

(Operations)
HQ DIVISION OF TRANSIT AND RAIL
ELKSTANG BUSTANG SERVICE

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made this ____ day of 5/20/2022 2022, by and between the State of Colorado for the use and benefit of the COLORADO DEPARTMENT OF TRANSPORTATION (“State” or “CDOT”), and the TOWN OF ESTES PARK (“Town” or “Local Agency”), 170 MacGregor Avenue, Estes Park, CO 80517, CDOT Vendor #: 2000036. The State and Local Agency shall be each be referred to as a “Party”, and collectively as “Parties”.

This Agreement shall not be effective or enforceable until it is approved and signed by the Governor or his designee (“Effective Date”).

RECITALS

1. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
2. The Town and Rocky Mountain National Park (the “National Park”), and neighboring highways US 34, US 36, and SH 7, experience intense traffic and parking congestion in late summer and early fall annually.
3. CDOT has goals to improve safety, mobility, access, and rural connectivity to transit services.
4. The Town has goals to decrease parking needs, increase visitation, and improve transportation choices to access the community.
5. The Parties desire to enter into this Agreement to delineate each one’s responsibilities for operation of a project to provide limited transit commuter services from Denver Union Station and from US 36 and Sheridan Station to the Town and back during peak late summer and early fall congestion days. For the purposes of this Agreement this commuter transit service will be named “Elkstang”, and is further detailed in **Section 1 & 2**;
6. The State and the Local Agency have the authority, as provided in Sections 29-1-203, 43-1106, 43-2-103, 43-2-104, and 43-2-144 CRS, as amended, to enter into this Agreement with the Local Agency as hereinafter set forth; and
7. The State and Local Agency have the resources to perform the Elkstang services as described in this Intergovernmental Agreement.

THE PARTIES NOW AGREE THAT:**Section 1. Scope of Work**

CDOT will operate Elkstang commuter services on Saturdays and Sundays from May 28, 2022, through October 2, 2022, and the following holidays: Memorial Day, observed May 30, 2022; Independence Day July 4, 2022; and Labor Day, observed September 5, 2022. During 2022, the days of operation will be: May 28, 29, 30; June 4, 5, 11, 12, 18, 19, 25, 26; July 2, 3, 4, 9, 10, 16, 17, 23, 24, 30, 31; August 6, 7, 13, 14, 20, 21, 27, 28; September 3, 4, 5, 10, 11, 17, 18, 24, 25; and October 1, 2. Totaling to forty-one (41) days of commuter transit service in 2022. CDOT reserves the right to add or reduce service days as business and public health require.

CDOT will operate, through contractor Ace Express Coaches, LLC (“Ace”), Elkstang commuter services for two round trips each day of operation, both originating from the Denver Union Station in downtown Denver, CO, making stops in Westminster, Boulder, and Lyons, traveling to stops in the Town and the National Park, returning along the same route, and ending at Denver Union Station.

CDOT intends to pay for Elkstang Services with both fare-box revenue (ticket sales) and state funds through Senate Bill 09-108 funds (annual FASTER funds). The estimated cost of operations and maintenance expenses to provide 41 days of Elkstang commuter services in 2022 is \$147,600. The maximum fare-box revenue estimated to be collected for Elkstang commuter services in 2022 is \$29,520.00. CDOT will be responsible for selling tickets and collecting fares for riders on the Elkstang transit project. This fare-box revenue will remain in the possession of CDOT and be utilized to offset the cost of the project.

The purpose of the Elkstang project is to:

- a. Increase transit options between the Denver metro area, the Town of Estes Park, and the National Park for residents, tourists, and employees;
- b. Connect Elkstang to the Estes Park Free Shuttle transit route in the Town of Estes Park and to the National Park’s Bear Lake & Moraine Park trail shuttles originating from the National Park’s Park & Ride facility;
- c. Connect Elkstang to the Regional Transportation District’s (“RTD”) services at the multi-modal Denver Union Station, the US 36 and Sheridan Station, the US 36 and Table Mesa Station, 5170 Table Mesa Dr., Boulder, and the Lyons Park & Ride at 4th Ave & Railroad Ave., Lyons, CO;
- d. Reduce congestion on US 34, US 36, SH 7 and local roads by providing an alternative mode of transportation to and from Estes Park;
- e. Improve safety by reducing the number of passenger vehicles on US 24, US 36, SH7 and local roads;
- f. Decrease passenger vehicle emissions;
- g. Decrease number of vehicles needing to park within the Town and the National Park;
- h. Provide for increased visitation to the Town and the National Park; and
- i. Provide for economic development.

