BRECKENRIDGE TOWN COUNCIL REGULAR MEETING
Tuesday, April 24, 2012; 7:30 PM
Town Hall Auditorium

I CALL TO ORDER, ROLL CALL

II APPROVAL OF MINUTES - APRIL 10, 2012 **3**

III APPROVAL OF AGENDA

IV COMMUNICATIONS TO COUNCIL
- A. POLICE DEPARTMENT LIFE SAVING AWARD
- B. CITIZEN'S COMMENT - (NON-AGENDA ITEMS ONLY: 3-MINUTE LIMIT PLEASE)
- C. USA PRO CYCLING CHALLENGE UPDATE FROM LOCAL ORGANIZING COMMITTEE CO-CHAIRS

V CONTINUED BUSINESS
- A. SECOND READING OF COUNCIL BILLS, SERIES 2012 - PUBLIC HEARINGS - NONE

VI NEW BUSINESS
- A. FIRST READING OF COUNCIL BILLS, SERIES 2012
  1. AN ORDINANCE AMENDING BRECKENRIDGE DEVELOPMENT CODE POLICY 4 (ABSOLUTE), ENTITLED “MASS”, AND MAKING MISCELLANEOUS AMENDMENTS TO THE BRECKENRIDGE TOWN CODE RELATED TO SUCH AMENDED DEVELOPMENT POLICY **6**
- B. RESOLUTIONS, SERIES 2012
  1. A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF COLORADO ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION (Four O’Clock Road Roundabout) **11**
  2. A RESOLUTION AUTHORIZING THE EXECUTION AND RECORDING OF A DENSITY SUNSET COVENANT (For The Valley Brook Attainable Workforce Housing Project) **68**
- C. OTHER - NONE

VII PLANNING MATTERS
- A. PLANNING COMMISION DECISIONS **75**
- B. CALL-UP HEARING: PC#2012019, WELLINGTON NEIGHBORHOOD 2, BLOCK 9, FILING 5 **89**

VIII REPORT OF TOWN MANAGER AND STAFF

IX REPORT OF MAYOR AND COUNCILMEMBERS
- A. CAST/MMC (MAYOR WARNER)
- B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MR. BREWER)
- C. BRC (MR. BURKE)
- D. MARKETING COMMITTEE (MR. DUDICK)
- E. SUMMIT COMBINED HOUSING AUTHORITY (MS. WOLFE)
- F. BRECKENRIDGE HERITAGE ALLIANCE (MR. BREWER)
- G. WATER TASK FORCE (MR. GALLAGHER)

X OTHER MATTERS

*Report of the Town Manager, Report of Mayor and Council Members; Scheduled Meetings and Other Matters are topics listed on the 7:30 pm Town Council Agenda. If time permits at the afternoon work session, the Mayor and Council may discuss these items. The Town Council may make a Final Decision on any item listed on the agenda, regardless of whether it is listed as an action item.

A. BOSAC APPOINTMENTS (3) **97**

XI SCHEDULED MEETINGS **109**

XII ADJOURNMENT

*Report of the Town Manager, Report of Mayor and Council Members; Scheduled Meetings and Other Matters are topics listed on the 7:30 pm Town Council Agenda. If time permits at the afternoon work session, the Mayor and Council may discuss these items. The Town Council may make a Final Decision on any item listed on the agenda, regardless of whether it is listed as an action item.

CALL TO ORDER

Mayor Warner called the April 10, 2012 Town Council meeting to order at 7:34 pm.

OATH OF OFFICE - NEWLY ELECTED MAYOR & COUNCIL MEMBERS

Town Clerk, Mary Jean Loufek administered the oath of office to the newly elected Town Council members. Ms. Loufek administered the oath of office to the re-elected Mayor, John Warner.

ROLL CALL

The following members answered roll call: Mr. Burke, Ms Wolfe, Mr. Gallagher, Mr. Brewer, and Mayor Warner. Mr. Dudick and Ms. McAtamney were absent.

APPROVAL OF MINUTES - MARCH 27, 2012

There were no changes to the minutes, and Mayor Warner declared the minutes would stand approved.

APPROVAL OF AGENDA

There were no changes to the Agenda.

COMMUNICATIONS TO COUNCIL

A. CITIZEN'S COMMENT - (NON-AGENDA ITEMS ONLY: 3-MINUTE LIMIT PLEASE)

Samantha Kosanovich spoke against the rodeo citing it is against the Mission/Vision statement of the Town of Breckenridge including community character, and natural resources; people that come to visit are looking for peace, tranquility, and eco-friendliness which will be juxtaposed with compressors, tractor trailers, noise, porta-potties, and bright lights; and, five weeks is too long of a test which can cause irreversible damage to the Town’s reputation and everything the Town has worked for.

Gail Marshall spoke against the rodeo citing the effect on real estate values, in a mixed-used area where it is already difficult to get a mortgage; the rodeo may attract predatory wildlife; the non-profit status would mean no sales tax for Breckenridge; the concerns for the profit margins of the concessions; and, compromising the beauty of the Blue River, and the people who currently use the area. She asked the Council to consider other locations, and suggested the area by the Breckenridge Building Center.

Sheri Shelton spoke in favor of the rodeo citing she loves the rodeo; it would broaden the tourism base; rodeo fans are educated people; need to fill beds in the summer; and need events that attract people for more than just the day. She asked the Council to survey the businesses about the rodeo, not just the residents.

Jack Rueppel spoke against the rodeo citing his concerns about the drought year; run-off from the rodeo into the Blue River; the current use of the river; displacing one group of visitors for another; the sound and light pollution; carrying capacity of the riverside trails; the other uses of the area including the bike race; and, that the Town should put it in their own backyard instead of his.

Elizabeth Lawrence stated she is pulled in both directions regarding the rodeo. She citied being for the rodeo because they would use Breckenridge business for concessions, and stated she would like to see a statement from the Restaurant Association. Mr. Burke stated they have one. Ms. Lawrence stated she is against the rodeo citing it will be located directly out her front door; she doesn’t want Breckenridge to be defined as a rodeo town; she is concerned that fly fishing businesses’ access to the Blue River will be impacted; she uses the trail every day; concerns with the safety including traffic, lights, and extra people in the area; and, the displacement of other events that use the parking lots in the summer.

Brad Bays with Breckenridge Stables stated he appreciates the time the Town has put in on this matter, and wants to make sure the Council understands the rodeo will be a community event, hopes the community will get involved, and is 100% Breckenridge. He stated his commitment to do it the right way where all Town rules are followed, and he is

willing to resolve any issues that arise. He clarified the rodeo will only utilize half of the parking lot, and the other half will be available for fishing access; the animals will not be allowed near the river; spectators are contained within the rodeo grounds; and there will be no semis but instead horse trailers. He also added that the competitors will come in for the day, compete and leave.

Cindy Shanholtz, Professional Rodeo Cowboys Association (PRCA), stated they are working with the Town and the County regarding education for the care of the livestock. She stated Brad Bays wanted to have a PRCA rodeo due to its high standards, and they are happy to work with him to make this a successful event

The Council discussed the impacts of the rodeo on the town, alternate locations, the letter from the Restaurant Association, and the change in duration of the rodeo from 11 weeks to 5 weeks, and that this is a process where no decision would be made until staff have addressed all the issues.

Mayor Warner hearing no other comments closed the citizen comments.

B. BRECKENRIDGE RESORT CHAMBER UPDATE

John McMahon, Director of Breckenridge Resort Chamber introduced himself to the New Council Members. He mentioned Breckenridge is holding its own against other destinations after a tough winter; is looking long term in Breckenridge with the implementation of BMAC; Colorado Tourism may cut back 30% of marketing, but include a new advertising platform; are optimistic about the Summer with the University of Denver conducting a class with the marketing of Kingdom days; groups sales leads are up; received an award from Colorado Marketing Event Magazine for the best under 25,000 population. Mr. McMahon and the Council discussed if the rodeo fits in with the Breckenridge brand, relating it to how Aspen did not think the X games would fit into the Aspen brand.

C. JUDGE BUCK ALLEN

Mayor Warner introduced Judge Buck Allen to the New Council. Judge Allen mentioned how the court staff are great and work well together; the court has been pretty busy this year; there are always weird drunk cases, including a couple of instances where the victim was out cold; deceptive use of ski facility crime is up, where there were 282 instances last year, which each collected $250.00 in fines for about $70,000.00, and are already at 270 instances this season; some other projects include clothes for needy kids, food cards to the Senior Center, and new this year part of the fund went to the Breckenridge Recreation Department's Easter Egg Hunt. He stated if you add all the years he worked in each court, the total is 90 years, and that he enjoys his job, and wants to continue doing it for a number of years.

CONTINUED BUSINESS

A. SECOND READING OF COUNCILS BILLS, SERIES 2012 - PUBLIC HEARINGS - NONE

NEW BUSINESS

A. FIRST READING OF COUNCIL BILLS, SERIES 2012 - NONE
B. RESOLUTIONS, SERIES 2012 - NONE
C. OTHER

1. Municipal Judge Appointment

Mr. Burke made a motion to approve the Municipal Judge Appointment. Ms. Wolfe seconded.
The motion Passed 5-0.

2. Committee Appointments

Mr. Brewer made a motion to approve the Committee Appointments. Mr. Gallagher seconded.
The motion Passed 5-0.

PLANNING MATTERS

A. PLANNING COMMISION DECISIONS - APRIL 3, 2012

Mr. Burke made a motion to call up the Wellington Neighborhood 2, Filing 5 (MM) PC#2012019. Mr. Gallagher seconded.
The motion passed 5-0.
There were no other motions to call up and Mayor Warner stated the decisions of the April 3, 2012 Planning Commission meeting were approved as submitted.

REPORT OF TOWN MANAGER AND STAFF

No report.

REPORT OF MAYOR AND COUNCILMEMBERS

A. CAST/MMC (MAYOR WARNER) – No report.
B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MR. DUDICK) – No report.
C. BRC (MR. BURKE) – No report.
D. MARKETING COMMITTEE (MR. DUDICK) – No report.
E. SUMMIT COMBINED HOUSING AUTHORITY – No report.
F. BRECKENRIDGE HERITAGE ALLIANCE (MR. BURKE) – No report.
G. WATER TASK FORCE – No report.

OTHER MATTERS

The Council discussed the new street light policy and the Town is changing out the current bulbs to energy saving LEDs.

Mr. Brewer thanked Peter Joyce for his four years of service. Mr. Gagen said they will present him with something at the next meeting is he is available.

SCHEDULED MEETINGS

ADJOURNMENT

With no further business to discuss the meeting adjourned at 8:50 pm.

Submitted by Cathy Boland, Municipal Court Clerk.

ATTEST:

____________________________	____________________________
Mary Jean Loufek, CMC, Town Clerk	John Warner, Mayor

MEMORANDUM

TO: Breckenridge Town Council
FROM: Julia Puester, AICP
DATE: April 12, 2012 (for April 24th meeting)
RE: Policy 4/A-Mass (Renewable Energy Sources); First Reading

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The Town of Breckenridge encourages the use of renewable sources of energy and energy conservation. This is done through the assignment of positive points in Policy 33/R (Relative) *Energy Conservation*. The Town also encourages high quality design through various policies in the Development code including a limit on the allowed mass of a building. Staff has recently been approached with a situation where additional mass would be needed to accommodate a mechanical room for a solar hot water system. Staff proposes to modify Policy 4/A (Absolute) *Mass*, to allow a mass bonus to accommodate the additional mechanical room for renewable energy systems.

The Planning Commission discussed this proposed policy during three worksessions and approved the attached draft on April 3rd. This issue addresses two different goals of the Town 1) encouraging energy efficiency and renewable sources of energy, and 2) maintaining community character (including building massing limitations). The goal of this policy modification was to find a way to encourage the use of renewable energy without compromising character.

Staff's research shows that almost all older multi-family buildings in Town have been built to or over the allowed mass and therefore would be in need of additional mass square footage to install a renewable energy system. We believe that in most cases, mechanical room additions for renewable energy systems could be accommodated within the existing building footprints but would consume additional mass. Many buildings in town have existing boilers with mechanical rooms which could accommodate needed improvements to convert to a renewable energy source by reconfiguring the existing mechanical room with no additional mass required. However, other buildings would need additional mass to accommodate a new mechanical system.

To develop this policy, staff had discussions with experts in the field including local mechanical engineers, designers, solar thermal installers and plumbers. Based on these consultations, large multi-family buildings on an electric heat source would require the most additional square footage with the addition of boilers, solar hot water holding tank and piping. Commercial (restaurant, retail and office) uses would require a much smaller mechanical system. As proposed, any additional mass approved under this policy would have a covenant recorded against the property which states that the mass is permitted only for the mechanical room with a renewable energy source and may not be converted into any other use in the future.

Summary
Staff has attached the proposed policy modification and will be at the meeting Tuesday to address any questions or concerns that the Council may have.

FOR WORKSESSION/FIRST READING – APRIL 24

Additions To The Current Breckenridge Town Code Are
Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

COUNCIL BILL NO. ___

Series 2012

AN ORDINANCE AMENDING BRECKENRIDGE DEVELOPMENT CODE POLICY 4 (ABSOLUTE), ENTITLED "MASS", AND MAKING MISCELLANEOUS AMENDMENTS TO THE BRECKENRIDGE TOWN CODE RELATED TO SUCH AMENDED DEVELOPMENT POLICY

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. The definition of "Class D Development" in Section 9-1-5 of the Breckenridge Town Code is amended by the addition of the following item:

- **Application for a renewable energy mechanical system under Policy 9-1-19-4A**

Section 2. Section 9-1-5 of the Breckenridge Town Code is amended by the addition of the following new definition of "Renewable Energy Mechanical System":

RENEWABLE ENERGY MECHANICAL SYSTEM:	**A mechanical system required to process onsite renewable energy from natural resources such as sunlight, wind, and geothermal heat.**

Section 3. Section 9-1-19-4A of the Breckenridge Town Code, entitled "Policy 4 (Absolute) Mass", is amended by the addition of the following new subsection F:

F. Mass Allowance for Onsite Renewable Energy Mechanical System in Multi-family and Commercial Uses: The goal of this subsection F is to encourage renewable energy production in existing multi-family and commercial structures. This subsection is not applicable to new construction. This subsection seeks to improve energy efficiency by permitting existing nonconforming structures to install appropriate onsite renewable energy mechanical systems to help protect the health, safety, and welfare of the community.

1. Any existing multi-family residential or commercial structure constructed prior to ________, 2012 may be permitted additional aboveground mass square footage for the installation of a renewable energy mechanical system,

1 **even if the structure already exceeds applicable mass limitations. The**
2 **additional square footage shall be the lesser of the following:**

3 **a. the space necessary for an efficiently designed mechanical room;**

4 **b. 350 square feet: or**

5 **c. 2% of the existing mass square footage, whichever is less.**

6 **2. Design Standards**

7 **a. An onsite renewable energy mechanical system shall be located based upon**
8 **the following order of preference. Preference 1 is the highest and most**
9 **preferred; preference 4 is the lowest and least preferred. An onsite**
10 **mechanical energy mechanical system shall be located as follows: (1) within**
11 **the existing building footprint; (2) out of view from the public right of way**
12 **and adjacent properties and screened; (3) partly visible from the public right**
13 **of way or adjacent property and screened and; (4) highly visible from the**
14 **public right of way or adjacent properties. An application for a system to be**
15 **located in a least preferred location must adequately demonstrate why the**
16 **system cannot be located in a more preferred location.**

17 **b. Any structural modifications or additions made for a renewable energy**
18 **mechanical system shall meet the intent of Policy 5/A (Architectural**
19 **Compatibility) and Policy 5/R (Architectural Compatibility), in addition to**
20 **all other applicable policies of this Code.**
21
22 Section 4. Except as specifically amended by this ordinance, the Breckenridge Town
23 Code, and the various secondary codes adopted by reference therein, shall continue in full force
24 and effect.
25
26 Section 5. The Town Council finds, determines, and declares that this ordinance is
27 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
28 improve the order, comfort, and convenience of the Town of Breckenridge and the inhabitants
29 thereof.
30
31 Section 6. The Town Council finds, determines, and declares that it has the power to
32 adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act,
33 Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal
34 zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv)
35 Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to
36 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers
37 contained in the Breckenridge Town Charter.

