~16.40.040 Closed hours of parks violation unlawful exceptions.~~

~~It is unlawful for any person to be within the parks between the hours of 10:00 p.m. and 5:00 a.m. unless travel on park streets therein is necessary for through traffic for those residing in areas adjoining such parks or unless on occasions or events of a public nature for which a permit has been previously granted by authority of the City. This prohibition shall not extend to persons employed within such parks or to persons who have obtained permission, in writing, from the Director of Parks and Recreation for entry into parks during such hours.~~

~~(Ord. 369-06; Ord. 1150-99; Ord. 652-86; Ord. 595-84)~~

~~16.40.050 Vandalism and interference with facilities or vegetation unlawful.~~

~~It is unlawful for any person to injure, damage, remove, deface or destroy any City park facility, tree, shrub, vine, flower or other property within any City park or to commit any act of vandalism therein.~~

~~(Ord. 595-84)~~

~~16.40.060 Orderly conduct required certain behavior prohibited.~~

~~All persons making use of any public park in the City shall at all times conduct themselves in an orderly manner and shall not disport themselves in a loud, boisterous or unseemly manner or in such fashion as to disturb, be offensive to or annoy other users of such park or residents adjacent thereto.~~

~~(Ord. 595-84)~~

~~16.40.070 Glass containers prohibited.~~

~~It is unlawful for any person to bring, use or possess a glass container in a public park within the City.~~

~~(Ord. 652-86)~~

~~16.40.080—Alcohol restricted—public parks and facilities.~~

~~It shall be unlawful for any person to serve, consume or have any open container of alcoholic beverages within the Riverside Park Ball Fields and the adjacent parking area without the issuance of a special permit. It is also unlawful for any person to serve, consume or have any open container of alcoholic beverage (except as permitted by Section 12-47-411(3.5), C.R.S., for vinous liquor) when on, in or using, by conveyance or otherwise, any public street, parking lot, alley, park, public place, avenue or sidewalk within the City, with the exception that alcoholic beverages with six percent (6%) or less alcohol content may be consumed in the parks of the City (outside the Riverside Park Ball Fields and adjacent parking area) and with the exception that alcohol may be consumed upon issuance of a special permit within the confines of the Evans Community Complex. (See also Subsections 5.08.230A and 5.08.230B of this Chapter). Any consumption of alcohol at the Evans Community Complex or within Riverside Park Ball Fields and its adjacent parking area will be restricted to approved City issued permit holders and such permit holders shall follow all rules and regulations set forth at the Complex and all other applicable laws pertaining to the consumption of alcohol in the City.~~

~~(Ord. 292-04; Ord. 022-00; Ord. 1044-97)~~

~~16.40.090—No smoking at Riverside Park Ball Fields.~~

~~As provided in Section 8.18.030 of this Code, and in order to reduce the levels of exposure to environmental tobacco smoke, smoking shall not be permitted and no person shall smoke in any area within the fenced area of the Riverside Park Ball Fields.~~

~~(Ord. 427-08)~~

~~16.40.100—No open fires.~~

~~It shall be unlawful for any person to start or maintain an open fire except in designated receptacles provided in the park by the City and except for persons employed within such parks by the City or to persons who have obtained permission, in writing, from the Fire Chief and the Director of Parks and Recreation.~~

~~(Ord. 1150-99; Ord. 768-90)~~

~~16.40.110—No boating or swimming—variance provision.~~

~~A.—It shall be unlawful for any person to use any type of boat, floatation device or inflatable boat on any City lake. It shall further be unlawful for any person to swim, wade or enter the water at any City lake.~~

~~B.—Application for a variance to this Section shall be submitted to the Parks and Recreation Commission. Such application shall include a statement setting forth the nature and extent of the requested variance, together with evidence supporting need for such variance. Once a completed application for a variance has been submitted to and heard by the Parks and Recreation Commission, its recommendation shall be forwarded to the City Council for consideration and final decision at the next regular council meeting.~~

~~(Ord. 1150-99; Ord. 768-90)~~

~~16.40.111—Dogs in parks.~~

~~It shall be unlawful for any dog to be in any public lake or body of water and will be considered a public nuisance when in any lake or body of water. Controlled dogs are allowed on City-owned parks, trails and open space. A controlled dog must be on a leash ten (10) feet or less in length, attached to the dog and held by or tied to a person (see also Section 6.04.020, "Control required - running at large prohibited" of this Code). Any owner, taking the animal upon any public way or other public property in the City, shall immediately remove or cause to be removed and lawfully dispose of all fecal matter left on such property by the animal (see also Section 6.04.130, "Animal defecation - owner responsibility" of this Code).~~

~~(Ord. 426-08; Ord. 369-06)~~

~~16.40.112 - Off-leash dog park.~~

~~Dogs may be allowed off-leash only within designated off-leash dog parks in the City. Dogs must be under voice control and in sight of the owner at all times and owners must follow all posted rules and regulations while in the dog park. Any owner, taking the animal in to any dog park, shall immediately remove or cause to be removed and lawfully dispose of all fecal matter left on such property by the animal.~~

~~(Ord. 426-08)~~

~~16.40.120 - Violation penalty.~~

~~Any person who violates any of the provisions of this Chapter is guilty of a violation of this Chapter and shall be punished as provided in Section 1.16.010 of this Code.~~

~~(Ord. 842-92; Ord. 768-90)~~

~~CHAPTER 16.42 - Regulations for Dedication of Land and/or Payment of Fees for Public Park Land in Subdivisions~~

16.42.010 - Intent.

This Section is intended to provide adequate sites for the location of public park land necessitated by the impacts created by new development. Such sites may be dedicated to the City or a homeowner's association for eventual construction and maintenance. The intent is to require appropriate mitigation in proportion to the impacts being created by new development. It is further the intent of this Section to have dedicated park land as the highest priority although a cash-in-lieu process is identified. An annexation agreement and/or developer's agreement, when appropriate, will outline the specific requirements pertaining to this Section and specifics as to land dedication and/or cash-in-lieu for land. This Section is in addition to park development impact fees, of which said fees are to be used for the design and construction of park lands.

(Ord. 370-06; Ord. 111-01; Ord. 045-00)

16.42.020 - General requirements.

The developer shall provide, at no cost to the City, for the construction of all roads adjacent to the park area being platted in conformance with the Comprehensive Plan, including all roads adjoining publicly dedicated park sites, traffic signalization to serve the site, extensions of all utilities to the site and other public infrastructure as required by the City Council. Security needed to ensure such improvements shall

Commented [ST14]: Staff is reviewing 16.42 as part of this discussion. The intent is to provide for streamlined procedures that are more responsive and adaptable to the needs of the development

be required prior to the issuance of any building permits. All park and trail development and facilities shall conform to the standards and criteria as outlined in the City of Evans Parks, Trails and Recreation Master Plan, as amended.

- A. Parks, trails and open land. Whenever land is proposed for residential subdividing, or if land is replatted which would add to, or change, the original residential impact, the developer shall provide land or cash-in-lieu of land for active and specialized recreation generated by the proposed use. In general, these lands shall be suitable for the development of active play areas, trails or in some instances to serve to preserve unique land forms or natural areas. Where no suitable land is available in a development, cash-in-lieu of land or the equivalent monetary value or the donation of recreation facilities may be substituted at the City's discretion. Additional dedication for open land may be required by the City if deemed necessary to preserve areas of special significance.
1. The following formula is used to calculate the minimum amount of land dedication required in residential developments by the City, which is deemed necessary to provide adequate land for parks. This formula is based upon a total of six and one-quarter (6.25) acres of developed park land per one thousand (1,000) population as recommended in the City of Evans Parks, Trails and Recreation Master Plan. Furthermore, for purposes of population impact, each residential unit is assumed to house an average of two and nine-tenths (2.9) individuals per unit (2000 U.S. Census figures).

3.5 ac of neighborhood with a minimum size of 6.0 acres or 2.75 ac of community parks with a minimum size of 25.0 acres:

Neighborhood Park = Dwelling units x 0.010 acres/unit

Community Park = Dwelling units x 0.0080 acres/unit

- B. The City reserves the right to adjust the acreage requirement between neighborhood and community park categories as deemed necessary to meet specific needs and to determine the amount of developed park acreage required based upon recommendations by the Parks and Recreation Department/ Commission.
1. Within nonresidential developments (commercial, industrial, etc.) provision of park facilities is encouraged.
 2. For the purposes of calculating the required dedication, existing dwelling units within a subdivision shall be excluded from the calculation of the park requirement.
 3. Land proposed for park dedication shall be clearly identified on any submitted plat including the number of acres for each site and the total acreage proposed for City park dedication within the project.
 4. The conveyance of dedicated park land to the City shall be by general warranty deed and title commitment and the title shall be free and clear of all liens and encumbrances, including real property taxes completed to the time of conveyance. Dedicated park land shall include the necessary water rights or other available water service to provide for irrigation and drinking water. Community and neighborhood park land shall be conveyed at the time of recordation of the final plat for the area served by the community and neighborhood parks as defined in the City of Evans Parks, Trails and Recreation Master Plan.
 5. The City shall assume all responsibility for development of all land dedicated for parks and trails, unless otherwise determined by the City and the developer. If the developer elects to develop the park, a park site master plan, as designed by a professional landscape architect, shall be submitted to the City for approval prior to the time of final plat submittal and will be identified in a developer's agreement. Upon approval of the park plan by the City, cost estimates and construction documents shall be submitted along with all other necessary information for construction. The park site shall be constructed in accordance with City standards and specifications and as outlined in an approved developer's agreement. In addition, the developer shall provide to the City a letter of credit until all of the improvements are completed.

(Ord. 370-06; Ord. 111-01; Ord. 045-00)

16.42.030 - Cash-in-lieu.

Cash-in-lieu for off-site land dedication may be used in cases in which the cash value of park land dedication and park development costs is deemed, by the City, to be more appropriate in satisfying the needs of the residents of the proposed development. Such cases include, but are not limited to, small developments not able to meet the minimum size requirement and developments which already have adjacent facilities that could be expanded to satisfy the need created by the proposed development. In those subdivisions where proposed regional trails are located, no cash-in-lieu of land will be accepted unless there is an acceptable alternate route, as determined by the City, which is compatible with the City of Evans Parks, Trails and Recreation Master Plan.

