



**CITY OF TRINIDAD
TRINIDAD, COLORADO**

The City Council of the City of Trinidad, Colorado,
will hold its regular Work Session on Wednesday, November 12, 2014 at 1:30 P.M.
in City Council Chambers at City Hall, Third Floor, City Hall

AGENDA

1. Petitions and Communications, Oral or Written
2. Presentation by Randy Devine, NPGA, regarding NPGA Gas Supply Agreement
3. Joe Saldibar from History Colorado/ Preservation Inc., to present new historic tax credit information
4. Introduction of Planning Commission applicants
5. Consideration of Professional Services Agreement with SGM, Inc. for the Purgatoire River Pedestrian Bridge Project engineering services
6. Consideration of submission of grant request to Department of Local Affairs for Water Treatment Plant Upgrades
7. Consideration of Colorado Department of Transportation Way-Finding Signage Grant Contract
8. US EPA Brownfield coalition discussion
9. Urban Renewal Authority boundary survey discussion and Consultant Agreement consideration
10. Discussion regarding amending non-conforming status
11. Consideration of request for City Proclamation
12. 2015 Proposed Budget review
13. Discussion of other agenda items



Council Communication

City Council Work session: November 18, 2014

Prepared: Linda Vigil, November 7, 2014

Dept. Head Signature: *David A. Hulet*

of Attachments: 1

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Subject: National Public Gas Agency Gas Supply Agreement for Total Requirements

Presenter: Randy Devine, NPGA

Recommended City Council Action: Discussion of the National Public Gas Agency Gas Supply Agreement for Total Requirements Supply since our current Gas Supply Agreement and Service Schedule agreement expires March 31, 2015.

Summary Statement: In March 2013, the city received advanced notice from NPGA that the Gas Supply Agreement dated March 31, 2009 will be terminated on March 31, 2015. In conjunction with the decision, the NPGA Board of Directors voted to adopt the new standard form agreement for total requirements gas supply for its participants. In addition to the agreement, NPGA is offering to its members either the option to receive a Gas Cost of Service Study or a monthly credit.

Expenditure Required: Yes, monthly purchases of natural gas for Trinidad's Gas Distribution System.

Source of Funds: Gas Budget

Policy Issue:

Alternative:

Background Information: The gas supply agreement provided by NPGA consists of a rolling ten (10) year period to begin on April 1, 2015 thru April 1, 2025 and includes a revised schedule of rates and charges based upon a leveled purchase plan. The purpose of the ten (10) year rolling period contract is to allow NPGA to continuously seek lower gas prices for its pool of gas members to provide equitable sharing of the resulting benefits and costs.

The gas supply agreement includes the transportation charges from Kinder Morgan previously known as Colorado Interstate Gas Company. Finally and in addition to the agreement, NPGA members have the option to participate in a Gas Cost of Service Study or receive a monthly credit. Regardless, NPGA is requesting their members to formally indicate which option they elect to receive.

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City of Trinidad, Colorado

Office of the City Attorney
135 North Animas Street
Trinidad, CO 81082
P: (719) 846-9843
F: (719) 846-4140
les.downs@trinidad.co.gov

LEGAL MEMORANDUM

To: Mayor Reorda, City Councilmembers
From: Les Downs, City Attorney
Re: NPGA and NMPP natural gas service and supply contracts
Date: November 7, 2014

I have enclosed for your perusal a copy of the current contract the City entered into with the National Public Gas Agency (NPGA), effective April 1, 2009 (until March of 2015). There was an amendment executed in May of 2011. This contract is a precursor to the agreement you are considering now. The new agreement would constitute, if approved by Council and duly executed, not only an agreement for natural gas through the National Gas Supply Agreement, it would also include support services, as provided by the NMPP, an acronym for the Nebraska Municipal Power Pool.

So, as part of this agreement, we would continue to have our gas supply provided by the National Public Gas Agency, and supporting services and a continued board membership through NMPP.

In any event, you asked for the differences between the prior agreement and this agreement. The main difference is the duration of the contract, which now would be for "rolling" ten year periods, as opposed to five year renewal periods in the current agreement.

Also, the new agreement offers the City a "Cost of Service Study," which---according to Michelle Lepin of NMPP---greatly helps cities to recoup their costs for providing gas services. Or, the City can elect a four year opt out from this study, and receive a monthly credit of one 48th of the study cost, over a span of four years.

Please note also, that the ten year agreement (if approved by you) can be terminated, with three year notice to NPGA and NMPP.

I should tell you this as well: when I spoke with Michelle Lepin, she told me that if we sign up, there would be fourteen member communities. We would be the only Colorado member community. They also have Fort Morgan and Walden as customers, but not as members. Part of the benefit of being a member is that we get a voice in terms of setting rates, and other matters that would arise for our gas supply and associated services.

I hope this makes some sense, but these are the primary differences between the two agreements.

Start period year
2006
2009 - member -

20090702361
Filed for Record in
LAS ANIMAS, CO
BERNARD J. GONZALES
04-09-2009 At 02:15 pm.
AGREEMENTS 31.00
Doc Fees .00
OR Book 1084 Page 3 - 8
Instrument Book Page
20090702361 OR 1084 3

Gas Supply Agreement

SERVICE SCHEDULE BG-CIG

Total Gas Supply

This Service Schedule BG-CIG to the Gas Supply Agreement (GSA) between the National Public Gas Agency (formerly Nebraska Public Gas Agency) ("NPGA") and the cities or villages that are participants thereto, including the City of Trinidad, Colorado ("Participant"), shall, upon execution by NPGA and Participant, constitute the valid and binding agreement between NPGA and Participant for the supply of natural gas upon the terms specified herein and in GSA. Terms used herein and not otherwise defined shall have the same meaning ascribed thereto in GSA.

Section 1. Service to be Provided

1.01 This Schedule provides for the sale of the total natural gas requirements to Bulk Gas Participants.

1.02 Participant understands and agrees that this Service Schedule and the operations hereunder are subject to all applicable laws, ordinances, orders, rules and regulations of any governmental entity having or asserting jurisdiction, (such as the Federal Energy Regulatory Commission FERC); and the terms and conditions stated herein are subject to modifications resulting from changes in any such laws, ordinances, orders, rules or regulations.

Section 2. Term of Service

Participant, located on the gas transportation system of Colorado Interstate Gas Pipeline, agrees to purchase natural gas from NPGA for a term beginning April 1, 2009 and ending March 31, 2015.

Section 3. Scheduling of Deliveries

3.01 All deliveries of natural gas to and from Participant will be dispatched by the NPGA Coordination Center.

3.02 The Delivery Point(s) of natural gas to be delivered hereunder shall be identified on Exhibit 1 attached hereto.

Section 4. Schedule of Rates

4.01 The Schedule of Rates and Charges is attached to this Agreement and shall remain effective until modified by the NPGA Board of Directors.

4.02 Participant shall make payments for natural gas supplied to it by NPGA pursuant to this Service Schedule BG-CIG in accordance with Article XII of GSA.

4.03 The rates established herein may be modified from time to time by the NPGA Board of Directors.

Section 5. Assignment of Contracts

Participant agrees to assign to NPGA by the effective date of this Service Schedule BG-CIG all current natural gas supply and transportation contracts and agreements, with entities other than NPGA. Said contracts and agreements are listed on Exhibit 2 hereto and constitute all of Participant's Natural Gas Contracts and Agreements. Upon termination of Participant's status as a Bulk Gas Participant, NPGA agrees to assign back to Participant all natural gas supply and transportation contracts and agreements assigned by Participant to NPGA under this Paragraph or such part of any replacement contracts and agreements for natural gas supply and transportation entered into by NPGA insofar as they apply to service in or for Participant.

Section 6. Intervening Agency

In the event natural gas is supplied to Participant through the transportation system of an intervening agency, all terms and conditions of the applicable transportation schedule of the intervening agency shall apply.

Section 7. Covenant as to Rates; Termination; Limited Liability

7.01 Covenant as to Rates. Participant covenants and agrees that it will fix rates and charges for the services of its municipal gas utility system, and revise the same from time to time, and collect and account for the revenues therefrom, so that such rates and charges will produce revenues and receipts which will at all times be sufficient to enable Participant to pay the amounts payable by it hereunder when and as the same become due, to carry out its other obligations hereunder and to pay all other amounts which are payable from or a charge upon the revenues derived from the operation of its municipal gas utility system, including but not limited to natural gas operating expenses, as and when the same become due.

7.02 Termination.

(a) Participant may terminate the GSA at any time upon 36 months written notice provided that such notice will not terminate the GSA prior to October 31, 2003. Such notice of termination will be effective upon receipt by NPGA. This termination provision supersedes Participant's termination option in Section 2.03 of the GSA.

(b) Upon termination of Participant's participation in the GSA by the GSA Management Committee pursuant to Section 2.04 thereof, NPGA may cease delivering natural gas to Participant; provided that such cessation shall not relieve Participant of any obligation under this Schedule BG-CIG including the obligation to pay amounts for natural gas, transportation, and associated charges, assuming a natural gas requirement equal to Participant's demand for the 12 months preceding such failure, plus all other costs of collection and including interest on unpaid amounts and attorney's fees, less any amount received by NPGA from the sale of natural gas or other services it would have otherwise provided; however, that NPGA shall not be under a duty to mitigate the damages it may incur as a result of Participant's default hereunder, but shall undertake such sale as a convenience to and as agent for Participant.

7.03 Limited Liability. This agreement and the obligations of Participant hereunder are not general obligations of Participant and are not payable in any manner by taxation, but this agreement and the obligations of Participant hereunder are payable and enforceable solely and only from the revenues and receipts to be derived by Participant from the operation of its municipal gas utility system. Amounts payable by Participant hereunder, or in carrying out its other obligations hereunder, shall be considered to be operating expenses of the municipal gas utility system of Participant.

7.04 Liability. Upon termination of the GSA as provided in this Section 7, Participant shall not be liable for any bonded indebtedness of NPGA, or any other indebtedness of NPGA maturing more than 365 days from the date of funding, unless Participant expressly authorizes and assumes such indebtedness by resolution, ordinance or other similar official action of the governing body of Participant.

Section 8. Penalties

The Parties agree and understand that Paragraph 12.05 of the GSA shall not be applied to Bulk Gas Participants. Paragraph 12.05 of the GSA states:

Each month NPGA shall invoice Participant for any penalties which may be applicable. Participant shall pay NPGA such charges within twenty (20) days of the invoice date except where otherwise specified in a rate schedule.

Section 9. Assignment

This Service Schedule may be assigned by either party hereto only after receipt of written approval by the other party.

The Participant may assign any of its rights under this Service Schedule to another entity, if permitted by applicable law, but no such assignment shall relieve the Participant of its obligations under this Service Schedule so long as any bonds of NPGA are outstanding and, in any event, the Participant shall not assign such rights if, in the opinion of counsel of recognized standing in the field of law relating to municipal bonds selected by NPGA, such assignment would adversely affect the exemption from federal income taxation of the interest on the bonds.

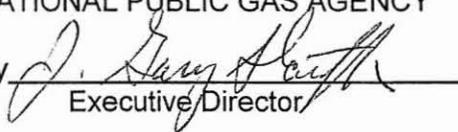
This Service Schedule shall be binding upon, and inure to the benefit of, any successor to NPGA. NPGA may assign any or all of its rights hereunder, or pledge any or all of the revenues payable to it under this Service Schedule, pursuant to such obligations for repayment of outstanding bonds of NPGA and such assignee may enforce the provisions of this Service Schedule as if it were named as party hereto.

Section 10. Agreement

It is hereby recognized and agreed that this Service Schedule BG-CIG constitutes an agreement and contract between Participant and NPGA within the meaning of Sections 2.04 and 2.05 of GSA. NPGA hereby proposes and Participant hereby accepts the provisions of this Service Schedule BG-CIG to become effective on the 1st day of April, 2009.

NATIONAL PUBLIC GAS AGENCY

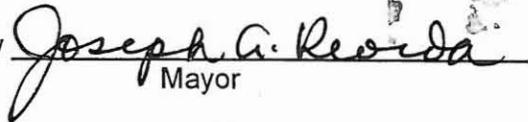
By


Executive Director

Date March 31, 2009

CITY OF TRINIDAD, COLORADO

By


Mayor

Date November 18, 2008



Approved October 1, 2001. Supersedes version approved October 13, 1993.

Exhibit 1

Service Schedule BG-CIG

Gas Supply Agreement

POINT OR POINTS OF DELIVERY

City of Trinidad, Colorado

City of Trinidad TBS

Exhibit 2

Service Schedule BG-CIG

Gas Supply Agreement

City of Trinidad, Colorado

Natural Gas Supply and Transportation Contracts and Agreements assigned to NPGA pursuant to Section 5 of Service Schedule BG:

None

In effect pursuant to approval of Service Schedule BG approved on October 1, 2001.

Amended May 11, 2011

**NATIONAL PUBLIC GAS AGENCY
AMENDED AND RESTATED INTERLOCAL AGREEMENT**

THIS INTERLOCAL AGREEMENT (this "Agreement") is made and entered into as of this 11th day of May, 2011 by and between the undersigned Cities, Villages or other public agencies which execute this Agreement, hereinafter called the "Members."

RECITALS:

1. By authority of Section 18 of Article XV of the Constitution of the State of Nebraska and the Interlocal Cooperation Act of the State of Nebraska, §§ 13-801 et seq., R.R.S. Nebraska, 1997, as amended (the "Act"), any two or more public agencies may enter into interlocal agreements with one another for joint or cooperative action of any power or powers, privileges or authority exercised or capable of exercise individually by such public agencies, and create a joint entity in furtherance of such joint or cooperative action with such powers, including bond-issuing powers, as such an interlocal agreement shall specify.

2. Each Member has the authority, among other things, to negotiate for the purchase, transportation or sale of natural gas and natural gas reserves, or any combination thereof, with any entity engaged in the purchase, transportation or sale of natural gas, whether public or private, located within or without the State of Nebraska.

3. As authorized by Nebraska law, the Members own and operate certain distribution systems for the distribution and sale of natural gas or have other municipal requirements for a natural gas supply and for such operations desire to assure themselves of a reliable and economical supply of natural gas.

4. The Members deem it to be in the best interest of the public to coordinate the operation of existing natural gas distribution and transportation facilities and the mutual acquisition of stable and economic natural gas supplies.

5. The Members desire to study and evaluate on a continuing basis the benefits that may result to the Members and their residents from the coordination of natural gas resources and facilities as described above.

6. The Members desire to enter into an interlocal agreement pursuant to which the Members, among other objectives, will cooperate to assure reliable and economical supplies of natural gas to meet their respective local requirements.

7. The Members desire pursuant to such interlocal agreement to create a joint entity to exercise public powers and to act on behalf of the Members for the purposes set forth in such interlocal agreement.

In consideration of the agreements herein contained, the Members do hereby mutually agree as follows:

ARTICLE I

OBJECTIVES AND PURPOSES; CREATION OF NATIONAL PUBLIC GAS AGENCY

Section 1.01. The objectives and purposes of this Agreement are to carry out those public powers, duties and obligations of the governing bodies of the Members relating to the acquisition, management, distribution and sale of natural gas, through joint planning, central dispatching, cooperation in environmental and regulatory matters and coordinated construction, operation and maintenance of natural gas distribution or transportation facilities owned or controlled by the Members, transportation facilities owned or controlled by other entities and through more effective coordination with other natural gas utilities throughout the country, natural gas purchasers and natural gas producers and sellers:

- (a) To provide the means for a reliable natural gas supply for Members in conformance with optimum standards of reliability.
- (b) To provide the means for efficient and effective use of natural gas distribution and transportation facilities.
- (c) To attain maximum practicable economy to the Members consistent with - high standards of reliability and to provide for equitable sharing of the resulting benefits and costs.
- (d) To provide for such other general utility or related infrastructure projects as the Members determine to purchase, own, lease or finance.
- (e) To conduct any other Board-approved activities authorized under the Act.

Section 1.02. In furtherance of such objectives and purposes, (i) the Members hereby create a joint entity under the Act to be known as the "National Public Gas Agency," being a separate, nonprofit public body corporate and politic of the State of Nebraska ("NPGA"), and successor to the Nebraska Public Gas Agency which shall be constituted and administered by a board of directors (the "Board of Directors"); and (ii) the Members hereby delegate to NPGA those powers as are hereinafter provided by this Agreement. The Members shall have the right to create a class or classes of non-voting affiliates that are Public Agencies.

ARTICLE II

DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

"Member" shall mean a public agency that purchases all of its natural gas requirements from NPGA for a term specified by the Board of Directors and/or a public agency that is elected to membership by the Board of Directors as provided in the Bylaws. A Member shall be a full or associate member in good standing of Nebraska Municipal Power Pool.

"NPGA" shall mean the National Public Gas Agency, a nonprofit joint entity created by this Agreement pursuant to and in accordance with the Act.

“Public Agency” shall mean a government agency as defined in the Act.

ARTICLE III

TERM OF AGREEMENT

Section 3.01. This Agreement shall initially become effective and binding upon its execution by at least two Members, and shall become effective and binding as to each additional Member, as provided by Section 3.02 hereof.

Section 3.02. After the initial effective date, any public agency (within the meaning of the Act) may become a Member by obtaining approval of the Board of Directors and executing this Agreement.

Section 3.03. Any Member may terminate its participation by giving three years’ written notice to the Board of Directors, which will then send written notice to all other Members notifying them of the termination. The Board of Directors may terminate this Agreement and dissolve NPGA on three years’ written notice to all Members. Upon the termination of this Agreement and the entire dissolution of NPGA, each Member, at the time of such dissolution shall receive a distribution of the assets, if any, of NPGA as provided by a vesting formula set forth in the Bylaws.

(a) The Board of Directors may terminate, expel or suspend a Member in the manner set forth in the Bylaws.

Section 3.04. In the event a Member fails to perform its obligations pursuant to this Agreement, the Board of Directors shall give written notice to such Member specifying such failure to perform and establishing a reasonable period that the Member shall have to fulfill its obligations pursuant to this Agreement. If the Member’s failure to perform its obligations is continuing, the Board of Directors may immediately terminate such Member’s participation in this Agreement. Any Member terminated by the Board of Directors shall continue to fulfill its contractual obligations (including, without limitation, any obligations with respect to outstanding bonded debt of NPGA) pursuant to any natural gas or other project transaction under a separate contract with NPGA until the completion of such natural gas or other project transaction in accordance with its terms. The process set forth in this Section 3.04 regarding termination for failure to perform obligations pursuant to this Agreement is separate and distinct from the right of the Board of Directors to terminate, expel or suspend a Member as provided in Section 3.03(a) above.

Section 3.05. Termination of participation in this Agreement or termination of this Agreement by the Board of Directors shall not impair, amend or change any previous contracts or agreements. Such contracts and agreements shall continue in full force, including all rates, terms, obligations and conditions, until the expiration of such contracts and agreements in accordance with their respective terms, or unless sooner released by the Board of Directors.

Section 3.06. Subject to earlier termination as aforesaid, this Agreement shall terminate on January 1, 2099. This Agreement shall survive a transition of the form of government of a Member from one form to another.

ARTICLE IV

BOARD OF DIRECTORS

Section 4.01. The affairs of NPGA shall be conducted by a Board of Directors consisting of a representative designated by each Member signing the agreement.

Section 4.02. Each Member shall designate by resolution a Director and Alternate Director, each of whom shall hold office until a successor shall be designated or until his or her earlier resignation.

Section 4.03. The Board of Directors shall hold an annual meeting at such time and place as the Board of Directors shall designate and shall hold meetings at other times as provided in the Bylaws.

Section 4.04. The Board of Directors shall annually adopt and thereafter monitor a budget of revenues and expenditures.

Section 4.05. Subject to Article III, Section 3.03(a), each Member of the Board of Directors shall have the right to cast one vote. There shall be no weighted voting.

Section 4.06. No action of the Board of Directors shall be taken unless 50% or more of the Members are represented at the meeting. Unless provided otherwise in the Bylaws, upon a majority affirmative vote of the representatives present, such action shall be effective immediately.

Section 4.07. The Board of Directors shall have the authority to appoint and hire an Executive Director.

ARTICLE V

POWERS

Section 5.01. NPGA shall have all the powers to carry out the objectives and purposes stated in this Agreement on behalf of the Members as any individual Member would have on its own behalf.

Section 5.02. NPGA shall have the power (a) to sue and be sued, (b) to have a seal and alter the same at pleasure or to dispense with the necessity thereof, (c) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and (d) from time to time, to make, amend and repeal bylaws, rules and regulations not inconsistent with the Act and this Agreement and to carry out and effectuate its powers, objectives and purposes.

Section 5.03. NPGA, acting through its Board of Directors, shall have such other powers as are permitted to it under the Act which are necessary and proper for the achievement by NPGA of its stated objectives and purposes as set forth in this Agreement, including but without limitation, the power to approve the issuance by NPGA of its revenue bonds in accordance with and subject to the limitations and restrictions of the Act and pursuant thereto, and to apply the proceeds of such revenue bonds to the financing of the stated objectives and purposes of this

Agreement, including, without limitation, the acquisition of natural gas supplies and related infrastructure projects.

ARTICLE VI

NO ASSIGNMENT

No Member shall assign this Agreement.

ARTICLE VII

AMENDMENTS

Section 7.01. Any Member may propose an amendment to this Agreement by filing such proposed amendment with the chairperson of the Board of Directors, who shall immediately forward copies thereof to the Members, provided that no amendment shall, directly or indirectly, affect or impair any contracts or agreements of the Agency agreed upon in writing prior to the effective date of such amendment, including, in particular, but without limitation, any contracts relating to the Agency's bonds or other debt financings. Each Member shall forward its vote to the chairperson of the Board of Directors, and said vote must be received by the chairperson within 60 days after the date of filing.

Section 7.02. In voting on any amendment, each Member shall have one vote. If two-thirds of the Members approve the amendment, as evidenced by resolution of the governing body of each Member, such amendment will become effective 30 days after approval by the Members, subject to the restriction set out in Section 7.01. Abstentions shall be counted as negative votes.

Execution. Separate copies of this Agreement are executed by the Members with the understanding that, as and when each of the Members has executed a copy, all of the Members shall be bound to the same extent and purpose as if all such Members had simultaneously joined in the execution of a single master copy.

IN WITNESS WHEREOF, each of the Members has caused this Amended and Restated Interlocal Agreement to be executed by its duly authorized officer as of the day and year shown below.

CITY OF TRINIDAD
By [Signature]
Title CITY MANAGER
Date 5/17/2011

Attest:
By [Signature]

(SEAL)



NMPP • MEAN • NPGA • ACE

NMPP Energy ■ 8377 Glynoaks Drive ■ Lincoln, NE 68516 ■ Phone: 402.474.4759 ■ Fax: 402.474.0473 ■ www.nmppenergy.org

September 18, 2014

Audra Garrett
City Clerk
City of Trinidad
135 N. Animas, PO Box 880
Trinidad, CO 81082-0880

Dear Audra,

At its meeting held on September 13, 2012, the Board of Directors of the National Public Gas Agency (NPGA) approved a new standard form agreement for total requirements gas supply to NPGA participants. Executables of the new agreement are enclosed for consideration by your municipality.