Section 2. CDOT Commitments

CDOT, at its own expense, will be responsible for performing the following:

For each scheduled round-trip service, CDOT will provide a transit coach bus for 51 passengers (or 21 passengers as COVID pandemic processes may require) and up to 4 bicycles. Passengers may reserve a space on the bicycle carrier. Each bus can hold two bicycles on the front of the bus and another two in the under-coach storage area. The bus is wheelchair accessible. The vehicle will provide free Wi-Fi and an onboard rest room. CDOT will provide a driver through a contract with Ace.

CDOT will operate, through contractor Ace, Elkstang commuter services for two round trips each day of operation, both originating from the Denver Union Station in downtown Denver. A round trip ticket will cost each passenger \$10.00.

CDOT has an existing access agreement with the RTD. RTD has provided permission for Elkstang commuter services to use Gate B4 at Denver Union Station. RTD has provided permission for the Elkstang commuter service to use Gate C at the US 36 and Sheridan Station for eastbound trips and Gate D at the US 36 and Sheridan Station for westbound trips, Gate B at the Table Mesa Station at US 36 & Table Mesa Drive, Boulder, CO for westbound Elkstang commuter services, Gate A at the US 36 & Table Mesa Station for eastbound Elkstang commuter services, and the Lyons Park & Ride at 4th Ave & Railroad Ave., Lyons, CO. The Elkstang transit services shall stop at the Town of Estes Park Visitor's Center located at 500 Big Thompson Avenue, Estes Park, CO, and arrive at the National Park's Park and Ride facility at the intersection of Bear Lake Road and Glacier Basin before returning along the route.

CDOT will also:

Provide Elkstang bus and driver operations;

Create digital ticketing through a Bustang mobile /smart phone application and through a CDOT Bustang website;

Implement public communications and marketing strategies on CDOT's website, LinkedIn, Facebook, and Twitter accounts;

As part of the communications, CDOT will host a "kick-off" event for Elkstang transit services;

Create Elkstang signs for installation by RTD at Denver Union Station, US 36 and Sheridan Station, US 36 and Table Mesa Station, and the Town of Estes Park Visitors Center; and

Track Elkstang ridership data and report it to the Town of Estes Park, RTD, and the Colorado Transportation Commission.

CDOT will contract with Ace to operate Elkstang transit services. Ace will provide insurance and will name CDOT, RTD, and the Town of Estes Park as additional insureds.

Section 3. Local Agency Commitments

The Local Agency, at its own expense, shall be responsible for the following:

Provide permission and a dedicated location for Elkstang to drop off and pick

up its passengers at the Estes Park Visitors Center;
Provide for driver and passenger use of restroom facilities at the Estes Park Visitors Center; Provide for daily Elkstang bus storage at the Estes Park Visitor Center's Parking Garage on the days of the CDOT-provided Elkstang commuter services.

Market the 2022 Elkstang commuter services for destination ridership and for reverse ridership;

Create a link to CDOT's Elkstang commuter services on the Town of Estes Park's website;

Continue public operations of the Estes Transit Free Shuttle on weekend days and the national Labor Day holiday from September 3, 2022, through October 2, 2022; Install Elkstang signs at the Estes Park Visitors Center advertising CDOT's Elkstang commuter services and the locations of the Estes Park Visitor Center's gates for Elkstang access prior to the 2022 Elkstang transit program and continuing through the duration thereof;

Provide Bustang passenger parking at the Estes Park Visitor Center Parking Garage and post the 2022 Elkstang transit service bus schedule information at the Estes Park Visitors Center prior to the 2022 Elkstang transit program and continuing through the duration thereof.

Section 4. Term and Termination Provisions

This Agreement shall be in effect only after it is executed by both Parties. The Agreement will remain in effect until December 31, 2022, or until this Agreement is terminated in accordance with the requirements of this Section 4 and both Parties agree to terminate, whichever is sooner.