A. The cash-in-lieu for land dedication and park development costs fee shall be determined by the following process:

1. The City Parks and Recreation Department shall review all cash-in-lieu for land and recommend a course of action to the Building Division prior to the issuance of any building permits.
2. The City shall make a final determination of the method in which the dedication requirements shall be satisfied.
3. When cash-in-lieu for land dedication and park development costs is requested by the City, the following formula shall be used:

Total acreage for dedication	\$ Value/acre as determined	Dedication
as cash-in-lieu	by market value	\$ amount required

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4. When a combination of land and cash-in-lieu for land is requested by the City, the following formula shall be used:

Total park dedication in acres required as calculated by formula	(divided by)	Land acreage accepted	=	Total acreage for dedication as cash-on-lieu
Total acreage for dedication as cash-in-lieu	(multiplied by)	\$ Value/acre as determined by market value	=	Dedication \$ amount required

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5. The cash-in-lieu fee shall be equivalent to the full market value of the acreage required for park land dedication. Value shall be based on the anticipated market value of the land being developed after completion of platting and construction of public improvements. The City shall determine the value for each approved cash-in-lieu project. If the fee is disputed, the applicant shall submit a proposal for the cash-in-lieu fee and supply the information necessary for the City to evaluate the adequacy of the proposal. Such submittal shall include at least one (1) appraisal of similar property within the development being reviewed, paid for the developer, by a qualified appraiser approved by the City. The Parks and Recreation Department shall recommend, to the Building Division, a final cash-in-lieu amount to be collected by the City.

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6. The cash-in-lieu fee for single-family dwellings and duplexes will be prorated on a per unit basis at the time of final platting, final plan review or any subsequent replats, whichever indicates the greater proposed land use and final number of dwelling units to be constructed, and fees will be conveyed to the City prior to the issuance of any building permits.

7. The cash-in-lieu fee for multi-family housing will be prorated on a per unit basis at the time of the issuance of building permits, which indicates the final number of dwelling units to be constructed, and will be conveyed to the City at the time of issuance of each building permit within the development.

8. Cash-in-lieu fee collected is intended to be used to benefit the residents within the service area of the type of park for which the fees were collected (i.e., neighborhood park - one-half-mile radius; community park - two-mile radius). The City reserves the right to adjust the cash-in-lieu requirement between neighborhood and community park categories as deemed necessary to meet specific needs.

(Ord. 370-06; Ord. 111-01; Ord. 045-00)

16.42.040 - Disposal of land.

Disposing of park lands obtained through these dedication requirements shall be pursuant to requirements of state law and/or City Charter.

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(Ord. 370-06; Ord. 111-01; Ord. 045-00)

16.42.050 - Variations.

Commented [ST16]: This is an example of a section that has been streamlined to be more responsive and effective in implementation.

Credit towards park land dedication requirements may be considered for the following and as determined by the Parks and Recreation Department, the Planning Division, the Planning and Zoning Commission and the City Council:

- A. Consideration may be given for meeting a portion of park land dedication requirements through the provision of specialized recreation facilities, provided that such facilities:
1. Are, and will remain, available to the general public;
 2. Will meet a demonstrated public need; and
 3. Replace or supplement facilities that would generally be provided by the City.

- B. Consideration may be given for meeting a portion of park land dedication requirements through dedication or purchase and subsequent dedication of off-site land (land not contiguous to the development), provided that such land:
 - 1. Will meet a demonstrated public need; and
 - 2. Meets the selection criteria for a neighborhood park, community park or trail as provided in Section 16.42.060 below.
- C. Consideration may be given for meeting a portion of park land dedication requirements through the provision of private open land if such land is restricted for park, recreation or open space purposes by conservation easement or restricted deed, provided that such land:
 - 1. Will meet a demonstrated public need; and
 - 2. Meets the selection criteria for a neighborhood park community park, trail or open land as provided in Section 16.42.060 below.
- D. Consideration may be given for meeting a portion of park land dedication requirements through the provision of park and recreation facilities by developers, special districts and homeowners' associations provided that such amenities:
 - 1. Will meet a demonstrated public need;
 - 2. Are, and will remain, available to the general public; and
 - 3. Meet the selection criteria for a neighborhood park, community park or trail as provided in Section 16.42.060 below.

(Ord. 370-06; Ord. 111-01; Ord. 045-00)

16.42.060 - Selection criteria.

- A. Community parks. Recommended guidelines for sizes of community parks are listed in the City of Evans Parks, Trails and Recreation Master Plan. Land may be considered for acceptance for community park land dedication requirements if all of the following criteria are met:
 - 1. Community parks shall have a two-mile service area radius and are a minimum of twenty-five (25) contiguous acres in size;
 - 2. Sufficient flat terrain is available to provide for the development of active recreation areas as deemed necessary to meet the needs of the respective service area;
 - 3. Land will not be considered for community park land dedication if it is an exclusive utility or other easement, public street right-of-way, pedestrian walkway required under other regulations or contains topographical or hazardous obstructions that would preclude development as a community park;
 - 4. Street frontage or permanent access to the park site, at two (2) or more points, with a minimum clear distance of three hundred (300) continuous linear feet each shall be provided for both vehicles and nonmotorized users;
 - 5. Only the upper one-fourth of detention areas, with maximum side slopes or berms of 6:1, adjacent to, or within, the park site may be applied toward the minimum acreage requirement;
 - 6. Fifty percent (50%) of oil wellhead and tank battery setback areas may be applied toward the minimum acreage requirement with the placement of the oil structures at the edge of any dedicated property affected. In the case of tank batteries, however, an additional three (3) acres, or a minimum of a total of twenty-three (23) contiguous acres, is necessary for park land dedication;

7. Areas to be dedicated shall offer natural and scenic quality and, ideally, can support both active and passive recreational activities for City residents; and
 8. Areas containing lakes, ponds or reservoirs may be considered, provided that such areas do not exceed fifty percent (50%) of the total dedication requirement and the area is contiguous to other land suitable for public park development.
- B. Neighborhood parks. Recommended guidelines for sizes of neighborhood parks are listed in the City of Evans Parks, Trails and Recreation Master Plan. Land may be considered for acceptance for neighborhood park land dedication requirements if all of the following criteria are met:
1. Shall be a minimum of six (6) contiguous acres in size;
 2. Neighborhood parks shall have a one-half-mile service area radius, however, the service area will not extend across arterial roadways, as determined by the proposed development and City of Evans Transportation Plan, as amended;
 3. Sufficient flat terrain is available to provide for development of active recreation areas as deemed necessary to meet the needs of the respective service area;
 4. Land will not be considered for local park land dedication if it is an exclusive utility or other easement, public street right-of-way, pedestrian walkway required under other regulations or contains topographical or hazardous obstructions that would preclude development as a neighborhood park;
 5. Detention or retention areas will not be considered as suitable neighborhood park land and may not be applied to the minimum park acreage requirement, however; detention or retention facilities may be considered as adjacent and additional public lands to the dedicated park land providing that any side slopes or berms do not exceed a maximum 4:1 slope;
 6. Fifty percent (50%) of oil wellhead and tank battery setback areas may be applied toward the minimum acreage requirement with the placement of the oil structures at the edge of any dedicated property affected; in the case of tank batteries, however, an additional three (3) acres, or a minimum of a total of seven (7) contiguous acres, is necessary for park land dedication; and
 7. Street frontage or permanent access to the park site, at two (2) or more points, with a minimum clear distance of one hundred fifty (150) continuous linear feet each shall be provided for both vehicles and nonmotorized users.

A neighborhood park site, when possible, should be considered for co-locating with an elementary and/or middle school site in order to benefit from shared facilities such as parking lots, access roads, play fields and other facilities, thereby reducing the overall acreage requirement by a factor equal to those shared facilities. Any such consideration must be approved by all parties involved, including the City of Evans, Weld County School District 6, Weld County and/or any others.

- C. Mini-parks. Recommended guidelines for sizes of mini-parks are listed in the City of Evans Parks, Trails and Recreation Master Plan. Land may be considered for a mini-park if all of the following criteria are met:
1. Mini-parks shall be accessible to all residents living within a one-quarter-mile radius;
 2. Mini-parks shall only be constructed in large lot subdivisions (2.5 acres per unit or larger) and in developed areas of town that are currently underserved, where no sites meeting the six-acre minimum size for a neighborhood park are available;
 3. Land will not be considered for a mini-park if it is an exclusive utility or other easement, public street right-of-way, pedestrian walkway required under other regulations or contains topographical or hazardous obstructions that would preclude development as a mini-park; and
 4. Street frontage or permanent access to the park site, at two (2) or more points, with a minimum clear distance of seventy-five (75) linear feet each shall be provided for both vehicles and nonmotorized users.

D. Trails. Partial credit may be given for trails toward the park and dedication requirements as determined by the Parks and Recreation Department, the Parks and Recreation Commission and the City Council. Provision of trails is considered a normal element of an appropriately planned development. The following are considerations for design criteria for trails:

1. Alignment provides linkages for the community to local parks, schools and other activity areas;
2. Alignment is identified in the City's Trails Master Plan or provides linkages for the community to regional parks, trails or open lands as specified in the City of Evans Parks, Trails and Recreation Master Plan;
3. Trails shall be designed to provide for easy, safe and secure usage and allow for sufficient easement or right-of-way to accommodate multiple uses; and
4. Land should not be considered for trail dedication acceptance if it is an exclusive utility or other easement, public street right-of-way, pedestrian walkway required under other regulations or contains topographical or hazardous obstructions that would preclude development of a trail.