Since the City's current Service Schedule BG expires on March 31, 2015, NPGA proposes an effective date of April 1, 2015 for the new agreement. Therefore, if your municipality and NPGA execute the enclosed Gas Supply Agreement for Total Requirements Supply, the new agreement will replace your current Gas Supply Agreement and Service Schedule agreement with NPGA as of April 1, 2015.

Additionally, at the meeting held on February 13, 2014, the NPGA Board of Directors approved Revised Schedule of Rates and Charges to the Gas Supply Agreement for Total Requirements Supply. The revisions incorporate a four-year Gas Cost of Service Study for each Member that has executed a Gas Supply Agreement for Total Requirements Supply for the term of April 1, 2013 through March 31, 2023.

The Cost of Service Study service has been offered previously to Members for a four-year period from July 1, 2013 through June 30, 2017. If the City elects to receive this service, the NPGA Board will first need to approve a term of this offering for the City of April 1, 2015 through March 31, 2019. If a Member does not want to receive this Cost of Service Study service, the Member could ask the NPGA Board to grant a monthly credit equal to 1/48th of NPGA's cost for purchasing this service for that Member during the four-year term this service is being offered to Members. NPGA is asking Members to formally indicate which option they elect to receive.

City of Trinidad

SEP 24 2014

City Clerk's Office

September 18, 2014

Audra Garrett

Page 2 of 2

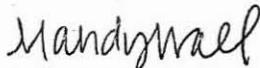
Municipalities that elect to receive the Gas Cost of Service Study will be asked to sign a separate written agreement establishing the terms and conditions of that service. NPGA will forward agreement executables to interested municipalities.

Accordingly, enclosed is an Election form for your municipality to complete. Please have the authorized official sign and return the enclosed form to indicate whether you choose to receive the four-year Gas Cost of Service Study or the monthly credit.

Also enclosed is a packet which includes a Checklist containing step-by-step instructions on completing the required documentation to enter into the new Gas Supply Agreement with NPGA. The packet includes a sample Ordinance that must be adopted, as well as a sample Attorney Opinion letter for completion by your municipality's counsel.

Should you have any questions, please contact Michelle Lepin, Staff Attorney, at (800) 234-2595.

Sincerely,



Mandy Wall
Legal Assistant

Enclosures

Election Form
**Option regarding Gas Cost of Service Study
from National Public Gas Agency**

Please complete the information below and return this Form to NPGA by November 1, 2014 to indicate your Municipality's preference to receive the Gas Cost of Service Study or the monthly credit on your invoice for natural gas service from NPGA.

Background

Pursuant to revisions made to the Schedule of Rates and Charges to the Gas Supply Agreement for Total Requirements Supply approved by the National Public Gas Agency (NPGA) Board at the meeting held on June 27, 2013, NPGA offered a four-year Gas Cost of Service Study for each Member that has executed a Gas Supply Agreement for Total Requirements Supply for the term of April 1, 2013 through March 31, 2023.

Qualifying Members electing not to receive the Gas Cost of Service Study for the four-year term of April 1, 2013 through March 31, 2017 were eligible for a monthly credit equal to 1/48th of NPGA's cost for purchasing this service for that Member during the four-year term this service was offered to Members.

NPGA is inquiring whether Members signing the Gas Supply Agreement for Total Requirements Supply after April 1, 2013 are interested in receiving the Gas Cost of Service Study. Specifying your municipality's preference below will indicate whether the NPGA Board needs to approve (i) an extension of the service to your municipality or (ii) extension of the monthly credit to your municipality.

Municipality Name: City of Trinidad, Colorado

Municipality elects as follows: (Municipality must choose one)

Four-year Gas Cost of Service Study. This service is subject to the execution of a separate written agreement for said service and approval by the NPGA Board. Executables will be forwarded to your Municipality after NPGA's receipt and Board approval of this signed Election form.

Or

Monthly credit equal to 1/48th of NPGA's cost of the Gas Cost of Service Study for your Municipality during the four-year term this service is being offered to Members, subject to approval by the NPGA Board.

THE MUNICIPALITY HEREBY SUBMITS ITS ELECTION REGARDING THE OPTION FOR A GAS COST OF SERVICE STUDY FROM THE NATIONAL PUBLIC GAS AGENCY. NPGA IS ENTITLED TO RELY ON THE INFORMATION SUBMITTED:

The undersigned is authorized to execute this form on behalf of the Municipality.

(Authorized Signature)

(Printed Name)

Return by November 1, 2014 via Fax to (402) 474-0473, e-mail to mlepin@nmpenergy.org, or mail to:

Attn: Legal Department
National Public Gas Agency
8377 Glynoaks Drive
Lincoln, NE 68516

**NEED FROM MUNICIPALITIES TO EXECUTE
NPGA GAS SUPPLY AGREEMENT FOR TOTAL REQUIREMENTS SUPPLY**

1. *Copy* of Public Notice of the Meeting and associated Affidavit of Publication from newspaper.
2. Agenda of the Meeting.
3. Certified copy of the Minutes or certified excerpt of the Minutes (certified by City Clerk).
4. Ordinance for Gas Supply Agreement for Total Requirements Supply (GSA). Signed, sealed and dated.
5. GSA Agreement. Signed and sealed. It will be dated when NPGA signs.
(Exhibits A-C attached to GSA Agreement: No action needed by City.)
Note: Schedule of Rates and Charges is enclosed – retain for City's file.
6. Affidavit of Publication from paper of Ordinance passed by the municipality. If Ordinance is published in pamphlet form, then provide a copy of the published pamphlet. (Proof of Publication)
7. Municipal Attorney Opinion Letter.

RETURN TO:

Attn: Michelle Lepin
National Public Gas Agency
8377 Glynoaks Drive
Lincoln, NE 68516

GAS SUPPLY AGREEMENT FOR TOTAL REQUIREMENTS SUPPLY

between

National Public Gas Agency

and

City of Trinidad, Colorado

THIS GAS SUPPLY AGREEMENT FOR TOTAL REQUIREMENTS SUPPLY ("Agreement") is made and entered into this _____ day of _____, 20____, by and between National Public Gas Agency (formerly Nebraska Public Gas Agency), a public corporation of the State of Nebraska, hereinafter called "NPGA", and the City of Trinidad, Colorado, hereinafter called "Participant".

RECITALS:

1. NPGA has the authority to negotiate for and on behalf of the membership of NPGA or in combination with others for the purchase, distribution, transportation or sale of natural gas and natural gas reserves, or any combination thereof with any entity engaged in the purchase, distribution, transportation or sale of natural gas, whether public or private located within or without the State of Nebraska.

2. Participant owns and operates a distribution system for the distribution and sale of natural gas and for such operations desires a supply of natural gas from NPGA. Participant may operate a gas transportation system.

3. The Parties recognize that it is of the utmost importance to the Participant that its gas distribution facilities be preserved and that the investment in those gas distribution facilities be utilized in the most efficient manner possible in satisfying the Participant's future natural gas needs.

4. The Parties hereto desire to enter into an agreement which will help assure the Participant a supply of firm gas to meet its requirements.

In consideration of the agreements herein contained, the Parties do hereby mutually agree as follows:

ARTICLE I

OBJECTIVES

1.01 The objectives of this Agreement are:

- (a) To provide the means for an adequate natural gas supply for the Participant in conformance with proper standards of reliability.

- (b) To provide the means for optimal use of natural gas distribution and transportation facilities resulting in the efficient use of natural gas resources.
- (c) To attain maximum practicable economy to the Participant and other NPGA participants consistent with proper standards of reliability and to provide for equitable sharing of the resulting benefits and costs.

1.02 In order to attain the objective of this Agreement, the Participant shall observe the applicable provisions of this Agreement in good faith and shall cooperate with all other NPGA participants where possible.

ARTICLE II

TERM OF AGREEMENT

2.01 This Agreement shall be legally binding upon execution by the Parties and approval of the NPGA Board of Directors. Total requirements natural gas service shall begin on April 1, 2015 and will continue in rolling ten (10) year periods as provided below. The term's end date will automatically extend by an additional year on each April 1, beginning April 1, 2016, unless and until terminated as provided in Section 2.02 below (hereinafter, the "Term"). For example, the initial term shall be April 1, 2015 to April 1, 2025, and effective April 1, 2016 an additional year will be added to the term to result in a rollover date of April 1, 2026, subject to termination as provided below.

2.02 Notwithstanding Section 2.01: (i) Participant may terminate this Agreement at any time by three (3) years' written notice to NPGA, which will then send written notice to all other NPGA participants notifying them of the termination. (ii) NPGA may terminate this Agreement at any time by three (3) years' written notice to Participant.

2.03 In the event Participant fails to perform its obligations pursuant to this Agreement or breaches its obligations under the Amended and Restated NPGA Interlocal Agreement or the Bylaws of NPGA, the NPGA Board of Directors may at its option give written notice to the Participant specifying such breach or failure to perform and establishing a reasonable period that Participant shall have to fulfill its obligations pursuant to this Agreement, the Amended and Restated NPGA Interlocal Agreement or the Bylaws of NPGA. If the Participant's failure to perform its obligation is continuing (an "Event of Default"), the NPGA Board of Directors may cease delivering natural gas to Participant and/or immediately terminate this Agreement and exercise any and all rights and remedies at law or in equity, provided that such cessation shall not relieve Participant of any obligation under this Agreement including the obligation to pay amounts for natural gas, transportation, and associated charges, for the three-year period beginning on the date of such cessation, assuming a natural gas requirement equal to Participant's demand for the 12 months preceding such failure, plus all other costs of indemnification provided in Section 12.03 plus interest on unpaid amounts, less any amount received by NPGA from the sale of natural gas or other services it would have otherwise provided; however, that NPGA shall not be under a duty to mitigate the damages it may incur as a result of Participant's default hereunder, but shall undertake such sale as a convenience to and as agent for Participant.

2.04 Termination of this Agreement shall not impair, amend, or change any previous contracts or agreements. Such contracts and agreements shall continue in full force, including

all rates, terms, obligations and conditions, until the expiration of such contracts and agreements, or unless sooner released by the NPGA Board of Directors.

ARTICLE III

DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

3.01 "Day" - A period of twenty-four (24) consecutive hours beginning and ending at twelve o'clock noon Central Time or at such other hour as the NPGA Board of Directors may determine.

3.02 "Month" - A period beginning at noon, or such other hour as determined by the NPGA Board of Directors, on the first day of the calendar month and ending at the aforesaid time on the first day of the next month.

3.03 "Point of Delivery" - The point at the connection of the facilities of NPGA or another transporting entity and Participant at which the gas leaves the outlet side of the measuring equipment or main pipeline of NPGA or other transporting entity and enters Participant's distribution or pipeline system or another agreed upon point.

3.04 "Cubic Foot of Gas" - The amount of gas necessary to fill a cubic foot of space when the gas is at a temperature of sixty (60°) degrees Fahrenheit and under an absolute pressure of fourteen and seventy-three hundredths (14.73) pounds per square inch.

3.05 "British thermal unit" (Btu) - The amount of energy required to increase the temperature of one (1) pound of water one degree (1°) Fahrenheit from fifty-eight degrees (58°) to fifty-nine degrees (59°) Fahrenheit.

3.06 "MMbtu" - One million (1,000,000) British Thermal Units.

3.07 "Party" - Shall mean either Participant or NPGA.

3.08 "Participant" ("Party") - An entity which is in good standing as a full member or an associate member with the Nebraska Municipal Power Pool ("NMPP"), and a signatory to this Agreement.

3.09 "NMPP" - The Nebraska Municipal Power Pool, a non-profit corporation of the State of Nebraska.

3.10 "Firm" - Shall mean, with respect to service by NPGA, that NPGA may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure.

3.11 "Gas" - any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.

3.12 "Year" - a period of twelve consecutive months (52 consecutive weeks) beginning on one Day and ending on the same Day the following year.

ARTICLE IV

PARTICIPATION PREREQUISITES

4.01 Participant shall remain a member (either full member or associate member) in good standing of the Nebraska Municipal Power Pool as defined in the Articles of Incorporation and the By-Laws of the Nebraska Municipal Power Pool, or its successor entities.

ARTICLE V

TOTAL REQUIREMENTS PARTICIPATION; SERVICES TO BE PROVIDED

5.01 Participant, located on the gas transportation system of Colorado Interstate Gas Company, L.L.C., hereby contractually commits to NPGA to purchase its total requirements of natural gas from NPGA, except that already under contract with certain other entities as identified in Exhibit A attached to and made a part of this Agreement, for the Term of this Agreement. Participant hereby obligates NPGA to economically schedule all existing and future natural gas resources and to schedule all required natural gas for the Participant's needs in accordance with this Agreement.

5.02 Scheduling of Deliveries. All deliveries of natural gas to and from Participant will be dispatched by NPGA.

5.03 The Delivery Point(s) of natural gas to be delivered hereunder shall be identified on Exhibit B attached to and made a part of this Agreement.

5.04 Schedule of Rates

- (a) The Schedule of Rates and Charges is attached to this Agreement and shall remain effective until modified by the NPGA Board of Directors.
- (b) Participant shall make payments for natural gas supplied to it by NPGA in accordance with Article VIII.
- (c) The rates established herein may be modified from time to time by the NPGA Board of Directors.

5.05 Participant understands and agrees that this Agreement and the operations hereunder are subject to all applicable laws, ordinances, orders, rules and regulations of any governmental entity having or asserting jurisdiction, (such as the Federal Energy Regulatory Commission (FERC)); and the terms and conditions stated herein are subject to modifications resulting from changes in any such laws, ordinances, orders, rules or regulations.

5.06 During the Term of this Agreement, NPGA will serve as agent for Participant's transportation agreement with Colorado Interstate Gas Company, L.L.C., or any successor, to the extent that the transportation service agreement used to serve Participant is held in the Participant's name, and NPGA will control any and all capacity and storage gas for Participant. Accordingly, Participant hereby designates NPGA as Participant's exclusive agent for the Participant for such matters. Participant shall advise the transportation provider, in writing, that NPGA is designated by the Participant, pursuant to this Agreement, as the agent for the Participant's transportation service and for any storage gas, and that the Participant requests

that all communications pertaining to the Participant's transportation service arrangements or storage gas shall be directed to NPGA. NPGA shall have no liability in the event of loss of control of Participant's capacity or storage gas through no fault of NPGA. In the event Participant terminates the agent designation or NPGA's control or if for any reason NPGA loses control of the capacity or storage gas during the Term of this Agreement, NPGA may deem such change in control a material breach of contract and exercise all rights and remedies at law or in equity. Further, Participant must within thirty (30) days either return control of the storage gas to NPGA or pay NPGA an amount equal to NPGA's cost of such storage gas, as determined by NPGA.

5.07 In the event this Agreement expires or is terminated for any reason, Participant must within thirty (30) days of such expiration or termination pay NPGA an amount equal to NPGA's cost of the storage gas remaining as of the date of expiration or termination of this Agreement, as determined by NPGA.

5.08 To the extent that NPGA holds in its name the transportation service agreement used to serve Participant, in the event this Agreement expires or is terminated, Participant must take or pay for such transportation service through the term in which NPGA is contractually obligated with the third party.

5.09 Assignment of Contracts. Participant agrees to assign to NPGA by the effective date of this Agreement, all current natural gas supply and transportation contracts and agreements (excluding transportation agreements for which NPGA serves as agent pursuant to this Agreement), with entities other than NPGA. Said contracts and agreements are listed on Exhibit C hereto and constitute all of Participant's natural gas contracts and agreements. Upon termination of this Agreement, NPGA agrees to assign back to Participant all natural gas supply and transportation contracts and agreements assigned by Participant to NPGA under this Section or such part of any replacement contracts and agreements for natural gas supply and transportation entered into by NPGA insofar as they apply to service in or for Participant.

5.10 NPGA will purchase or provide such natural gas reserve(s), storage, gas purchases, transportation service, and other service(s) as may be necessary for the reliable and economical supply of gas to the Participant.

5.11 In addition, the duties of NPGA will include but are not limited to the following:

- (a) Provide for facilities for the day-to-day scheduling and coordination, in accordance with the directions of the NPGA Board of Directors, of the natural gas supplies, storage, reserves, and transportation facilities for the Participant and such other facilities, materials, supplies, and services as the NPGA Board of Directors may determine are necessary and desirable to carry out the provisions of this Agreement.
- (b) Buy and sell natural gas or provide other services for the Participant according to this Agreement and within the guidelines established by the NPGA Board of Directors.
- (c) Provide for the record-keeping associated with the functions of NPGA.
- (d) Act on behalf of the Participant in carrying out any action properly taken pursuant to the provisions of this Agreement and within the authority granted by the NPGA Board of Directors.

- (e) Execute any contract, lease or other instrument which has been properly authorized by the NPGA Board of Directors pursuant to this Agreement and file, if necessary, with appropriate governmental bodies this Agreement and documents amending or supplementing this Agreement, contracts with non-participants, and related rate schedules and such other documents as may be appropriate.

5.12 NPGA will perform such other services for the Participant as the NPGA Board of Directors may from time to time direct and may contract for services with natural gas suppliers or pipelines which are not parties to this Agreement. The functions of NPGA shall be carried out consistent with the goal of satisfying the natural gas requirements of all NPGA participants at the lowest practical cost.

5.13 All expenses incurred by NPGA in the execution of duties under this Agreement and any similar agreements with other NPGA participants, plus a management fee to be set by the NPGA Board of Directors, shall be paid by Participant and the other NPGA participants according to a formula or formulas developed by the NPGA Board of Directors. The reimbursement of expenses incurred on behalf of the Participant and other NPGA participants shall be made within such period of time as shall be established by NPGA.

5.14 Participant is required to prepare and submit all such reports concerning schedules, loads and capabilities, and transportation facilities, and other information as may be reasonably requested by NPGA.

5.15 Participant is required to maintain continuously available and manned one telephone number for contact by NPGA and response by the Participant to a request for any of the services provided by this Agreement.

5.16 Participant shall retain the sole responsibility for the operation of its system in accordance with the principles set forth in this Agreement, and for the utilization of the information which may be provided by NPGA.

5.17 Covenant as to Rates. Participant covenants and agrees that it will set rates and charges for the services of its municipal gas utility system, and revise the same from time to time, and collect and account for the revenues therefrom, so that such rates and charges will produce revenues and receipts which will at all times be sufficient to enable Participant to pay the amounts payable by it hereunder when and as the same become due, to carry out its other obligations hereunder and to pay all other amounts which are payable from or a charge upon the revenues derived from the operation of its municipal gas utility system, including but not limited to natural gas operating expenses, as and when the same become due.

ARTICLE VI

ADMINISTRATION OF AGREEMENT

6.01 The NPGA Board of Directors shall administer this Agreement so as to accomplish the objectives of this Agreement.

6.02 The duties of the NPGA Board of Directors with respect to this Agreement include but are not limited to the following duties, performance of which is subject to the Amended and Restated NPGA Interlocal Agreement, the Bylaws of NPGA, and other policies and procedures established from time to time by the NPGA Board of Directors:

- (a) Supervise the development of plans and procedures that will result in the attainment of the objectives of this Agreement.
- (b) Specify the duties and authority of various committees and task forces which may be established from time to time by the NPGA Board of Directors in accordance with the Bylaws of NPGA.
- (c) Make such administrative arrangements as may be required pertaining to matters which are pertinent to this Agreement, but which are not specifically covered herein.
- (d) Establish standards with respect to any aspect of arrangements between Participant and any other of the NPGA participants or non-participants which it determines may adversely affect the reliability of NPGA and to review such arrangements to determine compliance with such standards.
- (e) Establish and revise as necessary reliability standards for the gas supply of NPGA. Review and approve planning and operating studies made to show conformance with reliability standards.
- (f) Develop long range plans and establish annually a plan for the ensuing ten years or longer period.
- (g) Review on a continuing basis the gas load forecast of the participant.
- (h) Review plans and procedures relating to the coordination of the gas reserves and transportation facilities and operations with adjoining systems, pools and regional gas coordinating groups.
- (i) Establish and revise rules relating to the effect of abnormal conditions on operating conditions.
- (j) Cause studies to be made as necessary for administration of the aforesaid duties.
- (k) Establish procedures for the use of service agreements with the Participant.
- (l) Coordinate the operation so as to effect optimum reliability and economy of service.
- (m) Establish rates for transactions with the Participant, including without limitation the rates for services under this Agreement. Rates and charges established by the NPGA Board of Directors will be sufficient to reimburse NPGA for expenses incurred on behalf of NPGA participants within such period of time as shall be established by NPGA.
- (n) Determine and periodically review the procedures to be followed by the Participant in restoring service following emergency conditions.

6.03 The NPGA Board of Directors shall at all times adhere to sound engineering principles and prudent utility practice and in particular shall evaluate alternative gas reserve and transportation expansion programs on appropriate uniform assumptions with respect to cost of capital, rates of escalation, carrying charges and other necessary conditions.

ARTICLE VII

GAS SERVICE AGREEMENTS

7.01 As part of this Agreement NPGA shall negotiate, contract for and administer Natural Gas Supply and Transportation Agreements with other entities. Such Agreements shall to the extent possible provide for the uninhibited flow of natural gas over the respective transportation systems in order to provide an adequate, reliable supply of natural gas to the Participant.

ARTICLE VIII

BILLINGS AND PAYMENTS

8.01 For billing purposes, the amount of gas delivered pursuant to this Agreement by NPGA or delivered to the Participant through an intervening gas transportation system during any period, shall be the amount metered at a point or points where the system of the Participant interconnects with the system of the gas transportation entity with which the Participant is interconnected and shall be as determined by such transportation entity. In the event natural gas is supplied to Participant through the transportation system of an intervening agency, all terms and conditions of the applicable transportation schedule of the intervening agency shall apply.

8.02 All bills for services supplied pursuant to this Agreement shall be rendered monthly by NPGA to the Participant not later than thirty (30) days after the end of the period to which such bills are applicable. Unless otherwise agreed upon by the NPGA Board of Directors such periods shall be from 12:01 a.m. of the first day of the month to 12:01 a.m. of the first day of the succeeding month. Bills shall be due and payable within thirty (30) days from the date such bills are rendered and payment shall be made when due and without deduction. Interest on any unpaid amount from the date due until the date upon which payment is made shall accrue at the rate of one percent per month or fraction thereof.

8.03 Both NPGA and Participant shall have the right to examine, at reasonable times, books, records and charts of the other to the extent necessary to verify the accuracy of any statement, charge or computation made under or pursuant to any of the provisions hereof.