Termination for Cause. If, through any cause, either Party shall fail to fulfill its obligations under this Agreement, or if either Party shall violate any of the covenants, agreements, or stipulations of this Agreement, either Party shall thereupon have the right to terminate this Agreement for cause by giving written notice to the other Party of its intent to terminate and giving at least three (3) days opportunity to cure the default or show cause why termination is otherwise not appropriate.

Section 5. Legal Authority

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 law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind the Local Agency to its terms. The person(s) executing this Agreement on behalf of the Local Agency warrants that such person(s) has full authorization to execute this Agreement.

Section 6. Representatives and Notice

The State will provide liaison with the Local Agency through the State's Director of the Division of Transit and Rail, CDOT HQ, 2829 West Howard Place, 4th Floor, Denver, Colorado 80204, (303) 757-9008, amber.blake@state.co.us. Said Director will also be responsible for coordinating the State's activities under this Agreement. All communications

relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Division of Transit and Rail and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either Party may from time to time designate in writing new or substitute representatives.

If to State:

Michael Timlin Branch Mgr.
Mobility Operations CDOT DTR
2829 W. Howard Place
Denver, CO 80204
(303) 757-9548
michael.timlin@state.co.us

If to the Local Agency:

Vanessa Solesbee, Parking & Transit Mgr.
Town of Estes Park Estes Park Visitor Center
P.O. Box 1200
Estes Park, CO 80517
(970) 577-3957
vsolesbee@estes.org

or:

Kyle French
Bus Operations Manager-Bustang CDOT DTR
2829 W. Howard Place
Denver, CO 80204
(303) 757-9647
Kyle.french@state.co.us

Section 7. Successors

Except as herein otherwise provided, this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

Section 8. Governmental Immunity

Notwithstanding any other provision of this Agreement to the contrary, 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, §24-10-101, *et seq.*, CRS, as now or hereafter amended. The Parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of §24-10-101, *et seq.*, CRS, as now or hereafter amended and the risk management statutes, §§24-30-1501, *et seq.*, CRS, as now or hereafter amended.

Section 9. Severability

To the extent that this Agreement may be executed and performance of the obligations of the Parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 10. Waiver

The waiver of any breach of a term, provision, or requirement of this Agreement 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.

Section 11. Modification and Amendment

- A. This Agreement is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Agreement shall be effective unless agreed to in writing by both Parties in an amendment to this Agreement that is properly executed and approved in accordance with applicable law.
- B. Either party may suggest renegotiation of the terms of this Agreement, provided that the Agreement shall not be subject to renegotiation more often than annually, and that neither party shall be required to renegotiate. If the Parties agree to change the provisions of this Agreement, the renegotiated terms shall not be effective until this Agreement is amended/modified accordingly in writing.

Section 12. 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 will 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 the Department of Transportation. 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 the Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his/her duly authorized representative for the determination of such appeals will 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.

Section 13. Sub-Local Agencies

The Local Agency may subcontract for any part of the performance required under this Agreement, subject to the Local Agency first obtaining approval from the State for any particular Sub-local Agency. The State understands that the Local Agency may intend to perform some, or all of the services required under this Agreement through a Sub-local Agency. The Local Agency agrees not to assign rights or delegate duties under this Agreement or subcontract any part of the performance required under the Agreement without the express, written consent of the State, which shall not be unreasonably withheld. Except as herein otherwise provided, this agreement shall inure to the benefit of and be binding only upon the Parties hereto and their respective successors and assigns.

Section 14. 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.

Section 15. 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.

SPECIAL PROVISIONS

Section 16. The Special Provisions apply to all Agreements except where noted in *italics*

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

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

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor 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 Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

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

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

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

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, et seq., C.R.S.

[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] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, et seq., C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, et seq., C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, et seq., C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

THE PARTIES HERETO HAVE EXECUTED THIS INTERGOVERNMENTAL 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.

**LOCAL AGENCY:
TOWN OF ESTES PARK**

**STATE OF COLORADO:
Jared S. Polis, GOVERNOR**

DocuSigned by:
Wendy Koenig
By: 535F0A4F192D47A...

DocuSigned by:
Steve Harelson 5/20/2022
AB4C0B01642B42E...