38 Section 7. This ordinance shall be published and become effective as provided by
39 Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of ____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By_____________________________
John G. Warner, Mayor

ATTEST:

____
Mary Jean Loufek, CMC,
Town Clerk

1
2
3
4 **500-325\Renewable Energy Mechanical System Ordinance (04-05-12)**

FOR WORKSESSION/ADOPTION – APRIL 24

A RESOLUTION

SERIES 2012

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF COLORADO ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION
(Four O'clock Road Roundabout)

WHEREAS, governmental entities are authorized by Article XIV of the Colorado Constitution and Part 2 of Article 1 of Title 29, C.R.S., to co-operate and contract with one another to provide any function, service, or facility lawfully authorized to each of the co-operating or contracting governmental entities; and

WHEREAS, the Town desires to contract with the State of Colorado acting by and through the Colorado Department of Transportation ("CDOT") to construct a roundabout at the intersection of Colorado Highway 9 and Four O'clock Road; and

WHEREAS, a proposed intergovernmental agreement for such project has been prepared, a copy of which is marked Exhibit "A", attached hereto and incorporated herein by reference (the "Intergovernmental Agreement"); and

WHEREAS, the Town Council has reviewed the proposed Intergovernmental Agreement, and finds and determines that it would be in the best interest of the Town to enter into such agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, as follows:

Section 1. The Intergovernmental Agreement between the Town and the State of Colorado acting by and through the Colorado Department of Transportation related to the construction of a roundabout at the intersection of Colorado Highway 9 and Four O'clock Road ("Exhibit "A" hereto) is approved, and the Town Manager is authorized, empowered, and directed to execute such Intergovernmental Agreement for and on behalf of the Town of Breckenridge. The Town is authorized to expend so much of its funds as required by the approved Intergovernmental Agreement.

Section 2. This resolution is effective upon adoption.

RESOLUTION APPROVED AND ADOPTED THIS _____ DAY OF __________, 2012.

TOWN OF BRECKENRIDGE

By________________________________
John G. Warner, Mayor

ATTEST:

____
Mary Jean Loufek, CMC,
Town Clerk

APPROVED IN FORM

____
Town Attorney date

(FMLAWRK)
PROJECT#STA 0091-037 (17142)
REGION 1 (PCO)

Rev 7/8/09
Routing # 12 HA1 37633
SAP O/L# 331000480

STATE OF COLORADO
Department of Transportation
Agreement
with
Town of Breckenridge

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1. PARTIES

THIS AGREEMENT is entered into by and between **Town of Breckenridge** (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.

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").

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 - FFATA).

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

a) 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.

b) 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.

c) 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 therefor, as required by 23 C.F.R. 633.102(e).

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

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

(3) The requirements of this §6(D)(iii)(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 preceeding 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 <u>Standard Specifications for Road and Bridge Construction</u> §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.

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**,

ROW and Acquistion/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).

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.

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:

a) 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.
b) Obtain the railroad's detailed estimate of the cost of the Work.
c) Establish future maintenance responsibilities for the proposed installation.
d) Proscribe future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
e) Establish future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

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.

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

Option Letters may be used to extend Agreement terms, change the level of service within the current term due to unexpected overmatch, add a phase without increasing contract dollars, or increase or decrease the amount of funding. These options are 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. Following are the applications for the individual options under the Option Letter form:

A. **Option 1- Level of service change within current term due to unexpected overmatch in an overbid situation only.**

In the event the State has contracted all project funding and the Local Agency's construction bid is higher than expected, this option allows for additional Local Overmatch dollars to be provided by the Local Agency to be added to the contract. This option is only applicable for Local Overmatch on an overbid situation and shall not be intended for any other Local Overmatch

funding. The State may unilaterally increase the total dollars of this contract as stipulated by the executed Option Letter (**Exhibit D**), which will bring the maximum amount payable under this contract to the amount indicated in **Exhibit C-1** attached to the executed Option Letter (future changes to **Exhibit C** shall be labeled as **C-2**, **C-3**, etc, as applicable). Performance of the services shall continue under the same terms as established in the contract. The State will use the Financial Statement submitted by the Local Agency for "Concurrence to Advertise" as evidence of the Local Agency's intent to award and it will also provide the additional amount required to exercise this option. If the State exercises this option, the contract will be considered to include this option provision.

B. **Option 2 – Option to add overlapping phase without increasing contract dollars.** 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 contract with the contract dollars remaining the same. 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 contract will be considered to include this option provision.

C. **Option 3 - To update funding (increases and/or decreases) with a new Exhibit C.** This option can be used to increase and/or decrease the overall contract dollars (state, federal, local match, local agency overmatch) to date, by replacing the original funding exhibit (**Exhibit C**) in the Original Contract with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc). The State may have a need to update changes to state, federal, local match and local agency overmatch funds as outlined in **Exhibit C-1**, which will be attached to the option form. The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days after the State has received notice of funding changes, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the contract will be considered to include this option provision.

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.

iiiAvailable 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.

iIv 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 reimubursement 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**
Resonable 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.

1. **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.

2. **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.

3. **Damages and Witholding**

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. **Withold 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 forgegoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

18. NOTICES and REPRESENTATIVES

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

A. **State:**

Grant Anderson
Resident Engineer
CDOT Region 1
P.O. Box 399
Dumont, Colorado 80436
(303)512-5601

B. **Local Agency:**

Tom Daugherty
Assistant Public Works Director
Town of Breckenridge
P.O. Box 168
Breckenridge, Colorado 80424
(970)453-3175

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 Agencys's obligations hereunder without the prior written consent of the State.

20. GOVERNMENTAL IMMUNITY

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

21. STATEWIDE CONTRACT MANAGEMENT SYSTEM

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

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

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

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

22. FEDERAL REQUIREMENTS

The Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended. A listing of certain federal and state laws that may be applicable are described in **Exhibit J** and **Exhibit K.**

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. **Jurisdction 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.

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,

The provisions of the main body of this Agreement,

Exhibit A (Scope of Work),

Exhibit B (Local Agency Resolution),

Exhibit C (Funding Provisions),

Exhibit D (Option Letter),

Exhibit E (Local Agency Contract Administration Checklist),

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.

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

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

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

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

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

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

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

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

9. 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.

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

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

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

SPs Effective 1/1/09

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27. SIGNATURE PAGE

Agreement Routing Number 12 HA1 37633

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

THE LOCAL AGENCY **Town of Breckenridge** By: ______________________ Name of Authorized Individual Title: ______________________ Official Title of Authorized Individual ______________________ *Signature Date: ______________________	**STATE OF COLORADO** **John W. Hickenlooper, GOVERNOR** Colorado Department of Transportation For: Donald E. Hunt, Executive Director ______________________ By: Timothy J. Harris, Chief Engineer Date: ______________________
2nd The Local Agency Signature if Needed By: ______________________ Name of Authorized Individual Title: ______________________ Official Title of Authorized Individual ______________________ *Signature Date: ______________________	**LEGAL REVIEW** John W. Suthers, Attorney General By: ______________________ Signature - Assistant Attorney General Date: ______________________

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.

STATE CONTROLLER
David J. McDermott, CPA

By: ______________________

Colorado Department of Transportation

Date: ______________________

28. EXHIBIT A – SCOPE OF WORK

Scope of Work:

The Colorado Department of Transportation ("CDOT") will oversee The Town of Breckenridge ("The Town") when The Town designs and constructs the following: Roundabout Intersection at SH 9 and 4 O'Clock Rd. (Hereinafter referred to as "this work") CDOT and The Town believe it will be beneficial to perform this work because of streamlined processes that will occur and potential savings in the Design, Right of Way ("ROW") and Construction phases. This work will be located at SH 9 and 4 O'Clock Rd. This work will contain the following features: Intersection improvements including paving, curb and gutter, sidewalks, pedestrian crossings, drainage, utility relocations, ROW, and construction administration. This work will conform to the parameters articulated in the following: CDOT Standard Plans and Specifications, the Americans with Disabilities Act, The Uniform Act, MUTCD, and Utility Company Requirements. The design phase of the work will begin as soon as reasonably possible after the execution of this agreement. The design phase will identify more exact requirements, qualities, and attributes for this work. (Herein after referred to as "the exact work"] The exact work shall be used to complete the Right of Way, Utility, and construction phases of the project. The construction (and utility) phase of the contract shall begin as soon as reasonably possible after the design phase is complete and necessary Environmental and ROW clearances and acquisitions have been obtained and shall finish as soon as reasonably possible.

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 to be $600,000.00, which is to be funded as follows:

1	**BUDGETED FUNDS**		
	a. Federal Funds (82.79% of Participating Costs)		$496,740.00
	b. State Matching Funds (17.21% of Participating Costs)		$103,260.00
	TOTAL BUDGETED FUNDS		$600,000.00
2	**ESTIMATED CDOT-INCURRED COSTS**		
	a. Federal Share (__ of Participating Costs)		$0.00
	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)		$496,740.00
	b. State Matching Funds (1b)		$103,260.00
	TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		$600,000.00
	FOR CDOT ENCUMBRANCE PURPOSES		
	Total Encumbrance Amount ($600,000.00 divided by 82.79%)		$496,740.00
	State Matching Funds		$103,260.00

Net to be encumbered as follows: **$0.00 is currently available, Funds will be added in the future by Option Letter or Amendment.**			$600,000.00
WBS Element 17142.10.30_	Design	3020	$0.00
WBS Element 17142.20.10_	Const	3301	$0.00

B. **Matching Funds**
The matching ratio for the federal participating funds for this Work is 82.79% federal-aid funds (CFDA #20.205) to 17.21% State funds, it being understood that such ratio applies only to the $600,000.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds $600,000.00, and additional federal funds are made available for the Work, the Local Agency shall pay 100% 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 $600,000.00, then the amounts of State Funds and federal-aid funds will be decreased in accordance with the funding ratio described herein. **Should the cost of the work exceed $600,000.00, all additional cost will be borne by the Local Agency at 100%.** 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 $600,000.00 (For CDOT accounting purposes, the federal funds of $496.740.00 and the Local Agency matching funds of $103,260.00 will be encumbered for a total encumbrance of $600,000.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. *****Note - $0.00 is currently available. Design Phase funds and/or Local Agency Overmatch will be added in the future by Option Letter or Amendment.*** It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. **Single Audit Act Amendment**
All state and local government and non-profit 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
The Local Agency expends less than $500,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure exceeding than $500,000-Highway Funds Only
The Local Agency expends more than $500,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure exceeding than $500,000-Multiple Funding Sources
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.	CLIN Routing #

Original Contract CMS # Original Contract SAP #	Option Letter CMS # Option Letter SAP #

Vendor name: ____

A. SUBJECT: (*Choose applicable options listed below* ***AND*** *in section B and delete the rest)*

1. Level of service change within current term due to an unexpected Local overmatch on an overbid situation ONLY;
2. Option to add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (does not apply to Acquisition/Relocation or Railroads);
3. Option to update funding (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. REQUIRED PROVISIONS. All Option Letters shall contain the appropriate provisions set forth below:

(Insert the following language for use with Option #1):
In accordance with the terms of the original Agreement (*insert FY, Agency code & CLIN routing # of Basic Contract)* between the State of Colorado, Department of Transportation and *(insert the Local Agency's name here)*, the State hereby exercises the option to record a level of service change due to unexpected overmatch dollars due to an overbid situation. The Agreement is now increased by (*indicate additional dollars here*) specified in Paragraph/Section/Provision ________________ of the original Agreement.

(Insert the following language for use with Option #2):
In accordance with the terms of the original Agreement (*insert FY, Agency code & CLIN routing # Basic Contract)* between the State of Colorado, Department of Transportation and *(insert the Local Agency's name here)*, the State hereby exercises the option to add an overlapping phase in *(indicate Fiscal Year here*) that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*). Total funds for this Agreement remain the same (*indicate total dollars here*) as referenced in Paragraph/Section/Provision/Exhibit ________________of the original Agreement.

(Insert the following language for use with Option #3):
In accordance with the terms of the original Agreement (*insert FY, Agency code & CLIN routing # of Basic Contract)* between the State of Colorado, Department of Transportation and *(insert the Local Agency's name here)*, the State hereby exercises the option to update funding based on changes from state, federal, local match and/or local agency overmatch funds. The Agreement is now (*select one: increased and/or decreased)* by (*insert dollars here*) specified in Paragraph/-Section/-Provision/Exhibit ______________ of the original Agreement. 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.)

(The following language must be included on ALL options):
The amount of the current Fiscal Year contract value is (*increased/decreased*) by ($ *amount of change)* to a new Agreement value of ($____________) to satisfy services/goods ordered under the Agreement for the current fiscal year *(indicate Fiscal Year)*. The first sentence in Paragraph/Section/Provision ____________ is hereby modified accordingly.

The total Agreement value to include all previous amendments, option letters, etc. is ($____________).

The effective date of this Option Letter is upon approval of the State Controller or delegate.

APPROVALS:

For the The Local Agency:
Legal Name of the Local Agency

____

By: ____
Print Name of Authorized Individual

Signature: ______________________________________
Date: ________________________

Title: Official Title of Authorized Individual

____

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
David J. McDermott, CPA

By: ________________________________

Date: ______________________________

Form Updated: June 12, 2008

32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

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

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

COLORADO DEPARTMENT OF TRANSPORTATION

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

Project No. STA 0091-037	STIP No. SR16684.004	Project Code 17142	Region 1

Project Location SH 9 (PARK AVE) AND 4 O'CLOCK RD. BRECKENRIDGE, CO	Date 10/18/11

Project Description
SH 9 ROUNDABOUT AT 4 O'CLOCK RD (INTERSECTION IMPROVEMENTS)

Local Agency TOWN OF BRECKENRIDGE	Local Agency Project Manager TOM DAUGHERTY
CDOT Resident Engineer GRANT ANDERSON	CDOT Project Manager GRANT ANDERSON

INSTRUCTIONS:

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

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.

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.