(Ord. 370-06; Ord. 111-01; Ord. 045-00)

CITY OF EVANS, COLORADO

ORDINANCE NO. 642-16

AN ORDINANCE AMENDING THE EVANS CITY CODE BY CONFIRMING AND RE-ENACTING IMPACT FEES FOR TRANSPORTATION, PARKS, RECREATION AND TRAILS, AND FIRE/RESCUE SERVICES; ENACTING AND APPROVING A POLICE PROTECTION SERVICES IMPACT FEE; ESTABLISHING AND UPDATING THE SCHEDULES OF SUCH FEES; ESTABLISHING AND RE-ESTABLISHING PROCEDURES FOR IMPOSITION AND COLLECTION OF IMPACT FEES FOR DEVELOPMENT ACTIVITIES THAT GENERATE AN INCREASED NEED FOR ADDITIONAL CAPITAL FACILITIES; AND REPEALING, RELOCATING, AND CONSOLIDATING THE PROVISIONS RELATING TO THE VARIOUS IMPACTS FEES IN A NEW CHAPTER 3.20 OF THE EVANS CITY CODE

WHEREAS, the City Council of the City of Evans, Colorado, pursuant to Colorado statute and the Evans City Charter, is vested with the authority of administering the affairs of the City of Evans, Colorado; and

WHEREAS, the construction of proposed developments within the City places significant additional demands on the City's capital facilities used in providing transportation, parks recreation and trails, fire/rescue services, and police protection services; and

WHEREAS, the demand for providing transportation, parks recreation and trails, fire/rescue services, and police protection services is immediate upon development of residential and non-residential property though funding from tax revenues accrues well after the demand for services has been created; and

WHEREAS, the Evans City Council finds and determines that one of the primary roles of building, subdivision and development review is to ensure essential public services and facilities, and that in order to promote and protect the convenience, order, prosperity and welfare of present and future inhabitants of the City, a rational system for identifying growth-related costs incurred in providing new and expanded transportation, parks recreation and trails, fire/rescue services, and police protection services made necessary by development activity is necessary, and a fee structure therefore directly related to such costs and a method for collection of such fees, should be adopted; and

WHEREAS, the adoption of a requirement that developers of residential and non-residential developments pay transportation, parks recreation and trails, fire/rescue services, and police protection services impact fees as established and re-established herein will ensure that new development defrays the projected impacts on these capital facilities caused by the proposed development; and

WHEREAS, the Local Government Land Use Control Enabling Act of 1974 (the “Land Use Act”), Sections 29-20-101 et seq., C.R.S.; Article 23 of Title 31, and other applicable laws grant broad authority to the City to plan for and regulate the development of land on the basis of the impacts thereof on the community and surrounding areas; and

WHEREAS, provisions of the Land Use Act, including but not limited to Section 29-20-104.5, C.R.S. authorize local governments to establish impact fees or similar development charges related to land development activities as a condition of the approval of development permits, if such fees or charges are intended to defray the projected impacts on capital facilities caused by proposed development; and

WHEREAS, the City is authorized by Colorado constitutional and statutory authority and case law, as well as its own Charter, to regulate the development and use of land, and impose mitigation measures, including impact fees, upon proponents of land development activities if impacts related to the service demands created by the development are not adequately mitigated; and

WHEREAS, the City’s authority to impose impact fees is conditioned upon criteria that establish the extent of the impact on capital facilities and the fees necessary to defray the projected impacts on capital facilities; and

WHEREAS, pursuant to the authority set forth above, and for the purposes set forth above, the City has previously enacted streets, park facilities, and fire/rescue impact fees; and

WHEREAS, the City Council has determined that it is in the interest of the public health and safety, and necessary in order to provide capital facilities for police protection services associated with new development to impose a police protection services impact fee; and

WHEREAS, the City Council previously determined the need to update the City’s existing impact fees and to determine the amount for the new police protection services impact fee, and to accomplish those purposes retained the services of TischlerBise to perform a Fiscal Impact Fee Study, and

WHEREAS, on September 15, 2015 the City Council, following consideration of the matter, accepted the impact fee study from July 2015 performed by TischlerBise, and

WHEREAS, TischlerBise subsequently made minor revisions resulting in a study dated November 16, 2015, and such study results, as revised, are reflected in this ordinance and the revised study is accepted by this ordinance; and

WHEREAS, the methodologies and analyses used by TischlerBise for determining the amount necessary to defray the projected impacts on capital facilities caused by the proposed development are reasonable and sound; and

WHEREAS, all of the Capital Facilities planned for and included in the Impact Fee Study are services directly related to services the City is authorized to provide, have an estimated useful life of five years or longer, and are required by the Charter or general policy of the City pursuant to resolution or ordinance; and

WHEREAS, the Impact Fees to be imposed on proposed development are legislatively imposed, generally applicable to a broad class of property and are no greater than necessary to defray the projected impacts on capital facilities caused by proposed new development; and

WHEREAS, the City Council finds and determines that the amendments to the Evans City Code as contained herein, are necessary and designed for the purpose of promoting the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of the City of Evans and are consistent with the City's goals, policies and plans, including the City's master plan documents; and

WHEREAS, the City Council finds that the legislative action of adopting the provisions set forth in this ordinance is necessary to protect the health, safety and welfare of the City's residents and visitors.

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

PART 1: ACCEPTANCE OF IMPACT FEE STUDY RESULTS. The Impact Fee Study: City of Evans, Colorado prepared by TischlerBise and dated November 16, 2015 is hereby accepted. Copies of the report shall be made available to the public for inspection at the City Clerk's office and copies may be provided upon appropriate request.

PART 2: AMENDMENT TO CITY CODE. The City Code of the City of Evans, Colorado (herein sometimes referred to as the "City Code") is hereby amended as follows:

- 1.1 Repeal of existing City Code provisions. The following provisions of the existing City Code are hereby deleted, with such deletions to become effective simultaneously with the additions and other amendments as set forth below:
 - a. Chapter 15.50, regarding Fire Protection Impact Fees;
 - b. Chapter 15.52, regarding Park Impact Fees; and
 - c. Chapter 12.20, regarding Street Impact Fees.
- 1.2 Section 1.04.010 of the City Code is amended by adding the following definitions:
 - (A) "Building Permit" means the development permit issued by the City before any building or construction activity can be initiated on a parcel of land.

- (B) “Capital Facilities” includes:
- (1) Buildings and facilities used for transportation, parks recreation and trails, fire/rescue services, and police protection services.
 - (2) Apparatus and equipment, including communications equipment, with an average useful life of at least five years, for transportation, parks recreation and trails, fire/rescue services, and police protection services.
 - (3) Excludes periodic or routine maintenance of facilities and equipment, personnel costs or operational expenses.
- (C) “Developer” means a person or entity that commences a Development creating the need for additional transportation, parks recreation and trails, fire/rescue services, or police protection services.
- (D) “Development” means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any change in the use of land, which creates or may create impacts on Capital Facilities for transportation, parks recreation and trails, fire/rescue services, or police protection services.
- (E) “Fire District” means the Evans Fire Protection District.
- (F) “Fiscal Impact Fee Study” means a study prepared by an outside engineer or consultant that mathematically calculates the fiscal impact of future demand for services on existing facilities of the City of Evans or within its boundaries.
- (G) “Impact Fee” means a fee established as provided in this Chapter that is intended to defray the projected impacts on Capital Facilities for streets, park recreation or trail facilities, fire/rescue services, or police protection services caused by proposed development within the City of Evans.
- (H) “TischlerBise Impact Fee Study” means the July 2015 Study accepted by the City Council on September 15, 2015.

1.3 The City Code is amended by adding a new Chapter 3.20 to the City Code entitled "Impact Fees", which shall provide as follows:

Chapter 3.20

IMPACT FEES

Sections:

- 3.20.010 - Title.
- 3.20.020 - Purpose and Intent.
- 3.20.030 - Imposition and Purpose of Specific Impact Fees.
- 3.20.040 - Impact Fee Amounts.
- 3.20.050 - Alternative Calculation Study.
- 3.20.060 - Time for Payment of Impact Fees, Entity to Whom Payment Shall be Made.
- 3.20.070 - Deposit and Use of Impact Fees.
- 3.20.080 - Credit for Improvements.
- 3.20.090 - Additional Guidelines for Park Credit Determinations.
- 3.20.100 - Additional Guidelines for Transportation Credit Determinations.
- 3.20.110 - Appeal of Credit Determinations.
- 3.20.120 - Unpaid Impact Fees.
- 3.20.130 - Prior Conditions and/or Agreements.
- 3.20.140 - Adjustment and Review of Impact Fees.
- 3.20.150 - Application.
- 3.20.160 - Judicial Review.

3.20.010 – Title.

The provisions of this Chapter shall be known and cited as the Evans Impact Fee Code.

3.20.020 - Purpose and Intent.

(A) The purpose of this Chapter is to:

- (1) Provide a rational system for identifying and mitigating growth-related costs associated with growth and development and the expansion of transportation, parks recreation and trails, fire/rescue services, and police protection services through Capital Facilities made necessary by development.
- (2) Ensure that the impact fees established by this Chapter are established at a level no greater than necessary to defray such impacts directly related to proposed development.

3.20.030 - Imposition and Purpose of Specific Impact Fees.

(A) Any Developer who seeks a approval for a Development which impacts or may impact Capital Facilities for transportation, parks recreation and trails, fire/rescue services, or police protection services, who has not already dedicated land or Capital Facilities to fully satisfy anticipated impacts of the proposed development, shall pay an impact fee in the manner and amount set forth in this Chapter.

(B) In order to provide or to assist in providing the financing required to develop, maintain, and provide Capital Facilities for transportation, parks recreation and trails, fire/rescue services, and police protection services, the impact fees in the amounts set forth below shall be paid to defray the projected impacts on Capital Facilities caused by the proposed development.

3.20.040 – Impact Fee Amounts.

(A) Transportation Impact Fees

Single Unit	\$4,328 per housing unit
2+ Unit	\$3,520 per housing unit
Manufactured Home	\$4,328 per housing unit
Commercial	\$5.62 per square foot of floor area
Office/Institutional	\$2.43 per square foot of floor area
Industrial/Flex	\$1.53 per square foot of floor area

(B) Park Facility Impact Fees

Single Unit	\$4,594 per housing unit
2+ Unit	\$3,587 per housing unit
Manufactured Home	\$3,569 per housing unit
Commercial	\$0.00 per square foot of floor area
Office/Institutional	\$0.00 per square foot of floor area
Industrial/Flex	\$0.00 per square foot of floor area

(C) Fire/Rescue Services Impact Fees

Single Unit	\$930 per housing unit
2+ Unit	\$726 per housing unit
Manufactured Home	\$723 per housing unit
Commercial	\$1.00 per square foot of floor area
Office/Institutional	\$0.39 per square foot of floor area
Industrial/Flex	\$0.25 per square foot of floor area

(D) Police Protection Services Impact Fees

Single Unit	\$274 per housing unit
2+ Unit	\$214 per housing unit
Manufactured Home	\$212 per housing unit
Commercial	\$0.28 per square foot of floor area
Office/Institutional	\$0.11 per square foot of floor area
Industrial/Flex	\$0.07 per square foot of floor area

3.20.050 - Alternative Calculation Study.