8.04 Each month NPGA shall invoice Participant for any penalties which may be applicable which are due to an act or omission of the Participant. Participant shall pay NPGA such charges within 20 days of the invoice date except where otherwise specified in a rate schedule. NPGA may develop operational policies to which the Participant must comply. Such policies will be attached to and made a part of this Agreement.

8.05 Any late charge shall be compounded monthly. If either principal or late charges are due, any payments thereafter received shall first be applied to the late charges due, then to penalties due, then to the previously outstanding principal due, and lastly, to the most current principal due.

8.06 In the event a Participant desires to dispute all or any part of the charges submitted by NPGA it shall nevertheless pay the full amount of the charges when due and give notification in writing within sixty (60) days from the date of the statements stating the specific grounds on which the charges are disputed and the amount in dispute. The Participant will not be entitled to

any adjustment on account of any disputed charges which are not brought to the attention of NPGA within the time and in the manner herein specified. If settlement of the dispute results in a refund to the payee, interest at one percent per month or fraction thereof shall be added to the refund.

ARTICLE IX

UNCONTROLLABLE FORCES AND LIMITATIONS ON OBLIGATIONS

9.01 Force Majeure

- (a) It is expressly agreed that NPGA shall not be liable on any account whatsoever nor shall NPGA be considered to be in default with respect to any obligation hereunder if prevented from fulfilling such obligation to Participant by reason of uncontrollable forces. The term "uncontrollable forces" shall be deemed for the purposes hereof to mean any failure, interruption or diminution in delivery of gas hereunder or any act, omission or circumstance occasioned by or in consequence of accident to or breakage of pipelines, equipment or machinery, explosions, landslides, earthquakes, fires, lightning, floods, washouts, freezing, storms, the elements, natural emergencies, sabotage, the making of repairs, alterations or replacements, strikes, lockouts or other industrial disturbances, riots, insurrections, civil disturbances, pestilence, acts of God or the public enemy, war, terrorism, legal interferences, orders or requirements of any court of competent authority, depletion or destruction of gas wells or fields, diminution or failure of, or interference, partial or entire, with NPGA's natural gas supply, failure of facilities not due to lack of proper care or maintenance, or, and without limitation by the foregoing, any other causes beyond reasonable control of NPGA. With regard to any obligation NPGA is unable to fulfill by reason of uncontrollable forces NPGA will exercise due diligence to remove such disability with reasonable dispatch, but such obligation shall not require the settlement of a labor dispute except in the sole discretion of NPGA.
- (b) Participant shall not be liable to NPGA for any failure to accept natural gas hereunder when occasioned by accident to or breakage of pipelines, equipment or machinery, explosions, fires, lightning, floods, freezing, storms, the elements, natural emergencies, sabotage, riots, insurrections, civil disturbances, pestilence, landslides, washouts, strikes, industrial disturbances, legal interferences, orders or requirements of competent authority, acts of God or the public enemy, war, terrorism, or, and, without limitation by the foregoing, any other cause beyond reasonable control of the Participant. Any such cause or contingency, however, exempting Participant from liability for non-performance (excepting where prevented by valid orders or requirements of Federal, State or other governmental regulatory bodies having jurisdiction in the premises) shall not relieve Participant of its obligation to pay demand charges or reservation charges in accordance with the provisions of the applicable rate schedule. In every case, Participant shall exercise the utmost diligence to remove any such interference with its take of gas and shall resume such take at the earliest practicable time.

9.02 Limitations on Gas Receipts, Transportation and Deliveries

Whenever the capability of NPGA's or other entity's system, due to any cause whatsoever not limited to force majeure, is such that NPGA is unable to receive, transport or

deliver gas to consumers served directly or indirectly by NPGA, the quantity of gas which Participant or the consumers require, including fulfilling NPGA's requirements for injection of gas into its storage facilities, then receipts, firm transportation and deliveries shall be based on priorities established in the appropriate pipeline tariffs or agreements.

ARTICLE X

MEASUREMENT

10.01 The unit of volume for the purpose of measurement and for the determination of total heating value shall be either a cubic foot of gas or million Btu (MMbtu) as defined by the prevailing transporting entity and the applicable agreement. The point of measurement shall be the Point of Delivery identified on Exhibit B.

ARTICLE XI

11.01 Possession of Gas

NPGA shall be in control and possession of the gas delivered hereunder and responsible, as between it and Participant, for any damage or injury caused thereby until the same has been delivered to Participant at the Point of Delivery and thereafter sole responsibility and liability in relation to the gas shall attach to Participant.

11.02 Warranty of Title to Gas

NPGA warrants generally the title to all gas delivered hereunder and the right to sell the same and that such gas shall be free and clear from all liens and adverse claims.

ARTICLE XII

INDEMNIFICATION

12.01 Participant agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless NPGA and its directors, officers, employees and agents from and against all claims, damages, losses and expenses, direct or indirect, or consequential damages including, but not limited to, attorney's fees arising out of or resulting from the performance of NPGA's services hereunder.

12.02 Further, Participant shall indemnify and save harmless NPGA on account of any and all damages, claims or actions arising out of the maintenance or operation of its property or equipment.

12.03 Further, Participant agrees to indemnify NPGA from and against any and all costs, claims, losses and expenses arising out of an Event of Default (including enforcement of this Agreement). If an Event of Default has occurred, Participant shall upon demand pay to NPGA the amount of any and all such costs, claims, losses and expenses, including without limitation reasonable attorneys' fees and fees of any experts and agents, that NPGA may incur in connection with either or both of: (a) the exercise or enforcement of any of the rights of NPGA hereunder following an Event of Default or under any judgment awarded to NPGA in respect of its rights hereunder (which obligation shall be severable from the remainder of this Agreement and shall survive the entry of any such judgment); and (b) collection efforts by NPGA.

ARTICLE XIII

LIMITATION OF LIABILITY

13.01 Notwithstanding any other provision of this Agreement, NPGA's total liability to Participant for any loss or damage, including, but not limited to, special and/or consequential damages arising out of or in connection with the performance of services or any other cause shall not exceed the compensation for administrative services (excluding costs for natural gas commodity, transportation service and any pass-through costs) received by NPGA from Participant under this Agreement during the twenty-four (24) months preceding the action or omission giving rise to the loss or damage, and Participant hereby releases and will hold harmless NPGA from any liability above such amount.

ARTICLE XIV

NOTICES

14.01 Any formal notice, demand or request required or authorized by this Agreement shall be deemed properly given if mailed postage prepaid to NPGA and to the Participant's Director on the NPGA Board of Directors.

14.02 Any written notice or request of a routine character in connection with delivery of gas or in connection with operation of facilities shall be given in such a manner as the NPGA Board of Directors from time to time shall establish.

ARTICLE XV

SUCCESSORS AND ASSIGNS

15.01 This Agreement may be assigned by either Party hereto only after receipt of written approval by the other Party. The Participant may assign any of its rights under this Agreement to another entity, if permitted by applicable law, but no such assignment shall relieve the Participant of its obligations under this Agreement so long as any bonds of NPGA are outstanding and, in any event, the Participant shall not assign such rights if, in the opinion of counsel of recognized standing in the field of law relating to municipal bonds and taxation selected by NPGA, such assignment would adversely affect the exemption from federal income taxation of the interest on the bonds or NPGA's tax status.

15.02 This Agreement shall be binding upon, and inure to the benefit of, any successor to NPGA. NPGA may assign any or all of its rights hereunder, or pledge any or all of the revenues payable to it under this Agreement, pursuant to such obligations for repayment of outstanding bonds of NPGA and such assignee may enforce the provisions of this Agreement as if it were named as party hereto.

15.03 The several provisions of this Agreement are not intended to and shall not create rights of any character whatsoever in favor of any persons, corporations, or associations other than the Parties to this Agreement, and the obligations herein assumed are solely for the use and benefits of the Parties to this Agreement.

ARTICLE XVI
AMENDMENTS

16.01 This Agreement may be amended only by a written instrument signed by duly authorized representatives of each of the Parties.

ARTICLE XVII
GENERAL

17.01 All production (including ad valorem type production taxes), gathering, delivery, sales, severance, or other excise taxes or assessments upon the gas delivered hereunder by Participant to NPGA which are now or hereafter in existence or authorized for collection by any state or other governmental agency or duly constituted authority, either directly or indirectly, shall be paid or caused to be paid by Participant and Participant shall hold NPGA harmless for the payment thereof.

17.02 If, by an order, opinion, approval of a settlement of any of NPGA's rate cases, or otherwise, any appropriate regulatory body directly or indirectly requires changes in the costs attributable to transportation by NPGA hereunder or requires changes to the rate form in which such costs are recovered, then, as of the effective date of such change in attribution or rate form, the transportation rate hereunder shall be changed to reflect the full recovery from Participant of all costs attributed to the transportation hereunder or to reflect any new rate form.

17.03 The Parties recognize that the rates, terms, and conditions, for service hereunder may require change from time to time. Accordingly, NPGA's rates, terms and conditions, may from time to time be changed. NPGA shall give Participant written notice of any such change prior to its effective date. NPGA shall be entitled to collect such changed rate from Participant commencing with the effective date of such change. Participant shall be obligated to pay the changed rate, made effective in the manner described above, but nothing herein contained shall prejudice the rights of Participant to contest at any time changes to the charges for the services rendered hereunder by NPGA.

17.04 NPGA shall not be required to perform service under this Agreement on behalf of Participant to the extent Participant fails to comply with any and all of the terms and conditions of this Agreement including the applicable rate schedule.

17.05 NPGA shall have no obligation whatsoever to odorize the natural gas delivered, nor to maintain odorant levels in such gas.

17.06 This Agreement and the obligations of Participant hereunder are not general obligations of Participant and are not payable in any manner by taxation, but this Agreement and the obligations of Participant hereunder are payable and enforceable solely and only from the revenues and receipts to be derived by Participant from the operation of its municipal gas utility system. Amounts payable by Participant hereunder, or in carrying out its other obligations hereunder, shall be considered to be operating expenses of the municipal gas utility system of Participant.

17.07 Upon termination of this Agreement and payment by Participant of all amounts owed, Participant shall not be liable for any bonded indebtedness of NPGA, unless Participant

expressly authorizes and assumes such indebtedness by resolution, ordinance or other similar official action of the governing body of Participant.

ARTICLE XVIII

RELATION TO OTHER AGREEMENTS AND OBLIGATIONS

18.01 Participant represents that there are no conditions in Participant's existing agreements, including financing agreements, which will preclude Participant from performance of all obligations hereunder; and, further, Participant agrees not to enter into an agreement which will preclude performance hereunder. The failure by Participant to get approval under any financing agreement for entering into a contract, or amending or terminating any existing agreement, shall not excuse performance hereunder.

18.02 The execution of this Agreement shall not impair, amend or change any previous contracts or agreements, and such contracts and agreements shall continue, including all rates, terms, obligations and conditions until the expiration of such contracts and agreements.

18.03 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

ARTICLE XIX

PRIOR AGREEMENT

19.01 On the effective date hereunder, this Agreement shall supersede, terminate and replace that certain Gas Supply Agreement and Service Schedule BG, Total Gas Supply Agreement, by and between NPGA and Participant.

[SIGNATURE PAGE FOLLOWING.]

IN WITNESS WHEREOF, each of the Parties has caused this Gas Supply Agreement for Total Requirements Supply to be executed by its duly authorized officer as of the day and year shown below.

NATIONAL PUBLIC GAS AGENCY

BY _____

TITLE _____

DATE _____

CITY OF TRINIDAD, COLORADO

BY _____

TITLE _____

DATE _____

Attest:

City Clerk

(SEAL)

Version approved by NPGA Board of Directors on September 13, 2012.

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GAS SUPPLY AGREEMENT FOR TOTAL REQUIREMENTS SUPPLY

EXHIBIT "A"

CITY OF TRINIDAD, COLORADO

Contracts for Natural Gas required to be listed pursuant to Article V, Section 5.01 of the Gas Supply Agreement for Total Requirements Supply.

None

GAS SUPPLY AGREEMENT FOR TOTAL REQUIREMENTS SUPPLY

EXHIBIT "B"

CITY OF TRINIDAD, COLORADO

POINT OR POINTS OF DELIVERY

City of Trinidad, Colorado TBS

GAS SUPPLY AGREEMENT FOR TOTAL REQUIREMENTS SUPPLY

EXHIBIT "C"

CITY OF TRINIDAD, COLORADO

Natural gas supply and transportation contracts and agreements assigned to NPGA pursuant to Section 5.09 of the Agreement:

None

NATIONAL PUBLIC GAS AGENCY
GAS SUPPLY AGREEMENT FOR TOTAL REQUIREMENTS SUPPLY

REVISED SCHEDULE OF RATES AND CHARGES

This Revised Schedule of Rates and Charges (the "Rate Schedule") for natural gas supplied to the Participant by NPGA is a part of the Gas Supply Agreement for Total Requirements Supply between NPGA and the Participant.

SECTION 1. TERM

- 1.01 This Rate Schedule shall be effective as of April 1, 2014.

SECTION 2. POINT OF DELIVERY AND MONTHLY BILLING QUANTITIES FOR FIRM GAS SUPPLY

- 2.01 The Point of Delivery is the town border station ("TBS") of the Participant on the applicable transportation pipeline.
- 2.02 Monthly Billing Quantity in MMBtu is defined as the total metered quantity at the Point of Delivery for the current month, less the sum of Non-LPP Loads as defined under Section 6 of the Rate Schedule.

SECTION 3. SCHEDULE OF RATES FOR FIRM GAS SUPPLY

- 3.01 Gas supplies under the Rate Schedule will be purchased through the Level Purchase Plan (the "LPP") and rates for this gas shall be referred to as "LPP Rates," as defined in Section 3.02.
- 3.02 LPP Rates are defined as the Actual Cost of Gas, as defined in Section 3.03 by pipeline, plus \$0.65 per MMBtu carrying charge.
- 3.03 Actual Cost of Gas shall include: purchased gas costs, pipeline fuel losses, storage charges related to supplying gas, interest costs of financing storage, hedging activity under the LPP, plus \$0.10 per MMBtu, plus \$0.05 per MMBtu for the period of April 1, 2014 through March 31, 2015 only. Purchased gas costs shall be computed based on open market value of gas supplies and do not include discounts created by NPGA purchases of prepaid gas supplies.

Date Approved: February 13, 2014

By: 

Effective Date of this Revised Schedule of Rates and Charges: April 1, 2014.

Supersedes: Schedule of Rates and Charges dated effective July 1, 2013.

3.04 Unless a different LPP Rate is specifically agreed upon in writing between NPGA and all Participants on the same pipeline, the LPP Rate per MMBtu for each pipeline will be as follow:

NNG:	\$5.65
KMI:	\$7.08
SSC:	\$5.00
KPL:	\$5.50
CIG:	\$5.15

3.05 Pooled Gas Adjustment (PGA)

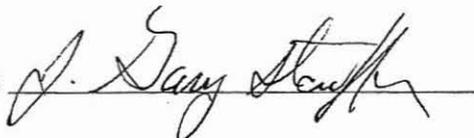
The PGA is to be applied to all sales of gas under the LPP. The purpose of the PGA is to allow NPGA to collect the difference between the LPP Rate and the Actual Cost of Gas plus \$0.65 per MMBtu as defined under Section 3.02. Whenever the monthly Actual Cost of Gas plus \$0.65 per MMBtu exceeds the base monthly LPP charge, the amount by which the base is exceeded shall be the PGA and will be applied to all sales made under the LPP. Conversely, if the Actual Cost of Gas plus \$0.65 per MMBtu is less than the base monthly LPP, the difference shall be charged as a negative PGA.

3.06 Early Pay Discount

If payment is received by NPGA from Participant, or postmarked within ten (10) days of the date that Participant's monthly invoice is rendered, then Participant shall be entitled to a discount as set forth below for the Monthly Billing Quantity billed by NPGA to Participant for that month. The invoice rendered by NPGA to Participant shall set forth the specific amounts to be paid by Participant with and without the early payment discount. If payment is received by NPGA, postmarked after the above specified ten (10) day period, the early payment discount shall not apply and Participant shall owe and pay NPGA the full amount of the invoice when due.

<u>Usage (MMBtu)</u>	<u>Discount per MMBtu</u>
0-2000	\$0.05
2001-5,000	\$0.15
5,001-12,000	\$0.35
More than 12,000	\$0.60

Date Approved: February 13, 2014

By: 

Effective Date of this Revised Schedule of Rates and Charges: April 1, 2014.

Supersedes: Schedule of Rates and Charges dated effective July 1, 2013.

3.07 Payment True-up Adjustment

In order to adjust the total billed to the Participant each fiscal year, NPGA will provide a true-up adjustment for the Actual Cost of Gas for the prior fiscal year.

At that time, any over or under billing for the previous April through March fiscal year period will be adjusted such that total billing from NPGA will equal the Actual Cost of Gas plus any applicable carrying charges. True-up adjustments will be provided by April 30 and will be included in the Participants next succeeding monthly billing.

3.08 GTI Contribution

A Gas Technology Institute (GTI) charge of \$0.01/Dth will be included on the monthly bill for all NPGA Participant volumes under the LPP rate. The total amount collected from this charge will be remitted by NPGA directly to the Gas Technology Institute on a monthly basis. Participants and non-members may also elect to include the GTI surcharge on non-LPP volumes by delivering written notice to NPGA of their desire to do so.

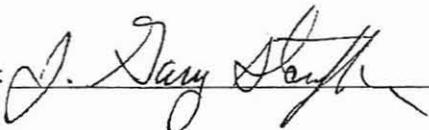
3.09 Gas Cost of Service Study for Participants

The NPGA Board of Directors has approved the purchase of a four-year Gas Cost of Service Study from the Nebraska Municipal Power Pool for each Participant that has executed a Gas Supply Agreement for Total Requirements Supply for the term of April 1, 2013 through March 31, 2023. If a Participant does not want to receive this service, which will be available for the four-year period from July 1, 2013 through June 30, 2017, the Participant will be eligible for a monthly credit equal to 1/48th of NPGA's cost for purchasing this service for that Participant during the four-year term this service is being offered to Participants. In order to receive the credit, the Participant must notify NPGA in writing of their desire to receive the credit in lieu of the Gas Cost of Service Study.

3.10 Modification of Rates

The LPP Rate established in the Rate Schedule may be modified from time to time by the NPGA Board of Directors.

Date Approved: February 13, 2014

By: 

Effective Date of this Revised Schedule of Rates and Charges: April 1, 2014.

Supersedes: Schedule of Rates and Charges dated effective July 1, 2013.

SECTION 4. TRANSPORTATION

- 4.01 All transportation costs and charges incurred by NPGA for a Participant shall be passed through and charged to the Participant. Each Participant shall pay NPGA such costs and charges equal to the cost of the transportation of gas over the transportation pipeline(s), as incurred by NPGA for such Participant.
- 4.02 In the event a transportation agreement with a transportation pipeline provides transportation for more than one Participant, the costs and charges incurred by NPGA shall be prorated to each Participant receiving such transportation service on the basis of volume.
- 4.03 Transportation costs and charges shall include, but not be limited to such items as: reservation charges, commodity transport charges, FERC ordered charges, capacity release revenue credits, storage charges and credits, and any other charges essential to the deliverability of gas.
- 4.04 Storage credits will be deducted from the Participant's monthly invoice to become included in the Actual Cost of Gas calculation as defined in Section 3.02. The current annual credits in effect for each Participant are:

Alma, Nebraska:	\$17,856
Auburn, Kansas:	\$10,392
Central City, Nebraska:	\$33,072
Falls City, Nebraska:	\$26,532
Superior, Nebraska:	\$11,436
Trinidad, Colorado	\$72,816
Wisner, Nebraska:	\$12,756

SECTION 5. INTEREST ON LATE PAYMENTS

5.01 Interest

Unpaid balances on billings shall accrue interest from the due date until paid at the rate of 1% per month.

Date Approved: February 13, 2014

By: 

Effective Date of this Revised Schedule of Rates and Charges: April 1, 2014.

Supersedes: Schedule of Rates and Charges dated effective July 1, 2013.

SECTION 6. NON-LPP LOADS

6.01 Non-LPP Loads are identifiable portions of gas requirements for NPGA Gas Bulk Participants that the Participant desires to exclude from NPGA's Total Requirements Level Purchase Program. Non-LPP Loads include any Qualified Industrial Load agreements as defined in prior rate schedules. Non-LPP Loads must meet the following criteria:

- a. Minimum annual usage of 5,000 MMBtu,
- b. Designation as Non-LPP loads prior to beginning of the fiscal year, and
- c. Measurable on a daily basis or allocated as defined blocks of monthly gas. If measured, the metering devices must meet the specifications set by NPGA. During the period between November 16 and February 15, the Participant agrees to provide daily gas usage data if required by NPGA operations staff. If allocated, the schedule of volumes designated as program volumes will be pre-determined. Monthly billing summaries will bill the Non-LPP Load volumes first, with the remainder of actual gas consumption billed at the Total Requirements-LPP rates.

6.02 NPGA's Non-LPP Load Program

- a. Participation in NPGA's Non-LPP Program requires the Participant to provide NPGA with written notice of their intent. If the Participant wishes to convert a portion of its load from LPP to Non-LPP, the Participant must take delivery of its share of any previously purchased LPP volumes at the LPP Rate.
 - b. The minimum term of service under NPGA's Non-LPP Load Program is one year.
 - c. Participant will establish a loss adjustment factor for volumes measured downstream of the TBS for purposes of monitoring, scheduling, and billing of Non-LPP Program volumes.
-
- d. A Participant who elects to operate its own hedging program as described in this Rate Schedule shall be subject to the following terms and conditions:

Date Approved: February 13, 2014

By: 

Effective Date of this Revised Schedule of Rates and Charges: April 1, 2014.

Supersedes: Schedule of Rates and Charges dated effective July 1, 2013.

- 1) Participant will purchase its total requirements under the Non-LPP Program by providing NPGA with written notice of Participant's intent,
- 2) Participant is responsible for paying transaction costs upon execution of a transaction and for all financial benefits/costs resulting from the hedging,
- 3) Participant is required to provide financial assurances as described in Section 6.06,
- 4) NPGA will not allow hedging that exceeds the projected use of the respective Participant,
- 5) NPGA staff shall not make proactive recommendations on specific hedging transactions for Participant, nor shall NPGA staff engage in research beyond gathering basic information for the purposes of executing Participant's hedging transaction,
- 6) All hedging activity must be confirmed by the Participant,
- 7) NPGA shall provide written confirmation of all terms and conditions, monthly hedging activity, and monthly settlement calculations to the Participant on a timely basis, and
- 8) Participants may jointly engage in one or more hedging transactions, but NPGA shall not make any arrangements for the administration of any agreements between Participants regarding such transactions, nor shall NPGA enforce any such agreements between cooperating Participants, nor mediate any disputes between Participants regarding the continuation, termination or liquidation of any hedging transaction.