Title: Mayor

Date: 5/20/2022

**LOCAL AGENCY:
(A Local Agency attestation or approval, if required.)**

DocuSigned by:
Dan Kramer
By: C735545AE3D0453...

Title: Town Attorney - Approval as to Form

Date: 5/19/2022

**LOCAL AGENCY:
(A Local Agency attestation or approval, if required.)**

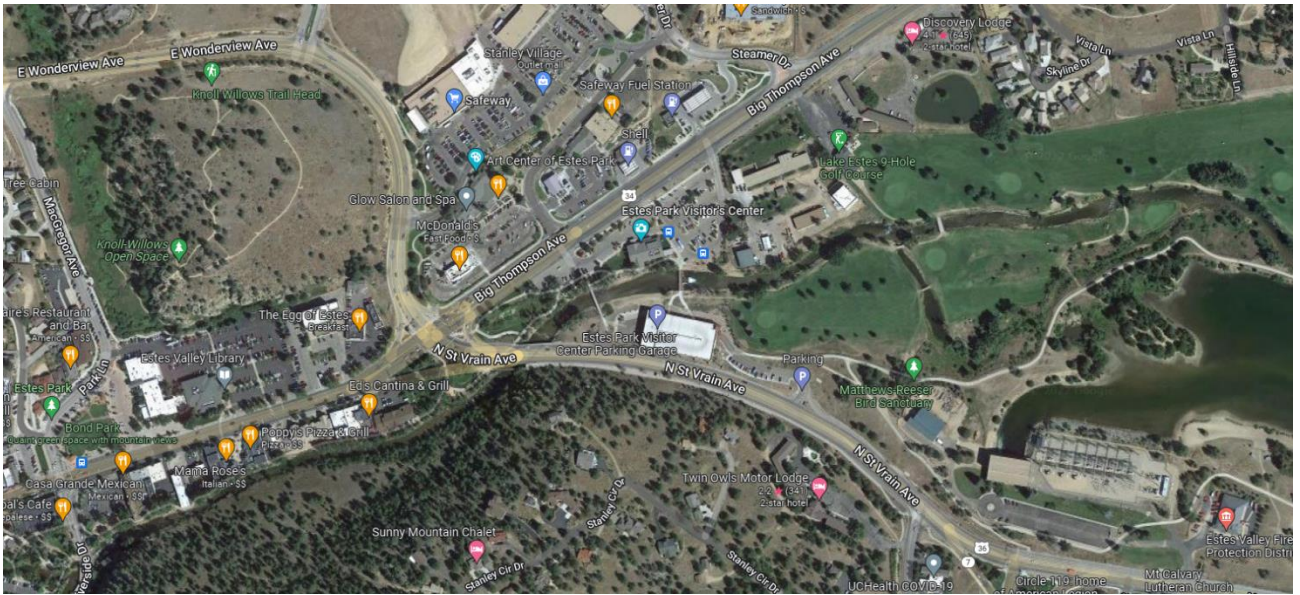
DocuSigned by:
Jackie Williamson
By: 410C07A746B44DA...