In lieu of computation of the Impact Fee in accordance with the schedules adopted pursuant to Section 3.20.040 above, the Developer may prepare and submit, to the Evans City Manager, a

site-specific Fiscal Impact Fee Study and calculation for the Development. The Fiscal Impact Fee Study submitted shall show the basis upon which the site-specific Impact Fee Study calculation was made, and such calculation shall reflect the same level of service and standards contemplated by the TischlerBise Fiscal Impact Fee Study. The site-specific Fiscal Impact Fee Study and calculation shall be prepared and presented by professionals qualified in their respective fields. The Evans City Manager or their designee shall consider the documentation submitted by the Developer. If the City Manager or their designee determines that an acceptable site-specific Fiscal Impact Fee Study and calculation has not been presented, the Developer shall pay the Impact Fee based upon the schedule set forth in Section 3.20.040 above. Determinations made by the City Manager or his designee pursuant to this section may be appealed to the City Council by filing a written request with the City Clerk within ten (10) days of the determination by the City Manager or their designee. Following the submittal of such request, the City Council shall hold a public hearing to determine prior to Development approval, the amount of the Impact Fee that shall be paid.

3.20.060 - Time for Payment of Impact Fees, Entity To Whom Payment Shall Be Made.

The owner of property shall pay the Impact Fees at the time a building permit is issued. All Impact Fees shall be paid to the Evans City Treasurer.

3.20.070 - Deposit and Use of Impact Fees.

All Impact Fees collected pursuant to this Chapter shall be deposited by the City or the Fire District in an interest-bearing account that clearly identifies the category, account, or fund of capital expenditure for which such charge was imposed. Each such category, account, or fund shall be accounted for separately. Any interest or other income earned on moneys deposited in said interest-bearing account shall be credited to the account. All Impact Fees shall be used exclusively for Capital Facilities for which they were collected. No Impact Fees shall be used for periodic or routine maintenance, personnel costs, or operational expenses. All Impact Fees will be collected and deposited in accordance with Part 8 of Article 1 of Title 29 of the Colorado Revised Statutes.

3.20.080 - Credit for Improvements.

The City Manager shall calculate the amount of any credit that shall be granted to any Developer for the amounts due or to become due for Capital Facilities installed, purchased, and paid for by such Developer when such Capital Facilities offset the need or amount of the Impact Fee that would otherwise be required. Any credit granted shall not exceed the total amount the Developer would have had to pay under the existing fee schedule.

3.20.090 - Additional Guidelines For Park Credit Determinations.

By way of illustration and not limitation, in making a determination of whether to grant credit for park facilities provided by a Developer, the City Manager may consider the following as non-binding guidelines:

- (A) Whether the park Capital Facilities utilize acceptable design and construction methods approved by the Director of Parks and Recreation.

- (B) Whether the park Capital Facilities adhere to the applicable sections of Chapter 16.42 of the Evans Municipal Code.
- (C) Whether the park Capital Facilities conform to the standards and criteria as outlined in the City of Evans Parks, Trails and Recreation Master Plan, as amended.

3.20.100 - Additional Guidelines for Transportation Credit Determinations.

By way of illustration and not limitation, in making a determination of whether to grant credit for transportation facilities provided by a Developer, the City Manager may consider the following as non-binding guidelines:

- (A) Whether the Developer has dedicated land for rights-of-way and the value of such dedication, which may be based on the most recent assessed value of the County Assessor or the fair market value of the property as established by an appraiser or by other reliable means.
- (B) Whether the Developer has constructed or agreed to construct transportation Capital Facilities and the value of such Capital Facilities based on complete engineering drawings, specifications, and construction costs estimates, or by other reliable means.
- (C) Whether the Developer has contributed to or agreed to contribute to the cost of transportation Capital Facilities and the value of such contribution based on actual construction costs or an estimate prepared by a professional engineer or other reliable means.
- (D) Whether the Developer has entered into an agreement with the City to construct off-site transportation Capital Facilities to the City's system and the value of such facilities.

3.20.110 - Appeal of Credit Determinations.

Determinations made by the City Manager or his designee pursuant to this section may be appealed to the City Council by filing a written request with the City Clerk within ten (10) days of the determination by the City Manager or their designee. Following the submittal of such request, the City Council shall hold a public hearing to determine prior to Development approval, the amount of credits to be granted.

3.20.120 - Unpaid Impact Fees.

The City reserves the right to withhold or revoke any permits, certificates, or other approvals for any land or building for which the payment of Impact Fees is delinquent.

3.20.130 - Prior Conditions and/or Agreements.

Any Developer who, prior to the effective date of this Chapter, agreed as a condition of development approval to pay Impact Fees shall be responsible for the payment of the fees under the terms of any such agreement, and the payment of such fees by the Developer will be offset against any Impact Fees due pursuant to the terms of this Chapter.

3.20.140 - Adjustment and Review of Impact Fees.

The amount of all Impact Fees shall be reviewed and adjusted as follows:

- (A) Annually, the Impact fees for transportation, parks, recreation, and trails will be updated and adjusted, by resolution, to reflect inflation utilizing the most recent factor in the most recent period for which figures are available from the Consumer Price Index for the Denver-Boulder-Greeley area. Annually, the Impact fees for police protection services and fire/rescue services will be updated to reflect inflation, as reflected in the Engineering News Record *Construction Index*.
- (B) The City Council shall, annually, in conjunction with the presentation of Evans's proposed budget, consider any further adjustments to the Impact Fees.
- (C) City Council is encouraged to authorize and cause to be performed future Fiscal Impact Fee Studies on a regular basis to review the City's impact fees.

3.20.150 - Application.

The requirements of this Chapter shall apply only within the jurisdiction and boundaries of the City of Evans. Only applicants who submit applications for development after adoption of the Impact Fee will be assessed such fee.

3.20.160 - Judicial Review.

The Developer may seek a declaratory judgment to determine whether any Impact Fee assessed complies with state law requirements for the imposition of impact fees. The City shall allow the Developer, upon payment of the Impact Fee, to proceed with development of their property pursuant to the Development approval while the court reviews the validity of the Impact Fee.

PART 3: REPEAL. Any and all existing City Code provisions, ordinances or parts of City Code provisions or ordinances of the City of Evans covering the same matters as embraced in this Ordinance are hereby repealed and all City Code provisions, ordinances or parts of City Code provisions or ordinances inconsistent with the provisions of this Ordinance are hereby repealed; provided, however, that such repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any City Code provision or ordinance hereby repealed prior to the taking effect of this Ordinance.

PART 4: SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City of Evans hereby declares that it would have adopted this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases thereof be declared invalid or unconstitutional.

PART 5: EFFECTIVE DATE. The provisions of this Ordinance shall become effective as of February 15, 2016.

INTRODUCED AND PASSED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF EVANS ON THIS 5TH DAY OF JANUARY, 2016.

ATTEST:

CITY OF EVANS, COLORADO

Raegan Robb, City Clerk

BY: _____
John L. Morris, Mayor

PASSED AND ADOPTED ON A SECOND READING THIS 19TH DAY OF JANUARY, 2016.

ATTEST:

CITY OF EVANS, COLORADO

Raegan Robb, City Clerk

BY: _____
John L. Morris, Mayor

CITY COUNCIL COMMUNICATION

DATE: January 19, 2016

AGENDA ITEM: 8.A

SUBJECT: Emergency Ordinance No. 644-16 – An Ordinance Amending Section 16.04.070 that outlines the Basis for Establishing the Special Flood Hazard Area

PRESENTED BY: N. Zach Ratkai, Building and Development Manager

AGENDA ITEM DESCRIPTION:

The original Flood Damage Prevention Ordinance (No. 579-13) was adopted on January 7, 2014 on the basis of the Colorado State Model Ordinance, the adoption thereof required by the State of Colorado Water Conservation Board (CWCB). Within Ordinance 579-13, section 16.04.070 outlines the adoption of a specific version of the FEMA-generated Flood Insurance Rate Map (FIRM) which is the map by which the Evans floodplain boundaries are delineated.

The original ordinance adopted updated and draft FIRM maps released on May 31, 2013. Since that time FEMA has conducted their period comment, appeal and revision time period. That time period has since lapsed with no changes proposed, thus having FEMA adopt the map as final as of January 20, 2016. The CWCB mandates that the date of the FIRM maps be updated in the adoption of the City's ordinance, hence the amended section presented on the attached ordinance.

FINANCIAL SUMMARY:

There will be no financial impact with the passage of this ordinance.

RECOMMENDATION:

Staff recommends passage of this Ordinance.

SUGGESTED MOTIONS:

- * *I move to recommend approval of Ordinance No. 644-16.*
 - * *I move to deny approval of Ordinance No. 644-16.*
-

CITY OF EVANS, COLORADO

ORDINANCE NO. 644-16

AN EMERGENCY ORDINANCE AMENDING BY REPLACING CHAPTER 16.04 OF THE
EVANS CITY CODE REGARDING FLOOD DAMAGE PREVENTION

WHEREAS, the City Council of the City of Evans, Colorado, pursuant to Colorado statute and the Evans City Charter, is vested with the authority of administering the affairs of the City of Evans, Colorado; and

WHEREAS, the City Council has previously adopted ordinances regarding flood damage prevention, which are codified in Section 16.04 of the Evans City Code; and

WHEREAS, the City Council has concluded that the City's flood damage prevention regulations should be revised as set forth below, in order to protect the health, safety and welfare of the general public and the citizenry of the City of Evans; and,

WHEREAS, as part of the adoption of a flood damage prevention ordinance, specific floodplain delineation maps are adopted based on the date that FEMA release said maps to the public; and,

WHEREAS, as mandated by the Colorado Water Conservation Board, the City's ordinance shall be updated to reflect the most current floodplain maps in use; and,

WHEREAS, the passage of this emergency ordinance is necessary in order to comply with federal regulations and so as not to jeopardize flood insurance coverage for Evans' citizens and property owners.

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

1. Section 16.04.070 of the Evans City Code is amended to read as follows:

16.040.070. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREA
The Special Flood Hazard Areas identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for the City of Evans, Colorado," dated **January 20, 2016**, with accompanying Flood Insurance Rate Maps and/or Flood Boundary as adopted by ordinance.

Floodway Maps (FIRM and/or FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance. These Special Flood Hazard Areas identified by the FIS and attendant mapping are the minimum area of applicability of this ordinance and may be supplemented by studies designated and approved by resolution of the Evans City Council. The Floodplain Administrator shall keep a copy of the Flood Insurance Study (FIS), DFIRMs, FIRMs and/or FBFMs on file and available for public inspection.

2. Any person who violates any provision of this Ordinance shall be punished as provided in Chapter 1.16 of the City Code.

3. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts thereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

4. Repeal. Existing ordinances or parts of ordinances covering the same matters embraced in this ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effect date of this ordinance.

5. Publication and Effective Date. This Ordinance is necessary for the immediate protection and preservation of the public health, safety, and welfare of the citizens of the City of Evans for the reasons described above, and therefore, shall become effective immediately as an emergency ordinance upon adoption by the City Council.

INTRODUCED, PASSED, AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF EVANS ON THIS 19TH DAY OF JANUARY, 2016.

ATTEST:

CITY OF EVANS, COLORADO

BY: _____

Raegan Robb, City Clerk

John Morris, Mayor

COUNCIL COMMUNICATION

DATE: January 19, 2016

AGENDA ITEM: 8.B

SUBJECT: Emergency Ordinance No. 645-16 – Amending Chapter 1.14 of the Evans Municipal Code concerning certain deadlines related to the 2016 Evans Regular Municipal Council Election

PRESENTED BY: Scott Krob, City Attorney and Raegan Robb, City Clerk

AGENDA ITEM DESCRIPTION:

Emergency Ordinance 645-16 would amend Chapter 1.14 of the Evans Municipal Code in order to satisfy the requirements under the federal “Uniformed and Overseas Citizens Absentee Voting Act” (UOCAVA). At the January 5, 2016 City Council meeting, staff received direction from Council to make any necessary changes to the election deadlines established in City Code in order to meet the 45 day mailing requirement to send mail ballots to UOCAVA voters.

BACKGROUND:

UOCAVA. The requirements of the federal “Uniformed and Overseas Citizens Absentee Voting Act” (UOCAVA) were implemented in Colorado during the 2015 legislative session through adoption of HB15-1130, which implemented requirements to help ensure that United States military personnel and American civilians living abroad can vote in federal, state elections, and local elections.

This Act requires that ballots be mailed to registered voters that qualify under UOCAVA no later than 45 days before the date of the election (Evans currently has 33 UOCAVA covered voters).

The City’s Home Rule authority provides the ability to amend the municipal code in order to satisfy different election deadlines and challenges that may arise while conducting a mail ballot election. At the January 5, 2016 City Council meeting, staff received direction from Council to make any necessary changes to the election deadlines established in City Code in order to meet the 45 day mailing requirement to send mail ballots to UOCAVA voters.

Evans Election Guidelines. Section 2.3 of the Evans Home Rule Charter provides that regular and special municipal elections shall be governed by the Colorado Municipal

Election Law, except as otherwise provided in the Evans Home Rule Charter or as Council may prescribe by Ordinance.

Therefore, the Council may, by Ordinance establish election procedures, the method for registration of electors, the number, qualifications and compensation for election of Judges, and the boundaries of election Wards, by Ordinance. The changes to Chapter 1.14 are shown below:

CHAPTER 1.14 – Elections

1.14.010 - Nomination petitions.

Notwithstanding any provision in the Colorado Municipal Election Code or Uniform Election Code, the time periods for circulation, submission and cure of nomination petitions for any City mail ballot election shall be as follows:

Action	# Of days prior to the election	Deadline change	New election deadline
First day to pick up petitions	60 days	67 days	Friday, January 29, 2016
Last day to file petition with City Clerk	46 days	53 days	Friday, February 12, 2016
Last day to cure petition with City Clerk	40 days	48 days	Wednesday, February 17, 2016
Last day to withdraw from nomination	40 days	48 days	Wednesday, February 17, 2016
Affidavit of intent	40 days	48 days	Wednesday, February 17, 2016
Election may be cancelled	40 days	35 days	Tuesday, March 1, 2016
Election Day			Tuesday, April 5, 2016

1.14.020 - Affidavit of intent.

No write-in vote for any municipal office shall be counted unless an affidavit of intent has been filed with the City Clerk by the person whose name is written in by the close of business on the ~~fortieth~~ **forty-eighth** day before the date of the election, indicating that such person desires the office and is qualified to assume the duties of that office, if elected. The City Clerk shall maintain an appropriate form of affidavit in the Clerk's office.

1.14.030 - Election may be cancelled - when.

If the only matter before the voters is the election of persons to office and if, at the close of business on the ~~fortieth~~ **thirty-fifth** day before the election, there are not more candidates than offices to be filled at such election, including candidates filing affidavits of intent, as set forth in Section 1.14.020 of this Chapter, the City Council, by resolution, shall cancel the election and declare the candidates elected. Notice of such cancellation shall be published and posted.

FINANCIAL SUMMARY:

The County currently has thirty-three (33) registered UOCAVA voters with little additional cost to the overall set-up and project cost. The City of Evans has already received a quote of approximately \$12,500 from our vendor, Election Systems & Software, to mail out 10,000 ballots for the April election.

RECOMMENDATION:

Staff recommends the City Council adopt Emergency Ordinance No. 645-16 to amend Chapter 1.14 to ensure compliance with UOCAVA and UMOVA.

SUGGESTED MOTIONS:

- * *I move to approve Ordinance No. 645-16 on first reading.*
 - * *I move to deny approval of Ordinance No. 645-16.*
-

CHAPTER 1.14 – Elections

1.14.010 - Nomination petitions.

Notwithstanding any provision in the Colorado Municipal Election Code or Uniform Election Code, the time periods for circulation, submission and cure of nomination petitions for any City mail ballot election shall be as follows:

Action from candidates	# of days prior to the election	Deadline Change
First day to pick up petitions	60 days	67 days
Last day to file petition with City Clerk	46 days	53 days
Last day to cure petition with City Clerk	40 days	48 days
Last day to withdraw from nomination	40 days	48 days

1.14.020 - Affidavit of intent.

No write-in vote for any municipal office shall be counted unless an affidavit of intent has been filed with the City Clerk by the person whose name is written in by the close of business on the ~~fortieth~~ ~~forty-~~ ~~eighth~~ day before the date of the election, indicating that such person desires the office and is qualified to assume the duties of that office, if elected. The City Clerk shall maintain an appropriate form of affidavit in the Clerk's office.

1.14.030 - Election may be cancelled - when.

If the only matter before the voters is the election of persons to office and if, at the close of business on the ~~fortieth~~ ~~forty-~~ ~~eighth~~ day before the election, there are not more candidates than offices to be filled at such election, including candidates filing affidavits of intent, as set forth in Section 1.14.020 of this Chapter, the City Council, by resolution, shall cancel the election and declare the candidates elected. Notice of such cancellation shall be published and posted.

CITY OF EVANS

ORDINANCE NO. 645-16

AN EMERGENCY ORDINANCE AMENDING CHAPTER 1.14 OF THE EVANS MUNICIPAL CODE CONCERNING CERTAIN DEADLINES RELATED TO THE 2016 EVANS REGULAR MUNICIPAL COUNCIL ELECTION

WHEREAS, the City of Evans conducts its municipal elections through mail ballot procedures implemented by the City Clerk's Office; and

WHEREAS, based on Section 2.1 of the Evans Home Rule Charter, which provides that “Regular municipal elections shall be held on the first Tuesday following the first Monday in April in the even numbered years commencing with 1974 and bi-annually thereafter, the 2015 Evans regular municipal election is to be held on Tuesday, April 5, 2016.” ; and

WHEREAS, Section 2.3 of the Evans Home Rule Charter provides that “Regular and Special Municipal elections shall be governed by the Colorado Municipal Election Law as now existing or hereafter amended or modified, except as otherwise provided in this Charter or as Council may prescribe by ordinance. The Council may by ordinance establish election procedures, the method for registration of electors, the number, qualifications and compensation for election of Judges and Clerks, and the boundaries of election Wards.”; and

WHEREAS, Section 2.4 of the Evans Home Rule Charter provides that “the City Clerk shall provide notice of election in accordance with federal, state, or municipal law, whichever is applicable.”; and

WHEREAS, when deemed necessary over the years, the Evans City Council has adopted Ordinances applicable to the conduct of municipal elections, which ordinances have been codified as Chapter 1.14 of the Evans Municipal Code; and

WHEREAS, during the 2015 legislative session, the Colorado General Assembly enacted HB15-1130, which implemented requirements to help ensure that United States military personnel and American civilians living abroad can vote in federal and state elections according to the federal "Uniformed and Overseas Citizens Absentee Voting Act" (UOCAVA) and the state "Uniform Military and Overseas Voters Act" (UMOVA); and

WHEREAS, because county elections are coordinated with state elections, UOCAVA and UMOVA also indirectly help ensure that such military personnel and civilians have similar ability to vote in municipal elections as they do in federal, state, and county elections; and

WHEREAS, UOCAVA contains certain deadlines for mailing ballots to such military personnel and civilians that are inconsistent with and earlier than the existing deadlines in Chapter 1.14 of the Evans Municipal Code; and

WHEREAS, the City Council wishes to amend Chapter 1.14 to ensure compliance with UOCAVA and UMOVA, and

WHEREAS, it is necessary to adopt this Ordinance as an emergency measure for the immediate protection and preservation of the public safety, and welfare of the citizens of the City of Evans. In particular it protects the fundamental rights of military personnel and civilians who are entitled to the benefits of UOCAVA and UMOVA by ensuring their ability to participate and vote in the 2016 Evans regular municipal election.

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

1. Chapter 1.14, of the Evans *Municipal Code* is hereby amended to reflect the deadline changes indicated in the chart and redline notations set forth below:

CHAPTER 1.14 – Elections

1.14.010 - Nomination petitions.

Notwithstanding any provision in the Colorado Municipal Election Code or Uniform Election Code, the time periods for circulation, submission and cure of nomination petitions for any City mail ballot election shall be as follows:

Action from candidates	# of days prior to the election	Deadline Change
First day to pick up petitions	60 days	67 days
Last day to file petition with City Clerk	46 days	53 days
Last day to cure petition with City Clerk	40 days	48 days
Last day to withdraw from nomination	40 days	48 days

1.14.020 - Affidavit of intent.

No write-in vote for any municipal office shall be counted unless an affidavit of intent has been filed with the City Clerk by the person whose name is written in by the close of business on the ~~fortieth~~ forty-eighth day before the date of the election, indicating that such person desires the office and is qualified to assume the duties of that office, if elected. The City Clerk shall maintain an appropriate form of affidavit in the Clerk's office.

1.14.030 - Election may be cancelled - when.

If the only matter before the voters is the election of persons to office and if, at the close of business on the ~~fortieth~~ thirty-fifth day before the election, there are not more candidates than offices to be filled at such election, including candidates filing affidavits of intent, as set forth in Section 1.14.020 of this Chapter, the City Council, by resolution, shall cancel the election and declare the candidates elected. Notice of such cancellation shall be published and posted.

2. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts thereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

3. Repeal. Existing ordinances or parts of ordinances covering the same matters embraced in this ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this ordinance.

4. Publication and Effective Date. This Ordinance is necessary for the immediate protection and preservation of the public health, safety, and welfare of the citizens of the City of Evans for the reasons described above, and therefore, shall become effective immediately as an emergency ordinance upon adoption by the City Council.

INTRODUCED, PASSED, AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF EVANS ON THIS 19TH DAY OF JANUARY, 2016.

ATTEST:

CITY OF EVANS, COLORADO

Raegan Robb, City Clerk

BY: _____
John L. Morris, Mayor

COUNCIL COMMUNICATION

DATE: January 19, 2016

AGENDA ITEM: 8.C

SUBJECT: Resolution No. 08-2016 – Amending Resolution No. 06-2016 and Authorizing the Conduct of a Mail Ballot Election for the City’s Regular Municipal Election Scheduled for April 5, 2016

PRESENTED BY: Scott Krob, City Attorney and Raegan Robb, City Clerk

AGENDA ITEM DESCRIPTION:

REGULAR MUNICIPAL ELECTIONS. According to the Evans Home Rule Charter, “regular municipal elections shall be held on the first Tuesday following the first Monday in April in the even numbered years commencing with 1974 and bi-annually thereafter.”

This resolution amends Resolution 06-2016 and authorizing the conduct of a Mail Ballot Election for the City’s Regular Municipal Election for April 5, 2016.

FINANCIAL SUMMARY:

The 2016 Election budget has been set at \$35,000

RECOMMENDATION:

Staff recommends adoption of the resolution.

SUGGESTED MOTIONS:

"I move to adopt Resolution No. 08-2016."

"I move to deny the adoption of Resolution No. 08-2016."

CITY OF EVANS, COLORADO

RESOLUTION 08-2016

A RESOLUTION AMENDING RESOLUTION 06-2016 AND AUTHORIZING THE CONDUCT OF A MAIL BALLOT ELECTION FOR THE CITY'S REGULAR MUNICIPAL ELECTION SCHEDULED FOR APRIL 5, 2016

WHEREAS, the City Council adopted Resolution 06-2016 authorizing a mail ballot election for the City's 2016 regular municipal election, and

WHEREAS, in reviewing the new procedures involved in municipal elections as a result of the enactment of the Uniformed and Overseas Citizens Absentee Voting Act" (UOCAVA) and the state "Uniform Military and Overseas Voters Act" (UMOVA) it was determined that the date of the 2016 Evans regular municipal election is April 5, 2016, rather than April 12, 2016.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF EVANS, COLORADO:

Resolution 06-2016 is hereby amended by changing the date indicated for the Evans regular municipal election from April 12, 2016 to April 5, 2016. All other provisions of Resolution 06-2016 shall remain unchanged.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Evans on this 19th day of January, 2016.

CITY OF EVANS, COLORADO

By: _____
Mayor

ATTEST:

City Clerk

COUNCIL COMMUNICATION

DATE: January 19, 2016

AGENDA ITEM: 8.D

SUBJECT: Resolution No. 09-2016 – Approving an Intergovernmental Agreement with the Colorado Department of Transportation (CDOT) Regarding the Widening of 35th Avenue between 37th Street and Prairie View Drive

PRESENTED BY: Dawn Anderson, City Engineer

AGENDA ITEM DESCRIPTION:

Resolution No. 09-2016 approves an Intergovernmental Agreement (IGA) between the City of Evans and CDOT. The intent of the IGA is for the purpose of obtaining reimbursement from the State of Colorado for work resulting from the widening of 35th Avenue to a four lane major arterial section as outlined in the city's adopted transportation plan.

The city received a notice of award in the amount of \$1,115,000. With the city's required local match in the amount of \$231,781 the total funded award for the project is \$1,346,781.

The Scope of the Work covered by this IGA is defined within the IGA Exhibit "A" and describes the work associated with the 35th Avenue Widening Project.

FINANCIAL SUMMARY:

A total of \$2,500,000.00 is budgeted for construction of the project from the following funds:

2015 CIP Streets fund: \$1,440,000 budgeted

2015 Street Impact fund: \$707,000 budgeted

2016 CIP Streets fund: \$353,000 budgeted

The 2016 first quarter revision will include a request to carry forward the 2015 project budget to current year for construction.

RECOMMENDATION:

Staff recommends approval of the IGA with the Colorado Department of Transportation through the adoption of Resolution No. 09-2016.

SUGGESTED MOTIONS:

"I move to adopt Resolution No. 09-2016 approving the IGA with the Colorado Department of Transportation regarding the Widening of 35th Avenue between 37th Street and Prairie View Drive.

"I move NOT to adopt Resolution No. 09-2016 approving an IGA with the Colorado Department of Transportation regarding the Widening of 35th Avenue between 37th Street and Prairie View Drive.

CITY OF EVANS, COLORADO

RESOLUTION NO. 09-2016

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE DEPARTMENT OF TRANSPORTATION,
STATE OF COLORADO, AND THE CITY OF EVANS, COLORADO
REGARDING WIDENING 35TH AVENUE BETWEEN
37TH STREET AND PRAIRIE VIEW DRIVE

WHEREAS, the City Council of the City of Evans, Colorado, pursuant to Colorado statute and the Evans City Charter, is vested with the authority of administering the affairs of the City of Evans, Colorado; and

WHEREAS, the Evans City Council desires to widen 35th Avenue to a four-lane arterial street with sidewalks between 37th Street and Prairie View Drive (“the Work”); and

WHEREAS, the Evans City Council desires to obtain financial assistance from the Colorado Department of Transportation (“CDOT”); and

WHEREAS, CDOT has agreed to provide financial assistance in the funding of the Work, pursuant to the provisions in the State of Colorado, Department of Transportation Agreement with the City of Evans” attached hereto (“the CDOT IGA”)

WHEREAS, intergovernmental cooperation and agreements to pursue common purposes are encouraged among governmental entities by the Colorado constitution and by statute; and

WHEREAS, the City Council has reviewed the CDOT IGA and finds that it is in the best interest of the public and promotes the health, safety, and welfare of the public to authorize the Mayor to enter into the CDOT IGA on behalf of the City of Evans.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANS, COLORADO, that the attached State of Colorado, Department of Transportation Agreement with the City of Evans is hereby approved and the Mayor is authorized and directed to execute said Agreement on behalf of the City.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Evans on this 19th day of January, 2016.

ATTEST:

CITY OF EVANS, COLORADO

Raegan Robb, City Clerk

John L. Morris, Mayor

STATE OF COLORADO
Department of Transportation
Agreement
with
CITY OF EVANS

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1. PARTIES

THIS AGREEMENT is entered into by and between CITY OF EVANS (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, 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: 04
Jake Schuch
Project Manager
1402 2nd Street
Greeley, CO 80631
970-350-2205

B. If to the Local Agency:

CITY OF EVANS
Dawn Anderson
Project Manager
1100 37TH STREET
EVANS, CO 80620
970-475-1113

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

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

27. SIGNATURE PAGE

Agreement Routing Number: **16-HA4-XC-00009**

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 EVANS</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 P. 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>
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28. EXHIBIT A – SCOPE OF WORK

CDOT will oversee the City of Evans in the design and reconstruction of intersection improvements along 35th Avenue between Prairie View and 37th Street. This project will construct sidewalks, stormwater improvements, median islands, and asphalt paving. More exact design requirements will be established once the intergovernmental agreement is in place.

The design and construction of this project will adhere to all applicable state and federal regulations including ADA requirements. A FOR was held in the spring of 2015 and construction is planned for the summer 2015. The project is being designed by the city's consultant and will be advertised for bids and awarded by the city.

29. EXHIBIT B – LOCAL AGENCY RESOLUTION

LOCAL AGENCY
ORDINANCE
or
RESOLUTION

30. EXHIBIT C – FUNDING PROVISIONS

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work which is to be funded as follows:

1 BUDGETED FUNDS		
a. Federal Funds (80.00% of Participating Costs)		\$1,115,000.00
b. Local Agency Matching Funds (20.00% of Participating Costs)		\$231,781.00
TOTAL BUDGETED FUNDS		\$1,346,781.00
2 ESTIMATED CDOT-INCURRED COSTS		
a. Federal Share (0% of Participating Costs)		\$0.00
b. Local Share		
Local Agency Share of Participating Costs	\$0.00	
Local Agency Share of Non-Participating Costs	\$0.00	
Estimated to be Billed to Local Agency		\$0.00
TOTAL ESTIMATED CDOT-INCURRED COSTS		\$0.00
3 ESTIMATED PAYMENT TO LOCAL AGENCY		
a. Federal Funds Budgeted (1a)		\$1,115,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)		\$0.00
c. State Funds Budgeted (1c)		\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		\$1,115,000.00
FOR CDOT ENCUMBRANCE PURPOSES		
<i>*Note - \$0.00 is currently available. Funds will be added in the future either by Option Letter or Amendment. Maximum Encumbrance \$1,346,781.00</i>		
Net to be encumbered as follows:		\$0.00
WBS Element 19741.20.10 Construc. 3301		\$0.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 82.79% federal-aid funds (CFDA #20 2050) to 17.21% Local Agency and State funds, it being understood that such ratio applies only to the \$1,346,781.00 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 \$1,346,781.00 and additional federal funds are made available for the Work, the Local Agency shall pay 17.21% 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 \$1,346,781.00, then the amounts of State 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 \$1,115,000.00 (For CDOT accounting purposes, the federal funds of \$1,115,000.00, State funds of \$0.00, Local Agency matching funds of \$231,781.00, and Local Agency Overmatch funds of \$0.00 will be encumbered for a total encumbrance of \$1,346,781.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. ***** Note - \$0.00 is currently available. Funds will be added in the future either by Option Letter or 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.

D. Single Audit Act Amendment

All state and local government and non-profit organization Sub-The Local Agencies 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 Sub-The Local Agencies receiving federal funds are as follows:

i. Expenditure less than \$750,000

If the Sub-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 than \$750,000-Highway Funds Only

If the Sub-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 than \$750,000-Multiple Funding Sources

If the Sub-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:

- A.** 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.*).
- B.** 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.).
- C.** 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

COLORADO DEPARTMENT OF TRANSPORTATION LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. STM M415-015	STIP No. SNF5788.037	Project Code 19741	Region 04
Project Location 35 th Avenue: Prairie View to 37 th Street			Date 5/15/2015
Project Description Roadway and Pedestrian Improvements on 35 th Avenue			
Local Agency City of Evans		Local Agency Project Manager Dawn Anderson	
CDOT Resident Engineer Long Nguyen		CDOT Project Manager Jake Schuch	
<p>INSTRUCTIONS: This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i>.</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 consistency 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	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	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	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
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.) _____ Long Nguyen _____ 5/15/2015 _____ 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	X	
	Check CDOT Form 1415 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 1416 - 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	
	Presurvey		
	• Construction staking	X	
	• Monumentation	X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	X	
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
8-4	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." _____ Dawn Anderson _____ 970-475-1160 _____ Local Agency Professional Engineer or Phone number CDOT Resident Engineer	X	

CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10-1	Fulfill Project Bulletin Board and Pre-construction Packet Requirements	X	
10-2	Process CDOT Form 205b - Sublet Permit Application Review and sign completed CDOT Form 205b for each subcontractor, and submit to EEO/Civil Rights Specialist	X	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	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 1419 - Contractor DBE Payment Certification from the Contractor and submit to the Resident Engineer (Quarterly)	X	
11-9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor		NA
11-10	Process Final Payment	X	X
11-11	Complete and Submit CDOT Form 950 - Project Closure		X
11-12	Retain Project Records for Six Years from Date of Project Closure	X	X
11-13	Retain Final Version of Local Agency Contract Administration Checklist	X	X

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

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 or of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

The 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.

36. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS

FHWA-1273 -- Revised May 1, 2012

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 qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

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

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

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

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

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii) The classification is utilized in the area by the construction industry; and
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

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

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

2. Withholding

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

3. Payrolls and basic records

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

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

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

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

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

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

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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 FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

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

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-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

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

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

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

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

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

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

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

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

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

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

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

37. EXHIBIT J – FEDERAL REQUIREMENTS

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

A. Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule)

The "Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions. The requirements of 49 CFR 18 include, without limitation: the Local Agency/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.

B. Executive Order 11246

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

C. 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).

D. Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local 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).

E. Contract Work Hours and Safety Standards Act

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

F. Clear Air Act

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).

G. Energy Policy and Conservation Act

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

H. OMB Circulars

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

I. Hatch Act

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

J. Nondiscrimination

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

K. 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.

L. Uniform Relocation Assistance and Real Property Acquisition Policies Act

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

M. Drug-Free Workplace Act

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

N. Age Discrimination Act of 1975

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.

O. 23 C.F.R. Part 172

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

P. 23 C.F.R Part 633

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

Q. 23 C.F.R. Part 635

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

R. 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.

S. 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.

T. 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.

CITY COUNCIL COMMUNICATION

DATE: January 19, 2016

AGENDA ITEM: 8.E

SUBJECT: Approval of Resolution No. 10-2016 Authorizing the Application for a planning Grant from the Colorado Department of Local Affairs to assist with flood mitigation work at the Highway 85 and Highway 60 bridges

PRESENTED BY: Chad Reischl, City Planner/Kacey Blum, Watershed Coordinator

PROJECT DESCRIPTION:

As the fiscal sponsor of the Middle South Platte River Alliance (MSPRA), the City of Evans is seeking to apply for CDBG-DR funds for construction of flood mitigation work at the Highway 85 Bridge and the Highway 60 Bridge

These projects will work to increase flow capacity at both bridges through sediment and debris removal, as well as stabilize eroding river banks. The work at Highway 85 will be completely funded by this grant and include, among other things, streambank stabilization on City of Evans property east of the Bridge. The Highway 60 project will be funded primarily by a joint agreement between the Natural Resources Conservation Board and the Colorado Water Conservation Board. This grant application asks for the 12.5% match required by a local sponsor (i.e. MSPRA).

The grant applications for these two projects will total \$873,000 for which the Alliance and the City of Evans will be fully reimbursed.

BACKGROUND:

This is the State of Colorado's third round of CDBG-DR funding for planning projects related to the 2013 flood. The state has specifically allocated some of the funding to support watershed resiliency projects. Last year the City of Evans, with the support of the Colorado Water Conservation Board and the Department of Local Affairs, worked to form a river stakeholder group now known as the Middle South Platte River Alliance. The Alliance, with the City of Evans as its fiscal sponsor has guided the drafting of the South Platte River Restoration Master Plan which was approved earlier this year.

The restoration master plan identified 16 flood resiliency projects along the 20+ mile river corridor. Many of these projects involved pieces of critical infrastructure such as bridges and diversion structures. Both the Highway 85 and Highway 60 Bridges were on this project list.

Working to mitigate flood risk at the Highway 85 Bridge has been one of the number one priorities of the Alliance since its inception. This project will work to remove sediment and debris from the bridge while re-creating an over-flow channel south of the main channel to help move more water and sediment through the structure. The project will also work on stabilizing the north bank of the river which has migrated 8-12' inland since the 2013 flood. Much of the bank to be stabilized will be on City of Evans Property. The project is estimated to cost \$800,000.

The Highway 60 project was a lesser priority for the Alliance but has come to the forefront of projects as CDOT will be replacing the bridge in the near future. While CDOT will be doing work in the river as part of the bridge construction, they cannot do work outside their designated right-of-way. CDOT felt that it did not make sense to stop work at the right-of-way line as the needed bank stabilization and sediment removal extended both up and downstream from the bridge. CDOT and the Alliance therefore worked together to request money and design services through a joint project of the Natural Resources Conservation Service and the Colorado Water Conservation Board. The NRCS and CWCB have agreed to take on the project but require a 12.5% match from a local sponsor. CDBG-DR funds can be used for this match and therefore the Alliance is asking for \$73,000 to complete the project in anticipation of the new bridge.

FINANCIAL:

While the cost of this project will be fully reimbursed by the CDBG-DR grant it is expected that the city will incur some minor in-kind expense as a small portion of staff time may be needed to coordinate financial and grant management of the project with the Alliance.

STAFF RECOMMENDATION:

The City of Evans staff recommends that the City Council approve Resolution No. 10-2016 for the flood mitigation work at the Highway 85 and Highway 60 bridges

SUGGESTED MOTIONS:

“I move to approve Resolution No. 10-2016.”

“I move to deny the adoption of Resolution No. 10-2016”

CITY OF EVANS, COLORADO

RESOLUTION NO. 10-2016

A RESOLUTION SUPPORTING A GRANT APPLICATION TO THE COLORADO DEPARTMENT OF LOCAL AFFAIRS' CDBG-DR GRANT PROGRAM TO ASSIST WITH FLOOD MITIGATION WORK AT THE HIGHWAY 85 AND HIGHWAY 60 BRIDGES

WHEREAS, the City Council of the City of Evans, Colorado, pursuant to Colorado statute and the Evans City Charter, is vested with the authority of administering the affairs of the City of Evans, Colorado;

WHEREAS, the City of Evans supports the need to complete flood mitigation work along the South Platte River in the Evans area; and

WHEREAS, the City of Evans has worked with the Colorado Water Conservation Board to create a Restoration Master Plan for the South Platte River in Weld County wherein the Lower Latham Ditch Diversion Structure was noted as an issue of serious concern; and

WHEREAS, the Middle South Platte River Alliance (MSPRA) has been formed to oversee and manage that restoration plan; and

WHEREAS, the City of Evans is a founding member and fiscal agent for the Middle South Platte River Alliance; and

WHEREAS, MSPRA has identified the Highway 85 Bridge project as a top priority for their organization at this time; and

WHEREAS, the Highway 60 Bridge project will be timely and concurrent with construction of a new bridge and primarily funded through monies provided by the NRCS, and

WHEREAS, the State of Colorado Department of Local Affairs is administering the CDBG-DR grant funds for watershed recovery projects in the area.

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

1. The City Council hereby supports the CDBG-DR grant application for \$800,000 from the State of Colorado Department of Local Affairs for the Highway 80 Bridge Project and \$73,000 for the Highway 60 Bridge Project.
2. The City Council of the City of Evans acknowledges that while the grant application does not mandate matching funds the City of Evans will need to allocate a small share of staff resources to fulfill the terms and obligations of said grant if awarded.

PASSED AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF EVANS ON THIS 19TH DAY OF JANUARY, 2016.

ATTEST:

CITY OF EVANS, COLORADO

Raegan Robb, City Clerk

BY: _____
John Morris, Mayor

COUNCIL COMMUNICATION

DATE: January 19, 2016

AGENDA ITEM: 8.F

SUBJECT: 2016 Greeley Evans Transit (GET) Operating & Capital Costs

PRESENTED BY: Dawn Anderson, City Engineer

AGENDA ITEM DESCRIPTION:

On July 2, 2013 the City of Evans and City of Greeley entered into an Intergovernmental Agreement (IGA) regarding transit services provided in Evans. Each year the City of Greeley provides Evans with the current operating and capital costs based off of the City of Greeley's budget and account for City of Evans' local share to the federal grants received for services provided within Evans and to the residents of Evans.

The below costs were provided and are based upon budgetary, ridership and hours of service projections and represent only the local match needed to provide the service.

Service	Unit Type	2016 Projection	Cost
Fixed Route	% of System	9.39%	\$ 329,006
Paratransit/Demand Response	% of Service	5.72%	\$ 53,258
2016 Vehicle Local Match			\$ 18,021
Less: Fare Box			- \$ 35,305
Less: Grants Funds			- \$ 202,205
Total Cost			\$ 162,774

FINANCIAL SUMMARY:

The 2016 General Fund Streets budget included \$183,954 for these professional services.

- Streets General Fund 11-41-4101-8320 – \$183,954

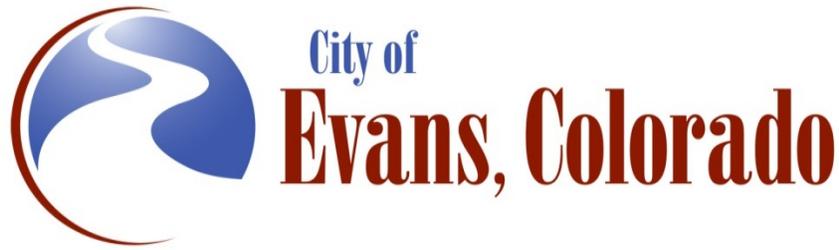
RECOMMENDATION:

Staff recommends that City Council approve the 2016 Operating and Capital costs for transit service in the amount of \$ 162,774.

SUGGESTED MOTIONS:

"I move to approve the Greeley Evans Transit 2016 Operating and Capital Costs for services in Evans in the amount of \$162,774.00."

"I move to deny approval of the Greeley Evans Transit 2016 Operating and Capital Costs."



City Manager - Monitoring Report

January 19, 2016

Below is a compellation of updates and projects that are either new or have changed since the last City Council meeting.

➤ Communications



The new website has launched! Our previous website is no longer available and evanscolorado.gov takes one to the new site. The first wave of “tire kickers” as John would say, are staff and City Council. We are grateful for the additional eyes on the site to help identify links that may have broken in the switch and glitches with mobile devices. We will work through those issues for two weeks and then start the big shout outs to drive people to the new site.

Another video opportunity – this one FREE – has come to us. CGI Communications is working with Weld County to provide professionally done marketing videos on their website. Evans will be one of the communities that will be highlighted in this series. You can learn about CGI on their website at <http://www.cgicompany.com>, see some of their work on the Weld County site <http://www.co.weld.us> and see the videos they have produced at the bottom of the page under video tour.

➤ Community Development

Non-Residential Construction Projects In Progress

	Project	Type	Location	Description	Stage
A	Prairie Heights Middle School	Commercial	3737 65 th Ave.	New Middle School to replace John Evans	Complete, Right of Way Recorded
B	America's Best Value Inn	Remodel	800 31 st St.	Remodeling Bar/Restaurant area into 8 hotel rooms	Under construction
D	Evans VFW	Building Addition	3501 State Street	1200 Sq. Ft. Shed	Under construction
F	Harvest Time Tabernacle Inc	Building Addition	3040 11 th Avenue	Adding on an additional room	Under construction
H	Evans Fast Break	Remodel	1100 42 nd Street	Removing a wall and moving an exit door	Under construction

I	ARB Midstream	Commercial Development	7300 47 th Avenue	Building an railcar oil transfer facility	Under construction
J	Heritage Inn	Building Addition	3301 West Service Rd	Upgrade commercial fire alarm system	Under construction
K	Humane Society of Weld County	Remodel	1620 42 nd Street	Office area remodel	Under construction

Building Department Construction Activity Comparative Analysis

		December 2015	December 2014	YTD 2015	YTD 2014
New Single Family Dwelling Units	# of Permits Valuation	4 572,337	2 367,452	47 8,064,366	32 5,498,633
Single Family Footing & Foundation Only	# of Permits	3	0	16	7
New Multi-Family Dwellings Units	# of Permits Valuation	0	0	0	0
Multi-Family Footing & Foundation Only	# of Permits Valuation	0	0	0	0
Residential Additions and Remodels	# of Permits Valuation	7 74,918	10 99,272	160 1,438,729	149 1,306,711
New Commercial Projects	# of Permits Valuation	0	0	1 400,000	10 6,804,462
Commercial Footing & Foundation Only	# of Permits Valuation	0	0	0	0
Commercial Additions and Remodels	# of Permits Valuation	0	1 22,914	25 1,239,173	23 615,414
Miscellaneous Permits	# of Permits Valuation	14 34,940	20 86,311	239 867,051	515 2,696,972
Mobile Home Permits	# of Permits	2	2	68	82

TOTALS	# of Permits Valuation	30 682,195	35 575,949	556 12,009,319	818 16,922,192
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Building Department Construction Activity Comparative Analysis

		Year 2015	Year 2014
New Single Family Dwelling Units	# of Permits Valuation	47 8,064,366	32 5,498,633
Single Family Footing & Foundation Only	# of Permits	16	7
New Multi- Family Dwellings Units	# of Permits Valuation	0	0
Multi-Family Footing & Foundation Only	# of Permits Valuation	0	0
Residential Additions and Remodels	# of Permits Valuation	160 1,438,729	149 1,306,711
New Commercial Projects	# of Permits Valuation	1 400,000	10 6,804,462
Commercial Footing & Foundation Only	# of Permits Valuation	0	0
Commercial Additions and Remodels	# of Permits Valuation	25 1,239,173	23 615,414
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Mobile Home Permits	# of Permits	68	82
TOTALS	# of Permits Valuation	556 12,009,319	818 16,922,192

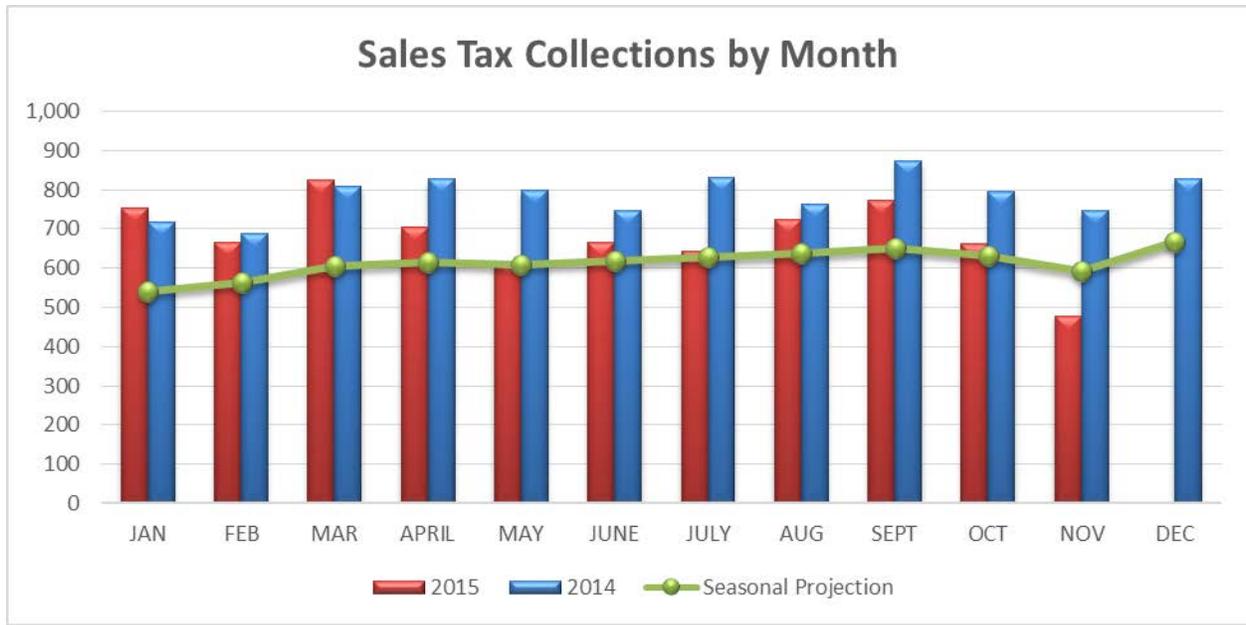
➤ **Finance**

Please find the preliminary November sales tax update below. Year-to-date Actual vs. Budget, we are \$814,183 ahead.

As far as the monthly projection goes, we are \$114,724 short of what we needed to collect this month to meet our annual budget. This does not include motor vehicle tax. Weld County has changed the timing of the tax distribution, therefore, as we receive information, we will be issuing a final sales tax report for November that includes motor vehicle tax.

November 2015			
Category	2014 YTD	2015 YTD	% Change
Base	2,137,392	2,305,403	8%
Commercial	1,797,054	1,756,605	-2%
Industrial	2,588,694	1,647,001	-36%
Utilities	670,114	656,098	-2%

November 2015			
Lodging	2014 YTD	2015 YTD	% Change
Lodging	91,818	92,412	1%



➤ **Police**

Officer Juan Rodriguez was sworn in on Monday January 11th. He will complete his training program in early May.

Recruit Officer Jason Schissler started the Adams County Sheriff's Office Training Academy on Monday January 11th, as well. He is scheduled to graduate in mid-June at which time he will begin his 16-week training program.

We have four officers currently in the field training program; Officer Schuett is scheduled to complete his training in mid-February. Officers Pacheco and Williams are scheduled to complete their training in mid-March, and Officer Rodriguez who is mentioned above.

We have a hiring process open currently for two certified peace officer positions and hope to complete hiring by the end of February. Those two hiring's will bring the police department to authorized strength, for the first time in well over a year!

We have had a tremendous response to our new Animal Control/Services Technician position. We received a large number of applications from highly qualified and experienced individuals and hope to fill the position by mid-February.

The Police Department was recently awarded accredited status from the Colorado Association of Chiefs of Police. A formal presentation of the award will be scheduled before Council as soon as possible. Being accredited signifies that the police department has met all of the requirements demonstrating that our policies and procedures comply with best practices in policing.