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

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY 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
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	X	#
5.10	Conduct Final Office Review (FOR)	X	#
5.11	Justify Force Account Work by the Local Agency	X	#
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	#
5.13	Document Design Exceptions - CDOT Form 464	X	#
5.14	Prepare Plans, Specifications and Construction Cost Estimates	X	#
5.15	Ensure Authorization of Funds for Construction		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6.2	Determine Applicability of Davis-Bacon Act This project ☐ is ☒ is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Grant Anderson, Resident Engineer — 10-18-11 CDOT Resident Engineer (Signature on File) — Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than $1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances	X	
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks		X
7.2	Advertise for Bids	X	#
7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	#
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor	X	#
8.2	Project Safety		X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)	X	#
	Pre-survey • Construction staking • Monumentation	 X X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in *CDOT Construction Manual)*	X	#
	Concrete Pavement Pre-Paving (Agenda is in *CDOT Construction Manual)*	X	#
	HMA Pre-Paving (Agenda is in *CDOT Construction Manual)*	X	
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." TOM DAUGHERTY — 970-453-3175 Local Agency Professional Engineer or CDOT Resident Engineer — Phone number	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8.6	Approve Shop Drawings	X	#
8.7	Perform Traffic Control Inspections	X	
8.8	Perform Construction Surveying	X	
8.9	Monument Right-of-Way	X	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates Provide the name and phone number of the person authorized for this task. TOM DAUGHERTY — 970-453-3175 Local Agency Representative — Phone number	X	#
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	
8.12	Prepare Local Agency Reimbursement Requests	X	
8.13	Prepare and Authorize Change Orders	X	#
8.14	Approve All Change Orders		X
8.15	Monitor Project Financial Status	X	
8.16	Prepare and Submit Monthly Progress Reports	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. Grant Anderson Resident Engineer — (303) 512-5601 CDOT Resident Engineer — Phone number		X
MATERIALS			
9.1	Conduct Materials Pre-Construction Meeting	X	
9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	 X X	 X
9.3	Perform Project Acceptance Samples and Tests	X	
9.4	Perform Laboratory Verification Tests	X	
9.5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X X	 # # #
9.6	Approve Sources of Materials	X	
9.7	Independent Assurance Testing (IAT), Local Agency Procedures ☐ CDOT Procedures ☒ • Generate IAT schedule • Schedule and provide notification • Conduct IAT	 X X	 X X
9.8	Approve mix designs • Concrete • Hot mix asphalt	 X X	 # #
9.9	Check Final Materials Documentation	X	
9.10	Complete and Distribute Final Materials Documentation	X	

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

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

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

The 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 23. 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 23.41

35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

[Delete this Exhibit if the State is doing the work]

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 preceeding eight (8) steps.

36. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS

FHWA-1273 Electronic version -- March 10, 1994

FHWA Form 1273

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

I. General 1
II. Nondiscrimination ... 1
III. Non-segregated Facilities ... 3
IV. Payment of Predetermined Minimum Wage ... 3
V. Statements and Payrolls ... 6
VI. Record of Materials, Supplies, and Labor ... 6
VII. Subletting or Assigning the Contract ... 7
VIII. Safety: Accident Prevention ... 7
IX. False Statements Concerning Highway Projects ... 7
X. Implementation of Clean Air Act and Federal Water Pollution Control Act ... 8
XI. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion ... 8
XII. Certification Regarding Use of Contract Funds for Lobbying ... 9

ATTACHMENTS

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. GENERAL

1. 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.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;
Section IV, paragraphs 1, 2, 3, 4, and 7;
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this Agreement. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 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 DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this Agreement, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

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 and 41 CFR 60) 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 Agreement. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American 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 Agreement. In the execution of this Agreement, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his 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 SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO 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 minority group employees.

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 minority groups 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 minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group 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, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementations of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group 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 his obligations under this Agreement, 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 his avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

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. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this Agreement, this subparagraph will be superseded as indicated in the special provision.

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 minority group and women employees 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 his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. 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 best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best 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 SHA 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 minority and women 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 minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) 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 SHA.

8. **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.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this Agreement.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this Agreement. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. **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 completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

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

(1) The number 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;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA 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. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

a. By submission of this bid, the execution of this Agreement or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this Agreement. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of $10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

a. All mechanics and laborers 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 (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) 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. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, 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 paragraphs 4 and 5 of this Section IV.

b. 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.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this Agreement.

2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification 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 DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour 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.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional 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. Said 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

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

a. 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 or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a 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.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. Apprentices:

(1) 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 DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/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 Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees 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 employee 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 listed in 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 or subcontractor 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-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) 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 journeyman-level 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 for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) 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 DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. 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.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level 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-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor 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. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. 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.

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this Agreement 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, as 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 SHA contracting officer 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.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her 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, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies 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 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. **Compliance with Copeland Regulations (29 CFR 3):**

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. **Payrolls and Payroll Records:**

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof 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. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found 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 and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such 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 the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less that the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. 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 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, 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 SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions 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.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than $1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this Agreement.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

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 State. 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).

a. "Its own organization" shall be construed to include only workers employed and paid directly 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, assignee, or agent of the prime contractor.

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 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 VII 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 SHA 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 SHA 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 SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this Agreement 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 SHA 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 Agreement, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this Agreement, 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. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this Agreement 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. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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, the following notice 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:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

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 not more that $10,000 or imprisoned not more than 5 years or both."

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

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $100,000 or more.)

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

1. That any facility that is or will be utilized in the performance of this Agreement, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

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

1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary 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 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 primary 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 department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary 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," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary 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 primary 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 Transaction," provided by the department or agency

entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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 may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.

i. 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.

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.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-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;

c. 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 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary 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 Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of $25,000 or more - 49 CFR 29)

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," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

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.

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 may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

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 Covered Transactions:

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 participation in this transaction 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.

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS OR LOBBYING

(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.
2. 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 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 recipients shall certify and disclose accordingly

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 Agencys and their contractors).

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 Agencys and the Local Agencys 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 Agencys 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:**

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.

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.

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.

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.

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
As of 10-15-10

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. **"Central Contractor Registration (CCR)"** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at http://www.bpn.gov/ccr.

   1.3. **"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.

   1.4. **"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.

   1.5. **"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.

   1.6. **"Entity"** means all of the following as defined at 2 CFR part 25, subpart C;

   1.6.1. A governmental organization, which is a State, local government, or Indian Tribe;
   1.6.2. A foreign public entity;

1.6.3. A domestic or foreign non-profit organization;
1.6.4. A domestic or foreign for-profit organization; and
1.6.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.

1.7. **"Executive"** means an officer, managing partner or any other employee in a management position.

1.8. **"Federal Award Identification Number (FAIN)"** means an Award number assigned by a Federal agency to a Prime Recipient.

1.9. **"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."

1.10. **"Prime Recipient"** means a Colorado State agency or institution of higher education that receives an Award.

1.11. **"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.

1.12. **"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.

1.13. **"Subrecipient Parent DUNS Number"** means the subrecipient parent organization's 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient's Central Contractor Registration (CCR) profile, if applicable.

1.14. **"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.

1.15. **"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. **Central Contractor Registration (CCR) and Data Universal Numbering System (DUNS) Requirements.**

   3.1. **CCR.** Contractor shall maintain the currency of its information in the CCR until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update the CCR 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 CCR 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 CCR and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in **§2** above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at http://www.colorado.gov/dpa/dfp/sco/FFATA.htm.

6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these supplemental provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is $25,000 or more. If the initial Award is below $25,000 but subsequent Award modifications result in a total Award of $25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds $25,000. If the initial Award is $25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below $25,000, the Award shall continue to be subject to the reporting requirements.

7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

   7.1 **To CCR.** A Subrecipient shall register in CCR and report the following data elements in CCR ***for each*** Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

      39. 7.1.1 Subrecipient DUNS Number;

      40. 7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

      41. 7.1.3 Subrecipient Parent DUNS Number;

42. 7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

43. 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:

44. 7.2.1 Subrecipient's DUNS Number as registered in CCR.

45. 7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. **Exemptions.**

46. 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.

47. 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.

9. **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.

MEMORANDUM

TO: Town Council

FROM: Mark Truckey, Assistant Director of Community Development

SUBJECT: Density Sunset Covenant for the Carter Museum Property

DATE: April 6, 2012 for April 24 Meeting

JUBMP Policy Direction

The Joint Upper Blue Master Plan (JUBMP) provides policy direction on a number of land use issues in the Upper Blue Basin. The JUBMP has been adopted by the towns of Breckenridge and Blue River and Summit County. One of the major policy discussions that occurred in the 2011 update to the JUBMP was density for affordable housing.

The 1997 JUBMP contained a policy that essentially exempted deed restricted affordable housing projects from density requirements, as an incentive to encourage more affordable housing in the community. The 2011 JUBMP update recognized that affordable housing was still a high priority goal, but that there were impacts to the community from adding the housing density on top of the density already zoned in the basin. As a result, the 2011 JUBMP contains policies that address this issue and attempt to mitigate the impacts of new affordable housing development. The Council addressed this issue at numerous meetings, finally agreeing to a policy that for every four units of affordable housing constructed, one development right would be transferred from Town-owned property to partly mitigate the impacts of the new density. The JUBMP policy is listed below, with the Breckenridge provisions highlighted:

Policy/Action 2. The impacts of new affordable workforce housing on the overall density and activity levels within the Basin should be mitigated by permanently extinguishing density on County and/or Town of Breckenridge-owned properties. Recommended guidelines or goals for each jurisdiction to take into consideration when evaluating implementation of this policy are as follows:

- *The County should strive to permanently extinguish density on County-owned properties at a minimum 1:2 ratio (i.e., extinguish 1 development right for every 2 affordable workforce housing units permitted to be built).*
- ***When new affordable workforce housing units are developed, the Town of Breckenridge should transfer density it owns to the affordable workforce housing site at a 1:4 ratio (i.e., transfer one development right for every four affordable workforce housing units permitted to be built).***
- *This policy of extinguishing density to offset the impacts of new affordable workforce housing units is not applicable within the Town of Blue River.*

Density at Valley Brook and the Carter Museum

The Valley Brook affordable housing project is the first project subject to the above policy. A total of 50,385 square feet of density (31.77 single-family equivalent units) are being constructed. At the 1:4 ratio, about eight units of Town-owned density need to be extinguished to account for the Valley Brook density. Staff is proposing to extinguish nine units, in the event that some minor additions are proposed at a later date.

In December staff took this issue to Council to discuss which town-owned properties should be used to strip density off to account for the Valley Brook density. The Council agreed upon the Carter Museum property. The attached resolution and density sunset covenant thus extinguish nine development rights off the Carter Museum property. There will still be four development rights remaining on the property after the nine units are sunsetted.

In March the Council adopted amendments to the Development Code that set the stage for the above-discussed density sunset. The 1:4 ratio is now included in the Code.

Council Action

The Council is asked to review the attached resolution and density sunset covenant, provide any additional direction or revisions regarding the wording in the documents, and then take action to adopt the attached resolution.

1 ***FOR WORKSESSION/ADOPTION – APR. 24***
2
3 A RESOLUTION
4
5 SERIES 2012
6
7 A RESOLUTION AUTHORIZING THE EXECUTION AND RECORDING OF A DENSITY
8 SUNSET COVENANT
9 (For the Valley Brook Attainable Workforce Housing Project)
10
11 WHEREAS, pursuant to policies set forth in the recently adopted Joint Upper Blue
12 Master Plan, and in accordance with Section E of Policy 3(Absolute) (Density/Intensity) of
13 Section 9-1-19 of the Breckenridge Town Code, the Town is required to transfer density it owns
14 to approved attainable workforce housing projects at a 1:4 ratio (i.e., transfer one development
15 right for every four attainable workforce housing development rights permitted to be built); and
16
17 WHEREAS, the Summit Housing Development Corporation, a Colorado nonprofit
18 corporation, recently developed an attainable workforce housing project known as "Valley
19 Brook"; and
20
21 WHEREAS, the Town Council finds and determines it is therefore necessary and
22 appropriate to permanently extinguish nine (9) single family equivalents of density from the
23 Town's "Carter Museum" property in order to account for the density that was used to construct
24 the "Valley Brook" attainable workforce housing project; and
25
26 WHEREAS, a proposed "Density Sunset Covenant" has been prepared by the Town
27 Attorney, a copy of which is marked **Exhibit "A",** attached hereto and incorporated herein by
28 reference; and
29
30 WHEREAS, the proposed Density Sunset Covenant permanently extinguishes nine (9)
31 single family equivalents of density previously allocated to the Town's Carter Museum property
32 in order to account for the density that was used to construct the "Valley Brook" attainable
33 workforce housing project; and
34
35 WHEREAS, the Town Council has reviewed the proposed Density Sunset Covenant, and
36 finds and determines that it should be approved.
37
38 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
39 BRECKENRIDGE, COLORADO, as follows:
40
41 Section 1. The Density Sunset Covenant that is attached as **Exhibit "A"** to this
42 resolution is approved, and the Town Manager is authorized, empowered, and directed to sign
43 such document for and on behalf of the Town. After it is signed, the approved Density Sunset
44 Covenant shall be recorded in the real property records of the Clerk and Recorder of Summit
45 County, Colorado in order to give record notice that the Town has accounted for the density that

1 was used by Summit Housing Development Corporation to construct the "Valley Brook"
2 attainable workforce housing project.

3 Section 2. This resolution is effective upon adoption.
4
5 RESOLUTION APPROVED AND ADOPTED this ___ day of ___, 2012.
6
7 TOWN OF BRECKENRIDGE
8
9
10
11 By: ________________________________
12 John G. Warner, Mayor
13
14 ATTEST:
15
16
17
18 _______________________
19 Mary Jean Loufek,
20 CMC, Town Clerk
21
22 APPROVED IN FORM
23
24
25
26 ___________________________
27 Town Attorney Date
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1 DENSITY SUNSET COVENANT
2
3 This Covenant ("**Covenant**") is made ______________________, 2012 by the TOWN
4 OF BRECKENRIDGE, a Colorado municipal corporation ("**Town**").
5
6 WHEREAS, Town owns the following described real property situate in the Town of
7 Breckenridge, Summit County, Colorado:
8
9 Parcel "A"
10
11 A parcel of land lying wholly within the Abbett Addition to the Town of
12 Breckenridge, known also as the Abbett Placer, U.S. Mineral Survey No. 843 and
13 more particularly described as follows:
14
15 Beginning at Corner No. 8 of U.S. Survey No. 843, Abbett Placer;
16 thence North 7° East, 123.32 feet along the West line of said Abbett Placer;
17 thence East 158.2 feet to the West line of Ridge Street;
18 thence South 123.16 feet to line 7-8 of Survey No. 843;
19 thence North 89° 45' West 173.25 feet to the Point of Beginning.
20
21 Parcel "B"
22
23 A parcel of land lying wholly within the Abbett Addition to the Town of
24 Breckenridge, known also as the Abbett Placer, U.S. Mineral Survey No. 843 and
25 more particularly described as follows:
26
27 Beginning at a point whence Corner No. 8 of U.S. Survey No. 843, Abbett Placer,
28 bears South 7° West, 123.32 feet;
29 thence North 7° East, 75.76 feet to the South line of Carter Avenue;
30 thence East 149 feet to Corner of Carter Avenue and Ridge Street;
31 thence South 75 feet;
32 thence West 158.2 feet to the Point of Beginning.
33
34 ("**Town's Property**")
35 ; and
36
37 WHEREAS, the Town's Property is commonly known as the Town's "Carter Museum"
38 property; and
39
40 WHEREAS, pursuant to policies set forth in the recently adopted Joint Upper Blue
41 Master Plan, and in accordance with Section E of Policy 3(Absolute) (Density/Intensity) of
42 Section 9-1-19 of the Breckenridge Town Code, the Town is required to transfer density it owns
43 to attainable workforce housing projects at a 1:4 ratio (i.e., transfer one development right for
44 every four attainable workforce housing development rights permitted to be built); and

1
2 WHEREAS, the Summit Housing Development Corporation, a Colorado nonprofit
3 corporation, recently developed an attainable workforce housing project known as "Valley
4 Brook"; and
5
6 WHEREAS, the Town Council finds and determines it is therefore necessary and
7 appropriate to transfer nine (9) single family equivalents of density from the Town's "Carter
8 Museum" property in order to account for the density that was constructed at the "Valley Brook"
9 attainable workforce housing project.
10
11 NOW, THEREFORE, Town agrees as follows:
12
13 1. Extinguishment of Density. Nine (9) single family equivalents ("**SFEs**") of density
14 previously allocated to Town's Property is forever extinguished. Following the execution
15 of this Covenant, there will be four (4) SFEs of density remaining on the Town's
16 Property.
17
18 2. Recording; Covenant to Run With Land. This Covenant shall be placed of record in the
19 real property records of Summit County, Colorado, and the covenants contained herein
20 shall run with the land and shall bind the Town and all subsequent owners of Town's
21 Property, or any interest therein.
22
23 3. Town's Acknowledgment of Covenant Validity. Town agrees that any and all
24 requirements of the laws of the State of Colorado to be satisfied in order for the
25 provisions of this Covenant to constitute a restrictive covenant running with the land shall
26 be deemed to be satisfied in full, and that any requirements of privity of estate are
27 intended to be satisfied, or, in the alternative, that an equitable servitude has been created
28 to insure that the covenant herein contained shall run with the land. This covenant shall
29 survive and be effective as to successors and/or assigns of all or any portion of Town's
30 Property, regardless of whether such contract, deed or other instrument hereafter
31 executed conveying Town's Property or portion thereof provides that such conveyance is
32 subject to this Covenant.
33
34 4. Authorization By Resolution. The execution and recording of this Covenant was
35 authorized by Town of Breckenridge Resolution No. ____, Series 2012, adopted April
36 24, 2012.
37
38
39

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By:____________________________________
Timothy J. Gagen, Town Manager

ATTEST:

____
Mary Jean Loufek CMC,
Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this _____ day of _______________________, 2012, by Timothy J. Gagen, Town Manager, and Mary Jean Loufek CMC, Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.

My commission expires: _____________________.

____
Notary Public

500-324\Density Sunset Covenant _2(03-30-12)

MEMORANDUM

***To**:* Town Council

From: Peter Grosshuesch

Date: April 18, 2012

Re: Town Council Consent Calendar from the Planning Commission Decisions of the April 17, 2012, Meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF <u>April 17, 2012</u>:

CLASS C APPLICATIONS:

1. Caldwell Residence PC#2012023, 211 Marksberry Way

Construct a new, single family residence with 3 bedrooms, 2 bathrooms, 3,830 sq. ft. of density and 4,695 sq. ft. of mass for a F.A.R. of 1:4.87. Approved.

2. Ski Side Condominium Remodel PC#2012022, 1001 Grandview Drive

Exterior remodel of three connected residential buildings, hot tub building and dumpster enclosure, to include: new fiber cement siding and trim on the residential and hot tub building; natural wood post and beam timbers at decking; corrugated metal siding at base and metal handrails and railings, upgrades to the insulation and heating system. Continued.

3. Nordin Garage and Driveway PC#2012025, 517 Wellington Road

Construct a new, 812 sq. ft. garage and regrade driveway to existing single family residence. Approved.

4. Pray Residence PC#2012026, 306 Lake Edge Drive

Construct a new, single family residence with 3 bedrooms, 3 bathrooms, 4,717 sq. ft. of density and 5,334 sq. ft. of mass for a F.A.R. of 1:5.14. Approved.

5. "House A" Residence PC#2012027, 738 Highfield Trail

Construct a new, single family residence with 4 bedrooms, 4 bathrooms, 3,139 sq. ft. of density and 3,932 sq. ft. of mass for a F.A.R. of 1:11.30. Approved.

6. Lot 10, Corkscrew Flats PC#2012028, 168 Corkscrew Drive

Construct a new, single family residence with 5 bedrooms, 4.5 bathrooms, 3,593 sq. ft. of density and 4,153 sq. ft. of mass for a F.A.R. of 1:3.40. Approved.

7. Goldflake Residence PC#2012024, 207 North Gold Flake Terrace

Construct a new, single family residence with 4 bedrooms, 5.5 bathrooms, 4,634 sq. ft. of density and 5,647 sq. ft. of mass for a F.A.R. of 1:7.26. Approved.

8. Shores Duplex, Lot 4A & 4B PC#2012021, 312 & 344 Shores Lane

Construct a new duplex with 4 bedrooms, 3.5 bathrooms, 2,667 sq. ft. of density and 3,340 sq. ft. of mass (312 Shores Lane side), 3 bedrooms, 3.5 bathrooms, 2,273 sq. ft. of density and 2,969 sq. ft. of mass (344 Shores Lane side). Approved.

CLASS B APPLICATIONS:
None

CLASS A APPLICATIONS:
None

Shores Duplex
312 & 344 Shores Lane

"House A" Residence
738 Highfield Trail

Pray Residence
306 Lake Edge Drive

Stan Miller Master Plan
2nd Modification
13541 CO Highway 9

Caldwell Residence
211 Marksberry Way

Breckenridge North

Town of Breckenridge and Summit County governments assume no responsibility for the accuracy of the data, and use of the product for any purpose is at user's sole risk.

printed 4/12/2011

Lot 10, Corkscrew Flats
168 Corkscrew Drive

Nordin Garage &
Driveway
517 Wellington Road

Gold Flake Residence
207 North Gold Flake
Terrace

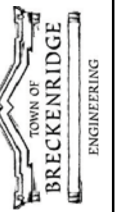
Harris Residence
Rehabilitation,
Restoration and Addition
206 South French Street

Ski Side Condominium
Remodel
1001 Grandview Drive

printed 4/12/2011

Breckenridge South

Town of Breckenridge and Summit County governments assume no responsibility for the accuracy of the data, and use of the product for any purpose is at user's sole risk.



PLANNING COMMISSION MEETING

The meeting was called to order at 7:01 p.m.

ROLL CALL

Kate Christopher Jim Lamb Dan Schroder
Gretchen Dudney Michael Rath Dave Pringle
Trip Butler and Gary Gallagher, Town Council Liaison, were not present

APPROVAL OF MINUTES

Ms. Dudney: On page 5 of the packet, at the top of the page, please change "incoherent" to "inherent".
With no other changes, the April 3, 2012 Planning Commission meeting minutes were approved unanimously (6-0).

APPROVAL OF AGENDA

Staff and Applicant for Ski Side made a request for call up on the Ski Side Condominium Remodel PC#2012022, 1001 Grandview Drive.
With no other changes, the April 17, 2012 Planning Commission meeting agenda was approved unanimously (6-0).

CONSENT CALENDAR:

1) Caldwell Residence (JP) PC#20120123, 211 Marksberry Way
2) **Ski Side Condominium Remodel (JP) PC#2012022, 1001 Grandview Drive**
3) Nordin Garage and Driveway (MM for MGT) PC#2012025, 517 Wellington Road
4) Pray Residence (MM for MGT) PC#2012026, 306 Lake Edge Drive
5) "House A" Residence (MM for MGT) PC#2012027, 738 Highfield Trail
6) Lot 10, Corkscrew Flats (MM for MGT) PC#2012028, 168 Corkscrew Drive
7) Goldflake Residence (MM for MGT) PC#2012024, 207 North Gold Flake Terrace
8) Shores Duplex, Lot 4A & 4B (MM) PC#2012021, 312 & 344 Shores Lane

Mr. Pringle made a motion to call up the Ski Side Condominium Remodel, PC#2012022, 1001 Grandview Drive. Ms. Dudney seconded, and the motion was carried unanimously (6-0) and moved to the end of the consent calendar for discussion.

With no other requests for call up, the remainder of the consent calendar was approved as presented.

Ski Side Condominium Remodel, PC#2012022, 1001 Grandview Drive Call-Up:

Ms. Puester gave a short presentation about the application for the Commission and the public in attendance. Ms. Puester also pointed out a modification regarding siding in the staff report on the Skipper/Sutter remodel that occurred as a Class D permit.

Ms. Puester discussed the proposed plans for remodel for the residential buildings, hot tub and dumpster. Staff commended the Applicant for an upgrade to the property including energy conservation improvements. Regarding Policy 5/R, effective in April of 2011, the concern is how little natural material is being proposed. Ms. Puester discussed in detail the materials proposed for all of the structures and presented the color renderings, pointing out the natural material proposed and color board to the Commissioners. Staff recommended negative three (-3) points; concerned that the amount of accent materials proposed (deck columns on residential and corner trim on hot tub building) did not meet the intent of natural materials in Policy 5/R. Staff recommended denial of application due to a non-passing point analysis.

Mr. Paul Dunkleman, Attorney for the Applicant: Surprised that we are here; they are going beyond to include energy in the remodel. We thought we had a fairly straight forward remodel. I don't see any language in the code that would recommend denial; says "natural materials on each elevation." By the code, we are good. We should not get negative points. It is a tight budget project; the Applicant wants to do more than the aesthetics with energy upgrades.

Ms. Michelle Tonti, Applicant: Units gross about $20,000/year. Approached it from building performance perspective: improving insulation, hybrid hot water heaters, looking to cut energy consumption. Wants to put up a 50 year product instead of a 20 year project. Would rather spend money to cut an energy bill from $300 to $100. We are also rewiring communications. This budget is so tight that we are leaving wood siding on the dumpster. I think it meets many of the Town's goals. It is good decent workforce housing beyond what is out there. It reduces the carbon footprint and the bottom line is I don't believe the code says "some" natural materials, not trying to work a loop-hole. Looking to put out a project with better performance.

Ms. Darcy Hughes, Architect: We are approving the appearance and performance of the building. The Applicant is trying to limit the maintenance of the exterior and trying to increase the performance. Know that we are setting precedent here, but believe that we are meeting the code with the natural materials; don't think we are trying to get by with anything.

Commissioner Questions / Comments:

Mr. Schroder: Have you discussed with Staff Policy 33 *Energy Efficiency* to make up positive points? (Ms. Hughes: Yes, but studies that determine the rating and the uncertainty of the outcome is also a factor with the budget and timing. We are trying to meet the code without needing those positive points.) (Ms. Dudney: Do you know how much it would cost?) (Ms. Hughes: No.) (Ms. Tonti: Matt from HC3 (High Country Conservation Center) has been involved in those from the beginning and has done some studies on the building but not a finalized HERS rating). From the planning side of things the budget is not something that we can consider. We have to look at per the Development code. Other perspectives can be taken by the Town Council.

Mr. Pringle: Is it a price difference between the materials? Both cementitious and wood will need maintenance. Not sold that one will take less than the other. (Ms. Tonti: To me it is a maintenance issue. The wood is on a completely different cycle; probably staining every 5 years verses 10 years for cementitious.) We have many concerns and maintenance is one of those issues and we aren't compelled to think of budgets but it is in the back of our minds. Part of the dialog when we talked about when the policy was changed to allow the cementitious material wasn't meant to make the entire building of synthetic materials. This is where we get into the question about how much is enough. We have to think about the look that the Town is trying to maintain. (Ms. Tonti: It is not in the code today and the problem with aesthetics is that it is always someone's opinion. Unless you walk up to it, can you really tell me the difference from cementitious siding and wood?) Yes, and part of the Commission's role is to recommend what looks appropriate per code.

Mr. Schroder opened the hearing to public comment. There was no public comment and the hearing was closed.

Mr. Schroder: I like the effort made for energy conservation; we don't have a way in the code to look at energy savings over time. I wish there was some way to get some positives towards what you are doing for energy regarding HERS. I do support Staff regarding the amount of natural materials used. We were at 25% synthetic at one point and I don't think that a wood beam every so many feet meets out current policy intent. I support negative three (-3) points.

Mr. Lamb: I love hardiplank; it is cheaper and it does last. I can tell the difference up close. The energy upgrades, I support those. But those aren't a part of the application for positive points, wish we

could give you points for that. The flip side of that is, I'm not seeing that threshold. I think it looks good; it does have some natural materials. Language is vague and I would feel better is we had a number to go off of.

Mr. Pringle: Was personally opposed to the fiber cement boards outside of the historic district in Town when the policy went through but it is in place because we are being sensitive to the needs for the Town and changing times. The siding is fine. I think we still have to go back and take a look at the trim boards and the belly board. All of this would go away if you put the wood trim on there; that would be my suggestion. I concur with the Staff's analysis.

Ms. Dudney: Concur with the three statements before me. The words in the code talks about accents but the paragraph before it suggests otherwise. The code needs to be subjective and this is the first project coming through with this little amount of natural material proposed. It just wasn't what we had in mind and so I concur with the Staff's analysis. Suggest that trim be wood, or add a stone base. If not, then look at energy and landscape to regain some positive points.

Mr. Rath: Agrees with Staff as well. Natural materials help sell the rest of the exterior building as well as positive aesthetics. Our concern is where does this all end; hardiplank now and then in 10 years we are fighting off aluminum. We have to draw the line somewhere.

Ms. Christopher: Agree with Staff. How much is enough? The reason why we made it subjective is what happens when a 19% project comes in and it looks good but we can't pass it, so no number in there. This just isn't in the ballpark of what we are looking for with natural materials. It is subjective but that is how we meant it. (Ms. Dudney: I am not in favor of the percentages. I would be in favor of the wood trim. That is a very low percentage of the façade.) We have to set precedent with this application. (Mr. Lamb: But if they wrapped the building in stone then it would probably pass.) If there is a way to get positive points then I am in favor for that but I have to go with the negative three (-3) points now.

Mr. Pringle: Would the applicant be willing to come back and make some changes to the application? (Mr. Mosher: Besides a denial, there is the option to continue this application to another meeting so they could make changes and not have the application denied completely.)

Mr. Schroder: We would love to have this work. (Ms. Dudney: It seems as though some ways it could work: wood trim, stone trim, and offset with landscaping or energy.) We would recommend a continuance. (Mr. Dunkleman: Could we request a call up to Town Council? (Mr. Mosher: Yes, the Council could call it up as requested or could pass it as is with a denial.) (Mr. Tim Berry, Town Attorney: If the Council calls it up, it would be called up next Tuesday and scheduled for a hearing the following Council meeting.)

Mr. Rath: Does it make any sense for us to make suggestions for what would be more acceptable? Stone is an expensive remedy. Aesthetically, window trim, the majority of the material is the siding in itself. Speaking as a builder, it isn't going to cost more to put up wood over fiber cementitious. The maintenance difference is minor. The reason the metal is there is it is aesthetically pleasing but it is a quarter of the cost of the stone.

Mr. Schroder then opened the floor to Applicant about their preference or where this Application is going to go to a future meeting. Mr. Dunkleman stated the Applicant would like a continuance to another meeting to work on finishing up the HERS rating.

Mr. Pringle made a motion to continue the Ski Side Condominium Remodel application, PC #2012022, 1001 Grandview Drive. Ms. Christopher seconded, and the motion was carried unanimously (6-0).

PRELIMINARY HEARINGS:

1) Harris Residence Rehabilitation, Restoration and Addition (MM) PC#2012020, 206 South French Street

Mr. Mosher presented. This property was subject to a Development Permit, the Cummins Residence and Setback Variance request, PC#2002014. This application was approved but never acted upon and has since expired. This application represents new applicant/owners and a similar proposal.

- The applicants propose to restore the historic house with new roof, replace damaged or non-historic siding, repair or replace windows, remove the non-historic bay window and attached shed.
- Add a new dormer to the east facing roof of the historic house.
- Relocate the historic out-building further back on the lot.
- Create a new full basement beneath the historic portion of the house (leaving the house in the historic location at the zero front-yard setback) and a portion the connector link.
- Build a 1.5 story addition at the rear of the property.
- Create a paver-strip driveway along the south edge of the property with a paver courtyard in front of the two-car garage, which will be access off of French Street.
- Locally Landmark the building creating 'free' basement density beneath the historic portion of the house.

Staff expressed concerns about the proposal to move the historic sheds inside the absolute 10-feet setback, cannot see a hardship that would support a variance. Moving the sheds so close to the property edges also is requiring the only tree on the property to be removed. There are concerns with the solid to void ratio on one elevation. The Agent is also questioning the assignment of the restoration points.

Ms. Janet Sutterley, Architect: Applicants are eventually applying for rear property access (as a separate application); hence where the programming for the design of the project is coming from. Their main priority is to have a courtyard where they will have all their outdoor living; no front yard with property. This will be their only area for living and they want it to be private. This is what generated this design so it wasn't a lengthy telescope type layout.

9A/9-R: We are 20 square feet over density. We have no points on the table with density. Going for zero for the point analysis for density. Respectfully disagree with staff for the negative five (-5) points for the relocation of the shed, the precedents all seem like a different situation. If we were taking it off the site, we are keeping it within the historical context of where sheds are supposed to be. It is reinforcing the historical context. I don't see there is any precedent set for that and disagree with the ones provided. We aren't moving the building at all; we are literally talking inches to square this building up.

Rear-setback: We aren't asking to move the outhouse. (Ms. Sutterley presented visual scenarios through a shed placement site plan with three options for locations; yellow being the preferred possibility.)

Historic points: This house is going to be as clean of a historic house restoration as you can get. We are taking everything that is non-historic. We are going to be able to obtain points due to the restoration. If you feel like the dormers are a problem we can take them off; it is not a make or break it thing. I don't think we should get dinged again for moving the historic shed on restoration points.

Trees: The front trees are off our property; they belong to the Town. They are really close to the house, but we don't have a problem with saving them. I do have a problem with the tree in the back. It is a young lodge pole and it is 20 feet tall. We will replace any trees that staff sees necessary. I don't know if 4" is enough, the tree might die anyway. The bottom line is I don't understand why it is law everywhere else where we have to have the 15" defensible space but here it is different. I'd rather replace it with whatever the necessary amount of trees will be. (Mr. Schroder: Where is the land where the possible tree replacements would go?) We could replace and put aspens. We could put some along the south side.

My initial point analysis, negative nine (-9) points for three setbacks; negative two (-2) for the heated courtyard, and then we don't have to worry about the snow stack; this ultimately makes sense. Hoping to get positive twelve (+12) points for restoration.

Moved out of context and it doesn't look like a shed. (Mr. Mosher: Negative points were assigned for moving sheds in two projects. I'm specifically citing the code as found in the report. It is a historic structure and it could be given negative points for relocating it. Staff's take is that sheds are just as important as the primary structures and contribute to the character of the site.) (Mr. Pringle: I could understand the Silverthorne House example.) (Mr. Mosher: Staff's interpretation of the code is that the shed is equal importance as a historical structure.) (Mr. Pringle: Is it possible to incorporate the shed into the addition and leave the shed intact?) (Mr. Mosher: Policy 80A comes into play.)

I'm trying to be creative, if we could take the shed itself and plug it onto the back of the structure. You wouldn't lose any of the fabric. We could also find that it isn't applicable in that specific case. (Mr. Mosher: Making sure that we don't go haywire on precedent. We have to be specific and maybe we could make it a special finding.) (Mr. Rath: You would end up losing two walls of the structure though.) (Mr. Pringle: From a historical precedent a lot of sheds have been placed into the homes.)

Commissioner Questions / Comments:

Ms. Dudney: If it was an alley it would only have to be 5 feet? (Mr. Mosher: Correct.) (Mr. Lamb: Could it be an alley?) (Mr. Mosher: It would become an easement because it is on Town property.)

Mr. Pringle: Didn't really get the feeling of a preliminary point analysis; where do they currently stand? (Mr. Mosher: Not miles away, but they are going to work out some of the key issues on that.)

Mr. Lamb: Where is the window in the east Elevation? (Mr. Mosher: There are three but I suggested a possible skylight.)

Ms. Dudney: The connector was fine? (Mr. Mosher: Yes.)

Mr. Schroder opened the hearing to public comment. There was no public comment and the hearing was closed.

Staff believes that this project is off to a good start. Most of the policies of the Development Code and Handbook of Design Standards for the Historic and Conservation District are being met. Staff had the following questions for the Commission:

1. Would the Commission support a variance allowing the historic house to be replaced along the west property line at the existing zero-setback?
    a. Ms. Dudney: Yes.
    b. Mr. Pringle: Yes.
    c. Mr. Lamb: Yes.
    d. Ms. Christopher: Yes.
    e. Mr. Rath: Yes.
    f. Mr. Schroder: Yes.
2. Did the Commission support assigning negative five (-5) points for the relocation of the historic sheds to accommodate the new addition?
    a. Ms. Dudney: Don't know, N/A.
    b. Mr. Pringle: Undecided.
    c. Mr. Lamb: Definitely there is precedent.
    d. Ms. Christopher: Yes, I see negative points.
    e. Mr. Rath: Not sure I agree, but sees negative five (-5) as well.
    f. Mr. Schroder: Viable, yes to the negative five (-5).
3. Did the Commission support allowing a variance to be processed for locating the two out-buildings 5-feet off the rear property line instead of 10-feet? (Mr. Mosher: The Klack Placer parcel is Town owned and not proposed to be a future alley.)
    a. Ms. Dudney: Can't agree to the variance. What is the intent of the rear property line? If

nothing is going to be built there, why not treat it similar to an alley and allow the 5-foot setback?

b. Mr. Pringle: Undecided; even if we thought 5-feet was right you would still have to meet the variance.
c. Mr. Lamb: Definite no, livability I don't see as hardship. Could it be an alley someday? 10-feet?
d. Mr. Schroder: Support of the variance of 5-feet.
e. Ms. Christopher: In support of the variance but not for livability hardship; 5-feet; it seems like imaginary space and that is why I feel like the 5-feet would work.
f. Mr. Rath: Feels like an alley but it is private property; not a livability hardship; not in support of a variance.

Mr. Pringle: (To the Agent): Variance hardship criteria; how do you intend meet that?

4. Did the Commission support allowing the 1-foot encroachment of the roof eaves into the 3-foot side yard setbacks?
   a. Ms. Dudney: Yes.
   b. Mr. Pringle: Yes.
   c. Mr. Lamb: Yes.
   d. Mr. Schroder: Yes.
   e. Ms. Christopher: Yes.
   f. Mr. Rath: Yes.
5. Did the Commission support awarding positive nine (+9) points for the restoration efforts?
   a. Ms. Dudney: Uncertain; reasons I would consider positive twelve (+12) are reasons stated by Applicant; not changing exterior, moving the sheds so little distance seems like not much of a change for me.
   b. Mr. Rath: Can you explain why they didn't reach the positive twelve (+12)? (Mr. Mosher: Policy 24: identified this level of point to include: *"respecting the historic context of the site"*. Between moving the sheds, the only tree and adding an addition, Staff felt the site had been compromised enough to not meet this criteria.) I am in support of the positive twelve (+12) points. Moving the shed a few feet shouldn't cause them to preserve this structure. We should be concerned about preserving these buildings not moving them. What if the Applicant chose not to restore the sheds? (Mr. Mosher: The points could be lower then.)
   c. Mr. Pringle: I think that you and Staff can probably come to an agreement to the right amount of points. I would choose not to side on either one yet.
   d. Mr. Lamb: I think it is a solid positive nine (+9) points; I have an open mind. An argument could be made for positive twelve (+12); but as for now I see it as a solid positive nine (+9).
   e. Ms. Christopher: Ok with either positive nine (+9) or positive twelve (+12). If the Applicant wanted to fight for positive twelve (+12), I would support that.
   f. Mr. Schroder: The site is being changed; we have changed the historic context, but there is a lot of good restoration. Not in support of positive twelve (+12) now but I am in support of positive nine (+9).

Ms. Dudney: What if we moved this to a completely different site? (Mr. Mosher: Taking it offsite could possibly warrant negative ten (-10) points as Chapter 6.0 strongly discourages moving historic buildings off-site. You want to keep it on the property at all costs if you can.)
Mr. Rath: Would Staff's point analysis change if the shed was not reconstructed and preserved? (Mr. Mosher: It would play into other descriptions of 9 and 12.)
Ms. Christopher: They wouldn't get as many restoration points? (Mr. Mosher: Important to consider site and the context changes; picking away at the context of the impact to the site.)

6. Did the Commission believe the size of the windows needs to be reduced to better meet the solid-to-void ratio on the west facing gable end of the addition?
    a. Ms. Dudney: Yes, agrees with Mr. Mosher; it could have more ratio.
    b. Mr. Pringle: Concurs with Ms. Dudney's point.
    c. Mr. Lamb: Ok with the vertical ones, yes.
    d. Ms. Christopher: Yes.
    e. Mr. Rath: Yes.
    f. Mr. Schroder: Yes.
7. Did the Commission support the smaller windows along the east elevation?
    a. Ms. Dudney: Yes, fine with design.
    b. Mr. Pringle: I'd make them more historically accurate but in agreement .
    c. Mr. Lamb: Yes, off of the main street; maybe it could be more historic but I am objectionable.
    d. Ms. Christopher: In agreement.
    e. Mr. Rath: In agreement.
    f. Mr. Schroder: Yes; in agreement.
8. Did the Commission support awarding positive two (+2) points for providing parking out of public view?
    a. Ms. Dudney: Yes.
    b. Mr. Pringle: Yes.
    c. Mr. Lamb: Yes.
    d. Ms. Christopher: Yes.
    e. Mr. Rath: Yes.
    f. Mr. Schroder: Yes.
9. Did the Commission believe the mature Lodge pole tree along the northeast property line should be preserved?
    a. Ms. Dudney: Would like to hear from tree expert about if they think the tree will die anyway; however, I am influenced by neighbor's requests to keep it
    b. Mr. Pringle: Location of the shed will dictate the longevity of the tree.
    c. Mr. Lamb: Love to see it stay; like to hear from tree expert about alternatives; larger trees for significant replacements if it is removed.
    d. Ms. Christopher: Be nice to see it stay; skeptical if the shed is there it might die; plan on landscaping anyway with suitable replacements.
    e. Mr. Rath: Depends on what it would be replaced with. If you put in sizeable spruce you might get more of a privacy wall; would be improvement from Lodgepole.
    f. Mr. Schroder: Sympathetic to neighbors, lose the Lodgepole, it doesn't hurt my heart; we are in reforestation mode as is. In support of anything other than Lodgepole.

Mr. Rath: What if they planted a buffer of trees creating more privacy for the public space? Could the shed be placed closer? (Mr. Mosher: The setbacks are absolute in Policy 9. Additionally site buffering is needed to meet Policy 7.) Is there some way with landscaping where points would be mitigated? (Mr. Schroder: Are points to be lost or gained by losing this tree?) (Mr. Mosher: The only reason the tree is being removed is because of the relocation of the shed so close to the property line. Also, this is the only tree on the property. Priority Policy 1 of the Handbook of Design Standards specifies *1. Respect the natural setting of the building site. Avoid damage to natural resources on site, including established trees. Preserve existing trees in their original location.*)

10. Did the Commission support preserving the trees in the front yard that are located in the Town ROW?
    a. Ms. Dudney: Yes, support preserving.

b. Mr. Pringle: Yes, try to preserve them but they aren't on her property.
c. Mr. Lamb: Yes, preserve them; the excavation should be done in a sensitive manner to not damage its roots .
d. Ms. Christopher: Be careful to not kill them, and if they die in construction they should be replaced.
e. Mr. Rath: Looks like trees are severely crowded, it might benefit them to lose a couple of them; the ones that are closest to the house if they are sacrificed then the other ones might survive better.
f. Mr. Schroder: Agree with Mr. Rath; thin the trees, and that we are careful with what remains. The trees aren't on the Applicants property; this actually brings us back to number 3.

With Commission direction, Staff suggested this application return for another review.

2) Stan Miller Master Plan Second Modification (MM) PC#2012012, 13541 Colorado Highway 9
Mr. Mosher presented a proposal to modify the existing Amended Miller Master Plan with a change in previously allowed uses and density allocations. (Note: the portion of the property owned by Braddock Holdings, Parcels F and D-2, will be reviewed as a separate modification to the Master Plan for their property.)

Since this is a Master Plan, it is subject to a Development Code based point analysis. However, this application seeks only to modify the density allocation and uses for a portion of the plan that should have no impact on the previously approved point analysis. As the property is developed, each development application will be subject to its own point analysis.

As mentioned above, this preliminary hearing acts as a 'preamble' to guide this application, with Planning Commission input, on to the Town Council for the applicant's desire to modify the Land Use Guidelines for 33-North (to include commercial uses), and to modify the Annexation Agreement to reflect these changes too.

Commissioner Questions / Comments:

Ms. Dudney: Is that plan and the color rendering; is that the proposal? (Mr. Mosher: The map is the Master Plan subject to approval. The color rendering is a sample illustrative plan and not binding.) It is very confusing in the report. Nowhere in the report does it say where it is going to go. (Mr. Mosher pointed out that the staff report and the included maps do show the location.) The key doesn't show commercial, it only shows mixed use. (Mr. Mosher: The commercial are included in "mixed uses", i.e.: parcel B and E are noted as Mixed Use on the map. The rendering is not part of the approved master plan; just the map.) You are asking us to consider "Assisted Living"? The rendering doesn't look anything like it. (Mr. Mosher: The rendering is not specific in showing every possible use. The illustrative plan addresses the required public access, public parking, pocket parks, that all were required from the previous approved Master Plan.) I want you to look at page 102 of what you gave to us. I need you to clarify. Look at the categories. If you look at the headings you have 3 different categories. You are telling me there are only two categories; this is really confusing. So there really are only two categories? So if we approve 1-9 and 1-21? (Mr. Mosher: Perhaps the Master Plan Map included in your packet would help. The heading is in bold and underlined titled Allowed and Prohibited Uses in Mixed Use Parcels and shows Residential Uses and Commercial Uses beneath it. This is Mixed Use. Perhaps I could have used underlining and bold to match it better.) (Mr. Bill Campie, Agent for the Applicant: The idea is that mixed use could have commercial and/or residential.)

Mr. Pringle: At one time we thought that incorporating work force housing this far out of Town wouldn't be the best. (Mr. Mosher: There would be a planned bus stop located here.) We are now not considering that consideration.

Ms. Dudney: Have you thought of how you would work a deed restriction with assisted living? (Mr. Mosher: They are separated. We are discussing the impacts of the proposed uses, Residential and Mixed Use. We need to reflect on what the possible impacts could be and relay that back to the Town Council.) The new uses; what the Applicant would like would be to come back later and incorporate any of the uses on B, H and E? (Mr. Mosher: Yes.) (Mr. Grosshuesch: The Town Council housing committee has been pretty clear about not allowing assisted living to substitute for the affordable housing requirement. Assisted living would be in addition to the affordable housing units.)

Mr. Campie: The way this was structured is that there was a very restrictive requirement of affordable housing. All of this is coupled with trying to meet some type of market demand. We are trying to get to the point where we can develop it based on the type of market. We are not changing the ratios of the affordable housing, the AMI requirements within that; anything we can do to promote development. Commercial, conflict of uses; concern how that with residential and how that affects ability to rent. The Town is trying to help service area, not a lot going on. Thinking that it will compete with downtown is pretty far-fetched; don't see that becoming a real conflict. Required to preserve trees, pocket park within project and open space corridors to river access. With regard to assisted living, etc: age-targeted housing; great idea since there isn't much in Town. Would create a sense of community. With regards to assisted living, big question with living at altitude. Is there really demand within that? Would the Town see it as public benefit? Not much certainty around it but a lot of questions around it as well; a lot of flexibility with that as well; placed here to create a sense of options. Independent living: basically independent with a few options, anyone can live there; can be rental, owned, etc. Assisted living: typically more staff on-site to support folks; inside of units would have small kitchenette, wheel chairs, where you need enough help but you are getting to that point where you can't deal with day-to-day stuff on your own. Dementia: memory impairment, specific arrangement for design; vary state-by-state; full medical help state.

Ms. Dudney: What would be the minimum size of assisted living? (Mr. Campie: 20 units, 16 units, I have built some small ones. The trick is the density required for that since the units are small and there are a lot of common areas. Tough to say at this point.)

Mr. Rath: Altitude for anyone who is unwell is not much of a reality, wouldn't build one here. Don't really see the market for it.

Ms. Christopher: Did the report mention that we wouldn't do any of the sites where people aren't well? (Mr. Campie: It was more of a demand study. We don't want to rule it out. Usually a net win for the community; from a development standpoint it is totally up in the air.) (Mr. Mosher: I remind the Commission that we need to discuss the proposed uses of the site based on the Development Code.) (Mr. Grosshuesch: Want to steer Commission to discuss whether these uses are compatible together? Is this change going to introduce incompatibility?)

Mr. Rath: Unless we actually see the design how could we actually make a decision? (Ms. Dudney: Mr. Rath is right; you might not feel ok with a huge assisted living place as you drive into Breckenridge.) (Mr. Campie: There can be no commercial uses larger than the maximum 20 SFE's for the commercial.)

Mr. Schroder opened the hearing to public comment. There was no public comment and the hearing was closed.

Staff welcomed any Commissioner comments on the following:

1. Did the Commission have any Code related concerns with the proposed uses listed on the Master Plan notes?
    a. Ms. Dudney: On Page 102; 30 uses, non-obnoxious uses and uses that would be entirely inside. Child Daycare might be something that would be different since there has to be outside play

area; if they are limited to 20 SFE's for commercial, I am ok with all of it because it is just small projects that are market based

b. Mr. Pringle: No, all would be compatible with Town; I don't feel that all listed would be compatible together; not opposed to introducing some of the commercial uses into this area.
c. Mr. Lamb: Like the mix of commercial and residential; support.
d. Ms. Christopher: No code issues, liked the mixed use.
e. Mr. Rath: No code issue, don't like master plan; it has been here since 2008 and it might be needing another review.
f. Mr. Schroder: No code issues.

2. Did the Commission support adding a Master Plan note be added similar to that on the Select 10, Snowflake Blocks 1 and 2 Master Plan (Reception #530269) stating *"Other commercial uses as may be approved by the Town under special review"*?
    a. Ms. Dudney: Yes.
    b. Mr. Pringle: Yes.
    c. Mr. Lamb: Yes.
    d. Ms. Christopher: Yes.
    e. Mr. Rath: Yes.
    f. Mr. Schroder: Yes.
3. Did the Commission have any comment on the sizes and hours of operations of the proposed commercial uses?
    a. Ms. Dudney: No comment unless could hear specific use of proposals is.
    b. Mr. Pringle: The sizes probably work; not so sure I want to be tied to hours of operation if I don't know what the uses are going to be (i.e.: coffee shop).
    c. Mr. Lamb: Sizes are good; hours of operation are limited. Hours could keep it in check; if someone wanted to argue hours that could fit into # 2 as a special review for an argument.
    d. Ms. Christopher: Like hours and square footage; would be nice if they needed different hours to submit and support their case.
    e. Mr. Rath: Agree with keeping the hours open; I see that there is enough density where there might be a satellite village where people don't have to drive all the way to town to get something; all of this could be integrated.
    f. Mr. Schroder: Hours will sort itself out; we will see all these things in the application.
4. Did the Commission have any special comments regarding the proposed residential uses that are not identified in the Development Code; "*Assisted Living*" , "*Cooperative Housing units*", "*Dementia Care (as defined by the Colorado Department for Public Health and Environment)*" and "*Nursing Care (as defined by the Colorado Department for Public Health and Environment)*"?
    a. Ms. Dudney: As long as there is a square footage limitation, I am in favor of giving the developer flexibility in this regard. Changing market forces will always happen; wouldn't presume to tell them what they could or couldn't put in there, as long as it isn't a nuisance to the surrounding areas and uses.
    b. Mr. Pringle: Assisted Living/Senior Living; state of CO has specific requirements. Don't want to weigh in with the Town of Breckenridge and the potential of these facilities; agree.
    c. Mr. Lamb: Good we are accommodating uses that may be difficult to sell up here; nice to know there might be a need.
    d. Ms. Christopher: Market will handle this; independent living might be the only thing to squeeze in; if it were to happen, parking like Wellington Neighborhood by spreading it out might be a better look instead of a huge parking lot.
    e. Mr. Rath: We need to have some green and reestablish the trees to start to get rid of the rubble; example: Buena Vista; community feel; if assisted living worked up here I know it could be done well. No concerns, it is all about size and massing. The gateway to Town is important. The Town it creates an impression and I want it to be a good impression.

Mr. Schroder: Do these fall into hotels where they have X amount of parking spaces? How many of these would we want? Do we anticipate writing new code to address these facilities or is the Master Plan going to be the baseline? (Mr. Mosher: Yes, the master plan would be the baseline.) I would say maybe the assisted living could be here; would like to see no more than the one.

OTHER MATTERS:

Mr. Mosher: The Council Representative, Gary Gallagher, will be at the next meeting. Plan on discussing the topics for the joint Town Council and Planning Commission Meeting.

ADJOURNMENT:

The meeting was adjourned at 10:45 p.m.

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Dan Schroder, Chair

MEMORANDUM

TO: Town Council

FROM: Michael Mosher - Chris Neubecker, Community Development Department

DATE: April 16, 2012

SUBJECT: Block 9, Wellington Neighborhood 2, Filing 5, a re-subdivision of a portion of Lot 3, Block 6, Wellington Neighborhood Preliminary Plat - de novo hearing

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At the last Town Council meeting, the Block 9, Wellington Neighborhood 2, Filing 5, a re-subdivision of a portion of Lot 3, Block 6, Wellington Neighborhood Plat was called off the Consent Calendar at the request of the Applicant, David O'Neil and Staff. The purpose was to add additional verbiage to one Condition of Approval, specifically (addition in bold and underlined):

"15. Applicant shall submit and obtain approval from the Town Engineer of final grading, ***<u>water quality,</u>*** *drainage, utility, erosion control and street lighting plans. These plans are to include the detention areas located at the south end of this subdivision."*

This condition was changed to specifically address the water quality concerns Staff identified in this area of the Wellington Neighborhood. Off-site water that had been flowing over the surface of a portion of this subdivision has been covered with dredge material. Staff is seeking design detail in how this drainage is being mitigated with this subdivision.

We will be present at the meeting to present the application and answer any questions.

Town Council (de novo) Staff Report

Subject:	Block 9, Wellington Neighborhood 2, Filing 5, a re-subdivision of a portion of Lot 3, Block 6, Wellington Neighborhood Plat, (Class A Subdivision, Combined Preliminary and Final Hearing) PC#2012019
Date:	March 27, 2012 (For meeting of April 3, 2012)
Project Manager:	Michael Mosher, Planner III, Chris Neubecker, Current Planning Manager
Applicant/Agent:	David O'Neil / Poplar Wellington LLC.
Proposal:	To resubdivide a portion of Lot 3, Block 6, of the Wellington Neighborhood (this will be the fifth filing for Phase II) in connection with the recently approved Wellington Neighborhood Phase II Master Plan. This resubdivision will create 12 single family lots. All units are on single family lots.
Site Area:	2.62 acres (114,006 square feet)
Land Use District:	16, Subject to Wellington Neighborhood Phase II Master Plan
Site Conditions:	The site is partially under development with over lot grading and deep utilities being installed. Those areas not being developed are covered with dredge rock with no vegetation. The site has been previously prepared for development by removing and leveling the dredge rock, and currently slopes downhill from east to west at rate of about 4%. French Creek runs from east to west and is outside any developable area.

Adjoining Uses:

Northeast:	Largely undeveloped land, public open space, National Forest, Country Boy Mine Tours.
Southeast:	The remaining French Creek Valley, undeveloped Phase II land.
Southwest:	Wellington Neighborhood Phase 2, consisting primarily of single-family homes (western part of subdivision to share alley with existing development).
West:	Wellington Neighborhood Phase 2.

Item History

Since the Planning Commission approval on April 3, 2012 the only change to the submittal is the inclusion of "water quality" to Condition number 15. It now reads: *"Applicant shall submit and obtain approval from the Town Engineer of final grading,* ***water quality****, drainage, utility, erosion control and street lighting plans. These plans are to include the detention areas located at the south end of this subdivision".*

The initial subdivision for the Wellington Neighborhood (PC#1999149) encompassed the entire 84.6-acre property, while only a portion was initially developed. Lot 3, Block 6 was left unimproved and anticipated for future development. The Planning Commission approved the Wellington Neighborhood 2 Master Plan (PC#2005042) on February 7, 2006 and the Town Council approved it on February 14, 2006.

The first re-subdivision of Wellington Neighborhood 2 (Wellington Neighborhood Re-Subdivision of Block 5 and Lot 6 PC#2006013) was approved by the Planning Commission on February 21, 2006. This is the fifth re-subdivision filing, pursuant to that Master Plan, that identifies the lots to be created on a portion of Lot 3, Block 6 of the Wellington Neighborhood.

The layout of this block is similar to the illustrative plan of the Wellington Neighborhood 2 Master Plan Modification. Staff has advertised this application as a combined preliminary and final review as we believe the pertinent issues were reviewed under the first re-subdivision. However, if the Council believes that the layout of this re-subdivision is not ready for final approval, we suggest continuing this hearing to a future date. ”

Staff Comments

Block/Lot size/Layout: The proposed re-subdivision follows the same development patterns, landscaping, road/alley layout, and typical green development as established throughout the Wellington Neighborhood as approved with the Wellington Neighborhood Master Plan. The Master Plan addressed the smaller lots, reduced setbacks, and narrow road sections that have been created throughout the entire subdivision. The open space requirement for all re-subdivisions of the Wellington Neighborhood have been met with the initial subdivision

Drainage / Utilities: Drainage and utilities will be engineered and constructed consistent with the first phase. The applicant’s engineer has been working with Town Engineering Staff to provide temporary detention facilities, which meet Town standards, as subdivisions are added to the second phase development. A Condition of Approval has been added requiring this information to be added to the final grading plans prior to any construction of the above ground improvements for this subdivision.

Landscaping: Landscaping will utilize the same patterns as the First Phase - conifers and aspens defining right of ways, with bluegrass ground cover from the front of the house to the street. Working with Staff, the Applicant has agreed to place the trees along the Town right of ways no closer than seven (7) feet to the concrete pan, unless allowed otherwise by the Town’s Public Works Department. This will improve the effectiveness of the snow stacking along these streets. Public Works and Planning Staff will review the placement of the plantings along the right of ways and may allow, on a case-by-case basis, encroachments into this setback.

In addition, since the property line and development are close to the French Gulch Road ROW, a special easement is shown where no development (fences, buildings, etc.) may occur. However,

landscaping may be placed in this area with approval from the Streets and Public Works Department.

Staff has no concerns and Staff review of all landscaping improvements has been added as a Condition of Approval.

The proposed landscaping plan along French Gulch Road will preserve all existing aspens, willows, shrubs and wild grasses and where the natural cover is "thin", the plan is to replicate the established pattern between Blocks 3 and 4 and French Gulch Road. All noxious weeds will be removed. New tree and shrub plantings will be added as needed as reviewed by Staff.

Road Names: Staff reviewed the proposed road names for this subdivision with the County and emergency services and have no concerns.

Staff Recommendation

The proposed lot layout, green design and landscaping follows the patterns we have seen in the previously approved subdivisions of the Wellington Neighborhood. We welcome any comments from the Council regarding the information presented in this report.

Since we had no concerns with this proposal, Staff has advertised this review as a combined Preliminary and Final hearing. If, for any reason, the Council has any concerns we ask that this application be continued rather than denied.

Staff recommends the Town Council approve the Block 9, Wellington Neighborhood 2, Filing 5, a re-subdivision of a portion of Lot 3, Block 6, Wellington Neighborhood Preliminary Plat, PC#2012019, with the attached Findings and Conditions.

TOWN OF BRECKENRIDGE

Block 9, Wellington Neighborhood 2, Filing 5,
a re-subdivision of a portion of Lot 3, Block 6, Wellington Neighborhood Preliminary Plat,
PERMIT #2012019

FINDINGS

1. The proposed project is in accord with the Subdivision Ordinance and the Wellington Neighborhood Phase II Master Plan (PC#2005042) and does not propose any prohibited use.

2. The project will not have a significant adverse environmental impact or demonstrative negative aesthetic effect.

3. All feasible measures mitigating adverse environmental impacts have been included, and there are no economically feasible alternatives which would have less adverse environmental impact.

4. This approval is based on the staff report dated **April 13, 2012** and findings made by the Town Council with respect to the project. Your project was approved based on the proposed design of the project and your acceptance of these terms and conditions imposed.

5. The terms of approval include any representations made by you or your representatives in any writing or plans submitted to the Town of Breckenridge, and at the hearing on the project held on **April 24, 2012** as to the nature of the project. The Council minutes are recorded.

6. If the real property which is the subject of this application is subject to a severed mineral interest, and if this application has been determined by the Director to be subject to the requirements of Article 65.5 of Title 24, C.R.S., the applicant has provided notice of the initial public hearing on this application to any mineral estate owner and to the Town as required by Section 24-65.5-103, C.R.S., and no mineral estate owner has entered an appearance in the proceeding or field an objection to the application as provided in Article 65.5 of Title 24, , to the applicant or the Town.

7. The issues involved in the proposed project are such that no useful purpose would be served by requiring two separate hearings.

CONDITIONS

1. The Final Plat of this property may not be recorded unless and until the applicant accepts the preceding findings and following conditions in writing and transmits the acceptance to the Town of Breckenridge.

2. If the terms and conditions of the approval are violated, the Town, in addition to criminal and civil judicial proceedings, may, if appropriate, refuse to record the Final Plat, issue a stop order requiring the cessation of any work being performed under this permit, revoke this permit, require removal of any improvements made in reliance upon this permit with costs to constitute a lien on the property and/or restoration of the property.

3. This permit will expire three (3) years from the date of Town Council approval, on **April 24, 2015** unless the Plat has been filed. In addition, if this permit is not signed and returned to the Town within 30 days from the permit mailing date, the duration of the permit shall be three years, but without the benefit of any vested property right.

4. The terms and conditions of this permit are in compliance with the statements of the staff and applicant made on the evidentiary forms and policy analysis forms.

5. Applicant shall construct the subdivision according to the approved subdivision plan, and shall be responsible for and shall pay all costs of installation of public roads and all improvements including revegetation,

retaining walls, street lighting, and drainage system. All construction shall be in accordance with Town regulations.

6. This permit contains no agreement, consideration, or promise that a certificate of occupancy or certificate of compliance will be issued by the Town. A certificate of occupancy or certificate of compliance will be issued only in accordance with the Town's planning requirements/codes and building codes and the Wellington Neighborhood 2 Master Plan.

7. Applicant shall be required to install an address sign identifying all residences served by a private drive posted at the intersection with the primary roadway.

PRIOR TO RECORDATION OF FINAL PLAT

8. Applicant shall submit and obtain approval from Town staff of a final plat that meets Town subdivision requirements, and the Wellington Neighborhood 2 Master Plan and the terms of the subdivision plan approval.

9. Applicant shall submit and obtain approval from the Town Attorney for any restrictive covenants and declarations for the property.

10. Applicant shall either install all public and private improvements shown on the subdivision plan, or a Subdivision Improvements Agreement satisfactory to the Town Attorney shall be drafted and executed specifying improvements to be constructed and including an engineer's estimate of improvement costs and construction schedule. In addition, a monetary guarantee in accordance with the estimate of costs shall be provided to cover said improvements.

11. Applicant shall submit and obtain approval from the Town Engineer of all traffic control signage and street lights which shall be installed at applicant's expense prior to acceptance of the streets by the Town.

12. .Per Section 9-2-3-5-B of the Subdivision Standards, the following supplemental information must be submitted to the Town for review and approval prior to recordation of the final plat: title report, errors of closure, any proposed restrictive covenants, any dedications through separate documents, and proof that all taxes and assessments have been paid.

13. A note shall be added to the Landscaping plan stating: "Trees that are to be placed along the Town right of ways by the developer for this subdivision shall be no closer than seven (7) feet to the concrete pan, unless allowed otherwise by the Town's Public Works Department who may allow, on a case-by-case basis, encroachments into this setback."

PRIOR TO IMPROVEMENT CONSTRUCTION

14. Prior to revegetation of disturbed areas, applicant shall submit and obtain approval from Town staff of a landscaping plan in compliance with the Subdivision Ordinance requirements, specifying revegetation consisting of native grasses and other native vegetation. In addition, these plans should show increased landscaping (trees and shrubs) along the adjacent French Gulch Road Right of Way where possible.

15. Applicant shall submit and obtain approval from the Town Engineer of final grading, **water quality,** drainage, utility, erosion control and street lighting plans. These plans are to include the detention areas located at the south end of this subdivision.

PRIOR TO ISSUANCE OF CERTIFICATE OF COMPLIANCE

16. Applicant shall submit the written statement concerning contractors, subcontractors and material suppliers required in accordance with Ordinance No. 1, Series 2004.

WELLINGTON 2, FILING 5, BLOCK 9

FRENCH GULCH ROAD
ROW VARIES

POB PROPERTY DESCRIPTION NE COR WELLINGTON 2 FILING 4 REC NO. 918908

S67°09'58"E 304.46'

LOT 11
BLOCK 9
5,321 sq.ft. 0.12 acres

LOT 12
BLOCK 9
3,363 sq.ft. 0.08 acres

LOT 13
BLOCK 9
5,409 sq.ft. 0.12 acres

LOT 14
BLOCK 9
4,908 sq.ft. 0.11 acres

LOT 15
BLOCK 9
6,706 sq.ft. 0.15 acres

LOT 16
BLOCK 9
3,775 sq.ft. 0.09 acres

LOT 17
BLOCK 9
3,405 sq.ft. 0.08 acres

LOT 18
BLOCK 9
3,251 sq.ft. 0.07 acres

LOT 19
BLOCK 9
5,170 sq.ft. 0.12 acres

LOT 20
BLOCK 9
6,067 sq.ft. 0.14 acres

LOT 21
BLOCK 9
3,422 sq.ft. 0.08 acres

LOT 22
BLOCK 9
5,322 sq.ft. 0.12 acres

LOGAN ROAD
50.0'
ROW

UTILITY AND SNOWSTACK EASEMENT (TYP)

PUBLIC TRIAL EASEMENT

20' PRIVATE ALLEY AND PUBLIC UTILITY EASEMENT

PARKING EASEMENT

DRAINAGE & UTILITY EASEMENT

PRIVATE OPEN SPACE

PROSPECTOR GREEN

PUBLIC UTILITY EASEMENT

WELLINGTON 2 FILING 4

SUMMIT COUNTY BOARD OF COMMISSIONERS

REMAINDER OF LOT 4 BLOCK 6

NORTHERLY SIDE 150' RIGHT OF WAY EASEMENT REC NO. 191507

150.0' RIGHT OF WAY EASEMENT REC NO. 191507

DRAINAGE EASEMENT

S10°47'54"E 288.05'

435.12'(P)

N74°51'05"W 363.70'

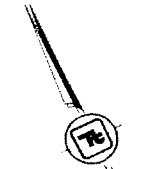
N72°36'38"W 116.74'

49.65' N63°48'44"W

N26°11'16"E 110.00'

N26°11'16"E 189.77'

S63°48'44"E 44.76'



SCALE: 1" = 20'

LEGEND

- ●[1] FOUND #5 REBAR WITH 1-1/2" ALUM CAP STAMPED "TT RMC PLS 29412"
- ●[2] FOUND #5 REBAR WITH 1-1/2" ALUM CAP STAMPED "PLS 35595"
- ●[3] FOUND #5 REBAR WITH 1-1/2" ALUM CAP STAMPED "PLS 10847"
- ●[4] SET #5 REBAR WITH 1-1/2" ALUM CAP STAMPED "TT RMC PLS 38074"
- FRENCH GULCH RD EASEMENT
- DRAINAGE EASEMENT

BASIS OF BEARINGS: ALL BEARINGS CONTAINED HEREIN ARE BASED UPON THE PLATTED BEARING OF S26°11'16"W, A DISTANCE OF 189.77 FEET, WELLINGTON 2, FILING 4, BLOCK 9, RECEPTION NO. 918908 AS SHOWN BETWEEN THE SET AND DESCRIBED MONUMENTS

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

UNLESS STATED OTHERWISE, LINEAL UNITS CONTAINED HEREIN ARE U.S. SURVEY FEET.

TETRA TECH
www.tetratech.com
410 S. French St.
Breckenridge, CO 80424
PHONE (970)453-6394 FAX (970)453-4579

MARK	DATE	DESCRIPTION	BY
1	02-16-12		

WELLINGTON 2, FILING 5, BLOCK 9
PRELIMINARY PLAT

Project No.: 133-23360-12001
Designed By:
Drawn By: SMT
Checked By: RPG

1
Sheet 2 of 2

Copyright: Tetra Tech

Wellington Rd
Rodeo Dr
Olivia Ln
Cedar Green
Midnight Sun Rd
Grey Ln
French Gulch Rd
Summer Green
Huckleberry Green
Wolff Lyon Rd
Willow Green
Queen of the West Rd
Silver Green
Union Mill Rd
Bridge St
Dragonfly Green
Meadow Lark Green
Madeline Green
Raindrop Green
Leap Frog Green
Walker Green
Logan Dr
NORTH
Wellington 2, Filing 5
Block 9

MEMORANDUM

TO: Town Council

FROM: Scott Reid, Open Space & Trails Manager

DATE: April 17, 2012

SUBJECT: Breckenridge Open Space Advisory Commission (BOSAC) Vacancies

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Attached please find seven letters of application for BOSAC. There are three vacancies for terms from April of 2012 through March of 2014. The terms that are up are Dennis Kuhn, Devon O'Neal and Scott Yule. Devon and Scott are reapplying, and we also have applications from Eric Buck, Rick Hague, Chris Tennal, Jeffrey Bergeron and Alexis Bohlander.

Suggested interview questions and a ballot have been included in a separate email to the Town Council.

RECEIVED
MAR 19 2012
TOWN OF BRECKENRIDGE
PLANNING DEPT

March 19, 2012

Dear Breckenridge Town Council and Staff,

Please accept my application to serve another term on the Breckenridge Open Space Advisory Commission.

When I was appointed in 2010, I brought energy and interest but hardly a firm grasp on the enormous range of issues influencing our town's open space and trails. I had no idea what a warbler was. I didn't fully comprehend the intricacies at play behind the scenes of crucial management decisions. I'd never been asked to evaluate million-dollar land purchases, let alone with public money.

Now, I know the warbler is not only a cute little bird, but a species whose fate sometimes rests in our hands; I embrace the unique analysis required to balance divergent public interests; and I understand the value of protecting open spaces even at a great monetary cost.

In short, I feel better equipped to make difficult decisions than I did at the start of my first term. If granted the opportunity, I will continue to bring impartiality to BOSAC with every discussion.

Sincerely,
Devon O'Neil

April 6, 2012

RECEIVED
APR 06 2012
TOWN OF BRECKENRIDGE
PLANNING DEPT

Breckenridge Town Council
PO Box 168
Breckenridge, CO
80424

Dear Mayor Warner and Town Council Members,

I would like to express my continued interest in serving on the Breckenridge Open Space Advisory Commission. I have just completed my fourth appointment and look forward to working, first and foremost, to help establish the goals and objectives stated in the BOSAC mission statement.

. BOSAC has the responsibility to act as the "Lead Entity" for the Cucumber Gulch Preserve, a popular and sensitive community asset. I hope to continue working towards solutions to achieve the protection of the natural resources and management of recreational activities within this special Breckenridge amminiety.

I'm passionate about the importance and uniqueness of the Cucumber Gulch Preserve, which finally now includes the "Wedge" property and finding the right balance between providing quality habitat for wildlife and the increasing human interaction.

The long awaited USFS travel management plan for the Golden Horseshoe property has become a reality. My priority is continued involvement in the management process for protection of natural resources, development of quality sustainable trail systems and preserving our mining heritage.

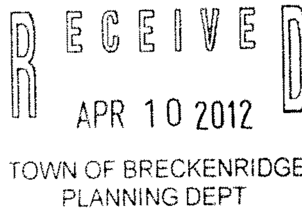
I look forward to discussing my interests in serving on BOSAC in the future.

Cordially,

Scott Yule
108 Goldflake
Breckenridge, CO
333-1573

April 9, 2012

Scott Reid
Town of Breckenridge
PO Box 168
Breckenridge, CO 8042



Scott,

I once again am writing to express my interest in volunteering to serve on the Breckenridge Open Space Advisory Commission (BOSAC). As you know, I have been an active volunteer for many town and community activities including trail maintenance, tree planting, grant solicitation, HOA board membership and special events such as the Snow Sculpture Championships. While these activities have been rewarding, I earnestly want to serve my town in a more substantial and more lasting way. As an avid outdoorsman and history buff, I am keenly interesting in preserving the open spaces we have and adding new ones to ensure that Breckenridge maintains its unique mountain feel and continues to offer hiking, biking and other outdoor activities to Breckenridge residents and visitors for years to come. As important, I believe efforts need to be made to preserve special areas in our community from destruction from overuse or development.

I believe my background and experience make me especially qualified for this position. I have a financial and real estate background which gives me an appreciation of the economic issues that affect open space acquisition and maintenance. For nearly 30 years I was an investment analyst on the East Coast. Over that same time, I was actively involved as an investor in residential and commercial real estate – primarily in less developed areas including ski areas in the east and in Steamboat, Colorado. Currently, I am a broker with RE/MAX Properties of the Summit, a position that has made me intimately familiar with our community's neighborhoods and acutely aware of the importance of maintaining our heritage and quality of life to keep our community vibrant and prosperous.

As important, the outdoors has been a life-long passion. From my days as a Boy Scout, to enjoying the Scouting experience with my sons and culminating in my six month hike of the (then) 2,186 hike of the Appalachian trial in 2002, I have developed a unique understanding of trails and open spaces. Those ventures have exposed me to a wide range of issues facing conservationist trying to balance the wilderness experience with property development. I fully appreciate that once property is developed, it likely never will be returned to its native state.

I believe these qualities, an appreciation of Breckenridge's heritage and mission statement, experience in trail and open space issues, the analytical experience to review the science, economics and emotional aspects of any decision and the passion to serve my community make me an excellent candidate for this position.

Sincerely,

Eric C. Buck
970- 406-0858
ecbuck@ownthesummit.com

Richard E. Hague

PO Box 8475, Breckenridge, Colorado 80424

RECEIVED
APR 10 2012
TOWN OF BRECKENRIDGE
PLANNING DEPT

April 9, 2012

Mr. Scott Reid
Town of Breckenridge
PO Box 168
Breckenridge, CO 80424

Dear Scott:

Please accept my application to join the Breckenridge Open Space Advisory Commission (BOSAC). I feel that my interest in and enjoyment of our beautiful outdoors, my background, my knowledge of the community, and record of community involvement make me a strong candidate for membership on this commission.

Perhaps I should first explain my perspective of and passion for our surrounding open spaces. It goes without saying that we live in a beautiful, precious environment of mountains, wildlife, and natural resources – resources that must be preserved and managed carefully for both our own enjoyment and for future generations, as their heritage. After all, our surroundings are one of the main reasons we all live here. However, these resources will not manage and preserve themselves. There certainly are conflicting opinions concerning their use, preservation, and management. That, of course, is why concerned citizens and BOSAC are absolutely necessary in today's world.

We all enjoy hiking, biking, and camping in our open spaces as well as viewing its wildlife and mountains. For me, it's about history and heritage as well. Our mountains host our history, tell the story of who we are and where we have come from. I am certainly into the natural beauty that surrounds us, but almost equally important is the history that is there as well. Let's face it - some people love to enjoy a field of wild flowers, and some people love to explore 150-year-old can dumps. I'm in both camps.

I see BOSAC's mission – as well as my own as an individual – as protecting, preserving, and advocating on behalf of both our natural and historical resources. I feel that my history/heritage focus would provide an important perspective with which to support and reinforce the BOSAC mission. The more our backcountry is used for hiking and biking, the more its historic resources are opened to visitation, exploration – and, unfortunately, to vandalism. They, as well as the natural resources in any given area, need to be protected and managed.

To this end, I feel that my background and community involvement support this commitment. I am a founder, original board member, and three-year president of the Breckenridge Heritage Alliance (BHA), an organization dedicated to historical preservation and restoration of historic assets in the Breckenridge area, many of these assets in the open spaces surrounding the Town. As a member of the Golden Horseshoe task force about three years ago, I worked with the US Forest Service, Summit County, and the Town to develop a transportation management plan for the Golden Horseshoe area that would effectively manage and preserve both the natural and historical resources in this area. As part of both of these organizations, I have worked to develop the

concept of a "back country" and "front country" to enable more remote areas to be preserved for hikers and campers, while enabling some areas near developed areas and roads to be more accessible to the public to experience historical sites and our heritage

My community involvement has also included service on the former Breckenridge Economic Development Advisory Commission (BEDAC). During the three-year life of BEDAC, I served as either Chair or Vice-Chair of the group that advised the Town Council on issues such as WIFI availability in the Town, building restrictions on Main Street, possible imposition of a tax on ski-area lift tickets, development of the gondola lots, and similar issues. Following the demise of BEDAC in favor of a more flexible advisory committee strategy, I served on a Council task force to develop home-size and building restriction recommendations to Council to facilitate traditional neighborhood preservation in Breckenridge.

I have also been very active in the Summit Historical Society, serving as its president for two years and developing a number of still-existing historical programs. Lastly, I have been a volunteer for about six years with the US Forest Service in Silverthorne where, for roughly four months each summer, I assist visitors with hiking, camping, and recreational questions in the District headquarters.

As a result of this community involvement, I have come to know and work with many persons on the Town Council, BOSAC, the Summit County staff, Vail Resorts, and the US Forest Service staff. In view of this contact, I have worked with, and am known by, many of the same individuals with whom BOSAC is involved on the Town, county, and regional level.

My wife, daughter, and I have lived full time in Breckenridge since 2003 and have owned our home here since 1998. I retired from PricewaterhouseCoopers LLC in 2000 where I served in the firm's management consulting practice as a senior project manager performing planning, financial analysis, process design and reengineering, and organizational analysis for Fortune 500 companies. Prior to that experience, I worked in the mining industry as a mining exploration geologist and mining engineer.

Unfortunately, I will not be in Breckenridge on April 24th for the Town Council interview process. Due to a longstanding prior commitment, I will be in Hawaii and will not return to Breckenridge until May 15th. I certainly recognize that my absence complicates my candidacy for the BOSAC position. However, I would be happy to be available through April 20th to meet with you or others for an interview or make any other arrangements that would meet your needs in assessing my suitability for the Commission. Most of the Town Council members have known me for at least several years as well. I truly hope that my absence will not compromise my candidacy.

In summary, I hope that this letter effectively conveys my passion for the outdoors, for my belief in the need to manage and preserve our natural and historical resources, and my sincerity in wishing to join BOSAC to enable me to further contribute to our great community. Please feel free to contact me if you require any further information or have any questions.

Yours truly,

Rick Hague
970-547-9262

Chris Tennal
P.O. Box 6126
Breckenridge, CO 81424
970-376-3867
cltennal@aol.com

RECEIVED
APR 12 2012
TOWN OF BRECKENRIDGE
PLANNING DEPT

April 11th, 2012

Mr. Reid and Breckenridge Town Council,

I am interested in volunteering for the Breckenridge Open Space Advisory Commission.

As a business owner and resident in the Breckenridge community and a frequent visitor into our local backcountry and open space, I have seen the benefits, positive changes and hard work put forth by our town staff and councils. My businesses, and our clientele, are primary beneficiaries of the positive cohesion that has developed between the Town of Breckenridge and it's surrounding wilderness. I feel my outdoor industry association and a lifetime of recreation and appreciation amongst the Colorado outdoors could be a positive addition to the Breckenridge Open Space Advisory Commission. I would like to offer my services as an enthusiastic advisor, wishing to continue the positive work done on behalf of our community and it's surroundings.

I look forward to the opportunity to meet with you and our council.

Sincerely,

Chris Tennal

RECEIVED
APR 13 2012
TOWN OF BRECKENRIDGE
PLANNING DEPT

Dear Council and Staff:

I would like to submit my application for a position on BOSAC. If I am chosen, it will be a pleasure to sit on a committee where I actually understand the subject matter.

Open space, environmental issues and trails have been a passion of mine since moving to Breckenridge. It was just that passion which fueled the flames for Ellen and me to instigate the ballot initiative which would ultimately spawn BOSAC. That passion has not diminished though it has been somewhat diluted with my two terms on the Breckenridge Council. With the Travel Management Plan finally being approved, I suspect much of the next few years of BOSAC will focus on the Golden Horseshoe, an area I know well and I'm also familiar with the history of negotiations that led to the final recreation plan. Protecting Cucumber Gulch as you all know, is very important to me.

You have many great candidates to choose from for this position. I hope you will deem me worthy for one of the open slots. But if not, if you are looking for new blood, I totally understand you all will continue to have my respect and support.

Sincerely,

Jeffrey Bergeron

From: Alexis Bohlander <alexisbohl@gmail.com>
Date: April 13, 2012 2:18:16 PM MDT
To: WebsiteOpenSpace <WebsiteOpenSpace@townofbreckenridge.com>
Subject: BOSAC application

Alexis Bohlander
P.O. Box 375
Breckenridge, CO 80424
970-485-4332
alexisbohl@gmail.com

RECEIVED
APR 13 2012
TOWN OF BRECKENRIDGE
PLANNING DEPT

Breckenridge Open Space Advisory Commission
Town of Breckenridge
150 Ski Hill Road
P.O. Box 168
Breckenridge, CO 80424

Dear Mr. Reid,

I am writing to declare my candidacy for membership on the Breckenridge Open Space Advisory Commission (BOSAC).

Breckenridge is defined by open spaces: trails, green, non-commercialized areas even in the downtown, open hillsides against a mountain backdrop. For Breckenridge residents it can be easy to take all of this space, and the beauty that depends on it, for granted or to start believing that it is an unlimited resource not in need of protection and management.

However, now more than ever, Breckenridge's open spaces need sound, smart oversight. Population growth has escalated in recent years. Its well-deserved reputation as a destination town and outdoor mecca has resulted in a major influx of tourists year-round. The BOSAC is positioned to create and help implement the type of coherent, long-term space management plan that will protect Breckenridge's open spaces and historic heritage while ensuring a bright economic future and excellent quality of life for its residents and seasonal visitors.

I believe that I would be a valuable asset to the BOSAC and its mission to ensure a green, healthy Breckenridge with an abundance of protected open space. As a licensed realtor and broker associate in Summit County, I am keenly aware that the quality of life for Breckenridge residents at stake when protecting the area's open spaces, as well as its economic health. Breckenridge as a destination for tens of thousands of people annually depends on maintain its heritage as a pristine outdoor paradise. If we lose this, even if this "development" is with the best of intentions, we will all lose what makes Breckenridge special, and in turn, lose our livelihoods as well.

As a member of the BOSAC, I would be able to continue to give back and help protect Breckenridge's open spaces in new and significant ways. My background in historic preservation and art would provide the Commission with another resource to draw upon when discussion ways to protect and highlight Breckenridge's unique architecture and history. As a full time resident and realtor, I would be a dedicated, involved member of the BOSAC, willing to invest whatever time and energy necessary to ensure Breckenridge's green health and success.

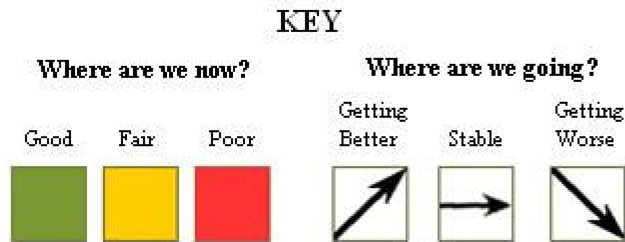
Thank you in advance for considering my bid for membership on the Breckenridge Open Space Advisory Commission. Please contact me with any questions or need of additional information.

Best regards,
Alexis Bohlander

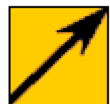
Alexis Bohlander
RE/MAX Properties of the Summit
220 S. Main St.
Breckenridge, CO 80424
Phone: 970-485-4332
Email: alexisbohl@gmail.com
www.breckmountainhomes.com

Town of Breckenridge Executive Summary
Economic Indicators
(Published April 18, 2012)

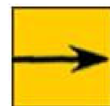
Indicator Monitoring System
Up and down arrow symbols are used to show whether the indicator appears to be getting better, appears stable, or is getting worse. We have also designated the color green, yellow or red to display if the indicator is currently good, fair or poor.



Unemployment: Local (February 2012)
Summit County's February unemployment rate dropped one tenth of a percent from January's rate to 5.8%. February's rate is significantly lower than the February 2011 rate of 7% yet higher than February 2010 rate of 5.4%. Summit's February rate is in the same range as Pitkin County (5.4%) and lower than Eagle County (7.1%), however our rate is still considered relatively high for the time of year (prior to 2009, the Feb. unemployment rate typically did not rise above 3%). (*Note that the arrow follows the KEY for all of the indicators. In this case, the arrow pointing up meaning that the unemployment rate has dropped and is 'getting better' and yellow indicates the condition as "fair".)* (Source: BLS)



Unemployment: State (February 2012)
The Colorado State unemployment rate held steady in February at 7.8% after a seven month downward trend. (The highest unemployment rate the State has ever seen was 9.3% in February 2011-rates tracked since 1976) (Source: State of Colorado)

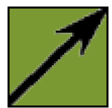


Unemployment: National (March 2012)
National unemployment rate decreased in March one tenth of a percent to 8.2% after seven months of incremental decreases. March 2012 remains trending down from last March's rate of 8.8% and March's 2010 rate of 9.7%. (*Note that the arrow follows the KEY for all of the indicators. In this case, the arrow pointing down meaning that the unemployment rate has is and is 'getting worse' and yellow indicates the condition as "fair".)*
(Source: BLS)

Destination Lodging Reservations Activity (March 2012)
Occupancy rates saw a decrease of 4.1%. The Average Daily Rate (ADR) however, rose 1.4% for the month of March over March 2011 (as reported to MTrip). (Source: MTrip)

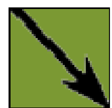
6 Month Projected YTD Occupancy (April-September 2012)
Future bookings for the upcoming April-September 2012 period shows a decrease of 3.5% in projected occupancy rate over the corresponding period last year and increase in ADR of 6.9%. This indicator will continue to be monitored closely as we have seen poor snow conditions during the months of March and April and have witnessed more last minute bookings during the summer months. (Source: MTrip)

Traffic Counts and Sales Trend (March 2012)
March traffic count in town on Highway 9 at Tiger Road was 21,856 total vehicles. As the traffic count is over 20,000 and above last year's count, we expect to see increased sales tax revenues for March. *(Note: There is a strong correlation between high net taxable sales and traffic once a 20,000 vehicle count has been reached. Please see detailed report on website for chart.)* (Source: CDOT and Town of Breckenridge Finance)

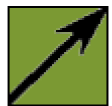


Traffic Count at Eisenhower Tunnel and Highway 9 (March 2012)
During the month of March, the traffic count at the Eisenhower tunnel (westbound) was up 1.4% over March 2011. Despite poor snowfall, data showed March traffic coming into town on Highway 9 rose significantly by 9.4% from March 2011. Traffic flows indicate that the Town is gaining its relative capture rate coming from the tunnel. (Source: CDOT)

Consumer Confidence Index-CCI (March 2012)
The Consumer Confidence Index (CCI), which saw a strong comeback in February at 71.6 dropped in March to 70.2 (1985=100). Although in decline this month, this is not a drastic shift (of 5% or more) and is still above indexes that we have seen for the last year (70.4, Feb. 2011). Moves of 5% or more often indicate a change in the direction of the economy. An Index of 50 or more typically translates to a "good" level of consumer confidence and indicates an increase in consumer spending. Based on the index level continuing to rise and fall, we expect that real estate transfer tax revenues will also fluctuate over the same period until the index sees consistent improvement. (Source: CCB)



Mountain Communities Sales Tax Comparisons (February 2012)
The amount of taxable sales in Town for February 2012 was up 7.24% from February 2011 levels. For February, Breckenridge is in the top three (out of 8) of the mountain communities for sales tax collected for the month in comparison to last year's February numbers. Mountain communities in the top three spots include Snowmass (up 17.55%), Glenwood Springs (7.28%), and Breckenridge (7.24%). (Source: Steamboat Springs Finance Dept.)



Standard & Poor's 500 Index and Town Real Estate Transfer Tax (March 2012)

The S&P 500 average monthly adjusted closing price saw gains for the fourth month in a row after a relatively fluctuating 2011. We saw our RETT receipts decrease this month from Town collections in March 2011and 2010. We believe that RETT will continue to lag the growth rates that the S&P 500 achieves for the near future. This month may have also been effected by the poor snow conditions this season. A prolonged positive change in RETT will likely require a long sustained recovery in the S&P 500 index, with an increase in the wealth effect. *See website for detailed chart and additional information.* (Source: S&P 500 and Town Finance)

Town of Breckenridge RETT Collection (March 2012)

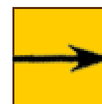
March 2012 RETT collection ($115,321) is down 54% from March 2011 ($250,986). This March is also down from March 2010 ($175,161) by 34%. (Source: Town Finance)

Real Estate Sales (March 2012)

March 2012 compared to March 2011 Summit county real estate sales were down in $ volume by 17%, and down 21% in the number of transactions. Of that, Breckenridge took in 37% of the $ volume and 26% of the transactions countywide for this month. This month reflects a continued overall downward trend in $ volume over the last five months (Feb. 2012 being the only month of increase). (Source: Land Title)

Foreclosure Stressed Properties (March 2012)

Breckenridge properties (excluding timeshares) which have started the foreclosure process are at 28% (19 properties) of the total units within Summit County in 2012 YTD. These are considered distressed properties which may or may not undergo the foreclosure process. Should these properties actually undergo foreclosure, these properties may sell at an accelerated rate and lower price per square foot in the short term. (Source: Land Title)



If you have any questions or comments, please contact Julia Puester at (970) 453-3174 or juliap@townofbreckenridge.com.

Scheduled Meetings, Important Dates and Events

Shading indicates Council attendance – others are optional

The Council has been invited to the following meetings and events. A quorum may be in attendance at any or all of them. All Council Meetings are held in the Council Chambers, 150 Ski Hill Road, Breckenridge, unless otherwise noted.

APRIL 2012

Tuesday, April 24; 3:00/7:30 p.m. — Second Meeting of the Month

Friday, April 27; Cool River Cafe, 8 a.m. — Coffee Talk

MAY 2012

Tuesday, May 1; Town Hall 3rd Floor Conf. Room, 11:45-2:00 p.m. — Public Official Liability Training

Tuesday, May 8; 2:00/7:30 p.m. — First Meeting of the Month

Friday, May 11; Mug Shot, 8 a.m. — Coffee Talk

Tuesday, May 22; 3:00/7:30 p.m. — Second Meeting of the Month

OTHER MEETINGS

1st & 3rd Tuesday of the Month; 7:00 p.m. — Planning Commission; Council Chambers

1st Wednesday of the Month; 4:00 p.m. — Public Art Commission; 3rd floor Conf Room

2nd & 4th Tuesday of the Month; 1:30 p.m. — Board of County Commissioners; County

2nd Thursday of every other month (Dec, Feb, Apr, June, Aug, Oct) 12:00 noon — Breckenridge Heritage Alliance

2nd & 4th Tuesday of the month; 2:00 p.m. — Housing/Childcare Committee

2nd Thursday of the Month; 5:30 p.m. — Sanitation District

3rd Monday of the Month; 5:30 p.m. — BOSAC; 3rd floor Conf Room

3rd Tuesday of the Month; 9:00 a.m. — Liquor Licensing Authority; Council Chambers

3rd Thursday of the Month; 7:00 p.m. — Red White and Blue; Main Fire Station

4th Wednesday of the Month; 9:00 a.m. — Summit Combined Housing Authority

4th Wednesday of the Month; 8:30 a.m. — Breckenridge Resort Chamber; BRC Offices

TBD (on web site as meetings are scheduled) — Breckenridge Marketing Advisory Committee; 3rd floor Conf Room

Other Meetings: CAST, CML, NWCCOG, RRR, QQ, I-70 Coalition