6.03 Rates for Non-LPP Load Program volumes may vary by transportation pipeline and shall be calculated based on Actual Cost of Gas plus a \$0.65 per MMBtu carrying charge. Rates will be the bid price as mutually agreed upon by NPGA and the Participant. Rates for the volumes of a Participant who is operating its own hedging program in accordance with the terms of Section 6 shall be calculated as the monthly Actual Cost of Gas as defined in Section 3.03 by pipeline, less the hedging activity under the LPP program, plus the monthly settlement results of the Participant's hedging activity, plus \$0.65 per MMBtu carrying charge.

Date Approved: February 13, 2014

By: 

Effective Date of this Revised Schedule of Rates and Charges: April 1, 2014.

Supersedes: Schedule of Rates and Charges dated effective July 1, 2013.

- 6.04 Monthly billing for Non-LPP Loads shall equal the monthly quantity for Non-LPP Loads as set forth in Paragraph 6.01 above times the charges set forth in Paragraph 6.03 above.
- 6.05 Non-LPP Program agreements shall be created in writing between NPGA and Participant and shall specify the volumes and pricing for Non-LPP Loads between NPGA and Participant.
- 6.06 A Participant who operates its own hedging activity through NPGA will be responsible for all financial assurances required by NPGA. NPGA shall not provide any capital for a Participant who operates its own hedging activity through NPGA. NPGA and the Participant shall mutually agree to the type of financial assurance which Participant shall provide, which assurance may include letters of credit, margin accounts, or other terms mutually agreed to by NPGA and the Participant. NPGA may from time to time require, and Participant shall timely provide, an increased amount of financial assurance as determined by NPGA, in its sole discretion, to be necessary to support the hedging activity. Failure to provide such financial assurance as required may result in termination of one or more hedging transactions applicable to Participant.

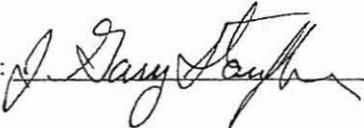
SECTION 7. MODIFICATIONS

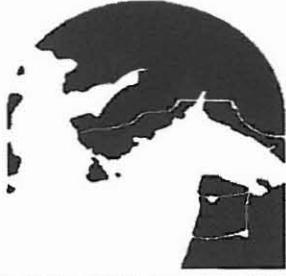
- 7.01 This Rate Schedule shall remain effective until modified by the NPGA Board of Directors.

Date Approved: February 13, 2014

Effective Date of this Revised Schedule of Rates and Charges: April 1, 2014.

Supersedes: Schedule of Rates and Charges dated effective July 1, 2013.

By: 



CITY OF TRINIDAD, COLORADO
1876

COUNCIL COMMUNICATION

3

CITY COUNCIL MEETING: November 12, 2014
PREPARED BY: Tara Marshall
DEPT. HEAD SIGNATURE: *Tara Marshall*
OF ATTACHMENTS:

SUBJECT: Presentation of HB 1311 and the New Historic Preservation Tax Credits available in mid-2015.

PRESENTER: Tara Marshall, City Management Intern
Joe Saldibar, History Colorado

RECOMMENDED CITY COUNCIL ACTION: No action necessary, this information is to prepare City Council for the upcoming discussion and recommended adoption of an ordinance creating a Certified Local Government.

SUMMARY STATEMENT:

In 2014, the Colorado Assembly created legislation by passing HB 1311. This legislation was created with Pueblo and Trinidad in mind and was introduced by Senator Larry Crowder and Representative Tim Dore. It was the first attempt to create a significant tax advantage to the rehabilitation of historic buildings. The tax credits that will become available as a result of the legislation will make the possibility of rehabilitating our large downtown buildings more equitable.

Joe Saldibar works for History Colorado in the Office of Archeology and Historic Preservation. He was instrumental in the creation of the legislation and has been working with several agencies to determining the best practices for implementing the tax credits that will become available in mid-2015.

EXPENDITURE REQUIRED: Not Applicable

SOURCE OF FUNDS: Not Applicable

POLICY ISSUE: Upcoming discussion of the potential adoption of an ordinance creating a Certified Local Government.

ALTERNATIVE: Not Applicable

BACKGROUND:

In April 2014, the City Council asked that a Task Force be formed to research and recommend the formation of a Certified Local Government that would be poised to facilitate access to tax credits.

3



COUNCIL COMMUNICATION

4

CITY COUNCIL MEETING: November 12, 2014
PREPARED BY: Audra Garrett, City Clerk
DEPT. HEAD SIGNATURE: *Audra Garrett*
OF ATTACHMENTS: 4

SUBJECT: Introduction of Planning Commission applicants

PRESENTER: Audra Garrett, City Clerk

RECOMMENDED CITY COUNCIL ACTION: Consider the applicants

SUMMARY STATEMENT: N/A

EXPENDITURE REQUIRED: No

SOURCE OF FUNDS: N/A

POLICY ISSUE: Advertisement was made seeking applicants to fill the vacancies as required by ordinance

ALTERNATIVE: N/A

BACKGROUND INFORMATION:

Advertisement was had seeking applicants to fill vacancies. Letters of interest were received from Liz Aragon, Robert Bruce and Tom Potter. All are qualified to fill the vacancies, which number two.

A current board composition list is attached.

4

October 27th. 2014

City Council:

I would like to serve on the Planning and Zoning Commission Board.

Thank- you for your consideration.

Regards,



Liz Aragon

1736 Jillett St
Verified voter regis + residence,
City of Trinidad AB
OCT 27 2014
City Clerk's Office

846-7650

Robert Bruce
227 Elm Street
Trinidad, CO 81082
719 680 9520

October 28th, 2014

City of Trinidad
135 North Animas
Trinidad, CO 81082

Attn: Audra Garret, City Manager

RE: City Planning, Zoning, and Variance Committee

Dear Audra

I am inquiring about an open position on the City of Trinidad's "Planning, Zoning and Variance Committee". I feel my knowledge and experience in both construction and design would be a considerable asset to the board and the various challenges they face.

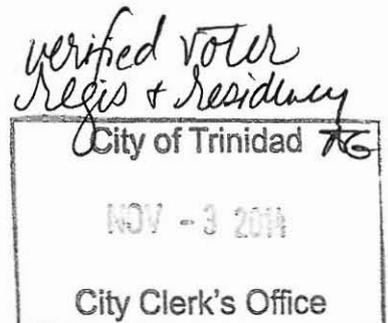
I have currently been residing at the aforementioned address for the past fifteen years. During this time I have been serving Trinidad and Southern Colorado as a general contractor, historic preservationist, woodworker & mason. Enclosed please find my personal resume.

I look forward to hearing from you,

Sincerely,

ROBERT BRUCE

Robert Bruce



PERSONAL RESUME

Robert Bruce
227 Elm Street
Trinidad, CO 81082
719 846 3709

Education:

Lake Forest High School-Lake Forest, Illinois-Graduate, 1981
Western Illinois University-Macomb, Illinois, 1981-1985
Bachelor Degree-Industrial Technology, specialization in Construction Management

Work Experience:

- 2008-Present Concept LLC Trinidad, Colorado
Owner, General Contractor & lead carpenter/fabricator for a variety of high quality Projects, including ,but not limited to, residences, cabinets & furniture.
- 1998-2008 Southern Colorado Woodworks LLC Trinidad, Colorado
Owner, General Contractor & lead carpenter. Custom home in La Veta, Colorado, 1999-2000. Ran woodworking shop full-time 2001-2004, kitchens, built-ins, furniture. Completed a variety of restoration project in Trinidad, CO, Denver, CO and Fire Island, New York.
- 1992-1998 Self-employed Carpenter Denver, Colorado
Specialized in Restoration of Victorian and Arts & Crafts style homes and associated period woodworking and stained glass. Projects thru-out Denver's older neighborhoods.
- 1990-1992 Interior Woodworking Inc. Longmont, Colorado
Purchasing Agent/ Shop hand for retail fixtures. Clients included Coach Leatherware and Metropolitan Museum of Art Shops.
- 1985-1990 Capital Construction Group Inc. Chicago, Illinois
Estimator/Project Manager for interior tenant finish project. Projects included Retail build-outs @ 900 North Michigan ave., Lobby Renovations @ 500 North Michigan Ave. & over 200,000 s.f. of office space thru-out downtown Chicago.

Tom Potter
403 N Commercial St
Apt 301
Trinidad CO 81082

November 3, 2014

Ms Audra Garrett
City Manager
Trinidad CO 81082

Dear Audra

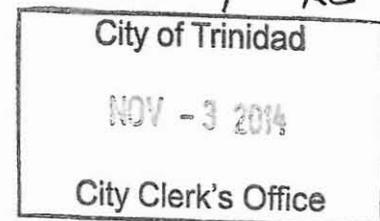
I would be interested in serving on the Planning Commission should a vacancy occur.

Thanks



Tom Potter

*verified voter regis
+ residency AC*



PLANNING, ZONING AND VARIANCE COMMISSION (4 yr terms - 7 members - Council appointed)
Home Rule Charter 8.4 - not less than 5 nor more than 9 members - appointed by Council

<u>DATE</u> <u>APPOINTED</u>	<u>APPOINTEE</u>	<u>ADDRESS</u>	<u>PHONE #</u>	<u>TERM</u> <u>EXPIRES</u>
09/07/10	Vacant			09/01/2014
11/19/13	Wayne Pritchard	728 Tillotson St.	242-7951	09/01/2015
10/04/11	Glenn T. Davis	316 E. Third St.	846-9142	09/01/2015
11/07/12	Vacant			09/01/2016
09/04/12	Richard George	824 Tillotson	846-7052	09/01/2016
11/05/14	Carl Goodall	1701 Santa Fe Trail	859-0523	09/01/2017
09/01/09	Frank Leone Jr.	502 S. Walnut	846-4170	09/01/2017

CHAIRPERSON: Glenn T. Davis

5



COUNCIL COMMUNICATION

CITY COUNCIL MEETING: November 12th, 2014
PREPARED BY: Louis Fineberg
DEPT. HEAD SIGNATURE: 
OF ATTACHMENTS: 2

SUBJECT: Contract Approval for Purgatoire River Pedestrian Bridge Grant

PRESENTER: Louis Fineberg, Planning Director

RECOMMENDED CITY COUNCIL ACTION: Council should approve the contract.

SUMMARY STATEMENT:

Attached is the professional services agreement from SGM for the design portion of the Purgatoire River Pedestrian Bridge project.

EXPENDITURE REQUIRED: \$52K.

SOURCE OF FUNDS: CIP.

POLICY ISSUE: Should the Council approve the contract?

ALTERNATIVE: The Council could decide not to approve the contract.

5

AGREEMENT FOR [PROFESSIONAL] SERVICES

THIS AGREEMENT FOR [PROFESSIONAL] SERVICES (the "Agreement") is made and entered into effective this ____ day of _____, 2014, by and between the CITY OF TRINIDAD, a Colorado home rule municipality whose address is 135 North Animas Street, Trinidad, Colorado (the "City"), and SGM, Inc., a civil engineering & surveying firm whose principal business address is 225 East 2nd Street, Salida, CO 81201 ("Contractor").

WHEREAS, the City desires to retain the services of Contractor; and

WHEREAS, Contractor desires to provide services to the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. SERVICES; DELIVERABLES.

a. Services. The City agrees to retain Contractor to provide the services (**Scope of Work**) set forth in **SGM proposal dated 8/29/14**, which may also include a **project description**, attached hereto and incorporated herein by reference (the "Services"), and Contractor agrees to so serve.

b. Controlling Terms. In the event of any conflict between the terms and conditions contained in this Agreement and those contained in any Exhibit or Attachment hereto, the terms and conditions of this Agreement shall prevail and as such shall supersede the conflicting terms and/or conditions of such Exhibit or Attachment.

c. Deliverables. In the event any deliverables, set forth in **SGM proposal dated 8/29/14**, required under this Agreement consist of reports, surveys, maps, plans, drawings or photographs, or any other materials that lend themselves to production in electronic format, as determined by the City, Contractor shall provide such deliverables to the City in both hard copy and one or more electronic formats acceptable to the City, unless otherwise directed by the City in writing, and Contractor's failure to do so shall constitute a material breach of this Agreement. Acceptable electronic formats may include, but are not necessarily limited to, editable Word document, editable PDF document, AutoCAD and specified GPS/GIS format(s). Prior to beginning the Services, Contractor shall consult with the City to determine which electronic formats are acceptable. Any and all deliverables and other tangible materials produced by Contractor pursuant to this Agreement shall at all times be considered the property of the City.

e. Contractor Representations. Contractor warrants and represents that it has the requisite authority, capacity, experience and expertise to perform the Services in compliance with the provisions of this Agreement and all applicable laws and agrees to perform the Services on the terms and conditions set forth herein. The City reserves the right to omit any of the Services identified in Exhibit A upon written notice to Contractor.

2. COMPENSATION; PAYMENT.

a. Amount. As compensation for performance of the Services, the City agrees to pay Contractor a sum not to exceed fifty-one thousand one hundred Dollars (**\$ 51,100**); provided, however, that if the actual cost of the Services is less than the foregoing, the City shall compensate Contractor only up to the amount of such actual cost.

b. Changed Conditions. Contractor specifically waives any claim for additional compensation for any changed condition arising out of any one or more of the following, unless such changed condition is caused in whole or in part by acts or omissions within the control of the City or persons acting on behalf thereof:

i. A physical condition of the site of an unusual nature;

ii. A condition differing materially from those ordinarily encountered and generally recognized as inherent in work of the character and at the location provided for in the Contract; or

iii. As a result of any force majeure.

c. Invoices and Payment. The City shall make payment within thirty (30) days after receipt and approval of invoices submitted by Contractor. Invoices shall be submitted to the City not more frequently than monthly and shall identify the specific Services performed for which payment is requested.

d. IRS Form W-9. Contractor shall provide to the City a completed Internal Revenue Service Form W-9 not later than the date upon which Contractor submits its first invoice to the City for payment. Failure to provide a completed Form W-9 may result in delay or cancellation of payment under this Agreement.

3. PERFORMANCE.

a. Prosecution of the Services. Contractor shall, at its own expense, perform all work and furnish all labor, materials, tools, supplies, machinery, utilities and other equipment that may be necessary for the completion of the Services, in a professional and workmanlike manner, except as otherwise provided in Work Orders or attachments thereto.

b. Licenses and Permits.

i. Licenses. Contractor and each subcontractor shall be responsible to obtain all licenses required for the Services, including a City (or other applicable governmental jurisdictions) Contractor's license, if required. Contractor shall pay any and all City license fees.

ii. Permits. Contractor shall obtain any and all permits required for the Services. No charge will be made for any City permit required for the Services.

c. Rate of Progress. Contractor acknowledges and understands that it is an essential term of this Agreement that Contractor maintain a rate of progress in the Services that will result in completion of the Services in accordance with this Agreement, and to that end, Contractor agrees to proceed with all due diligence to complete the Services in a timely manner in accordance with this Agreement.

d. Monitoring and Evaluation. The City reserves the right to monitor and evaluate the progress and performance of Contractor to ensure that the terms of this Agreement are being satisfactorily met in accordance with the City's and other applicable monitoring and evaluating criteria and standards. Contractor shall cooperate with the City relating to such monitoring and evaluation.

e. Drugs, Alcohol and Workplace Violence; Compliance with Applicable Law. Contractor and its employees, agents and subcontractors, while performing the Services or while on City property for any reason during the term of this Agreement, shall adhere to the City's policies applicable to City employees regarding drugs, alcohol and workplace violence. A copy of such policies will be made available to Contractor upon request. Contractor further covenants and agrees that in performing the Services hereunder, it shall comply with all applicable federal, state and local laws, ordinances and regulations.

f. Specific Performance. In the event of a breach of this Agreement by Contractor, the City shall have the right, but not the obligation, to obtain specific performance of the Services in addition to any other remedy available under applicable law.

4. TERM AND TERMINATION.

a. Term. The Term of this Agreement shall be from the date first written above until May 31st, 2016, upon which date all Services shall be completed to the City's satisfaction unless the Term is extended by written agreement of the parties.

b. Termination.

i. Generally. The City may terminate this Agreement without cause if it determines that such termination is in the City's best interest. The City shall effect such termination by giving written notice of termination to Contractor, specifying the effective date of termination, at least fourteen (14) calendar days prior to the effective date of termination. In the event of such termination by the City, the City shall be liable to pay Contractor for Services performed as of the effective date of termination, but shall not be liable to Contractor for anticipated profits. Contractor shall not perform any additional Services following receipt of the notice of termination unless otherwise instructed in writing by the City.

ii. For Cause. If, through any cause, Contractor fails to fulfill its obligations under this Agreement in a timely and proper manner, violates any provision of this Agreement or violates any applicable law, the City shall have the right to terminate this Agreement for cause immediately upon written notice of termination to Contractor. In the event of such termination by the City, the City shall be liable to pay Contractor for Services performed as of the effective date of termination, but shall not be liable to Contractor for anticipated profits. Contractor shall not perform any additional Services following receipt of the notice of termination. Notwithstanding the foregoing, Contractor shall not be relieved of liability to the City for any damages sustained by the City by virtue of any breach of this Agreement, and the City may withhold payment to Contractor for the purposes of setoff until such time as the exact amount of damages due to the City from Contractor is determined.

5. FORCE MAJEURE Neither party shall be liable for failure to perform that party's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service. No party is entitled to terminate this Agreement under Clause 4 (Term and Termination) in such circumstances.

If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the nonperforming party must prove that the party took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of an event described in Clause 5.

6. INDEMNIFICATION. Contractor shall be liable and responsible for any and all damages to persons or property caused by or arising out of the actions, obligations or omissions of Contractor or its employees, agents, representatives or other persons acting under Contractor's direction or control in performing or failing to perform the Services under this Agreement. Contractor shall indemnify and hold harmless the City, its elected and appointed officials and its employees, agents and representatives (the "Indemnified Parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including, but not limited to, attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the negligent, grossly negligent, willful and wanton, or intentional actions or omissions of Contractor and/or its employees, agents or representatives or other persons acting under Contractor's direction or control. The provisions set forth in this Section shall survive the completion of the Services and the satisfaction, expiration or termination of this Agreement.

7. INSURANCE.

a. Commercial General Liability Insurance. Contractor shall procure and keep in force during the duration of this Agreement a policy of comprehensive general liability insurance insuring Contractor, and naming the City as an additional insured, against any liability for personal injury, bodily injury or death arising out of the performance of the Services with at least One Million Dollars (\$1,000,000) each occurrence. The limits of such insurance shall not, however, limit the liability of Contractor hereunder.

b. Products and Completed Operations Insurance. Contractor shall procure and keep in force during the duration of this Agreement a policy of products and completed operations insurance insuring Contractor, and naming the City as an additional insured, against any liability for bodily injury or property damage caused by the completed Services, with a combined single limit of at least One Million Dollars (\$1,000,000). The limits of such insurance shall not, however, limit the liability of Contractor hereunder.

c. Comprehensive Automobile Liability Insurance. Contractor shall procure and keep in force during the duration of this Agreement a policy of comprehensive automobile liability insurance insuring Contractor, and naming the City as an additional insured, against any liability for personal injury, bodily injury or death arising out of the use of motor vehicles and covering operations on or off the site of all motor vehicles controlled by Contractor that are used in connection with performance of the Services, whether the motor vehicles are owned, non-owned or hired, with a combined single limit of at least One Million Dollars (\$1,000,000). The limits of such insurance shall not, however, limit the liability of Contractor hereunder.

d. Professional Liability Insurance. If Contractor is an architect, engineer, surveyor, appraiser, physician, attorney, accountant or other licensed professional, or if it is customary in the trade or business in which Contractor is engaged to carry professional liability insurance, or if the City otherwise deems it necessary, Contractor shall procure and keep in force during the duration of this Agreement a policy of errors and omissions professional liability insurance insuring Contractor against any professional liability with a limit of at least One Million Dollars (\$1,000,000.00) per

claim and annual aggregate. The limits of such insurance shall not, however, limit the liability of Contractor hereunder.

e. Terms of Insurance.

i. Insurance required by this Section shall be with companies qualified to do business in the State of Colorado and may provide for deductible amounts as Contractor deems reasonable for the Services, but in no event greater than Ten Thousand Dollars (\$10,000.00). Contractor is responsible for payment of any such deductible. No such policies shall be cancelable or subject to reduction in coverage limits or other modification except after thirty (30) days prior written notice to the City. Contractor shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal Contractor changes to "occurrence," Contractor shall carry a twelve (12) month tail. Contractor shall not do or permit to be done anything that shall invalidate the policies.

ii. No "Pollution Exclusion."

(a) The insurance required by this Section shall cover any and all damages, claims or suits arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants, and shall not exclude from coverage any liability or expense arising out of or related to any form of pollution, whether intentional or otherwise.

(b) In the event Contractor is unable to procure a policy of comprehensive general liability insurance in compliance with the provisions of subsection ii(a) above, Contractor shall secure and maintain either a rider or a separate policy insuring against liability for pollution related damages, claims or suits, as described in subsection ii(a), with at least One Million Dollars (\$1,000,000) each occurrence, subject to approval by the City, which approval shall not be unreasonably withheld.

iii. The insurance policies described in herein shall be for the mutual and joint benefit and protection of Contractor and the City. Except for the professional liability policy, all insurance policies required herein shall provide that the City, although named as an additional insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to the City or its officers, employees or agents by reason of the negligence of Contractor or its officers, employees, agents, subcontractors or business invitees. Such policies shall be written as primary policies not contributing to and not in excess of coverages the City may carry.

f. Other Insurance. During the term of this Agreement, Contractor shall procure and keep in force workers' compensation insurance and all other insurance required by any applicable law.

g. Evidence of Coverage. Before commencing work under this Agreement, Contractor shall furnish to the City certificates of insurance policies and all necessary endorsements evidencing insurance coverage required by this Agreement. Contractor understands and agrees that the City shall not be obligated under this Agreement until Contractor furnishes such certificates of insurance and endorsements. In the event the Term of this Agreement extends beyond the period of coverage for any insurance required herein, Contractor shall, not less than ten (10) days prior to the expiration of any such insurance coverage, provide the City with new certificates of insurance and endorsements evidencing either new or continuing coverage in accordance with the requirements of this Agreement.

8. SUBCONTRACTS – INSURANCE. Due to the nature of the Services, Contractor hereby agrees that it will not engage subcontractors to perform any part of the Services without the express written consent of the City, which shall not be unreasonably withheld. If such consent is granted, Contractor agrees to include the insurance requirements set forth in this Agreement in all subcontracts. The City shall hold Contractor responsible in the event any subcontractor fails to procure and maintain, for the duration of this Agreement, insurance meeting the requirements set forth herein. The City reserves the right to approve variations in the insurance requirements applicable to subcontractors upon joint written request of subcontractor and Contractor if, in the City's sole discretion, such variations do not substantially affect the City's interests.

9. SALES AND USE TAX. Unless specifically exempt, all materials provided and equipment used in the performance of services within the City are subject to City Sales & Use Tax, including services performed by a contractor on behalf of the City.

a. Contractor Responsible for Tax. Contractor is subject to the tax on all purchases, fabrication, manufacture or other production of tangible personal property used, stored or consumed in performance of the Services.

b. Specific Industry Standard. The Specific Industry Standard for Construction and Contractors (Regulation 20-S.I.15) can be provided upon request by contacting the City's Finance Department, , at 719-846-9843.

c. Equipment. Prior to or on the date Contractor locates equipment within the City to fulfill this Agreement, Contractor shall file a declaration describing each anticipated piece of equipment the purchase price of which was two thousand five hundred dollars (\$2,500) or greater, stating the dates on which Contractor anticipates the equipment to be located within and removed from the boundaries of the City and stating the actual or anticipated purchase price of each such anticipated piece of equipment along with any other information deemed necessary by the City. When such declared equipment is located within the City for a period of thirty (30) days or less, Contractor may include sales and use tax calculated on one-twelfth (1/12) of the purchase price of such equipment in the contract amount, in compliance with Section 20-5-V of the Commerce City Sales & Use Tax Code. If Contractor fails to declare the equipment to the City prior to or on the date Contractor locates the equipment within the City, none of the sales and use tax due on the equipment shall be allowed as a contract expense.

10. UNDOCUMENTED WORKERS – COMPLIANCE WITH C.R.S. § 8-17.5-102.

a. Contractor hereby certifies that, as of the date of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in the E-verify Program or Department Program as defined in C.R.S. § 8-17.5-101 in order to confirm the eligibility of all employees who are newly hired to perform work under this Agreement.

b. Contractor 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 Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

c. Contractor is prohibited from using either the E-verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

d. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:

i. Notify the subcontractor and the City within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to this subparagraph d the subcontractor does not stop employing or contracting with the illegal alien; provided, however, that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

e. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department is undertaking pursuant to the authority established in Article 17.5 of Title 8, C.R.S.

f. If Contractor violates this Section, the City may terminate this Agreement for breach of contract. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the City.

g. Verification of lawful presence; Compliance with C.R.S. § 24-76.5-103.

i. If Contractor is a natural person or a sole proprietor without employees (*i.e.*, not a corporation, limited liability company, partnership or other similar entity) and is 18 years of age or older, he/she must do the following:

(a) Complete the affidavit attached to this Agreement as **an additional Exhibit**; and

(b) Attach a photocopy of the front and back of one of the valid forms of identification noted on **Exhibit _**.

ii. If Contractor executes the affidavit stating that he/she is an alien lawfully present in the United States, the City shall verify his/her lawful presence through the federal systematic alien verification or entitlement program, known as the "SAVE Program," operated by the U.S. Department of Homeland Security or a successor program designated by said department. In the event the City determines through such verification process that Contractor is an alien not lawfully present in the United States, the City shall terminate this Agreement and shall have no further obligation to Contractor hereunder.

11. CONTRACTOR'S REMEDIES FOR BREACH.

a. Contractor may terminate this Agreement in the event of non-payment of sums due only as provided in this Section, except where non-payment is the result of Contractor's failure to provide the City with a completed IRS Form W-9 as required herein. In the event Contractor elects to terminate this Agreement for non-payment of sums due, Contractor shall first provide the City notice of Contractor's intent to terminate and allow the City ten (10) days within which to make payment. Contractor's termination shall become effective immediately upon the City's failure to make payment within such ten-day period.

b. Pending resolution of any material breach by the City, Contractor may, in addition to any other remedies provided by law, discontinue performance of the Services without being in breach of this Agreement.

12. NOTICES. Written notices required under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the City:

Louis Fineberg, Planning Director
Department of Planning
135 North Animas Street
Trinidad, CO 81082

If to Contractor:

Matt Hutson, Project Manager
SGM, Inc.
225 East 2nd Street
Salida, CO 81201

13. GENERAL PROVISIONS.

a. Independent Contractor; No Partnership or Agency. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, the relationship between Contractor and the City shall be as independent contractors, and neither the City nor Contractor shall be deemed or constitute an employee, servant, agent, partner or joint venturer of the other. Contractor is obligated to pay federal and state income tax on any money earned pursuant to this Agreement, and neither Contractor nor Contractor's employees, agents or representatives are entitled to workers' compensation benefits from the City.

b. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the parties. It is the express intention of the parties that any person other than the City and Contractor shall be deemed to be only an incidental beneficiary under this Agreement.

c. No Assignment. Contractor shall not assign this Agreement without the City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

d. No Waiver. The waiver of any breach of a term, provision or requirement of this Agreement shall not be construed as or deemed a waiver of any subsequent breach of such term, provision or requirement or of any other term, provision or requirement of this Agreement.

e. Governing Law and Venue; Recovery of Costs. This Agreement shall be governed by the laws of the State of Colorado. Venue for state court actions shall be in the 3rd Judicial District in Las Animas County, Colorado, and venue for federal court actions shall be in the United States District Court for the District of Colorado. In the event legal action is brought to resolve any dispute among the parties related to this Agreement, the prevailing party in such action shall be entitled to recover reasonable court costs and attorney fees from the non-prevailing party.

f. 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, C.R.S. §§ 24-10-101, *et seq.*

g. Entire Agreement; Binding Effect. This Agreement contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or

amended except by written agreement of the parties. This Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, personal representatives, successors and assigns.

h. Time of the Essence. Contractor acknowledges that time is of the essence in the performance of this Agreement. Contractor's failure to complete any of the Services contemplated herein during the Term of this Agreement, or as may be more specifically set forth in an Exhibit hereto, shall be deemed a breach of this Agreement.

i. Authority. The parties represent and warrant that they have taken all actions necessary to legally authorize the undersigned signatories to execute this Agreement on behalf of the parties and to bind the parties to its terms.

j. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

k. Headings. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.

l. Severability. In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

m. Acknowledgement of Open Records Act – Public Document. Contractor hereby acknowledges that the City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*, and as such, this Agreement may be subject to public disclosure thereunder.

14. ADDITIONAL GENERAL PROVISIONS. Please attach (or insert below, 14. a., etc.) any additional provisions, specific to the project named above, Consultant background(s), requirements of the granting agency if applicable, or any other provisions requested by the Contractor.

[Remainder of this page intentionally left blank – signature page(s) follow]



Section 4 - Approach

The RFP indicates that the design phase is to be completed by October 17th, 2014. With an award date of September 9th, this provides a mere six weeks to complete the design phase. This is a very aggressive design schedule, but is obtainable if the design can be advanced in parallel to the environmental work and if a preferred bridge location is selected at the onset of the project. It is unlikely that this schedule will afford any time for developing alignment alternatives or significant intermediate design review periods.

Kick-off Meeting

If SGM is selected to work with the City to implement this project our first task would be to meet with City staff and hold an initial kick off meeting. SGM will include our surveyor as well as consultants for both the survey, landscape, environmental and geotechnical work.

A draft schedule will be provided to all prior to the meeting. This schedule will be discussed, key milestones and critical deadlines agreed upon. The draft schedule will be finalized after this meeting and will become part of our team and consultant agreements.

Survey, Geotechnical and Wetlands Delineation

After the walk-through, we will initiate field survey for the project. The survey work will include adequate cross sections to allow for hydraulic modeling of the flow channel. Survey data and cross sections will be used for both the construction drawing production as well as hydraulic modeling. Concurrently with the survey work, we will initiate the geotechnical investigations and the wetlands delineation survey.

Design

All design will be in accordance with CDOT and City standards, and regular communication with staff will be an important part of our management of the project.

A major element of the design will be to determine the 100-year flood flow rate. This flow rate coupled with the surveyed cross sections will be used to perform the hydraulic analysis.

Conduct Environmental Processes

SGM will coordinate required environmental work with our team member, ERO Resources. ERO is very familiar with the CDOT requirements and has worked with SGM on numerous CDOT Local Agency projects.



Final Office Review (FOR)

SGM prepares 90% drawings based on team input and feedback received from CDOT and County. We will complete project drawings, prepare project specifications, bid schedule and FOR level construction cost estimate. This package is delivered to CDOT with the utility clearances and environmental work.

At this stage we will again meet with staff to review the project plans and specifications. Based on CDOT FOR comments, we will edit the design package (plans, specifications and estimate) and complete the package for advertising and bidding.

Acquire Right of Way

At this point, we assume that the entire project is within City right of way and that no acquisition of right of way is needed. However, CDOT requirements are such that this must be verified and a map produced to present this information. If required, SGM can assist with right of way acquisition; however, we don't believe this will be needed for this project.

Obtain Utility Agreements and Clearances

SGM does this with the local utility providers. SGM reaches out to the utility owners within the project limits, to make sure that the work does not conflict with utilities. It is possible that at this location, no utilities cross the existing culverts. However, we have yet to be so lucky.

Bid Process

At the end of the design process we will prepare final bid plans and documents. We will assist the City with advertising the project and answer any contractor questions during the advertisement and bidding phase.

Upon award of the contract we will provide construction observation and management throughout the duration of the project. SGM will also handle contractor submittal review and approval. We will provide review of pay requests, verification of wage rates and construction support as needed by the City.

6



COUNCIL COMMUNICATION

CITY COUNCIL MEETING: November 12th, 2014
PREPARED BY: Louis Fineberg
DEPT. HEAD SIGNATURE: *[Signature]*
OF ATTACHMENTS: 3

SUBJECT: DOLA EIAF Grant Request for Water Treatment Plant Upgrades

PRESENTER: Louis Fineberg, Planning Director

RECOMMENDED CITY COUNCIL ACTION: Council should approve the request.

SUMMARY STATEMENT:

The grant request would be for \$1M with a \$400K City match from the Water Fund. The project would entail designing and installing a new 150,000 gallon water tank at the treatment facility proximate to North Lake. Specific tasks are outlined in the attached budget.

EXPENDITURE REQUIRED: \$400K.

SOURCE OF FUNDS: Water Fund.

POLICY ISSUE: Should the Council approve the grant request?

ALTERNATIVE: The Council could decide not to approve the grant request.

6

APPLICATION SUBMISSION INSTRUCTIONS AND OFFICIAL BOARD ACTION DATE (REQUIRED)

Application and attachments must be submitted electronically in

WORD .DOC (Preferred) or .PDF Format (Unsecured) to:

ImpactGrants@state.co.us

Please Cc your [Regional Field Manager](#) all documents as well to ensure receipt.

In email subject line include: Applicant Local Government name and Tier for which you are applying

-example- **Subject:** Springfield County EIAF Grant Request, Tier 1

NOTE: Please do not submit a scanned application (scanned attachments ok).

(If you are unable to submit electronically please contact your [DOLA regional manager](#))

For any questions related to the electronic submittal please call Bret Hillberry @ 303.864.7730

Attachments List (Check and submit the following documents, if applicable):

- ▶ Preliminary Engineering Reports _____
- ▶ Architectural Drawings _____
- ▶ Cost Estimates _____
- ▶ Detailed Budget _____
- ▶ Map showing location of the project _____
- ▶ Attorney's TABOR decision _____

Official Board Action taken on

_____ Date

Submission of this form indicates official action by the applicant's governing board authorizing application for these funds.



Location: Water Treatment Plant
 Process: **Filter Backwash Supply**
 Project: **Replacement of Existing Elevated Steel Tank - Alternative 1**
 Date: 2014 - Updated with Caldwell Quote
 By:

Total Project Cost Estimate Summary Sheet

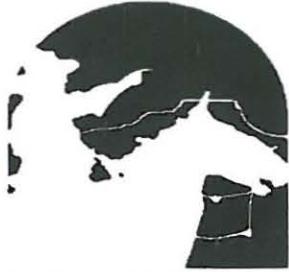
Description of Construction Cost		Total Cost
New Multi Column Elevated Steel Storage Tank (150,000 gallon)		\$ 1,026,614
Total Construction Cost		\$ 1,026,614
Summary of Engineering Fees		
Engineering - Predesign	0.0%	\$ -
Engineering - Design & Bidding Services	7.0%	\$ 71,863
Engineering - Construction	2.0%	\$ 20,532
Resident Engineering	3.0%	\$ 30,798
Post Construction Phase	1.0%	\$ 10,266
Total Engineering Cost		\$ 133,460
Summary of City Administration Costs		
Control System	2.5%	\$ 25,665
Miscellaneous	2.5%	\$ 25,665
Material Testing	1.0%	\$ 10,266
Total Administrative Cost		\$ 61,597
Subtotal Costs		\$ 1,221,671
City of Trinidad Contingencies	10.0%	\$ 122,167
Total Costs in 2013		\$ 1,343,838
Escalation Cost @ 4.5% per year from 2014 to 2015		\$ 60,473
Total Project Cost		\$ 1,404,311

Black & Veatch Corp.

City of Trinidad, Colorado
 Water Treatment Plant Improvements
 Filter Backwash Supply Improvements
 Conceptual Opinion of Construction Cost
**Alternative 1 - Replacement of 125,000 Gallon Elevated Storage Tank with
 a 160,000 gallon Multi-Column Elevated Tank**

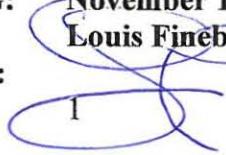
Updated with Caldwell Quote

<u>Item Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Cost</u> \$	<u>Total Cost</u> \$
General Requirements				
Mobilization	2.0%	Lump Sum		17,510
Supervision	5.0%	Lump Sum		43,775
Temporary facilities	1.2%	Lump Sum		10,506
Temporary utilities	0.8%	Lump Sum		7,004
Equipment rental & misc.	0.4%	Lump Sum		3,502
Subtotal - General Requirements				<u>82,297</u>
Demolition				
Remove Existing Elevated Tank		Lump Sum		50,000
Excavation & Backfill of Footings	33	CY	25.00	828
Existing Tank Concrete Footing/Vault	33	CY	250.00	8,283
Yard Piping Removal				
16"	55	Lin Ft	48.00	2,640
4"	55	Lin Ft	12.00	660
Demolition				
Surfacing				
Concrete Driveway Removal for New Piping	23	SY	10.00	230
Saw Cut trench width	40	Lin Ft	2.50	100
Remove Existing Engine Generator for Relocation				0
Yard Work				
Yard Piping				
24" Backwash Supply	180	Lin Ft	330.00	59,400
8" Plant Service Water Supply	180	Lin Ft	80.00	14,400
Surfacing				
Concrete Driveway replacement	23	SY	25.00	575
Finish Grading/Seeding/Sodding	2,222	SY	1.00	2,222
Multi Column Elevated Storage Tank				
Structural Excavation	33	CY	50.00	1,657
160,000 Elevated Storage Tank	160,000	gallon		682,500
Foundation, Cast-in-Place Concrete				
Column footing, shallow	20	CY	650.00	13,000
Fdn Mass, shallow	60	CY	650.00	39,000
Subtotal - Multi Column Elevated Storage Tank				<u>957,792</u>
25% Contingencies Class 4 (5% included in tank cost)				<u>68,823</u>
Total Construction - Multi Column Elevated Storage Tank				<u>1,026,614</u>



CITY OF TRINIDAD, COLORADO
1876

COUNCIL COMMUNICATION

CITY COUNCIL MEETING: November 12th, 2014
PREPARED BY: Louis Fineberg
DEPT. HEAD SIGNATURE: 
OF ATTACHMENTS: 1

SUBJECT: Contract Approval for CDOT Wayfinding Signage Grant

PRESENTER: Louis Fineberg, Planning Director

RECOMMENDED CITY COUNCIL ACTION: Council should approve the contract.

SUMMARY STATEMENT:

Attached is the CDOT contract for the Wayfinding Signage grant. The grant will cover the installation of three (3) computerized information kiosks and eight (8) gateway signs as specified in the Wayfinding Signage Plan. Note that the original grant request was for \$225K with a \$75K City match. The grant amount actually given was \$300K with the same \$75K City match. The extra \$75K with facilitate site preparation for the gateway signs.

EXPENDITURE REQUIRED: \$75K.

SOURCE OF FUNDS: CIP.

POLICY ISSUE: Should the Council approve the contract?

ALTERNATIVE: The Council could decide not to approve the contract.

7

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STATE OF COLORADO
Department of Transportation
Agreement
with the
City of Trinidad

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1. PARTIES

THIS AGREEMENT is entered into by and between the City of Trinidad (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.R.F. 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: 2
Don Scanga
Project Manager
902 Erie Avenue
Pueblo, CO 81001
(719) 546-5434

B. If to the Local Agency:

City of Trinidad
Louis Fineberg
Project Manager
309 Nevada Avenue
Trinidad, CO 81082
(719) 846-9843, ext. 130

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.

26. COLORADO SPECIAL PROVISIONS

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

A. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Agreement shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

B. FUND AVAILABILITY. CRS §24-30-202(5.5).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR.

The Local Agency shall perform its duties hereunder as an independent contractor and not as an employee. Neither The Local Agency nor any agent or employee of The Local Agency shall be deemed to be an agent or employee of the State. The Local Agency and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for The Local Agency or any of its agents or employees. Unemployment insurance benefits shall be available to The Local Agency and its employees and agents only if such coverage is made available by The Local Agency or a third party. The Local Agency shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. The Local Agency shall not have authorization, express or implied, to

bind the State to any Agreement, liability or understanding, except as expressly set forth herein. The Local Agency shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

The Local Agency shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW.

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

G. BINDING ARBITRATION PROHIBITED.

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

H. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

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

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

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. The Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of The Local Agency's services and The Local Agency shall not employ any person having such known interests.

J. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

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

K. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.

[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services]. The Local Agency certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Agreement and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c). The Local Agency shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to The Local Agency that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Local Agency (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if The Local Agency has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation,

undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If The Local Agency participates in the State program, The Local Agency shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that The Local Agency has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If The Local Agency fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, The Local Agency shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.

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

SPs Effective 1/1/09

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27. SIGNATURE PAGE

Agreement Routing Number: 15 HA2 73849

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>THE LOCAL AGENCY City of Trinidad</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p>*Signature</p> <p>Date: _____</p>	<p>STATE OF COLORADO John W. Hickenlooper, GOVERNOR Colorado Department of Transportation Donald E. Hunt, Executive Director</p> <p>By: Joshua Laipply, P.E., Chief Engineer</p> <p>Date: _____</p>
<p>2nd Local Agency Signature if needed</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p>*Signature</p> <p>Date: _____</p>	<p>LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: _____</p> <p>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>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p>Colorado Department of Transportation</p> <p>Date: _____</p>

28. EXHIBIT A – SCOPE OF WORK

COLORADO DEPARTMENT OF TRANSPORTATION DESIGN DATA		Orig. Date: 10/02/2013 Rev. Date: Revision #: 0 Region #: 02	Project Code # (SA#): 19858 STIP#: SR25079 Project #: STE M296-012 PE Project Code: Project Description: TRINIDAD WAYFINDING County: 071 Municipality: Trinidad System Code: O-Other Federal-Aid Highway Oversight By: Delegated/Locally Administered Planned Length: 0.000
Page 1 to 4 Status: <input checked="" type="checkbox"/> Preliminary <input type="checkbox"/> Final <input type="checkbox"/> Revised			
Submitted By PM: SCANGAD Date: Revised by: Date:		Approved by Program Engineer: 	
Geographic Location: VARIOUS AREAS WITHIN THE CITY OF TRINIDAD			
Type of Terrain: Mountainous Description of Proposed Construction/Improvement(Attach map showing site location) INSTALLATION OF WAYFINDING SIGNS			
1 Project Characteristics (Proposed) <input type="checkbox"/> Lighting <input type="checkbox"/> Handicap Ramps <input type="checkbox"/> Curb and Gutter <input type="checkbox"/> Curb Only <input type="checkbox"/> Sidewalk Width= <input type="checkbox"/> Bikeway Width= <input type="checkbox"/> Parking Lane Width= <input type="checkbox"/> Detours <input type="checkbox"/> Landscaping requirements (description):		Median (Type): <input type="checkbox"/> Depressed <input type="checkbox"/> Painted <input type="checkbox"/> Raised <input type="checkbox"/> None <input type="checkbox"/> Traffic Control Signals <input type="checkbox"/> Striping <input type="checkbox"/> Left-Turn Slots <input type="checkbox"/> Continuous Width= <input type="checkbox"/> Right-Turn Slots <input type="checkbox"/> Continuous Width= Signing <input type="checkbox"/> Construction <input type="checkbox"/> Permanent <input type="checkbox"/> Other (description):	
2 Right of Way Yes/No Est. # ROW &/or Perm. Easement Required No _____ Relocation Required No _____ Temporary Easement Required: No _____ Changes in Access: No _____ Changes to Connecting Roads: No _____		3 Utilities (list names of known utility companies) 	
4 Railroad Crossings # of Crossings: Recommendations :			
5 Environmental Type: Approved On: Project Code # Cleared Under: Project # Cleared Under:			
None / /			
Comments:			
6 Coordination <input type="checkbox"/> Withdrawn Lands (Power Sites, Reservoirs, Etc.) Cleared through BLM or Forest Service Office Irrigation Ditch Name: <input type="checkbox"/> New Traffic Ordinance Required <input type="checkbox"/> Modify Schedule of Existing Ordinance Municipality: Trinidad Other:			
7 Construction Method Advertised By: NoAd Reason: Entity / Agency Contact Name. Phone #: Local Louis Finestein 719-846-9843			
8 Safety Considerations Project Under:		Guardrail meets current standards: No	
<input type="checkbox"/> Variance in Minimum Design Standards Required <input type="checkbox"/> Justification Attached <input type="checkbox"/> Request to be Submitted <input type="checkbox"/> Bridge(see item 12) <input type="checkbox"/> See Remarks		<input type="checkbox"/> Safety project not all standards addressed Comments:	
<input type="checkbox"/> Stage Construction (explain in remarks) 3R projects Safety Evaluation Complete (date):			

Page 2 of 4	Project Code #(SA#): 19856	Project #: STE M296-012	Revise date:														
Use Columns A, B, C, D and/or E to identify facility described below																	
	A =	B =	C =	D =	E =												
9	Traffic																
Current Year	ADT																
	DHV																
	DHV % Trucks																
Future Year	ADT																
	DHV																
Facility Location	<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential <input type="checkbox"/> Other												
10	Roadway Class																
Route																	
Refpt	0.000																
Endrefpt	0.000																
Functional Classification																	
Facility type																	
Rural Code																	
11	Design Standards																
	Standard	Existing	Proposed	Ultimate	Standard	Existing	Proposed	Ultimate	Standard	Existing	Proposed	Ultimate	Standard	Existing	Proposed	Ultimate	
Design Variance Required (substandard items are identified with an * in 1st column & clarify as design variance with CDOT Form #464)																	
Width of Travel Lanes																	
Shoulder width lt/outside																	
Shoulder width rt/outside																	
Design Speed																	
Cross Slope																	
Max. superelevation rate																	
Min. Radius																	
Min. Horizontal SSD																	
Min. Vertical SSD																	
Max Grade																	
Design Decision Letter Required (substandard items are identified with an * in 1st column & clarify with decision letter)																	
Typical Section Type																	
# of Travel Lanes																	
Side Slope Dist. ("z")																	
Median Width																	
Posted Speed																	

Page 3 of 4	Project Code #(SA#): 19858	Project # STE M296-012	Revise Date:						
12 Major Structures S= to stay, R= to be removed, P= proposed new structure									
Structure ID#	Length	Reference Point	Feature Intersected	Standard Width	Structure Roadway	Structural Capacity	Horizontal Clearance	Vertical Clearance	Year Built
Proposed Treatment of Bridges to Remain in Place(address bridge rail, capacity, and allowable surfacing thickness):									
13 Remarks									
1., General Description									
<p>The City is currently seeking to implement Priority 2 and Priority 3 of the City of Trinidad Wayfinding Signage Plan. Priority 2 of the plan includes the addition of ten (10) informational signs and three (3) programmable touchscreen kiosks at key locations specified in the plan. The informational signs will feature maps of the Corazon de Trinidad National Historic District and will supplement the information provided by the existing interpretive historical markers at each of the ten proposed locations. The orientation maps will show the locations of key destinations within the District including museums, parks, the new multi-modal transit center, the Las Animas County Courthouse, City Hall and other civic destinations relative to the location of the particular informational sign. The signs will help visitors to orient themselves within the District and will allow them to quickly and efficiently locate the key destinations. The three (3) programmable touchscreen information kiosks will be installed at strategic points of entry into the City. One (1) kiosk will be installed at the new multi-modal transit center, one (1) kiosk will be installed at the Colorado Welcome Center and one (1) kiosk will be installed at the rest stop at the El Moro Exit (Exit 18) on I-25. The programmable kiosks will allow visitors to locate and contact local restaurants, hotels and other retail venues within the City as well as museums, galleries and other popular destinations. Visitors will also have access to information on local and regional events and happenings that will allow them to better organize their visit. The kiosks will be updated on a regular basis to ensure that the information provided is current and relevant.</p> <p>Priority 3 includes the addition of attractive, context appropriate gateway signage. Gateway signage will be installed at key entry locations including the north and south approaches to the City along I-25, the Santa Fe Trail Scenic Byway, the Highway of Legends Scenic Byway and Highway 160. Primary gateway signage will demarcate entry into the City of Trinidad while secondary gateway signage will demarcate entry into the Corazon de Trinidad National Historic District. As outlined in the plan, the design of the gateway signs will draw inspiration from Fisher's Peak, the iconic landform that forms Trinidad's backdrop to the southeast. The silhouette of Fisher's Peak will be featured on the top of the sign while the stone base will draw inspiration from the masonry work found on the Carnegie Library and the First National Bank building. The two upright posts on either side of the signs will mimic the form of the existing light posts in the Corazon de Trinidad National Historic District which draw upon the City's prominent Victorian architecture. The signs will be sized according to the specific location as defined in the plan. Attractive gateway signage will help to announce the arrival of the visitor into the City of Trinidad as well as the Corazon de Trinidad National Historic District and will instill a sense of place within visitors to Trinidad through branding.</p>									
2., Definitions NA									
3., Personnel									
3.1., Responsible Administrator. The Local Agency's performance hereunder shall be under the direct supervision of the project manager identified in §18 of the Agreement.									
3.2., Replacement The Local Agency shall immediately notify the State if any key personnel cease to serve and seek its approval. Such notice shall specify why the change is necessary, who the proposed replacement is, what their qualifications are, and when the change would take effect. Anytime key personnel cease to serve, the State, in its sole discretion, may direct the Local Agency to suspend performance on the Work until such time as their replacements are approved. All notices sent under this subsection shall be sent in accordance with §18 of the Agreement.									
4., Administrative Requirements At all times from the effective date of this Agreement until completion of the Work, the Local Agency shall maintain properly segregated books of State Agreement funds, matching funds, and other funds associated with the Work. All receipts and expenditures associated with said Work shall be documented in a detailed and specific manner, and shall accord with the Work Budget set forth herein.									
5., Monitoring The State shall monitor this Work on an as-needed basis. The State may choose to audit the business activities performed under this Agreement. The Local Agency shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of activities undertaken pursuant to an executed Agreement. Such books and records shall contain documentation of the participant's pertinent activity under this Agreement in a form consistent with good accounting practice.									

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			\$299,250.00
	(80% of Participating Costs)		
b. Local Agency Matching Funds			\$74,812.00
	(20% of Participating Costs)		
TOTAL BUDGETED FUNDS			\$374,062.00
2 ESTIMATED CDOT-INCURRED COSTS			
a. Federal Share			\$0.00
	(0% of Participating Costs)		
b. Local Agency			
Local Agency Share of Participating Costs	\$0.00		
Non-Participating Costs (Including Non-Participating Indirects)	\$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)			\$299,250.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)			\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY			\$299,250.00
FOR CDOT ENCUMBRANCE PURPOSES			
Total Encumbrance Amount			\$374,062.00
Less ROW Acquisition 3111 and/or ROW Relocation 3109			\$0.00
Net to be encumbered as follows:			\$374,062.00
<i>NOTE: The funds are currently not available; the funding will become available after federal authorization and execution of an Option Letter(s) (Exhibit D).</i>			
WBS Element 19858.20.10	Const	3301	\$0.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 80% federal-aid funds (CFDA #20.205) to 20% Local Agency funds, it being understood that such ratio applies only to the \$374,062.00 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 \$374,062.00, and additional federal funds are made available for the Work, the Local Agency shall pay 20% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$374,062.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$299,250.00 (For CDOT accounting purposes, the federal funds of \$299,250.00 and the Local Agency matching funds of \$74,812.00 will be encumbered for a total encumbrance of \$374,062.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. **NOTE: The funds are currently not available; the funding will become available after federal authorization and execution of an Option Letter(s) (Exhibit D).** 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 organizations receiving more than \$500,000 from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 C.F.R. 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

- i. **Expenditure less than \$500,000**
If the Local Agency expends less than \$500,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.
- ii. **Expenditure exceeding \$500,000-Highway Funds Only**
If the Local Agency expends more than \$500,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.
- iii. **Expenditure exceeding \$500,000-Multiple Funding Sources**
If the Local Agency expends more than \$500,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.
- iv. **Independent CPA**
Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

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: _____

Form Updated: December 19, 2012

32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

COLORADO DEPARTMENT OF TRANSPORTATION LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. M296-012	STIP No. SR 25079.057	Project Code 19858	Region 2
Project Location Various locations within the City of Trinidad			Date 10/3/2013
Project Description Trinidad Wayfinding			
Local Agency City of Trinidad	Local Agency Project Manager Louis Fineberg		
CDOT Resident Engineer Dan Dahlke	CDOT Project Manager Don Scanga		
<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 it is consist with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463	X	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	
5.5	Conduct Public Involvement	X	
5.6	Conduct Field Inspection Review (FIR)	X	
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	
5.9	Obtain Utility and Railroad Agreements	NA	
5.10	Conduct Final Office Review (FOR)	X	
5.11	Justify Force Account Work by the Local Agency	X	
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	
5.13	Document Design Exceptions - CDOT Form 464	X	
5.14	Prepare Plans, Specifications and Construction Cost Estimates	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
5.15	Ensure Authorization of Funds for Construction		X
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6.2	Determine Applicability of Davis-Bacon Act This project <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.) Dan Dahlke _____ 10/3/2013 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	X
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor	X	
8.2	Project Safety		X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)	X	
	Pre-survey		
	• Construction staking	NA	
	• Monumentation	NA	
	Partnering (Optional)	NA	
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	NA	
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	NA	
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	NA	
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." Mike Valentine, Public Works Director _____ (719) 846-9843 Local Agency Professional Engineer or _____ Phone number	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	CDOT Resident Engineer		
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8.6	Approve Shop Drawings	X	
8.7	Perform Traffic Control Inspections	NA	
8.8	Perform Construction Surveying	NA	
8.9	Monument Right-of-Way	NA	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates	X	
	Provide the name and phone number of the person authorized for this task.		
	<u>Louis Fineberg</u> <u>719-846-9843 ext 130</u> Local Agency Representative Phone number		
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	NA	
8.12	Prepare Local Agency Reimbursement Requests	X	
8.13	Prepare and Authorize Change Orders	X	
8.14	Approve All Change Orders		X
8.15	Monitor Project Financial Status	X	X
8.16	Prepare and Submit Monthly Progress Reports	X	
8.17	Resolve Contractor Claims and Disputes	X	
8.18	Conduct Routine and Random Project Reviews		
	Provide the name and phone number of the person responsible for this task.		X
	<u>Dan Dahlke</u> <u>719-546-5509</u> CDOT Resident Engineer Phone number		
MATERIALS			
9.1	Conduct Materials Pre-Construction Meeting	X	
9.2	Complete CDOT Form 250 - Materials Documentation Record <ul style="list-style-type: none"> Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project Update the form as work progresses Complete and distribute form after work is completed 	X X	X
9.3	Perform Project Acceptance Samples and Tests	NA	
9.4	Perform Laboratory Verification Tests	NA	
9.5	Accept Manufactured Products <p>Inspection of structural components.</p> <ul style="list-style-type: none"> Fabrication of structural steel and pre-stressed concrete structural components Bridge modular expansion devices (0" to 6" or greater) Fabrication of bearing devices 	X NA NA NA	
9.6	Approve Sources of Materials	X	
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/> <ul style="list-style-type: none"> Generate IAT schedule Schedule and provide notification Conduct IAT 	NA NA	X
9.8	Approve mix designs <ul style="list-style-type: none"> Concrete Hot mix asphalt 	NA NA	
9.9	Check Final Materials Documentation	X	X
9.10	Complete and Distribute Final Materials Documentation	X	X

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Previous editions are obsolete and may not be used

CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	X	
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter	X	
11.3	Advertise for Final Settlement	X	
11.4	Prepare and Distribute Final As-Constructed Plans	X	
11.5	Prepare EEO Certification	X	
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation, and submit Final Certifications	X	
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11.8	Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer	X	
11.9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor	NA	
11.10	Complete and Submit CDOT Form 1212 - Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment		X
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure	X	
11.14	Retain Final Version of Local Agency Contract Administration Checklist	X	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 contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

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

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

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

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

VII. SAFETY; ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

18 U.S.C. 1020 reads as follows:

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

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

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

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

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

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

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

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

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring 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.

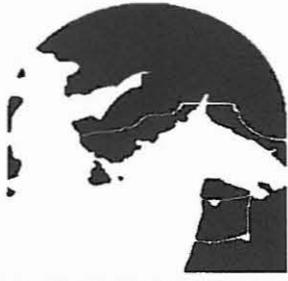
7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

- 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 OF TRINIDAD, COLORADO
1876

COUNCIL COMMUNICATION

9

CITY COUNCIL MEETING: November 12, 2014
PREPARED BY: Tara Marshall
DEPT. HEAD SIGNATURE: *Tm*
OF ATTACHMENTS: 1

SUBJECT: Consideration of Consulting Services with Ricker/Cunningham & Discussion of Survey Boundary for URA Conditions Survey

PRESENTER: Tara Marshall, City Management Intern

RECOMMENDED CITY COUNCIL ACTION: Discuss the Survey Boundary for the URA Conditions Survey and review the agreement with Ricker/Cunningham to create the Conditions Survey, the Urban Renewal Plan and the Urban Renewal Impact Study.

SUMMARY STATEMENT:

To activate our Urban Renewal Authority, the City of Trinidad needs to complete a Conditions Study (Blight Study), an Urban Renewal Plan and an Impact Report for the County and affected Districts (School, Ambulance, Library). Please see attached agreement for services from Ricker/Cunningham to produce these documents.

Upon hiring Ricker/Cunningham, our next step is to begin the Conditions Survey. First we need to set the boundary for the Survey. It is the suggestion of staff that this boundary include:

- All property located within the City limits of Trinidad except for;
- Residentially owned private property

Here are the advantages to setting the survey boundary along these lines:

- We cannot be certain where development will occur
- If we set the survey boundary in a prescribed area and then development begins outside that area, we will have to begin the survey process all over again.
- By setting a wider survey area, we will be able to more affectively choose the Urban Renewal Plan area.
- The Survey will remain effective for future Urban Renewal Projects in areas that do not experience much growth or revitalization.

Once we begin the survey, we must notify by mail, all property owners within the Survey boundary. We have 30 days to complete the notification.

EXPENDITURE REQUIRED: Anticipated to be \$75,000 for all three deliverables.

SOURCE OF FUNDS: General Fund, it is reflected in the current draft 2015 budget.

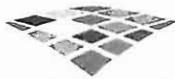
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POLICY ISSUE: Activating the Urban Renewal Authority

ALTERNATIVE: Not Reactivating the Urban Renewal Authority and choosing to approach redevelopment by other methods.

BACKGROUND:

Trinidad established an Urban Renewal Authority in 1964 by resolution. This URA remains today and can be used for redevelopment and revitalization of public and private property within the URA plan area(s) once that area has been defined and an Urban Renewal Plan has been adopted.



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Administrative Memorandum

TO: City of Trinidad, its Staff and Leadership

FROM: Anne Ricker

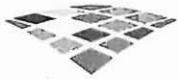
CC: Bill Cunningham

DATE: 6 November 2014

SUBJECT: Time Line
Project Number: J3642

Following are a list of tasks that will need to be completed over the next several months. We can put this in a more traditional timeline format (Gantt chart of sorts), but in the interest of time, I am providing it as a memorandum for the time being. I will work on the modified format as soon as we are ready to attach some real dates to each item.

1. Present the overall project and **determine the survey boundaries** at a **joint session** of Council, Planning Commission along with existing and potential Authority Board members and clarify roles and responsibilities going forward. Based on their comfort level, prepare a schedule for informing stakeholders within the proposed survey area, using a variety of mediums.
2. If all **Board members** have not, yet, been **appointed**, complete this process and **convene a meeting** to inform them about the project and process. If possible, establish a mission statement, as well as possible organizational policies and processes.
3. Establish a date or dates for **information meetings** (if any) for property and business interests within the potential urban renewal area, the community at-large, special interest groups, and / or other boards and commissions. Note: The value of informational meetings is the opportunity they provide to educate and dispel misinformation on the topic of urban renewal. The City will need to decide if it wants to notify all property and business owners within the area by mail, or simply advertisement on the City's website or in the newspaper.
4. If the City decides to hold one or more **informational meetings**, a location for each will need to be determined, notices prepared, and a mailing list (if relevant) compiled. Representatives of Ricker|Cunningham will prepare presentation materials and handouts (if any); and, identify a person within the City who will



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receive questions throughout the planning process, and make sure members of all Boards and Commissions, as well as Staff are aware of their dates and location.

Conditions Survey

5. Prior to commencing the conditions survey, and if notices were not sent out regarding the informational meeting, if any, **prepare and mail notices** to all property owners in the survey area. Note: Property and business owners will be notified prior to the public hearing, but only property owners prior to commencing the survey as per the statute.
6. **Collect information** from City Staff and other resources (as per the data request memo that will be provided by Ricker|Cunningham) and **complete field investigation** of properties within survey area.
7. Decide if the **findings of the survey** will be **presented** to the Authority, Council, property owners and / or the community at-large prior to commencing preparation of the urban renewal plan or in conjunction with the plan; and if so, to who and in which order. Based on this decision, schedule appropriate meetings. Note: The Council meeting can either be a work session or formal meeting where they receive the information since no action regarding a “finding of blight” will be taken until the public hearing.

Urban Renewal Plan

8. Convene a meeting of the Authority Board, Council and / or City staff to determine if the **urban renewal plan boundaries** will remain the same as the survey boundaries, or change based on the findings and input received, if any. Note: The plan boundaries can be less than the survey boundaries, but not greater than.
9. **Modify the boundary map** to reflect the proposed urban renewal area and **gather**: any and all policy, planning and regulating documents which speak to properties within the proposed boundaries; along with any planned and / or proposed projects, limitations on development (physical, regulatory, organizational or other), and established standards.
10. **Prepare a potential build-out scenario** for the next 25 years (high level) based on – market research, findings from the survey, review of existing documents including the comprehensive plan, and discussions with staff. **Share assumptions** with City staff and make any adjustments as necessary.
11. Incorporate the concepts and supporting language into the **urban renewal planning document**.

Impact Report or Reports

12. Use assumptions related to the build-out scenario in preparation of the **impact report for the County**. Prepare the report and submit it to the Clerk of the County Commissioners 30 days prior to the public hearing. Be available during this 30 day

period to meet with the Commissioners and / or answer any questions they may have. Note: If development of any housing is envisioned within the proposed boundaries over the 25 year life of the TIF, notify the school district about the Authority's intent to establish the district.

13. Decide if **impact reports** will be prepared for **any or all taxing entities**, other than the County. While not required by statute, many communities provide these reports in an effort to maintain transparency around the process and Authority's and City's intentions.
14. **Schedule the public hearing** with City Council, and **presentation of the urban renewal plan** to the Planning & Zoning Commission (the latter within 30 days of the hearing).
15. **Prepare and provide notice of the public hearing to the newspaper** of general circulation as determined by the City and / or Council.
16. **Prepare and provide notice of the public hearing to all property and business interests** within the proposed urban renewal area boundaries.
17. **Make all documents** (conditions survey, urban renewal plan, and impact report for the County) **available** to the public in the office of the City Clerk.
18. **Open the public hearing and close it within 120 days**, otherwise all further efforts to form an urban renewal area are suspended for two years.

Possible Schedule:

Commence Conditions Survey by noticing property owners – Week of November 10th

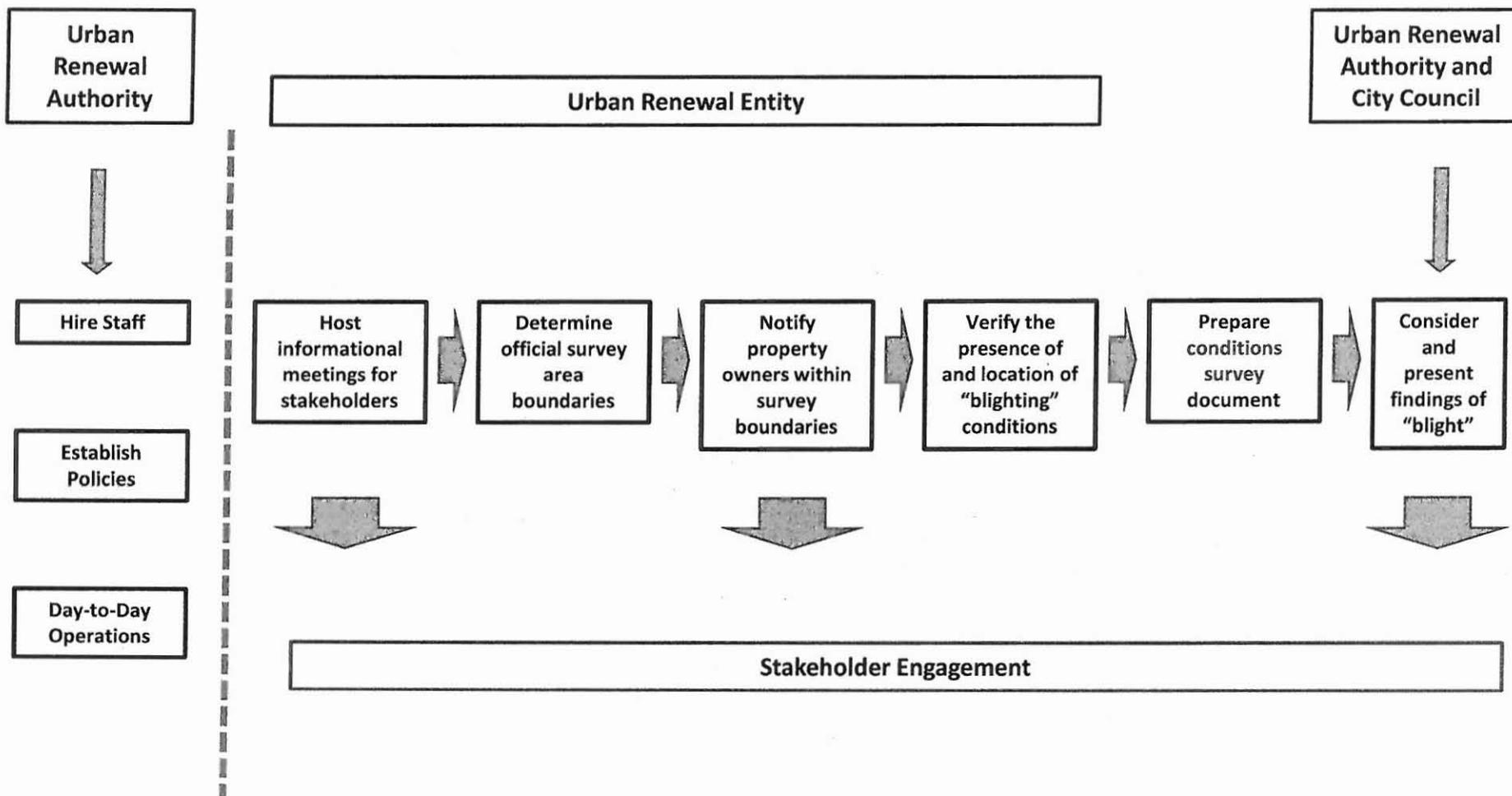
Complete Conditions Survey – Week of December 1st

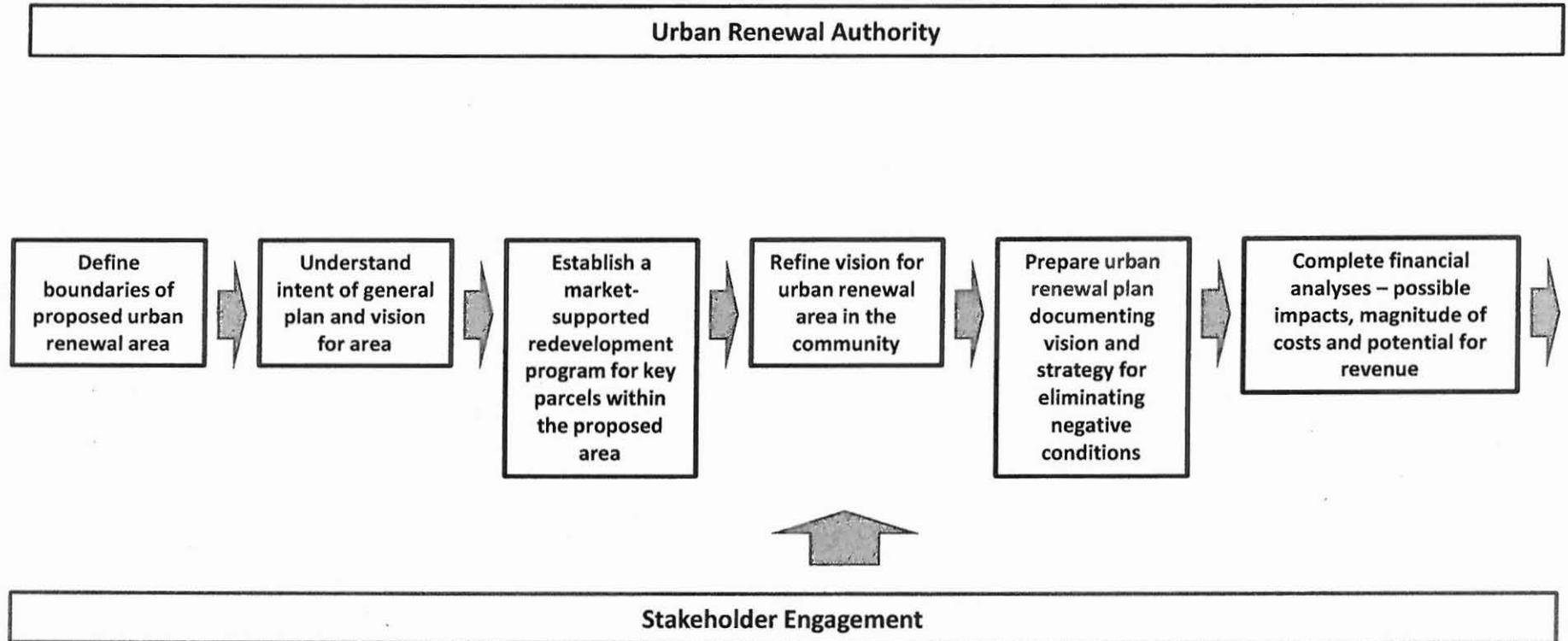
Commence preparation of Urban Renewal Plan and Impact Report – Week of December 1st

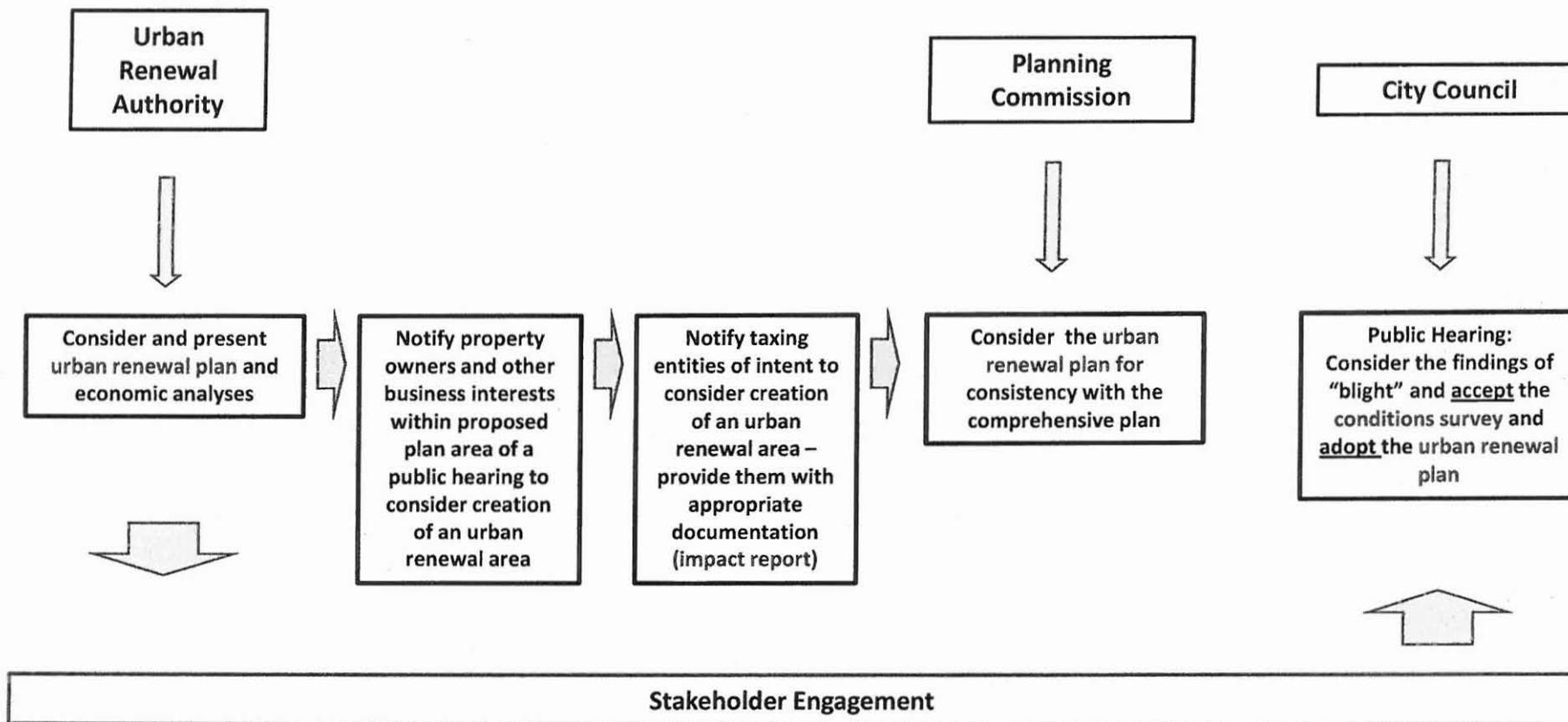
Complete Urban Renewal Plan and Impact Report – Week of January 12th

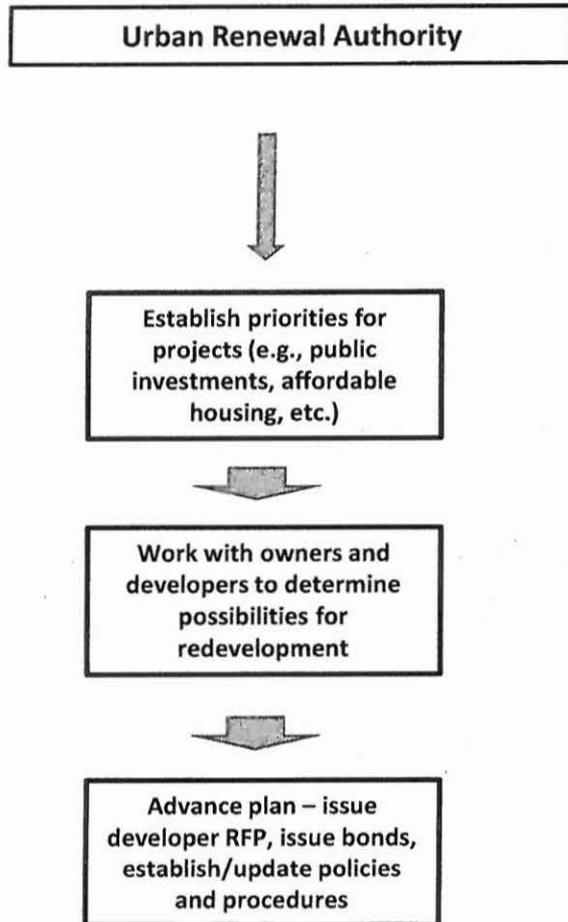
Schedule Public Hearing – March 3rd, 2015

Note: This schedule assumes the prompt transfer of requested information by the City to Ricker|Cunningham, the availability of Council and the Commission on the dates to be requested for presentations and the hearing, and a limited number of informational meetings (if any).











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Defining the Boundaries of an Urban Renewal Area

11.6.2014

1. The State Statute instructs communities to define the survey area “as narrowly as possible;” however, it also says that it must be a “viable on-going concern.”
2. Whenever possible, follow property lines and always (unless there is another reason not to) include the entire right-of-way to the opposite curb line.
3. Try and avoid including single family homes, particularly those that are being used as a primary residence, especially by the actual owner, unless you intend to use Tax Increment Financing (TIF) money to fund improvements in the public realm (streets, sidewalks, lighting, overhead utilities, etc.)
4. Include public property (if it makes sense) whereas TIF can be used to fund improvements such as (fire houses and firefighting equipment, police stations and vehicles, schools and related infrastructure, park improvements, etc.).
5. Be aware of owners that might be either pro- or anti- urban renewal. If you need or want to include a property that’s owner might be difficult, keep in mind that all property owners of record will be noticed at the onset of the conditions survey. Note: Both property owners and tenants will be noticed prior to the public hearing, but only property owners prior to the conditions survey.
6. Think about owners with property both within and outside the potential area in an effort to increase the possibility of land swaps or the Transfer of Development Rights (TDR).
7. Include vacant and under-utilized properties, as well as improved properties, especially the former where investment is imminent. You want to balance your “portfolio” of properties with those that will generate revenue, as well as those that will receive revenue.
8. Consider existing policy and other visioning documents that might inform the community’s intentions for specific areas. To the extent that these areas are defined or reflected in a map, consider using those boundaries.
9. Consider what improvements need to be made, their magnitude, and the availability of other resources that could be used either independent of or in combination with TIF.
10. Include areas and properties in need of TIF funding, but be cautious about people thinking TIF will be sufficient in and of itself to make a private development economically feasible, or that it will be the first dollar in.

Urban Renewal Basics



11. Remember that the conditions survey boundaries can be either the same as or “less than” the final plan boundaries. Some communities decide to use the survey process to understand conditions impacting properties (keeping in mind that the owners will be noticed). Others attempt to get it “right” the first time. The most important thing is to make every effort to include all of the properties that you think you will want included. It is not impossible, but difficult to add properties after the survey is completed. The urban renewal planning process is very linear. However, if someone requests being added or the City gets new information and wants to add a parcel or parcels, do so, but coordinate carefully with us.
12. Identify criteria, early in the process, that will be used when property owners either ask to be included or excluded at any point in the process. These will offer you a defensible process for decision-making.
13. Once the boundaries for of the area or areas are defined, consider preparing a communications plan so that people understand why the boundaries are what they are and what it means to be included.

Source: Ricker|Cunningham, www.rickercunningham.com 303.458.5800.



7 November 2014

Ms. Tara Dawn Marshall
City of Trinidad, Colorado
135 North Animas Street
Trinidad, Colorado 81082

Dear Ms. Marshall:

On behalf of RickerCunningham (RC), Real Estate Economists and Community Strategists, we are pleased to present this proposal to assist the City of Trinidad (the City) and Trinidad Urban Renewal Authority (TURA or the Authority) with preparation of a conditions survey (the Survey), urban renewal plan (the Plan), and impact report or reports (the Impact Report or Reports), for parcels located within Trinidad's municipal boundaries (the Survey Area). As we understand the situation, you are considering establishment of one or more urban renewal areas and in order to do so the Colorado Urban Renewal Statute requires preparation of these three reports (referenced above). The tasks described below provide greater detail about the work that will be completed as part of this effort. The process and work products will afford the Authority and Council with independent and statutorily compliant analyses and supporting documentation.

Conditions Survey

Task 1: Survey Area Boundary Discussion *(completed Thursday, November 6)*

RC will be available to meet with City Staff, TURA Board members and other City officials to answer questions regarding the boundaries of the area to be surveyed. Whereas a number of factors should be considered when defining the boundaries of each geography within a proposed urban renewal area (survey area, urban renewal plan area, Tax Increment Financing (TIF) district), these decisions are best made with this understanding. RC will prepare exhibits and / or handouts illustrating key considerations to assist those involved with understanding: the advantages and disadvantages associated with including or eliminating specific parcels; along with the potential long-term impact of these decisions on TURA's and City Council's larger renewal objectives.

Task 2: Data Gathering and Base Mapping

During this task, RC will provide the City with a list of information needed to complete the Survey including: electronic GIS base map files/aerial photography (if available) that shows the location of features such as streets, parcel boundaries, etc.; as well as, other relevant physical, regulatory, and political data. From these resources, RC will prepare a series of maps, as well as other exhibits to document conditions on properties within the Survey Area.



Task 3: Property Owner Notification

As required by State Statute, all property owners in a survey area must be notified within 30 days of commencement of the survey that a study is being conducted. While RC recommends that notices be mailed by TURA or the City, RC will work with you to identify the names and addresses of all property owners within the Survey Area and assist with preparation of a draft notification letter and mailing labels. If, however, the City requests that RC prepare and distribute the notices, expenses associated with reproduction and postage will be billed to you at cost.

Task 4: Field Survey

During the field survey, RC will examine each real property parcel and associated public spaces including adjacent rights-of-way, sidewalks, trails, open spaces, etc. within Survey Area and document conditions of blight that are visually observable. Examination of private real property will be made from the public right-of-way or from areas on parcels that are commonly accessible to the general public. RC does not inspect the interiors of any structures, public or private, unless specifically requested to do so and only after access has been arranged by the City or Authority.

Whereas some conditions, such as building code violations, traffic accident data, or street capacity and design deficiencies, are not able to be documented during the field survey, RC will rely on the City to provide this information.

Regarding Factor g of the Statute related to “defective or unusual conditions of title rendering the title non-marketable,” RC will not conduct a title document review. However, if this type of information is provided by either the City, individual property owner or agent of any property within the Survey Area, it will be considered as part of the analysis.

Task 5: Survey Findings and Report

RC will prepare a draft Conditions Survey report that documents the various conditions of blight present in the area along with an explanation of how those conditions relate to requirements set out in the Statute. Specifically, the report will include maps, photographs, and / or other exhibits that illustrate the location of blight (if any) supported by a narrative description of the same. RC will transmit the draft report in electronic (PDF) format for review by City Staff and Authority Board members. Comments will be compiled and transmitted to RC for preparation of the final Survey report.

Urban Renewal Plan

Task 6: Plan Boundary Discussion

RC will be available to meet with City Staff, TURA Board members and other City officials to discuss findings from the Survey as they may influence the boundaries of an urban renewal area or areas. RC will be prepared to assist those involved with understanding the advantages and disadvantages associated with including or eliminating specific parcels and the potential long-term impact of these decisions on properties both within and outside the proposed area. Note: Regardless of whether or not the boundaries of the proposed urban renewal area are different from those of the Survey Area, that area will be referred to in the Plan as the Plan Area or Areas or the Area or Areas.

Task 7: Market Assumptions

RC will conduct a limited analysis of existing and projected market conditions in an effort to understand the city's and region's potential for growth and development over the life of the Plan and TIF district. Information on land (and improvement) values and potential rates of absorption will provide the basis for assumptions used in the Impact Report (Task 10).

Task 8: Urban Renewal Plan Concepts

RC will review all policy and regulating documents which could influence future development and redevelopment within the Plan Area or Areas. With an understanding of conditions and influences, along with the expressed community vision as presented in the most recently adopted community plan (Comprehensive Plan or Master Plan), RC will define short- and long-term objectives for the Area, as well as potential priority initiatives, and possible redevelopment and development concepts.

Task 9: Urban Renewal Plan Documents

RC will prepare an urban renewal document for the Plan Area or Areas which reflects representative goals and objectives in the context of prevailing and anticipated conditions. Each document will embody development principles and objectives with feasible application in the market; identify potential priority initiatives; and, include strategies for implementation. Concept illustrations will be prepared for inclusion in the Plan which communicates this information to stakeholders and public officials.

RC will transmit the draft planning report in electronic (PDF) format for review by City Staff and Authority Board members. Upon receipt of comments, we will revise the draft documents and resubmit them for consideration by the Trinidad City Council during a public hearing.

Impact Report or Reports

Task 10: Tax Increment Analysis and Impact Report or Reports

Upon identification of a final possible development program and absorption schedule for the Plan Area or Areas, and using the market assumptions developed through completion of Task 7 above, RC will estimate the tax increment potential (real property and sales tax) and prepare the supporting impact documentation (the Impact Report) for the County as per the State Statute, as well as any other taxing entity as may be requested by TURA. If desired, RC will be available to assist with discussions among these groups.

Task 11: Property Owner and Business Interest Notification

As required by State Statute, all property owners, tenants and others with an ownership interest in the Plan Area must be notified 30 days prior to the public hearing that an urban renewal plan is being considered for adoption by City Council. While RC recommends that notices be mailed by TURA, the City or its agents, we will work with you to identify the names and addresses of these entities and assist with preparation of a draft notification letter and mailing letters. If, however, the City requests that RC prepare and distribute the notices, expenses associated with reproduction and postage will be billed to you at cost.

Task 12: Legal Description(s)

A legal description describing the boundaries of the Plan Area and TIF District or Districts if different, prepared and certified by a licensed surveyor, is required for inclusion in the Plan. RC will be prepared to sub-contract for these services, but will do so only with the expressed written consent of the City. Fees associated with preparation of a legal description or descriptions are not included in the fee estimate presented here.

Task 13: Public Hearing

RC will provide 15 color-bound copies of all final documents (including the Survey, Plan and Impact Report) and / or transmit these documents in electronic format. Further, RC will be available to present the same at necessary public meetings as per state legislative requirements. Presentation of the survey findings may occur either prior to beginning preparation of the Plan and Impact Reports or after they are completed and during the statutorily-required public hearing.

Task 14: Public Involvement / Education Activities

RC believes that too infrequently, public involvement programs are excluded from the urban renewal planning process. We have considerable experience facilitating the urban renewal discussion before a variety of public and other stakeholder audiences. We will be available to meet and /or present to any individuals or groups that you may identify.



Work Products

The work products to be delivered to the City will include:

- Draft and Final Conditions Survey Report
- Conditions Maps
- Photographic Presentation of Survey Area Physical Conditions
- Base Maps
- Field Ledgers
- Area-Wide Base Maps on Select Conditions (ownership, value, etc.)
- Public Hearing Presentation Materials
- Final Urban Renewal Boundary Map
- Draft and Final Urban Renewal Concept Illustrations
- Draft and Final Urban Renewal Plans
- Synthesis of Key Market Assumptions
- Draft and Final Impact Reports (all requested taxing entities)
- Draft and Final Notification Letters
- Legal Description or Descriptions

Proposed Schedule

Time to complete the work tasks described herein can vary significantly depending on the number of information and other meetings requested by the City and TURA, as well the availability of City officials for presentation of the findings. Based on our understanding of your objectives, however, we estimate approximately four months. This timing assumes:

- the prompt transfer at the commencement of the project of GIS mapping / aerial photography and parcel data from the City to RC;
- the cooperation of City departments and other public agencies during the data collection phase of the project; and
- a prompt review and transmittal of comments by the City and TURA members of all draft documents.

Proposed Fees

The following outlines our fee estimate for the major phases of work described herein:

Conditions Survey (Tasks 1 and 2, 4 and 5)	\$42,100	*
Urban Renewal Plan (Tasks 6 through 9)	\$18,400	
Impact Reports (Tasks 10)	\$12,300	
Survey, Plan and Impact Report Sub-Total	\$72,800	**
Legal Description (Task 11)	(see above)	
Notifications (Tasks 3 and 11)	Time and Materials	
Public Hearing (Task 13)	\$0	***
Public Involvement (Task 14)	TBD	****

* Not-to-exceed includes time for presentation of the Survey to the TURA Board.



- ** Not-to-exceed includes time for presentation of the Plan and Impact Reports to the TURA Board.
- *** Time and expenses associated with presentation of the three documents at statutorily-required meetings of the Planning & Zoning Commission and City Council are included in the fee estimate presented above.
- **** Meetings beyond those described above for the purpose of educating stakeholders in the Survey Area and / or Plan Area, the community at-large, or other boards and commissions are not included in the fee estimate presented above and will be billed on a time and materials basis.

Fees associated with preparation of the above work products are based on the hourly rate for the professionals involved (see below) and include out-of-pocket expenses such as local travel, meals, data purchases, telephone, postage, etc. and the delivery of 15 copies of all final documents identified herein. If the City requests additional copies, they will be billed at cost. These fees do not include costs associated with the preparation or reproduction of presentation materials including maps, power point slides or other information that may be made provided to staff, public officials or stakeholders. Expenses associated with these items will be billed at-cost.

Hourly Rates:

Anne B. Ricker, Principal	\$175
Bill J. Cunningham, Principal	\$175
GIS Mapping	\$100

Summary

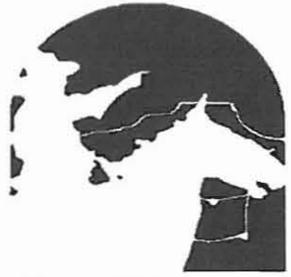
In summary, we are excited about this project and the opportunity to work with you and other members of the Trinidad community. We welcome the opportunity to serve you through completion of this assignment. As our qualifications illustrate, we have completed numerous urban renewal assignments throughout the state and region, and are actively updating our annual statewide assessment of the impact of urban renewal in Colorado. As experienced advisors to public sector entities throughout the Western United States, we understand how to take projects such as this from inception to completion -- moving from the general to the specific and ending with recommendations which provide sustained value. If you have any questions regarding this submittal, please contact either Anne Ricker or Bill Cunningham at 303.458.5800. Both of these individuals are authorized to execute an agreement on behalf of Ricker|Cunningham.

Sincerely,

Ricker|Cunningham

Anne B. Ricker, Principal
anne@rickercunningham.com

Bill J. Cunningham, Principal
bill@rickercunningham.com



CITY OF TRINIDAD, COLORADO
1876

COUNCIL COMMUNICATION

CITY COUNCIL MEETING: November 12, 2014
PREPARED BY: Chris S. Kelley CBO
DEPT. HEAD SIGNATURE:
OF ATTACHMENTS: 5

Chris S. Kelley

10

SUBJECT: Ordinance Revision for Chapter 5, Article 3, Non-Conformance

PRESENTER: Chris S. Kelley CBO

RECOMMENDED CITY COUNCIL ACTION: It is paramount for the City of Trinidad to assure the safety of its citizens and visitors. I, therefore, recommend that Chapter 5, Article 3, Non-Conformance as adopted December 27, 2013 be unchanged.

SUMMARY STATEMENT: There have been many, many discussions between City Council, area business people, realtors and myself, Chris S. Kelley, CBO regarding the safety and occupancy of all vacant buildings within the city. Attached are the results of my communication with local realtors regarding yet another revision to Chapter 5, Article 3 of the City of Trinidad's Municipal Code. I urge City Council to remain firm in our vigilance to secure the safety of any and all occupants of those buildings by ensuring the buildings have the most current safety features thus eliminating, to the best of our ability, the atmosphere for avoidable safety hazards. In order to help facilitate building renovations which might include adding fire sprinkler systems, fire and smoke detectors, fire walls, etc., the current Chapter 5, Article 1, Section 5-13(2e) Modifications/Phased Construction addresses the need some property owners may have to bring their building(s) into safe, habitable compliance.

EXPENDITURE REQUIRED: N/A

SOURCE OF FUNDS: N/A

POLICY ISSUE: N/A

ALTERNATIVE: Amend Chapter 5, Article 3, Non-Conformance

BACKGROUND INFORMATION: The City of Trinidad Chief Building Official was tasked by City Council to revise Chapter 5 of the City Ordinance in order to ensure a more clear understanding of the requirements needed for contractor licensing and all construction within the city's realm. Many of the city's buildings have been vacant or abandoned for several years during which time codes have continued to envelope more and more safety standards based on new revelations from accidents and fires locally, nationally and internationally. Even if those buildings have not been vacant for several years but only one or two, more than likely the building is functioning under building codes which were adopted decades ago and therefore not up to the most safe standards available. The Chapter 5 revision, as adopted by City Council under Ordinance 1949 on December 27, 2013, took into account necessity for meeting current safety standards and the ability for property owners to meet those standards by providing a phased approach to construction/renovation which allows partial Certificates of Occupancy.

10

Council Communication
Ordinance Revision for Chapter 5, Article 3, Non-Conformance
Presented November 12, 2014
By Chris S. Kelley, CBO

Attachments Included

1. Side by side comparison of Article 3 as currently written vs. possible changes
2. Checklist
3. Survey
4. Survey responses
5. Flow Chart of Possible Incentive Packages by Walter Boulden

**ARTICLE 3. NON-CONFORMANCE
AS CURRENTLY ADOPTED**

Section 5-23. Non-Conformance.

(1) **Definition.** Legal Non-Conforming refers to uses and structures, excluding single family residences (R-3), which were begun or constructed when the law allowed for them but have since become noncompliant due to a change in legislation (for example, new codes are adopted).

(2) **How a structure loses non-conforming status.** Any structure or building within the city limits is a non-conforming structure meaning that when the City adopts a new code or standard the buildings built to the previous code are no longer conforming to the existing code. A non-conforming structure is allowed to remain as is, as long as it is generating sales tax revenue and is open for business. Once the business ceases to generate revenue or is vacant for no less than twelve consecutive months it loses its non-conforming status. A building under these circumstances must, therefore, be brought up to current code standards. Part of that process requires an assessment by a registered design professional be provided to the Building Official. Owners may apply via the Variance Application Form to the CBO for review and consideration of a six (6) month extension. The CBO will consider all reasons the extension is being requested in making the decision. Additional six (6) month extensions may be considered upon payment of the appropriate variance fee, which shall allow for a total of three possible six-month extensions.

**ARTICLE 3. NON-CONFORMANCE
AMENDED**

Section 5-23. Non-Conformance.

Note: The following parameters are those set be the Building Department. The Zoning Department may have additional requirements.

(1) **Definition.** Legal Non-Conforming (grandfathering) status refers to uses of buildings (zoning) and structures (commercial buildings) which are under construction or have been constructed before the current building code or zoning ordinance was adopted by the City of Trinidad.

(2) **Example/Explanation.** All commercial structures that are in existence prior to the adoption of new building codes are non-conforming. The zoning of a structure is also non-conforming as long as it is generating sales tax revenue or is in use.

(3) **How does a structure lose its non-conforming status?** A structure loses its non-conforming status by being vacant or abandoned for more than twelve (12) consecutive months. Once a building is vacant or not generating sales tax for twelve (12) consecutive months it loses its non-conforming status in regards to both building codes and zoning.

(4) **How to extend a structure's non-conformance.** There are several ways to extend the non-conformance status of a structure.

a. If a building is in bankruptcy or foreclosure, an additional twenty-four (24) months may be added to the original twelve (12) consecutive month vacant/ abandoned time limit.

b. A variance may be applied for to extend the structure's non-conformance for an additional eighteen (18) months. The

variance is reviewed for approval by the Chief Building Official (CBO). Only one extension may be applied for per structure.

(5) **Will a variance be necessary to extend a structures non-conformance if the structure maintains the same occupancy classification?** If an assessment is submitted by a Colorado licensed design professional showing the same occupancy classification, changes may not be necessary to extend the structure's non-conformance. Even with the same occupancy classification, some improvements to the structure, electrical system, plumbing and mechanical systems may be needed to bring the structure into compliance with the adopted International Existing Building Codes.

(6) **Phased Construction Approach.** Phased construction is the process by which the complete renovation project is broken down into phases of completion. This approach may be allowed once engineered plans detailing electrical, plumbing and mechanical systems and any structural changes to the building are submitted to the CBO for review.

(7) **Partial Certificate of Occupancy.** The phased construction approach allows for the issuance of a Partial Certificate of Occupancy (PCO) which permits specific portions of the structure to open for occupancy.

(8) **American Disabilities Act (ADA).** ADA federal accessibility requirements and Life Safety requirements as stated in the International Existing Building Code as adopted by the City will need to be met in all public buildings.



CITY OF TRINIDAD
125 N. ANIMAS STREET, P.O. BOX 880
TRINIDAD, CO 81082

TELEPHONE: (719) 846-9843 ext. 128
FAX No. (719) 846-0952
Chris.Kelley@Trinidad.co.gov

Commercial Building Compliance Checklist

Building Address: _____, Trinidad, Colorado

In order to help clarify the requirements for non-compliant commercial building habitation within the City of Trinidad, the following checklist has been created. Please be sure to answer each question/statement then contact the Chief Building Official to set an appointment to go over any questions you may have.

1. What is the provision use and occupancy classification
 - A1 – Assembly w/fixed seating i.e. theatres
 - A2 – Assembly for food & drink i.e. restaurant
 - A3 – Assembly for worship
 - A4 – Assembly for indoor sports
 - A5 – Assembly for outdoor sports
 - B – Business inc. Ambulatory Health Care Facility
 - E – Education
 - F – Factory
 - F1 – Factory Modest Hazard
 - F2 – Factory Low Hazard
 - H – High Hazard
 - I – Institutional
 - I1 – Assisted Living
 - I2 – Hospitals
 - M – Mercantile
 - R – Residential
 - R1 – Hotels
 - R2 – Apartments
 - S – Storage
 - U – Utility
 - I4- Jails
 - I5 – Adult Day Care
 - R3 – Single Family
 - R4 – Care Facility
2. Is the building to be occupied as mixed use i.e. both residential and commercial? Yes No
3. What type of occupancy are you planning to create?
 - Business Only – specify type: _____
 - Business with residential
 - Other – specify: _____
4. What is the total area of the building? _____ square feet.
5. Is the building sprinkled? Yes No
6. Does the building have any fire separation?
 - Walls Yes No
 - Floor Yes No
 - Ceiling Yes No
7. Can sections of the building be divided off/separated by additions of walls to lower the total fire area?
Yes No

8. Have the following systems been inspected? Is any work required?
- Electrical Yes No Work Required: _____
- Plumbing Yes No Work Required: _____
- Mechanical Yes No Work Required: _____

9. Is the structure American Disability Act (ADA) compliant? Yes No
- If you answered "No", what needs to be done to meet federal standards? _____
- _____
- _____
- _____

10. If you are changing the existing occupancy (building use) or creating a mixed occupancy (business w/residential), you are required to use the most current International **Existing** Building Code (IEBC) adopted by the City of Trinidad. This building code versus the International Building Code (IBC) allows for phased construction.

11. In order to conform to the International **Existing** Building Code (IEBC) , you are required to have an assessment of the building by a Colorado **registered** design professional. Once the assessment is complete it shall be provided to the City of Trinidad Chief Building Official (CBO) for review. When the assessment has been approved by the CBO, a complete structure **certified** drawing/construction drawing shall then be provided to the CBO for review.

Note: Structural improvements, mechanical systems, plumbing diagrams and electrical systems must be engineered to meet current code requirements.

12. Once all of the above mentioned information has been provided, reviewed and approved, you may proceed with your project using the "phased approach". By providing the required drawings, it is hopeful that you will not run in to any unexpected costs during all phases of your project.

13. A Partial Certificate of Occupancy (PCO) can be issued to allow occupancy of certain completed portions of the building while other areas are still under construction. The PCO is issued only with certainty that all measures are in place to ensure public safety.

The City of Trinidad is attempting to make building restoration/occupation a viable process for all of those wishing to establish their business within our city limits. In addition to the information provided above, your opinions are very important. Please take a minute to answer the questions below in order to help us help you.

1. What type of city offered incentives would help with the restoration of this building?

2. Please share any other suggestions that would help make this project come to fruition?



CITY OF TRINIDAD

2009 International Existing Building Code Survey Responses

The 2009 International Existing Building Code as adopted by the City of Trinidad in December, 2013 states:

1. A non-conforming structure is allowed to remain as is, as long as it is generating sales tax revenue and is open for business.
2. *Once the business ceases to generate revenue or is vacant for no less than twelve (12) consecutive months it loses its non-conforming status.*
3. A building under these circumstances must, therefore, be brought up to current code standards.
4. Part of that process requires an assessment by a registered design professional be provided to the Building Official.
5. Owners may apply via the Variance Application Form to the Chief Building Official (CBO) for review and consideration of a six (6) month extension. The CBO will consider all reasons the extension is being requested in making the decision.
6. *Additional six (6) month extensions may be considered upon payment of the appropriate variance fee, which shall allow for a total of three (3) possible six-month extensions.*

Item number 2 is under consideration for change by city council. Please select the option with which you most agree.

- I agree with this section of the 2009 IEBC, Article 3, Non-Conformance as it currently reads.
- I disagree with this section of the 2009 IEBC, Article 3, Non-Conformance as it currently reads.
 - I would like this section changed to twenty four (24) consecutive months.
 - I would like this section changed to thirty six (36) consecutive months.
 - Other: _____

Please share any ideas and/or comments.

Item number 6 is under consideration for change by city council. Please select the option with which you most agree.

- I agree with this section of the 2009 IEBC, Article 3, Non-Conformance as it currently reads.
- I disagree with this section of the 2009 IEBC, Article 3, Non-Conformance as it currently reads.
 - I would like this section changed to four (4) possible six month extensions.
 - I would like this section changed to five (5) possible six month extensions.
 - Other: _____

Please share any ideas and/or comments.

Please share any ideas or comments that may help resurrect vacant buildings in the City of Trinidad into safely occupied buildings.

Submitted by:

Date:

The survey above was mailed to seventeen different real estate agents in the hopes of receiving specific responses in order to clarify a path for amending or keeping as is the 2009 IBC in regards to non-conformance. I received five responses. Below are the responses I received to item number 2 of the 2009 IBC in regards to non-conformance status.

2. *Once the business ceases to generate revenue or is vacant for no less than twelve (12) consecutive months it loses its non-conforming status.*

Five survey responses disagreed with this statement

1 – would like this section changed to twenty four (24) consecutive months

2 – change to indefinitely until economy turns around

1 – change to sixty (60) months

1 – disagreed - offered no idea/comment

6. *Additional six (6) month extensions may be considered upon payment of the appropriate variance fee, which shall allow for a total of three (3) possible six-month extensions.*

Four survey responses disagreed with this statement

One survey response agreed with this statement

1 – agrees with code as it is currently written

1 – change to four (4) possible six month extensions w/ provision of a mechanism whereby a building owner can spend funds to improve his/her building and extend the non-conformance period thereby, in effect, this would be a “pay as you go” provision that would incent rather than deter improvement to historic structures.

1 – change to five (5) possible six month extensions

1 – Other – extend for as long as possible

1 – disagree - offered no idea/comment

Two persons offered ideas/comments in addition to those poignant to the two items requesting a specific response.

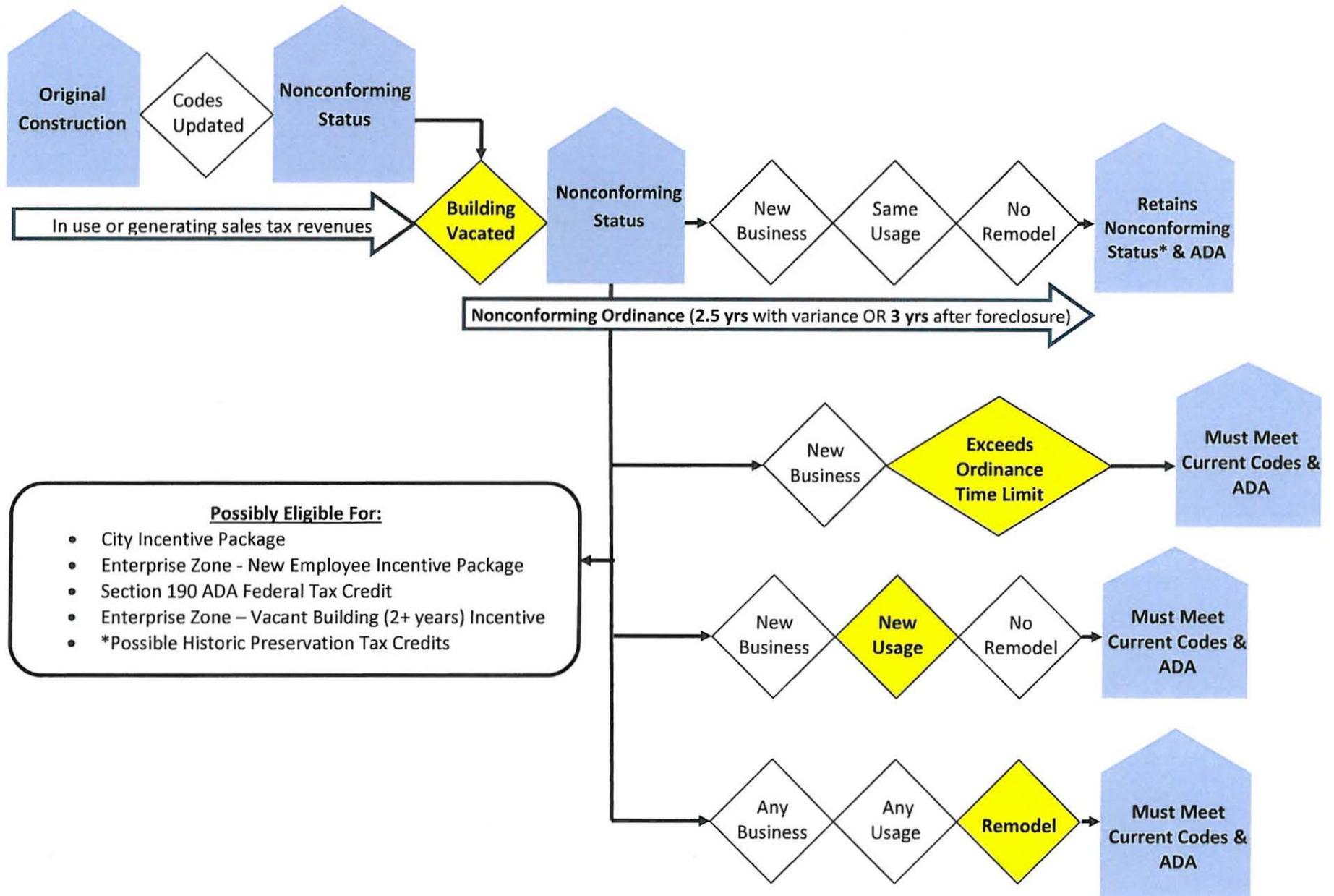
1 – We have 32 vacant buildings in Trinidad. Buyers can't afford to bring old buildings into compliance. These buildings will continue to deteriorate and will have to be torn down. If people buy them possibly they can put some money into them and possibly open a business and help the downtown area.

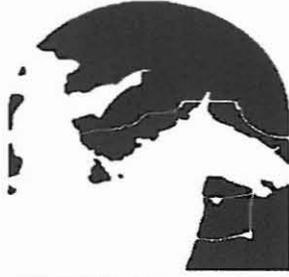
2 – If the structure is turn-key condition, such as Downtown Motel, I would think the new owner should be allowed to open their doors for business. Not needing to install sprinkler systems for fire, or strobe lighting for fire/smoke detectors, etc. Owner has an estimate of \$50k for improvements.

In addition to mailing out the above mentioned survey, I met directly with fourteen real estate agents to discuss possible changes to the 2009 IBC in regards to non-conformance. Below is a sampling of the responses received via those discussions.

- 2 responses – Codes are appropriate as currently written.
- 2 responses – Consider taking out “life safety” as it is cost prohibitive.
- 2 responses - Extend to vacancy requirement to 18 months instead of the current 12 month standard.
- 8 responses - Economic Development needs to be first priority. The changing of the codes wouldn't make any difference.

City of Trinidad Nonconforming Ordinance & Possible Incentive Packages





CITY OF TRINIDAD, COLORADO
1876

COUNCIL COMMUNICATION

CITY COUNCIL MEETING: November 12, 2014
PREPARED BY: Audra Garrett, ACM/City Clerk
DEPT. HEAD SIGNATURE: *Audra Garrett*
OF ATTACHMENTS: 1

SUBJECT: Consideration of request for City Proclamation

PRESENTER: Audra Garrett, ACM/City Clerk

RECOMMENDED CITY COUNCIL ACTION: Approval is recommended

SUMMARY STATEMENT: Effort to increase public awareness of issues

EXPENDITURE REQUIRED: No

SOURCE OF FUNDS: N/A

POLICY ISSUE: N/A

ALTERNATIVE: N/A

BACKGROUND INFORMATION:

Elvira Martin has requested a proclamation naming November as Pancreatic Cancer Awareness Month in Trinidad.

11

11



**CITY OF TRINIDAD
REQUEST FOR CITY PROCLAMATION**

What is a proclamation?

Proclamations are issued by the Office of the Mayor to provide an opportunity for the Mayor and City Council to recognize exceptional events, groups or people. The goal of a proclamation is to recognize and celebrate the extraordinary achievements of City residents and non-profit organizations, to honor occasions of importance and significance to the residents of Trinidad, and to increase public awareness of issues with the hope of improving the well-being of the citizens of Trinidad.

Proclamation Guidelines:

Proclamations recognize a day or week and in some cases the month can be recognized.

We ask that requests be submitted three weeks prior to the due date.

Any draft language submitted may be edited or revised without notice at the discretion of the Mayor's Office.

As proclamations are within the discretion of the Mayor, some requests may not be granted.

Proclamation Information:

Please mail the information to Audra Garrett, City Clerk, City of Trinidad, 135 N. Animas Street, Trinidad, CO 81082, or e-mail her at audra.garrett@trinidad.co.gov or call her at 719-846-9843, ext. 135 about your request.

Required fields are marked by an asterisk (*).

*Name Elvira Martin

*Phone (day) 846-7430

Phone (evening/cell) _____

Address Box 3265 Coke Lake Colo 81082

Email Address _____

Unless advised otherwise, all contact regarding this request will be to the above listed person.

*Title of Proclamation Pancreatic Cancer awareness Month

*Date(s) of Proclamation Nov. 03 but may be the month of November

*Purpose of Proclamation (draft language and/or background of person, event, or organization being proclaimed). You may attach additional information. Please provide as much detailed information as possible as we want the proclamation to capture your request.

See proclamations and fliers.

Please select a preferred option for receiving:

Presentation at City Council Meeting – Please provide date *Next meeting*
Alternate date *3rd Thursday or even 1st Tues of Dec.* (Council meetings are the 1st and 3rd Tuesdays of each month at 7:00 p.m.)

Presentation in person by the Mayor or member of City Council. Please provide date, time & location of presentation.

Mail – Please provide address *Elvira Martin*
Box 3265
Cokedale Colo
81082

Pickup

We will try to honor your request for presentation at a City Council meeting or in person, but certain dates may not be available.



November is Pancreatic Cancer Awareness Month

Wear Purple for Purpose

October 13, 2014

Pancreatic cancer is the 10th most commonly diagnosed cancer in men and the 9th in women, but the 4th leading cause of cancer death for both men and women in the United States. Unlike many other cancers, the survival rate for the disease has not improved substantially since the passage of the National Cancer Act over 40 years ago. Of all the racial/ethnic groups in the United States, African-Americans have the highest incidence rate of pancreatic cancer, between 32 percent and 66 percent higher than other groups.

Pancreatic cancer is expected to become the second leading cause of cancer death in the United States by 2020. Pancreatic Cancer Action Network, commonly known as "PanCan", is a national organization which creates hope in a comprehensive way through research, patient support, community outreach and advocacy for a cure.



Little is known about risk factors and there are no early detection methods

Today, only a few risk factors for pancreatic cancer are known. More research is needed to understand their direct relationship to the disease. Further complicating matters, there are no effective early detection methods available, and most symptoms are vague and could be attributed to many different conditions.

Symptoms include pain (usually abdominal or back pain), weight loss, jaundice (yellowing of the skin and eyes), loss of appetite, nausea, changes in stool and diabetes. The disease is often diagnosed late because of the pancreas' location deep in the body, the absence of definitive symptoms, and the lack of good early detection methods. More than half of patients are diagnosed when they have advanced (metastatic) disease that has spread to other organs.

Treatment options are EXTREMELY LIMITED

There are currently no curative treatments for pancreatic cancer. Research in the area of pancreatic cancer treatment is desperately needed.



For more information about pancreatic cancer or how you can get involved with the Pancreatic Cancer Action Network please visit: www.pancan.org or call 877-272-6226.

Trinidad, Colorado

RESOLUTION:

Declaring the month of November "Pancreatic Cancer Awareness Month" in the City of Trinidad

WHEREAS in 2014, an estimated 46,420 people will be diagnosed with pancreatic cancer in the United States and 39,590 will die from the disease;

WHEREAS pancreatic cancer is one of the deadliest cancers, is currently the fourth leading cause of cancer death in the United States and is projected to become the second by 2020;

WHEREAS pancreatic cancer the only major cancer with a five-year relative survival rate in the single digit at just six percent;

WHEREAS when symptoms of pancreatic cancer present themselves, it is late stage, and 73 percent of pancreatic cancer patients die within the first year of their diagnosis while 94 percent of pancreatic cancer patients die within the first five years;

WHEREAS approximately 510 deaths will occur in Colorado in 2014

WHEREAS the incidence and death rate for pancreatic cancer are increasing and pancreatic cancer is anticipated to move from the fourth to the second leading cause of cancer death in the U.S. by 2020;

WHEREAS the *Recalcitrant Cancer Research Act* was signed into law in 2013, which calls on the National Cancer Institute to develop a scientific framework, or strategic plans, for pancreatic cancer and other deadly cancers, which will help provide the strategic direction and guidance needed to make true progress against these diseases; and

WHEREAS the Pancreatic Cancer Action Network is the national organization serving the pancreatic cancer community in Trinidad and nationwide through a comprehensive approach that includes public policy, research funding, patient services, and public awareness and education related to developing effective treatments and a cure for pancreatic cancer;

WHEREAS the Pancreatic Cancer Action Network and its affiliates in Trinidad support those patients currently battling pancreatic cancer, as well as to those who have lost their lives to the disease, and are committed to nothing less than a cure;

WHEREAS the good health and well-being of the residents of Trinidad are enhanced as a direct result of increased awareness about pancreatic cancer and research into early detection, causes, and effective treatments; therefore be it.

RESOLVED that the Mayor designate the month of November 2014 as "Pancreatic Cancer Awareness Month" in the City of Trinidad.