Title: Town Clerk

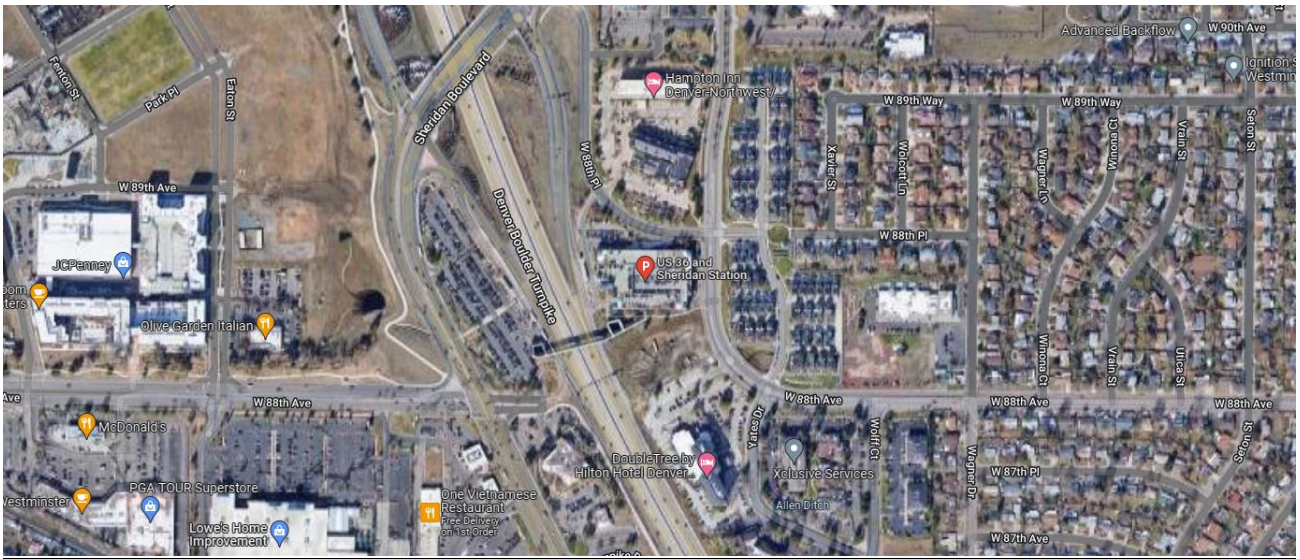
Date: 5/20/2022

MAPS OF PARKING AREAS:

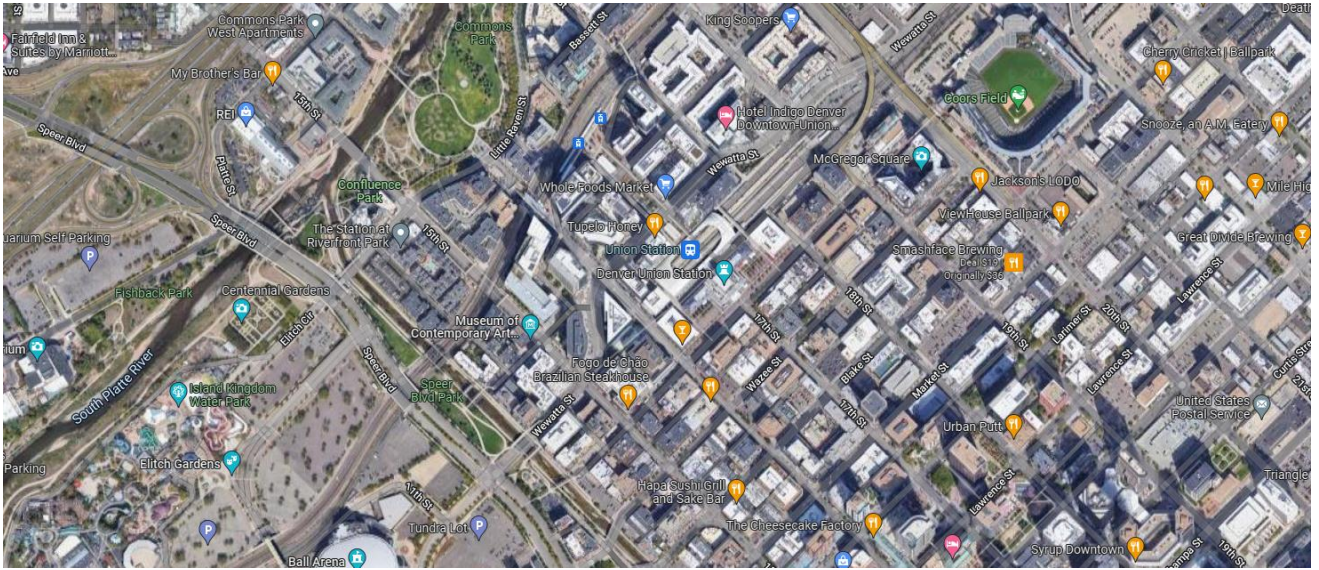
Estes Park Visitors Center, Town of Estes Park, Colorado:



RTD US 36 and Sheridan Boulevard Park and Ride, Westminster, Colorado:



RTD Denver Union Station, Denver, Colorado:



Elkstang 2021 US 36 and Table Mesa Station:



Green = westbound, Blue = eastbound

Lyons Park and Ride:



Depicted by white dot at 4th Avenue and Broadway

RMNP – Park & Ride Facility:

