

**LOVELAND CITY COUNCIL MEETING
LOVELAND URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS
GENERAL IMPROVEMENT DISTRICT BOARD OF DIRECTORS
TUESDAY, NOVEMBER 20, 2012
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO**

The City of Loveland is committed to providing an equal opportunity for citizens and does not discriminate on the basis of disability, race, color, national origin, religion, sexual orientation or gender. The City will make reasonable accommodations for citizens in accordance with the Americans with Disabilities Act. For more information, please contact the City's ADA Coordinator at bettie.greenberg@cityofloveland.org or 970-962-3319.

**5:30 P.M. DINNER - City Manager's Conference Room
6:30 P.M. REGULAR MEETING - City Council Chambers**

CALL TO ORDER

PLEDGE OF ALLEGIANCE

SWEARING IN CEREMONY

ROLL CALL

ELECTION OF MAYOR PRO TEM

PROCLAMATION DECLARING NOVEMBER 2012 AS NATIONAL FAMILY CAREGIVER MONTH

Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. You will be given an opportunity to speak to the item before the Council acts upon it.

Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items.

Anyone making a comment during any portion of tonight's meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Please limit your comments to no more than three minutes.

CONSENT AGENDA

- 1. CITY MANAGER
 BOARDS & COMMISSIONS APPOINTMENT
 Consideration of a motion appointing members to the Transportation Advisory Board and the Youth Advisory Commission
 This is an administrative item recommending the appointment of Jack Bowman to the**

Transportation Advisory Board for a full term effective until June 30, 2015 and appointing Austin Anderson to the Youth Advisory Commission for a term effective through May, 2013.

2. FINANCE

SUPPLEMENTAL APPROPRIATION FINALIZE 2012 CITY BUDGET

Consideration on second reading of an ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget

This is an administrative action. The ordinance is necessary to resolve several year-end issues and finalize the 2012 budget. Several of the issues are new and the remainder we have been following throughout the year and have waited until now to provide the best forecast for the cost to the end of the year. City Council unanimously approved the first reading of the ordinance on November 6, 2012.

3. FINANCE

SUPPLEMENTAL APPROPRIATION 2012 SPECIAL IMPROVEMENT DISTRICT #1

Consideration on second reading of an ordinance enacting a supplemental budget and appropriation to Loveland Special Improvement District #1 2012 budget and authorizing district bond prepayment

This is an administrative action. The ordinance appropriates reserves from prepaid assessments to call bonds, reducing the principal amount on the bonds to be repaid. City Council unanimously approved the first reading of the ordinance on November 6, 2012.

ADJOURN AS CITY COUNCIL AND CONVENE AS THE BOARD OF COMMISSIONERS FOR THE LOVELAND URBAN RENEWAL AUTHORITY (LURA)

4. FINANCE

SUPPLEMENTAL APPROPRIATION LOVELAND URBAN RENEWAL AUTHORITY

Consideration on second reading of an ordinance enacting a supplemental budget and appropriation to the 2012 budget for the Loveland Urban Renewal Authority

This is an administrative action. The ordinance appropriates tax increment financing (TIF) revenues above what was anticipated in the budget for projects previously approved and under contractual relationships. Additional revenues will be used to improve a new parking lot, continue the Facade Grant program, and pay down contractual reimbursements to developers. City Council unanimously approved the first reading of the ordinance on November 6, 2012.

ADJOURN AS THE BOARD OF COMMISSIONERS FOR THE LOVELAND URBAN RENEWAL AUTHORITY AND CONVENE AS THE BOARD OF DIRECTORS FOR THE LOVELAND GENERAL IMPROVEMENT DISTRICT #1 (GID)

5. FINANCE

SUPPLEMENTAL APPROPRIATION GENERAL IMPROVEMENT DISTRICT #1

Consideration on second reading of an ordinance enacting a supplemental budget and appropriation to the 2012 Loveland General Improvement District #1 budget for downtown parking improvements

This is an administrative action. The ordinance appropriates funding for improvements necessary to construct a new parking lot in the downtown area. City Council unanimously approved the first reading of the ordinance on November 6, 2012.

ADJOURN AS THE BOARD OF DIRECTORS FOR THE LOVELAND GENERAL IMPROVEMENT DISTRICT #1 AND RECONVENE AS CITY COUNCIL

6. HUMAN RESOURCES

2013 PAY PLAN AMENDMENT – POLICE DEPARTMENT STEP PLAN

Consideration on second reading of an ordinance amending Ordinance 5709 to remove from the 2013 Pay Plan and adopt a revised Police Department Step Plan for nine (9) designated Police Department positions

This is an administrative action. Approval of this ordinance amends the 2013 Pay Plan, adopted by Council on second reading on October 16, 2012, to include the addition of the revised Police Department Step Plan for nine (9) designated Police Department positions. These nine (9) positions are currently in a modified step plan, placed within the City-wide Pay Plan established ranges. As a result of a compensation survey, conducted with the assistance of a third party, Mountain States Employers' Council (MSEC), it is necessary to adjust the Step Plan to ensure the City fosters appropriate workplace performance/practices and attracts and retains employees. City Council unanimously approved the first reading of the ordinance on November 6, 2012.

7. WATER & POWER

MUNICIPAL CODE AMENDMENT – WATER RIGHTS FOR SERVICE OUTSIDE CITY LIMITS

Consideration on second reading of an Ordinance amending the Loveland Municipal Code at Section 19.04.023 regarding water rights for service outside the City limits

This is a legislative action to amend the Loveland Municipal Code at Section 19.04.023. The proposed ordinance is intended to clarify when water rights are required for city water service to property not annexed into the City of Loveland. City Council unanimously approved the first reading of the ordinance on November 6, 2012.

8. CITY MANAGER

AMEND CITY OF LOVELAND INVESTMENT POLICY

Consideration on second reading of an ordinance amending the City of Loveland Investment Policy

This is a legislative action to adopt an ordinance on second reading that will provide for more discretion in the management of the City's investment portfolio. The proposed ordinance implements a change to the City's Investment Policy Section VIII regarding prohibited investments. The specific provisions currently in place provide that investments that fall in a credit rating below the required level for acquisition are to be sold as soon as practical. The proposed change allows the City to conduct analysis of the downgraded investment to determine the risk of default prior to maturity and sets up a procedure to allow downgraded securities to be held to maturity or to a more profitable time. The purpose is to reduce realized losses to the City's portfolio. The impetus for the policy change is a series of downgrades by rating agencies of securities issued by highly rated banks and financial institutions. All corporate securities held by the City are high quality investment grade. City Council unanimously approved the first reading of the ordinance on November 6, 2012.

9. AIRPORT

SUPPLEMENTAL APPROPRIATION & AUTHORIZATION FOR GRANT AGREEMENT

Consideration on second reading of an ordinance enacting a supplemental budget and appropriation to the 2012 Ft. Collins-Loveland Municipal Airport budget for

the purchase of snow removal equipment

This is an administrative action. The ordinance appropriates a State grant and the local match for the purchase of snow removal equipment for the Airport. The resolution authorizes the City Manager to execute the grant agreement. City Council unanimously approved the first reading of the ordinance on November 6, 2012.

10. CULTURAL SERVICES

PUBLIC HEARING

COMMISSION & PLACEMENT OF ARTWORK AT HWY 34 & I-25 INTERCHANGE

- a) Consideration of Resolution #R-78-2012 a resolution approving an Intergovernmental Agreement between the City of Loveland and the State of Colorado Department of Transportation regarding the commission and placement of artwork in the U.S. Highway 34 and Interstate Highway I-25 Interchange and limited landscaping
- b) Consideration of an ordinance on first reading enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for the commission and placement of art work at the U.S. Highway 34 and I-25 interchange

This is an administrative action. The item contains a resolution to approve an agreement with the Colorado Department of Transportation to commission and place artwork in and, if appropriate, provide limited landscaping within the northeast quadrant of the U.S. 34 and I-25 Interchange to create a welcoming and iconic entryway into the north front range community using a CDOT Beautification Grant awarded in 2003 and previously reserved City funds; and a supplemental budget to appropriate the grant funds.

11. PUBLIC WORKS

AWARD OF CONSTRUCTION CONTRACT

Consideration of a motion awarding a construction contract to Mountain Constructors, Inc., in the amount of \$900,000 to complete a stormwater maintenance project under Project No. SW1201

This is an administrative action seeking approval for awarding a construction contract to Mountain Constructors, Inc. This is a planned maintenance contract funded by the Stormwater Utility's Capital Improvement Project Fund and by money appropriated in 2012.

12. DEVELOPMENT SERVICES

PUBLIC HEARING

ANNEXATION & ZONING FOR MEHAFFEY PARK

- a) Consideration of Resolution #R-79-2012 a resolution concerning the annexation to the City of Loveland, Colorado, of a certain area designated as "Mehaffey Park First Addition" more particularly described herein, and setting forth findings of fact and conclusions based thereon as required by the state constitution and state statutes
- b) Consideration on first reading of an ordinance approving the annexation of certain territory to the City of Loveland, Colorado, to be known and designated as "Mehaffey Park First Addition" to the City of Loveland
- c) Consideration on first reading of an ordinance amending Section 18.04.040 of the Loveland Municipal Code, the same relating to zoning regulations for "Mehaffey Park First Addition" to the City of Loveland
- d) Consideration on first reading of an ordinance amending Section 18.04.040 of the Loveland Municipal Code, the same relating to zoning regulations for certain property located in Tract "B", Vanguard-Famleco First Addition and a

portion of Tract "C", Vanguard-Famleco Second Addition, City of Loveland, Larimer County Colorado

A public hearing is to consider the following items on first reading:

- A legislative action to adopt a resolution and ordinance to annex 60.44 acres of City owned property to be known as the Mehaffey Park Addition;
- A quasi-judicial action to zone the 60.44 acre property PP- Public Park District; and
- A quasi-judicial action to rezone the 9.36 acres of City owned property from the Meadowbrook Ridge Planned Unit Development to Public Park District and amend the General Development Plan.

The property is located south of West 29th Street, east of Cascade Avenue, north of 22nd Street and ¼ mile west of Wilson Avenue. The applicant is the City of Loveland, Parks and Recreation Department.

13. FINANCE

SUPPLEMENTAL APPROPRIATION TO LOVELAND FIRE RESCUE AUTHORITY 2012 BUDGET

Consideration of Resolution #R-80-2012 a resolution approving a supplemental budget and appropriation to the Loveland Fire Rescue Authority 2012 budget

This is an administrative action. The resolution provides for Council approval of supplemental changes to the Loveland Fire Rescue Authority 2012 Budget for revenue and expenses associated with wildland firefighting and training exercises. The Council approval of the budget is required for the Authority's budget to be in effect.

END OF CONSENT AGENDA

CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA

CITY COUNCIL

- a. **Citizens' Report** *Anyone who wishes to speak to an item NOT on the Agenda may address the Council at this time.*
- b. **Business from Council** *This is an opportunity for Council Members to report on recent activities or introduce new business for discussion at this time or on a future City Council agenda.*
- c. **City Manager Report**
- d. **City Attorney Report**

PROCEDURAL INFORMATION

Anyone who wishes to address the Council on any item on this part of the agenda may do so when the Mayor calls for public comment. All public hearings are conducted in accordance with Council Policy. When Council is considering adoption of an ordinance on first reading, Loveland's Charter only requires that a majority of the Council quorum present vote in favor of the ordinance for it to be adopted on first reading. However, when an ordinance is being considered on second or final reading, at least five of the nine members of Council must vote in favor of the ordinance for it to become law.

REGULAR AGENDA

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

14. CITY CLERK

APPROVAL OF COUNCIL MINUTES

Consideration of a motion approving Council minutes

This is an administrative action to approve Council minutes from the following meetings:

October 23, 2012 study session and November 6, 2012 regular meeting.

15. **CITY MANAGER**
NEW CAPITAL EXPANSION FEES SCHEDULE
Consideration of Resolution #R-81-2012 a resolution adopting a new schedule of Capital Expansion Fees pursuant to Section 16.38.020.E of the Loveland Municipal Code effective January 1, 2013
 This is an administrative action to consider a resolution adopting a new schedule of CEFs. Throughout this year, City staff members have conducted the five year review of the capital expansion fees. The staff has prepared a resolution that adopts a new CEF fee schedule at rates indicated by the fee study. The resolution provides for modest increases in the fees for single family houses, reduced fees for multi-family housing projects, and increases for commercial and industrial projects. Three amendments to the recommended fee schedule are included to address additional adjustments requested by Council members in the recent Study Session.

16. **ECONOMIC DEVELOPMENT**
PUBLIC HEARING
SUPPLEMENTAL APPROPRIATION – FUND WAY FINDING SIGNS
Consideration on first reading of an ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget to fund way finding signs throughout Loveland with Loveland lodging tax funds
 This is an administrative action. Existing lodging tax reserves (\$186,000) are being used to fund a signage program directing visitors and residents to places of interest in Loveland. Reserves that have been saved are used as the funding source. The drawdown of reserves limits the flexibility for other projects to be funded within the fund. The lodging tax reserve fund balance is \$718,000.

17. **ECONOMIC DEVELOPMENT**
AGREEMENTS WITH LIGHTNING HYBRIDS, INC
Consideration of Resolution #R-82-2012 a resolution approving Lightning Hybrids, Inc. Hydraulic Hybrid Retrofit System Agreement and Amendment Number One to Lightning Hybrids, Inc. Economic Incentive and Performance Agreement
 This is an administrative action. The resolution authorizes the City Manager to sign a purchasing agreement with Lightning Hybrids (LH) for a hydraulic hybrid retrofit of two City buses and an amendment to the economic incentive agreement with Lightning Hybrids dated July 10, 2009. Staff has negotiated a contract with Lightning Hybrids that would apply the \$28,000 owed to the City for nonperformance under the incentive agreement towards the retrofit of the City buses.

18. **ECONOMIC DEVELOPMENT**
DISCUSSION OF A COMMON CONSUMPTION AREA IN DOWNTOWN LOVELAND
 This item is information only. Staff will present findings on the creation of a Common Consumption area in Loveland. Earlier this year, a Common Consumption area was created in Downtown Greeley. City Council requested that staff look into the issue and determine if it was feasible in Downtown Loveland. The Common Consumption area would allow for patrons of downtown establishments to carry alcoholic beverages freely from one establishment to another within a defined area and defined time period.

ADJOURN



CITY COUNCIL

Civic Center • 500 East Third Street, Suite 330 • Loveland, CO 80537
 (970) 962-2303 • Fax (970) 962-2900 • TDD (970) 962-2620
www.cityofloveland.org

PROCLAMATION

- WHEREAS,** Across our country, millions of family members, neighbors, and friends provide care and support for their loved ones during times of need; and
- WHEREAS,** with profound compassion and selflessness, these caregivers provide short term comfort and security, facilitate social engagement, and help individuals stay in their homes and communities as long as possible; and
- WHEREAS,** at some time during this year, 1 in 4 adults in the City of Loveland, or about 12,700 individuals, are providing care to an adult with limitations in daily activities; and
- WHEREAS,** while this care is given from the heart, the estimated economic value of their unpaid contribution amounts to about 2.8 million dollars; and
- WHEREAS,** this heroic work is often done while caregivers balance other commitments to their families, jobs and communities; and
- WHEREAS,** We observe National Family Caregiver Month, we honor the tireless compassion of Americans who heal, comfort, and support our elders and people with disabilities.
- NOW, THEREFORE,** we, the City Council of Loveland do hereby proclaim November 2012 as

NATIONAL FAMILY CAREGIVER MONTH

and urge all citizens this month and throughout the year, to let the quiet perseverance of our family caregivers remind us of the decency and kindness to which we can all aspire.

- FURTHER,** Let us pay tribute to the remarkable individuals we know in our community who put their own lives on hold to tend to their family members; it is our responsibility to ensure they do not have to do it alone.

Signed this 20th day of November, 2012

Cecil A. Gutierrez, Mayor



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Recycled Paper



CITY OF LOVELAND
CITY MANAGER'S OFFICE

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AGENDA ITEM: 1
MEETING DATE: 11/20/2012
TO: City Council
FROM: City Manager's Office
PRESENTER: Bill Cahill

TITLE:

Appointments to Transportation Advisory Board and Youth Advisory Commission

RECOMMENDED CITY COUNCIL ACTION:

Motion to appoint Jack Bowman to the Transportation Advisory Board for a full term effective until June 30, 2015

Motion to appoint Austin Anderson to the Youth Advisory Commission for a term effective through May, 2013

OPTIONS:

1. Adopt the action as recommended
2. Deny the action

DESCRIPTION:

This is an administrative item recommending appointment of members to the Transportation Advisory Board and Youth Advisory Board.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:

During the Spring, 2012 recruiting drive, the Transportation Advisory Board ("TAB") had three term vacancies. One incumbent did not apply for reappointment. Recruiting continued and Jack Bowman applied for TAB in early October. Mr. Bowman was interviewed on October 16, 2012. The panel recommends appointing Mr. Bowman to the Transportation Advisory Board for a full term effective until June 30, 2015.

On October 10 2012, the Youth Advisory Commission ("YAC") formally asked commissioner, Alvin Perry to step down due to attendance violations. In his place, YAC would like to

recommend that alternate Austin Anderson be assigned to the vacant position. Austin's term as commissioner would be immediately effective and run through May, 2013.

REVIEWED BY CITY MANAGER: *William D. Cahill*

LIST OF ATTACHMENTS:

None

**CITY OF LOVELAND****BUDGET OFFICE**

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AGENDA ITEM: 2
MEETING DATE: 11/20/2012
TO: City Council
FROM: Brent Worthington, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:

Consideration of an ordinance on second reading enacting a supplemental budget and appropriation to the 2012 City of Loveland budget

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second reading

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
 3. Adopt a modified action (specify in the motion)
 4. Refer back to staff for further development and consideration
 5. Adopt a motion continuing the item to a future Council meeting
-

DESCRIPTION:

This is an administrative action. The ordinance is necessary to resolve several year-end issues and finalize the 2012 budget. Several of the issues are new and the remainder we have been following throughout the year and have waited until now to provide the best forecast for the cost to the end of the year.

BUDGET IMPACT:

- ☐ Positive
☒ Negative
☒ Neutral or negligible

For many of the items outside revenue is the funding source so there is not an impact. Other items, funded by fund balance, reduce the flexibility to do other projects within the fund.

SUMMARY:

The ordinance is necessary to make adjustments in several departments. Staff has been monitoring these issues throughout the year to arrive at a single more accurate forecast. The details of the adjustments are as follows.

1. Additional funding is added to the Municipal Court for prisoner stay charges from Larimer County due to higher than expected usage;
2. Contributions to the Economic Development Department and costs for the painting of the Aims Mural are appropriated;
3. Funding for contractually based sales tax rebates are budgeted in the Economic Development Department;
4. A State grant and donations are budgeted for additional overtime and the purchase of K9 vests in the Police Department;
5. Additional funding is added for the Transit Division to match the Federal Transit Authority grant for the Flex Service;
6. Due to the dry summer, additional funding is added to the Parks & Recreation Department budget for irrigation costs;
7. The well that provides water for irrigation at the Civic Center is no longer operational and cannot be rehabilitated. In order to provide irrigation next year, staff recommends adding a new 3" tap from the Water Enterprise. \$22,000 is appropriated for work to connect the existing system to the new tap, and \$258,000 is appropriated for tap fees and plant improvement fees.
8. Donations from the Kroh Charitable Trust and the Esther Sjostrom Memorial are appropriated for art and history exhibits and a bench for the Rialto Theater Center Lobby;
9. Funding is added for emergency repairs at the Water Treatment Plant Filter Plant 8 to shore up the filter box walls.
10. High energy usage has resulted in the required purchase of wholesale electricity from Platte River Power Authority at a higher than projected rate. Additional funding for purchased power is appropriated. This cost will be recovered through resale to City of Loveland customers at the retail rates.
11. While most of the cleanup from the October 2011 snow storm was completed by the end of the year, a significant amount of yard material continued to be delivered to the Recycling Center, driving up disposal costs of yard waste. Additional funds are appropriated to meet this need.
12. Funding for the purchase of the land for the Fire Station 2 relocation and expansion project.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. An ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget.

FIRST READING November 6, 2012

SECOND READING November 20, 2012

ORDINANCE NO. _____

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND
APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET**

WHEREAS, the City has received or has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2012; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2012, as authorized by Section 11-6(a) of the Loveland City Charter.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF LOVELAND, COLORADO:**

Section 1. That revenues and/or reserves in the amount of \$3,667,520 from fund balance, grants and donations in the General Fund (\$357,520), Fire Capital Expansion Fee Fund (\$55,000), Water Enterprise Fund (\$150,000), Power Enterprise Fund (\$3,000,000) and Solid Waste Enterprise Fund (\$115,000) are available for appropriation. Revenues in the total amount of \$3,667,520 are hereby appropriated for the purchase of supplies and materials for donations for specific purposes, construction of a water line to irrigate the Civic Center, purchase of land for the relocation of a fire station, emergency repairs at the Water Treatment Plant, additional appropriations for purchased power due to higher usage, and increased funding for yard waste removal; and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

General Fund 100**Revenues**

Fund Balance		311,940
100-18-180-1500-35324-EDAIMSMURAL	Contributions for Aims Mural	15,500
100-21-202-2113-32100	State Grant	16,000
100-21-202-2102-35305-PDK9DO	K9 Donations	4,440
100-23-234-0000-32002	Federal Transit Authority Grant	122,420
100-52-720-8004-35305	Donations	5,640
100-52-720-8003-35305	Donations	3,500
100-52-730-0000-35305	Donations	500

Total Revenue **479,940**

Appropriations

100-13-115-0000-43450	Professional Services	8,000
100-18-180-1500-43176	Incentives/Sales Tax Rebates	2,500
100-18-180-1500-43714-EDAIMSMURAL	Aims Mural	15,500
100-21-202-2113-41021	Overtime	16,000
100-21-202-2102-43594	K9 Vests	4,440
100-23-234-0000-43450	Professional Services	122,420
100-51-563-0000-43668	Irrigation Water- Parks Grounds	19,000
100-51-564-0000-43668	Irrigation Water- Public Grounds	2,000
100-51-564-0000-43668	Repair and Mainenance	280,440
100-52-720-8004-42328	Exhbits	5,640
100-52-720-8003-42328	Exhbits	3,500
100-52-730-0000-42899	Other Supplies - Lobby Seating	500

Total Appropriations **479,940**

Supplemental Budget
Fire CEF Fund 264

Revenues

Fund Balance		89,000
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Total Revenue **89,000**

Appropriations

264-22-222-0000-49010-GF1204	Fire Station 2 Land Acquisition	89,000
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Total Appropriations **89,000**

**Supplemental Budget
Water Fund 300**

Revenues

Fund Balance	150,000
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Total Revenue	150,000
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Appropriations

330-46-318-2902-49360-W1011C	Construction - Water Treatment Plant Repairs	150,000
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Total Appropriations	150,000
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**Supplemental Budget
Power Fund 330**

Revenues

Fund Balance	3,000,000
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Total Revenue	3,000,000
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Appropriations

330-45-301-2906-44001-PW139	Purchased Power	3,000,000
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Total Appropriations	3,000,000
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**Supplemental Budget
Solid Waste Fund 360**

Revenues

Fund Balance	115,000
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Total Revenue	115,000
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Appropriations

360-23-272-0000-43657	Waste Disposal	115,000
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Total Appropriations	115,000
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Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 3. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

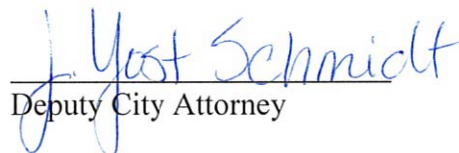
ADOPTED this 20th day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

**CITY OF LOVELAND****BUDGET OFFICE**

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AGENDA ITEM: 3
MEETING DATE: 11/20/2012
TO: City Council
FROM: Brent Worthington, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:

Consideration of an ordinance on second reading enacting a supplemental budget and appropriation to Loveland Special Improvement District #1 2012 budget and authorizing District bond prepayment.

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second reading

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
 3. Adopt a modified action (specify in the motion)
 4. Refer back to staff for further development and consideration
 5. Adopt a motion continuing the item to a future Council meeting
-

DESCRIPTION:

This is an administrative action. The ordinance appropriates reserves from prepaid assessments to call bonds, reducing the principal amount on the bonds to be repaid.

BUDGET IMPACT:

- ☒ Positive
☐ Negative
☐ Neutral or negligible

Early payment of the bonds reduces interest and principal payments in the future.

SUMMARY:

The Special Improvement District #1 (SID) was established to allow for the collection of assessments from property owners in the district to back bonded debt used to construct infrastructure improvements located within the district. The District is in east Loveland north of Eisenhower Boulevard along Rocky Mountain Avenue, extending north above Houts Reservoir.

A large property within the district prepaid the assessment. The funds are used to call District bonds early reducing the debt service in the District.

The City does not have any legal obligation towards this debt.

REVIEWED BY CITY MANAGER: *William D. Cabell*

LIST OF ATTACHMENTS:

1. An Ordinance enacting a supplemental budget and appropriation to Loveland Special Improvement District #1 2012 budget and authorizing District bond prepayment.

FIRST READING November 6, 2012

SECOND READING November 20, 2012

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 2012 BUDGET AND AUTHORIZING DISTRICT BOND PREPAYMENT

WHEREAS, the Loveland Special Improvement District #1 (“District”) receives prepayment of assessments from time to time, which amounts are credited to the Loveland Special Improvement Fund 702 (the “SID Fund”) and reserved for future bond payments or appropriated, from time to time, to call District bonds early, thereby reducing debt service costs; and

WHEREAS, the District also has received or has reserved other funds not anticipated or appropriated at the time of the adoption of the 2012 budget for the District; and

WHEREAS, the City Council, acting as the acting as the ex-officio Board of Directors of the Loveland Special Improvement District #1, desires to authorize the expenditure of these funds and the prepayment of District bonds by enacting a supplemental budget and appropriation to the District’s budget for 2012, as authorized by Section 11-6(a) of the Loveland City Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO ACTING AS THE EX-OFFICIO BOARD OF DIRECTORS OF THE LOVELAND SPECIAL IMPROVEMENT DISTRICT #1:

Section 1. That the City Council, acting as ex-officio Board of Directors of the District, hereby authorizes the prepayment of District bond debt in the amount of \$200,000.00.

Section 2. That revenues are available for appropriation from reserves and are hereby appropriated to call District bonds early, reducing the debt services amount. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
Loveland Special Improvement District #1 Fund 702**

Revenues

Fund Balance	200,000
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Total Revenue	200,000
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Appropriations

702-91-902-0000-46110	Principal	200,000
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Total Appropriations	200,000
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Section 3. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

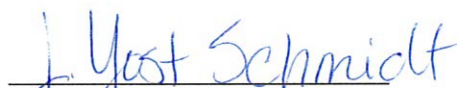
Section 4. That as provided in City Charter Section 11-5(d), this Ordinance shall be effective upon final adoption.

ADOPTED this 20th day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk
APPROVED AS TO FORM:



Deputy City Attorney

**CITY OF LOVELAND****BUDGET OFFICE**

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2329 • FAX (970) 962-2901 • TDD (970) 962-2620

AGENDA ITEM: 4
MEETING DATE: 11/20/2012
TO: City Council
FROM: Brent Worthington, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:

Consideration of an ordinance on second reading enacting a supplemental budget and appropriation to 2012 budget for the Loveland Urban Renewal Authority

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second reading

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
 3. Adopt a modified action (specify in the motion)
 4. Refer back to staff for further development and consideration
 5. Adopt a motion continuing the item to a future Council meeting
-

DESCRIPTION:

This is an administrative action. The ordinance appropriates tax increment financing (TIF) revenues above what was anticipated in the budget for projects previously approved and under contractual relationships.

BUDGET IMPACT:

- ☒ Positive
☐ Negative
☐ Neutral or negligible

Additional revenues will be used to improve a new parking lot, continue the Facade Grant program, and pay down contractual reimbursements to developers.

SUMMARY:

Receipts from TIF collections are higher than were projected in the budget in all three project areas. The additional revenue is allocated as follows:

Downtown project area

- Partial funding (\$20,000) for improvements related to a new parking lot in the downtown area. The other funding source is General Improvement District #1.
- Additional funding for the Facade Grant program (\$1,810).

Finley Block Project area

- Additional payments to the developer of the Lincoln Place project based on the Amended and Restated Master Finance Agreement.

Crossroads Project Area

- Additional payments to the Centerra Metropolitan District in accordance with the Master Finance Agreement.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

1. An ordinance enacting a supplemental budget and appropriation to 2012 budget for the Loveland Urban Renewal Authority

FIRST READING November 6, 2012

SECOND READING November 20, 2012

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 BUDGET FOR THE LOVELAND URBAN RENEWAL AUTHORITY

WHEREAS, the Loveland Urban Renewal Authority has reserved funds on hand not appropriated at the time of the adoption of the City budget for 2012; and

WHEREAS, the City Council, acting as the Board of Commissioners of the Loveland Urban Renewal Authority, desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the Authority's budget for 2011, as authorized by Section 11-6(a) of the Loveland City Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO, ACTING AS THE BOARD OF COMMISSIONERS OF THE LOVELAND URBAN RENEWAL AUTHORITY:

Section 1. That revenues in the amount of \$366,210 in the Loveland Urban Renewal Authority Fund 603 are available for appropriation. Revenues in the total amount of \$366,210 are hereby appropriated for the Facade Grant Program and improvements related to a new parking lot in the Downtown Project Area, for reimbursement to the developer of the Lincoln Place property in the Finley' Addition Plan Area pursuant to the Amended and Restated Master Finance Agreement, and for payment to Centerra Metropolitan District based on the Master Financing Agreement and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
Loveland Urban Renewal Authority - Fund 603**

Revenues

603-80-870-0000-30100	Property Taxes	21,810
603-80-871-0000-30100	Property Taxes	44,400
603-80-872-0000-30100	Property Taxes	300,000

Total Revenue **366,210**

Appropriations

603-80-870-0000-43840	Grants	1,810
603-23-232-0000-49360-DT1201	Construction	20,000
603-80-871-0000-43786	Developer Reimbursements	44,400
603-80-872-0000-46460	URA - Centerra TIF Distribution	300,000

Total Appropriations **366,210**

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 3. That as provided in City Charter Section 11-5(d), this Ordinance shall be effective upon final adoption.

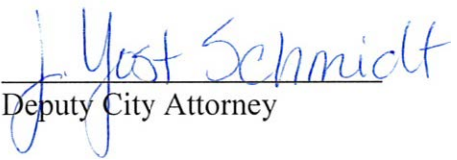
ADOPTED this 20th day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


Deputy City Attorney

**CITY OF LOVELAND****BUDGET OFFICE**

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2329 • FAX (970) 962-2901 • TDD (970) 962-2620

AGENDA ITEM: 5
MEETING DATE: 11/20/2012
TO: City Council
FROM: Brent Worthington, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:

Consideration of an ordinance enacting a supplemental budget and appropriation to the 2012 Loveland General Improvement District #1 for downtown parking improvements

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second reading

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
 3. Adopt a modified action (specify in the motion)
 4. Refer back to staff for further development and consideration
 5. Adopt a motion continuing the item to a future Council meeting
-

DESCRIPTION:

This is an administrative action. The ordinance appropriates funding for improvements necessary to construct a new parking lot in the downtown area.

BUDGET IMPACT:

- ☐ Positive
☒ Negative
☐ Neutral or negligible

Fund balance is used as the funding source limiting flexibility to fund other projects.

SUMMARY:

The City has obtained a lease from the Burlington Northern Santa Fe Railroad (BNSF) for a piece of land within the railroad right-of-way sitting directly west of the rail line and between 4th Street and 3rd Street. The lease is solely to create new surface parking and pedestrian improvements, no other uses are contemplated. The City will improve the lot to create approximately 37 new parking spaces and develop attached sidewalk improvements on Railroad Avenue to connect 3rd Street with pedestrian facilities on 4th Street to cross the railroad tracks. The City will also deconstruct existing remnant improvements on 3rd Street that

lead pedestrians to cross the tracks unsafely at the former 3rd Street crossing and construct, with appropriate solutions, additional barriers-to-access for this crossing.

The lease payment is \$2,000 per year for the lot and will be paid annually from revenues in the General Improvement District (GID). Weather permitting the project will be constructed in spring 2013.

The District encompasses the downtown area with boundaries of 3rd Street on the south, 7th Street on the north, Railroad Avenue on the west and Jefferson Avenue to the east, except along 4th Street where Washington Avenue is the eastern boundary.

REVIEWED BY CITY MANAGER: 

LIST OF ATTACHMENTS:

1. An ordinance enacting a supplemental budget and appropriation to the 2012 Loveland General Improvement District #1 for downtown parking improvements

FIRST READING November 6, 2012SECOND READING November 20, 2012

ORDINANCE NO. _____

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND
APPROPRIATION TO THE 2012 LOVELAND GENERAL
IMPROVEMENT DISTRICT #1 BUDGET FOR DOWNTOWN PARKING
IMPROVEMENTS**

WHEREAS, Loveland General Improvement District #1 (“District”) has received or has reserved funds not appropriated at the time of the adoption of the District budget for 2012; and

WHEREAS, the City Council, acting as the ex officio Board of Directors of the District, desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the District budget for 2012, as authorized by Section 11-6(a) of the Loveland City Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO, acting as the ex officio Board of Directors of the Loveland General Improvement District #1:

Section 1. That revenues in the amount of \$50,000 from reserves in the Loveland General Improvement District #1 Fund 602 are available for appropriation. Revenues in the total amount of \$50,000 are hereby appropriated for parking lot improvements and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
Loveland Special Improvement District #1 Fund 602**

Revenues		
Fund Balance		50,000
Total Revenue		50,000
Appropriations		
602-90-901-0000-49360-DT1201	Construction	50,000
Total Appropriations		50,000

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

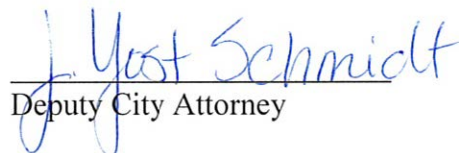
ADOPTED this 20th day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


Deputy City Attorney

**CITY OF LOVELAND****HUMAN RESOURCES DEPARTMENT**

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2371 • FAX (970) 962-2919 • TDD (970) 962-2620

AGENDA ITEM: 6
MEETING DATE: 11/20/2012
TO: City Council
FROM: Julia Holland, Human Resources Department
PRESENTER: Julia Holland

TITLE:

An ordinance amending Ordinance 5709 to remove from the 2013 Pay Plan and adopt a revised Police Department Step Plan for nine (9) designated Police Department positions

RECOMMENDED CITY COUNCIL ACTION:

Approve the Ordinance on second reading as recommended.

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
 3. Adopt a modified action (specify in the motion)
 4. Refer back to staff for further development and consideration
 5. Adopt a motion continuing the item to a future Council meeting
-

DESCRIPTION:

This is an administrative action. Approval of this ordinance amends the 2013 Pay Plan, adopted by Council on second reading on October 16, 2012, to include the addition of the revised Police Department Step Plan for nine (9) designated Police Department positions. These nine (9) positions are currently in a modified step plan, placed within the City-wide Pay Plan established ranges. As a result of a compensation survey, conducted with the assistance of a third party, Mountain States Employers' Council (MSEC), it is necessary to adjust the Step Plan to ensure the City fosters appropriate workplace performance/practices and attracts and retains employees.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible

The amendment of the 2013 Pay Plan to exclude the nine (9) designated Police Department positions and adopt a Police Department Step Plan will not require any additional funding for implementation. Costs associated with the necessary adjustments to implement the plan will be

covered from the 2013 3.5% merit pool funds, approved by Council through the adoption of the 2013 budget.

SUMMARY:

The original Police Step Plan was implemented in 2003 to 2004, with only minor adjustments being made since that time. As a result, it was determined the City needed to review the current pay system and practices. Based upon the MSEC compensation study, we have extracted the (9) positions from the City-wide pay plan. These positions were previously included in the City-wide Plan pay ranges, although they followed a "modified step plan". It is recommended that these positions be placed in a separate step plan. Movement from one step to the next will be based upon performance and time in job. As part of this change the nine positions will no longer be eligible for annual increases from the merit pool budget starting in 2013. Increases will only occur during either step level movement and/or when the market warrants an adjustment to the steps. In order to uphold our fiscal responsibility and practices, the cost of implementing this plan will be funded from the 3.5% merit pool that was approved by Council through the adoption of the 2013 budget.

REVIEWED BY CITY MANAGER:

**LIST OF ATTACHMENTS:**

1. Ordinance, including 2013 Police Department Step Plan
2. Police Department Step Plan Pay Study

FIRST READING November 6, 2012

SECOND READING November 20, 2012

ORDINANCE NO.

AN ORDINANCE AMENDING ORDINANCE 5709 TO REMOVE FROM THE 2013 PAY PLAN AND ADOPT A REVISED POLICE DEPARTMENT STEP PLAN FOR NINE (9) DESIGNATED POLICE DEPARTMENT POSITIONS

WHEREAS, Chapter 2.68 of the Loveland Municipal Code provides that the City Council shall from time to time adopt, by ordinance, an employee pay plan setting forth pay grades and compensation ranges for city employees; and

WHEREAS, the City Council previously adopted Ordinance No. 5637 approving a pay plan by for calendar year 2012 (the “2012 Pay Plan”) setting forth pay grades and compensation ranges for city employees for calendar year 2012, ; and

WHEREAS, the City Council most recently adopted a pay plan by Ordinance No. 5709 for calendar year 2013 (the “2013 Pay Plan”) setting forth pay grades and compensation ranges for city employees for calendar year 2013 and superseding all prior ordinances adopting an employee pay plan as of the first pay period of 2013, ; and

WHEREAS, the 2013 Pay Plan included the nine (9) designated Police Department positions at the pay levels listed on **Exhibit A** attached hereto and incorporated herein by this reference (the “Designated Police Department Positions”); and

WHEREAS, based upon a recent compensation survey conducted with the assistance of the Mountain States Employers’ Council, it has been determined that in order to foster appropriate workplace performance and practices and to attract and retain qualified employees, the Designated Police Department Positions should be removed from the 2013 Pay Plan and placed in a separate step pay plan, a copy of which is attached hereto as **Exhibit B** and incorporated herein by this reference (the “2013 Police Department Step Pay Plan”).

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

Section 1. That Ordinance 5709 and the 2013 Pay Plan adopted thereunder are hereby amended to remove the Designated Police Department Positions from the 2013 Pay Plan.

Section 2. That the 2013 Police Department Step Pay Plan, including the pay grades and compensation ranges for the Designated Police Department Positions, attached hereto as **Exhibit B** is hereby adopted and shall take effect for the first pay period of 2013.

Section 3. That notwithstanding the foregoing, the 2012 Pay Plan as adopted by Ordinance

5637 shall continue in full force and effect from the date of this Ordinance until it is superseded by the 2013 Pay Plan as provided in Ordinance 5709 and as amended herein.

Section 4. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 5. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Adopted this 20th day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

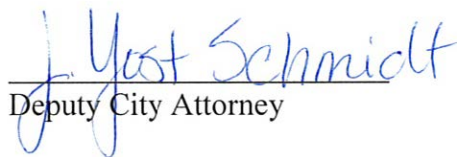

Deputy City Attorney

EXHIBIT A**NINE (9) DESIGNATED POLICE DEPARTMENT POSITIONS
REMOVED FROM 2013 PAY PLAN**

<u>Position Title</u>	<u>Previous Pay Level</u>
Police Sergeant	Pay Level 10
Police Officer/Police Specialist	Pay Level 8
Police Records Supervisor	Pay Level 8
Communications Specialist Supervisor	Pay Level 8
Community Service Officer	Pay Level 6
Lead Communications Specialist	Pay Level 6
Communications Specialist	Pay Level 5
Lead Police Records Specialist	Pay Level 4
Police Records Specialist	Pay Level 3

2013 Police Department Step Plan

Position	# EE	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
Officer/Specialist	69	\$55,700	\$58,700	\$61,400	\$64,000	\$66,700	\$69,500	\$72,300
Police Sergeant	16	\$74,700	\$78,100	\$81,300	\$84,700	\$88,250	\$91,900	N/A
CSO	4	\$42,300	\$44,600	\$46,650	\$48,700	\$50,850	\$53,000	\$55,100
Comm Specialist	14	\$41,800	\$44,050	\$46,075	\$48,100	\$50,200	\$52,300	\$54,400
Lead Communication Specialist	1	\$46,000	\$48,500	\$50,750	\$52,900	\$55,150	\$57,450	\$59,800
Comm Supervisor	3	\$57,600	\$60,800	\$63,550	\$66,200	\$69,000	\$71,900	\$74,800
Records Specialist	7	\$33,700	\$35,525	\$37,150	\$38,700	\$40,325	\$42,000	\$43,700
Lead Records Specialist	1	\$37,000	\$39,000	\$40,800	\$42,600	\$44,450	\$46,300	\$48,200
*Records Supervisor	1	\$56,200	\$59,250	\$62,000	\$64,600	\$67,300	\$70,100	\$73,000

*C Level Vacation Accrual

Step Key: Performance (Meets Expectations) and Months of Service			
Step 1	0 to 12 Months	Step 5	49 to 60 Months
Step 2	13 to 24 Months	Step 6	61 to 72 Months
Step 3	25 to 36 Months	Step 7	> 73 Months
Step 4	37 to 48 Months		

Introduction

The current Police Step Plan was implemented in 2003 to 2004, with only minor adjustments being made since that time. As a result, it was determined the City needed to review the current pay system and practices. There are several factors that led to this decision, aside from the length in time since its last thorough review, such as compression between Sergeants and Officers, the excessive time it takes to administer the plan, and the behavioral affects of the current plan.

Mountain States Employers Council, Inc, (MSEC) consultants conducted a market study to determine if the current plan was competitive with other public employers, particularly in Northern Colorado. As part of the study, a comprehensive market analysis on base compensation and salary structure for the positions was conducted. MSEC developed recommendations on salary ranges with steps based on the data collected and compared current rates of pay with the identified labor

Recommendation

After the study was completed it was determined that we would maintain steps instead of moving the positions into a 'Free Range' pay plan. As a result, the nine positions will be pulled from the City-wide pay plan and put into a step only plan. The employees in the nine positions will no longer be eligible for merit pay in addition to step movement. Movement to the next pay step will be based upon performance and time in position.

The estimated cost to bring employees to the appropriate step based on months of service in their current position is \$150,000. To uphold our fiscal responsibility as a City, it is recommended that the cost of implementing this plan be appropriated from the 3.5 percent merit pool that was approved through the budget on October 16, 2012. The merit pool budget will also cover performance based merit increases for 2012 performance. There are a number of long term employees that are currently paid at or above the top step of their corresponding range. Their base pay will be frozen until there is market movement to justify a change in the range/step. Market salaries will be reviewed annually.

Summary

A revised Police plan is necessary to ensure the City is paying competitively based on market, and in order to foster an environment of high performance and appropriate workplace performance/practices. It is important to note the City of Loveland currently only has one Pay Plan, in which the employees currently on the step system are placed within a specific range in an open range system. The revised step plan will create a step-based system, not contained within the range system of the City-wide Pay Plan.



CITY OF LOVELAND
WATER & POWER DEPARTMENT
200 North Wilson • Loveland, Colorado 80537
(970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

AGENDA ITEM: 7
MEETING DATE: 11/20/2012
TO: City Council
FROM: Larry Howard, Water and Power Department
PRESENTER: Larry Howard, Water and Power Department

TITLE:

Second reading of an ordinance amending the Loveland Municipal Code at Section 19.04.023 regarding water rights for service outside the city limits.

RECOMMENDED CITY COUNCIL ACTION:

Adopt the ordinance

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
 3. Adopt a modified action (specify in the motion)
 4. Refer back to staff for further development and consideration
 5. Adopt a motion continuing the item to a future Council meeting
-

DESCRIPTION:

This is a legislative action to amend the Loveland Municipal Code at Section 19.04.023. The proposed ordinance is intended to clarify when water rights are required for city water service to property not annexed into the City of Loveland.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible
-

SUMMARY:

This item passed unanimously on 1st Reading at the regular City Council meeting on November 6, 2012. The proposed ordinance is intended to clarify in the Loveland Municipal Code when water rights are required for city water service to property not annexed into the City of Loveland. It has been the city's practice to collect water rights for all new outside city water services at the time of application for water service. The proposed ordinance codifies this practice.

For services existing prior to 1979, water rights were not routinely collected at the time of the original application for service. Currently, the Loveland Municipal Code states in Section 19.04.023 that water rights are required in connection with any county building permit on a parcel of land which has not been a part of any annexation for which water rights were transferred to the city. However, for an existing outside city water service a county building permit could be required for minor items which would not affect the type, size or use of the existing water meter. The proposed amendment would clarify that water rights in such a situation would be due only upon annexation, or if there is a change in the type, size or use of the existing water meter consistent with a subdivision or redevelopment of the property as defined in the City of Loveland Site Development Performance Standards and Guidelines.

The Loveland Utilities Commission, at its meeting on October 15, 2012, unanimously recommended that the City Council adopt the ordinance.

REVIEWED BY CITY MANAGER: 

LIST OF ATTACHMENTS:

Ordinance (redline draft)
Ordinance

FIRST READING November 6, 2012

SECOND READING _____

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT
SECTION 19.04.023 REGARDING WATER RIGHTS FOR SERVICE
OUTSIDE THE CITY LIMITS**

WHEREAS, the City of Loveland's Water Utility serves customers both inside and outside the City limits; and

WHEREAS, the City's policies regarding collection of water rights from customers inside and outside the City limits have evolved over time; and

WHEREAS, the City's current policy regarding collection of water rights from customers outside the City limits is set forth in the City's administrative application for outside city water service (for new outside City water customers) and Section 19.04.023 of the Loveland Municipal Code (for existing outside City water customers); and

WHEREAS, the City's Water Utility has proposed certain amendments to Section 19.04.023 to clarify the City's policy regarding collection of water rights from customers outside the City limits;

WHEREAS, on October 15, 2012, the Loveland Utilities Commission reviewed the proposed amendments and adopted a motion recommending that the City Council adopt an ordinance revising Section 19.04.023 to incorporate said amendments; and

WHEREAS, the City Council desires to amend Section 19.04.023 as proposed as being in the best interest of the City's Water Utility ratepayers.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF LOVELAND, COLORADO:**

Section 1. That Section 19.04.023 of the Loveland Municipal Code is hereby amended to read as follows:

19.04.023 Water rights for service outside the city limits.

~~Water rights are required for original city water service in connection with any county building permit on a parcel of land which has not been a part of any annexation for which water rights were transferred to the city. For non-residential uses, the quantity of water rights required will be determined according to the size of tap as specified in Section 19.04.020B. For residential uses, the quantity of water required will be determined as the lesser of either that quantity necessary according to the tap size as in Section 19.04.020B., or as calculated in Section 19.04.020A. in an amount equal to that which would be required in connection with the~~

~~residential development of a parcel of land in the city of the same size as the parcel of land on which the applicant's proposed improvements will be located. The fact that the premises for which the permit is sought is located on a parcel of land which has already received city water service shall not affect the requirement of this Section that water rights shall be transferred for any parcel of land requiring original city water service.~~

- A. Water rights are required for outside city water service. For nonresidential uses, the quantity of water rights required shall be determined in accordance with Section 19.04.020B. (calculated in the same manner as if the property to be served were located inside the city). For residential uses, the quantity of water rights required shall be determined as the lesser of the quantity specified in Section 19.04.020B., or Section 19.04.020A. (calculated in the same manner as if the property to be served were located inside the city). For irrigation use only, the quantity of water rights required shall be determined in accordance with Section 19.06.040B. or Section 19.050.050, as applicable, (calculated in the same manner as if the property to be served were located inside the city).
- B. Water rights required for outside city water service shall be due at the time of application for outside city water service. Any outside city customer who has received a city water meter prior to December 1, 2012 but has not paid water rights to the city shall be required to provide water rights to the city upon the earlier of the following to occur to the property receiving city water service: (i) annexation; (ii) subdivision; (iii) "redevelopment," as defined in the City of Loveland Site Development Performance Standards and Guidelines; (iv) change in meter classification (residential, nonresidential, or irrigation); (v) change in meter size; or (vi) installation of additional meters. Notwithstanding anything herein to the contrary, water rights shall not be due upon any of the following to occur to the property receiving city water service: (i) minor changes to the property that do not rise to the level of "redevelopment," such as roof replacements, or basement finishes that do not increase the gross floor area of a building or structure by at least twenty-five percent over the gross floor area existing as of February 1, 1988; (ii) the addition of outbuildings that do not require a change in meter size or additional meters; or (iii) the addition of a fire hydrant.

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this _____ day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


Assistant City Attorney

FIRST READING November 6, 2012

SECOND READING November 20, 2012

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT
SECTION 19.04.023 REGARDING WATER RIGHTS FOR SERVICE
OUTSIDE THE CITY LIMITS**

WHEREAS, the City of Loveland's Water Utility serves customers both inside and outside the City limits; and

WHEREAS, the City's policies regarding collection of water rights from customers inside and outside the City limits have evolved over time; and

WHEREAS, the City's current policy regarding collection of water rights from customers outside the City limits is set forth in the City's administrative application for outside city water service (for new outside City water customers) and Section 19.04.023 of the Loveland Municipal Code (for existing outside City water customers); and

WHEREAS, the City's Water Utility has proposed certain amendments to Section 19.04.023 to clarify the City's policy regarding collection of water rights from customers outside the City limits;

WHEREAS, on October 15, 2012, the Loveland Utilities Commission reviewed the proposed amendments and adopted a motion recommending that the City Council adopt an ordinance revising Section 19.04.023 to incorporate said amendments; and

WHEREAS, the City Council desires to amend Section 19.04.023 as proposed as being in the best interest of the City's Water Utility ratepayers.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF LOVELAND, COLORADO:**

Section 1. That Section 19.04.023 of the Loveland Municipal Code is hereby amended to read as follows:

19.04.023 Water rights for service outside the city limits.

- A. Water rights are required for outside city water service. For nonresidential uses, the quantity of water rights required shall be determined in accordance with Section 19.04.020B. (calculated in the same manner as if the property to be served were located inside the city). For residential uses, the quantity of water rights required shall be determined as the lesser of the quantity specified in Section 19.04.020B., or Section 19.04.020A. (calculated in the same manner as if the property to be served were located inside the city). For irrigation use only, the quantity of water rights required shall be

determined in accordance with Section 19.06.040B. or Section 19.050.050, as applicable, (calculated in the same manner as if the property to be served were located inside the city).

- B. Water rights required for outside city water service shall be due at the time of application for outside city water service. Any outside city customer who has received a city water meter prior to December 1, 2012 but has not paid water rights to the city shall be required to provide water rights to the city upon the earlier of the following to occur to the property receiving city water service: (i) annexation; (ii) subdivision; (iii) “redevelopment,” as defined in the City of Loveland Site Development Performance Standards and Guidelines; (iv) change in meter classification (residential, nonresidential, or irrigation) (v) change in meter size; or (vi) installation of additional meters. Notwithstanding anything herein to the contrary, water rights shall not be due upon any of the following to occur to the property receiving city water service: (i) minor changes to the property that do not rise to the level of “redevelopment,” such as roof replacements, or basement finishes that do not increase the gross floor area of a building or structure by at least twenty-five percent over the gross floor area existing as of February 1, 1988; (ii) the addition of outbuildings that do not require a change in meter size or additional meters; or (iii) the addition of a fire hydrant.

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this 20th day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


 Assistant City Attorney

**CITY OF LOVELAND**
CITY MANAGER'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 8
MEETING DATE: 11/20/2012
TO: City Council
FROM: Alan Krcmarik, Executive Fiscal Advisor
PRESENTER: Alan Krcmarik

TITLE:

Consideration of an ordinance on second reading amending the City of Loveland Investment Policy

RECOMMENDED CITY COUNCIL ACTION:

Adopt the ordinance on second reading

DESCRIPTION:

This is a legislative action to adopt an ordinance on second reading that will provide for more discretion in the management of the City's investment portfolio. The proposed ordinance implements a change to the City's Investment Policy Section VIII regarding prohibited investments. The specific provisions currently in place provide that investments that fall in a credit rating below the required level for acquisition are to be sold as soon as practical. The proposed change allows the City to conduct analysis of the downgraded investment to determine the risk of default prior to maturity and sets up a procedure to allow downgraded securities to be held to maturity or to a more profitable time. The purpose is to reduce realized losses to the City's portfolio. The impetus for the policy change is a series of downgrades by rating agencies of securities issued by highly rated banks and financial institutions. All corporate securities held by the City are high quality investment grade.

BUDGET IMPACT:

- ☒ Positive
☐ Negative
☐ Neutral or negligible

When rating agencies downgraded banks and other financial institutions, the value of securities issued by the institutions lost market value. If the downgraded securities were sold immediately after the downgrades, the City's portfolio would have had a realized loss of several hundred thousand dollars. By holding the securities, the immediate realized loss has been avoided. If held to final maturity, the securities will not incur any realized loss due to market conditions.

SUMMARY: The most recent U.S. economic recession began in December of 2007 and ended in June 2009. The U.S. economy is still recovering from much of the downturn. Since the Great Depression of 1929 to 1933, the most recent recession is the most severe economic correction that the nation has experienced. On August 5, 2011, Standard & Poor's ("S&P"), one of three major credit rating firms, announced that it was lowering its rating on the long term credit of the United States. The other two major credit ratings firms, Moody's and Fitch, have reaffirmed their AAA (the highest rating available) ratings of the U.S. Treasury and government sponsored enterprise credit. The downgrade of the long term credit of the United States by S&P caused many problems for states and municipalities that invest in the highly rated securities that are issued by these entities.

In late 2011 and early 2012, the rating agencies began a systematic review of the credit-worthiness of corporate entities with specific focus on banks and other financial institutions that are closely linked to the housing and mortgage industries. The rating agencies' systematic review has resulted in many downgrades of corporations. The downgrades affect approximately \$17.5 million of securities held in the City of Loveland investment portfolio.

To be considered an eligible investment, corporate securities must carry two credit ratings with a minimum rating of AA-, Aa3, or AA- from S&P, Moody's and Fitch. The current wording of the investment policy provides that:

"If an eligible investment drops in its credit rating below the required level, the investment will be considered a prohibited investment and will be sold as soon as practical." (Investment Policy Section VIII. Suitable and Authorized Investments)

Because the market value of the corporate securities fell after the downgrades, the City would have experienced a sizable realized loss if the securities had been sold. Staff estimated that the realized loss would have been approximately \$700,000. This would be about one-fourth of the total anticipated revenue on the portfolio in 2012. The more prudent approach was determined to be to hold the securities and avoid the immediate realized loss.

In the monthly investment reports since the downgrades occurred, Council has been informed about the downgrades. Staff has also been working with the Citizens' Finance Advisory Commission ("CFAC"), which has advisory responsibility to the Council, to develop new investment policy wording to provide more flexibility to prudently manage investments that have been downgraded. The process begins with a financial and economic analysis of each downgraded security to assess the risk and probability of the security not being able to reach its maturity date without delay or default of payments. The results of the analysis are to be reported to the City Manager with a recommendation to hold the security. If the City Manager does not agree with the recommendation to hold the security, it would be sold. If the City Manager agrees with the recommendation to hold the security, the City Council shall be informed of the situation, and Council may use its normal process to bring the decision to Council for further discussion and review. At its regular meeting in September, the CFAC moved to recommend the proposed change to Council.

Proposed City Ordinance

The proposed ordinance makes a change to the investment policy at Section VIII. Suitable and Authorized Investments. The proposed wording specifically outlines the process summarized immediately above. The wording is provided below:

Prohibited Investments:

- Purchases on margin or short sales –
- Derivative securities that are in effect a leveraged anticipation of future movements in interest rates or some price indices –
- Collateralized mortgage obligations due to their complexity and prepayment rate uncertainty –
- Lending securities with an agreement to buy them back after a stated period of time.
- If an eligible investment drops in its credit rating below the required level, ~~the investment will be considered a prohibited investment and will be sold as soon as practical.~~ the security will be reviewed for possible retention or sale.

Retention of Investments that fall below required Credit Ratings for Investment.

Should a currently held investment have its credit rating reduced below the level allowed for purchase, a determination must be made to sell or retain the investment. The following actions will be followed to confirm a decision to retain the investment. Otherwise, the investment shall be sold as expeditiously as possible.

- First, an analysis shall be conducted to confirm that the investment remains consistent with the objectives of this investment policy.
- Second, should retention be determine the preferred action rather than realizing unacceptable losses, a report detailing those findings shall be provided to the City Manager. Accomplishing this within a reasonable timeframe following the notification of the credit rating downgrade is a goal, but not an inflexible timeline. Exceptional circumstances are within the purview of the City Manager.
- Third, the City Manager may not concur with the recommendation to retain an investment and direct the sale of the investment.
- Fourth, should the City Manager concur with the retention recommendation, the City Council shall be so informed, by communicating the City Manager's position, including the original recommendation and a copy of the report. Council may exercise its normal process to bring the matter before the Council for a Study Session, Special or Regular Meeting.
- This procedure shall apply to any subsequent reduction in the credit rating of an investment. There is no limitation on the number of times an investment may be reviewed using the retention procedures.

The investment policy also contains an existing provision, which remains unmodified, regarding the application of the proposed changes in the investment policy to existing investments. Under Section XI, Policy Exemption, each time the investment policy is amended this section is utilized as a “safe harbor” for existing investments.

REVIEWED BY CITY MANAGER: *William D. Cabell*

LIST OF ATTACHMENTS:

Redlined Exhibit A (Section VIII of Investment Policy)

Ordinance on first reading with Exhibit A

Redlined to Show Changes from Existing Section VIII Exhibit A

Section VIII. SUITABLE AND AUTHORIZED INVESTMENTS, of the City Investment Policy dated February, 2003 (approved by Resolution on February 4, 2003 and amended by Ordinance 5650 adopted November 6, 2011), shall be further amended to read in full as follows:

VIII. SUITABLE AND AUTHORIZED INVESTMENTS

Most City funds are scheduled for specific purposes with maturities selected to coincide as closely as possible with the periods in which monies will be spent for their intended purpose, even though new money is coming in to replace the expended funds. Since the nature of the yield curve tends to be positive (i.e. the longer the term of investment the higher the rates that are available) the City will attempt to stagger the maturity dates on investments to meet the anticipated cash flow needs based on a cash flow analysis and the available yield curve information. However, it is the intention of the City to maximize investment return within the constraints delineated in this policy and according to investment marketability and diversification. In maximizing investment return, it is anticipated that specific securities may be sold prior to maturity.

Eligible Investments:

- All investments authorized by C.R.S. 24-75-601.1 and 24-75-702 (exhibit A)
- Fully insured and/or collateralized certificates of deposit of commercial banks who have submitted a letter documenting that they are a Colorado Banking Board Eligible Public Depository
- Interest bearing advances from one city fund to any other city fund
- The following investments will be permitted by this investment policy:

1. United States Treasury and Agency Issues

Eligible Security Description:

Securities that are issued by the United States Treasury or Agencies of the United States Government for which the full faith and credit of the United States Treasury guarantees fully all principal and interest payments.

Credit Rating:

Securities which carry two credit ratings with a minimum rating of AA-/Aa3/AA- respectively from Standard & Poor's, Moody's Investor service, or Fitch. Securities qualified under Section 2a-7 will be investment eligible on the agencies' short-term credit scale, requiring a minimum rating of A1/P1/F1 from the respective rating agencies.

Maturity Risk Restriction:

At the time of purchase, securities must have a maturity of no greater than five years from the date of settlement to the maximum possible maturity date.

Diversification Limit:

Up to 100% of the total portfolio may be invested in securities purchased in United States Treasury and Agency issues.

2. Government Sponsored Enterprises (“GSE”)Eligible Security Description:

Securities issued by federal government sponsored enterprises (“GSE”) such as, but not limited to the Federal Agricultural Mortgage Corporation, Federal Farm Credit Bank, the Federal Home Loan Bank, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation. These securities are not guaranteed by the full faith and credit of the United States Government, however, they hold an implied federal guarantee.

Credit Rating:

Must be senior debt obligations which carry two credit ratings with a minimum rating of AA-/Aa3/AA- from standard & Poor’s, Moody’s, or Fitch. Securities qualified under Section 2a-7 will be eligible for investing on the agencies’ short-term credit scale, requiring a minimum rating of A1/P1/F1 from Standard & Poor’s, Moody’s or Fitch.

Maturity Risk Restriction:

At the time of purchase, securities must have a maturity no greater than five years from the date of settlement to the maximum possible maturity date.

Diversification Limit:

Up to 75% of the portfolio may be invested in Government Sponsored Enterprises. No more than 35% of the total portfolio may be invested in the securities of any single GSE.

3. State and Local Debt IssuesEligible Security Description:

General obligation or revenue obligation of any state of the United States, the District of Columbia, or any territorial possession of the United States, or, of any political subdivision, institution, department, agency, instrumentality, or authority or any such governmental entities.

Credit Rating:

Obligations which carry a minimum rating of AA-/Aa3/AA- respectively from Standard & Poor’s Moody’s or Fitch. Securities qualified under section 2s-7 will be eligible for investing on the agencies’ short-term credit scale, requirement a minimum rating of A1/P1/F1 respectively from Standard & Poor’s, Moody’s, or Fitch. If a short-term rating has not been assigned, then apply the long-term credit scale.

The City may invest in its own bond, lease, or note issues, and those of its urban renewal authority without a rating, consistent with existing state law.

Maturity Risk Restriction:

At the time of purchase, such securities must have a maturity no greater than five years from the date of settlement.

Diversification Limit:

Up to 50% of the portfolio may be invested in State and Local Government debt issues. No more than 10% of the total portfolio may be invested in the securities of any single government entity.

4. Corporate Securities

Eligible Security Description:

United States dollar denominated debt instruments issued by a corporation or bank which is organized and operated within the United States and has a net worth in excess of two hundred fifty million dollars.

Credit Rating:

Must be obligations which carry two credit ratings with a minimum rating of AA-/Aa3/AA- respectively from Standard & Poor's, Moody's, or Fitch. Securities qualifying under section 2a-7 will be eligible for investing on the agencies' short-term credit scale, requiring a minimum rating of A1/P1/F1 respectively from Standard & Poor's, Moody's, or Fitch. If a 2a-7 security has no assigned short-term rating, then apply the long-term scale criteria.

Maturity Risk Restriction:

At the time of purchase such securities must have a maturity no greater than three years from the date of settlement to the maximum possible maturity date.

Diversification Limit:

Up to 25% of the portfolio may be invested in Corporate Debt, exclusive of any amount invested in GSE securities. No more than 5% of the total portfolio may be invested in the securities of any single corporation.

5. Local Government Investment Pools (LGIP)

Eligible Security Description:

Shares in local government investment pools organized and operated per Colorado Revised Statutes.

Credit Rating:

Must carry a minimum rating of AAAm/Aaa from Standard & Poor' or Moody's.

Maturity Risk Restriction:

At the time of purchase of shares in the LGIP, they must be fully redeemable on the next business day.

Diversification Limit:

Up to 100% of the portfolio may be invested in local government pools. No more than 50% of the total portfolio may be invested in shares of any single LGIP.

6. Money Market Funds

Eligible Security Description:

Accounts that pool money from many investors, have a fund manager, and trade the fund's assets in accordance with the fund's objective. The Fund must be actively controlled by a registered investment company under the "Investment Company Act of 1940", as amended, and Securities Exchange Commission rule 2a-7 (17 CFR 270.2a-7). The fund must have assets in excess of one billion dollars, hold only securities eligible under C.R.S. section 24-75-601.1, a maximum maturity no greater than three years, and shares redeemable the next business day.

Credit Rating:

Must carry a minimum rating of AAAm/Aaa respectively from Standard & Poor's or Moody's.

Maturity Risk Restriction:

At the time of purchase, shares must be fully redeemable on the next business day.

Diversification Limit:

Up to 50% of the portfolio may be deposited in Money Market Funds. No more than 20% of the total portfolio may be invested in any single fund.

7. Repurchase and Reverse Repurchase Agreements

Eligible Security Description:

Agreements between a seller and a buyer whereby the seller agrees to repurchase the securities at an agreed upon price and usually at a stated time. Such securities subject to these agreements must have a coupon rate that is fixed from the time of settlement until its maturity date, and must be marketable. The title to or a perfected security interest in such securities, along with any necessary transfer documents, must be transferred to the investing public entity or to a custodian acting on behalf of the investing public entity. Such securities must actually be delivered to a third-party custodian or third-party trustee for safekeeping on behalf of the public entity. The collateral securities of repurchase agreements must be collateralized at no less than one hundred two percent and marked to market no less frequently than weekly. Eligible securities consist of only those referenced in this Section: 1. United States Treasury and Agency Issues and, 2. Government Sponsored Enterprises.

Credit Rating:

The counter-party must carry two credit ratings with a minimum rating of AA-/Aa3/AA- respectively from Standard & Poor's, Moody's, or Fitch. Securities qualified under Section 2a.7 will be eligible for investing on the agencies' short-term credit scale, requiring a minimum rating of A1/P1/F1 respectively from Standard & Poor's, Moody's, or Fitch. If a 2a-7 qualified security has no assigned short-term rating, then apply the long-term scale criteria.

Maturity Risk Restriction:

For Repurchase Agreements, at the time of purchase such agreements must have a maturity no greater than one year from the date of settlement to the maximum possible maturity date. The forward delivery period on such securities may not exceed 60 days. For Reverse Repurchase Agreements, at the time of purchase, such agreements must have a maturity no greater than 90 days from the date of settlement to the maximum possible maturity date. Requirements for both Repurchase Agreements and Reverse Repurchase Agreements, at the time of purchase are 1) the forward delivery period on such securities may not exceed 30 days 2) securities must be fully marketable 3) City must have title to or a perfected interest in said securities 4) all required documents must be transferred to acting safekeeping agent 5) securities must be delivered versus payment into the City's safekeeping account 6) securities must be collateralized at no less than one hundred two percent and marked to market value no less frequently than weekly.

Diversification Limit:

Up to 50% of the portfolio may be invested in Repurchase Agreements and up to 20% of the portfolio may be invested in Reverse Repurchase Agreements. No more than 20% of the total portfolio may be invested in either of these agreements with any single counter-party.

8. Deposits in State or Nationally Chartered Depository Institutions

Eligible Security Description:

Such depositories must be participants in the State of Colorado Public Deposit Protection Act (PDPA) collateralization program as defined in C.R.S. Section 11-10.5-103, whereby, the bank must pledge their own securities.

Credit Rating:

As depositories are often unrated by nationally recognized credit rating agencies, any deposit and accrued interest above the Federal Depositary Insurance Corporation (FDIC) maximum insured amount must be collateralized through the Public Deposit Protection Act. The Colorado Division of Banking and Colorado Division of Financial Services are responsible to monitor and assure adequate collateralization in reserve. For deposits above the FDIC limit and if a long-term credit rating is available from Standard & Poor's, Moody's, and Fitch, on the bank, then a minimum rating of A-/A3/A- respectively is required. If no such rating is assigned, then the bank must carry an acceptable rating from Bauer Financial.

Maturity Risk Restriction:

Demand Deposit, Savings, and Money Market accounts have no final maturity, therefore, can remain on deposit as long as the financial institution retains a Bauer financial rating of two stars for deposits fully insured by the FDIC or three stars for deposits subject to PDPA. All financial institutions must have an Adjusted Risk Based Capital (RBC) greater than eight as reported on their quarterly Call report.

Diversification Limit:

Up to 75% of the portfolio may be deposited in State of Nationally Chartered Depository institutions. No more than 30% of the total portfolio may be invested in any single type of bank instrument (Demand Deposit, Saving, Time Deposit, Money Market) at one depository.

Prohibited Investments:

- Purchases on margin or short sales -
- Derivative securities that are in effect a leveraged anticipation of future movements in interest rates or some price indices –
- Collateralized mortgage obligations due to their complexity and prepayment rate uncertainty –
- Lending securities with an agreement to buy them back after a stated period of time –
- If an eligible investment drops in its credit rating below the required level, the investment will be ~~considered a prohibited investment and will be sold as soon as practical~~reviewed for possible retention or sale.

Retention of Investments that fall below required Credit Ratings for Investment:

Should a currently held investment have its credit rating reduced below the level allowed for purchase, a determination must be made to sell or retain the investment. The following actions will be followed to confirm a decision to retain the investment. Otherwise, the investment shall be sold as expeditiously as possible.

- First, an analysis shall be conducted to confirm that the investment remains consistent with the objectives of this investment policy.
- Second, should retention be determine the preferred action rather than realizing unacceptable losses, a report detailing those findings shall be provided to the City Manager. Accomplishing this within a reasonable timeframe following the notification of the credit rating downgrade is a goal, but not an inflexible timeline. Exceptional circumstances are within the purview of the City Manager.
- Third, the City Manager may not concur with the recommendation to retain an investment and direct the sale of the investment.
- Fourth, should the City Manager concur with the retention recommendation, the City Council shall be so informed, by communicating the City Manager's position, including the original recommendation and a copy of the report. Council may exercise its normal

process to bring the matter before the Council for a Study Session, Special or Regular Meeting.

- This procedure shall apply to any subsequent reduction in the credit rating of an investment. There is no limitation on the number of times an investment may be reviewed using the retention procedures.

FIRST READING November 6, 2012

SECOND READING November 20, 2012

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE CITY OF LOVELAND
INVESTMENT POLICY**

WHEREAS, the City is a home-rule municipality under Article XX of the Colorado Constitution, with the authority to exercise as large a measure of home rule in municipal affairs as may be granted in the republican form of government, which the State of Colorado is obligated to maintain under its enabling act ; and

WHEREAS, Loveland Municipal Code Section 3.04.070 provides for deposit of City funds and for the investment of City funds as authorized by ordinance and state law; and

WHEREAS, the City has adopted the City of Loveland Investment Policy dated February, 2003, and, by Ordinance 5650, amended the Policy (collectively, the “City Investment Policy”), which sets forth authorized investments for City funds; and

WHEREAS, Section VIII of the City Investment Policy contains provisions requiring the sale of investments that fall in credit rating below the required level for acquisition “as soon as practical”, and

WHEREAS, recent credit rating downgrades make it desirable to modify the City Investment Policy to provide for an analysis of downgraded investments and, in appropriate circumstances, to permit downgraded securities to be held to maturity or to a more profitable time in order to reduce realized losses to the City’s investment portfolio and serve the interests of the public.

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

Section 1. That the City Council hereby amends the Section III of the City Investment Policy to read in full as set forth on Exhibit A attached hereto and incorporated herein by this reference.

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 3. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

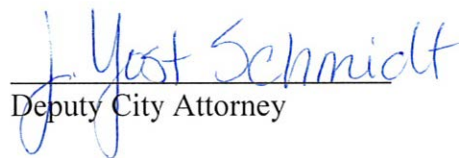
ADOPTED this 20th day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

Exhibit A

Section VIII. SUITABLE AND AUTHORIZED INVESTMENTS, of the City Investment Policy dated February, 2003 (approved by Resolution on February 4, 2003 and amended by Ordinance 5650 adopted November 6, 2011), shall be further amended to read in full as follows:

VIII. SUITABLE AND AUTHORIZED INVESTMENTS

Most City funds are scheduled for specific purposes with maturities selected to coincide as closely as possible with the periods in which monies will be spent for their intended purpose, even though new money is coming in to replace the expended funds. Since the nature of the yield curve tends to be positive (i.e. the longer the term of investment the higher the rates that are available) the City will attempt to stagger the maturity dates on investments to meet the anticipated cash flow needs based on a cash flow analysis and the available yield curve information. However, it is the intention of the City to maximize investment return within the constraints delineated in this policy and according to investment marketability and diversification. In maximizing investment return, it is anticipated that specific securities may be sold prior to maturity.

Eligible Investments:

- All investments authorized by C.R.S. 24-75-601.1 and 24-75-702 (exhibit A)
- Fully insured and/or collateralized certificates of deposit of commercial banks who have submitted a letter documenting that they are a Colorado Banking Board Eligible Public Depository
- Interest bearing advances from one city fund to any other city fund
- The following investments will be permitted by this investment policy:

1. United States Treasury and Agency Issues

Eligible Security Description:

Securities that are issued by the United States Treasury or Agencies of the United States Government for which the full faith and credit of the United States Treasury guarantees fully all principal and interest payments.

Credit Rating:

Securities which carry two credit ratings with a minimum rating of AA-/Aa3/AA- respectively from Standard & Poor's, Moody's Investor service, or Fitch. Securities qualified under Section 2a-7 will be investment eligible on the agencies' short-term credit scale, requiring a minimum rating of A1/P1/F1 from the respective rating agencies.

Maturity Risk Restriction:

At the time of purchase, securities must have a maturity of no greater than five years from the date of settlement to the maximum possible maturity date.

Diversification Limit:

Up to 100% of the total portfolio may be invested in securities purchased in United States Treasury and Agency issues.

2. Government Sponsored Enterprises (“GSE”)Eligible Security Description:

Securities issued by federal government sponsored enterprises (“GSE”) such as, but not limited to the Federal Agricultural Mortgage Corporation, Federal Farm Credit Bank, the Federal Home Loan Bank, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation. These securities are not guaranteed by the full faith and credit of the United States Government, however, they hold an implied federal guarantee.

Credit Rating:

Must be senior debt obligations which carry two credit ratings with a minimum rating of AA-/Aa3/AA- from standard & Poor’s, Moody’s, or Fitch. Securities qualified under Section 2a-7 will be eligible for investing on the agencies’ short-term credit scale, requiring a minimum rating of A1/P1/F1 from Standard & Poor’s, Moody’s or Fitch.

Maturity Risk Restriction:

At the time of purchase, securities must have a maturity no greater than five years from the date of settlement to the maximum possible maturity date.

Diversification Limit:

Up to 75% of the portfolio may be invested in Government Sponsored Enterprises. No more than 35% of the total portfolio may be invested in the securities of any single GSE.

3. State and Local Debt IssuesEligible Security Description:

General obligation or revenue obligation of any state of the United States, the District of Columbia, or any territorial possession of the United States, or, of any political subdivision, institution, department, agency, instrumentality, or authority or any such governmental entities.

Credit Rating:

Obligations which carry a minimum rating of AA-/Aa3/AA- respectively from Standard & Poor’s Moody’s or Fitch. Securities qualified under section 2s-7 will be eligible for investing on the agencies’ short-term credit scale, requirement a minimum rating of A1/P1/F1 respectively from Standard & Poor’s, Moody’s, or Fitch. If a short-term rating has not been assigned, then apply the long-term credit scale.

The City may invest in its own bond, lease, or note issues, and those of its urban renewal authority without a rating, consistent with existing state law.

Maturity Risk Restriction:

At the time of purchase, such securities must have a maturity no greater than five years from the date of settlement.

Diversification Limit:

Up to 50% of the portfolio may be invested in State and Local Government debt issues. No more than 10% of the total portfolio may be invested in the securities of any single government entity.

4. Corporate Securities

Eligible Security Description:

United States dollar denominated debt instruments issued by a corporation or bank which is organized and operated within the United States and has a net worth in excess of two hundred fifty million dollars.

Credit Rating:

Must be obligations which carry two credit ratings with a minimum rating of AA-/Aa3/AA- respectively from Standard & Poor's, Moody's, or Fitch. Securities qualifying under section 2a-7 will be eligible for investing on the agencies' short-term credit scale, requiring a minimum rating of A1/P1/F1 respectively from Standard & Poor's, Moody's, or Fitch. If a 2a-7 security has no assigned short-term rating, then apply the long-term scale criteria.

Maturity Risk Restriction:

At the time of purchase such securities must have a maturity no greater than three years from the date of settlement to the maximum possible maturity date.

Diversification Limit:

Up to 25% of the portfolio may be invested in Corporate Debt, exclusive of any amount invested in GSE securities. No more than 5% of the total portfolio may be invested in the securities of any single corporation.

5. Local Government Investment Pools (LGIP)

Eligible Security Description:

Shares in local government investment pools organized and operated per Colorado Revised Statutes.

Credit Rating:

Must carry a minimum rating of AAAm/Aaa from Standard & Poor' or Moody's.

Maturity Risk Restriction:

At the time of purchase of shares in the LGIP, they must be fully redeemable on the next business day.

Diversification Limit:

Up to 100% of the portfolio may be invested in local government pools. No more than 50% of the total portfolio may be invested in shares of any single LGIP.

6. Money Market FundsEligible Security Description:

Accounts that pool money from many investors, have a fund manager, and trade the fund's assets in accordance with the fund's objective. The Fund must be actively controlled by a registered investment company under the "Investment Company Act of 1940", as amended, and Securities Exchange Commission rule 2a-7 (17 CFR 270.2a-7). The fund must have assets in excess of one billion dollars, hold only securities eligible under C.R.S. section 24-75-601.1, a maximum maturity no greater than three years, and shares redeemable the next business day.

Credit Rating:

Must carry a minimum rating of AAAm/Aaa respectively from Standard & Poor's or Moody's.

Maturity Risk Restriction:

At the time of purchase, shares must be fully redeemable on the next business day.

Diversification Limit:

Up to 50% of the portfolio may be deposited in Money Market Funds. No more than 20% of the total portfolio may be invested in any single fund.

7. Repurchase and Reverse Repurchase AgreementsEligible Security Description:

Agreements between a seller and a buyer whereby the seller agrees to repurchase the securities at an agreed upon price and usually at a stated time. Such securities subject to these agreements must have a coupon rate that is fixed from the time of settlement until its maturity date, and must be marketable. The title to or a perfected security interest in such securities, along with any necessary transfer documents, must be transferred to the investing public entity or to a custodian acting on behalf of the investing public entity. Such securities must actually be delivered to a third-party custodian or third-party trustee for safekeeping on behalf of the public entity. The collateral securities of repurchase agreements must be collateralized at no less than one hundred two percent and marked to market no less frequently than weekly. Eligible securities consist of only those referenced in this Section: 1. United States Treasury and Agency Issues and, 2. Government Sponsored Enterprises.

Credit Rating:

The counter-party must carry two credit ratings with a minimum rating of AA-/Aa3/AA- respectively from Standard & Poor's, Moody's, or Fitch. Securities qualified under Section 2a.7 will be eligible for investing on the agencies' short-term credit scale, requiring a minimum rating of A1/P1/F1 respectively from Standard & Poor's, Moody's, or Fitch. If a 2a-7 qualified security has no assigned short-term rating, then apply the long-term scale criteria.

Maturity Risk Restriction:

For Repurchase Agreements, at the time of purchase such agreements must have a maturity no greater than one year from the date of settlement to the maximum possible maturity date. The forward delivery period on such securities may not exceed 60 days. For Reverse Repurchase Agreements, at the time of purchase, such agreements must have a maturity no greater than 90 days from the date of settlement to the maximum possible maturity date. Requirements for both Repurchase Agreements and Reverse Repurchase Agreements, at the time of purchase are 1) the forward delivery period on such securities may not exceed 30 days 2) securities must be fully marketable 3) City must have title to or a perfected interest in said securities 4) all required documents must be transferred to acting safekeeping agent 5) securities must be delivered versus payment into the City's safekeeping account 6) securities must be collateralized at no less than one hundred two percent and marked to market value no less frequently than weekly.

Diversification Limit:

Up to 50% of the portfolio may be invested in Repurchase Agreements and up to 20% of the portfolio may be invested in Reverse Repurchase Agreements. No more than 20% of the total portfolio may be invested in either of these agreements with any single counter-party.

8. Deposits in State or Nationally Chartered Depository Institutions

Eligible Security Description:

Such depositories must be participants in the State of Colorado Public Deposit Protection Act (PDPA) collateralization program as defined in C.R.S. Section 11-10.5-103, whereby, the bank must pledge their own securities.

Credit Rating:

As depositories are often unrated by nationally recognized credit rating agencies, any deposit and accrued interest above the Federal Depository Insurance Corporation (FDIC) maximum insured amount must be collateralized through the Public Deposit Protection Act. The Colorado Division of Banking and Colorado Division of Financial Services are responsible to monitor and assure adequate collateralization in reserve. For deposits above the FDIC limit and if a long-term credit rating is available from Standard & Poor's, Moody's, and Fitch, on the bank, then a minimum rating of A-/A3/A- respectively is required. If no such rating is assigned, then the bank must carry an acceptable rating from Bauer Financial.

Maturity Risk Restriction:

Demand Deposit, Savings, and Money Market accounts have no final maturity, therefore, can remain on deposit as long as the financial institution retains a Bauer financial rating of two stars for deposits fully insured by the FDIC or three stars for deposits subject to PDPA. All financial institutions must have an Adjusted Risk Based Capital (RBC) greater than eight as reported on their quarterly Call report.

Diversification Limit:

Up to 75% of the portfolio may be deposited in State of Nationally Chartered Depository institutions. No more than 30% of the total portfolio may be invested in any single type of bank instrument (Demand Deposit, Saving, Time Deposit, Money Market) at one depository.

Prohibited Investments:

- Purchases on margin or short sales -
- Derivative securities that are in effect a leveraged anticipation of future movements in interest rates or some price indices –
- Collateralized mortgage obligations due to their complexity and prepayment rate uncertainty –
- Lending securities with an agreement to buy them back after a stated period of time –
- If an eligible investment drops in its credit rating below the required level, the investment will be reviewed for possible retention or sale.

Retention of Investments that fall below required Credit Ratings for Investment:

Should a currently held investment have its credit rating reduced below the level allowed for purchase, a determination must be made to sell or retain the investment. The following actions will be followed to confirm a decision to retain the investment. Otherwise, the investment shall be sold as expeditiously as possible.

- First, an analysis shall be conducted to confirm that the investment remains consistent with the objectives of this investment policy.
- Second, should retention be determine the preferred action rather than realizing unacceptable losses, a report detailing those findings shall be provided to the City Manager. Accomplishing this within a reasonable timeframe following the notification of the credit rating downgrade is a goal, but not an inflexible timeline. Exceptional circumstances are within the purview of the City Manager.
- Third, the City Manager may not concur with the recommendation to retain an investment and direct the sale of the investment.
- Fourth, should the City Manager concur with the retention recommendation, the City Council shall be so informed, by communicating the City Manager's position, including

the original recommendation and a copy of the report. Council may exercise its normal process to bring the matter before the Council for a Study Session, Special or Regular Meeting.

- This procedure shall apply to any subsequent reduction in the credit rating of an investment. There is no limitation on the number of times an investment may be reviewed using the retention procedures.

**CITY OF LOVELAND**
MUNICIPAL AIRPORT

4900 Earhart Road • Loveland, Colorado 80538
(970) 962-2852 • FAX (970) 962-2855 • TDD (970) 962-2620

AGENDA ITEM: 9
MEETING DATE: 11/20/2012
TO: City Council
FROM: Jason Licon, Airport
PRESENTER: Jason Licon, Keith Reester

TITLE:

Consideration of an ordinance enacting a supplemental budget and appropriation to the 2012 Ft. Collins-Loveland Municipal Airport budget for the purchase of snow removal equipment

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second reading

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
 3. Adopt a modified action (specify in the motion)
 4. Refer back to staff for further development and consideration
 5. Adopt a motion continuing the item to a future Council meeting
-

DESCRIPTION:

This is an administrative action. The ordinance appropriates a State grant and the local match for the purchase of snow removal equipment for the Airport.

BUDGET IMPACT:

- ☒ Positive
☐ Negative
☐ Neutral or negligible

The action leverages state funding for 50% of the cost of replacing aging snow removal equipment.

SUMMARY:

The Denver International Airport (DEN) and the State of Colorado's Department of Transportation, Division of Aeronautics are partnered in a program that allows for the acquisition of used equipment from DEN for use by other Colorado airports. The State of Colorado assists with the equipment acquisition through a 50% matching grant for the purchase of the equipment. Through this program our airport has exercised the opportunity to obtain a used

rotary snowplow. This piece of equipment would cost over \$300,000 if new, and our airport was able to obtain it for \$18,000. With the 50% match grant from the state the total Cities contributions are \$9,000. This rotary plow will replace a similar unit that was acquired through this same program in the past, and is critical for expedited snow removal from the airport runways and taxiways.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance

FIRST READING November 6, 2012SECOND READING November 20, 2012

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 FT. COLLINS-LOVELAND MUNICIPAL AIRPORT BUDGET FOR THE PURCHASE OF SNOW REMOVAL EQUIPMENT

WHEREAS, the City has received or has reserved funds not anticipated or appropriated at the time of the adoption of the Airport budget for 2012; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the Airport budget for 2012, as authorized by Section 11-6(a) of the Loveland City Charter.

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

Section 1. That revenues and/or reserves in the amount of \$18,000 from fund balance and a grant from the State of Colorado in the Airport Fund 600 are available for appropriation. Revenues in the total amount of \$18,000 are hereby appropriated for the purchase of snow removal equipment and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
Fund 600 Airport Fund**

Revenues

Fund Balance		9,000
600-00-000-0000-38617	Contribution- State of Colorado	9,000

Total Revenue		18,000
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Appropriations

600-23-290-0000-48240	Machinery & Equipment	18,000
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Total Appropriations		18,000
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Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 3. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

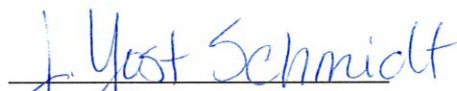
ADOPTED this 20th day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


Deputy City Attorney



CITY OF LOVELAND
CULTURAL SERVICES /MUSEUM •ART IN PUBLIC PLACES
503 N. Lincoln Avenue • Loveland, Colorado 80537
(970) 962-2410 • FAX (970) 962-2910 • TDD (970) 962-2833

AGENDA ITEM: 10
MEETING DATE: 11/20/2012
TO: City Council
FROM: Suzanne Janssen, Cultural Services Department
PRESENTER: Suzanne Janssen, Public Art/Business Services Manager

TITLE:

- A. A resolution approving an Intergovernmental Agreement between the City of Loveland and the State of Colorado Department of Transportation regarding the commission and placement of artwork in the U.S. Highway 34 and Interstate Highway I-25 Interchange and limited landscaping
- B. Public hearing and consideration of an ordinance on first reading enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for the commission and placement of art work at the U.S. Highway 34 and I-25 interchange.

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and adopt motions to approve the resolution and the ordinance on first reading.

OPTIONS:

- 1. Adopt the action as recommended
 - 2. Deny the action
 - 3. Adopt a modified action (specify in the motion)
 - 4. Refer back to staff for further development and consideration
 - 5. Adopt a motion continuing the item to a future Council meeting
-

DESCRIPTION:

This is an administrative action. The item contains a resolution to approve an agreement with the Colorado Department of Transportation to commission and place artwork in and, if appropriate, provide limited landscaping within the northeast quadrant of the U.S. 34 and I-25 Interchange to create a welcoming and iconic entryway into the north front range community using a CDOT Beautification Grant awarded in 2003 and previously reserved City funds; and a supplemental budget to appropriate the grant funds.

BUDGET IMPACT:

- ☒ Positive
 - ☐ Negative
 - ☐ Neutral or negligible
-

Federal funding is leveraged with reserves in the Art in Public Places fund to fund the project. This project was listed as an Art in Public Places project as approved within the 2013 budget.

SUMMARY:

In 2003 the City of Loveland Public Works Department applied for, and was awarded, a \$163,000 Colorado Department of Transportation (CDOT) Beautification Grant. The original application was submitted "to install new landscaping and plantings in such a way that they would enhance the existing and any new interchange configuration" at the interchange of Interstate 25/US 34. In spring 2011, a revised proposal was approved by the North Front Range Metropolitan Planning Organization (MPO) to allow for the installation of new interchange public art, and, if appropriate, limited landscaping at the site.

This interchange is one of the main gateways to Loveland, Greeley, Larimer County, Johnstown, Northern Colorado and the Rocky Mountains, including Rocky Mountain National Park. The City of Loveland wishes to create a more aesthetically-pleasing, welcoming entryway that will give tourists and local residents a sense of place. The Art in Public Places Program is willing to overmatch funds to beautify this area because it is the nearest community to the interchange and has a long history of public art placements throughout the city.

Millions of people view the intersection of these corridors each year including tourists on their way to and from Rocky Mountain National Park and other parts of the western United States. The view shed of the two main highways in the Northern Front Range MPO will be directly enhanced by this project. Approximately 27 million vehicles pass through this interchange each year. Some estimates on US 34 in Loveland show that up to 1/3 of the summertime traffic is tourists.

The aesthetic improvements provided by this proposed public art installation will create a welcoming entryway to the community. Additionally, it will serve as a visual reminder of Loveland's rich history within the arts. The collaborative financing between CDOT and the Art in Public Places Program will maximize each entity's ability to enhance the chosen site. City Council approval for the appropriation of the funds is necessary for this project to proceed.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Resolution Approving an Intergovernmental Agreement between the City of Loveland and the State of Colorado Department of Transportation Regarding the Commission and Placement of Artwork and Limited Landscaping in the U.S. Highway 34 and Interstate Highway I-25 Interchange
-

2. An ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for the commission and placement of art work at the U.S. Highway 34 and I-25 interchange
3. Colorado Department of Transportation Agreement
4. Project Brief (including the updated Project Description)

RESOLUTION # R-78-2012

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND AND THE STATE OF COLORADO DEPARTMENT OF TRANSPORTATION REGARDING THE COMMISSION AND PLACEMENT OF ARTWORK IN THE U.S. HIGHWAY 34 AND INTERSTATE HIGHWAY I-25 INTERCHANGE AND LIMITED LANDSCAPING

WHEREAS, in 2003 the City of Loveland Public Works Department applied for and was awarded a \$163,000.00 grant from the Colorado Department of Transportation (“CDOT”) as part a \$204,000.00 CDOT Beautification Grant (“Beautification Grant”) based on a City proposal and request for new landscaping and plantings to enhance the U.S. Highway 34 and Interstate Highway I-25 interchange (the “Interchange”); and

WHEREAS, in 2011, the City with the support of the North Front Range Metropolitan Planning Organization submitted and CDOT approved a revised proposal on the use of the Beautification Grant to allow for the installation of artwork that would create a welcoming and iconic entryway into the north front range community with limited landscaping; and

WHEREAS, the City has provided the required matching funds of \$41,000.00 which represents difference between the amount awarded by CDOT and the total amount of the Beautification Grant, plus an additional overmatch of funds of \$46,000.00; and

WHEREAS, the City and CDOT desire and are now prepared to commence the process to commission and place artwork in the Interchange’s northeastern quadrant and to provide limited landscaping in such quadrant as set forth in the agreement between the City and CDOT attached hereto as Exhibit A and incorporated by reference herein (the “Agreement”); and

WHEREAS, The City finds that it is in the best interests of its residents to approve the Agreement.

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

Section 1. That the Agreement is approved.

Section 2. That the City Manager is hereby authorized and directed to enter into the Agreement, subject to such modifications in form or substance as the City Manager, in consultation with the City Attorney, may deem necessary to effectuate the purposes of this resolution or to protect the interests of the City.

Section 3. That the City has appropriated or will appropriate or otherwise make available in a timely manner its share of all funds that are required to be provided by the City under the terms and conditions of the Beautification Grant and this Agreement.

Section 4. That this Resolution shall be effective as of the date and time of its adoption.

ADOPTED this _____ day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

A Resolution Approving an Intergovernmental Agreement between the City of Loveland and the State of Colorado Department of Transportation Regarding the Commission and Placement of Artwork in the U.S. Highway 34 And Interstate Highway I-25 Interchange and Limited Landscaping

(FMLAWRK)
PROJECT# STE M830-058 (18002)
REGION # (PCO)

Rev 7/8/09
Routing # 12 HA4 45281
SAP PO# 2710001701

STATE OF COLORADO
Department of Transportation
Agreement
with
City of Loveland

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1. PARTIES

THIS AGREEMENT is entered into by and between CITY OF LOVELAND (hereinafter called the "Local Agency"), and the STATE OF COLORADO acting by and through the Department of Transportation (hereinafter called the "State" or "CDOT").

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or their designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse the Local Agency for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, And Approval

Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment and the required approval, clearance and coordination have been accomplished from and with appropriate agencies.

i. Federal Authority

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

ii. State Authority

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

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.

C. Purpose

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT's Stewardship Agreement with the FHWA.

D. References

All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Agreement or Contract

"Agreement" or "Contract" means this Agreement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Agreement, and any future modifying agreements, exhibits, attachments or references that are incorporated pursuant to Colorado State Fiscal Rules and Policies.

B. Agreement Funds

"Agreement Funds" means funds payable by the State to Local Agency pursuant to this Agreement.

C. Budget

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

D. Consultant and Contractor

"Consultant" means a professional engineer or designer hired by Local Agency to design the Work and "Contractor" means the general construction contractor hired by Local Agency to construct the Work.

E. Evaluation

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

F. Exhibits and Other Attachments

The following exhibit(s) are attached hereto and incorporated by reference herein: **Exhibit A** (Scope of Work), **Exhibit B** (Resolution), **Exhibit C** (Funding Provisions), **Exhibit D** (Option Letter), **Exhibit E** (Checklist), **Exhibit F** (Certification for Federal-Aid Funds), **Exhibit G** (Disadvantaged Business Enterprise), **Exhibit H** (Local Agency Procedures), **Exhibit I** (Federal-Aid Contract Provisions), **Exhibit J** (Federal Requirements) and **Exhibit K** (Supplemental Federal Provisions).

G. Goods

"Goods" means tangible material acquired, produced, or delivered by the Local Agency either separately or in conjunction with the Services the Local Agency renders hereunder.

H. Oversight

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

I. Party or Parties

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

J. Work Budget

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

K. Services

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

L. Work

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

M. Work Product

"Work Product" means the tangible or intangible results of the Local Agency's Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM and EARLY TERMINATION.

The Parties' respective performances under this Agreement shall commence on the Effective Date. This Agreement shall terminate after five (5) years of state controllers signature in section 26, 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.F.R. 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.

(b) An alternative to the 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 Standard Specifications for Road and Bridge Construction §109.04.

(d) All Work being paid under force account shall have prior approval of the State and/or FHWA and shall not be initiated until the State has issued a written notice to proceed.

iv. 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 E₅**.

v. ROW and Acquisition/Relocation

a) If the Local Agency purchases a right of way for a State highway, including areas of influence, the Local Agency shall immediately convey title to such right of way to CDOT after the Local Agency obtains title.

b) Any acquisition/relocation activities shall comply with all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.

c) The Parties' respective compliance responsibilities depend on the level of federal participation; provided however, that the State always retains Oversight responsibilities.

d) The Parties' respective responsibilities under each level in CDOT's Right of Way Manual (located at http://www.dot.state.co.us/ROW_Manual/) and reimbursement for the levels will be under the following categories:

- (1) Right of way acquisition (3111) for federal participation and non-participation;
- (2) Relocation activities, if applicable (3109);
- (3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

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.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, the Local Agency's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. The State's performance hereunder is also contingent upon the continuing availability of federal funds. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions hereof.

iv. Erroneous Payments

At the State's sole discretion, payments made to the Local Agency in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by the Local Agency, may be recovered from the Local Agency by deduction from subsequent payments under this Contract or other contracts, Agreements or agreements between the State and the Local Agency or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

C. Use of Funds

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

D. Matching Funds

The Local Agency shall provide matching funds as provided in **§8.A.** and **Exhibit C**. The Local Agency shall have raised the full amount of matching funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. The Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of the Local Agency and paid into the Local Agency's treasury. The Local Agency represents to the State that the amount designated "Local Agency Matching Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. The Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of the Local Agency. The Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the Local Agency's laws or policies.

E. Reimbursement of Local Agency Costs

The State shall reimburse the Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and **§8**. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the State's obligation to reimburse all costs incurred by the Local Agency and submitted to the State for reimbursement hereunder, and the Local Agency shall comply with all such principles. The State shall reimburse the Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C**. However, any costs incurred by the Local Agency prior to the date of FHWA authorization for the Work and prior to the Effective Date shall not be reimbursed absent specific FHWA and State Controller approval thereof. Costs shall be:

i. Reasonable and Necessary

Reasonable and necessary to accomplish the Work and for the Goods and Services provided.

ii. Net Cost

Actual net cost to the Local Agency (i.e. the price paid minus any items of value received by the Local Agency that reduce the cost actually incurred);

9. ACCOUNTING

The Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

A. Local Agency Performing the Work

If Local Agency is performing the Work, all allowable costs, including any approved services contributed by the Local Agency or others, shall be documented using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

B. Local Agency-Checks or Draws

Checks issued or draws made by the Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. All checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents shall be on file in the office of the Local Agency, clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other Work documents.

C. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. The Local Agency shall reimburse the State for the costs of any such services from the Budget as provided for in Exhibit C. If FHWA funding is not available or is withdrawn, or if the Local Agency terminates this Agreement prior to the Work being approved or completed, then all actual incurred costs of such services and assistance provided by the State shall be the Local Agency's sole expense.

D. Local Agency-Invoices

The Local Agency's invoices shall describe in detail the reimbursable costs incurred by the Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and shall not be submitted more often than monthly.

E. Invoicing Within 60 Days

The State shall not be liable to reimburse the Local Agency for any costs unless CDOT receives such invoices within 60 days after the date for which payment is requested, including final invoicing. Final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or the State may offset them against any payments due from the State to the Local Agency.

F. Reimbursement of State Costs

CDOT shall perform Oversight and the Local Agency shall reimburse CDOT for its related costs. The Local Agency shall pay invoices within 60 days after receipt thereof. If the Local Agency fails to remit payment within 60 days, at CDOT's request, the State is authorized to withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to CDOT. Interim funds shall be payable from the State Highway Supplementary Fund (400) until CDOT is reimbursed. If the Local Agency fails to make payment within 60 days, it shall pay interest to the State at a rate of one percent per month on the delinquent amounts until the billing is paid in full. CDOT's invoices shall describe in detail the reimbursable costs incurred, the dates incurred and the amounts thereof, and shall not be submitted more often than monthly.

10. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this §10 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §18, if applicable.

A. Performance, Progress, Personnel, and Funds

The Local Agency shall submit a report to the State upon expiration or sooner termination of this Agreement, containing an Evaluation and Review of the Local Agency's performance and the final status of the Local Agency's obligations hereunder.

B. Litigation Reporting

Within 10 days after being served with any pleading related to this Agreement, in a legal action filed with a court or administrative agency, the Local Agency shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State or its principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of CDOT.

C. Noncompliance

The Local Agency's failure to provide reports and notify the State in a timely manner in accordance with this §10 may result in the delay of payment of funds and/or termination as provided under this Agreement.

D. Documents

Upon request by the State, the Local Agency shall provide the State, or its authorized representative, copies of all documents, including contracts and subcontracts, in its possession related to the Work.

11. LOCAL AGENCY RECORDS

A. Maintenance

The Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. The Local Agency shall maintain such records until the last to occur of the following: (i) a period of three years after the date this Agreement is completed or terminated, or (ii) three years after final payment is made hereunder, whichever is later, or (iii) for such further period as may be necessary to resolve any pending matters, or (iv) if an audit is occurring, or the Local Agency has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

B. Inspection

The Local Agency shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe the Local Agency's records related to this Agreement during the Record Retention Period to assure compliance with the terms hereof or to evaluate the Local Agency's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Agreement, including any extension. If the Work fails to conform to the requirements of this Agreement, the State may require the Local Agency promptly to bring the Work into conformity with Agreement requirements, at the Local Agency's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require the Local Agency to take necessary action to ensure that future performance conforms to Agreement requirements and may exercise the remedies available under this Agreement at law or in equity in lieu of or in conjunction with such corrective measures.

C. Monitoring

The Local Agency also shall permit the State, the federal government or any other duly authorized agent of a governmental agency, in their sole discretion, to monitor all activities conducted by the Local Agency pursuant to the terms of this Agreement using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All such monitoring shall be performed in a manner that shall not unduly interfere with the Local Agency's performance hereunder.

D. Final Audit Report

If an audit is performed on the Local Agency's records for any fiscal year covering a portion of the term of this Agreement, the Local Agency shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

12. CONFIDENTIAL INFORMATION-STATE RECORDS

The Local Agency shall comply with the provisions of this §12 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals. Nothing in this §12 shall be construed to require the Local Agency to violate the Colorado Open Records Act, C.R.S. §§ 24-72-1001 et seq.

A. Confidentiality

The Local Agency shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of the Local Agency shall be immediately forwarded to the State's principal representative.

B. Notification

The Local Agency shall notify its agents, employees and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by the Local Agency or its agents in any way, except as authorized by the Agreement and as approved by the State. The Local Agency shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by the Local Agency or its agents, except as set forth in this Agreement and approved by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by the Local Agency for any reason may be cause for legal action by third parties against the Local Agency, the State or their respective agents. The Local Agency is prohibited from providing indemnification to the State pursuant to the Constitution of the State of Colorado, Article XI, Section 1, however, the Local Agency shall be responsible for any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, or assignees pursuant to this §12.

13. CONFLICT OF INTEREST

The Local Agency shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of the Local Agency's obligations hereunder. The Local Agency acknowledges that with respect to this Agreement even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, the Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Local Agency's obligations to the State hereunder. If a conflict or appearance exists, or if the Local Agency is uncertain whether a conflict or the appearance of a conflict of interest exists, the Local Agency shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Agreement.

14. REPRESENTATIONS AND WARRANTIES

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

A. Standard and Manner of Performance

The Local Agency shall perform its obligations hereunder, including in accordance with the highest professional standard of care, skill and diligence and in the sequence and manner set forth in this Agreement.

B. Legal Authority – The Local Agency and the Local Agency's Signatory

The Local Agency warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement, or any part thereof, and to bind the Local Agency to its terms. If requested by the State, the Local Agency shall provide the State with proof of the Local Agency's authority to enter into this Agreement within 15 days of receiving such request.

C. Licenses, Permits, Etc.

The Local Agency represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. The Local Agency warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Agreement, without reimbursement by the State or other adjustment in Agreement Funds. Additionally, all employees and agents of the Local Agency performing Services under this Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. The Local Agency, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for the Local Agency to properly perform the terms of this Agreement shall be deemed to be a material breach by the Local Agency and constitute grounds for termination of this Agreement.

15. INSURANCE

The Local Agency and its contractors shall obtain and maintain insurance as specified in this section at all times during the term of this Agreement: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the Local Agency and the State.

A. The Local Agency

i. Public Entities

If the Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then the Local Agency shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. The Local Agency shall show proof of such insurance satisfactory to the State, if requested by the State. The Local Agency shall require each Agreement with their Consultant and Contractor, that are providing Goods or Services hereunder, to include the insurance requirements necessary to meet Consultant or Contractor liabilities under the GIA.

ii. Non-Public Entities

If the Local Agency is not a "public entity" within the meaning of the Governmental Immunity Act, the Local Agency shall obtain and maintain during the term of this Agreement insurance coverage and policies meeting the same requirements set forth in §15(B) with respect to sub-contractors that are not "public entities".

B. Contractors

The Local Agency shall require each contract with Contractors, Subcontractors, or Consultants, other than those that are public entities, providing Goods or Services in connection with this Agreement, to include insurance requirements substantially similar to the following:

i. Worker's Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of the Local Agency's Contractors, Subcontractors, or Consultant's employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, contractors, subcontractors, and consultants shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Local Agency a certificate or other document satisfactory to the Local Agency showing compliance with this provision.

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Additional Insured

The Local Agency and the State shall be named as additional insured on the Commercial General Liability policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. Primacy of Coverage

Coverage required of the Consultants or Contractors shall be primary over any insurance or self-insurance program carried by the Local Agency or the State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Local Agency and the State by certified mail.

vii. Subrogation Waiver

All insurance policies in any way related to this Agreement and secured and maintained by the Local Agency's Consultants or Contractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against the Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

The Local Agency and all Contractors, subcontractors, or Consultants shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Agreement. No later than 15 days prior to the expiration date of any such coverage, the Local Agency and each contractor, subcontractor, or consultant shall deliver to the State or the Local Agency certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Agreement or any sub-contract, the Local Agency and each contractor, subcontractor, or consultant shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §15.

16. DEFAULT-BREACH

A. Defined

In addition to any breaches specified in other sections of this Agreement, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §18. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §17. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate

this Agreement in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

17. REMEDIES

If the Local Agency is in breach under any provision of this Agreement, the State shall have all of the remedies listed in this §17 in addition to all other remedies set forth in other sections of this Agreement following the notice and cure period set forth in §16(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If the Local Agency fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Agreement and in a timely manner, the State may notify the Local Agency of such non-performance in accordance with the provisions herein. If the Local Agency thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Agreement or such part of this Agreement as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. The Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, the Local Agency shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and sub-Agreements with third parties. However, the Local Agency shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Agreement's terms. At the sole discretion of the State, the Local Agency shall assign to the State all of the Local Agency's right, title, and interest under such terminated orders or sub-Agreements. Upon termination, the Local Agency shall take timely, reasonable and necessary action to protect and preserve property in the possession of the Local Agency in which the State has an interest. All materials owned by the State in the possession of the Local Agency shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by the Local Agency to the State and shall become the State's property.

ii. Payments

The State shall reimburse the Local Agency only for accepted performance received up to the date of termination. If, after termination by the State, it is determined that the Local Agency was not in default or that the Local Agency's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Agreement had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, the Local Agency also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Agreement by the Local Agency and the State may withhold any payment to the Local Agency for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from the Local Agency is determined. The State may withhold any amount that may be due to the Local Agency as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. The Local Agency shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

The State is entering into this Agreement for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this

Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Agreement in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Agreement by the State for cause or breach by the Local Agency, which shall be governed by §17(A) or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify the Local Agency of the termination in accordance with §18, specifying the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice, the Local Agency shall be subject to and comply with the same obligations and rights set forth in §17(A)(i).

iii. Payments

If this Agreement is terminated by the State pursuant to this §17(B), the Local Agency shall be paid an amount which bears the same ratio to the total reimbursement under this Agreement as the Services satisfactorily performed bear to the total Services covered by this Agreement, less payments previously made. Additionally, if this Agreement is less than 60% completed, the State may reimburse the Local Agency for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Agreement) incurred by the Local Agency which are directly attributable to the uncompleted portion of the Local Agency's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to the Local Agency hereunder.

C. Remedies Not Involving Termination

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend the Local Agency's performance with respect to all or any portion of this Agreement pending necessary corrective action as specified by the State without entitling the Local Agency to an adjustment in price/cost or performance schedule. The Local Agency shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by the Local Agency after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to the Local Agency until corrections in the Local Agency's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed that due to the Local Agency's actions or inactions cannot be performed or, if performed, would be of no value to the State; provided that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

Demand removal of any of the Local Agency's employees, agents, or contractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Agreement is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property

If the Local Agency infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Agreement, the Local Agency shall, at the State's option (a) obtain for the State or the Local Agency the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

18. NOTICES and REPRESENTATIVES

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

A. State:

Tim Tuttle, P.E.
CDOT – Region 4
1420 2 nd Street
Greeley, Colorado 80631
(970)350-2211
Tim.tuttle.@dot.state.co.us

B. Local Agency:

Frank B. Hempen
City of Loveland
410 East Fifth Street
Loveland, Colorado 80537
(970)962-2908
hempef@ci.loveland.co.us

19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE; RIGHTS IN GOODS

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 joint property of the State and the Local Agency and all Work Product shall be delivered to the State by the Local Agency upon completion or termination hereof; provided, however, that all Work Product shall be subject to inspection by the Local Agency. The State's and the Local Agency's joint rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Work Product as used herein shall not include the Goods that are the result of the Work or any rights therein including, but not limited to, the right to copy, publish, display, transfer, and prepare derivative works.

Subject to the Copyright Act of 1976 (17 U.S.C. § 101, *et seq.*), the Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), any other type of moral right protecting the the integrity of artwork, and any related waivers, if applicable, the Local Agency shall have exclusive rights to the Goods that are the result of the Work upon completion or termination hereof. Subject to the foregoing, the Local Agency's exclusive rights in such Goods shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. The State shall not use, willingly allow, cause or permit such Goods or any rights therein to be used for any purpose without the prior written consent of the Local Agency.

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. Jurisdiction and Venue

All suits, actions, or proceedings related to this Agreement shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. Limitations of Liability

Any and all limitations of liability and/or damages in favor of the Local Agency contained in any document attached to and/or incorporated by reference into this Agreement, whether referred to as an exhibit, attachment, schedule, or any other name, are void and of no effect. This includes, but is not necessarily limited to, limitations on (i) the types of liabilities, (ii) the types of damages, (iii) the amount of damages, and (iv) the source of payment for damages.

I. Modification

i. By the Parties

Except as specifically provided in this Agreement, modifications of this Agreement shall not be effective unless agreed to in writing by both parties in an amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF AGREEMENTS - TOOLS AND FORMS.

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 contract 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

27. SIGNATURE PAGE

Agreement Routing Number 12 HA4 45281

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

<p align="center">City of Loveland</p> <p>By: _____ Name of Authorized Individual</p> <p>Title: _____ Official Title of Authorized Individual</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p align="center">STATE OF COLORADO</p> <p align="center">John W. Hickenlooper, GOVERNOR Colorado Department of Transportation Donald E. Hunt, Executive Director</p> <p>_____ By: Timothy J. Harris, Chief Engineer</p> <p>Date: _____</p>
<p align="center">ATTEST:</p> <p>By: _____ City Clerk</p> <p align="center">APPROVED AS TO FORM:</p> <p>By: _____ Assistant City Attorney</p>	<p align="center">LEGAL REVIEW</p> <p align="center">John W. Suthers, Attorney General</p> <p>By: _____ Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

<p>STATE CONTROLLER David J. McDermott, CPA</p> <p>By: _____</p> <p align="center">Colorado Department of Transportation</p> <p>Date: _____</p>

28. EXHIBIT A – SCOPE OF WORK

COLORADO DEPARTMENT OF TRANSPORTATION DESIGN DATA		Orig. Date: 06/30/2010		Project Code # (SA#): 18002		STIP#: SNF5094	
		Rev. Date:		Project #: STE M830-058			
		Revision #: 0		PE Project Code:			
		Region #: 04		Project Description: Loveland I-25 / US34 Artwork			
Status: <input type="checkbox"/> Preliminary <input checked="" type="checkbox"/> Final <input type="checkbox"/> Revised							
Submitted By PM: TUTTLET				Approved by Program Engineer:			
Date: 04/12/2012							
Revised by:							
Date:							
Geographic Location: I-25 / US34 INTERCHANGE AREA							
Type of Terrain: Urban							
Description of Proposed Construction/Improvement (Attach map showing site location) INSTALL ARTWORK & LANDSCAPING							

1 Project Characteristics (Proposed) <input type="checkbox"/> Lighting <input type="checkbox"/> Handicap Ramps <input type="checkbox"/> Curb and Gutter <input type="checkbox"/> Curb Only <input type="checkbox"/> Sidewalk Width= <input type="checkbox"/> Bikeway Width= <input type="checkbox"/> Parking Lane Width= <input type="checkbox"/> Detours <input type="checkbox"/> Landscaping requirements (description):				Median (Type): <input type="checkbox"/> Depressed <input type="checkbox"/> Painted <input type="checkbox"/> Raised <input type="checkbox"/> None <input type="checkbox"/> Traffic Control Signals <input type="checkbox"/> Striping <input type="checkbox"/> Left-Turn Slots <input type="checkbox"/> Continuous Width= <input type="checkbox"/> Right-Turn Slots <input type="checkbox"/> Continuous Width= Signing <input type="checkbox"/> Construction <input type="checkbox"/> Permanent <input checked="" type="checkbox"/> Other (description): Artwork at US34 & I-25 by the City of Loveland																					
2 Right of Way <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 60%;"></th> <th style="width: 20%;">Yes/No</th> <th style="width: 20%;">Est. #</th> </tr> </thead> <tbody> <tr> <td>ROW &/or Perm. Easement Required</td> <td>No</td> <td>_____</td> </tr> <tr> <td>Relocation Required</td> <td>No</td> <td>_____</td> </tr> <tr> <td>Temporary Easement Required:</td> <td>No</td> <td>_____</td> </tr> <tr> <td>Changes in Access:</td> <td>No</td> <td>_____</td> </tr> <tr> <td>Changes to Connecting Roads:</td> <td>No</td> <td>_____</td> </tr> </tbody> </table>					Yes/No	Est. #	ROW &/or Perm. Easement Required	No	_____	Relocation Required	No	_____	Temporary Easement Required:	No	_____	Changes in Access:	No	_____	Changes to Connecting Roads:	No	_____	3 Utilities (list names of known utility companies)			
	Yes/No	Est. #																							
ROW &/or Perm. Easement Required	No	_____																							
Relocation Required	No	_____																							
Temporary Easement Required:	No	_____																							
Changes in Access:	No	_____																							
Changes to Connecting Roads:	No	_____																							
4 Railroad Crossings # of Crossings:																									
Recommendations :																									
5 Environmental		Type: None	Approved On: / /	Project Code # Cleared Under:	Project # Cleared Under:																				
Comments:																									
6 Coordination <input type="checkbox"/> Withdrawn Lands (Power Sites, Reservoirs, Etc.) Cleared through BLM or Forest Service Office Irrigation Ditch Name: <input type="checkbox"/> New Traffic Ordinance Required <input type="checkbox"/> Modify Schedule of Existing Ordinance Municipality: Loveland Other:																									
7 Construction Method		Advertised By: None	NoAd Reason: P.O	Entity / Agency Contact Name: Frank Hempen		Phone #: 970-962-2515																			
8 Safety Considerations		Project Under:				Guardrail meets current standards: No																			
<input type="checkbox"/> Variance in Minimum Design Standards Required <input type="checkbox"/> Justification Attached <input type="checkbox"/> Request to be Submitted <input type="checkbox"/> Bridge (see item 12) <input type="checkbox"/> See Remarks				<input type="checkbox"/> Safety project not all standards addressed		Comments: No Guardrail within Project Limits																			
<input type="checkbox"/> Stage Construction (explain in remarks)																									
3R projects Safety Evaluation Complete (date):																									

Page 2 of 3	Project Code #(SA#): 18002	Project #: STE M830-058	Revise date:
Use Columns A, B, C, D and/or E to identify facility described below			
A = 034A		B =	C =
D =		E =	
9 Traffic			
Current Year	ADT		
	DHV		
	DHV % Trucks		
Future Year	ADT		
	DHV		
Facility Location	<input type="checkbox"/> Industrial <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Other
10 Roadway Class			
Route	034A		
Relpt	96.259		
Endrefpt	96.259		
Functional Classification	F		
Facility type	E		
Rural Code	3		
11 Design Standards			
Design Variance Required (substandard items are identified with an * in 1 st column & clarify as design variance with CDOT Form #464)			
Width of Travel Lanes			
Shoulder width l/outside			
Shoulder width r/outside			
Design Speed			
Cross Slope			
Max. superelevation rate			
Min. Radius			
Min. Horizontal SSD			
Min. Vertical SSD			
Max Grade			
Design Decision Letter Required (substandard items are identified with an * in 1 st column & clarify with decision letter)			
Typical Section Type			
# of Travel Lanes			
Side Slope Dist. ("z")			
Median Width			
Posted Speed			

Page 3 of 3	Project Code #(SA#): 18002	Project #: STE M830-058	Revise Date:	
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12	Major Structures	S= to stay, R= to be removed, P= proposed new structure									
Structure ID#	▼	Length	Reference Point	Feature Intersected	Standard Width	Structure Roadway	Structural Capacity	Horizontal Clearance	Vertical Clearance	Year Built	
Proposed Treatment of Bridges to Remain in Place(address bridge rail, capacity, and allowable surfacing thickness):											

13	Remarks
<p>Scope and Project Description</p> <p>The City of Loveland has been recognized for its commitment to the arts, as illustrated through the commercial opportunities created by the city's artistic activity, its national recognition as a top artist destination, and the use of arts to promote economic vitality and quality of life.</p> <p>The artwork for this project will serve as a gateway piece to the City of Loveland. It should have an immediate visual impact that doesn't require an up close and personal inspection of the art. The art will be located in the line of sight for motorists and passengers exiting the Interstate as well as motorists and passengers traveling on US34. The art cannot be kinetic nor have colors that can be construed as traffic signage (per CDOT Public Art Guidelines). The scale of the art should be set accordingly and not be a distraction to motorists.</p> <p>The Artist will be required to carry general liability insurance in the amount of \$1 million. The project design must adhere to the Federal Highway Administration and Colorado Department of Transportation Standard Specifications.</p>	

29. EXHIBIT B – LOCAL AGENCY RESOLUTION

LOCAL AGENCY
ORDINANCE
or
RESOLUTION

29. EXHIBIT C – FUNDING PROVISIONS**A. Cost of Work Estimate**

The Local Agency has estimated the total cost the Work to be \$249,750.00 which is to be funded as follows:

1 BUDGETED FUNDS

a. Federal Funds (80.00% of Participating Costs)	\$163,000.00
b. Local Agency Matching Funds (20.00% of Participating Costs)	\$40,750.00
c. Local Agency Overmatch	\$46,000.00
TOTAL BUDGETED FUNDS	\$249,750.00

2 ESTIMATED CDOT-INCURRED COSTS

a. Federal Share (0% of Participating Costs)	\$0.00
b. Local Share	
Local Agency Share of Participating Costs	\$0.00
Local Agency Share of Non-Participating Costs	\$0.00
Estimated to be Billed to Local Agency	\$0.00
TOTAL ESTIMATED CDOT-INCURRED COSTS	\$0.00

3 ESTIMATED PAYMENT TO LOCAL AGENCY

a. Federal Funds Budgeted (1a)	\$163,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)	\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY	\$163,000.00

FOR CDOT ENCUMBRANCE PURPOSES

**Note - \$249,750.00 is currently available. Funds and/or Local Agency Overmatch will be added in the future either by Option Letter or Amendment.*

				\$0.00
	Net to be encumbered as follows:			
	WBS Element 18002.10.50	Misc.	3403	\$249,750.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 80.00% federal-aid funds at \$163,000.00 (CFDA #20 2050) to 20.00% Local Agency funds at \$40,750, it being understood that such ratio applies only to the \$203,750.00 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 \$203,750.00, and additional federal funds are made available for the Work, the Local Agency shall pay 20.00% 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 \$203,750.00, then the amounts of State and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$163,000.00 (For CDOT accounting purposes, the federal funds of \$163,000.00, Local Agency matching funds of \$40,750.00, and Local Agency Overmatch funds of \$46,000.00 will be encumbered for a total encumbrance of \$249,750.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. ***** Note - \$249,750.00 is currently available. Funds and/or Local Agency Overmatch will be added in the future either by Option Letter or Amendment ***** It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. Single Audit Act Amendment

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

i. Expenditure less than \$500,000

~~If the Sub-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

If the Sub-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

If the Sub-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.

E. The Local Agency understands and accepts that future reimbursement of the Federal funding for the Project is contingent upon the FHWA making such funds available to the State in future fiscal years, and to the budgeting of such funds by the Transportation Commission for reimbursement to the Local Agency. The Local Agency understands that the FHWA has not currently obligated all Federal funds for the project. The Local Agency does not by this Agreement irrevocably pledge present case reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of the Local Agency.

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 #		Option Letter CMS #	
Original Contract SAP #		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 # 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 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

COLORADO DEPARTMENT OF TRANSPORTATION

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

Project No. STE M830-058	STIP No. SNF5094.007	Project Code 18002	Region 04
Project Location City of Loveland			Date 4/25/2012
Project Description Artwork project at I-25 and US34 in the City of Loveland			
Local Agency City of Loveland	Local Agency Project Manager Frank Hempen		
CDOT Resident Engineer Long Nguyen	CDOT Project Manager Tim Tuttle		

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 consistency with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4-1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5-1	Prepare Design Data - CDOT Form 463	X	X
5-2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5-3	Conduct Consultant Selection/Execute Consultant Agreement	X	#
5-4	Conduct Design Scoping Review meeting	X	
5-5	Conduct Public Involvement	X	
5-6	Conduct Field Inspection Review (FIR)	X	X
5-7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	X
5-8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
5-9	Obtain Utility and Railroad Agreements	X	
5-10	Conduct Final Office Review (FOR)	X	X
5-11	Justify Force Account Work by the Local Agency	X	#
5-12	Justify Proprietary, Sole Source, or Local Agency Furnished items	X	#
5-13	Document Design Exceptions - CDOT Form 464	X	#
5-14	Prepare Plans, Specifications and Construction Cost Estimates	X	#
5-15	Ensure Authorization of Funds for Construction		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6-1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6-2	Determine Applicability of Davis-Bacon Act This project <input checked="" type="checkbox"/> is <input type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) <div style="display: flex; justify-content: space-between;"> <div> <u>Long Nguyen</u> CDOT Resident Engineer(Signature on File) </div> <div> <u>4/25/2012</u> Date </div> </div>		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 UDDE 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	
	Presurvey		
	• Construction staking	X	
	• Monumentation	X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	X	
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
8-4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8-5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." <div style="display: flex; justify-content: space-between;"> <div> <u>Frank Hempen</u> Local Agency Professional Engineer or CDOT Resident Engineer </div> <div> <u>970-962-2515</u> Phone number </div> </div>	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	X
8-8	Perform Construction Surveying	X	
8-9	Monument Right-of-Way	X	
8-10	Prepare and Approve Interim and Final Contractor Pay Estimates	X	
	Provide the name and phone number of the person authorized for this task. <div style="display: flex; justify-content: space-between;"> Frank Hempen 970-962-2515 </div> <div style="display: flex; justify-content: space-between;"> Local Agency Representative Phone number </div>		
8-11	Prepare and Approve Interim and Final Utility/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	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. <div style="display: flex; justify-content: space-between;"> Long Nguyen 970-350-2126 </div> <div style="display: flex; justify-content: space-between;"> CDOT Resident Engineer Phone number </div>		X
MATERIALS			
9-1	Conduct Materials Preconstruction Meeting	X	
9-2	Complete CDOT Form 250 - Materials Documentation Record		
	<ul style="list-style-type: none"> Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project Update the form as work progresses Complete and distribute form after work is completed 	X X X	X
9-3	Perform Project Acceptance Samples and Tests	X	
9-4	Perform Laboratory Verification Tests	X	
9-5	Accept Manufactured Products	X	
	Inspection of structural components: <ul style="list-style-type: none"> Fabrication of structural steel and pre-stressed concrete structural components Bridge modular expansion devices (0" to 6" or greater) Fabrication of bearing devices 	X X X	
9-6	Approve Sources of Materials	X	
9-7	Independent Assurance Testing (IAT), Local Agency Procedures <input checked="" type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/>		
	<ul style="list-style-type: none"> Generate IAT schedule Schedule and provide notification Conduct IAT 	X X	X
9-8	Approve Mix Designs		
	<ul style="list-style-type: none"> 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	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		
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 - Contractor DBE Payment Certification from the Contractor and submit to the Resident Engineer	X	
11-9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor		NA
11-10	Process Final Payment	X	
11-11	Complete and Submit CDOT Form 950 - Project Closure		X
11-12	Retain Project Records for Six Years from Date of Project Closure	X	X
11-13	Retain Final Version of Local Agency Contract Administration Checklist	X	X

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

33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

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

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

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

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

Required by 23 CFR 635.112

34. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 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 Form 1273

FHWA-1273 Electronic version – March 10, 1994

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 an 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 than the applicable wage rate and fringe benefits or cash equivalent for the classification of work 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 than \$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 Agencies 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 Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

E. Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agencies 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.

FIRST READING November 20, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR THE COMMISSION AND PLACEMENT OF ART WORK AT THE U.S. HIGHWAY 34 AND I-25 INTERCHANGE

WHEREAS, the City has received funds not anticipated or appropriated at the time of the adoption of the City budget for 2012; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2012, as authorized by Section 11-6(a) of the Loveland City Charter.

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

Section 1. That revenues in the amount of \$163,000 from a federal grant passed through the Colorado Department of Transportation in the Art in Public Places Fund 205 are available for appropriation. Revenues in the total amount of \$163,000 are hereby appropriated for the commission and placement of art at the U.s 34 and I-25 Interchange and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
Art in Public Places Fund 205**

Revenues

205-00-000-0000-32000-VAC034	Federal Grant	163,000
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Total Revenue

163,000

Appropriations

205-52-740-0000-48196-VAC034	Art Commissions - Construction	163,000
------------------------------	--------------------------------	---------

Total Appropriations

163,000

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 3. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

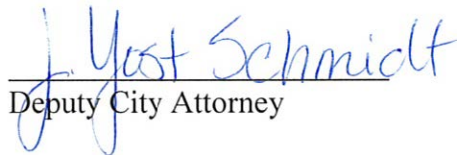
ADOPTED this ____ day of December, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

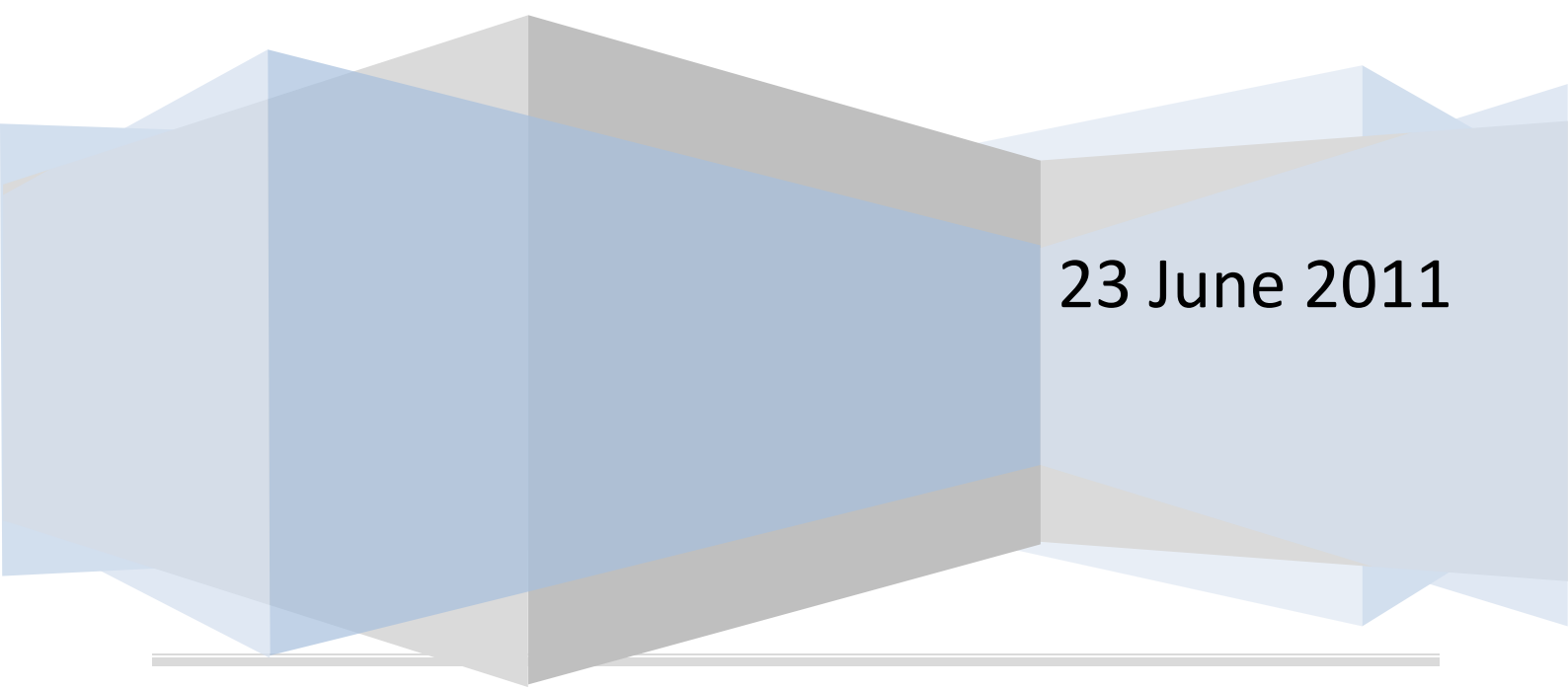
APPROVED AS TO FORM:


Deputy City Attorney

City of Loveland
Art in Public Places Program

I-25/Highway 34 Interchange

Public Artwork

An abstract geometric artwork composed of several overlapping, semi-transparent planes in shades of blue and grey. The planes are arranged in a way that creates a sense of depth and three-dimensional space. The overall shape is somewhat rectangular but with irregular, faceted edges. The artwork is positioned in the lower half of the page, below the title and above a thin horizontal line.

23 June 2011

Project Brief

1. Project

This proposal outlines the proposed public art project for the northeast quadrant of the I25/Highway 34 Interchange. The City of Loveland Visual Arts Commission will utilize Colorado Department of Transportation monies, in conjunction Art in Public Places funds, to beautify the interchange, while creating an iconic identity for the City. While it is the intention to have the artwork installed by spring 2012, a timeline for the project will developed based upon the selected artist.



2. Process

The process for selecting public artwork can be lengthy and is addressed in sections below:

Site Selection:

- After touring the general site, the northeast quadrant of the I25/Highway 34 Interchange is desired for a large scale artwork.
- Initial verbal approval was given for this site by CDOT.
- Next Steps: Detailed drawings of the proposed site will be needed for the artists Call for Qualifications

Call for Qualifications

- An artist Call for Proposals will be listed on CAFÉ, an online call for entry service administered by Westaf. Conducted in this manner, the call will be open to the widest possible pool of artists.
 - From this Call, up to three artists may be selected based upon their conceptual drawings.
 - Each finalist will present scale maquettes for the jury panel's review.
 - One finalist will be selected to develop their design, fabricate and install the artwork.
-

- While it is the intention to have the artwork installed by spring 2012, a timeline for the project will be developed based upon the selected artist.

Artwork Selection Panel

- Artwork Selection Panel: Members of City of Loveland Visual Arts Commission, one Public Works representative, and one McWhinney Enterprises representative will serve as jurors for the project.
- City staff will oversee operations and administer the decisions of the jury panel.
- CDOT will appoint a consultant to City staff for all matters relating to the CDOT guidelines, in an effort to expedite CDOT processes and avoid non-compliance.

Artist Fabrication and Installation Process

- The Artist is expected to work closely with City staff and CDOT representative to ensure CDOT guidelines are followed. While not anticipated, CDOT approval will be sought should there be a need for deviating from the guidelines.
- The Artist is responsible to execute and install their design as presented and shall provide stamped and approved engineering drawings for City and CDOT review.
- CDOT will make available (through its consultant) the parameters the artists will be expected to follow throughout the installation process.
- Access to the installation site shall be scheduled with CDOT at least two weeks prior to the installation date.

3. Quality criteria

- The Artist will guarantee his/her artwork for a period of three years, after which time the City of Loveland Visual Arts Commission will become responsible for the on-going long-term care of the work.
- The City of Loveland will perform all maintenance on the artwork from the time of installation throughout the life of the sculpture (or as long as it remains a part of the City's public art collection).

4. Budget

- The Visual Arts Commission will budget this project in the 2012 fiscal year and will enter into contract with the artist accordingly.
 - Typically, the Artist will be paid a stated percentage of the total amount of the contract at the beginning, midpoint and upon installation/approval of the artwork.
 - The Artist is responsible for providing photographic documentation of the artwork at various stages throughout the fabrication process and installation. Detailed maintenance instructions are also a condition of final payment.
 - CDOT will be responsible for the monies granted to the City of Loveland.
-

5. The user(s) and any other known interested parties

Name and organization	Interface
City of Loveland	9 member Visual Arts Commission
Colorado Department of Transportation	Consultant
City of Loveland	Public Works Representative
City of Loveland	Suzanne Janssen, Public Art/Business Services Manager
City of Loveland	Susan Ison, Cultural Services Director

6. Attachment

Grant request revision submitted by Frank Hempen, spring 2011.

**WORK TASK:
PROJECT****I-25/US34 INTERCHANGE BEAUTIFICATION****STIP ID: SNF5094.007, NFR TIP No. NF0735****SPONSOR:**

City of Loveland
 Frank Hempen, Jr., Public Works Project Engineering
 e-mail: hempef@ci.loveland.co.us
 and
 Susan Ison, Cultural Services Director
 410 East 5th Street
 Loveland, CO 80537
 e-mail: isons@ci.loveland.co.us

CATEGORY:**Transportation Aesthetics****DESCRIPTION:**

Install new public art to enhance the beautification of the interchange at I-25/US 34, the main entryway to Loveland, Greeley, Larimer County and Northern Colorado.

This important entryway for Northern Colorado is in the process of being beautified with new landscaping and plantings in a way that would enhance the new interchange configuration. Public art will be added to the new landscaping to enhance the beautification effort. The project would be done in existing right of way, designed by experienced professionals, located in consultation with CDOT, and follow the Guidelines for Integrating Artwork into CDOT Transportation Facilities.

FUNDING:

Total (FY 2012)	\$204,000
Federal	\$163,000
Local (City of Loveland)	\$ 41,000

PROJECT NEED:

This interchange is one of the main gateways to Loveland, Greeley, Larimer County, Johnstown, Northern Colorado and the Rocky Mountains including Rocky Mountain National Park. The interchange is undergoing an upgrade in landscaping and geometrics and the City of Loveland wishes to create an enhanced aesthetically-pleasing, welcoming entryway that will give tourists and local residents a sense of place. The City is willing to match funds to beautify this area because it is the nearest community to the interchange and has a long history of public art placements throughout the city.

QUALITY:

Since this is a main entryway, the quality and scale of the artwork is of utmost importance. The vision for the project is that it would feature an iconic work(s) of public art that make a statement about Loveland's reputation as a city of the arts.

COST:

\$204,000

**ENVIRONMENTAL
SENSITIVITY:**

This project will have no negative environmental impacts. Located all in existing highway right of way, no environmentally sensitive areas are known at this point.

**IMPLEMENTATION
AND MAINTENANCE:**

The City's Visual Arts Commission (VAC) will facilitate an open competition to choose the work(s) of art. The selection committee will be comprised of both members of the VAC and community residents. City staff will administer the artist contract and monitor the progress throughout the duration of the project. Ongoing maintenance of the installation will be the responsibility of the VAC.

OTHER INFORMATION:

US 34 is the key east-west corridor in the North Front Range. Millions of people view the intersection of these corridors each year including tourists on their way to and from Rocky Mountain National Park and other parts of the western United States. The City of Loveland is contributing 20 per cent of the initial costs plus the costs relating to the ongoing maintenance of the project.

The viewshed of the two main highways in the Northern Front Range MPO will be directly enhanced by this project. Approximately 27 million vehicles pass through this interchange each year. Some estimates on US 34 in Loveland show that up to 1/3 of the summertime traffic is tourists.

**CITY OF LOVELAND****CITY COUNCIL**

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2329 • FAX (970) 962-2901 • TDD (970) 962-2620

AGENDA ITEM: 11
MEETING DATE: 11/20/2012
TO: City Council
FROM: Eric Lessard, Public Works – Stormwater Engineering
PRESENTER: Eric Lessard

TITLE: Recommendation for contract award to Mountain Constructors, Inc. for Stormwater Maintenance Projects

RECOMMENDED CITY COUNCIL ACTION: Adopt a motion to award a construction contract to Mountain Constructors, Inc., in the amount of \$900,000.00 to complete a stormwater maintenance project under Project No. SW1201.

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
 3. Adopt a modified action (specify in the motion)
 4. Refer back to staff for further development and consideration
 5. Adopt a motion continuing the item to a future Council meeting
-

DESCRIPTION: This is an administrative action seeking approval for awarding a construction contract to Mountain Constructors, Inc., in the amount of \$900,000.00 for stormwater maintenance projects under Project No. SW1201 in 2013.

BUDGET IMPACT:

- ☒ Positive
☐ Negative
☐ Neutral or negligible

This is a planned maintenance contract funded by the Stormwater Utility's Capital Improvement Project Fund and by money appropriated in 2012.

SUMMARY:

Sealed bids were opened on Thursday, October 25th, 2012. Four bids were received for four separate Bid Schedules A, B, C, and D in addition to a schedule of values for future work orders. The following is a list of the bidders and their respective bid totals for specific projects under Bid Schedules A+ B+C+D for Project No. SW1201.

Bidder	Total Bid Schedule
Mountain Constructors, Inc.	\$ 442,273.00
Duran Excavating, Inc.	\$ 544,913.00
Brannan Construction Company	\$ 707,220.81
DeFalco Construction Company	\$ 593,815.70

This project is a blanket purchase order contract through 2013, and is renewable for up to two consecutive one year periods (2014 & 2015). The first term of the contract, ending on December 31st, 2013, has a total value of \$900,000.00 of which \$442,273.00 is related to specific bid projects. This \$900,000.00 amount will fund a number of much needed routine maintenance projects in addition to the projects contained in the bid package. The work generally consists of the removal and replacement of aging, undersized, or failing stormwater infrastructure and the installation of various retrofit stormwater quality improvements. The project will be funded through the Stormwater Utility's Capital Improvement Project Fund.

Stormwater Utility staff recommends awarding the Stormwater Maintenance Project No. SW1201 contract to Mountain Constructors, Inc., the lowest responsible bidder, and authorize the City Manager to execute the contract. These stormwater maintenance projects are under Project No. SW1201 in the amount of \$900,000.00.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

None



CITY OF LOVELAND

DEVELOPMENT SERVICES DEPARTMENT

Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
(970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: 12
MEETING DATE: 11/20/2012
TO: City Council
FROM: Greg George, Development Services
PRESENTER: Kerri Burchett, Current Planning

TITLE:

1. A resolution concerning the annexation to the City of Loveland, Colorado, of a certain area designated as "Mehaffey Park First Addition" more particularly described herein, and setting forth findings of fact and conclusions based thereon as required by the state constitution and state statutes;
2. An ordinance approving the annexation of certain territory to the City of Loveland, Colorado, to be known and designated as "Mehaffey Park First Addition" to the City of Loveland;
3. An ordinance amending Section 18.04.040 of the Loveland Municipal Code, the same relating to zoning regulations for "Mehaffey Park First Addition" to the City of Loveland; and
4. An ordinance amending Section 18.04.040 of the Loveland Municipal Code, the same relating to zoning regulations for certain property located in Tract "B", Vanguard-Famleco First Addition and a portion of Tract "C", Vanguard-Famleco Second Addition, City of Loveland, Larimer County Colorado

RECOMMENDED CITY COUNCIL ACTION:

City staff recommends the following motions for City Council action as recommended by the Planning Commission:

1. Move to adopt the resolution concerning the annexation of the Mehaffey Park First Addition;
2. Move to adopt on first reading the ordinance annexing the Mehaffey Park First Addition to the City of Loveland, subject to the Planning Commission condition set forth in Section III of the attached City Council staff memorandum dated November 20, 2012; and
3. Move to adopt on first reading the ordinance zoning the Mehaffey Park First Addition to the City of Loveland to PP-Public Park District; and
4. Move to adopt on first reading the ordinance rezoning 9.36 acres from the Meadowbrook Ridge Planned Unit Development to Public Park District and approving the Meadowbrook Ridge PUD (#P-67) General Development Plan First Amendment to reflect such rezoning.

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
 3. Adopt a modified action (specify in the motion)
 4. Refer back to staff for further development and consideration
 5. Adopt a motion continuing the item to a future Council meeting
-

DESCRIPTION:

A public hearing is to consider the following items on first reading:

- A legislative action to adopt a resolution and ordinance to annex 60.44 acres of City owned property to be known as the Mehaffey Park Addition;
- A quasi-judicial action to zone the 60.44 acre property PP- Public Park District; and
- A quasi-judicial action to rezone the 9.36 acres of City owned property from the Meadowbrook Ridge Planned Unit Development to Public Park District and amend the General Development Plan.

The property is located south of West 29th Street, east of Cascade Avenue, north of 22nd Street and ¼ mile west of Wilson Avenue. The applicant is the City of Loveland, Parks and Recreation Department.

BUDGET IMPACT:

- ☐ Positive
- ☐ Negative
- ☒ Neutral or negligible
-

SUMMARY:

This proposal is to annex, zone and rezone 69.8 acres of city owned property in order to develop a future public park, called Mehaffey Park. The City purchased the 60.4 acres proposed for annexation in 1997 for the purpose of developing a community park in this location. The City purchased an additional 9.36 acres of property within the Meadowbrook Ridge PUD this year, to expand the area for the park and gain access from West 29th Street. While the specific design of the park is not a component of the annexation, zoning and GDP amendment request, the park is currently being master planned and various public outreach meetings have been held. Development of the park will require approval of a special review, which requires a neighborhood meeting and will provide an opportunity for public input.

The Planning Commission held a public hearing to consider the request on September 24, 2012 and unanimously recommended approval of the annexation and zoning, GDP amendment and rezoning applications.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

- A. Annexation Resolution
- B. Ordinances
 - 1. Annexation Ordinance
 - 2. Zoning Ordinance
 - 3. Rezoning Ordinance
- C. Staff Memorandum

RESOLUTION #R-79-2012**A RESOLUTION CONCERNING THE ANNEXATION TO THE CITY OF LOVELAND, COLORADO, OF A CERTAIN AREA DESIGNATED AS "MEHAFFEY PARK FIRST ADDITION" MORE PARTICULARLY DESCRIBED HEREIN, AND SETTING FORTH FINDINGS OF FACT AND CONCLUSIONS BASED THEREON AS REQUIRED BY THE STATE CONSTITUTION AND STATE STATUTES**

WHEREAS, on September 11, 2012,, a Petition for Annexation was filed by the Loveland City Manager on behalf of the City of Loveland as the sole owner of the area described on **Exhibit A**, attached hereto and incorporated herein, which area is not solely a public street or right-of-way; and

WHEREAS, said petition requests the City of Loveland to annex said area to the City; and

WHEREAS, the City Council has determined that the area proposed to be annexed complies with the applicable requirements of Section 30(1)(c) of Article II of the Colorado Constitution, and of §§31-12-104(1)(a) and 31-12-105, C.R.S., is eligible for annexation under §31-12-106(3), C.R.S.; that an election is not required under Section 30(1)(a) of Article II of the Colorado Constitution or under §31-12-107(2), C.R.S.; and no additional terms and conditions are to be imposed; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO THAT:

1. The City Council of the City of Loveland makes the following findings of fact:

A. The subject Petition for Annexation was signed by the Loveland City Manager, on behalf of the City of Loveland as the sole owner of the area proposed to be annexed.

B. The area proposed to be annexed is not solely a public street or right-of-way.

C. The proposed annexation complies with the applicable requirements of Section 30(1)(c) of Article II of the Colorado Constitution, and of §§31-12-104(1)(a) and 31-12-105, C.R.S.; is eligible for annexation under §31-12-106(3), C.R.S.; no election is required under Section 30(1)(a) of Article II of the Colorado Constitution or under §31-12-107(2), C.R.S.; and no additional terms and conditions are to be imposed.

D. The land to be annexed lies entirely within the City of Loveland Growth Management Area, as depicted in the 2005 Comprehensive Plan, as amended. Therefore, pursuant to Section 3.3.1 of the Intergovernmental Agreement with Larimer County, the annexation impact report requirement of §31-12-108.5, C.R.S. has been waived.

E. The perimeter of the area proposed to be annexed within is 6733.54 linear feet, of which 5155.61 linear feet are contiguous to the City of Loveland. Not less than one-sixth of the perimeter of said area is contiguous with the City of Loveland.

F. No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, is divided into separate parts or parcels without the written consent of the landowners thereof unless such tracts or parcels are separated by a dedicated street, road, or other public way.

G. No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising 20 acres or more and which, together with the buildings and improvements situated thereon, has a

valuation for assessment in excess of \$200,000 for ad valorem tax purposes for the year next preceding the annexation, is included within the area proposed to be annexed without the written consent of the landowner or landowners.

H. No annexation proceedings have been commenced for the annexation to another municipality of part or all of the area proposed to be annexed.

I. The annexation of the area proposed to be annexed will not result in the detachment of the area from any school district and the attachment of the same to another school district.

J. The annexation of the area proposed to be annexed would not have the effect of extending the boundary of the City of Loveland more than three miles in any direction from any point of such boundary in any one year.

K. In establishing the boundaries of the area proposed to be annexed, the entire width of any platted street or alley to be annexed is included within said area.

L. The annexation of the area proposed to be annexed will not deny reasonable access to any landowner, owner of an easement or owner of a franchise adjoining a platted street or alley which is included in said area but which is not bounded on both sides by the City of Loveland.

2. The City Council reaches the following conclusions based on the above findings of fact:

A. The proposed annexation of the area described on **Exhibit A** complies with and meets the requirements of Section 30(1)(c) of Article II of the Colorado Constitution, and the applicable parts of §§31-12-104(1)(a) and 31-12-105, C.R.S.

B. No additional terms and conditions are to be imposed.

3. This Resolution shall become effective on the date and at the time of its adoption.

APPROVED the ____ day of November, 2012.

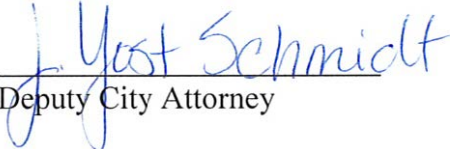
ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

Mayor

APPROVED AS TO FORM:



Deputy City Attorney

EXHIBIT A**PARCEL 1 PROPERTY DESCRIPTION:**

That portion of the North Half of Section 9, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the West line of the Northeast Quarter of said Section 9 as bearing South 00°10'56" East and with all bearings contained herein relative thereto:

Beginning at the Northwest corner of the Northeast Quarter of said Section 9; said Northwest corner of the Northeast Quarter of said Section 9 also being the Northeast corner of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence along the West line of the Northeast Quarter of said Section 9; said West line of the Northeast Quarter of said Section 9 also being the East line of said Tract 'C', VANGUARD-FAMLECO SECOND ADDITION; thence along said West line of the Northeast Quarter of said Section 9 and along said East line of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION South 00°10'56" East 207.50 feet, more or less, to the Northwest corner of that certain parcel of land as described in Deed recorded at Reception No. 98004036, records of said County; thence departing said West line of the Northeast Quarter of said Section 9 and said East line of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION and along the Northeasterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 South 55°05'44" East 1577.93 feet, more or less, to the Northeast corner of said parcel of land as described in Deed recorded at Reception No. 98004036; said Northeast corner also being a point on the Westerly line of Lot 3, WINDEMERE SEVENTH SUBDIVISION to the City of Loveland, County of Larimer, State of Colorado; thence departing said Northeasterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 and along the Easterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 and along said Westerly line of Lot 3, WINDEMERE SEVENTH SUBDIVISION and along the Westerly line of Lot 1, of said WINDEMERE SEVENTH SUBDIVISION South 17°52'28" East 663.20 feet, more or less, to the Northwest corner of that certain parcel of land as described in Deed recorded at Reception No. 97004655, records of said County and the TRUE POINT OF BEGINNING; thence continuing along said Westerly line of said Lot 1, WINDEMERE SEVENTH SUBDIVISION and along the Easterly line of said certain parcel of land as described in Deed recorded at Reception No. 97004655 South 17°52'28" East 74.83 feet, more or less, to a point on the Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT (Originally known as PARK PLACE SUBDIVISION-A PLANNED UNIT DEVELOPMENT and name changed per City of Loveland Resolution No. R-229-79) to the City of Loveland, County of Larimer, State of Colorado, said Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT also being the Easterly line of said parcel of land as described in Deed recorded at Reception No. 97004655; thence departing said Westerly line of said Lot 1, WINDEMERE SEVENTH SUBDIVISION and along said Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT and continuing along said Easterly line of said parcel of land as described in Deed recorded at Reception No.

97004655 South 18°30'39" West 578.93 feet and again South 30°45'44" West 251.47, more or less, to a point on the North line of QUAIL RUN ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence departing said Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT and said Easterly line of said parcel of land as described in Deed recorded at Reception No. 97004655 and along said North line of QUAIL RUN ADDITION South 89°13'52" West 63.25 feet, more or less, to the Southwest corner of said parcel of land as described in Deed recorded at Reception No. 97004655; said Southwest corner also being a point on the Easterly line of said parcel of land as described in Deed recorded at Reception No. 98004036; thence departing said North line of QUAIL RUN ADDITION and along the Westerly line of said parcel of land as described in Deed recorded at Reception No. 97004655 and along said Easterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 the following five (5) courses and distances: 1) North 28°18'48" East 161.20 feet; 2) North 33°57'42" East 131.30 feet; 3) North 17°36'59" East 506.29 feet; 4) North 25°50'55" East 88.42 feet; 5) North 24°41'07" East 26.62 feet, more or less, to a point on the Westerly line of said Lot 1, WINDEMERE SEVENTH SUBDIVISION; said point also being the Northwest corner of that certain parcel of land as described in Deed recorded at Reception No. 97004655 and the TRUE POINT OF BEGINNING.

Containing 1.11 Acres, more or less, and being subject to all existing easements and/or rights-of-way of record.

PARCEL 2 PROPERTY DESCRIPTION:

That portion of the North Half of Section 9, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the West line of the Northeast Quarter of said Section 9 as bearing South 00°10'56" East and with all bearings contained herein relative thereto:

Beginning at the Northwest corner of the Northeast Quarter of said Section 9; said Northwest corner of the Northeast Quarter of said Section 9 also being the Northeast corner of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence along the West line of the Northeast Quarter of said Section 9; said West line of the Northeast Quarter of said Section 9 also being the East line of said Tract 'C', VANGUARD-FAMLECO SECOND ADDITION; thence along said West line of the Northeast Quarter of said Section 9 and along said East line of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION South 00°10'56" East 207.50 feet, more or less, to the Northwest corner of that certain parcel of land as described in Deed recorded at Reception No. 98004036, records of said County and the TRUE POINT OF BEGINNING; thence departing said West line of the Northeast Quarter of said Section 9 and said East line of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION and along the Northeasterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 South 55°05'44" East 1577.93 feet, more or less, to the Northeast corner of said parcel of land as described in Deed recorded at Reception No. 98004036; said Northeast corner also being a point on the Westerly line of Lot 3, WINDEMERE

SEVENTH SUBDIVISION to the City of Loveland, County of Larimer, State of Colorado; thence departing said Northeasterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 and along the Easterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 and along said Westerly line of Lot 3, WINDEMERE SEVENTH SUBDIVISION and along the Westerly line of Lot 1, of said WINDEMERE SEVENTH SUBDIVISION South 17°52'28" East 663.20 feet, more or less, to the Northwest corner of that certain parcel of land as described in Deed recorded at Reception No. 97004655, records of said County; thence departing said Westerly line of said Lot 1, WINDEMERE SEVENTH SUBDIVISION and along the Easterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 and along the Westerly line of said parcel of land as described in Deed recorded at Reception No. 97004655 the following five (5) courses and distances: 1) South 24°41'07" West 26.62 feet; 2) South 25°50'55" West 88.42 feet; 3) South 17°36'59" West 506.29 feet; 4) South 33°57'42" West 131.30 feet; 3) South 28°18'48" West 161.20 feet, more or less, to a point on the North line of QUAIL RUN ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence departing said Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT and said Easterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 and said Westerly line of said parcel of land as described in Deed recorded at Reception No. 97004655 and along said North line of QUAIL RUN ADDITION South 89°13'52" West 1137.44 feet, more or less, to the Northwest corner of said QUAIL RUN ADDITION; said Northwest corner also being a point on said West line of the Northeast Quarter of said Section 9 and said East line of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION; thence departing said North line of QUAIL RUN ADDITION and along said West line of the Northeast Quarter and along said East line of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION North 00°10'56" West 2386.49 feet, more or less, to the to the Northwest corner of said certain parcel of land as described in Deed recorded at Reception No. 98004036 and the TRUE POINT OF BEGINNING.

Containing 59.33 Acres, more or less, and being subject to all existing easements and/or rights-of-way of record.

FIRST READING: November 20, 2012

SECOND READING: _____

ORDINANCE NO. _____

AN ORDINANCE APPROVING THE ANNEXATION OF CERTAIN TERRITORY TO THE CITY OF LOVELAND, COLORADO, TO BE KNOWN AND DESIGNATED AS "MEHAFFEY PARK FIRST ADDITION" TO THE CITY OF LOVELAND

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That a Petition for Annexation, together with four (4) copies of the map of said territory as required by law, was filed with the City on September 11, 2012, by the Loveland City Manager, on behalf of the City of Loveland as the sole owner of the area of the territory hereinafter described. The Council, by resolution at its regular meeting on November 20, 2012, found and determined that the proposed annexation complies with and meets the requirements of the applicable parts of Section 30(1)(c) of Article II of the Colorado Constitution, and of §§31-12-104(1)(a) and 31-12-105, C.R.S.; is eligible for annexation under §31-12-106(3), C.R.S.; and further determined that an election was not required under Section 30(1)(a) of Article II of the Colorado Constitution and under §31-12-107(2), C.R.S., and further found that no additional terms and conditions were to be imposed upon said annexation except those set out on said Petition.

Section 2. That the annexation to the City of Loveland of the following described property to be designated as "**MEHAFFEY PARK FIRST ADDITION**" to the City of Loveland, Larimer County, Colorado is hereby approved:

PARCEL 1 PROPERTY DESCRIPTION:

That portion of the North Half of Section 9, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the West line of the Northeast Quarter of said Section 9 as bearing South 00°10'56" East and with all bearings contained herein relative thereto:

Beginning at the Northwest corner of the Northeast Quarter of said Section 9; said Northwest corner of the Northeast Quarter of said Section 9 also being the Northeast corner of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence along the West line of the Northeast Quarter of said Section 9; said West line of the Northeast Quarter of said Section 9 also being the East line of said Tract 'C', VANGUARD-FAMLECO SECOND ADDITION; thence along said West line of the Northeast

Quarter of said Section 9 and along said East line of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION South 00°10'56" East 207.50 feet, more or less, to the Northwest corner of that certain parcel of land as described in Deed recorded at Reception No. 98004036, records of said County; thence departing said West line of the Northeast Quarter of said Section 9 and said East line of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION and along the Northeasterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 South 55°05'44" East 1577.93 feet, more or less, to the Northeast corner of said parcel of land as described in Deed recorded at Reception No. 98004036; said Northeast corner also being a point on the Westerly line of Lot 3, WINDEMERE SEVENTH SUBDIVISION to the City of Loveland, County of Larimer, State of Colorado; thence departing said Northeasterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 and along the Easterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 and along said Westerly line of Lot 3, WINDEMERE SEVENTH SUBDIVISION and along the Westerly line of Lot 1, of said WINDEMERE SEVENTH SUBDIVISION South 17°52'28" East 663.20 feet, more or less, to the Northwest corner of that certain parcel of land as described in Deed recorded at Reception No. 97004655, records of said County and the TRUE POINT OF BEGINNING; thence continuing along said Westerly line of said Lot 1, WINDEMERE SEVENTH SUBDIVISION and along the Easterly line of said certain parcel of land as described in Deed recorded at Reception No. 97004655 South 17°52'28" East 74.83 feet, more or less, to a point on the Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT (Originally known as PARK PLACE SUBDIVISION-A PLANNED UNIT DEVELOPMENT and name changed per City of Loveland Resolution No. R-229-79) to the City of Loveland, County of Larimer, State of Colorado, said Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT also being the Easterly line of said parcel of land as described in Deed recorded at Reception No. 97004655; thence departing said Westerly line of said Lot 1, WINDEMERE SEVENTH SUBDIVISION and along said Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT and continuing along said Easterly line of said parcel of land as described in Deed recorded at Reception No. 97004655 South 18°30'39" West 578.93 feet and again South 30°45'44" West 251.47, more or less, to a point on the North line of QUAIL RUN ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence departing said Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT and said Easterly line of said parcel of land as described in Deed recorded at Reception No. 97004655 and along said North line of QUAIL RUN ADDITION South 89°13'52" West 63.25 feet, more or less, to the Southwest corner of said parcel of land as described in Deed recorded at Reception No. 97004655; said Southwest corner also being a point on the Easterly line of said parcel of land as described in Deed recorded at Reception No. 98004036; thence departing said North line of QUAIL RUN ADDITION and along the Westerly line of said parcel of land as described in Deed recorded at Reception No. 97004655 and along said Easterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 the following five (5) courses and distances: 1) North 28°18'48" East 161.20 feet; 2) North 33°57'42" East 131.30 feet; 3) North 17°36'59" East 506.29 feet; 4) North 25°50'55" East 88.42 feet; 5) North 24°41'07" East 26.62 feet, more or less, to a point on the Westerly line of said Lot 1, WINDEMERE SEVENTH SUBDIVISION; said point also being the Northwest corner of that certain parcel of land as described in Deed recorded at Reception No. 97004655 and the TRUE POINT OF BEGINNING.

Containing 1.11 Acres, more or less, and being subject to all existing easements and/or rights-of-way of record.

PARCEL 2 PROPERTY DESCRIPTION:

That portion of the North Half of Section 9, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the West line of the Northeast Quarter of said Section 9 as bearing South 00°10'56" East and with all bearings contained herein relative thereto:

Beginning at the Northwest corner of the Northeast Quarter of said Section 9; said Northwest corner of the Northeast Quarter of said Section 9 also being the Northeast corner of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence along the West line of the Northeast Quarter of said Section 9; said West line of the Northeast Quarter of said Section 9 also being the East line of said Tract 'C', VANGUARD-FAMLECO SECOND ADDITION; thence along said West line of the Northeast Quarter of said Section 9 and along said East line of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION South 00°10'56" East 207.50 feet, more or less, to the Northwest corner of that certain parcel of land as described in Deed recorded at Reception No. 98004036, records of said County and the TRUE POINT OF BEGINNING; thence departing said West line of the Northeast Quarter of said Section 9 and said East line of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION and along the Northeasterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 South 55°05'44" East 1577.93 feet, more or less, to the Northeast corner of said parcel of land as described in Deed recorded at Reception No. 98004036; said Northeast corner also being a point on the Westerly line of Lot 3, WINDEMERE SEVENTH SUBDIVISION to the City of Loveland, County of Larimer, State of Colorado; thence departing said Northeasterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 and along the Easterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 and along said Westerly line of Lot 3, WINDEMERE SEVENTH SUBDIVISION and along the Westerly line of Lot 1, of said WINDEMERE SEVENTH SUBDIVISION South 17°52'28" East 663.20 feet, more or less, to the Northwest corner of that certain parcel of land as described in Deed recorded at Reception No. 97004655, records of said County; thence departing said Westerly line of said Lot 1, WINDEMERE SEVENTH SUBDIVISION and along the Easterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 and along the Westerly line of said parcel of land as described in Deed recorded at Reception No. 97004655 the following five (5) courses and distances: 1) South 24°41'07" West 26.62 feet; 2) South 25°50'55" West 88.42 feet; 3) South 17°36'59" West 506.29 feet; 4) South 33°57'42" West 131.30 feet; 3) South 28°18'48" West 161.20 feet, more or less, to a point on the North line of QUAIL RUN ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence departing said Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT and said Easterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 and said Westerly line of said parcel of land as described in Deed recorded at Reception No. 97004655 and along said North line of QUAIL RUN ADDITION South 89°13'52" West 1137.44 feet, more or less,

to the Northwest corner of said QUAIL RUN ADDITION; said Northwest corner also being a point on said West line of the Northeast Quarter of said Section 9 and said East line of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION; thence departing said North line of QUAIL RUN ADDITION and along said West line of the Northeast Quarter and along said East line of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION North 00°10'56" West 2386.49 feet, more or less, to the to the Northwest corner of said certain parcel of land as described in Deed recorded at Reception No. 98004036 and the TRUE POINT OF BEGINNING.

Containing 59.33 Acres, more or less, and being subject to all existing easements and/or rights-of-way of record.

Section 3. That the annexation of said territory is subject to the conditions set forth in Paragraph (14) of the Petition for Annexation of said territory filed with the City of Loveland.

Section 4. That the City Council hereby consents to the inclusion of the annexed territory in the Municipal Subdistrict of the Northern Colorado Water Conservancy District pursuant to Section 37-45-136 (3.6), C.R.S.

Section 5. Should any court of competent jurisdiction determine that any portion of the land annexed in this ordinance was unlawfully annexed, then it is the intent of the City Council that the remaining land lawfully annexed to the City of Loveland should be so annexed and the City Council affirmatively states that it would have annexed the remaining land even though the court declares the annexation of other portions of the land to have been unlawfully annexed.

Section 6. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Dated this ____ day of December, 2012.


ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

Mayor

APPROVED AS TO FORM:



Deputy City Attorney

FIRST READING: November 20, 2012

SECOND READING: _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR "MEHAFFEY PARK FIRST ADDITION" TO THE CITY OF LOVELAND

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That Section 18.04.040 of the Loveland Municipal Code and the map referred to therein, said map being part of said Municipal Code and showing the boundaries of the district specified, shall be and the same is hereby amended in the following particulars, to wit:

That the following described property recently annexed to the City of Loveland and within the area known as "**MEHAFFEY PARK FIRST ADDITION**" to the City of Loveland, Colorado, shall be included within the boundaries of the district designated as follows:

PP – PUBLIC PARK DISTRICT

PARCEL 1 PROPERTY DESCRIPTION:

That portion of the North Half of Section 9, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the West line of the Northeast Quarter of said Section 9 as bearing South 00°10'56" East and with all bearings contained herein relative thereto:

Beginning at the Northwest corner of the Northeast Quarter of said Section 9; said Northwest corner of the Northeast Quarter of said Section 9 also being the Northeast corner of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence along the West line of the Northeast Quarter of said Section 9; said West line of the Northeast Quarter of said Section 9 also being the East line of said Tract 'C', VANGUARD-FAMLECO SECOND ADDITION; thence along said West line of the Northeast Quarter of said Section 9 and along said East line of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION South 00°10'56" East 207.50 feet, more or less, to the Northwest corner of that certain parcel of land as described in Deed recorded at Reception No. 98004036, records of said County; thence departing said West line of the Northeast Quarter of said Section 9 and said East line of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION and along the Northeasterly line of said parcel of land as described in Deed recorded at Reception No.

98004036 South 55°05'44" East 1577.93 feet, more or less, to the Northeast corner of said parcel of land as described in Deed recorded at Reception No. 98004036; said Northeast corner also being a point on the Westerly line of Lot 3, WINDEMERE SEVENTH SUBDIVISION to the City of Loveland, County of Larimer, State of Colorado; thence departing said Northeasterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 and along the Easterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 and along said Westerly line of Lot 3, WINDEMERE SEVENTH SUBDIVISION and along the Westerly line of Lot 1, of said WINDEMERE SEVENTH SUBDIVISION South 17°52'28" East 663.20 feet, more or less, to the Northwest corner of that certain parcel of land as described in Deed recorded at Reception No. 97004655, records of said County and the TRUE POINT OF BEGINNING; thence continuing along said Westerly line of said Lot 1, WINDEMERE SEVENTH SUBDIVISION and along the Easterly line of said certain parcel of land as described in Deed recorded at Reception No. 97004655 South 17°52'28" East 74.83 feet, more or less, to a point on the Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT (Originally known as PARK PLACE SUBDIVISION-A PLANNED UNIT DEVELOPMENT and name changed per City of Loveland Resolution No. R-229-79) to the City of Loveland, County of Larimer, State of Colorado, said Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT also being the Easterly line of said parcel of land as described in Deed recorded at Reception No. 97004655; thence departing said Westerly line of said Lot 1, WINDEMERE SEVENTH SUBDIVISION and along said Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT and continuing along said Easterly line of said parcel of land as described in Deed recorded at Reception No. 97004655 South 18°30'39" West 578.93 feet and again South 30°45'44" West 251.47, more or less, to a point on the North line of QUAIL RUN ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence departing said Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT and said Easterly line of said parcel of land as described in Deed recorded at Reception No. 97004655 and along said North line of QUAIL RUN ADDITION South 89°13'52" West 63.25 feet, more or less, to the Southwest corner of said parcel of land as described in Deed recorded at Reception No. 97004655; said Southwest corner also being a point on the Easterly line of said parcel of land as described in Deed recorded at Reception No. 98004036; thence departing said North line of QUAIL RUN ADDITION and along the Westerly line of said parcel of land as described in Deed recorded at Reception No. 97004655 and along said Easterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 the following five (5) courses and distances: 1) North 28°18'48" East 161.20 feet; 2) North 33°57'42" East 131.30 feet; 3) North 17°36'59" East 506.29 feet; 4) North 25°50'55" East 88.42 feet; 5) North 24°41'07" East 26.62 feet, more or less, to a point on the Westerly line of said Lot 1, WINDEMERE SEVENTH SUBDIVISION; said point also being the Northwest corner of that certain parcel of land as described in Deed recorded at Reception No. 97004655 and the TRUE POINT OF BEGINNING.

Containing 1.11 Acres, more or less, and being subject to all existing easements and/or rights-of-way of record.

PARCEL 2 PROPERTY DESCRIPTION:

That portion of the North Half of Section 9, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the West line of the Northeast Quarter of said Section 9 as bearing South $00^{\circ}10'56''$ East and with all bearings contained herein relative thereto:

Beginning at the Northwest corner of the Northeast Quarter of said Section 9; said Northwest corner of the Northeast Quarter of said Section 9 also being the Northeast corner of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence along the West line of the Northeast Quarter of said Section 9; said West line of the Northeast Quarter of said Section 9 also being the East line of said Tract 'C', VANGUARD-FAMLECO SECOND ADDITION; thence along said West line of the Northeast Quarter of said Section 9 and along said East line of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION South $00^{\circ}10'56''$ East 207.50 feet, more or less, to the Northwest corner of that certain parcel of land as described in Deed recorded at Reception No. 98004036, records of said County and the TRUE POINT OF BEGINNING; thence departing said West line of the Northeast Quarter of said Section 9 and said East line of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION and along the Northeasterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 South $55^{\circ}05'44''$ East 1577.93 feet, more or less, to the Northeast corner of said parcel of land as described in Deed recorded at Reception No. 98004036; said Northeast corner also being a point on the Westerly line of Lot 3, WINDEMERE SEVENTH SUBDIVISION to the City of Loveland, County of Larimer, State of Colorado; thence departing said Northeasterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 and along the Easterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 and along said Westerly line of Lot 3, WINDEMERE SEVENTH SUBDIVISION and along the Westerly line of Lot 1, of said WINDEMERE SEVENTH SUBDIVISION South $17^{\circ}52'28''$ East 663.20 feet, more or less, to the Northwest corner of that certain parcel of land as described in Deed recorded at Reception No. 97004655, records of said County; thence departing said Westerly line of said Lot 1, WINDEMERE SEVENTH SUBDIVISION and along the Easterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 and along the Westerly line of said parcel of land as described in Deed recorded at Reception No. 97004655 the following five (5) courses and distances: 1) South $24^{\circ}41'07''$ West 26.62 feet; 2) South $25^{\circ}50'55''$ West 88.42 feet; 3) South $17^{\circ}36'59''$ West 506.29 feet; 4) South $33^{\circ}57'42''$ West 131.30 feet; 3) South $28^{\circ}18'48''$ West 161.20 feet, more or less, to a point on the North line of QUAIL RUN ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence departing said Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT and said Easterly line of said parcel of land as described in Deed recorded at Reception No. 98004036 and said Westerly line of said parcel of land as described in Deed recorded at Reception No. 97004655 and along said North line of QUAIL RUN ADDITION South $89^{\circ}13'52''$ West 1137.44 feet, more or less, to the Northwest corner of said QUAIL RUN ADDITION; said Northwest corner also being a point on said West line of the Northeast Quarter of said Section 9 and said East line of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION; thence departing said North line of QUAIL RUN ADDITION and along said West line of the Northeast Quarter and along said East line of

Tract 'C', VANGUARD-FAMLECO SECOND ADDITION North 00°10'56" West 2386.49 feet, more or less, to the to the Northwest corner of said certain parcel of land as described in Deed recorded at Reception No. 98004036 and the TRUE POINT OF BEGINNING.

Containing 59.33 Acres, more or less, and being subject to all existing easements and/or rights-of-way of record.

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Section 3. That the City Clerk is hereby directed to record the Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

Dated this ____ day of December, 2012.

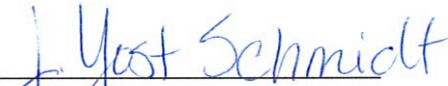
ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

Mayor

APPROVED AS TO FORM:



Deputy City Attorney

FIRST READING November 20, 2012
SECOND READING _____

ORDINANCE NO.

AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR CERTAIN PROPERTY LOCATED IN TRACT 'B' VANGUARD-FAMLECO FIRST ADDITION AND A PORTION OF TRACT "C", VANGUARD-FAMLECO SECOND ADDITION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That Section 18.04.040 of the Loveland Municipal Code and the map referred to therein, said map being part of said Municipal Code and showing the boundaries of the district specified, shall be and the same is hereby amended in the following particulars, to wit:

That all of the territory located within Tract 'B' Vanguard-Famleco First Addition and a portion of the territory located within a portion of Tract "C", Vanguard-Famleco Second Addition, City of Loveland, Larimer County, Colorado (the "Property"), more particularly described as:

PARCEL 3 PROPERTY DESCRIPTION:

That portion of the Northwest Quarter of Section 9, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the West line of the Northeast Quarter of said Section 9 as bearing South 00°10'56" East and with all bearings contained herein relative thereto:

BEGINNING at the Northwest corner of the Northeast Quarter of said Section 9; said Northwest corner of the Northeast Quarter of said Section 9 also being the Northeast corner of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence along the West line of the Northeast Quarter of said Section 9; said West line of the Northeast Quarter of said Section 9 also being the East line of said Tract 'C', VANGUARD-FAMLECO SECOND ADDITION; thence along said West line of the Northeast Quarter of said Section 9 and along said East line of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION South 00°10'56" East 1238.62 feet to a point on a non-tangent curve concave to the Southwest having a central angle of 06°12'55" and a radius of 308.00 feet, the long chord of which bears North 40°35'30" West a distance of 33.39 feet; thence departing said East line of the Northwest Quarter of said Section 9 and Northwesterly along the arc of said curve 33.41 feet; thence tangent from said curve North 43°41'58" West 449.08 feet to the

beginning of a tangent curve concave to the Northeast having a central angle of $42^{\circ}32'06''$ and a radius of 242.00 feet, the long chord of which bears North $22^{\circ}25'55''$ West a distance of 175.56 feet; thence Northwesterly along the arc of said curve 179.66 feet; thence tangent from said curve North $01^{\circ}09'51''$ West 572.61 feet to the beginning of a tangent curve concave to the Southeast having a central angle of $28^{\circ}10'23''$ and a radius of 242.00 feet, the long chord of which bears North $12^{\circ}55'20''$ East a distance of 117.80 feet; thence Northeasterly along the arc of said curve 118.99 feet; thence tangent from said curve North $27^{\circ}00'31''$ East 35.50 feet, more or less, to a point on the North line of the Northwest Quarter of said Section 9; said North line of the Northwest Quarter of said Section 9 also being the North line of said Tract 'C', VANGUARD-FAMLECO SECOND ADDITION; thence along said North line of the Northwest Quarter of said Section 9 and along said North line of said Tract 'C', VANGUARD-FAMLECO SECOND ADDITION North $88^{\circ}50'29''$ East 213.38 feet, more or less, to the Northwest corner of Tract 'B', VANGUARD-FAMLECO FIRST ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence departing said North line of the Northwest Quarter of said Section 9 and said North line of said Tract 'C', VANGUARD-FAMLECO SECOND ADDITION and along the Westerly, Southerly and Easterly lines of said Tract 'B', VANGUARD-FAMLECO FIRST ADDITION the following three (3) courses and distances: 1) South $00^{\circ}31'22''$ West 422.60 feet; 2) North $88^{\circ}50'29''$ East 100.00 feet; 3) North $00^{\circ}31'22''$ East 422.60 feet, more or less, to a point on the North line of the Northwest Quarter of said Section 9; said North line of the Northwest Quarter of said Section 9 also being the North line of said Tract 'C', VANGUARD-FAMLECO SECOND ADDITION; thence departing said Easterly line of said Tract 'B', VANGUARD-FAMLECO FIRST ADDITION and along said North line of the Northwest Quarter of said Section 9 and along said North line of said Tract 'C', VANGUARD-FAMLECO SECOND ADDITION North $88^{\circ}50'29''$ East 50.90 feet, more or less, to the Northwest corner of the Northeast Quarter of said Section 9; said Northwest corner of the Northeast Quarter of said Section 9 also being the Northeast corner of Tract 'C', VANGUARD-FAMLECO SECOND ADDITION and the TRUE POINT OF BEGINNING.

Containing 8.39 Acres, more or less, and being subject to all existing easements and/or rights-of-way of record.

AND

PARCEL 4 PROPERTY DESCRIPTION:

Tract 'B', VANGUARD-FAMLECO FIRST ADDITION to the City of Loveland, County of Larimer, State of Colorado.

Containing 0.97 Acres, more or less, and being subject to all existing easements and/or rights-of-way of record.

which is now included within the boundaries designated "**MEADOWBROOK RIDGE PLANNED UNIT DEVELOPMENT (# P – 67)**" shall be removed therefrom and included within the boundaries of the district designated as follows:

"PP – PUBLIC PARK DISTRICT"

The Property contains 9.36 acres, more or less, and is subject to all easements and rights-of-way now on record or existing.

Section 2. That the **MEADOWBROOK RIDGE GENERAL DEVELOPMENT PLAN – FIRST AMENDMENT**, which Amendment modifies the Meadowbrook Ridge General Development Plan to reflect the removal of the Property (also designated as Parcel E therein) from the Plan and is on file in the Building Division and incorporated herein by this reference, is hereby approved.

Section 3. That the Property shall be subject to all applicable zoning regulations for the City of Loveland.

Section 4. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Section 5. That the City Clerk is hereby directed to record this Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.


Signed this ____ day of _____, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



DEVELOPMENT SERVICES Current Planning

500 East Third Street, Suite 310 • Loveland, CO 80537
(970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

MEMORANDUM

TO: City Council

FROM: Kerri Burchett, Principal Planner

DATE: November 20, 2012

RE: Mehaffey Park Addition, Meadowbrook Ridge General Development Plan Amendment and Rezoning

I. EXHIBITS

- A. Staff power point presentation
- B. Planning Commission Minutes dated September 24, 2012
- C. Planning Commission staff report, including:
 - 1. Narrative provided by the Parks and Recreation Department
 - 2. Chapter 18.32 PP - Public Park District
 - 3. Conceptual Master Plan of Park
 - 4. Annexation Map
 - 5. General Development Plan Amendment
 - 6. Rezoning Map

II. EXECUTIVE SUMMARY

A. Project Description

The City Council public hearing is to consider an annexation and zoning, GDP Amendment and rezoning of city owned property in order to develop a future 69.8 acre public park, called Mehaffey Park. The property is located between West 22nd Street and West 29th Street, approximately ¼ mile west of Wilson Avenue (see vicinity map on page 2). Of the 69.8 acres, approximately 60.4 acres are located outside of the city limits, zoned FA-Farming in the County. The City Parks and Recreation Department proposes to annex this property and zone it PP - Public Park District. The remaining 9.3 acres of property lie within the Meadowbrook Ridge Planned Unit Development. The property is vacant and was recently purchased by the City to expand the future park area. The proposal would amend the PUD to exclude the city property from its boundaries and rezone the property to PP - Public Park District. The property to be

The specific design of the park is currently being master planned and various public outreach meetings with the adjacent neighborhoods have been held by the Parks and Recreation Department. While the specific design and development of the park is not a component of the annexation, zoning and GDP amendment request, the master plan is provided to the right for informational purposes only.

The master plan has been reviewed and approved by the Loveland Parks and Recreation Commission for the design and inclusion of elements within the park. It is anticipated that the park would house a variety of activities, including a skate park, tennis, pickleball and a basketball court, multi-purpose fields, a dog park, an adventure playground for children and group and family shelters.



C. Planning Commission Hearing

The Planning Commission held a public hearing regarding the proposal on September 24, 2012. Four residents spoke at the hearing and were all in support of the park. General questions were discussed regarding waste removal and dust abatement. Residents were informed that the design of the development is still in a master plan stage and will require a subsequent neighborhood meeting and approval of a special review. The Planning Commission unanimously recommended approval of the requests. The minutes from the hearing are included as Exhibit B to this staff memorandum.

III. RECOMMENDED CONDITION

The following annexation condition is recommended by the Planning Commission and City staff.

Transportation Development Review

1. All public improvements shall comply with the Larimer County Urban Area Street Standards (LCUASS).

10/26/2012



Mehaffey Park

Annexation, Rezoning & GDP Amendment

City Council
November 20, 2012

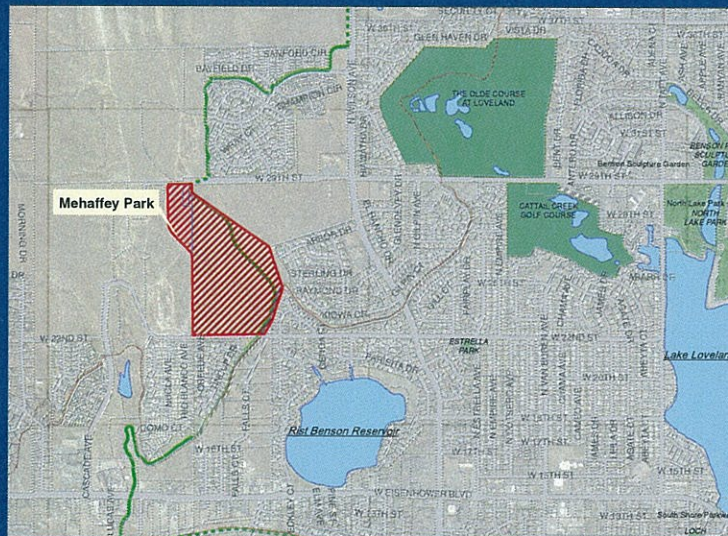
Mehaffey Park

Location:

- Between 22nd and 29th St.,
¼ mile west of
Wilson Ave.
- 69.8 acres

Request:

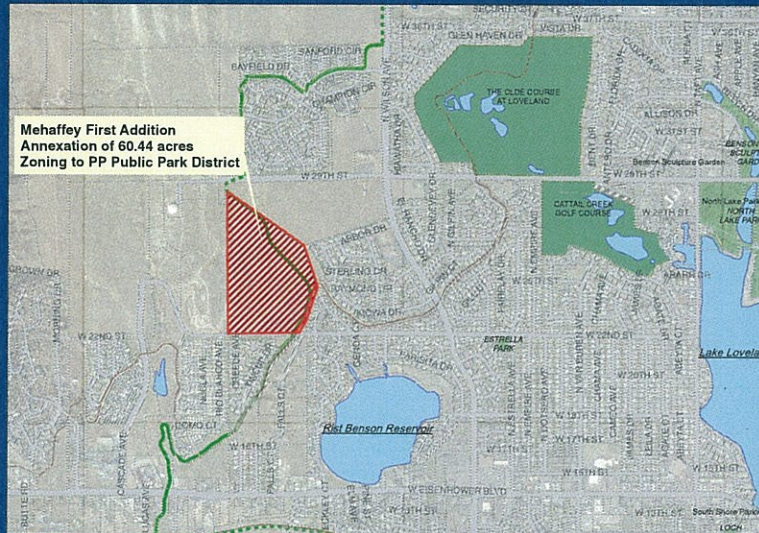
1. Annexation
and Zoning
2. GDP
Amendment
3. Rezoning



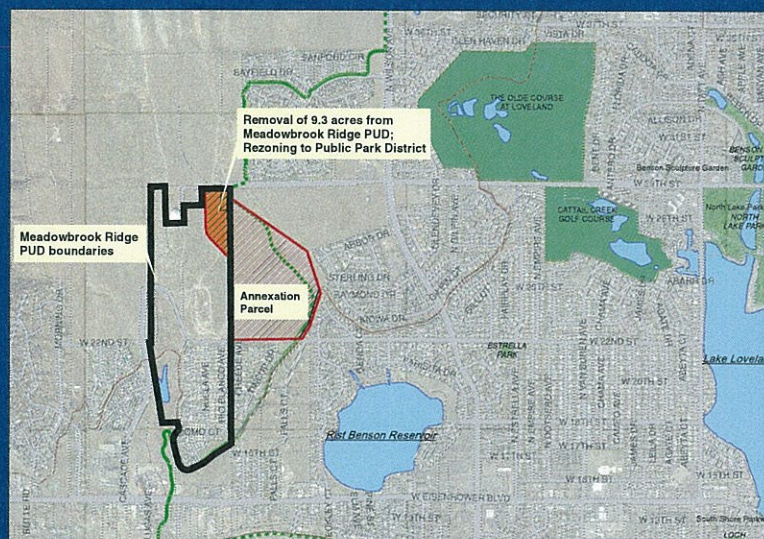
City Council Public Hearing

Nov. 20, 2012

Mehaffey First Addition



Step 3. Rezoning



10/26/2012

Mehaffey Park

- Combined result in 69.8 acre community park.
- PP District requires Special Review process due to proximity of residential uses.
- Special Review for design; neighborhood meeting; administrative approval with appeal period.



City Council Public Hearing

Nov. 20, 2012

Planning Commission Recommendation

- Recommend approval of annexation, zoning, GDP Amendment and Rezoning with the annexation condition listed in staff report.



City Council Public Hearing

Nov. 20, 2012

1. Replat the property
2. Special Review Process
 - Submit in January 2013
 - Neighborhood meeting
 - Final review next spring
3. Start construction summer 2013
4. Park to open in late summer 2014



CITY OF LOVELAND
PLANNING COMMISSION MINUTES
September 24, 2012

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on September 24, 2012 at 6:30 p.m. Members present: Chairman Meyers; Vice Chairman Middleton; and Commissioners Molloy, Ray, Dowding, Krenning and Leadbetter. Commissioners Crescibene and Fancher were absent. City Staff present: Kerri Burchett, Current Planning; Janet Meisel-Burns, Parks and Recreation; Keith Reester, Public Works; Judy Schmidt, Deputy City Attorney.

These minutes are a general summary of the meeting. For more detailed information, audio and videotapes of the meeting are available for review in the Community Services office.

COMMITTEE REPORTS

Commissioner Molloy reported the Title 18 Committee met and will soon be bringing the flow chart for the site development plan as well as discussed public notice requirements.

COMMISSIONER COMMENTS

There were no comments.

APPROVAL OF THE MINUTES

Commissioner Ray made a motion to adopt the meeting minutes of September 10. Upon a second by Commissioner Molloy the motion was unanimously adopted (Chair Meyers abstained).

REGULAR AGENDA

1. Mehaffey Park First Addition and Meadowbrook Ridge General Development Plan First Amendment.

This is a public hearing to consider an annexation and zoning of 60.4 acres of City owned property, a general development plan amendment to the Meadowbrook Ridge PUD, and a rezoning of 9.3 acres of City owned property in order to develop a future public park, called Mehaffey Park. The property is located south of West 29th Street, east of Cascade Avenue, north of West 22nd Street and approximately ¼ mile west of Wilson Avenue.

Kerri Burchett, Current Planning, gave a brief introduction on this item reporting the city has owned the park site for 15-years and that it was always intended to be a park. She emphasized that

1 the intent of meeting was not the design of the park and stated that staff is recommending the
2 Planning Commission recommend adoption of the plan to City Council.

3
4 **Janet Meisel-Burns, Senior Park Planner**, reported two neighborhood meeting were held and that
5 the majority of concerns were access and traffic. She highlighted the Master Plan, the park theme,
6 and trail connectivity. She emphasized the park would not be used for weekend leagues and would
7 have all the normal activities of a typical park with the inclusion of a dog park.

8
9 **Chair Meyers** reemphasized the renderings were a conceptual design.

10 **Ms. Meisel-Burns** reported the Parks and Recreation Board adopted the plan. She explained how
11 parks are determined and included in the City's Comprehensive Plan and spoke of how national
12 averages are used to determine if a community is lacking in a particular park component, and in
13 Loveland it was 8 tennis courts. She commented there currently is only one dog park in Loveland at
14 the Fairgrounds Park, and stated that it has been "loved" to death shoe spoke of the need and the
15 demand for an additional dog park.

16 **Vice Chair Middleton** asked if funds are available and money set aside for the care and upkeep of
17 the park, if it were approved. Ms. Meisel-Burns stated it was and that City Council has it funded in
18 their O&M budget.

19 There was a discussion regarding neighborhood connectivity, it was stated that when Rio Blanco is
20 built out there would be full pedestrian access and the "stub outs" in the conceptual design show
21 pedestrian access and connectivity. Ms. Burchett responded to comments regarding notice and
22 stated there is a list already created.

23 **Ms. Meisel-Burns** gave the website address for the park: www.cityofloveland.org/Mehaffey
24

25 **Public Comment**

26 **Amy Lewark, 2916 Kiowa Drive**, spoke in support of the Park and it was very important to have a
27 safe public space in her neighborhood.

28 **Janet Popp, 3023 Sanford Circle and president of the Loveland Tennis Association**, spoke in
29 support of the Park and of the additional tennis courts and commented that the two largest tennis
30 tournaments in northern Colorado are in Loveland.

31 **Michele Yarberry, 3895 Downieville Street**, expressed concerns regarding people not picking up
32 their dog waste and asked if there were plans to further address the issue.

1 Vice Chair Middleton reminded the audience the only issue for discussion was the annexation and
2 zoning.

3 Michael Christianson, 1865 Rio Blanco Avenue, stated he supported the project but expressed
4 concerns regarding dust abatement.

5 **STAFF COMMENTS**

6 Ms. Meisel-Burns commented that there are signs and bags in the parks and along the trails for
7 people to pick up after their pets. She clarified enforcement of this issue is conducted by both the
8 police department and Larimer Animal Control. She commented the state dust mitigation protocol
9 will be followed at all times during the construction.

10 **COMMISSIONER COMMENTS**

11 Commissioner Krenning supported the application.

12 Commissioner Ray supported the application and stated he believed this was the last big park for
13 Loveland and hoped the community would be involved in the design.

14 Commissioner Dowding supported the project and all the features. She expressed concerns
15 regarding the lack of access on the northeast and would like to see future connectivity planned out.

16 Vice Chair Middleton supported the zoning stating it was a good plan for the area and was pleased
17 that maintenance was included in the City's operating and maintenance budget. He stated he would
18 like to know if the community has issues regarding nighttime lighting.

19 Commissioner Molloy commented the park was designed by the community and his only concern
20 was that he did not think the park was big enough.

21 Chair Meyers stated this was a big deal for the City and hopes it grows over time if it is affordable.
22 He supported the annexation

23 Vice Chair Middleton made a motion to make the findings listed in Section VIII of the Planning
24 Commission staff report dated September 24, 2012 and, based on those findings, recommend that
25 City Council approve the Mehaffey Park First Addition, subject to the condition listed in Section
26 IX, as amended on the record, and zone the addition to Public Park District. Upon a second by
27 Commissioner Ray the motion was unanimously adopted.

28
29 Vice Chair Middleton made a motion Move to make the findings listed in Section VIII of the
30 Planning Commission staff report dated September 24, 2012 and., based on those findings

1 *recommend that City Council approve the Meadowbrook Ridge PUD General Development Plan*
 2 *First Amendment. Upon a second by Commissioner Ray the motion was unanimously adopted.*

3
 4 *Vice Chair Middleton made a motion to make the findings listed in Section VIII of the Planning*
 5 *Commission staff report dated September 24, 2012 and, based on those findings, recommend that*
 6 *City Council rezone 9.36 acres from the Meadowbrook Ridge PUD to Public Park District. Upon*
 7 *a second by Commissioner Ray the motion was unanimously adopted.*

8 9 **RECOMMENDED CONDITIONS**

10
 11 The following conditions are recommended by City Staff.

12
 13 Annexation

14 Transportation Development Review

15
 16 1. All public improvements shall comply with the Larimer County Urban Area Street Standards
 17 (LCUASS).

18 19 2. Community Sustainability Plan.

20
 21 This is the Draft Community Sustainability Plan. In 2008 the City of Loveland began a staff
 22 initiated effort to define and establish sustainability efforts for the City of Loveland this
 23 document reflects the work of that effort and identifies what steps the city has already taken to
 24 guide and improve sustainability in the community. Staff is seeking Planning Commission
 25 input on the Plan.

26
 27 **Keith Reester, Director of Public Works**, introduced the Community Sustainability Plan (the
 28 "Plan") and of the goal statements.

29
 30 **Commissioner Ray** asked how Planning Department has been involved with the Plan.

31
 32 **Ms. Burchett** stated she was not prepared to speak to the issue because she has not be directly
 33 involved in the discussions. She commented that this is an opportunity to be a part of the Plan and
 34 was hopeful that there would be future discussions regarding sustainability, alternative energy and
 35 energy conservation.

36
 37 **Vice Chair Middleton** asked how oil and gas would be integrated into the Plan, or would it even be
 38 included.

39
 40 **Mr. Reester** stated there is interest on the topic noting that it is a policy issue to be adopted by City
 41 Council and then included in the next draft of the Plan.

1 **Commissioner Molloy** asked if the city has considered more LEED projects.

2
3 **Mr. Reester** stated there is no policy to require new projects to be LEED certified but there was
4 support for green building.

5
6 **Mr. Reester** responded to Commissioner Dowding's questions regarding how the goals would be
7 measured and scored. He stated that is one of the most challenging parts of the Plan and would be
8 dealt with on a departmental basis.

9
10 **Commissioner Dowding** stated she liked the concept of looking at previously established standards
11 and linking onto those.

12
13 **Commissioner Krenning** stated that Public Works and all the employees for what they do.


14
15 **Chair Meyers** stated that he would like to see the City use local company's/firms when at all
16 possible and purchase American made vehicles.

17
18 After further discussion regarding purchasing practices, Mr. Reester clarified local firms are used
19 whenever possible.

20
21 **ADJOURNMENT**

22
23 *Vice Chair Middleton made a motion to adjourn. Upon a second by Commissioner Molloy the*
24 *motion was unanimously adopted.*

25
26 
27 Buddy Meyers, Chair

28
29 
30 Vicki Mesa, Secretary



Development Services Current Planning

500 East Third Street, Suite 310 • Loveland, CO 80537
(970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

Planning Commission Staff Report

September 24, 2012

Agenda #: Regular Agenda - 1

Title: Mehaffey Park First Addition and Meadowbrook Ridge General Development Plan First Amendment

Applicant: City of Loveland Parks and Recreation Department, Janet Meisel-Burns

Request: **Annexation, Zoning, General Development Plan Amendment and Rezoning**

Location: South of West 29th Street, east of Cascade Avenue, north of 22nd Street and ¼ mile west of Wilson Avenue.

Existing Zoning: County FA -Farming and City Planned Unit Development

Staff Planner: Kerri Burchett

Staff Recommendation

APPROVAL of the annexation and zoning, GDP amendment and rezoning.

Recommended Motions:

1. Move to make the findings listed in Section VIII of the Planning Commission staff report dated September 24, 2012 and, based on those findings, recommend that City Council approve the Mehaffey Park First Addition, subject to the condition listed in Section IX, as amended on the record, and zone the addition to Public Park District;
2. Move to make the findings listed in Section VIII of the Planning Commission staff report dated September 24, 2012 and, based on those findings recommend that City Council approve the Meadowbrook Ridge PUD General Development Plan First Amendment,; and
3. Move to make the findings listed in Section VIII of the Planning Commission staff report dated September 24, 2012 and, based on those findings, recommend that City Council rezone 9.36 acres from the Meadowbrook Ridge PUD to Public Park District.

Summary of Analysis

This is a public hearing concerning the annexation and zoning of a new 69.8 acre community park on West 22nd Street. The hearing is to consider the following items:

- An annexation and zoning of 60.44 acres of City owned property. The property would be zoned PP - Public Park District;
- An amendment to the Meadowbrook Ridge PUD General Development Plan. The amendment would remove 9.36 acres of City owned property from the PUD boundaries; and
- A rezoning of the 9.36 acres of property removed from the PUD boundaries to PP - Public Park District.

Staff believes that all key issues have been resolved based on City Code and standards. The development of the park, which is currently in a conceptual stage, will require a special review application and a subsequent neighborhood meeting. Special review applications can be approved administratively, however there is an appeal period in which an application can be appealed to a public hearing with the Planning Commission.

I. SUMMARY

This proposal is to annex, zone and rezone 69.8 acres of city owned property in order to develop a future public park, called Mehaffey Park. The property is located south of West 29th Street, east of Cascade Avenue, north of West 22nd Street and approximately ¼ mile west of Wilson Avenue (see vicinity map on page 3). Of the 69.8 acres, approximately 60.4 acres are currently located outside of the city limits, zoned FA-Farming in the County. The applicant, which is the City Parks and Recreation Department, proposes to annex this property and zone it PP - Public Park District. The remaining 9.3 acres of property lie within the Meadowbrook Ridge Planned Unit Development. The property is vacant and was recently purchased by the City to expand the future park area. The proposal would amend the PUD to exclude the city property from its boundaries and rezone the property to PP - Public Park District. The property to be extracted represents Development Area E in the GDP, which permitted 50 duplex units. With the removal of the development area, all land use allowances associated with the parcel will also be removed from the GDP.

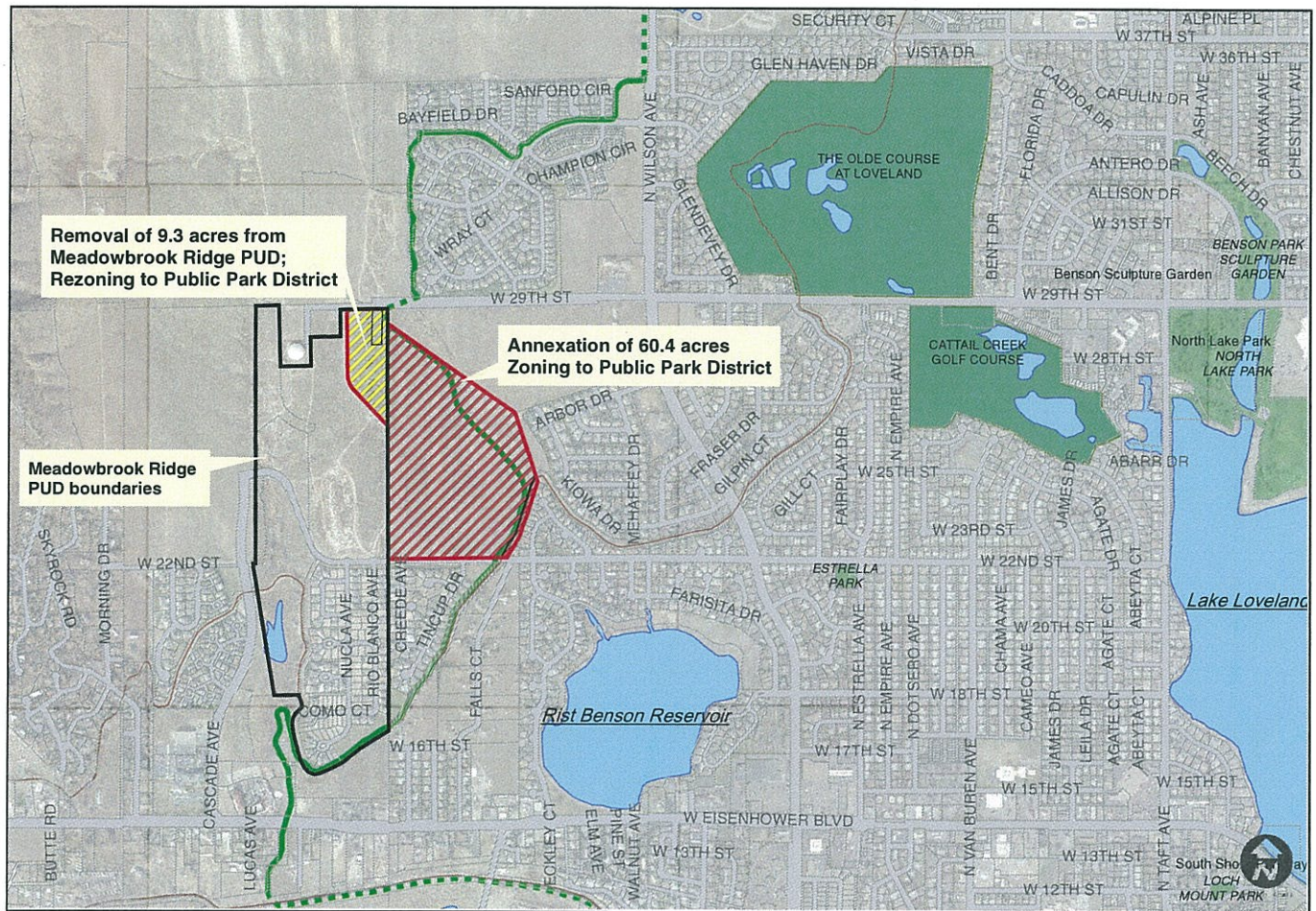
The specific design of the park is currently being master planned and various public outreach meetings with the adjacent neighborhoods have been held by the Parks and Recreation Department. The master plan has been reviewed and approved by the Loveland Parks and Recreation Commission for the design and inclusion of elements within the park. In the Public Park District, the development of a community park located within 500 feet of a residential zone requires approval of a special review. Under these provisions, the Mehaffey Park will require approval of a special review. The special review procedures require a neighborhood meeting and provide an opportunity for public input. A special review can be approved administratively by the Current Planning Division, however the process includes an appeal period in which the application can be appealed to a public hearing with the Planning Commission.

While the specific design and development of the park is not a component of the annexation, zoning and GDP amendment request, the master plan is included as **Attachment 3** in this report. It is anticipated that the park would house a variety of activities, including a skate park, tennis, pickleball and a basketball court, multi-purpose fields, a dog park, an adventure playground for children and group and family shelters.

II. ATTACHMENTS

1. Narrative provided by the Parks and Recreation Department
2. Chapter 18.32 PP - Public Park District
3. Conceptual Master Plan of Park
4. Annexation Map
5. General Development Plan Amendment
6. Rezoning Map

III. VICINITY MAP



IV. SITE DATA

A. ANNEXATION

ACREAGE OF SITE GROSS	60.44 AC
MASTER PLAN DESIGNATION	LOW DENSITY RESIDENTIAL & PARKS, OPEN LANDS, CONSERVATION EASEMENT, GOLF COURSE AND CEMETERIES
EXISTING ZONING	LARIMER COUNTY FA FARMING
PROPOSED ZONING.....	PUBLIC PARK DISTRICT
EXISTING USE	VACANT
EXIST ADJ ZONING & USE - NORTH.....	PUD / SF RESIDENTIAL
EXIST ADJ ZONING & USE - SOUTH	COUNTY FA / VACANT AND R-1 RESIDENTIAL / SF RESIDENTIAL
EXIST ADJ ZONING & USE - WEST.....	PUD / VACANT
EXIST ADJ ZONING & USE - EAST.....	R-1 RESIDENTIAL / SF RESIDENTIAL AND DR DEVELOPING RESOURCE / VACANT
UTILITY SERVICE – WATER, SEWER	CITY OF LOVELAND
UTILITY SERVICE – ELECTRIC.....	CITY OF LOVELAND

B. GENERAL DEVELOPMENT PLAN AMENDMENT

ACREAGE OF EXISTING GDP-GROSS/NET	122.88 AC / 95.59 AC
ACREAGE OF GDP AFTER AMENDMENT-GROSS/NET	113.52 / 86.14
MASTER PLAN DESIGNATION	LOW DENSITY RESIDENTIAL
EXISTING ZONING	PLANNED UNIT DEVELOPMENT
EXISTING USE	VACANT IN AREA OF AMENDMENT
NUMBER OF DWELLING UNITS APPROVED	461
NUMBER OF DWELLING UNITS AFTER AMENDMENT	411

C. REZONING

ACREAGE OF SITE	9.36 AC
MASTER PLAN DESIGNATION	LOW DENSITY RESIDENTIAL
EXISTING ZONING	PUD MEADOWBROOK RIDGE
PROPOSED ZONING	PP-PUBLIC PARK DISTRICT
EXISTING USE	VACANT

V. KEY ISSUES

City staff believes that all key issues have been addressed. At the neighborhood meeting, no concerns were voiced regarding the annexation, zoning, GDP amendment or rezoning applications. Comments were received regarding the conceptual design of the park, which is not a component of this request. The neighbors were provided information regarding the special review process and a neighborhood meeting will be held in the future to discuss the specific design of the park.

VI. BACKGROUND**Annexation Parcel**

The City's Parks and Recreation Department purchased the property proposed for annexation in 1997 for the purpose of developing a community park. The property is zoned FA Farming in Larimer County and until recently remained in agricultural production. A pedestrian trail was constructed in 2003 when the City completed the underpass at US Highway 34. The trail will be modified or relocated during the construction of Mehaffey Park. A pedestrian connection will remain in the park as part of the City's Recreation Trail.

General Development Plan Amendment/Rezoning Parcel

The City purchased 9.36 acres of property within the Meadowbrook Ridge PUD this year, to expand the area for the proposed community park and gain access from West 29th Street. The general development plan for Meadowbrook Ridge was approved by City Council in 2001. While Development Area E in the GDP will be removed from the PUD boundaries, the remaining zoning areas in the GDP will remain unchanged.

VII. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION

- A. Notification:** An affidavit was received from Janet Meisel-Burns with the City's Parks and Recreation Department certifying that written notice was mailed to all property owners within 1,000 feet of the property on August 20, 2012 and notices were posted in prominent locations on the perimeter of the site at least 15 days prior to the date of the Planning Commission hearing. Mineral owners were notified on August 24, 2012. In addition, a notice was published in the Reporter Herald on September 8, 2012.
- B. Neighborhood Response:** A neighborhood meeting was held at 6:00 p.m. on September 5, 2012 in the Chilson Center Multipurpose Room. The meeting was attended by 70 neighbors and interested parties along with City staff and consultants. At the meeting, there were no objections voiced to the annexation, zoning, GDP amendment and rezoning requests. Planning staff explained the process and public involvement with the special review application, which will be the next step in the development of the park. The Parks and Recreation Department presented an updated conceptual master plan of the park design. Comments and questions regarding the design focused around traffic, access and parking, lighting, noise and view of the playground, pedestrian access and funding for the park. The neighbors and residents were informed that there would be another neighborhood meeting for the design and development of the park with the special review process.

VIII. FINDINGS AND ANALYSIS

The chapters and sections cited below are from the Loveland Municipal Code.

Annexation and Zoning

A. Annexation Policies and Eligibility

1. Loveland Comprehensive Master Plan, Section 4.2

- a. Annexation ANX2.A:** *Whether the annexation encourages a compact pattern of urban development.*
- b. Annexation ANX2.B:** *Whether the annexation would result in the creation of an enclave*
- c. Annexation ANX5.B:** *Whether the applicant has demonstrated that reasonable efforts have been made to assemble adjoining land parcels to allow for the preparation of a master plan for a larger area, rather than submit separate individual proposals.*
- d. Annexation ANX1.C and 6:** *Whether the annexation encourages infill development and ensures that land is immediately contiguous to other land in the City that is already receiving City services, discouraging leapfrog and scattered site development.*
- e. Growth Management GM7:** *Whether the land proposed for annexation is within the City of Loveland Growth Management Area.*

2. Loveland Municipal Code, Section 17.04.020: *The annexation complies with the laws of the State of Colorado regarding annexation and the property proposed for annexation is otherwise eligible to be annexed because there is at least one-sixth contiguity between the City and the area seeking annexation and there is no evidence that two or more of the following conditions have been met:*

- a.** *Less than 50% of the adult residents of the area proposed to be annexed use some of the recreation, civic, social, religious, industrial or commercial facilities of the municipality and less than 25% of its adult residents are employed in the annexing municipality.*

- b. *One-half or more of the land proposed to be annexed is agricultural, and the landowners of such agricultural land have expressed an intention under oath to devote the land to agricultural use for at least five years.*
- c. *It is not physically practical to extend urban service which the municipality provides normally.*

Planning: Staff believes that this finding can be met, based on the following facts:

- The annexation complies with the Colorado State Statutes regarding annexation of lands and is within the City's Growth Management Area.
- No enclaves will be created by this annexation and there is no evidence that two or more of the conditions listed in Section 17.04.020 of the Municipal Code, cited above, have been met.
- The development of the city park will encourage a compact pattern of urban development and will not be leapfrog or scattered site development. The land is immediately contiguous to other land in the City that is already receiving City services.

B. City Utilities/Services and Transportation

1. Loveland Comprehensive Master Plan, Section 4.2

a. **Annexation ANX1.A and B:** *Whether the annexation of land minimizes the length of vehicle trips generated by development of the land and whether the annexation minimizes the short and long term costs of providing community facilities and services for the benefit of the annexed area.*

2. Loveland Municipal Code

a. Section 17.04.040:

(i) *Whether certain public facilities and/or community services are necessary and may be required as a part of the development of any territory annexed to the City in order that the public needs may be served by such facilities and services. Such facilities include, but are not limited to, parks and recreation areas, schools, police and fire station sites, and electric, water, wastewater and storm drainage facilities. Such services include, but are not limited to, fire and police protection, provision of water, and wastewater services.*

(ii) *Whether the annexation and development pursuant to the uses permitted in the zone district will create any additional cost or burden on the existing residents of the City to provide such facilities and services in the area proposed for annexation.*

(iii) *The annexation complies with the water rights requirements set forth in Title 19 of the Loveland Municipal Code.*

b. **Section 17.04.040,:** *Whether all existing and proposed streets in the newly annexed property are, or will be, constructed in compliance with City street standards, unless the City determines that the existing streets will provide proper access during all seasons of the year to all lots and that curbs, gutters, sidewalks, bike lanes, and other structures in compliance with City standards are not necessary to protect public health, safety, and welfare.*

c. **Section 18.04.010:** *The zoning, as proposed, would: lessen congestion in the streets; secure safety from fire, panic, and other dangers; and promote health and general welfare.*

Transportation: Staff believes that this finding can be met, based on the following facts:

- Annexing and zoning property does not warrant compliance with the City's Adequate Community Facilities (ACF) ordinance. A condition is recommended to clearly ensure that all future development or land application within this proposed property shall be in compliance with the City of Loveland Street Plan, the Larimer County Urban Area Street Standards and any updates to either in effect at the time of development application.
- As identified in the City Municipal Code Title 16, a Traffic Impact Study will be required with all future development or other land use applications. The annexation will also be required to dedicate, free and clear, all applicable right-of-way to the City, at no cost to the City, at the time of development.
- Pending future proposed development within this property, of which review and approval by the City is required, the Transportation Engineering staff does not object to the proposed annexation and zoning.

Fire: Staff believes that this finding can be met, based on the following facts:

- The site will comply with the requirements in the ACF Ordinance for response distance requirements from the first due Engine Company (Station 2).
- The proposed annexation/zoning will not negatively impact fire protection for the subject development or surrounding properties.

Water/Wastewater: Staff believes that this finding can be met, based on the following facts:

- The subject annexation is situated within the City's current service area for both water and wastewater.
- Regarding water, the subject area is shown on the City's current Water Master Plan (November 2005). The Water Master Plan does not show any future improvements required for the subject area. The subject area lies within the boosted P1 pressure zone. There is an existing 12" water main within the future right-of-way for Rio Blanco Ave, an existing 12" water main in W 22nd Street and three water mains (two 24" and one 30") in 29th Street. There is an existing 1.5" water service stubbed into the property from the water main in W 22nd Street.
- The subject property is adjacent to the 29th Street 4MG steel water tank. The Water & Power Department has shown in their Master Plan a second 4MG water tank on the adjacent parcel. The City will coordinate the park development with the future tank drain outlet.
- Regarding wastewater, the subject area is shown on the City's current Wastewater Master Plan (September 2010). The Wastewater Master Plan does not show any future improvements required for the subject area. The Wastewater Master Plan shows the subject area within future growth subbasins D07 & D08. There is an existing 8" wastewater main in W 22nd Street available to accept wastewater from the property and there is an existing 4" wastewater service stubbed into the property from this main.
- The Department finds that the annexation and zoning is consistent with the Department's Water and Wastewater master plan by being consistent with the 2005 Comprehensive Master Plan.
- Public facilities are available to serve the development.

Power: Staff believes that this finding can be met, based on the following facts:

- There are underground electrical vaults and conduit along the west side of the proposed park area. 200 amp primary cable can be extended through the existing conduit to the existing vaults from either the vault located in the north west corner of the proposed park or from the south from a vault located on the south side of west 22nd Street and Rio Blanco Avenue.
- The electric facilities are adequate and available for extension to the projected use. The proposed development will not have a negative impact on the City's electric system and it meets the criteria for level of service as outlined in the ACF ordinance.

Stormwater: Staff believes that this finding can be met, based on the following facts:

- With the annexation and future development, the Developer will engineer certain Stormwater facilities that will adequately collect, detain, and release Stormwater runoff in a manner that will eliminate off-site impacts.
- Development of the subject property pursuant to any of the uses permitted by right under the zoning district would result in impacts on City infrastructure and services that are consistent with current infrastructure and service master plans.

C. Land Use

1. Loveland Comprehensive Master Plan, Section 4.7

- a. **Land Use Plan:** *Whether the zoning is consistent with the Loveland Comprehensive Master Plan Land Use Plan or a "major plan amendment" request is being processed concurrently with the annexation and GDP application.*

Planning: Staff believes that this finding can be met, based on the following facts:

- The Comprehensive Master Plan designates the site in two categories: Low Density Residential (LDR) and Parks, Open Lands, Conservation Easements, Golf Courses or Cemeteries. Both categories permit parks and open space as acceptable land uses.
- The Public Park zone district requires that any community park located within 500 feet from a residential zone be processed as a special review. The special review process requires a neighborhood meeting and allows for public comment throughout the process.

2. Loveland Municipal Code

- a. **Section 18.04.010:**

- (i) *Whether the zoning will provide adequate light and air; prevent overcrowding of land; avoid undue concentration of population; and facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements.*
- (ii) *The character of the district and the particular uses permitted by right in the district will preserve the value of buildings and encourage the most appropriate use of land.*

Planning: Staff believes that this finding can be met, based on the following facts:

- Development of the park will provide and promote adequate light and air and be an amenity for the residents in the western portion of the City. Based on the land use proposal of a park, the finding of overcrowding of land and undue concentration of population is not applicable to this request.
- Development of the park will be governed by all applicable City codes and standards in the Public Park District, as well as any special provisions deemed necessary through the special review process.

D. Environmental Impacts

1. Loveland Comprehensive Master Plan, Section 4.2

a. Annexation ANX3.A: *Whether the annexation will comply with the recommendations contained in the adopted Open Lands Plan and preserves open space or natural areas.*

Annexation ANX3.B: *Annexation will be allowed for the purpose of preserving or acquiring open space or natural areas.*

Annexation ANX4.A and B: *If the planning staff and/or the City have determined that significant negative impacts on the environment may occur from development allowed under the proposed zoning, an Environmental Impact Report, including a Wetlands Reconnaissance Report, has been prepared by a qualified specialist.*

Annexation ANX4.B: *Whether the annexation application includes a Phase I Environmental Report, prepared by a qualified specialist, ensuring that the land to be annexed does not contain hazardous or toxic substances that may pose a danger to the City or that reasonable mitigation measures can be taken in the event that such contamination exists.*

Annexation ANX4.D: *All development agreements must deal satisfactorily with any environmental impacts upon the property.*

Planning: Staff believes that this finding can be met, based on the following facts:

- A Phase I Environmental Site Assessment (ESA) was performed by the CTL Thompson in April of 2012. The ESA concluded that there are no recognized environmental conditions existing on the site.
- The development of the proposed community park preserves open space and complies with the philosophies in the Open Lands Plan.

E. Miscellaneous

1. Loveland Municipal Code, Section 17.04.040.F: *Whether the annexation is in the best interest of the citizens of the City of Loveland.*

Planning: Staff believes that this finding can be met, based on the following fact:

- The property proposed for annexation is owned by the City of Loveland and was purchased for the development of a future community park. The annexation and development of the park is in the best interest of the citizens and will provide an amenity to the residents in the western portion of the City.

F. Mineral Extraction Colorado Revised Statute: *The proposed location and the use of the land, and the conditions under which it will be developed, will not interfere with the present or future extraction of a commercial mineral deposit underlying the surface of the land, as defined by CRS 34-1-3021 (1) as amended.*

Planning: Staff believes that this finding can be met, due to the following fact:

- A geologic evaluation and mineral extraction assessment was prepared by CTL Thompson for the property. The assessment concluded that based on the review of geologic maps, published reports, satellite and aerial imagery, and the examination of the site, the potential for commercial mineral resources on the site is considered negligible.

General Development Plan Amendment

G. Land Use

1. Loveland Municipal Code

a. Section 18.41.050.D.4: *Whether the general development plan amendment confirms to the requirements of this Chapter 18.41, to the City's master plans and to any applicable area plan.*

Planning: Staff believes that this finding can be met, due to the following facts:

- The GDP amendment removes approximately 9.36 acres of land from the PUD boundaries for the purpose of expanding the future community park. The property to be removed is labeled as Development Area E in the GDP and was designated for 50 duplex units (see **Attachment 5**). The amendment does not affect any other zoning area within the PUD. The new site data in the PUD is adjusted to reflect the removal of the 9.36 acres and the 50 duplex units.
- The GDP amendment is consistent with the intent of the master plan and is compatible with the LDR designation.

b. Section 18.41.050.D.4(c): *Whether development permitted under the GDP amendment will be complementary to and in harmony with existing development and future development plans for the area in which the GDP is located by:*

- (i) *Incorporating natural physical features into the GDP design and providing sufficient open spaces considering the type and intensity of proposed land uses.*
- (ii) *Incorporating site planning techniques that will foster the implementation of the Loveland Comprehensive Master Plan.*
- (iii) *Incorporating physical design features that will provide a transition between the project and adjacent land uses through the provisions of an attractive entryway, edges along public streets, architectural design, and appropriate height and bulk restrictions on structures.*
- (iv) *Incorporating an overall plan for the design of the streetscape within the project, including landscaping, auto parking, bicycle and pedestrian circulation, architecture, placement of buildings and street furniture.*

Planning: As the GDP amendment is seeking to remove land area from the PUD, the findings concerning the development and design of the GDP are not applicable.

H. City Utilities and Services

1. Loveland Municipal Code

a. Section 18.41.050.D.4

(i) *Development permitted under the zoning established by the GDP will not have negative impacts on City utilities. If such impacts exist, Section 18.41.050.D.4(b) of the Loveland Municipal Code requires City staff to recommend either disapproval of the GDP or reasonable conditions designed to mitigate the negative impacts.*

(ii) *Whether development permitted under the GDP will be complementary to and in harmony with existing development and future development plans for the area in which the GDP is located by incorporating public facilities or infrastructure, or cash-in-lieu, that are reasonably related to the proposed development so that the proposed development will not negatively impact the levels of service of the City's services and facilities.*

Planning: As the GDP amendment is seeking to remove land area from the PUD, the findings concerning the development and design of the GDP are not applicable.

Rezoning of Land Removed from GDP

I. Loveland Comprehensive Master Plan, Section 4.7

1. **Land Use Plan:** *Whether the zoning is consistent with the Loveland Comprehensive Master Plan Land Use Plan or a "major plan amendment" request is being processed concurrently with the application.*

Planning: Staff believes that this finding can be met, based on the following facts:

- The Comprehensive Master Plan designates the site as Low Density Residential (LDR). This category permit parks and open space as acceptable land uses.
- The Public Park zone district requires that any community park located within 500 feet from a residential zone be processed as a special review. The special review process requires a neighborhood meeting and allows for public comment throughout the process. A special review will be processed in accordance with the provisions in Chapter 18.40 of the Municipal Code.

2. **Loveland Municipal Code**

- a. **Section 18.04.010:**

- (i) *Whether the zoning will provide adequate light and air; prevent overcrowding of land; avoid undue concentration of population; and facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements.*
 - (ii) *The character of the district and the particular uses permitted by right in the district will preserve the value of buildings and encourage the most appropriate use of land.*

Planning: Staff believes that this finding can be met, based on the following facts:

- The 9.36 acres will be combined with the 60 acres to the east and developed into a community park. Development of the park will provide and promote adequate light and air and be an amenity for the residents in the western portion of the City. The finding of overcrowding of land and undue concentration of population is not applicable to this request.
- Development of the park will be governed by all applicable City codes and standards in the Public Park District, as well as any special provisions deemed necessary through the special review process.

IX. RECOMMENDED CONDITIONS

The following conditions are recommended by City Staff.

Annexation

Transportation Development Review

1. All public improvements shall comply with the Larimer County Urban Area Street Standards (LCUASS).

Mehaffey Park Annexation and Rezoning Report

1. Summary

The Mehaffey Park property is a site that combines approximately 60.44 acres, currently zone FA, with an approximately 9.36 acre site from a development parcel that had previously been annexed and is currently zoned as P-67 Meadowbrook Ridge PUD. The City of Loveland owns all of the property. Through separate instrument, the General Development Plan for Meadowbrook Ridge PUD #67 is modified to exclude 9.36 acres that consists of an 8.39 acre parcel, and a 0.97 acre parcel. This application is to annex the 60.44 acres, and rezone the three parcels as PP-Public Park District. A recreational trail already has been developed through the site, and is part of a city-wide system that is shown on the City's Parks and Recreation Master Plan map.

2. Compatibility with the City of Loveland Comprehensive Master Plan

The site is shown on the City of Loveland Land Use Plan as "Parks, Open Lands, Conservation Easements, Golf Courses and Cemeteries," and the LDR – Low Density Residential. The City of Loveland Land Use Plan shows a trail through the property which was constructed by the Parks and Recreation Department in 2003. Annexing the site into the city, and zoning the site to PP – Public Park District, are in complete compliance with all of the philosophies, goals and objectives in Section 4 of the Comprehensive Plan.

3. Rezoning Assessment

Zoning the site as PP-Public Park District permits developing the site as a community park and as a use by right if sports lighting is less than 40 feet in height, and if the site is not within 500 feet of residential zoned or occupied housing. This site was purchased for community recreational purposes and is surrounded by existing and proposed residential uses; therefore it will require a Special Review prior to construction of the park.

The park site is surrounded by lands that are zoned R-1 (Developing Low Density Residential,) P-36 (Hunter's Run PUD), P-89, (Hunter's Run West PUD), P-67 (Meadowbrook Ridge PUD), and FA – Farming and DR- Developing Resources. The PUDs are developed, or planned to be developed as low density residential housing. A property located adjacent to the site's northeast boundary remains in a Larimer County (FA-Farming) enclave that is also surrounded by City residentially zoned land.

The PP zone district is compatible with the surrounding land use zones and policies in Section 4 of the Comprehensive Master Plan for the City of Loveland as described below.

Annexation Goals and Objectives (p. 6-8)

ANX1: The capacity of community services and facilities to accommodate development should be considered when annexing new lands into the City.

1. A The annexation of land should minimize the length of vehicle trips generated by development of the land.

This annexation and rezoning proposal reduces vehicle trips by providing a public park within walking and bicycling distance of existing and planned residence.

1. B The annexation of land should minimize the short and long term costs of providing community services and facilities for the benefit of the annexed area.

Costs are minimized because the road system on 22nd Street and 29th Street and utilities are in place to adequately serve the park development. Adequate city utilities are also located on both streets to serve the park.

1. C The annexation of land should encourage infill development and generally ensure that land is immediately contiguous to other land in the City that is already receiving City services. Leapfrog and scattered site development are to be discouraged.

This property is an infill parcel, currently a County enclave, completely surrounded by the City.

1. D The recommendations of the Thompson R2-J School Board or their staff should be considered when evaluating an annexation proposal.

Development of a park provides no additional constraints on the R2J School District and in fact may provide additional practice fields and recreational facilities that could be used by the school district.

1. E Additional extension of City utilities should not be made outside the City limits without formal approval by the City Council.

There are no public utility extensions needed to develop the park. Private connections are planned with the park development.

1. F When annexation is accompanied by a specific development proposal, and when it is determined necessary by the City, the annexation of land should be allowed only if the City has accepted a cost/benefit study detailing the economic impacts of the proposed development based upon a fiscal model acceptable to the City.

This objective is not applicable.

1. G Proposed annexations, when accompanied by a specific development proposal, should include an analysis of the impact on the educational system.

This objective is not applicable.

ANX2: A compact pattern of urban development should be encouraged when considering the annexation of new lands into the City.

2. A The City should work with Larimer County to discuss ways to encourage a compact pattern of urban development.

Since this parcel is currently a County enclave, the park supports the compact urban pattern so desired and provides adequate community facilities for adjacent residents.

2.B The City should encourage the annexation of county enclaves within City limits and discourage the creation of future enclaves.

This annexation and zoning proposal annexes an enclave.

ANX3: Appropriate consideration should be given to the need for open space and natural areas within the city limits.

PP – Public Park allows for this use and the city encourages designing parks that are low water-use, and that contain natural and naturalized landscapes.

ANX4: Environmental impacts of development should be identified and considered when considering an annexation proposal.

4.A If the planning staff and/or city determines that significant negative impact of a proposed annexation or development on the environment may occur, based upon objective standards, an Environmental Impact Report should be prepared by a qualified specialist. Note: This requirement is applicable for the development or redevelopment of property already within the City as well.

An Environmental Impact Report is not required. There are no wetlands or significant natural resources existing on this property.

4.B The annexation of land should be allowed only if the owner can provide assurances that the land does not contain hazardous or toxic substances that may pose a danger to the city or that reasonable mitigation measures can be taken in the event that such contamination exists. To make this determination, a Phase I Environmental Report should be prepared by a qualified specialist. Note: This requirement is applicable for the development or redevelopment of property already within the City as well.

A Phase 1 Environmental Report has been performed and the site does not contain any hazardous or toxic substances.

4.C The annexation of land should be allowed only if the owner has had a Wetlands Reconnaissance Report prepared by a qualified specialist. Note: This requirement is applicable for the development or redevelopment of property already within the City as well.

The site has been used for dryland farming and there are no wetlands on the property.

4.D All development agreements should deal satisfactorily with any environmental impacts upon the property. Note: This requirement is applicable for the development or redevelopment of property already within the City as well.

This is not applicable.

ANX5: The City's annexation objectives, policies, and regulations should promote quality developments.

5.A Any annexation should be contingent upon a development agreement that clearly details the rights and obligations of the City and the land owner regarding the annexation and development of the annexed land.

A development agreement is not required as the City owns the property.

5.B As land is proposed for annexation the City encourages the developer to consider assembling available adjoining land parcels and prepare a master plan design for the larger area, rather than submit separate individual proposals.

Three parcels are being assembled for the rezoning request and the annexation is in compliance with the City Comprehensive Land Use Plan.

ANX6: Guidelines for Contiguous* Development

- A. Leapfrog, scattered-site and flagpole development is discouraged;
- B. Development of land should encourage infill development;
- C. Development of land should be contiguous to other land that is already receiving public services.

This property is an enclave, infill development, and contiguous to lands that are already receiving public services.

ANX7: Functional plans for extension of utilities should provide for a phased program of extension of utilities in accordance with the requirement for contiguous development, subject to the need to maintain the City utilities' ability to service their customers adequately and efficiently.

This property has adequate utilities available in adjacent public streets. Utilities such as Electric, Water, Waste Water and Stormwater will be provided in the park and connect to existing systems already provided in 22nd and 29th Streets.

Applicable Residential Land Use Goals (p 9.)

RES7: Pedestrian and bicycle friendly development is encouraged by considering among other things:

7A. Walking or biking distance to an existing or planned neighborhood park and within easy access to a community park;

This annexation and rezoning request supports walking and bicycling to community parks and once developed will be easily accessible from existing and proposed residential areas. The City trail system exists on the property and will be connected to 29th street with the development of the park.

Applicable County Enclaves Goals (p 23.)

“The Loveland Land Use Plan recognizes that county enclaves exist within the city limits. Land use categories have been designated for each enclave based upon recognizing existing surrounding land use, traffic capacity of the surrounding street system and projections of future development and redevelopment opportunities. The City desires to encourage annexation of enclaves and will consider various incentives, such as increased densities, waiver of fees, Adequate Community Facilities exemptions for a proposed development within an existing enclave provided that the incentives will not negatively impact the infrastructure system or existing neighborhood communities.”

This annexation and rezoning request supports this policy.

4. Compliance with “Findings” listed in the Annexation and Rezoning checklist.

- a. Compatibility with Section 18.04.010 of the Loveland Municipal Code.

Annexation of the 60.44 acre parcel and rezoning the three parcels as PP-Public Park District promotes the general health and welfare of the community. While traffic impacts are not part of this annexation and zoning request, they will be addressed in the Special Review/Site Development Plan process. The draft Traffic Impact Study that has been completed and indicates that the proposed park development will not exceed the total volumes of traffic permitted for 22nd (Major Collector) and 29th Streets (Minor Arterial).

- b. Land use compatibility.

Annexation and rezoning to PP-Public Park District is compatible with the Comprehensive Master Plan and Land Use Map, as well as the surrounding residential and PUD zoning districts.

- c. Current infrastructure and utilities master plans compatibility.

This annexation and rezoning request is compatible with the transportation master plan and utilities master plan, including storm drainage master plan. A regional storm water pond, which is part of the overall city storm drainage master plan, will be developed on the site.

- d. Consistency with Section 4 of the Loveland Comprehensive Master Plan.

This annexation and rezoning request is compatible with all goals and policies contained in Section 4 of the Loveland Comprehensive Master Plan (as described above.)

- e. Development that is not detrimental to the health, safety and welfare of the neighborhood or general public.

Annexation and zoning of the property to PP – Pubic Park and development as a community park is not detrimental to safety, and will provide additional opportunities to improve the health and welfare of the adjacent neighborhoods, general public, and provide additional public open space and recreation opportunities on the west side of Loveland.

Chapter 18.32

PP DISTRICT – PUBLIC PARK DISTRICT

Sections:

18.32.010	Purpose.
18.32.020	Definitions.
18.32.030	Uses permitted by right.
18.32.040	Uses permitted by special review.
18.32.050	Site plan review process.
18.32.060	Height limitations.
18.32.070	Off street parking area.

18.32.010 Purpose.

The purpose of the Public Park District is to establish and preserve areas in the City for public recreation facilities, parks and open space lands described in the City of Loveland Parks and Recreation Master Plan, as adopted and amended (“Parks and Recreation Master Plan”).

18.32.020 Definitions.

Definitions of Neighborhood Park, Community Park, School Recreation Areas, Regional Park, Special Use Areas, Recreational Trail, Recreational Facilities, Open Lands/Natural Area, Golf Courses, and Cemeteries or Memorial Gardens used in this Section shall be as defined below.

- A. Neighborhood Park - Shall mean a publicly owned park as defined and described in the Parks and Recreation Master Plan. Neighborhood Parks are centrally located, accessible to surrounding neighborhoods and should be equally distributed throughout the City. A Neighborhood Park should be a minimum of eight (8) acres in size and serve approximately a 1- mile service area with a ½ mile radius surrounding the park. Typical facilities include informal softball and soccer/football fields, volleyball, basketball, playground, horseshoe, tennis, shelter/pavilion with tables, pathways and free play areas.
- B. Community Park - Shall mean a publicly owned park as defined and described in the Parks and Recreation Master Plan, as adopted and amended. Community Parks serve as focal points within the community. Community Parks usually have parking, increased traffic due to active programmed sports, lighting and increased noise. Community Parks are greater than thirty (30) acres and usually serve approximately a 4-mile service area with a 1-mile radius surrounding the park. Typical facilities include those allowed in Neighborhood Parks plus all listed in the Park and Recreation Master Plan.
- C. School Recreation Areas – Shall mean a publicly owned park or recreation area as defined and described in the Parks and Recreation Master Plan. These areas are located adjacent to schools or are cooperatively developed as recreation areas on school properties. These sites should be developed where practical and beneficial to serve neighborhoods, which lack a park or have access barriers. Facilities may include youth baseball/softball fields, volleyball, basketball, soccer/football, playground, and multi-use turf areas.
- D. Regional Park – A Regional Park shall mean a publicly owned park which offers leisure value beyond the neighborhood or Community Park as defined and described in the Parks and Recreation Master Plan. Often there is an environmental or scenic quality, such as a river or mountain terrain within a Regional Park. Regional Parks are usually larger than two hundred (200) acres. Viestenz-Smith Mountain Park is categorized as a Regional Park.

- E. Special Use Areas - Shall mean a publicly owned park or recreation area as defined and described in the Parks and Recreation Master Plan, and may include unique or special uses such as Sculpture Parks.
- F. Recreational Trail - Shall mean a publicly owned or maintained trail system, including trailheads as identified or described in the Parks and Recreation Master Plan. Trails are typically located along drainage ways, irrigation canals, within acquired open space/natural areas or easements or land purchased. The Recreational Trail shall encircle the City of Loveland in a connecting loop. Trails are predominately off-road, non-motorized recreational routes constructed as 10-foot wide concrete paths. Soft path trails may parallel the concrete surface where practical. Where feasible, trailheads will be located and may include parking, drinking water, restrooms, and information on the trail system.
- G. Recreational Facilities – Shall mean any publicly owned recreation facility or area as defined and described in the Parks and Recreation Master Plan, and may include both indoor and outdoor uses.
- H. Open Lands/ Natural Area – Shall mean all areas as described in the City of Loveland Open Lands Plan or as further described in the Parks and Recreation Master Plan, as these plans are adopted and may be amended.
- I. Golf Courses - Shall mean any publicly owned facility or area as defined and described in the Parks and Recreation Master Plan, and may include both indoor and outdoor facilities, buildings, and accessory uses.
- J. Cemeteries or Memorial Gardens - Any publicly owned land used for burial or memorials.

18.32.030 Uses permitted by right.

All uses permitted by right and set forth in this section shall be subject to the site plan requirements of Chapter 18.46, as amended. The following uses are permitted by right in a PP district:

- A. Any Community Park, Regional Park and Recreational Facilities use which does not have sport lighting over forty (40) feet in height and is not located within five hundred (500) feet of a residentially zoned or occupied area;
- B. Neighborhood Parks;
- C. School Recreation Areas;
- D. Special Use Areas;
- E. Open Lands/Natural Areas;
- F. Recreational Trail;
- G. Accessory Buildings or uses which are reasonably required to provide maintenance or security for the principal use; and
- H. Antennas, as defined in Section 18.55.020(A), proposed to be located on an existing tower, as defined in Section 18.55.020(H), in compliance with the provisions of Chapter 18.55 of this title.

18.32.040 Uses permitted by special review.

The following uses are permitted by special review in a PP District :

- A. Any Community Park, Regional Park and Recreational Facilities use which does not meet the criteria as a use by right set forth in Section 18.32.030.A;
- B. Golf Course;
- C. Cemetery or Memorial Garden; and
- D. Except as provided in Section 18.36.010(M), personal wireless service facilities, as defined in Section 18.55.020(G), in compliance with Chapter 18.55 of this title.

18.32.050 Site plan review process.

The site plan required by Chapter 18.46 shall be submitted to the current planning manager for review and approval or disapproval. In the event of disapproval, the applicant may appeal the current planning manager's final decision to the planning commission in accordance with chapter 18.80 of this Code. (Ord. 5581 § 16, 2011)

18.32.060 Height limitations.

Buildings and structures in this zone shall comply with Chapter 18.54, as amended.

18.32.070 Off-street parking area.

The minimum off-street parking area for all permitted uses in a PP District shall be as provided in Chapter 18.42, as amended. (Ord. 5115 § 1, 2006)



Mehaffey Park Master Plan
09/06/2012

ATTACHMENT 3

MEHAFFEY PARK FIRST ADDITION

BEING AN ANNEXATION OF LAND SITUATE IN THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH P.M. TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

MEHAFFEY PARK FIRST ADDITION

ORIGINAL PARCEL PROPERTY DESCRIPTIONS FOR REFERENCE ONLY:

ORIGINAL PARCEL 1 PROPERTY DESCRIPTION (Per Reception No. 97004655):

All that portion of the Northeast Quarter of Section 9, Township 5 North, Range 69 West of the 6th P.M., Larimer County, Colorado more particularly described as follows:

Considering the South line of said Northeast Quarter of Section 9 as bearing SOUTH 89°33'30" WEST and with all bearings contained herein relative thereto:

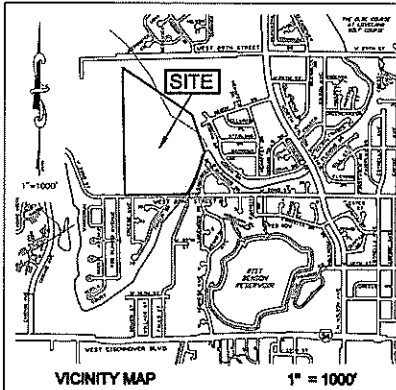
Commencing at the Southeast corner of said Northeast Quarter of Section 9, thence along said South line of the Northeast Quarter of Section 9 SOUTH 89°33'30" WEST 1447.30 feet to the Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT (originally designated as PARK PLACE SUBDIVISION-A PLANNED UNIT DEVELOPMENT and name changed per City of Loveland Resolution No. R-229-79) being a subdivision of Crescent Addition to the City of Loveland, County of Larimer, State of Colorado and the TRUE POINT OF BEGINNING, thence continuing along said South line of the Northeast Quarter of Section 9 SOUTH 89°33'30" WEST 81.820 feet to the existing Westerly line of the Louisa Ditch; thence along said Westerly line of the Louisa Ditch (2) courses and distances: 1) NORTH 28°28'28" EAST 189.81 feet; 2) NORTH 34°17'20" EAST 131.30 feet; 3) NORTH 17°56'27" EAST 506.29 feet; 4) NORTH 28°10'33" EAST 84.42 feet; 5) NORTH 25°00'45" EAST 28.65 feet to the Westerly line of WINDMERE SEVENTH SUBDIVISION to the City of Loveland, County of Larimer, State of Colorado; thence along said Westerly line SOUTH 17°21'57" EAST 74.83 feet to said Westerly line of DURANGO SUBDIVISION; thence along said Westerly line the following two (2) courses and distances: 1) SOUTH 18°01'17" WEST 578.93 feet; 2) SOUTH 31°05'22" WEST 180.81 feet to the TRUE POINT OF BEGINNING.

ORIGINAL PARCEL 2 PROPERTY DESCRIPTION (Per Reception No. 95004036):

All that portion of the Northeast Quarter of Section 9, Township 5 North, Range 69 West of the 6th P.M., Larimer County, Colorado more particularly described as follows:

Considering the West line of said Northeast Quarter of Section 9 as bearing SOUTH 00°10'56" EAST and with all bearings contained herein relative thereto:

Commencing at the Northeast corner of said Northeast Quarter of Section 9, thence along said West line of the Northeast Quarter of Section 9 SOUTH 00°10'56" EAST 207.50 feet to the TRUE POINT OF BEGINNING, thence bearing said West line SOUTH 53°03'41" EAST 1572.87 feet to the Westerly line of WINDMERE SEVENTH SUBDIVISION to the City of Loveland, County of Larimer, State of Colorado; thence along said Westerly line SOUTH 17°15'57" EAST 663.18 feet to the Westerly line of certain parcel of land described as deeded, recorded at Reception No. 97004855, records of said County; thence along said Westerly line the following five (5) courses and distances: 1) SOUTH 24°40'58" WEST 27.17 feet; 2) SOUTH 22°50'41" WEST 63.43 feet; 3) SOUTH 17°35'45" WEST 506.29 feet; 4) SOUTH 33°57'28" WEST 121.30 feet; 5) SOUTH 28°18'34" WEST 109.81 feet to the South line of said Northeast Quarter of Section 9, thence along said South line SOUTH 89°12'28" WEST 1123.86 feet to said West line of the Northeast Quarter of Section 9, thence along said West line NORTH 00°10'56" WEST 2411.52 feet to the TRUE POINT OF BEGINNING.



APPLICANT / OWNER:
PARKS AND RECREATION DEPARTMENT
CITY OF LOVELAND, COLORADO
500 EAST THIRD STREET - LOVELAND, COLORADO 80537

OWNERSHIP INFORMATION

PARCEL 1: CITY OF LOVELAND, COLORADO 500 East Third Street Loveland, Colorado 80537	PARCEL 2: CITY OF LOVELAND, COLORADO 500 East Third Street Loveland, Colorado 80537
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GENERAL NOTES:

- This project is subject to an Annexation Agreement which has been recorded in the Real Property records in the Office of the Larimer County Clerk and Recorder.
- When the property being annexed into the City of Loveland is currently located within the PCA certified territory, this property is subject to a five percent (5%) surcharge on recorded survey as defined in 40-1515-226, C.R.S. and the City of Loveland Municipal Code 15.12.180. This surcharge will expire ten years after effective date of the annexation.

- FLOOD ZONE NOTE:** Per the Flood Insurance Rate Map (FIRM) Community Panel No. 0005921186F, Panel 1186 of 1420 (Effective Date of December 10, 2008) as prepared by the Federal Emergency Management Agency (FEMA) for this area, the subject property appears to be in a Flood Zone "X", as FEMA regulated flood zones do not appear to affect the subject property. It is always in one's best interest to consult with the City of Loveland, Colorado and/or Larimer County, Colorado to discuss the possibility of additional "heavy" regulated flood hazards being affecting the subject property.

- Control Monumentation as shown on Map.

(Meas.): Indicates measured bearing and/or distance from field survey.

(Rec.): Indicates record bearing and/or distance from those certain Warranty Deeds recorded in the real property records of the Office of the Clerk and Recorder of Larimer County, Colorado as listed below:

* Warranty Deed recorded January 23, 1997 at Reception No. 97004655 (Rec.)

* Warranty Deed recorded January 20, 1998 at Reception No. 95004036 (Rec.)

(Calc.): Indicates calculated bearing and/or distance. May indicate a pre-recorded bearing and/or distance based on limited field survey and interpretation of existing plats, maps and/or deeds.

- This Annexation Map was prepared with the benefit of a Commission for Title Insurance as prepared by Stewart Title Guaranty Company (Order No. 855367, Effective Date of December 11, 2011) as provided to InterMill Land Surveying, Inc. by the City of Loveland, Colorado. Only those easements and/or rights-of-way listed in Schedule B-Section 2 (Easements) Items B-1 to B-4 of the aforesaid Commission for Title Insurance, which are defeasible, are shown on this Map. No further easement and/or right of way easements, other than those in the Map, were requested by the City of Loveland, Colorado and/or Larimer County, Colorado, for the preparation of this survey. The easements and rights-of-way which may be shown herein may not be complete, are based on general information, and are to be used only in this context.

- STATEMENT OF LINEAR UNITS USED:** Linear Units Used for this survey - U.S. Survey Feet

- BASES OF BEARINGS STATEMENT:** Bases of Bearings for this Annexation Map are based on an assumed bearing of South 00°10'56" East on the West line of the Northeast Quarter of Section 9, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado. Note: Monumentation of said line is shown on Map.

- According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect, in no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

MAYOR'S CERTIFICATE

This map is approved by the City Council of the City of Loveland, Larimer County, Colorado by Ordinance No. _____, passed on second reading on this _____ day of _____, 20____, for filing with the Clerk and Recorder of Larimer County.

By _____ Mayor

Attest: _____

City Clerk

ANNEXATION DATA TABLE

1. Contiguity to City Limits:	5,155.61 Linear Feet
2. Minimum Contiguity Requirement:	1,122.26 Linear Feet
3. Total Annexation Boundary:	6,733.54 Linear Feet
4. Total Annexation Area:	65,444 Acres

MEHAFFEY PARK FIRST ADDITION - ENTIRE ANNEXATION BOUNDARY PROPERTY DESCRIPTION:

That portion of the Northeast Quarter of Section 9, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the West line of the Northeast Quarter of said Section 9 as bearing South 00°10'56" East and with all bearings contained herein relative thereto:

Beginning at the Northeast corner of the Northeast Quarter of said Section 9, thence along the West line of the Northeast Quarter of said Section 9, said West line of the Northeast Quarter of said Section 9 also being the East line of Tract "C", VANQUARD-FARLECO SECOND ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence along said West line of the Northeast Quarter of said Section 9 and along said East line of Tract "C", VANQUARD-FARLECO SECOND ADDITION South 00°10'56" East 207.50 feet, more or less, to the Northwest corner of that certain parcel of land as described in Deed recorded at Reception No. 95004036, records of said County and the TRUE POINT OF BEGINNING, thence departing said West line of the Northeast Quarter of said Section 9 and said East line of Tract "C", VANQUARD-FARLECO SECOND ADDITION and along the Northeast line of said parcel of land as described in Deed recorded at Reception No. 95004036 South 33°03'41" East 1572.87 feet, more or less, to the Northeast corner of said parcel of land as described in Deed recorded at Reception No. 95004036, said Northeast corner also being a point on the Westerly line of Lot 3, WINDMERE SEVENTH SUBDIVISION to the City of Loveland, County of Larimer, State of Colorado; thence departing said Northeast line of said parcel of land as described in Deed recorded at Reception No. 95004036 and along the Westerly line of said Lot 3, WINDMERE SEVENTH SUBDIVISION and along the Westerly line of Lot 1, of said WINDMERE SEVENTH SUBDIVISION South 17°21'57" East 74.83 feet, more or less, to a point on the Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT (originally known as PARK PLACE SUBDIVISION-A PLANNED UNIT DEVELOPMENT and name changed per City of Loveland Resolution No. R-229-79) to the City of Loveland, County of Larimer, State of Colorado, said Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT also being the Easterly line of said parcel of land as described in Deed recorded at Reception No. 95004036, records of said County; thence departing said Westerly line of said Lot 1, WINDMERE SEVENTH SUBDIVISION and along said Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT and continuing along said Easterly line of said parcel of land as described in Deed recorded at Reception No. 97004855 South 17°35'45" West 506.29 feet and again South 33°57'28" West 121.30 feet, more or less, to a point on the North line of QUAIL RUN ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence departing said Westerly line of DURANGO SUBDIVISION-A PLANNED UNIT DEVELOPMENT and said Easterly line of said parcel of land as described in Deed recorded at Reception No. 97004855 and along said North line of QUAIL RUN ADDITION South 89°12'28" West 1123.86 feet, more or less, to the Northeast corner of said QUAIL RUN ADDITION; said Northeast corner also being a point on said West line of the Northeast Quarter of said Section 9 and said East line of Tract "C", VANQUARD-FARLECO SECOND ADDITION; thence departing said North line of QUAIL RUN ADDITION and along said West line of the Northeast Quarter of said Section 9 and said East line of Tract "C", VANQUARD-FARLECO SECOND ADDITION North 00°10'56" West 207.50 feet, more or less, to the to the TRUE POINT OF BEGINNING.

Containing 65.44 Acres, more or less, and being subject to all existing easements and/or rights-of-way of record.

SURVEYOR'S CERTIFICATE

I, Robert George Parashotte, a Registered Professional Land Surveyor in the State of Colorado, do hereby certify that the Annexation Map shown herein is a reasonably accurate depiction of the parcel of land together described herein and, to the extent described herein, that of least one-half (1/2) of the parcel boundary of said parcel is contiguous to the boundary of the City of Loveland, Colorado. The Map was compiled using existing plats, deeds, legal descriptions, known information, other documents and limited field survey. This Annexation map should not be construed as a full boundary survey of the subject properties.

PREPARED BY AND ON BEHALF OF:

INTERMILL LAND SURVEYING, INC.

1301 North Cleveland Avenue

Loveland, Colorado 80537

P: (970) 689-0316

F: (970) 635-9759

E: Robert@intermill.net

Robert George Parashotte

Colorado PLS 34174

STATE OF COLORADO)

COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,

by Robert George Parashotte for and on behalf of InterMill Land Surveying, Inc.

Witness my hand and official seal.

My Commission expires _____

Notary Public

PLOTTED FOR R
DATE: 08-15-2011

MEHAF

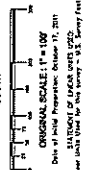
ATTACHMENT 4

MEHAFFEY PARK FIRST ADDITION

SEEING AN ANNEXATION OF LAND SITUATE IN THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 5 NORTH,
RANGE 69 WEST OF THE 5th P.M. TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

SEE SHEET 2 OF 3 FOR CONTINUATION

RECEIVED BY AIR IN DEPT. OF:
INTERNAL LAND SURVEYING, INC.
2000 W. CHERRY STREET
DENVER, COLORADO 80202
(303) 861-0518
(303) 832-1775
1. Bureau of Land Management
Department of the Interior
Washington, D.C. 20540



ORIGINAL SCALE: 1" = 100'
Date of Initial Preparation: October 17, 2011
STATEMENT OF WORK SHEET USED:
see Units Used for this survey - U.S. Survey feet

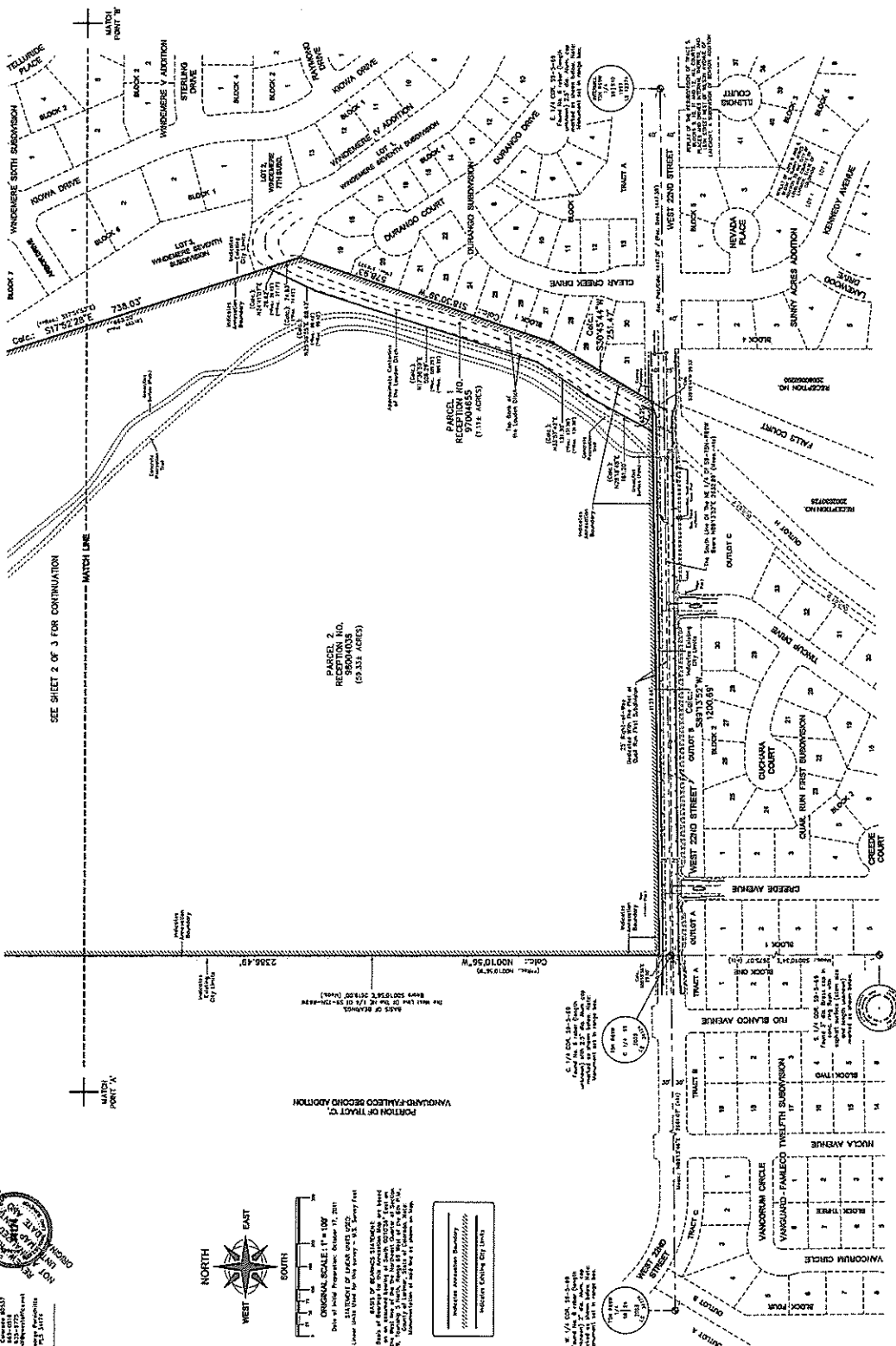
It's at the American Map and Book Co. in the Northwest Quarter at 3rd and 4th Sts., Room 88 West of the 6th St. Bridge. The store is located in the County of Denver, State of Colorado. The store is located in the County of Denver, State of Colorado. The store is located in the County of Denver, State of Colorado.

Indicates Assessment Boundary

Indicates Existing City Limits

WARGARD-FILTECO RECORD ADDITION

PARCEL 2
RECEPTION NO.
58004035
(59.33+ ACRES)



According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the publication shown herein.

PLOTTED FOR REQUEST
 DATE: 06-10-2011 BY: SCS

CITY OF LOVELAND, COLORADO

MANUEL F. PARR FIRST ADDITION

DRAWN BY:	PUR
CHECKED BY:	
APPROVED BY:	
DATE:	10-17-2011
SCALE:	1"=1'-0"
PROJECT NO.: P-11-7083	
SHEET	OF
3	3

MEHAFFEY PARK FIRST ADDITION

MEHAFFEY PARK FIRST ADDITION

BEING AN ANNEXATION OF LAND SITUATE IN THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 5 NORTH,
RANGE 69 WEST OF THE 6th P.M. TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

PREPARED BY AND ON BEHALF OF:
 INTERMILL LAND SURVEYING, INC.
 1301 North Cleveland Avenue
 Loveland, Colorado 80537
 P (970) 649-0518
 F (970) 631-8775
 E info@intermill.com
 W www.intermill.com
 SEAN COOPER, REGISTRANT
 Colorado PLS 50174

ANGUARD-FAMLECO SECOND ADDITION TRACT 'A'

VANGUARD-FAMILY ECON
 SECOND ADDITION
 (City of Loveland)

PORTION OF TRACT C,
VALUATED-FARLEO SECOND ADDITION



25 50 75 100 125 150 175 200
ORIGINAL SCALE: 1" = 100'
Date of initial Preparation: October 17, 1911
STATEMENT OF LINEAR MEASUREMENTS
Survey Lines Used for this survey - U.S. Survey Lines

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
I, _____, Clerk of the County of Los Angeles, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County of Los Angeles.

~~~~~  
Indicates Assumption Boundary  
~~~~~  
~~~~~  
Indicates Existing Clientele  
~~~~~

According to Colorado law you must terminate any legal action based upon any defect in this survey within three years after you first receive such defect. In no event, any legal action based upon any defect in this survey be terminated more than ten years from the date of the certification above herein.

RECEPTION NO. 2500025180
UNINCORPORATED LARIMER COUNTY

PARCEL 2
RECEPTION NO.
98004036
(59.33± ACRES)

SEE SHEET 3 OF 3 FOR CONTINUATION

PLOTTED FOR RESUMMITAL

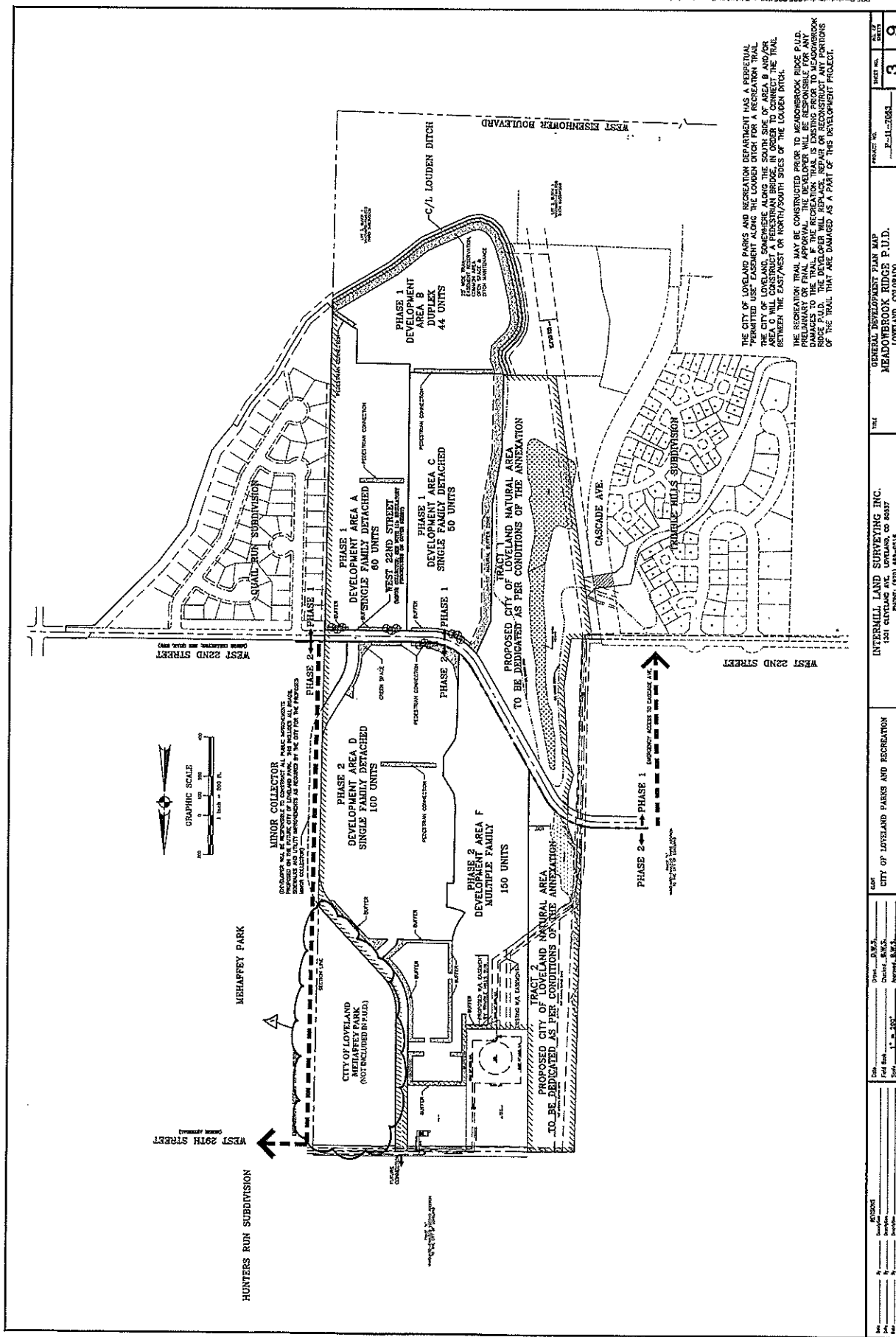
MEHAFFEY PARK FIRST ADDITION

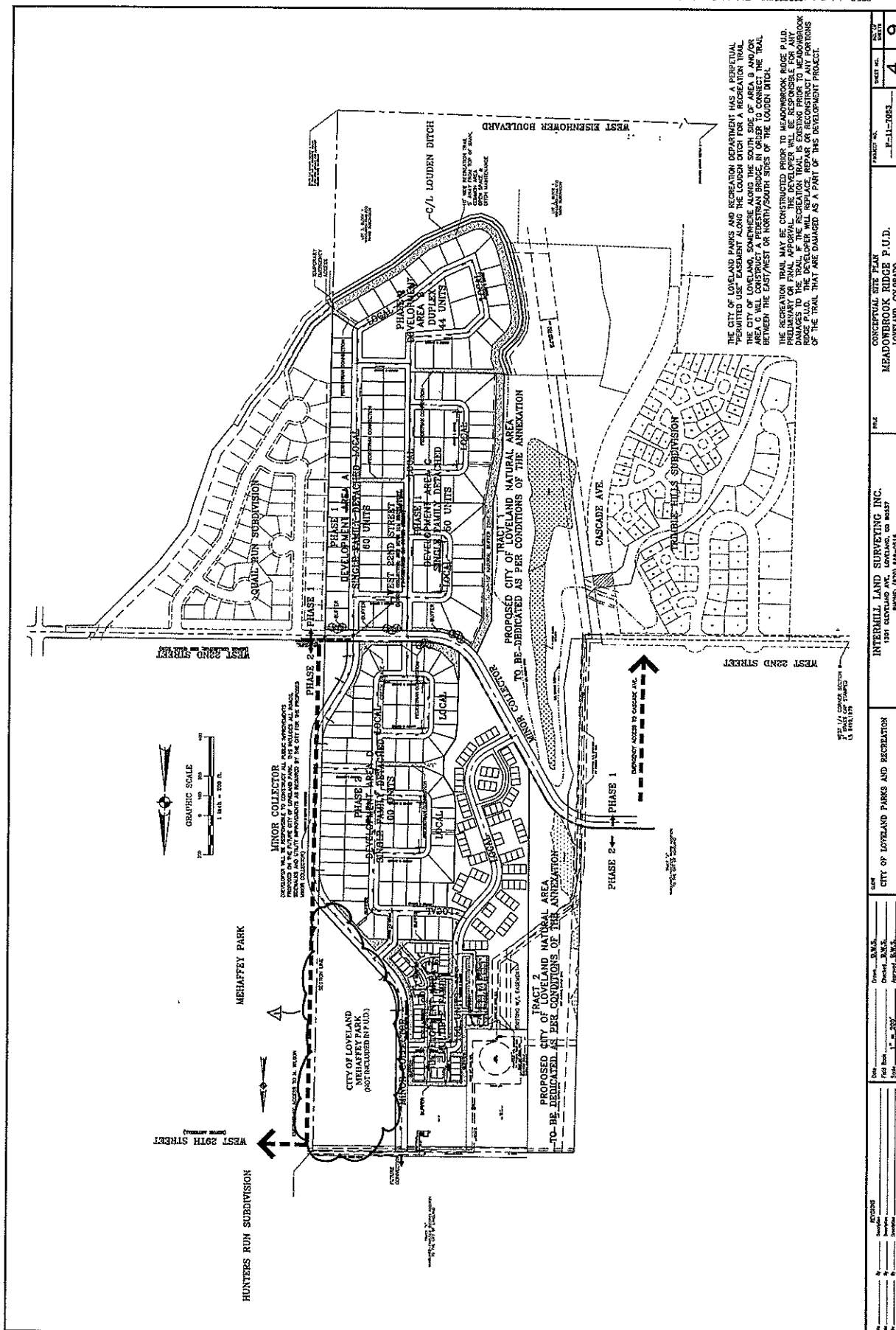
SURVEYING, INC.
 60427 804. (970)-644-0216 / FAX (970)-643-9775
 00000 CITY OF LOVELAND, COLORADO

INTERMILL LAN
1501 NORTH CLEVELAND AVENUE
CLEVELAND, OHIO 44115
THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA, STATE OF OHIO

DESIGNED BY:	DATE:	10-17-2011
CHECKED BY:	SCALE:	1"=100'
APPROVED BY:	PROJECT NO:	P-11-7083
	SHEET	5
		3

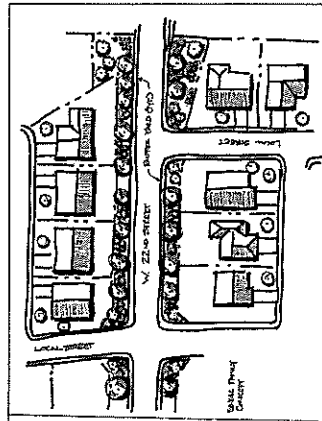
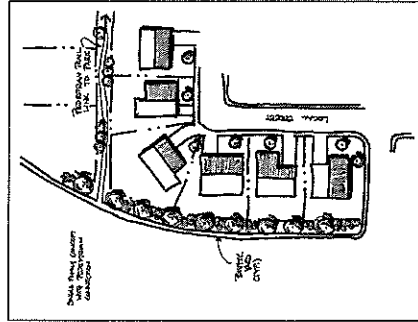
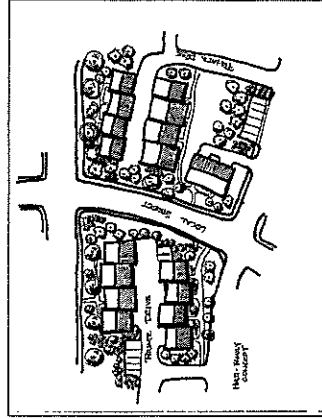
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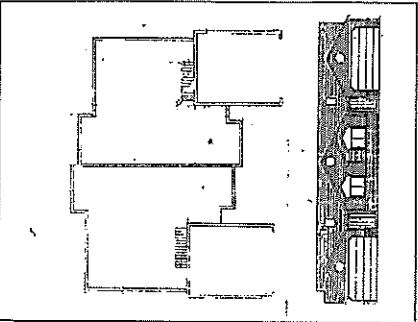
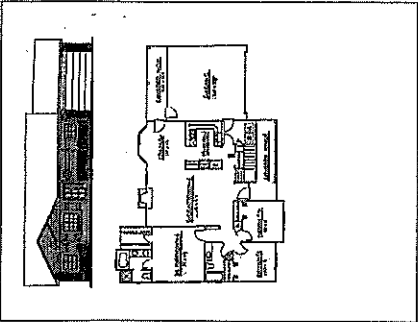
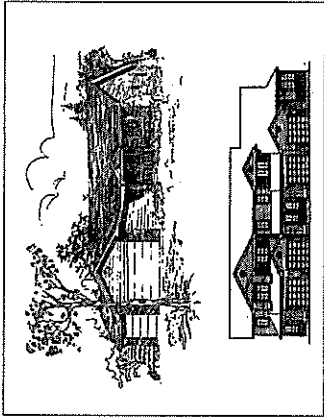
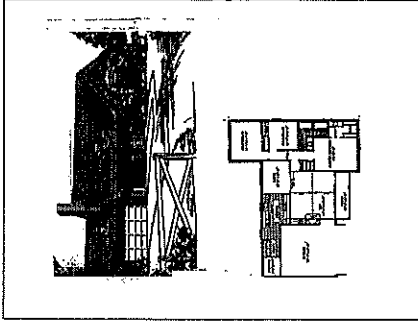
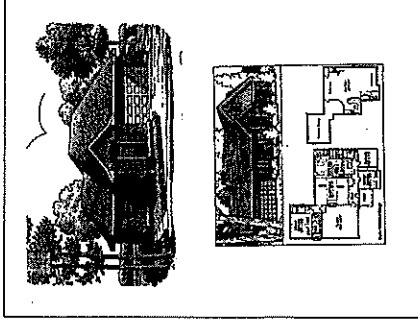


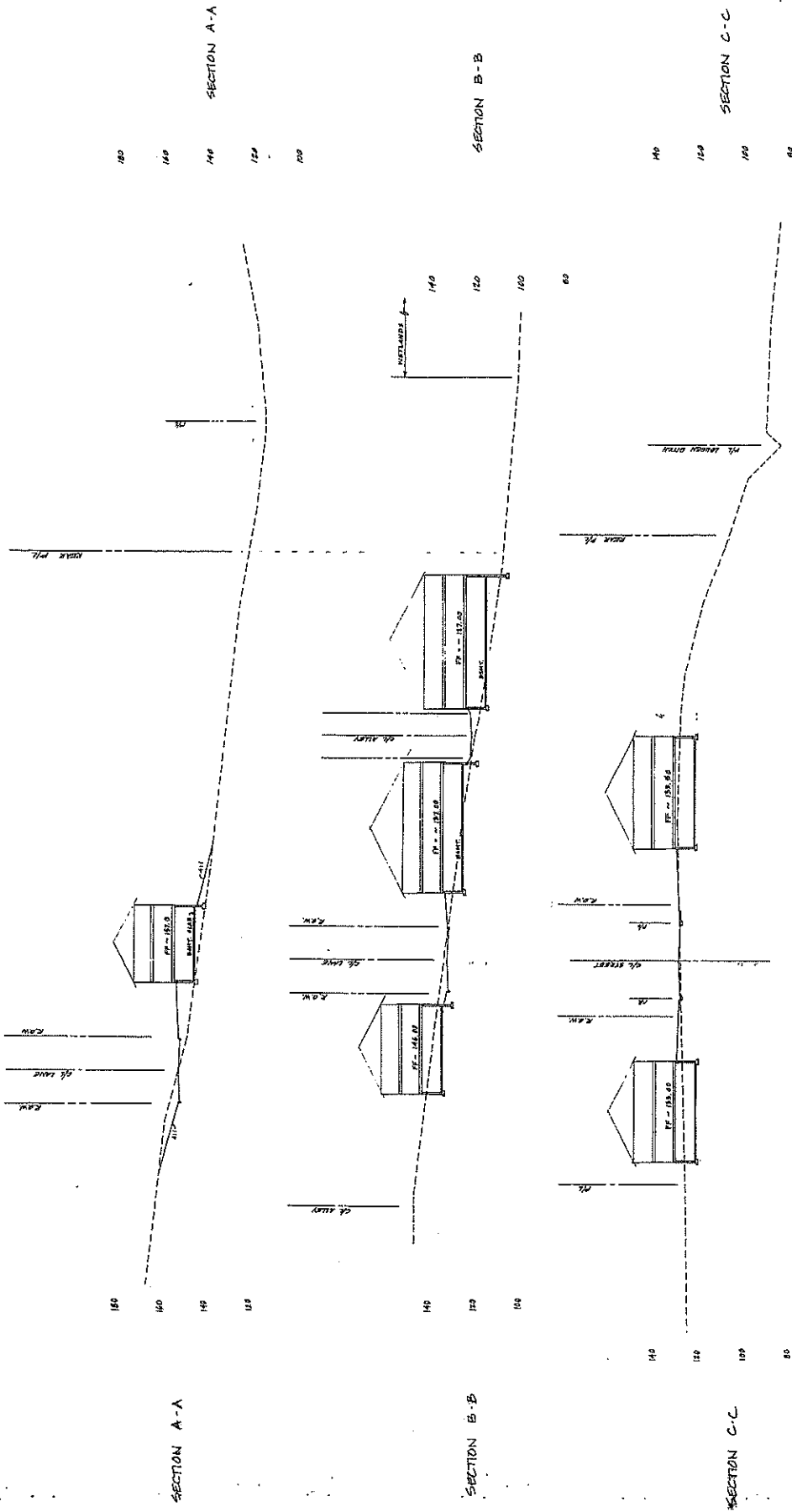
DATE		DESIGNED	DATE	PROJECT NO.	SHEET NO.	OF SHEETS
Jul 19, 2012		Mike	7/19/12	P-11-2083	5	9
PROJECT NO.		INTERMILL LAND SURVEYING, INC. 1321 EASTMAN AVE. LOVELAND, CO 80537 PHONE (970) 689-0216				
SHEET NO.		CITY OF LOVELAND PARKS AND RECREATION				
PROJECT NO.		TYPICAL SITE PLAN LAYOUT & CONCEPTUAL BLDG. ELEVATIONS MEADOWBROOK RIDGE P.U.D. LOVELAND, COLORADO				

TYPICAL SITE PLAN LAYOUT

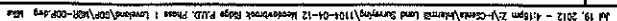


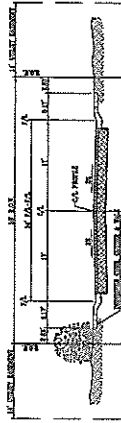
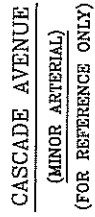
CONCEPTUAL BUILDING ELEVATIONS



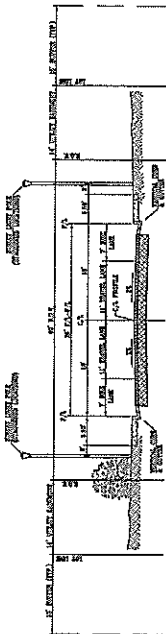
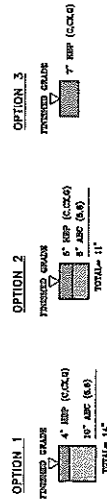


HENDONBROOK RIDGE
 #1444 - 01-99
 SITE DRAINAGE SECTIONS
 SCALE: 1" = 20' (VERT. & HORIZ.)
 6 of 9

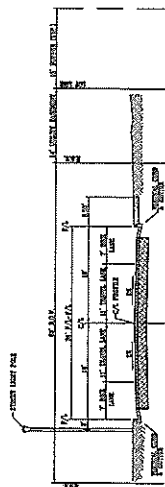
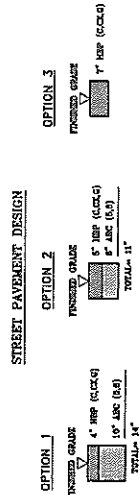




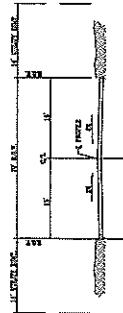
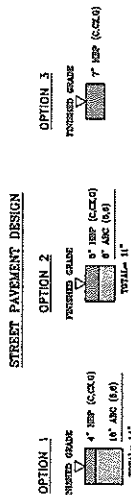
LOCAL STREET TYPICAL SECTION



MINOR COLLECTOR STREET TYPICAL SECTION
FROM STA: XX+XX TO XX+XX
LOOKING EAST



MINOR COLLECTOR STREET TYPICAL SECTION
FROM STA: XX+XX TO XX+XX
LOOKING EAST



LANE TYPICAL SECTION

NOTE:
ALL PAVEMENT DESIGNS ARE BASED ON THE
"CITY OF LOVELAND STREET DESIGN TECHNICAL
STANDARDS TABLE 4.2

INTERMILL LAND SURVEYING INC.
1331 CLEVELAND AVE., CLEVELAND, OH 44115
PHONE: (970) 448-0318

TYPICAL STREET SECTIONS
MEADOWBROOK RIDGE P.U.D.
LOVELAND, COLORADO

PRODUCT NO. P-11-7053

SHEET NO.	NO. OF SHEETS
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SHEET NO.	NO. OF SHEETS
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**CITY OF LOVELAND****BUDGET OFFICE**

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2329 • FAX (970) 962-2901 • TDD (970) 962-2620

AGENDA ITEM: 13
MEETING DATE: 11/20/2012
TO: City Council
FROM: Brent Worthington, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:

A Resolution approving a supplemental budget and appropriation to the Loveland Fire Rescue Authority 2012 budget

RECOMMENDED CITY COUNCIL ACTION:

Adopt the Resolution

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
 3. Adopt a modified action (specify in the motion)
 4. Refer back to staff for further development and consideration
 5. Adopt a motion continuing the item to a future Council meeting
-

DESCRIPTION:

This is an administrative action. The resolution provides for Council approval of supplemental changes to the Loveland Fire Rescue Authority 2012 Budget for revenue and expenses associated with wildland firefighting and training exercises. The Council approval of the budget is required for the Authority's budget to be in effect.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible

The resolution provides approval of the budget changes for reimbursements of expenses from outside sources. There is a \$4,000 change to the City contribution funded by a transfer from the Police Budget for training costs.

SUMMARY:

The Loveland Fire Rescue Authority was created through the Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate

Governmental Entity (IGA). During the year the Authority receives funds to reimburse the agency for overtime and equipment costs associated with wildland firefighting efforts and payments from other agencies for the use of the Training Center. Included is a payment from the Police Department of \$4,000 for payment of firefighter overtime involved in SWAT training. The funds were part of the Police Departments existing 2012 budget.

The Resolution will be presented to the Fire Authority Board on November 15, 2012 for adoption.

REVIEWED BY CITY MANAGER: 

LIST OF ATTACHMENTS:

1. A Resolution approving the Loveland Fire Rescue Authority 2013 Schedule of Rates, Charges, and Fees for Service and 2013 Budget
2. Exhibit A: Fire Authority Resolution 010 enacting a supplemental budget and appropriation to the 2012 Loveland Fire Rescue Authority Budget to appropriate additional grant funding from wildland fire and training reimbursements.

RESOLUTION #R-80-2012

A RESOLUTION APPROVING SUPPLEMENTAL BUDGET AND APPROPRIATION FOR THE LOVELAND FIRE RESCUE AUTHORITY 2012 BUDGET

WHEREAS, the Loveland Fire Rescue Authority (“Fire Authority”) is established pursuant to that certain Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity dated August 18, 2011 (the “Authority IGA”) between the City of Loveland, a Colorado home rule municipality (“City”) and the Loveland Rural Fire Protection District, a Colorado Special District (“District”); and

WHEREAS, the Fire Authority is authorized under Section 4.1 of the Authority IGA to adopt an annual budget and to supplement such budget from time to time, provided that the annual budget and any supplemental appropriations shall become effective upon the approval of the governing bodies of the City and the District; and

WHEREAS, the Fire Authority, by adoption of Resolution #R-010, approved a supplemental appropriation for its 2012 Budget; and

WHEREAS, the Fire Authority Board of Directors has also submitted the Fire Authority’s Resolution enacting a supplemental budget and appropriation to the 2012 Budget, which is attached hereto as **Exhibit A** and incorporated herein by reference, to the City and the District for approval as required by Section 4.1 of the Authority IGA; and

WHEREAS, the City Council desires to approve the Fire Authority’s 2012 Supplemental Budget and Appropriation as reflected on **Exhibit A**.

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

Section 1. That the 2012 Loveland Fire Rescue Authority Supplemental Budget and Appropriation, attached hereto as **Exhibit A** and which has been filed with the Fire Authority Administrative Office in its entirety, for the fiscal year beginning January 1, 2012 and ending December 31, 2012, with revenues in the amount of \$123,800, and expenditures of \$123,800 for operations, is hereby approved.

Section 2. That this Resolution shall take effect as of the date of its adoption.

ADOPTED this 20th day of November, 2012.

Cecil a. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

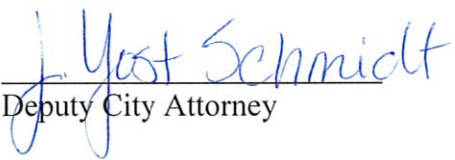

Deputy City Attorney

Exhibit A**RESOLUTION NO. R-010****A RESOLUTION ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 LOVELAND FIRE RESCUE AUTHORITY BUDGET TO APPROPRIATE ADDITIONAL GRANT FUNDING FROM WILDLAND FIRE AND TRAINING CENTER REIMBURSEMENTS**

WHEREAS, the Authority deployed crews to assist with fighting the Hewlett Gulch, Stuart Hole, High Park, Flagstaff, Pine Ridge, and Squirrel Creek fires; and

WHEREAS, the Authority has billed the federal government a total of \$147,276 for the wildland fire efforts; and

WHEREAS, the Loveland Fire Rescue Authority (“Authority”) will receive these funds on a reimbursement basis that exceeded the \$30,000 appropriated at the time of the adoption of the budget for 2012; and

WHEREAS, the Authority has collected \$16,781 as of September 30, 2012 from outside fire rescue organizations that have used the LFRA Training Center; and

WHEREAS, the Authority Board desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the budget for 2012; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE LOVELAND FIRE RESCUE AUTHORITY, STATE OF COLORADO, AS FOLLOWS:

Section 1. That additional funds from wildfire and fire training reimbursements were not appropriated at the time of adoption of the budget for 2012. The funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Account Title	Account Number	Amount	Description
Sources of Funds:			
Other Agency Deployments	604-22-227-1601-32404	\$103,000	\$147,276 for wildland fire reimbursements less \$30,000 already budgeted less \$15,000 in Fireworks Stands permits that were prohibited this year preventing the collection of fees
Academy Training	604-22-224-1605-32612	12,100	These are the reimbursements for the outside use of the training center. There was no revenue originally budgeted.
Academy Training	604-22-224-1605-32612 FRSUBC	4,700	These are reimbursements specifically for Blue Card training. There was no revenue originally budgeted.
Contribution from City	604-22-227-1601-38600	4,000	\$4,000 overtime that the Police Department agreed pay for firefighters involved in SWAT Training
Total Sources of Funds		\$123,800	
Uses of Funds:			

Overtime	604-22-224-0000-41021	76,000	Overtime associated with fires and backfills for injured
Overtime	604-22-224-0000-41021	4,000	Contribution from the City Police Department for half a portion of the overtime for SWAT training
Training Center	604-22-224-1605-43270 FRSUBC	4,700	Reimbursements on Blue Card Expenditures
Vehicle Maintenance	604-22-226-1647-43534	39,100	Based expenditures to date through 9/30/12 and on the average \$25k per month expenditure budgets provided by the City's Fleet Division, \$75,000 will be necessary through the end of the year and there is only \$14,700 left in the budget as of 9/30/12. We are appropriating the balance of sources in this appropriation to this account to assist with the expected shortfall.
Total Uses:		\$123,800	

Section 2. That as provided in Article IV: Section 4.1 of the Intergovernmental agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity, this Resolution shall be published in full by the Board Secretary.

Section 3. That this Resolution shall go into effect as of the date and time of its adoption.

ADOPTED this _____ day of November 15, 2012.

Jeffrey M. Swanty, Chairperson

ATTEST:

Secretary

Approved as to form:



Teresa Ablao
Assistant City Attorney

City Council Study Session
 October 23, 2012
 Page 1 of 1

Mayor Gutierrez called the Joint Meeting of the Loveland City Council and Planning Commission Study Session to order at 6:30 p.m. on the above date. Councilors present: Gutierrez, Fogle, Trenary, Klassen, Shaffer, and McKean. Councilors Taylor and Farley were absent. Planning Commission members present were: Rob Molloy; John Crescibene; Rich Middleton; Michael Ray; Carol Dowding; Troy Krenning; and Buddy Meyers. City Manager Bill Cahill was present.

1. DEVELOPMENT SERVICES

Regulation of Oil and Gas Development with City of Loveland

Development Services Director, Greg George made a brief presentation to open the public forum. The direction provided to date by City Council in the "Statement of Direction for the Development of Regulations on Oil and Gas Development in the City of Loveland" was reviewed and the tentative schedule was set out for adoption of an ordinance establishing regulations on oil and gas development. Mayor Gutierrez explained the procedures for the public forum. The following citizens spoke: Jennifer Monk; John Lewis; Donna Rice; Nathan Polan; Sue Mullins; Alan Fletcher; Irene Fortune; Nancy Rumfeldt; Linda Owen; Karl Langer; Robert Rumfeldt; David Zertzlaff; Greg Sugarman; Bob Massarro; Gail Zertzlaff; Kathy Hartman; Eve Buchner; Evelyn King; Jennifer Barnes; Kate Pierson; Darrick Barnes; Sue LeClare; Tim Anderson; Karen Carpenter; Vaughn Zendenic; Jonnie Westrup; Chelsea Wick; and Russell Stroud. The public forum was closed. Mr. George resumed his presentation on permit requirements and process related to traffic impacts, utility issues, air/water quality and other concerns. Council and Planning Commission discussion ensued. Council expressed their support and directed staff to move forward to draft the ordinance for future Council consideration and also thanked the Planning Commission for their attendance and collaboration on this matter.

Councilor Fogle proposed and found support from more than four councilors for a future study session on creating a voter-approved tax district to support arts, cultural, historic and scientific activities including maintaining and operating an expanded Loveland Museum/Gallery.

Having no further business to come before Council, the October 23, 2012 Study Session was adjourned at 10:10 p.m.

Respectfully Submitted,

Jeannie M. Weaver, Deputy City Clerk

Cecil A. Gutierrez, Mayor

CALL TO ORDER

Mayor Gutierrez called the regular meeting of the Loveland City Council to order on the above date at 6:30 PM.

PLEDGE OF ALLEGIANCE

ROLL CALL

Roll was called and the following responded: Gutierrez, Farley, Klassen, Trenary, Fogle, McKean, Shaffer and Taylor.

PROCLAMATION

Councilor Taylor read the proclamation which was accepted by Mike Knight.

Proclamation

WHEREAS The City of Loveland recognizes the importance of assisting Loveland families and individuals living in or near poverty in 2013; and
WHEREAS More than 50% of our homeless neighbors in Loveland are families in need of emergency services throughout the year; and
WHEREAS Funding to help our Loveland families living in poverty has actually decreased for 2013; and
WHEREAS We're grateful to the generous people of Loveland who take pride that the Loveland Salvation Army Red Kettle Campaign in an all volunteer effort that insures that 90% of all donations are directly allocated to our Loveland human service agencies in their efforts to reach out to those in greatest need; and
WHEREAS Our primary goal is to continue assisting local programs like the House of Neighborly Service, Neighbor to Neighbor Rental Assistance, Loveland Police Chaplains, Back to School backpacks, Christ's Church of the Rockies Front Porch Meal Ministry, Boys and Girls Club, Disabled Resource Service, Alternatives to Violence, the Community Kitchen and Salvation Army Special Needs Request Fund.

NOW, THEREFORE, we, the City Council of Loveland, do hereby proclaim Friday, the 16th of November, 2012 as

LOVELAND SALVATION ARMY RED KETTLE KICKOFF DAY

In Loveland, Colorado, and in so doing, urge all citizens to join us by volunteering to ring bells for two hours between Thanksgiving and Christmas Eve in a citywide effort to help us reach our goal of \$100,000 to aid and assist needy families and individuals in 2013.

Signed this 6th day of November, 2012

Cecil A Gutierrez

Mayor

PROCLAMATION

Councilor Trenary read the proclamation which was accepted Ruth Hale.

Proclamation

WHEREAS, Music, the universal language of peace, is one of the great arts and an outstanding feature of our culture; and
WHEREAS, The National Federation of Music Clubs, having as a foremost objective, the promotion of American music, will stage its annual "Parade of American Music" throughout the month of November; and
WHEREAS, The Colorado Federation of Music Clubs and Loveland join in encouraging and stimulating interest in American music and the enjoyment and appreciation thereof; and
WHEREAS, The "Parade of American Music" is designed to give our own worthy United States composers recognition, encouragement and support, and to impress upon the public of the United States that it has creative as well as performing musical artists and a musical culture equal to that of other countries.

NOW, THEREFORE, we, the City Council of Loveland, in recognition of the American Composer and in order to encourage native creative musical art, do hereby proclaim November, 2012 as

AMERICAN MUSIC MONTH

and urge all our citizens to join in the observance and share the joy of music.

Signed this 6th day of November, 2012

Cecil A. Gutierrez, Mayor

PROCEDURAL INFORMATION

Mayor Gutierrez made the following procedural announcement: Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. You will be given an opportunity to speak to the item before the Council acts upon it. Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items. Anyone making a comment during any portion of tonight's meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Please limit your comments to no more than three minutes. Mayor Gutierrez revised the Agenda to not hear items 19 and 20. Any questions that Councilor may have of Staff should be directed to all of Council.

CONSENT AGENDA

Mayor Gutierrez asked if anyone in the audience, Council or staff wished to remove any of the items or public hearings listed on the Consent Agenda. Councilor Klassen removed Item 16. Councilor Shaffer moved to approve the Consent Agenda without Item 16. The motion was seconded by Councilor Trenary and a roll call vote was taken with all councilors present voting in favor thereof.

1. CITY CLERK

Approval of Council Minutes

Motion

Administrative Action: The minutes from the following meetings were approved: October 8, October 9, October 10 and October 16, 2012.

2. PUBLIC WORKS

Municipal Code Amendment – Construction in Floodplains

Ordinance #5717

Legislative Action: "AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT CHAPTER 15.14 AND CHAPTER 18.45 REGARDING CONSTRUCTION IN FLOODPLAINS" was approved and ordered published on second reading.

3. DEVELOPMENT SERVICES

Municipal Code Amendment – Historic Preservation Commission Membership

Ordinance #5718

Legislative Action: "AN ORDINANCE AMENDING SECTION 2.60.130 OF THE LOVELAND MUNICIPAL CODE PERTAINING TO THE HISTORIC PRESERVATION COMMISSION" was approved and ordered published on second reading.

4. CITY MANAGER

Appointment to Historic Preservation Commission

Motion

Administrative Action: A motion appointing Mike Perry to serve as the Loveland Historical Society's member of the Historic Preservation Commission was approved.

5. HUMAN RESOURCES

Compensation of the City Attorney and City Manager

a) Resolution #R-71-2012

Administrative Action: Resolution #R-71-2012 of the Loveland City Council regarding the compensation of the City Attorney was approved.

RESOLUTION #R-71-2012

A RESOLUTION OF THE LOVELAND CITY COUNCIL REGARDING THE COMPENSATION OF THE CITY ATTORNEY

WHEREAS, on April 23, 2001, the City of Loveland ("the City") and John Duval entered into an Agreement appointing John Duval ("Duval") as Loveland's City Attorney effective May 8, 2001 (the "Agreement"); and

WHEREAS, on March 2, 2004, the City and Duval entered into that certain "First Addendum to Employment Agreement" (the "First Addendum") in which paragraph 6.B. of the Agreement was amended to provide a severance payment after Duval's initial three years of employment with the City; and

WHEREAS, in January of 2005, the City and Duval entered into that certain "Second Addendum to Employment Agreement" (the "Second Addendum") in which paragraph 4.B. of the Agreement was amended to provide that the City's contribution to Duval's 401a plan was increased from two and one-half percent (2.5%) of Duval's annual salary to three percent (3%) of Duval's annual salary; and

WHEREAS, on March 3, 2009 City Council adopted Resolution #R-20-2009 increasing the compensation of Duval based on its annual evaluation of Duval in his capacity as City Attorney; and

WHEREAS, on November 3, 2009, City Council adopted Resolution #R-107-2009 that decreased the compensation of Duval through the use of four furlough days based on the economic downturn and to be consistent with the 2010 budget which reduced pay to most city employees through the implementation of four furlough days; and

WHEREAS, on December 7, 2010, City Council adopted Resolution #R-107-2009 that increased Duval's vacation benefits by 5 days annually, increased the annual maximum vacation accrual carryover from 480 hours to 520 hours, as reflected in the "Third Addendum to Employment Agreement" (the "Third Addendum") and excluded furlough days from Duval's compensation; and

WHEREAS, on May 17, 2011, City Council adopted Resolution #R-35-2011 that increased Duval's compensation for 2011 with a one-time, merit-based payment of 2.5 percent (2.5%) of Duval's current annual base salary as reflected in the "Fourth Addendum to Employment Agreement" (the "Fourth Addendum"); and

WHEREAS, on November 1, 2011, City Council adopted Resolution #R-72-2011 increasing the compensation of Duval based on its annual evaluation of Duval in his capacity as City Attorney; and

WHEREAS, on October 10th and 16th, 2012, pursuant to the terms of the Agreement and Loveland City Charter Section 9-1(g), City Council conducted its annual evaluation of Duval for 2012, and determined that Duval's compensation for 2013 should be increased by three and one half percent (3.5%) of Duval's current annual base salary.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO that:

Section 1. Duval's compensation for 2013 should be increased by three and one half percent (3.5%) of Duval's current annual base salary.

Section 2. Except as amended by this Resolution and the First Addendum, Second Addendum, Third Addendum and Fourth Addendum, Duval's compensation and benefits as set forth in the Agreement shall remain unchanged and in full force and effect.

Section 3. The Agreement, as amended by the First Addendum, Second Addendum, Third Addendum and Fourth Addendum is hereby reaffirmed and ratified.

Section 4. Adequate cash reserves have been and shall be placed irrevocably in the City budget to be held for any severance payment made necessary pursuant to the terms of the Agreement.

Section 5. This Resolution shall take effect on the date and at the time of its adoption.

ADOPTED this 6th day of November, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

b) Resolution #R-72-2012

RESOLUTION #R-72-2012

A RESOLUTION OF THE LOVELAND CITY COUNCIL REGARDING THE COMPENSATION OF THE CITY MANAGER

City Council
November 6, 2012
Page 4 of 12

WHEREAS, on September 14, 2010, the City of Loveland ("the City") and William D. Cahill entered into an Agreement appointing William D. Cahill ("Cahill") as Loveland's City Manager effective November 1, 2010 (the "Agreement"); and

WHEREAS, on November 1, 2011, City Council adopted Resolution #R-71-2011 increasing the compensation of Cahill based on its annual evaluation of Cahill in his capacity as City Manager; and

WHEREAS, on October 10th and 16th, 2012, pursuant to the terms of the Agreement and Loveland City Charter Section 8-1(d), City Council conducted its annual evaluation of Cahill for 2012, and determined that Cahill's compensation for 2013 should be increased by three and one half percent (3.5%) of Cahill's current annual base salary.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO that:

Section 1. Cahill's compensation for 2013 should be increased by three and one half percent (3.5%) of Cahill's current annual base salary.

Section 2. Except as amended by this Resolution, Cahill's compensation and benefits as set forth in the Agreement shall remain unchanged and in full force and effect.

Section 3. The Agreement is hereby reaffirmed and ratified.

Section 4. Adequate cash reserves have been and shall be placed irrevocably in the City budget to be held for any severance payment made necessary pursuant to the terms of the Agreement.

Section 5. This Resolution shall take effect on the date and at the time of its adoption.

ADOPTED this 6th day of November, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

6. PUBLIC WORKS

IGA – TRAFFIC SIGNAL INTERCONNECT SYSTEM

Resolution #R-73-2012

Resolution #R-72-2012 approving an Intergovernmental Agreement between the City of Loveland, Colorado and the State of Colorado, acting by and through the Colorado Department of transportation, for design and construction of a Traffic Signal Interconnect System expansion along regionally-significant corridors was approved.

RESOLUTION #R-72-2012

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION, FOR DESIGN AND CONSTRUCTION OF A TRAFFIC SIGNAL INTERCONNECT SYSTEM EXPANSION ALONG REGIONALLY-SIGNIFICANT CORRIDORS

WHEREAS, the City of Loveland desires to design and construct a traffic signal interconnect system expansion along regionally-significant corridors within the City of Loveland (the "Project"), which is to be funded, in part, by federal-aid funds administered and made available through the State of Colorado, acting by and through the Colorado Department of Transportation ("CDOT"); and

WHEREAS, federal-aid funds are available for the Project in the amount of Eight Hundred and Eighty-three Thousand Dollars (\$883,000); and

WHEREAS, the City and CDOT desire to enter into an intergovernmental agreement to define the division of responsibilities with regard to the Project; and

WHEREAS, as governmental entities in Colorado, the City and CDOT are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each.

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

Section 1. That the "State of Colorado Department of Transportation Agreement with City of Loveland," attached hereto as Exhibit A and incorporated herein by reference ("Intergovernmental Agreement"), is hereby approved.

Section 2. That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Intergovernmental Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

City Council
November 6, 2012
Page 5 of 12

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the Intergovernmental Agreement on behalf of the City.

Section 4. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 6th day of November, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

7. PUBLIC WORKS

IGA – Pass thru grant assistance for Berthoud Rural Transit

Resolution #R-74-2012

Administrative Action: Resolution #R-74-2012 approving an Intergovernmental Agreement between the City of Loveland, Colorado and the Town of Berthoud, Colorado for 2012 Rural Larimer County Transit Services was approved.

RESOLUTION #R-74-2012

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE TOWN OF BERTHOUD, COLORADO FOR 2012 RURAL LARIMER COUNTY TRANSIT SERVICES

WHEREAS, in 2012, the City of Loveland became the designated recipient of federal funds made available by the Federal Transit Administration to support public transportations in rural areas ("5311 Funds"); and

WHEREAS, the City of Loveland and the Town of Berthoud desire to cooperate with one another to use the 5311 Funds made available to Loveland to support public transportation services provided by Berthoud to rural residents who reside within a designated area of Larimer County; and

WHEREAS, as governmental entities in Colorado, the City and Berthoud are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each.

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

Section 1. That the Intergovernmental Agreement for 2012 Rural Larimer County Transit Services, attached hereto as Exhibit A and incorporated herein by reference ("Intergovernmental Agreement"), is hereby approved.

Section 2. That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Intergovernmental Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the Intergovernmental Agreement on behalf of the City.

Section 4. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 6th day of November, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

8. PUBLIC WORKS

Agricultural Farming Lease

Resolution #R-75-2012

Administrative Action: Resolution #R-75-2012 approving an Agricultural Farming Lease with Dennis Orback for real property owned by the City of Loveland near the intersection of State Highway 402 and Interstate 25 was approved.

RESOLUTION #R-75-2012

A RESOLUTION APPROVING AN AGRICULTURAL FARMING LEASE WITH DENNIS ORBACK FOR REAL PROPERTY OWNED BY THE CITY OF LOVELAND NEAR THE INTERSECTION OF STATE HIGHWAY 402 AND INTERSTATE 25

WHEREAS, the City of Loveland is the owner of certain real property located within the City of Loveland near the intersection of State Highway 402 and Interstate 25 and legally described as set forth in Exhibit A to the attached Agricultural Farming Lease ("Property"); and

City Council
November 6, 2012
Page 6 of 12

WHEREAS, Dennis Orback desires to lease the Property from the City for the purposes of agricultural farming; and
WHEREAS, the City Council desires to lease the Property to Mr. Orback on the terms and conditions set forth in the Agricultural Farming Lease.

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

Section 1. That the Agricultural Farming Lease, attached hereto as Exhibit A and incorporated herein by reference ("Lease"), is hereby approved.

Section 2. That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Lease in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the Lease on behalf of the City.

Section 4. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 6th day of November, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

9. AIRPORT

Supplemental Appropriation & Authorization for Grant Agreement

a) Resolution #R-76-2012 Administrative Action: Resolution #R-76-2012 authorizing the City Manager to execute a grant agreement with the State of Colorado Division of Aeronautics (CDAG #13-FNL-S01) for equipment, improvements and funding pertaining to the Fort Collins-Loveland Municipal Airport was approved.

RESOLUTION #R-76-2012

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A GRANT AGREEMENT WITH THE STATE OF COLORADO DIVISION OF AERONAUTICS (CDAG #13-FNL-S01) FOR EQUIPMENT, IMPROVEMENTS AND FUNDING PERTAINING TO THE FORT COLLINS-LOVELAND MUNICIPAL AIRPORT

WHEREAS, the General Assembly of the State of Colorado has declared in Title 43 of the Colorado Revised Statutes, Article 10, 1991 in C.R.S. 43-10-101 ("the Act") that: "...there exists a need to promote the safe operation and accessibility of general aviation and intrastate commercial aviation in this state; that improvement of general aviation and intrastate commercial aviation transportation facilities will promote diversified economic development across the state; and that accessibility to airport facilities for residents of this state is crucial in the event of a medical or other type of emergency"; and

WHEREAS, the Act created the Colorado Aeronautical Board ("the Board") to establish policy and procedures for distribution of monies in the Aviation Fund and created the Division of Aeronautics ("the Division") to carry out the directives of the Board, including technical and planning assistance to airports and the administration of the state aviation system grant program. (See C.R.S. §43-10-103, C.R.S. §43-10-105, and C.R.S. §43-10-108.5 of the Act); and

WHEREAS, any entity operating a public-accessible airport in the state may file an application for and be a recipient of a grant to be used solely for aviation purposes (an "Application"); and

WHEREAS, The Division is authorized to assist such airports as request assistance by means of a Resolution passed by the applicant's duly-authorized governing body, which understands that all funds shall be used exclusively for aviation purposes and that it will comply with all grant procedures and requirements as defined in the Division's Grant program Project Management Manual, revised 2009 ("the Manual"); and

WHEREAS, the City of Fort Collins and the City of Loveland ("the Cities") own and operate in the State the Fort Collins-Loveland Municipal Airport ("the Airport"); and

WHEREAS, the Cities have applied for a grant (CDAG #13-FNL-S01) attached hereto as Exhibit A and incorporated by reference (the "Grant Agreement"), from the Division which provides additional funding for such Airport projects of nine thousand dollars (\$9,000.00), subject to the Cities providing matching funds of nine thousand dollars (\$9,000.00).

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

Section 1. That the Council of the City of Loveland ("the Council"), as one of the duly authorized governing bodies of the grant applicant, hereby formally requests assistance from the Colorado Aeronautical Board and the Division of Aeronautics in the form of a state aviation system grant. The City of Loveland states that such grant shall be used solely for aviation purposes, as determined by the State, and as generally described in the Application.

Section 2. That the City of Loveland makes the commitment (a) to keep the Airport facility accessible to, and open to, the public during the entire useful life of the grant funded improvements/equipment; or (b) to reimburse the Division for any unexpired useful life of the improvements/equipment on a pro-rata basis. By signing the Grant Agreement, the City of Loveland further commits to keep open and accessible for public use all grant funded facilities, improvements and services for their useful life, as determined by the Division and stated in the Grant Agreement.

Section 3. That the Council hereby designates Jason Licon, Airport Director, as the Project Director, as described in the Manual, and authorizes the Project Director to act in all matters relating to the work project proposed in the Application in its behalf, and further authorizes the City Manager to execute the Grant Agreement with such modifications in form or substance as the City Manager, in consultation with the City Attorney's Office, may deem necessary to effectuate the purposes of this resolution or to protect the interests of the City.

Section 4. That the City of Loveland has appropriated or will appropriate or otherwise make available in a timely manner its share of all funds that are required to be provided by the Cities under the terms and conditions of the Grant Agreement.

Section 5. That the City of Loveland, subject to the foregoing, hereby accepts all guidelines, procedures, standards, and requirements described in the Manual as applicable to the performance of the grant work and hereby approves the Grant Agreement submitted by the State, including all terms and conditions contained therein.

Section 6. That this Resolution shall be effective as of the date and time of its adoption.

ADOPTED this 6th day of November, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

b) 1st Rdg Ord & P.H.

Administrative Action: A public hearing was held and "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 FT. COLLINS-LOVELAND MUNICIPAL AIRPORT BUDGET FOR THE PURCHASE OF SNOW REMOVAL EQUIPMENT" was approved and ordered published on first reading.

10. FINANCE

Supplemental Appropriation Finalize 2012 City Budget

1st Rdg Ord & P.H.

Administrative Action: A public hearing was held and "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET" was approved and ordered published on first reading.

11. FINANCE

Supplemental Appropriation 2012 Special Improvement District #1

1st Rdg Ord & P.H.

Administrative Action: A public hearing was held and "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 2012 BUDGET AND AUTHORIZING DISTRICT BOND PREPAYMENT" and approved and ordered published on first reading.

At 6:17 p.m. the City Council adjourned and convened as the Board of Commissioners for the Loveland Urban Renewal Authority (LURA)

12. FINANCE

Supplemental Appropriation Loveland Urban Renewal Authority

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1st Rdg Ord & P.H.

Administrative Action: A public hearing was held and "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 BUDGET FOR THE LOVELAND URBAN RENEWAL AUTHORITY" was approved and ordered published on first reading.

At 6:17 p.m. the Board of Commissioners for the Loveland Urban Renewal Authority adjourned and convened as the Board of Directors for the Loveland General Improvement District #1 (GID)

13. FINANCE

Supplemental Appropriation General Improvement District #1

1st Rdg Ord & P.H.

Administrative Action: A public hearing was held and "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 LOVELAND GENERAL IMPROVEMENT DISTRICT #1 BUDGET FOR DOWNTOWN PARKING IMPROVEMENTS" was approved and ordered published on first reading.

At 6:17 p.m. the Board of Directors for the Loveland General Improvement District #1 adjourned and reconvened as City Council.

14. HUMAN RESOURCES

2013 Pay Plan Amendment – Police Department Step Plan

1st Rdg Ord & P.H.

Administrative Action: A public hearing was held and "AN ORDINANCE AMENDING ORDINANCE 5709 TO REMOVE FROM THE 2013 PAY PLAN AND ADOPT A REVISED POLICE DEPARTMENT STEP PLAN FOR NINE (9) DESIGNATED POLICE DEPARTMENT POSITIONS" was approved and ordered published on first reading.

15. WATER & POWER

Municipal Code Amendment – Water Rights for Service Outside City Limits

1st Rdg Ord & P.H.

Legislative Action: A public hearing was held and "AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT SECTION 19.04.023 REGARDING WATER RIGHTS FOR SERVICE OUTSIDE THE CITY LIMITS" was approved and ordered published on first reading.

16. CITY MANAGER

Amend City of Loveland Investment Policy

1st Rdg Ord. & P.H.

This item was removed from the consent agenda.

CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.

CITY COUNCIL

a) Citizens' Reports

Brian Uhlenbrock, 245 W. 8th spoke to Council regarding a broken water main that he believes caused damage to a porch on his property. Council referred this matter to the City Manager who directed staff to review and resolve and provide an update to Council.

b) Business from Council

Trenary

Councilor Trenary encouraged citizens to apply for a position one of the City's Boards and Commissions. He announced the next Larimer County Workforce Center Employers' Roundtable will be at the Police Institute on November 9th and the topic is "A General Overview of Employer law". The 6th Annual Northern Colorado Veterans Stand

Down will be held Friday, November 9th, 2012 from 9:00 AM – 1:00 PM at Catholic Charities Northern-The Mission at 460 Linden Center Drive, Fort Collins. Information and many services will be available to assistance veterans. This Friday is “A Night on the Town” event in downtown Loveland. On Saturday, Councilor Trenary is attending his high school alma mater and taking swing dance lessons. Sunday is Veteran’s Day in Loveland with many activities throughout the day. Pathways Hospice, 305 Carpenter Rd, Fort Collins, is hosting a Veterans Day Ceremony on November 12th from 3-4 pm.

Shaffer Councilor Shaffer attended the McKee Medical Center Foundation – Gatsby Gala at the Embassy Suites in Loveland on November 3rd. Proceeds help fund the Stepping Stone Adult Day program. She participated, on Friday, in the interview process for the Executive Director for the North Front Range Metropolitan Planning District. “Fall into Jewels”, the sixth annual jewelry benefit for House of Neighborly Service, is Thursday, Nov. 8, at Fountains of Loveland (La Quinta), 1480 Cascade Avenue from 5:30-8:30 p.m.

Fogle Councilor Fogle mentioned the Loveland Historical Society now has a representative serving on the Historic Preservation Commission. He also attended the McKee Medical Center Foundation Gala event. The Rotary Club had a used/recycled art auction benefitting Stepping Stones.

Farley Councilor Farley mentioned a new show is opening this weekend at the Museum, called “Dave Yust 40+ Years of Printmaking: A Retrospective”. A presentation and book signing by Loveland author, David Jessup, for his book “Mariano’s Crossing”, will be at the Library (Gertrude Scott Room) on Friday, November 9th.

Gutierrez Mayor Gutierrez mentioned Group Publishing gave out \$61,000 dollars to 28 organizations this past month. The Mayor gave out the award to Habitat for Humanity Construction and Geometry Class at Loveland High School. He mentioned he attended CSU’s Everett School of Real Estate forum last week. The First Annual Loveland Homeless Connect was held on November 2nd at Truscott Elementary. This event was a one-stop shop for the homeless or near homeless in the community and offered housing services, eye exams, medical screenings, bike repair, haircuts and more. The Mayor thanked Leah Johnson, Alison Hade and Glorie Magrum for their work on this event. He mentioned the Loveland High School Crimson Regiment Band took the bronze medal at the state championships.

c) City Manager Report None

d) City Attorney Report None

PROCEDURAL INFORMATION

Anyone who wishes to address the Council on any item on this part of the agenda may do so when the Mayor calls for public comment. All public hearings are conducted in accordance with Council Policy. When Council is considering adoption of an ordinance on first reading, Loveland’s Charter only requires that a majority of the Council present vote in favor of the ordinance for it to be adopted on first reading. However, when an ordinance is being considered on second or final reading, at least five of the nine members of Council must vote in favor of the ordinance for it to become law.

REGULAR AGENDA

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

16. CITY MANAGER

Amend City of Loveland Investment Policy

1st Rdg Ord. & P.H.

Legislative Action: Executive Fiscal Advisor Alan Krcmarik introduced this item to Council. This is a legislative action to adopt an ordinance on first reading that will provide for more discretion in the management of the City's investment portfolio. The proposed ordinance implements a change to the City's Investment Policy Section VIII regarding prohibited investments. The specific provisions currently in place provide that investments that fall in a credit rating below the required level for acquisition are to be sold as soon as practical. The proposed change allows the City to conduct analysis of the downgraded investment to determine the risk of default prior to maturity and sets up a procedure to allow downgraded securities to be held to maturity or to a more profitable time. The purpose is to reduce realized losses to the City's portfolio. The impetus for the policy change is a series of downgrades by rating agencies of securities issued by highly rated banks and financial institutions. All corporate securities held by the City are high quality investment grade. The Mayor opened the public hearing 7:17 pm and hearing no comments closed the meeting at 7:17 pm. Councilor Shaffer moved to approve and ordered published on first reading "AN ORDINANCE AMENDING THE CITY OF LOVELAND INVESTMENT POLICY". Councilor Trenary seconded the motion and a roll call vote was held with all Councilors present voting in favor thereof.

17. DEVELOPMENT SERVICES

Amend Mirasol Community General Development Plan

Ordinance #5719

Councilor Fogle recused himself from hearing this item because his wife is an employee of Mirasol.

Quasi-judicial Action: This is a quasi-judicial action to consider an ordinance on second reading that would amend the density, maximum number of units and off-street parking ratios established in the Mirasol Community General Development Plan. The Mirasol PUD consists of 24 acres located south of 4th Street SE, east of S. Madison Avenue and west of S. St. Louis Avenue. The applicant is the Housing Authority of the City of Loveland. Councilor Shaffer move to approve and ordered published on second reading "AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR PROPERTY LOCATED IN THE "MIRASOL FIRST SUBDIVISION" TO THE CITY OF LOVELAND, LARIMER COUNTY, COLORADO", subject to the Planning Commission conditions set forth in Section III of the City Council staff memorandum dated October 16, 2012. Councilor Farley seconded the motion and a roll call vote was taken with all Councilors present voting to approve.

Conditions (Section II of the City Staff Memo dated October 16, 2012)

Transportation Development Review

1. Prior to the issuance of any building permit within Lots 1 and 2, Block 2 of the Mirasol Second Subdivision, pursuant to the provisions in Section 16.40.010.B of the Loveland Municipal code, the Developer shall design and construct the ultimate adjacent improvements to Saint Louis Avenue, unless designed and constructed by others.
2. All public improvements shall comply with the Larimer County Urban Area Street Standards (LCUASS).

Water/Wastewater

3. St. Louis Avenue Improvements; Prior to issuance of any building permits within Block 2, Lot 1 of the Property, the Developer shall install that portion of the 24-inch waterline located in South St. Louis Avenue.

18. WATER & POWER

IGA – High Park Fire Reclamation Work

Resolution #R-77-2012

Administrative Action: Larry Howard with the Water & Power Department introduced this item. This is an administrative action to adopt a resolution approving an intergovernmental agreement with Greeley to share in the cost of reclamation work along Buckhorn Creek, which is tributary to the Big Thompson River, necessitated by damage resulting from the High Park Fire this summer. This work benefits Loveland's residents by protecting river flows and reservoirs within the city from potentially high levels of ash filled "black water" pollution as a result of runoff and erosion in the burn area. The work does not serve to protect the city's sources of drinking water from the Big Thompson River, which fortunately were not affected by the High Park Fire. Councilor Shaffer moved to approve Resolution #R-77-2012 approving an Intergovernmental Agreement between the City of Loveland, Colorado and the City of Greeley, Colorado for High Park fire reclamation work on Buckhorn Creek. Councilor McKean seconded the motion and a roll call vote was taken with all Councilors present voting to approve.

RESOLUTION #R-77-2012

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE CITY OF GREELEY, COLORADO FOR HIGH PARK FIRE RECLAMATION WORK ON BUCKHORN CREEK

WHEREAS, the City of Greeley entered into a contract with Western States Reclamation for reclamation work along areas of Buckhorn Creek affected by the High Park Fire; and

WHEREAS, the reclamation work performed by Western States Reclamation was necessary to protect Greeley's water sources from pollution caused by the fire and fire-related runoff, and to protect the Big Thompson River from ash-filled "black water" flows; and

WHEREAS, although Loveland's water source on the Big Thompson River is not affected by the High Park Fire because Loveland's diversion point is above the Big Thompson River's confluence with Buckhorn Creek, Loveland nevertheless benefited from the reclamation work because Greeley stores some of its water diverted from this area in reservoirs located within Loveland, and the Big Thompson River flows through Loveland; and

WHEREAS, Loveland desires to acknowledge this benefit by reimbursing Greeley a portion of the total cost of the reclamation work; and

WHEREAS, as governmental entities in Colorado, Loveland and Greeley are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each.

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

Section 1. That the Intergovernmental Agreement, attached hereto as Exhibit A and incorporated herein by reference, is hereby approved.

Section 2. That the Mayor and the City Manager are hereby authorized, following consultation with the City Attorney, to modify the Intergovernmental Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 3. That the Mayor, the City Manager, and the City Clerk are hereby authorized and directed to execute the Intergovernmental Agreement on behalf of the City.

Section 4. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 6th day of November, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

Items 19 and 20 were not heard.

19. FINANCE

September 2012 Financial Report

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Information Only

The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves year to date, ending September 30, 2012.

20. CITY MANAGER

Investment Report for September 2012

Information Only

The budget estimate for investment earnings for 2012 is \$2,729,560. Through September 2012, the amount posted to the investment account is \$2,087,650 including realized gains. Actual year-to-date earnings are higher than the year-to-date projection by \$36,838. Based on the August monthly statement, the estimated annualized yield on the U.S. agencies and corporates was to 1.27%, well under the annual target rate of 1.7% for 2012. Reinvestment rates are still near record low levels, much lower than the budget projection.

ADJOURNMENT

Having no further business to come before Council, the November 6, 2012 Regular Meeting was adjourned at 8:02 p.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

**CITY OF LOVELAND**
CITY MANAGER'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 15
MEETING DATE: 11/20/2012
TO: City Council
FROM: Alan Krcmarik, Executive Fiscal Advisor
PRESENTER: Alan Krcmarik

TITLE:

A Resolution adopting a new schedule of Capital Expansion Fees pursuant to Section 16.38.020.E of the Loveland Municipal Code effective January 1, 2013

RECOMMENDED CITY COUNCIL ACTION: The Resolution adopts a capital expansion fee (CEF) schedule labeled Exhibit A that includes fees based on the results of the updated study with a modification to reduce CEFs for multi-family housing. At the study session, some Council members requested additional adjustments. Three amendments to the CEF fee schedule set forth on Exhibit A have been prepared to address these requests. Amendment #1 includes revisions to fees for Parks, Recreation, Opens Lands and Trails (to adopt the lesser of the current fee or the fee indicated by the fee study). Amendment #2 includes a proposed increase in commercial rates equal to 40% of the increase indicated by the fee study. Amendment #3 includes a proposed increase in the industrial rates equal to 40% of the increase indicated by the fee study.

OPTIONS:

1. Adopt the resolution as recommended or adopt the resolution as modified by Amendment #1, #2, and/or #3 (specify in the motions)
 2. Deny the action
 3. Refer back to staff for further development and consideration
 4. Adopt a motion continuing the item to a future Council meeting
-

DESCRIPTION: This is an administrative action to consider a resolution adopting a new schedule of CEFs. Throughout this year, City staff members have conducted the five year review of the capital expansion fees. The staff has prepared a resolution that adopts a new CEF fee schedule at rates indicated by the fee study. The resolution provides for modest increases in the fees for single family houses, reduced fees for multi-family housing projects, and increases for commercial and industrial projects. Three amendments to the recommended fee schedule are included to address additional adjustments requested by Council members in the recent Study Session.

BUDGET IMPACT:

- ☒ Positive
☐ Negative
☐ Neutral or negligible

Proceeds from the CEFs provide funding for capital improvements. For purposes of preparing the 2013 Budget, the Budget Office staff has assumed that the CEFs will be continued into the future. The update process indicates that CEFs should be increased to meet the policy of growth paying for its share of capital costs. Most of the fee recommendations indicate higher fees. Depending on the Council's actions regarding three optional amendments to the CEF fee schedule, some fees may be lower and generate less revenue.

SUMMARY: The five year update of CEFs called for by Municipal Code section 16.38.020.E has been conducted throughout the year. During the study sessions regarding CEFs held on March 27, July 10, August 28, and September 25, 2012, Council has been provided with information about; (1) the history and methods of the program, (2) fee history, (3) comparison with other jurisdictions, (4) levels of service, (5) the updated calculation of fees, (6) some options to adjust Multi-family CEFs, (7) discussion of the annual adjustment for inflation, and finally (8) some methods to meet the operating and maintenance costs of growth. In the briefing memorandum, staff reiterates the fee levels derived from the fee update process and provides answers to some of the remaining questions that Council asked at the prior meetings. The update indicated by the fee study calls for increases in the Commercial and Industrial fees, due to growth in these sectors since the last five-year update, an increase in the single family fees, and a decrease in the multi-family fees. Additional amendments are presented in response to some of the Council questions at the September 25th study session.

Following Council direction at the September 25th study session, management and staff have begun the process to update master plans for all of the CEFs. The master plans are expected to be completed by the end of 2013 and will be available to provide another major update of the CEFs in 2014. The 2014 update would include the ability to use capital projects identified in the master plans and consider other models of cost allocation. Results of the update in 2014 would form the basis for fees to be implemented in 2015.

REVIEWED BY CITY MANAGER:


LIST OF ATTACHMENTS:

1. Updated Briefing Memorandum
2. Updated CEF PowerPoint Slides
3. Resolution with Exhibit A (new CEF fee schedule as indicated by the fee study)

4. Amendment #1 to Exhibit A - setting Parks and Opens Lands Fees at the lesser of the current fee or the fee indicated by the fee study
5. Amendment #2 to Exhibit A - reducing the adjustment in the Commercial fee to 40% of the increase indicated by the fee study
6. Amendment #3 to Exhibit A - reducing the adjustment in the Industrial fee to 40% of the increase indicated by the fee study



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CAPITAL EXPANSION FEE BRIEFING MEMORANDUM

TO: City Council
MEETING DATE November 20, 2012 updated from the September 25, 2012 Study Session
FROM: Alan Krcmarik, Executive Fiscal Advisor
SUBJECT: Capital Expansion Fee Proposed Levels and Responses to Questions

ISSUE FOR COUNCIL ACTION

Throughout the year, staff has been working on the five-year update of the Capital Expansion Fees. In the intervening years, the municipal code provides for annual inflationary increases. The update has been reviewed by Council at four study sessions. Presentations have also been made to the Construction Advisory Board and the Planning Commission. Additional input was sought at two scheduled open house meetings on September 21 and 24. On September 25, Council reviewed the proposed fee levels and requested a few options: 1) setting the 2013 CEFs for Parks, Recreation, Trails and Open Lands at the lower of the current fees and the fees indicated by the update study; 2) setting the CEFs for commercial projects lower than indicated by the update study; and 3) setting the CEFs for industrial projects lower than the update study. The basic resolution provided for the Council incorporates the levels from the update. Three amendments have been prepared to implement the three options listed above. The CEFs for Streets are still going through the review process that was presented to Council on September 25th.

Based on Council discussion at the September 25th study session, management and staff have begun the process to update master plans for all of the CEFs. The master plans are expected to be completed by the end of 2013 and will be available to provide another major update of the CEFs in 2014. The 2014 update would include the ability to use capital projects identified in the master plans and consider other models of cost allocation.

Comparisons to other Cities

During the course of the five-year update, Council has requested a great deal of information regarding fees in other communities. There are many inherent difficulties in making such comparisons. Each city has its own traditions, values, revenue sources, and varying service levels. Staff has attempted in the PowerPoint presentation to provide some additional information on this topic.

Loveland's approach, since 1984, is to try to keep property and sales taxes low and rely upon fees related to the impacts of growth to, in effect, have "growth pay for growth" or to have growth pay for its proportionate share of the impacts of growth. Most people would agree that this approach has provided a steady revenue source for a portion of the capital projects that the City has built in the last 25 years. The residents and customers of Loveland have seen tremendous growth and also received the benefits and services that have been supported by the capital projects built with capital expansions fees combined with other revenue from taxes and fees. The system has delivered many projects that support

essential services, educational facilities like the library and museum, and parks, recreational facilities, trails, and open lands preservation. All of these fit into the City's vision and comprehensive plan.

Proposed Fees

Based on the fee setting process, the fees in the following tables represent staff's proposal for the capital expansion fees. Street capital expansion fees are only estimates based on preliminary information. The Public Works Department made a separate presentation regarding the Street CEFs at the September 25 study session.

Residential	Single Family 2012 Fee Amount	Proposed 2013	Multi-family 2012 Fee Amount	Proposed 2013
Fire and Rescue	\$ 736	\$ 888	\$ 736	\$ 617
Law Enforcement	957	874	957	608
General Government	1,052	1,083	1,052	753
Library	681	722	681	502
Cultural Services / Museum	549	602	549	419
Parks	3,351	3,528	3,351	2,452
Recreation	1,679	1,572	1,679	1,092
Trails	532	527	532	366
Open Lands	824	884	824	614
Streets	<u>2,170</u>	<u>2,279</u>	<u>1,508</u>	<u>1,583</u>
Total	\$ 12,531	\$12,959	\$ 11,869	\$ 9,006

Commercial (charged per sq. ft.)	2012 Fee Level	2013 Proposed
Fire and Rescue	\$ 0.31	\$ 0.61
Law Enforcement	0.40	0.60
General Government	<u>0.44</u>	<u>0.74</u>
Total	\$ 1.15	\$ 1.95
Streets are based on the use in the Structure being built. For 2013, the estimate is for a 5% increase.		

Industrial (charged per sq. ft.)	2012 Fee Level	2013 Proposed
Fire and Rescue	\$ 0.03	\$ 0.08
Law Enforcement	0.05	0.08
General Government	<u>0.06</u>	<u>0.10</u>
Total	\$ 0.14	\$ 0.26
Streets are based on the use in the Structure being built. For 2013, the estimate is for a 5% increase.		

Questions from Prior Meetings with Answers

- 1. How does the cost of developing/living in Loveland compare to other cities when you take into account the higher mill levies for library, fire, metro districts and higher sales tax? Is it possible that the final consumer, the home owner or business owner is paying more in other cities that have lower impact fees on construction projects than Loveland?** Mayor Gutierrez

As staff has responded in the past, each city or town has its own system of fees and taxes and matches its revenue to a different bundle of services. Loveland is a full service city and does not use special financing districts as much as others in the region.

Staff will present data from other communities to answer this question using the single family comparison. The answer depends on where the project is located. Special financing districts make a big difference; especially some recently formed metropolitan districts.

- 2. Would like to see the rankings presented on August 28 adjusted for the proposed increases, and the downward adjustment for multi-family.** Council member Fogle

We have updated the rankings: Please refer to the PowerPoint slides.

Single family increased by \$428 per unit. This did not affect the Loveland ranking.

Multi-family decreased by \$3,137 per unit. This lowered Loveland in the rankings from second highest to third highest.

Retail increased by \$96,231 (96.2 cents per square foot). This moved Loveland up one place, from fourth to third in the rankings.

Office increased by \$86,230 (86.2 cents per square foot). This moved Loveland to 6th place out of 13. It was ranked at 9th.

Industrial increased by \$14,636 (14.6 cents per square foot). This moved Loveland to tenth place in the rankings, up from 12th.

3. **The CEFs, according to current municipal code, are to be adjusted each year according to changes in the Engineering News Record (ENR) Construction Cost Index (CCI) using the September reading of the index. Over the years, this method has resulted in some volatility in the annual adjustments. Council would like to see what would happen in the index were smoothed by using a moving average.**

For the Denver region, the ENR September CCI reported value was 1.68%. If this were an inflationary increase year, this is the number that would be used to adjust the fees for 2013. 2012 is the five year update, so the fees are adjusted for the shifts in the land use categories and the updated replacement values of buildings, vehicles, fixtures, etc.

Since January of 2000, the average of the monthly observations is 3.70%

Smoothing the CCI index over the last 12 months provides an inflation adjustment of 4.53%.
 Smoothing the CCI index over the last 24 months provides an inflation adjustment of 6.64%.
 Smoothing the CCI index over the last 30 months provides an inflation adjustment of 5.59%.
 Smoothing the CCI index over the last 36 months provides an inflation adjustment of 5.62%.
 Smoothing the CCI index over the last 48 months provides an inflation adjustment of 4.69%.
 Smoothing the CCI index over the last 60 months provides an inflation adjustment of 4.01%.

Many other jurisdictions use the 24 month term for smoothing out volatility. The City of Loveland has used the two-year smoothing for CCI for street construction projects. If a smoothing factor were to be the interest of a majority of Council, the factor would be inserted into to municipal code and applied to the Loveland fees at budget adoption.

Consultants in the impact fee field suggest than the term should not be longer than three years because significant turns in market prices are missed and fees should be updated periodically.

4. **What are the components that make up the RSMeans inflation index?** Council member McKean

The RSMeans Construction Cost Index is a proprietary system of project cost information and periodic adjustments. Their system relies on subcomponents for Materials, Installation/Labor, and Hourly Labor Rates. The sales representative and the technical services section would not provide additional detail.

The web-site claims that they update their data base on recently completed projects in Canada and across the United States. The firm tracks data in over 300 markets. In Colorado, they track Denver, Colorado Springs, Grand Junction, Pueblo, Greeley, and Fort Collins. Based on a subscription, they provide data to their customers and can help develop special cost estimates for specific types of projects.

5. Would like to see the fee levels for each fee category year to year. Council member Fogle

In the table below, single family residential fees are tracked back to 2007.

Fee Category	2007	2007 May 1	2008	2009	2010	2011 1 st Half	2011 2 nd Half	2012 Current
Fire	\$ 502	\$ 641	\$ 666	\$ 696	\$ 678	\$ 678	\$ 736	\$ 736
Law	590	833	865	904	881	881	957	957
General Govt	679	916	952	995	968	968	1,052	1,052
Library	539	593	616	644	627	627	681	681
Cultural	359	478	497	519	505	505	549	549
Parks	2,454	2,918	3,032	3,168	3,085	3,085	3,351	3,351
Recreation	1,128	1,462	1,519	1,587	1,546	1,546	1,679	1,679
Trails	406	463	481	503	489	489	532	532
Open Lands	662	736	765	799	778	778	824	824
Streets SF	2,984	2,045	2,045	2,170	2,170	2,170	2,170	2,170
Streets MF	1,940	1,436	1,436	1,508	1,508	1,508	1,508	1,508
Total using SF	\$10,303	\$11,085	\$11,438	\$11,985	\$11,727	\$11,727	\$12,531	\$12,531

Some of the data in this table for the Library and Cultural were transposed. Revisions to the table since the September 25th study session are shown in green and are highlighted.

From this data, 2012 total fees (including the Streets single family) are 21.6% higher than the levels at the beginning of 2006 which were extended to May 2007.

The cumulative increase in the Construction Cost Index for the period (2006 to 2012) was 23.36%. Adding the recent increase (September 2012) in the Construction Cost Index provides a corresponding growth factor of 25.45%.

Individual fees have risen higher than the percentage change in the CCI over the period. This is due to additional improvements that have non-CEF sources included in the total project cost coming on line in the years since the last update. Also, the cost of replacing certain facilities has risen more than the CCI. Replacement costs estimates are provided by the Facilities Management Division.

6. **Would like to compare the actual annual fee increase for the past five or so years and the inflation Engineering News Record Denver Construction Cost Index.** Council member Fogle

Construction Cost Index

September Year to Year	Percent Change	Effective Date of Fee Change	Percentage Fee Change	Comment
2006/2005	3.41%	May 1, 2007	7.57%	5 year update Partial Increase
2007/2006	1.39%	Jan. 1, 2008	3.90%	Adjustment for Partial increase in 2007
2008/2007	4.50%	Jan. 1, 2009	4.50%	
2009/2008	-2.63%	Jan. 1, 2010	-2.63%	
2010/2009	8.62%	July 1, 2011	8.62%	Delay of 6 months
2011/2010	7.79%	Jan. 1, 2012	No change	Suspend increase
2012/2011	1.68%			Will not be used because of the five year update

7. **How much in CEF revenue collections did the City forego or lose by not increasing for inflation in the first 10 years and other years in which the adjustment was not made?** Council member Klassen

In the first ten years of the Capital Expansion Fee program, annual adjustments for inflation were not made. In six of the remaining 19, years since 1994, an annual adjustment was not made or was delayed.

After adjusting the CEF revenue collections for each of the years and adding in interest on the revenue not collected, it was determined that \$5,405,600 was not received by the CEF program. In 2012, this amount would earn (at 1.3%) about another \$70,270 of interest. The CEF collections year-to-date in 2012 would have been about \$271,000 higher (from the CCI adjustment of 7.79%).

Summing all of these together provides a total of \$5,746,870 of fees and interest.

- 8. Discussion with Council at the September 25 study session included the topic of the ability to set the fees at a level lower than the levels indicated by the fee setting methodology and risk that the City may be exposed to if it set fees lower than determined by the fee update process.**

Council could not set the fees higher than the levels determined in the update process. The Council does have the ability to set the fees lower. In each of the fee updates completed over the years, the reports contain the following statements:

“The resulting updated CEFs calculated . . . reflect Loveland’s investment in its infrastructure. It is recognized, however, that the City may choose not to adopt fees as high as the maximum defensible amounts set forth in this report. Moreover, the City may decide to further reduce fees for certain “fiscally beneficial” land use categories or for individual projects which generate more public sector revenue than service provision costs. A similar adjustment could be made to promote affordable housing in Loveland, or other land uses which are consistent with good public policy.

In our [BBC Research and Consulting] judgment, such modifications to the updated CEFs developed in this [the 1998 report] are acceptable as long as the City maintains the integrity of the system by “reimbursing itself for capital” via transfers from the General Fund to the various CEF holding accounts.”

The City has been following this advice provided by the consultant in the update processes completed over the years.

If the City Council decides to set the fees at a level lower than the update study indicates and not reimburse the CEF accounts for the lower revenues caused by the lower fees, a deficit or unfunded liability would develop and the City would have the responsibility of making up the difference from tax or other sources when the next scheduled project is built. The cost would be borne by the General Fund or the projects would be scaled back to available revenue.

9. Based on the collections of CEFs since their inception in 1983, beginning with collections in 1984, what is the proportionate share of revenue for each of the fees?

The CEF revenue collections over the years since 1984 through mid-September 2012 have been:

Fire & Rescue	\$ 8,397,916	7.31%
Law Enforcement	4,921,850	4.28%
General Government	11,256,387	9.80%
Library	4,116,198	3.58%
Cultural Services / Museum	3,209,683	2.79%
Parks	21,350,151	18.58%
Recreation	9,182,655	7.99%
Trails	1,576,939	1.37%
Open Lands	1,902,550	1.66%
Streets	48,980,328	42.63%

When these shares of the total fee revenue were discussed by the Council, focus was on the Parks, Recreation, Trails, and Open Lands fees. The Parks and Recreation Commission reviewed the Council-Staff discussion at its October meeting. Parks and Recreation Director Gary Havener provided a summary of the Commission's views.

10. The combined fees for industrial are proposed to rise from 14 cents to 26 cents per square foot. The combined fees for commercial property are proposed rise from \$1.15 to \$1.95. What explains these large increases?

There are two major drivers in the five-year update process: 1) the replacement value of the assets for the service for which the CEF is collected for; and 2) the proportion of each of the land use categories compared to their combined total.

Since the last five year update, the land use (Residential, Commercial, and Industrial) proportions have changed with Residential decreasing significantly, commercial rising significantly, and industrial remaining about the same.

	<u>2007</u>	<u>2012</u>	
Residential	82.00%	76.87%	A decrease of 6.26%
Commercial	15.75%	20.98%	An increase of 33.2%
Industrial	2.25%	2.13%	A decrease of 5.3%

The City has CEFs for Industrial and Commercial projects for Fire & Rescue, Law Enforcement, General Government and Streets. The shift in the land use proportions above increases the fees for Commercial projects by 33% for Fire & Rescue, Law Enforcement

The capital investment for each of these fees categories since the last five-year update added replacement value

To provide some additional historical context, staff looked back to the fee levels for industrial and commercial projects. In 1998, the per-square-foot fee on Industrial projects was 86 cents. Over time, as the proportionate share of industrial property to the total of the three land use categories changed, the industrial fee dropped all the way down to 12 cents per square foot in 2007.

The Commercial CEF was 97 cents in 1998 and decreased to 93 cents by 2007 and subsequently rose back up to \$1.15 by 2011. With the large shift in the proportion of valuation from 15.75% to 20.98% since the last five-year update, the methods and math determine the fee to be \$1.95.

11. If the Council were to take the lower of the current fees and proposed fees for Parks, Recreation, Open Lands, and Trails, how would the 10 year capital improvement plans for these fee categories be affected?

A summary of Budget Director John Hartman's response to this question is provided immediately below.

After Mr. Hartman's Executive Summary, Director Gary Havener's summary of the Parks and Recreation Commission meeting is provided.

Executive Summary

Forecasting revenue from Capital Expansion Fees (CEF) for a Capital Program is difficult because of the number of variables, most of which cannot be controlled, involved in the revenue generation. Fee rates do not appear to be a dominant variable in forecasting revenue available for capital. The forecast is more dependent on the amount and type of construction (volume).

Reducing fees will always result in lower revenue compared to a current standard when the volumes are held constant, or at least move the same amount over time. However this serves more as a comparison of opportunity cost than of projected revenue. The current Capital Program approved as part of the 2013 Budget used a conservative revenue forecast. **Based on two projection models, there will be minimal impacts to the Capital Program related to the proposed fee decreases. [Emphasis added.]**

If building levels remain at the current levels being experienced, modest adjustments in the Parks CEF and Open Space CEF programs from what is currently planned will have to made. Should the growth in construction industry increase closer to the norm the City has experienced, there is a good chance more resources for capital projects will be available than currently planned, especially if in the residential sector the ratio of single family units to multi-family units increases, from the historical 60/40 ratio.

The analysis reinforces the budgeting methodology currently being used that requires projected fund balance to be available, rather than on current year revenue, for the ability to place a project in the Capital Program.

Gary Havener's summary of the Parks and Recreation Commission discussion

During the October 11th Parks and Recreation Commission meeting we discussed the CEF proposals presented to and discussed by City Council on September 25th. As one of the departments that receive 4 specific CEF's to fund its capital program, there is continued interest in monitoring the CEF program and specific fees to fund scheduled projects outlined both in the short and long term capital plans and City master Plans. The Commission agreed that I should forward to you for consideration, some key points I outlined during our most recent Commission meeting and also discussed with you earlier that week.

1. The CEF's and specific fees are a mathematical calculation based on dwelling units and the asset value of the capital resource, not a reflection of any kind of priority of service value by either the citizens or Council. General fund tax revenues allocated for specific projects and increased funding levels for labor and operating costs or expanding service levels is more of a priority of services reflection by the community and Council than a calculated asset formula. Can you take fees/revenues from one designated specific purpose or CEF and add it to any of the CEF's?
2. Council has directed staff to review the methodology and applicability of a revised model for CEF's to begin in 2013 for possible change and adoption for 2014. With this overall study being proposed for next year, why should Council specify only certain CEF's to be at the lower of the current 2012 or proposed calculated 2013 fee levels? This seems somewhat arbitrary and would destroy the integrity of the model, possibly subjecting the entire program up for possible other actions and questions. It is understood that Council has the authority to adopt any CEF fee, so either adopt the increased or decreased fees as recommended or keep them all at the current level, which Council has done on other occasions. Would it not be better to review the entire model and method of calculation in 2013, then adopt a new methodology and calculation for all CEF's if determined to be in the best interest of the community and desire of the Council?
3. In 2013 the Parks and Recreation Department has budgeted for a Master Plan revision, last revised in 2001. With this revision, future parks, recreation facilities and structures as well as recreational trail locations will be reviewed, updated and revised to reflect current citizen interests, new standards as well as many facilities such as spray parks, skate parks, etc. that were not even contemplated in 2001, let alone included in the Master Plan. Additionally, the Open Space program is currently involved in a Larimer County wide survey for input as to what that master plan revision should include and will be follow-up on with a revision of the Open Space Master Plan.
4. Parks, Recreation Trails and Open Space CEF's are only collected on residential units and represent a significant asset dollar investment, over \$100 million in parks alone. Several of the other service CEF's are not so heavily weighted to the asset value, i.e. Law Enforcement at \$25-\$33 million in all three categories (residential, commercial and industrial) asset value replacement costs.

The 30% reduction of residential CEF fees for multi-family units will make an impact to the capital plans only

if there are significant increases to multi-family unit construction activity in 2013. If there is a significant upswing in multi-family building unit activity, there could be a delay of 1-2 years in the Parks CEF projects, but not in Recreation, Trails or Open Space CEF fund plans or projects. The creation of this new category seems reasonable and well documented for surrounding communities comparisons. The other change proposed in addressing the increases for inflation and cost is also supported and may be a better reflection of actual costs. Staff and the Commission do not however, support the priority of services vs. capital asset value adjustments as discussed in the September 25th Council Study session to be used in setting the 4 departmental CEF fees for 2013. If you have any questions, please feel free to contact me to clarify the points and recommendations and our discussion with the Parks and Recreation Commission.

12. What is the Manager/Staff proposal for how to proceed for CEFs in 2013?

To set the fees for 2013, effective on January 1, 2013, the Resolution has been prepared starting with the update study based findings with an adjustment for the multi-family fees.

Then three amendments have been prepared for Council consideration. The first makes a fee schedule adjustment for Parks, Recreation, Trails, and Open Lands. The suggestion was made at the study session to use the lower of the current fee or the updated fees for 2013. Using this suggestion freezes two (Parks and Open Lands) of the fees at their current level and allows the study-based lower fee to be put in place for the other two (Recreation and Trails). The multi-family fee for all of them has been proportionately adjusted downward.

For the Commercial CEFs, which affects the Fire & Rescue, Law Enforcement, and General Government categories, staff proposes to make a partial increase of the increase determine in the update process. The staff medication implements an increase of 40% of the level from the update.

The staff proposed amendment for the Industrial Fees uses the same 40% partial fee adjustment.

Both the Commercial and Industrial Fees are rounded to the nearest penny per square foot.

13. What are the longer term plans for the Capital Expansion Fee adjustments?

Updates to master plans are underway for Parks, Recreation, Trails, and Open Lands are underway to be completed near the end of 2013. The Fire & Rescue strategic plan has been updated and this effort can be extended to project capital needs. The Police Department has also made progress on its staff plan and this too can be extended to fit into the next Capital Expansion Fee update. Management staff will be working with the Library and Cultural Services to ensure that their long-term plans are consistent with the CEF process.

Council expressed a desire to look at other impact fee setting models. The City's model is a replacement cost "equity buy-in" model. Most CEFs are based on level of service standards.

Plans-based models would likely provide different results. The other aspect that staff will be working on is a clearer understanding of Loveland's long-range build-out will be. This work is dependent on the completion of the master plans in 2013. Staff envisions that the consideration and adoption a new model for the Capital Expansion Fees could be completed in 2014 for implementation in 2015.



Capital Expansion Fee Five-Year Update

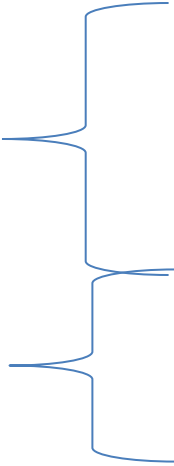
November 20, 2012

Prepared by: Alan Krcmarik, Executive Fiscal Advisor

Resolution to set 2013 CEFs

- **Primary focus**
 - Consider the CEF Fee Adjustment Resolution based on the 5 year update information provided
 - Council requested some options
- **Answer Questions**
 - Share of Fees Question
 - Impact on Capital Improvement Plan if Multi-family change is adopted and lower than recommended fees for Commercial and Industrial projects
 - A response from the Parks and Recreation Commission

Review of the Update Process

March 27:	History and Basic Direction from Council		<ul style="list-style-type: none">• Background and Scope for Review• No outright elimination of fees
July 10:	First Four Topics		<ul style="list-style-type: none">• History of Fee Revenues/Spending (July Topic 1)• Comparisons to other jurisdictions (July Topic 2 and updated in August)• How fees relate to community standards and quality of life indicators (July Topic 3)• How the fees are determined (July Topic 4)
August 28:	Three More Topics		<ul style="list-style-type: none">• Adjustment for Multi-family (August Topic 5)• Increasing cost of projects (August Topic 6)• Cover the O&M Cost of Growth (August Topic 7)
Sept 25:	Council Final Review		<ul style="list-style-type: none">• Research redevelopment issues and fee credits . Council to review on September 18. (Done)
November 20:	Adoption of Fee Resolution		

Capital Expansion Fee Proposal ^{P. 244}

Residential	Single Family 2012 Fee Amount	Proposed 2013	Multi-family 2012 Fee Amount	Proposed 2013
Fire and Rescue	\$ 736	\$ 888	\$ 736	\$ 617
Law Enforcement	957	874	957	608
General Government	1,052	1,083	1,052	753
Library	681	722	681	502
Cultural Services / Museum	549	602	549	419
Parks	3,351	3,528	3,351	2,452
Recreation	1,679	1,572	1,679	1,092
Trails	532	527	532	366
Open Lands	824	884	824	614
Streets	<u>2,170</u>	<u>2,279</u>	<u>1,508</u>	<u>1,583</u>
Total	\$ 12,531	\$12,959	\$ 11,869	\$ 9,006

Capital Expansion Fee Proposal

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Commercial (charged per sq. ft.)	2012 Fee Level	2013 Proposed
Fire and Rescue	\$ 0.31	\$ 0.61
Law Enforcement	0.40	0.60
General Government	<u>0.44</u>	<u>0.74</u>
Total	\$ 1.15	\$ 1.95
Streets are based on the use in the Structure being built. For 2013, the estimate is for a 5% increase.		

Some Council members asked for a closer look at the increase in commercial fees. Perhaps, phase in the increase.

Capital Expansion Fee Proposal

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Industrial (charged per sq. ft.)	2012 Fee Level	2013 Proposed
Fire and Rescue	\$ 0.03	\$ 0.08
Law Enforcement	0.05	0.08
General Government	<u>0.06</u>	<u>0.10</u>
Total	\$ 0.14	\$ 0.26
Streets are based on the use in the Structure being built. For 2013, the estimate is for a 5% increase.		

Council requested that industrial be reviewed as well for phase in.

Correction to the Answer to Question 5

- Some of the numbers in the table were transposed from other lines in the table
- The table in the briefing memo has been update for Library and Cultural Services CEFs for the years 2008 through the first half of 2011
- The total of all fees shows an increase of 21.6% over the period. This number is low because of the large drop in the Streets CEF in 2007. Many other fees increased by more than 21.6% due to higher valuation of pre-existing infrastructure and addition of new facilities.
- The cumulative increase in the Construction Cost Index was 23.6%.

Update to the Table in Question 6

The table did not have the September 2012 Construction Cost Index updated by the Engineering News Record.

The reading for September 2012 was 1.68% higher than September 2011.

Because the CEFs are subject the five-year update process this year, the 1.68% is not applicable to the fee setting process.

Question 8 covers ability to set fees at a lower level than the update study results

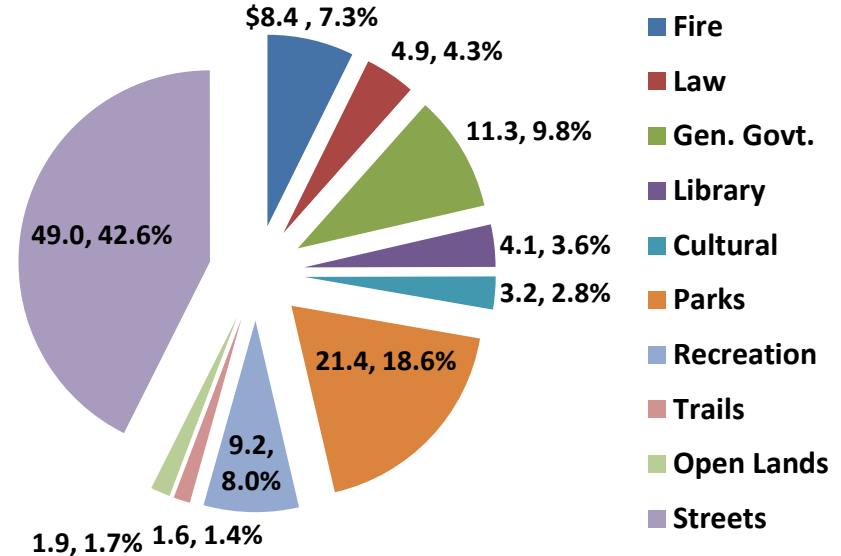
- **The fees determined in the update study reflect the investment in infrastructure.**
- **The City may choose not to adopt fees as the amounts supported by the study.**
- **Determination of other public policies for the basis of the reduction would be a good practice.**
- **The prior studies state that modifications are acceptable as long as the City maintains the integrity of the system by reimbursing the CEF accounts from the General Fund.**
- **The lower balances in the CEF holding accounts would need funding support in the future.**

Question 9. shows each CEF's share of the Total^{P. 250} Collected since the system was set up.

- At the September study session, there was interest in comparing the CEF by their category of service.
- The chart shows the amount of collections and the percentage share of the total.
- Some services, are extremely capital intensive; others are more labor intensive

CEF Collections 1984 – 2012

Total - \$115 million



Question 10. Provides some background on the Commercial and Industrial Fees

Two factors drive the fee calculations

1. The valuation of the City's current infrastructure is the basis for the "equity buy-in" method
2. The proportion of property types, Residential, Commercial, and Industrial is used for Fire & Rescue, Law Enforcement, and General Government allocations

Residential uses are distributed based on housing units.

Commercial and Industrial are distributed based on square feet.

	1982	1996	2004	2007	2012
Residential	78.4%	81.3%	78.6%	82.0%	76.9%
Commercial	12.5%	15.2%	15.8%	15.8%	21.0%
Industrial	9.1%	3.5%	5.6%	2.2%	2.1%

Compared to 2007, the Residential category offloaded cost allocation to Commercial and Industrial.

Commercial increased its share by 33%. Industrial per square foot in 1998 was \$ 0.86; the 2012 proposal is \$ 0.26.

Question 11. Financial Impact of the Multi-family change and the freezing or lower fees for Parks, Recreation, Trails, and Open Lands

P. 252

A review of the Capital Improvement Plan

Budget Director John Hartman concluded that:

- There will be minimal impacts to the Capital Program related to the proposed fee decreases.

In some cases, projects may move further into the future by a year or two in the Ten-year plan. Over a longer period of time, the adjustments may be

Parks, Recreation, Trails, and Open Lands

Key Points from the Commission

1. Fees are a mathematical process to match investment with growth. CEFs are not intended to be a priority setting process. Fees justified for one service are not to be transferred to other fee uses.
2. The focus on the four fees seems to be somewhat arbitrary and may harm the integrity of the model.
3. Parks and Recreation have master planning funding in the 2013 budget. This update will provide a fresh look at the citizen's interests in future projects.
4. The four services are highly capital dependent; over \$100 million in Parks alone.

What is Next: 2013 and the Longer Term?

2013

- Resolution prepared according to the study with the lower fees for multi-family
- **Three Amendments ready** for insertion in Exhibit A of the Resolution
 - Freeze Parks and Open Lands at the current levels and use the study amount for Recreation and Trails
 - Implement 40% of the update proposed Commercial Fees 32 cents total
 - Implement 40% of the update proposed Industrial fees : 5 cents total

Longer Term

Get the master plans for each of the fee areas completed in 2013.

Use the new master plans and consider the change from the level of services basis to plan basis.

Evaluate the allocation methods other than the “equity buy-in” approach for results and suitability.

Council Discussion and *Action* on Resolution

- Questions
- *Answers*

RESOLUTION #R-81-2012**A RESOLUTION ADOPTING A NEW SCHEDULE OF CAPITAL EXPANSION FEES PURSUANT TO SECTION 16.38.020.E OF THE LOVELAND MUNICIPAL CODE EFFECTIVE JANUARY 1, 2013**

WHEREAS, Loveland Municipal Code Section 16.38.020.E provides that capital expansion fees be reviewed and approved by resolution every five (5) years commencing in 2000; and

WHEREAS, the last five (5) year review of capital expansion fees was completed with the adoption of Resolution #R-38-2007, on April 3, 2007 establishing the City's current capital expansion fees; and

WHEREAS, City staff has completed a comprehensive five (5) year review of capital expansion fees established in Resolution #R-38-2007 and is recommending changes to these fees as set out in the Capital Expansion Fee Schedule attached hereto as **Exhibit A** and incorporated by reference (the "CEF Schedule") to more accurately reflect actual growth related capital costs; and

WHEREAS, City Council desires to adopt the CEF Schedule to more accurately reflect current growth related capital costs pursuant.

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

Section 1. That the City Council hereby finds that the CEF Schedule more accurately reflects the City's actual growth-related capital costs.

Section 2. That the CEF Schedule is hereby adopted and approved as the capital expansion fees for the City of Loveland as authorized in Section 16.38.020.E of the Loveland Municipal Code to become effective as provided in Section 3. below.

Section 3. That the capital expansion fees set forth in the CEF Schedule shall be effective as of January 1, 2013 and shall apply to all building permit applications completed on or after January 1, 2013, subject to annual adjustment thereafter in accordance with Code Section 16.38.110.A.

Section 4. That Resolution #R-38-2007 shall be superseded as of January 1, 2013 by this Resolution except with respect to building permits completed prior to January 1, 2013, which permits shall continue to be subject to the capital expansion fees as set forth in Resolution #R-38-2007 as adjusted annually in accordance with Code Section 16.38.110.A.

Section 4. That this Resolution shall be effective as of the date and time of its adoption.

ADOPTED this 20th day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

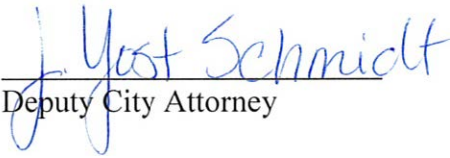

Deputy City Attorney

Exhibit A Capital Expansion Fees for 2013

<u>Residential Single Family</u>	<u>Current Fee</u>	<u>Proposed Fee</u>	<u>Amount of Change</u>
Per unit of housing			
Fire and Rescue	\$ 736	\$ 888	\$ 152
Law Enforcement	957	874	- 83
General Government	1,052	1,083	31
Library	681	722	41
Cultural Services / Museum	549	602	53
Parks	3,351	3,528	177
Recreation	1,679	1,572	- 107
Trails	532	527	- 5
Open Lands	824	884	60
<u>Residential Multi-family</u>			
Per unit of housing			
Fire and Rescue	\$ 736	\$ 617	- \$ 119
Law Enforcement	957	608	- 349
General Government	1,052	753	- 299
Library	681	502	- 179
Cultural Services / Museum	549	419	- 130
Parks	3,351	2,452	- 899
Recreation	1,679	1,092	- 587
Trails	532	366	- 166
Open Lands	824	614	- 210
<u>Commercial</u>			
Per square foot			
Fire and Rescue	\$ 0.31	\$ 0.61	\$ 0.30
Law Enforcement	0.41	0.60	0.19
General Government	0.44	0.74	0.30
<u>Industrial</u>			
Per square foot			
Fire and Rescue	\$ 0.03	\$ 0.08	\$ 0.05
Law Enforcement	0.05	0.08	0.03
General Government	0.06	0.10	0.04

Note: The review process for the street capital expansion fees are not yet completed. When the process has been completed, a revised fee schedule will be presented to Council.

Exhibit A Capital Expansion Fees for 2013 Amendment for Parks and Open Lands

<u>Residential Single Family</u>	<u>Current Fee</u>	<u>Proposed Fee</u>	<u>Amount of Change</u>
Per unit of housing			
Fire and Rescue	\$ 736	\$ 888	\$ 152
Law Enforcement	957	874	- 83
General Government	1,052	1,083	31
Library	681	722	41
Cultural Services / Museum	549	602	53
Parks	3,351	3,351	0
Recreation	1,679	1,572	- 107
Trails	532	527	- 5
Open Lands	824	824	0
<u>Residential Multi-family</u>			
Per unit of housing			
Fire and Rescue	\$ 736	\$ 617	- \$ 119
Law Enforcement	957	608	- 349
General Government	1,052	753	- 299
Library	681	502	- 179
Cultural Services / Museum	549	419	- 130
Parks	3,351	2,329	- 1,022
Recreation	1,679	1,092	- 587
Trails	532	366	- 166
Open Lands	824	573	- 251
<u>Commercial</u>			
Per square foot			
Fire and Rescue	\$ 0.31	\$ 0.61	\$ 0.30
Law Enforcement	0.41	0.60	0.19
General Government	0.44	0.74	0.30
<u>Industrial</u>			
Per square foot			
Fire and Rescue	\$ 0.03	\$ 0.08	\$ 0.05
Law Enforcement	0.05	0.08	0.03
General Government	0.06	0.10	0.04

Note: The review process for the street capital expansion fees are not yet completed. When the process has been completed, a revised fee schedule will be presented to Council.

Exhibit A Capital Expansion Fees for 2013**Amendment to adjust Commercial CEF****Residential Single Family** **Current Fee** **Proposed Fee** **Amount of Change**

Per unit of housing

Fire and Rescue	\$ 736	\$ 888	\$ 152
Law Enforcement	957	874	- 83
General Government	1,052	1,083	31
Library	681	722	41
Cultural Services / Museum	549	602	53
Parks	3,351	3,528	177
Recreation	1,679	1,572	- 107
Trails	532	527	- 5
Open Lands	824	884	60

Residential Multi-family

Per unit of housing

Fire and Rescue	\$ 736	\$ 617	- \$ 119
Law Enforcement	957	608	- 349
General Government	1,052	753	- 299
Library	681	502	- 179
Cultural Services / Museum	549	419	- 130
Parks	3,351	2,452	- 899
Recreation	1,679	1,092	- 587
Trails	532	366	- 166
Open Lands	824	614	- 210

Commercial**Increase the fee by 40% of the change indicated by the study**

Per square foot

Fire and Rescue	\$ 0.31	\$ 0.61 \$ 0.43	\$ 0.12
Law Enforcement	0.41	0.60 0.49	0.08
General Government	0.44	0.74 0.56	0.12

Industrial

Per square foot

Fire and Rescue	\$ 0.03	\$ 0.08	\$ 0.05
Law Enforcement	0.05	0.08	0.03
General Government	0.06	0.10	0.04

Note: The review process for the street capital expansion fees are not yet completed. When the process has been completed, a revised fee schedule will be presented to Council.

Exhibit A Capital Expansion Fees for 2013**Amendment to the Industrial CEF****Residential Single Family** **Current Fee** **Proposed Fee** **Amount of Change**

Per unit of housing

Fire and Rescue	\$ 736	\$ 888	\$ 152
Law Enforcement	957	874	- 83
General Government	1,052	1,083	31
Library	681	722	41
Cultural Services / Museum	549	602	53
Parks	3,351	3,528	177
Recreation	1,679	1,572	- 107
Trails	532	527	- 5
Open Lands	824	884	60

Residential Multi-family

Per unit of housing

Fire and Rescue	\$ 736	\$ 617	- \$ 119
Law Enforcement	957	608	- 349
General Government	1,052	753	- 299
Library	681	502	- 179
Cultural Services / Museum	549	419	- 130
Parks	3,351	2,452	- 899
Recreation	1,679	1,092	- 587
Trails	532	366	- 166
Open Lands	824	614	- 210

Commercial

Per square foot

Fire and Rescue	\$ 0.31	\$ 0.61	\$ 0.30
Law Enforcement	0.41	0.60	0.19
General Government	0.44	0.74	0.30

Industrial**Increase the fee by 40% of the change indicated by the study**

Per square foot

Fire and Rescue	\$ 0.03	\$ 0.08 \$ 0.05	\$ 0.02
Law Enforcement	0.05	0.08 0.06	0.01
General Government	0.06	0.10 0.08	0.02

Note: The review process for the street capital expansion fees are not yet completed. When the process has been completed, a revised fee schedule will be presented to Council.

**CITY OF LOVELAND****ECONOMIC DEVELOPMENT OFFICE**

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 16
MEETING DATE: 11/20/2012
TO: City Council
FROM: Betsey Hale, Economic Development Department
PRESENTER: Betsey Hale

TITLE: An ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget to fund way finding signs throughout Loveland with Loveland lodging tax funds

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and approve the ordinance on first reading.

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
 3. Adopt a modified action (specify in the motion)
 4. Refer back to staff for further development and consideration
 5. Adopt a motion continuing the item to a future Council meeting
-

DESCRIPTION:

This is an administrative action. Existing lodging tax reserves are being used to fund a signage program directing visitors and residents to places of interest in Loveland.

BUDGET IMPACT:

- ☐ Positive
- ☒ Negative: This is \$186,000.00 of Lodging Tax reserves not general fund dollars
- ☐ Neutral or negligible

Reserves that have been saved are used as the funding source. The drawdown of reserves limits the flexibility for other projects to be funded within the fund. The lodging tax reserve fund balance is \$718,000.00.

SUMMARY: At the City Council Advance in January of 2012, the Council directed staff to make way finding in Loveland a Council priority for 2012. In 2009, the City Council and the Loveland Downtown Team unanimously adopted the Hip Streets plan which made recommendations on sign design and locations. On September 19th, 2012 the Community Marketing Commission unanimously approved a motion recommending City Council make a supplemental appropriation of \$186,000.00 of lodging tax reserves for the purpose of placing way finding

signs throughout Loveland. On October 2nd, 2012, the Loveland Downtown Team unanimously supported the CMC's recommendation on funding, sign design and locations. Support for this request is consistent with the Destination Loveland Strategic plan adopted by City Council in November of 2011. The plan states the City should, "enhance way-finding in Loveland, including improved directional signs to the historic downtown district and other Loveland attractions." The use of lodging tax revenue for this purpose is consistent with the Loveland Municipal Code Section 3.24.105 which defines the use restrictions of the funds.

REVIEWED BY CITY MANAGER: 

LIST OF ATTACHMENTS:

1. An ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget to place way finding signs throughout Loveland.
2. Staff Presentation

FIRST READING November 20, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET TO FUND WAY FINDING SIGNS THROUGHOUT LOVELAND WITH LOVELAND LODGING TAX FUNDS

WHEREAS, the City imposes a lodging tax pursuant to Chapter 3.24 of the Loveland Municipal Code for the purpose of promoting tourism, conventions, and related activities within the City by marketing the City and sponsoring community events, both in support of this purpose (the “Dedicated Purpose”); and

WHEREAS, the City has reserved funds from lodging tax revenue not appropriated at the time of the adoption of the City budget for 2012; and

WHEREAS, on September 19, 2012, the Community Marketing Commission unanimously approved a motion recommending that City Council authorize the expenditure of reserved funds from lodging tax revenues for the purpose of placing way findings signs throughout Loveland, which markets the City by promoting tourism and related activities and is consistent with the Dedicated Purpose; and

WHEREAS, the City Council desires to authorize the expenditure of such funds for this purpose by enacting a supplemental budget and appropriation to the City budget for 2012 as authorized by Section 11-6(a) of the Loveland City Charter.

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

Section 1. That reserves in the amount of \$186,500 from fund balance in the Lodging Tax Fund 206 are available for appropriation. Revenues in the total amount of \$186,500 are hereby appropriated for placing way finding signs throughout Loveland and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
Lodging Tax Fund 206**

Revenues	
Fund Balance	186,500
Total Revenue	186,500
Appropriations	
206-18-182-1504-49399-EDWAYFIND Other Capital	186,500
Total Appropriations	186,500

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 3. That this Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

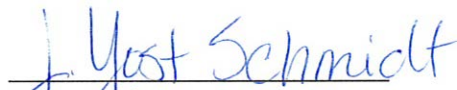
ADOPTED this ____ day of December, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



Way Finding Signs

Public Works and the Economic Development Department
City of Loveland

Way Finding Sign Committee members

Justin Erion – CMC

Kristine Koschke-LDT

Brian Jones-LDT

Ingrid Bush-CMC

Judy Saffell-CMC

Mike Scholl-Economic Development

Cindy Mackin - Economic Development

Dawn Wirth – Economic Development

Frank Hempen – Public Works

Bill Hange – Public Works

Jodi Lessman – Public Works

Introductions



1. Loveland Downtown Team developed a downtown way finding program in the HIP Streets plan from 2009.
2. Council Adopted the Hip Streets Plan in 2009
3. CMC had a way finding meeting in 2011 and another in February 2012
4. Subcommittee of LDT, CMC members and staff was developed
5. The Subcommittee met 8 times
6. Mr. Erion reported back to the CMC at regular CMC meetings
7. CMC approved recommendations in September and approved a motion recommending the \$186,000 supplemental appropriation
8. Loveland Downtown Team approved a motion of support in October
8. CMC reaffirmed support for project again in October

Process

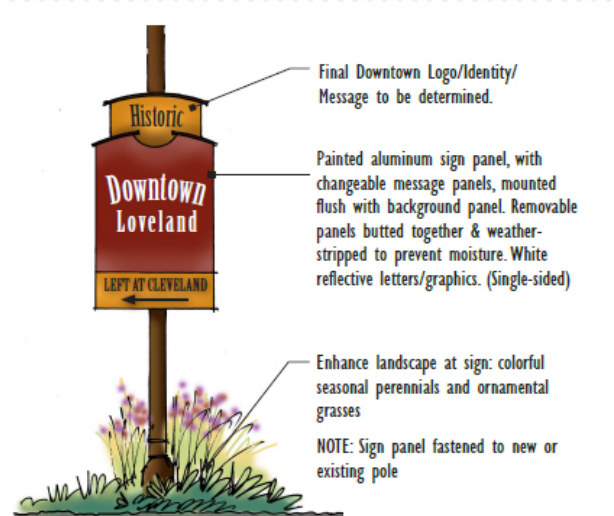


- » **Phase 1** - Directional Sign redesign/location on US highways (I-25, US 34 and US 287) - these are the large signs on major corridors
- » **Please note the original estimated budget for signs was for smaller signs made at the City sign shop.**
- » Phase 2 - Localized sign design/placement, City Signs – costs/funding to be determined.
 - > Preliminary report by the end of 2012.

Goals



- » Apply direction from the Community Marketing Commission: **Brand and Visitor Center location**
- » Utilize HIP Streets signage approved by Council 2009
- » **CDOT approved color and design and size**



History





These are significantly larger than originally anticipated. These are CDOT standards for sign size on major highways

30"

130"

6' or 7' off the ground



18.5' or 19' total height



- » Support columns for Interstate signs: these are required for the size of the sign and the wind and weather on I-25 and the major corridors. **Our shop cannot make these.**

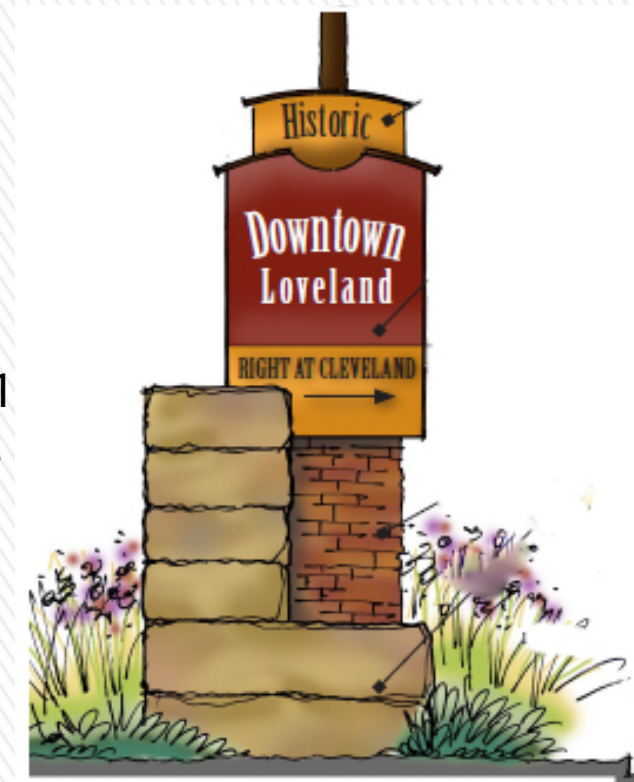


Standards





- Size
- Quality
- Life
- Color
- Rules
- CDOT
- 14 vs. 21
- locations



The Difference

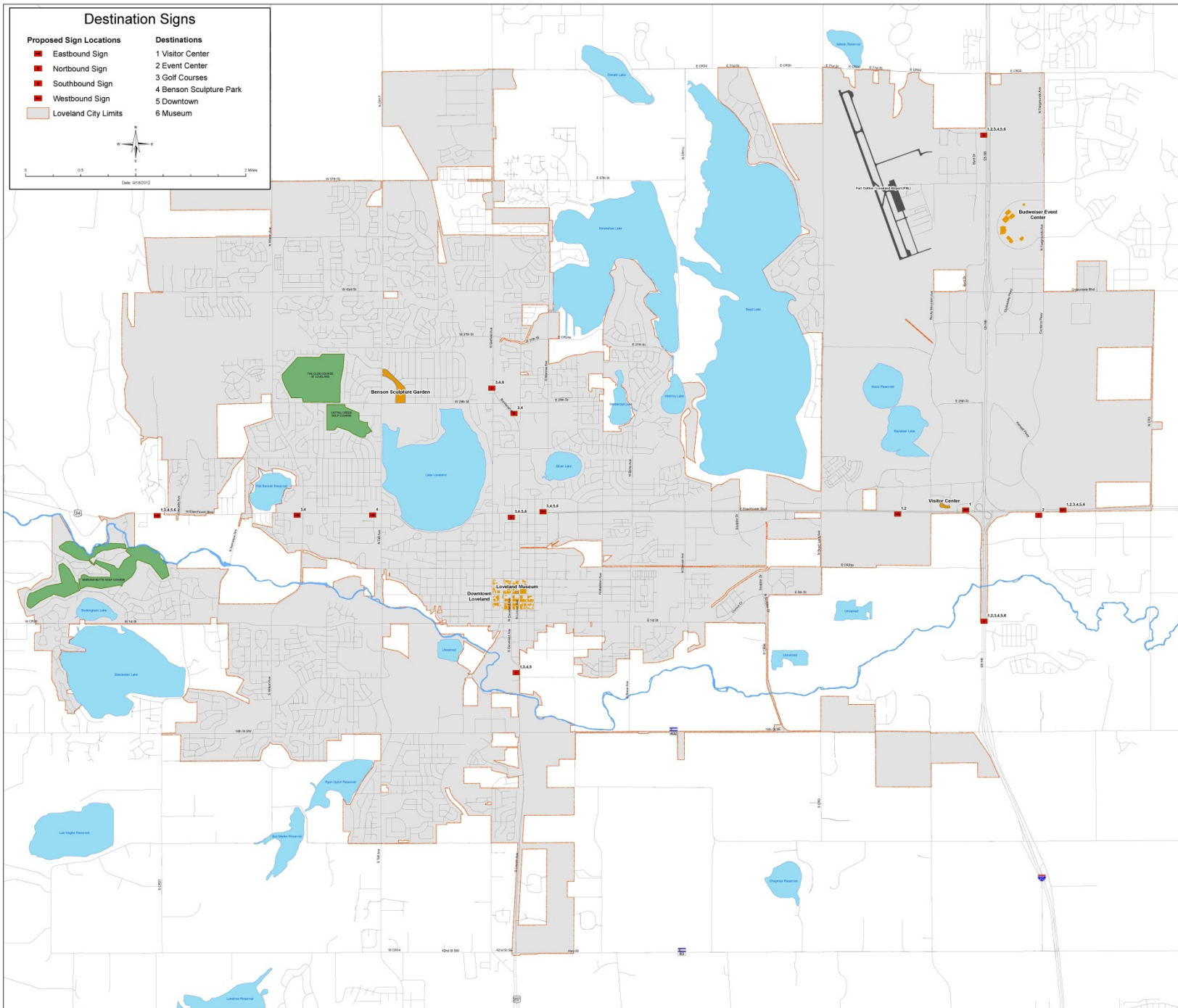


Phase 1 – Major Arterial Directional Signs

- » **14** locations for directional signs have been identified on I-25, US 34 and US 287
 - > I-25/US 34 exit was identified by the subcommittee as the focal entryway for Loveland in this exercise.
- » There are **21** signs total: This is a higher number than anticipated and the signs are significantly larger

Locations





Phase 1 - Directional Signs – CMC

» Capital Expenditures: One Time

- > 4 - Interstate signs 160" x 96" = \$61,200.00
- > 10 - US 34 and US 287 approaches 96" x 108" = \$100,000.00
- > 7 – US 34 and US 287 internal 96" x 48" = \$24,800.00
- > **Total: \$186,000.00 of reserves, current balance is \$718,466.29**

» Maintenance: Recommended

- > Replacement cost: annual depreciation of signs at small capital cost/15 year life span = \$12,000.00/year for all 21 signs
- > **It is recommended that in the 2014 budget a reserve for ongoing maintenance /repair/replacement be developed at \$12,000/year.**
- > Assume collision repairs are paid by insurance.

Costs/Funding



- » Submit final proposal to CDOT
- » Bid signage: City Policy
- » Installation (Completion first quarter 2013 but this may be changed due to process)

Moving Forward



»The CMC, LDT and Staff are requesting that City Council hold a public hearing and approve the supplemental appropriation ordinance on 1st reading.

Council Action



**CITY OF LOVELAND****ECONOMIC DEVELOPMENT OFFICE**

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 17
MEETING DATE: 11/20/2012
TO: City Council
FROM: Economic Development Department
PRESENTER: Mike Scholl, Economic Development Department

TITLE:

A resolution approving Lightning Hybrids, Inc. Hydraulic Hybrid Retrofit System Agreement and Amendment Number One to Lightning Hybrids, Inc. Economic Incentive and Performance Agreement

RECOMMENDED CITY COUNCIL ACTION:

Adopt the resolution as recommended

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
 3. Adopt a modified action (specify in the motion)
 4. Refer back to staff for further development and consideration
 5. Adopt a motion continuing the item to a future Council meeting
-

DESCRIPTION:

This is an administrative action. The resolution authorizes the City Manager to sign a purchasing agreement with Lightning Hybrids (LH) for a hydraulic hybrid retrofit of two City buses and an amendment to the economic incentive agreement with Lightning Hybrids dated July 10, 2009. Staff has negotiated a contract with Lightning Hybrids that would apply the \$28,000 owed to the City for nonperformance under the incentive agreement towards the retrofit of the City buses.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible

(The \$52,000 is offset by a \$24,000 federal grant and \$28,000 Lightning Hybrids owes the City for nonperformance under the 2009 economic incentive agreement)

SUMMARY:

On July 7, 2009, the Loveland City Council approved an economic incentive request from LH that provided a \$50,000 up front cash payment for the first 25 primary jobs created (\$65,000 annual salary), plus a second payment of \$50,000 once 25 additional primary jobs were created. LH was given 24 months to create and maintain the jobs to receive the second payment.

In July of 2011, staff in conjunction with LH verified that only 11 jobs had been created, which required LH to repay \$28,000 (\$2,000 per job X 11 = \$22,000 - \$50,000 = owe \$28,000). Staff worked with LH to identify a compromise solution that would be mutually beneficial to both parties. Initially, staff had proposed to Council that the term of the agreement be extended for two years to allow LH to create 14 more jobs and avoid having to repay the incentive. Given the direction of the company, the proposal was not approved by Council and staff continued negotiations with LH.

The current proposal calls for the City to purchase two hydraulic hybrid retrofit systems for two City buses. The City received a federal grant for the purchase of the buses and can apply \$24,000 from the grant to partially cover the cost of the systems. The \$28,000 owed to the City by LH will be applied as their contribution.

Under the agreement, the buses will need to achieve a minimum of 17 percent increase in fuel efficiency; however, LH has indicated that the buses should achieve 25 to 30 percent increase. In addition, the systems will be maintained by LH over the course of the agreement and are required to maintain a consistent level of service over the life of the contract. The agreement also provides LH with the opportunity to market their systems to potential customers.

The agreement allows the City and LH to achieve a mutually beneficial resolution to the economic incentive. The company has recently received an infusion of investor capital and has plans to expand production in the next six to twelve months.

REVIEWED BY CITY MANAGER:


LIST OF ATTACHMENTS:

1. Resolution
2. Retrofit System Agreement with Lightning Hybrids
3. Amendment Number One to the Incentive Agreement
4. Staff Report

RESOLUTION #R-82-2012

A RESOLUTION APPROVING LIGHTNING HYBRIDS, INC. HYDRAULIC HYBRID RETROFIT SYSTEM AGREEMENT AND AMENDMENT NUMBER ONE TO LIGHTNING HYBRIDS, INC. ECONOMIC INCENTIVE AND PERFORMANCE AGREEMENT

WHEREAS, Lightning Hybrids, Inc. (“LHI”) is a start –up company established in 2008 and engaged in green technology automotive research, development and manufacturing in Loveland, Colorado; and

WHEREAS, LHI and the City entered into that certain Lightning Hybrids, Inc. Economic Incentive and Performance Agreement dated July 10, 2009 (the “Incentive Agreement”), approved by City Council by adoption of Resolution #R-64-2009; and

WHEREAS, pursuant to the Incentive Agreement, the City made an incentive payment in the amount of \$50,000.00 to LHI for LHI’s creation and maintenance for 12 consecutive months of 25 “Qualified Jobs” within a 24 month period, as more fully set forth therein; and

WHEREAS, the Incentive Agreement further provided that in the event that LHI failed to satisfy the requirement of creating 25 Qualified Jobs and maintaining them for at least 12 full consecutive months within the 24 month period, it shall pay to the City two thousand dollars (\$2,000.00) for each Qualified Job short of the 25 Qualified Jobs; and

WHEREAS, the Owners, as the controlling principals of LHI, guaranteed LHI’s obligations under the Incentive Agreement, as more fully set forth therein; and

WHEREAS, early stage investor requirements and general economic conditions have inhibited LHI from meeting the job creation requirements under the Incentive Agreement; and

WHEREAS, LHI has created and maintained 11 jobs, resulting in an obligation to repay to the City two thousand dollars (\$2,000.00) for each of the 14 jobs that have not been created and maintained within the time frame required by the Incentive Agreement, for a total repayment obligation of twenty eight thousand dollars (\$28,000.00); and

WHEREAS, LHI and the City desire to enter into an agreement pursuant to which LHI will provide the City with two hybrid retrofit systems for City buses at a total cost of fifty two thousand dollars (\$52,000.00) (the “Retrofit Agreement”) attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, LHI and the City also desire that the Repayment Amount shall be applied to amounts due from the City under the Retrofit Agreement on the terms and conditions set forth therein and in Amendment Number One to the Incentive Agreement attached hereto as **Exhibit B** and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND:

Section 1. That the Retrofit Agreement attached hereto as **Exhibit A** and incorporated herein by reference is hereby approved.

Section 2. That Amendment Number One to the Incentive Agreement attached hereto as **Exhibit B** and incorporated herein by reference is hereby approved.

Section 3. That the City Manager is authorized, following consultation with the City Attorney, to modify the Retrofit Agreement and Amendment Number One to the Incentive Agreement in form or substance as deemed necessary to effectuate the purposes of this resolution or to protect the interests of the City.

Section 4. That the City Manager and the City Clerk are hereby authorized and directed to execute the Retrofit Agreement and Amendment Number One to the Incentive Agreement on behalf of the City of Loveland.

Section 5. That this Resolution shall be effective as of the date and time of its adoption.

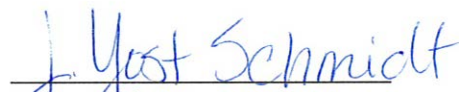
ADOPTED this 20th day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

LIGHTNING HYBRIDS, INC.
HYDRAULIC HYBRID RETROFIT SYSTEM AGREEMENT

This agreement ("Agreement") is made and entered into this 7th day of November 2012, by and between THE CITY OF LOVELAND, COLORADO, a home rule municipality ("the City"); LIGHTNING HYBRIDS, INC., a Colorado corporation ("LHI"); and DANIEL S. JOHNSON and TIMOTHY R. REESER (jointly, "the Owners").

WHEREAS, LHI is a company established in 2008 and located in Loveland, Colorado that is engaged in green technology automotive research, development and manufacturing that includes retrofitting powertrains on vehicles using hydraulic pressure technology to increase fuel efficiency; and

WHEREAS, pursuant to that certain Lightning Hybrids, Inc. Economic Incentive Agreement dated July 10, 2009 ("EI Agreement"), LHI was obligated to create twenty five jobs pursuant to certain terms and conditions in exchange for an economic incentive provided by the City and to repay such incentive at a rate of two thousand dollars (\$2,000) for each job not created;

WHEREAS, LHI was unable to create fourteen of the twenty five jobs pursuant to the terms and conditions of the EI Agreement and, as a result, currently owes the City twenty eight thousand dollars (\$28,000.00) (the "Amount Due");

WHEREAS, LHI desires to repay the Amount Due under the EI Agreement by retrofitting two City transit buses with the hydraulic pressure technology at a total cost of fifty two thousand dollars (\$52,000.00), leaving a balance owed by the City to LHI under this Agreement of twenty four thousand dollars (\$24,000.00);

WHEREAS, the City desire to encourage the development of high-technology businesses within the City and to increase the fuel efficiency of its transit buses and finds that the expenditure to retrofit the two transit buses, including application of the Amount Due under the EI Agreement for such retrofits, is reasonable and benefits the citizens of Loveland; and

WHEREAS, LHI and the City have contemporaneously executed that certain Amendment Number One to Lightning Hybrids, Inc. Economic Incentive and Performance Agreement ("EI First Amendment") to reflect that full and timely performance under this Agreement shall fulfill the remaining payment obligations under the EI Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Hydraulic Hybrid Retrofit Payments

The cost of this Agreement shall be fifty two thousand dollars (\$52,000.00). The City agrees to pay to LHI \$12,000.00 for each transit bus retrofitted with the hydraulic pressure technology referred to herein as the hydraulic hybrid retrofit system for a total of twenty four thousand dollars (\$24,000.00) and to apply the Amount Due (\$28,000.00) under the IE Agreement as payment for such retrofits, subject to all of the following terms and conditions:

- A. Transit Buses. City transit bus number 8019 and transit bus number 8021 shall be the vehicles designated under this Agreement for installation of the hybrid retrofit system; provided, however, that the City may, in its sole discretion, substitute any substantially similar transit bus (Ford chassis) in good condition prior to delivery of such transit bus to LHI. The City shall not assess a cost to LHI for the delivery of the transit buses to LHI.
- B. Retrofit Components. The hydraulic hybrid retrofit system for each transit bus retrofitted pursuant to this Agreement shall consist of the following powertrain components: hydraulic pumps, power transfer module, high-pressure accumulator, low pressure reservoir, a valve block, gearbox, control system, and associated hoses and brackets and supports (collectively, the "Powertrain Components"). Each transit bus shall also include a 32-inch monitoring screen mounted behind the driver seat to provide real time information on system performance. LHI shall install the hydraulic hybrid retrofit system and monitoring screen and complete all required testing. LHI shall be responsible for the cost of all Powertrain Components, the monitoring screen and any other equipment, hardware, software, labor, time and testing related to the installation and testing of the hydraulic hybrid retrofit system.
- C. Delivery. Within thirty (30) days of execution of this Agreement by LHI and the City, the City shall deliver one of the designated transit buses ("First Transit Bus") to LHI located at 319 N. Cleveland Avenue. LHI shall complete the retrofit and system testing, and return the First Transit Bus to the City within thirty (30) days of LHI's receipt of the First Transit Bus. Within 30 days following the City's receipt of the First Transit Bus, the City shall deliver the other designated transit bus ("Second Transit Bus") to LHI. LHI agrees to complete the retrofit and system testing, and to return the Second Transit Bus within thirty (30) days of LHI's receipt of the Second Transit Bus.
- D. Warranty.
 1. For a period of three (3) years from the date of the City's receipt of the retrofitted Second Transit Bus ("Warranty Period"), LHI warrants (a) the materials for the Powertrain Components and monitoring screens for each retrofitted transit bus to be free from defects and function for

the purposes for which they are manufactured and (b) the workmanship (installation). LHI shall be responsible for the cost of repair and replacement of any Powertrain Components and of the monitoring screens in the event of failure during the Warranty Period; provided that the City shall permit LHI to make any such repair or replacement.

2. LHI shall warrant each transit bus's original equipment manufacturer (OEM) warranty, if the OEM declines warranty coverage due to any modifications made by LHI or to any malfunction caused by the retrofit. In such case, LHI's warranty shall be equivalent to the OEM warranty.

E. Guarantee. The City shall have twelve (12) months from the date of receipt of the retrofitted Second Transit Bus for all in-service testing ("Guarantee Period"). If either retrofitted transit bus does not perform to the standards below during the Guarantee Period, LHI agrees, upon the City's written request, to remove the hydraulic hybrid retrofit system and return the transit bus to its previous working condition at no cost to the City. In such event, LHI shall have thirty (30) days from receipt of any transit bus to complete such work and return it to the City.

1. Standard Performance. Beginning on the in-service date after LHI system installation, LHI shall measure performance conditions to determine if the hydraulic hybrid retrofit system in the retrofitted transit buses is meeting standard performance levels for a transit bus (without retrofitting) defined as follows:
 - a. The transit buses must meet the fleet industry down-time standard (out-of-service) for transit buses of eighty percent (80%) availability, or out-of-service hours equal to or less than twenty percent (20%) of duty schedule.
 - b. A transit bus shall not exceed forty (40) hours per month out-of-service time for repair. A transit bus shall not require adjusted parameters or replacement of the hydraulic hybrid system Powertrain Components for at least sixty (60) days.
 - c. The vehicles' duty cycle is six (6) days per week from 6:30 a.m. to 6:30 p.m. or three thousand seven hundred forty-four (3,744) hours per year. The vehicles' life to date fleet availability is eight four and one half percent (84.5%) or fifteen and one half percent (15.5%) down time.
2. Fuel Efficiency. Each transit bus retrofitted pursuant to this Agreement shall have, throughout the Guarantee Period, a demonstrable increase in average fuel efficiency of no less than seventeen percent (17%) above the average fuel efficiency of such transit bus prior to its retrofit.
 - a. The City shall provide LHI with a Fuel Usage Report for the last twelve (12) months that sets forth the average fuel efficiency for each transit bus designated for the hydraulic hybrid retrofit system.

- b. Once a retrofitted transit bus is deemed to be in-service, its average fuel efficiency shall be calculated every six (6) months throughout the Guarantee Period.
 - c. The calculation of fuel efficiency shall be based on the City's standard fuel efficiency measurements for transit buses and shall be reported in a Fuel Usage Report.
- F. Maintenance. LHI agrees to do all hydraulic hybrid retrofit system-related maintenance on the transit buses, including software upgrades, at no cost to the City for three (3) years from the date of the City's receipt of the retrofitted Second Transit Bus. For normal or routine maintenance of the hydraulic hybrid retrofit systems, the City agrees to make the transit buses available from 6:30 PM to 6:30 AM Monday through Friday or 6:30 PM Saturday through 6:30 AM Monday so as to limit the interruption to the service schedule.
- G. Payment Schedule. The City agrees to pay LHI twelve thousand dollars (\$12,000.00) upon delivery of the First Transit Bus and twelve thousand dollars (\$12,000.00) upon receipt of the Second Transit Bus. Upon full and timely performance of all terms and conditions of this Agreement, the Amount Due under the EI Agreement shall be applied to this Agreement and any remaining payment obligations under the EI Agreement shall be deemed fulfilled.
- H. Marketing. Sixty (60) days after LHI delivers and the City receives the retrofitted Second Transit Bus and provided that LHI is not in default of any term or condition of this Agreement, the City agrees to participate in a marketing campaign promoting the hydraulic hybrid retrofit system with LHI. The marketing campaign shall be comprised of the following:
 - 1. Vehicle Wrap. LHI may install a vehicle wrap on the First Transit Bus and the Second Transit Bus that identifies each transit bus as having hydraulic hybrid retrofit systems. The vehicle wrap shall be done at the expense of LHI and shall not interfere with the in-service schedule of either transit bus. The vehicle wrap design must be jointly approved by the City and LHI and may include a QR tag smart phone application that provides real time vehicle performance information to the public. LHI shall repair, replace or remove any wrap that the City, in its sole discretion, finds damaged, worn or otherwise unacceptable in appearance.
 - 2. Brochures. LHI and the City may jointly produce brochures and other collateral material highlighting the City's use of the hydraulic hybrid system ("Brochures"). LHI shall be responsible for all costs associated with the Brochures.
 - 3. Termination. The marketing campaign shall have a duration of twelve (12) months from the installation date of the first vehicle wrap

provided that LHI is not in default of any term or condition of this Agreement. In the event that LHI is in default of any term or condition after the installation of any vehicle wrap or production of the Brochures, the City by written notice may require LHI, at LHI's own cost, to remove any vehicle wrap LHI has placed on any City transit bus and to destroy any Brochures in LHI's possession, custody or control.

2. Multi-Year Fiscal Obligation

To the extent this Agreement constitutes a multiple fiscal year debt or financial obligation of the City, it shall be subject to annual appropriation pursuant to the City of Loveland Municipal Charter Section 11-6 and Article X, Section 20 of the Colorado Constitution. The City shall have no obligation to continue this Agreement in any fiscal year in which no such appropriation is made.

3. Remedies upon Default

Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party fails to perform according to the terms of this Agreement, such party may be declared in default. If the defaulting party does not cure said breach as otherwise provided in this Agreement or within thirty (30) days of written notice thereof by the non-defaulting party, then such non-defaulting party may terminate this Agreement immediately upon written notice of termination to the other party. In the event of such termination by the City, LHI shall not be relieved of liability to the City for any damages sustained by the City by virtue of any default by LHI under this Agreement, and the City may withhold payment, if applicable, to LHI for the purposes of setoff until such time as the exact amount of damages is determined. In addition to any specific remedies provided in this Agreement, the City may pursue any and all remedies available to it under the law or in equity to collect any or all of the amounts owed to it under this Agreement including, without limitation, judicial enforcement of the Owners' personal guarantee under this Agreement.

4. Expenses and Costs of Collection

In the event that LHI is in default under this Agreement and, as a result, the City pursues collection efforts through suit or otherwise, LHI agrees to pay all reasonable expenses and costs of collection incurred by the City in connection with any such collection efforts and/or suit, in addition to the other amounts owed under this Agreement, which expenses and costs of collection shall include, without limitation, the following: attorney's fees; receiver's fees and costs; expert witness fees; deposition costs; filing fees; the cost of mailing notices and other documents; the cost of serving process, notice and other documents; and copy costs.

5. Applicable Law and Venue

This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. In addition, the parties hereto acknowledge that there are legal constraints imposed upon the City by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, and by the City's Charter and Code, and that, subject to such constraints, the parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provisions of this Agreement to the contrary, in no event shall any of the parties hereto exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law. Venue for any judicial proceeding concerning this Agreement shall be in the District Court for Larimer County, Colorado.

6. Time is of the Essence

Time shall be of the essence for the performance of all obligations under this Agreement.

7. Assignment

LHI and the Owners shall not assign or transfer any or all of their interests, rights or obligations under this Agreement without the prior written consent of the City. Any assignment of this Agreement by LHI or the Owners without the City's prior written consent shall be deemed void and of no effect.

8. Construction

This Agreement shall be construed according to its fair meaning and as if it was prepared by all of the parties hereto and shall be deemed to be and contain the entire Agreement between the parties hereto. There shall be deemed to be no other terms, conditions, promises, understandings, statements or representations, expressed or implied, concerning this Agreement, unless set forth in writing and signed by the City and LHI. Paragraph headings used in this Agreement are for convenience of reference only and shall in no way define, control or affect the meaning or interpretation of any provision of this Agreement.

9. Severability

In case any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be constructed as if the invalid, illegal, or unenforceable provision had never been included in the Agreement.

10. Notices

Any written notice given under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-

delivered or three (3) days after being sent by certified mail, return receipt requested, to the following addresses:

If to the City: William D. Cahill
City Manager
City of Loveland
500 East Third Street, Suite 330
Loveland, CO 80537

With Copy to: John R. Duval
City Attorney
City of Loveland
500 East Third Street, Suite 330
Loveland, CO 80537

If to LHI:

With a copy to:

If to the Owners:

Any party hereto may at any time designate a different address or person receiving notice by so informing the other parties in writing.

11. Binding Effect

This Agreement shall be binding upon and, except as otherwise provided in this Agreement, shall inure to the benefit of the personal representatives, estates, heirs, successors and assigns of the respective parties hereto.

12. The Owners' Guarantee

- A. The Owners unconditionally guarantee to the City, LHI's full and punctual performance of any and all of its obligations under this Agreement. The Owners waive notice of any breach or default by LHI under this Agreement. If LHI defaults in the performance of its obligations under this Agreement, upon the City's written request, the Owners shall promptly perform all such obligations.
- B. The Owners agree that any act of the City consisting of a waiver of any of the terms and conditions of this Agreement, or the giving of any consent to any matter or thing related to this Agreement, or the granting of any indulgences or extensions of time to LHI, may be done without prior notice to the Owners and without affecting the Owners' obligations under this section.

- C. The Owners agree that their liability under this section shall not be affected by: (1) the release or discharge of LHI from its obligations under this Agreement in any creditors', receivership, bankruptcy, or other proceeding, or the commencement or pendency of any such proceeding; (2) the dissolution, acquisition, or merger of or by LHI; (3) any disability or other defense of LHI; or (4) the cessation from any cause whatsoever of the liability of LHI under this Agreement.
- D. The Owners agree that they are each primarily, jointly and severally liable and obligated under this Agreement and that the City may, at its option, proceed against any one or both of the Owners for collection under this Agreement without proceeding against LHI or against anyone else obligated under this Agreement.
- E. The Owners agree to pay to the City on demand all of the City's reasonable attorney's fees and costs incurred by the City in connection with its enforcement of the Owners' obligations under this section and under this Agreement.

13. Mutual Cooperation

The parties each agree to use good faith efforts to cause satisfaction of all conditions to its obligations under this Agreement, and to exercise good faith in fulfilling its obligations under this Agreement and in cooperating with the other party with respect to that party's satisfaction and fulfillment of all that party's conditions and obligations under this Agreement.

14. Governmental Immunity

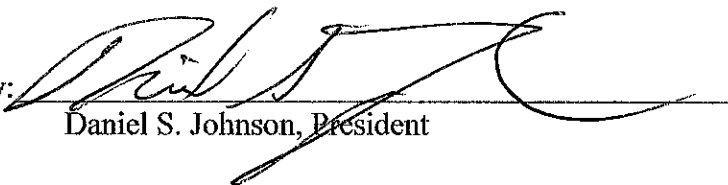
Notwithstanding any other provision of this Agreement to the contrary, the parties agree that no term or condition of this Agreement shall be construed or interpreted as a waiver, expressed or implied, of any of the City's immunities, rights, benefits, protections, defenses, limitations of liability, or any other provisions under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.* or under any other law.

15. Waiver

No waiver by either of the parties of any of the terms and conditions of this Agreement shall be deemed to be or shall be construed as a waiver of any other term or condition, nor shall such a waiver of any breach of this Agreement be deemed to constitute a waiver of any subsequent breach of the same provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.


LIGHTNING HYBRIDS, INC., a Colorado corporation

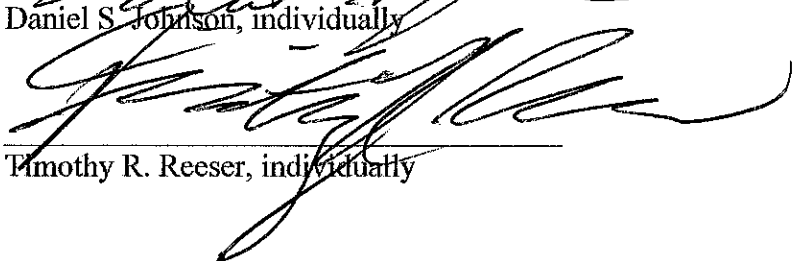
By: 
Daniel S. Johnson, President

ATTEST:

Secretary

OWNERS


Daniel S. Johnson, individually


Timothy R. Reeser, individually

CITY OF LOVELAND, COLORADO

By: _____
William D. Cahill, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

**AMENDMENT NUMBER ONE TO LIGHTNING HYBRIDS, INC. ECONOMIC
INCENTIVE AND PERFORMANCE AGREEMENT**

THIS AMENDMENT NUMBER ONE TO LIGHTNING HYBRIDS, INC. ECONOMIC INCENTIVE AND PERFORMANCE AGREEMENT (Amendment Number One") is made this 8 day of March, 2012, by and between the **City of Loveland, Colorado**, a home rule municipality ("City"), **LIGHTNING HYBRIDS, INC.**, a Colorado corporation ("LHI"); and **DANIEL S. JOHNSON AND TIMOTHY R. REESER** (collectively "the Owners").

WHEREAS, LHI is start-up company established in 2008 and engaged in green technology automotive research, development and manufacturing in Loveland, Colorado; and

WHEREAS, LHI and the City entered into that certain Lightning Hybrids, Inc. Economic Incentive and Performance Agreement dated July 10, 2009 (the "Agreement"), approved by City Council by adoption of Resolution #R-64-2009; and

WHEREAS, pursuant to the Agreement, the City made an incentive payment in the amount of \$50,000.00 to LHI for LHI's creation and maintenance for 12 consecutive months of 25 "Qualified Jobs" within a 24-month period, as more fully set forth therein; and

WHEREAS, the Agreement further provided that in the event that LHI failed to satisfy the requirement of creating 25 Qualified Jobs and maintaining them for at least 12 full consecutive months within the 24 month period, it shall pay to the City two thousand dollars (\$2,000.00) for each Qualified Job short of the 25 Qualified Jobs; and

WHEREAS, the Owners, as the controlling principals of LHI, guaranteed LHI's obligations under the Agreement, as more fully set forth therein; and

WHEREAS, early stage investor requirements and general economic conditions have inhibited LHI from meeting the job creation requirements under the Agreement; and

WHEREAS, LHI has created and maintained 11 jobs, resulting in an obligation to repay to the City two thousand dollars (\$2,000.00) for each of the 14 jobs that have not been created and maintained within the time frame required by the Agreement, for a total repayment obligation of twenty eight thousand dollars (\$28,000.00); and

WHEREAS, LHI and the City have entered into a Retrofit Agreement pursuant to which LHI will provide the City with two hybrid retrofit systems for City buses at a total cost of fifty two thousand dollars (\$52,000.00) (the "Retrofit Agreement"); and

WHEREAS, LHI and the City have further agreed, pursuant to the Retrofit Agreement, that the Repayment Amount shall be applied to amounts due from the City under the Retrofit Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The parties acknowledge and agree that, pursuant to Paragraph 1.A of the Agreement:

- a) the City advanced fifty thousand dollars (\$50,000.00) (the "First Payment:") for creation and maintenance of 25 Qualified Jobs within the First 24 Month Period as set forth therein; and
- b) LHI created 11 Qualified Jobs and maintained such 11 Qualified Jobs in accordance with Paragraph 1.A of the Agreement; and
- c) Since LHI did not create and maintain 25 Qualified Jobs within the First 24 Month Period as required under the Agreement, the City has no obligation to make the Second Payment to LHI.

2. The parties acknowledge and agree that, pursuant to Paragraph 2 of the Agreement:

- a) LHI is obligated to pay to the City two thousand dollars (\$2,000.00) for each of the Qualified Jobs short of the 25 Qualified Jobs required during the First 24 Month Period, for a total amount repayment amount of twenty eight thousand dollars (\$28,000.00) (14 jobs x \$2,000.00 = \$28,000.00); and
- b) Upon full performance by LHI of its obligations under the Retrofit Agreement and one hundred and eighty (180) days after the City's receipt of the second City vehicle retrofitted in accordance with the Retrofit Agreement, the City agrees that the twenty eight thousand dollars (\$28,000.00) due from LHI under the Agreement shall be applied to the remaining amount due under the Retrofit Agreement and that such application shall satisfy LHI's obligation for repayment of twenty eight thousand dollars (\$28,000.00) under the Agreement, as amended, shall be deemed satisfied.

3. By their signature below, the Owners acknowledge and agree that their unconditional guarantee of LHI's full and punctual performance of any and all obligations under the Agreement, as amended, including but not limited to repayment of any amounts due under Paragraph 2 of the Agreement, shall remain in full force and effect in accordance with the provisions of the Agreement, as modified by this Amendment Number One.

4. Except as expressly modified by this Amendment Number One, the Agreement shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number One as of the date and year first above written.

LIGHTNING HYBRIDS, INC.,
a Colorado corporation

By: _____

Daniel S. Johnson, President

STATE OF COLORADO)
) ss.
County of Larimer)

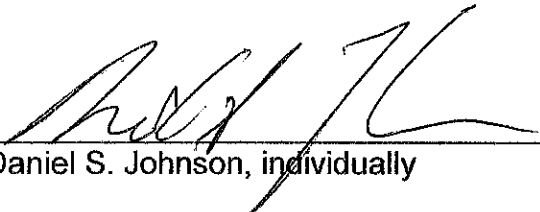
The foregoing instrument was acknowledged before me this 9th day of November, 2012 by Daniel S. Johnson as President of Lightning Hybrids, Inc., a Colorado corporation.

ANNETTE GILBERT
Notary Public
State of Colorado
Commission # 20084033190
Commission Expires Sep 23, 2016

Annette Gilbert
Notary Public

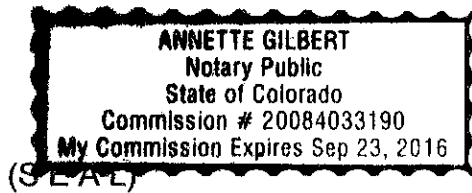
(SEAL)


"OWNERS"

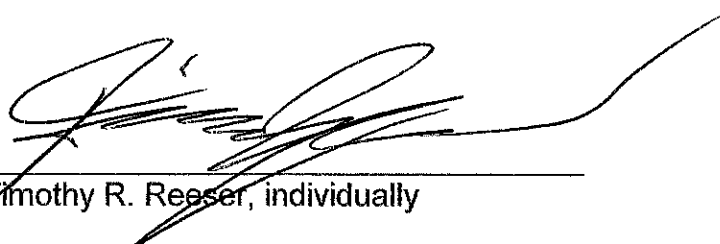

 Daniel S. Johnson, individually

STATE OF COLORADO)
) ss.
 County of Larimer)

The foregoing instrument was acknowledged before me this 9th day of November, 2012 by Daniel S. Johnson, an individual.

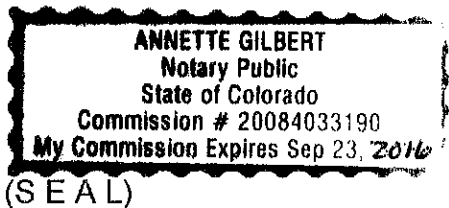




 Notary Public


 Timothy R. Reeser, individually

STATE OF COLORADO)
) ss.
 County of Larimer)

The foregoing instrument was acknowledged before me this 9th day of November, 2012 by Timothy R. Reeser, an individual.




 Notary Public

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CITY OF LOVELAND

ECONOMIC DEVELOPMENT OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

MEMORANDUM

To: Loveland City Council

Through: Bill Cahill, City Manager

From: Mike Scholl, Economic Development Department, City of Loveland

Date: November 15, 2012

RE: Lightning Hybrids/Incentive Agreement Amendment`

Request:

Staff has negotiated an amendment to the Lightning Hybrids Economic Incentive Agreement (July 10, 2009) that would allow Lightning Hybrids (LH) to apply the \$28,000 refund it owes the City towards the hydraulic hybrid retrofit of two city buses. The agreement is as follows:

<u>Sources of Funds</u>	<u>Amount</u>	<u>Uses of Funds</u>	<u>Amount</u>
Incentive Agreement/Clawback	\$28,000	Hydraulic Hybrid Retrofit X2	\$50,000
Federal Grant	\$24,000	Marketing	\$2,000
TOTAL	\$52,000	TOTAL	\$52,000

In addition to the hydraulic hybrid retrofit system, LH will provide a 32" monitoring screen in the bus that provides real time performance information, marketing brochures and a bus wrap that indicates the bus is powered by a hydraulic hybrid system provided by LH.

Background:

On July 7, 2009, the Loveland City Council approved an economic incentive request from LH that provided a \$50,000 up front cash payment for the first 25 primary jobs created (\$65,000 annual salary), plus a second payment of \$50,000 once 25 additional primary jobs were created. LH was give 24 months to create and maintain the jobs to receive the second payment.

In July of 2011, staff in conjunction with LH verified that only 11 jobs had been created, which required LH to repay \$28,000 (\$2,000 per job X 11 = \$22,000 - \$50,000 = owe \$28,000). Staff worked with LH to identify a compromise solution that would be mutually beneficial to both parties. Initially, staff had proposed to Council that the term of the agreement be extended for two years to allow LH to create 14 more jobs and avoid have to repay the incentive. Given the direction of the company, this idea was not approved by Council and staff continued negotiations with LH.

When the initial agreement was approved, LH business model called for the research and production of a hydraulic hybrid passenger vehicle that could exceed 100 mpg. A tremendous amount of research and development went into the design, but it became clear that the most efficient and economical use of the technology would be for large fleet vehicles that stop and start frequently (buses, garbage trucks etc.). This caused LH to shift its business model and refocus its effort on a different market segment.

Currently, LH has perfected the technology for large fleet vehicles and has received an injection of capital from a couple of large investors. This has allowed LH to start planning to scale up production. They are currently looking at a number of facilities in and around Loveland. The facility on Cleveland Avenue in Downtown will remain for R&D and sales.

Because of the change in business model, LH will be creating most of their jobs will be in production which pay less than primary jobs, which cannot be counted under the City's Incentive agreement.

Revised Agreement:

In exchange for the \$28,000 that LH owes the City, LH will retrofit two City buses with hydraulic hybrid powertrain systems. In addition, the City received a federal grant for the bus purchase that will allow us to apply an additional \$24,000 to the project for a second retrofits. The systems are expected to provide 25 to 30 percent increase in fuel efficiency over the life of the vehicle. In addition, the vehicles' performance is guaranteed and LH will be responsible for maintenance and upgrades of the hydraulic system at no cost to the City.

Staff believes that this agreement is in the best interests of the City. This will allow us to operate in partnership with a local company, while receiving the additional benefit of savings through greater fuel efficiency two of our City buses. The buses will also act as marketing tools for LH to show off their products in action to potential customers that will help the company continue to grow in Loveland.

**CITY OF LOVELAND****ECONOMIC DEVELOPMENT OFFICE**

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 18
MEETING DATE: 11/20/2012
TO: City Council
FROM: Economic Development Department
PRESENTER: Mike Scholl, Economic Development Department

TITLE:

Staff presentation on the issue of a Common Consumption area in Loveland

RECOMMENDED CITY COUNCIL ACTION:

No action required.

DESCRIPTION:

This item is information only. Staff will present findings on the creation of a Common Consumption area in Loveland.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible
No impact
-

SUMMARY:

Earlier this year, a Common Consumption area was created in Downtown Greeley. City Council requested that staff look into the issue and determine if it was feasible in Downtown Loveland. The Common Consumption area would allow for patrons of downtown establishments to carry alcoholic beverages freely from one establishment to another within a defined area and defined time period.

Under the law, the City could establish an “entertainment district” within which alcoholic beverages may be consumed. A separate “promotion association” would need to be created to apply for the local liquor license. The promotional association could not be the City and would need to be a separate entity. It would also need to be organized or authorized by at least two people who own or lease property within the district.

REVIEWED BY CITY MANAGER: *William D. Cabell*

LIST OF ATTACHMENTS:

1. Legal Memorandum – August 6, 2012
2. Staff Report
3. Map



Office of the City Attorney

Civic Center • 500 East Third Street, Suite 330 • Loveland, CO 80537
 (970) 962-2540 • Fax (970) 962-2900 • TDD (970) 962-2620
www.cityofloveland.org

MEMORANDUM

TO: Mayor and City Council
 Bill Cahill, City Manager

THRU: John Duval, City Attorney *[Signature]*

FROM: Teresa Ablao, Assistant City Attorney *[Signature]*

RE: Allowing Open Containers of Alcohol Beverages in Downtown Loveland

DATE: August 6, 2012

Issue Presented:

Whether the City can allow open containers of alcohol beverages to be possessed and consumed in Loveland's downtown on weekends?

Brief Answer:

Yes, the City can do so under the Colorado Liquor Code by enacting an ordinance to establish an "entertainment district" within which alcohol beverages may be consumed in a "common consumption area." There are numerous requirements and restrictions imposed by the Colorado Liquor Code on the establishment and operation of an open consumption area, which requirements and restrictions are hereafter discussed in detail. The Liquor Code also authorizes the City to impose certain of its own stricter requirements and restrictions on the establishment and operation of an open consumption area as hereafter described.

Discussion:

1. Background:

Generally, because the manufacture, distribution, and sale of alcohol are matters of state-wide concern, a home-rule municipality has no authority to enact legislation in these matters.¹ However, last year the state legislature passed Senate Bill 11-273 which amended the Colorado Liquor Code ("Liquor Code") to permit local jurisdictions to create an "entertainment district" by

¹ Kelly v. City of Fort Collins, 431 P.2d 785, 787 (1967).



ordinance or resolution to allow the open consumption of alcohol beverages in a “common consumption area.”²

C.R.S. § 12-47-103(7.5) defines an “entertainment district” to be an area within a municipality “of no more than one hundred acres containing at least twenty thousand square feet of premises licensed as a tavern, hotel and restaurant, brew pub, retail gaming tavern, or vintner’s restaurant when the district is created.”³ C.R.S. § 12-47-103 (6.6) defines a “common consumption area” to be “an area designed as a common area in an entertainment district approved by the local licensing authority that uses physical barriers to close the area to motor vehicle traffic and limit pedestrian access.”

The City of Greeley is the first Colorado municipality to create an entertainment district under the new statutory provisions of C.R.S. § 12-47-301(11). The Greeley Downtown Promotional Association has marketed this area as the “GO CUP” area, allowing patrons to purchase an alcohol beverage from participating or “attached” licensed establishments on certain designated evenings and to take the beverage outside the attached licensed establishments in a clearly marked “Go Cup” and consume the beverage while watching plaza entertainment or shopping in the common consumption area.

In addition to Greeley, Glendale, Snowmass and Mountain Village are other Colorado municipalities moving forward with establishing entertainment districts under the new statutory provisions.

2. Statutory Requirements (C.R.S. § 12-47-301(11)):

a. *Entertainment District:* Before a common consumption area within which alcohol beverages may be consumed can be established, a municipality must first create an entertainment district by ordinance or resolution. While C.R.S. § 12-47-301(11)(b) provides that the entertainment district can encompass up to one hundred acres, it also provides that the municipality’s ordinance or resolution creating the district may impose stricter limits than required by the Liquor Code with respect to “the size, security, or hours of operation of any common consumption area created within the entertainment district.”

b. *Certified Promotional Association:* Once the entertainment district is established, a “promotional association” may apply to the local licensing authority for certification to operate a common consumption area within the district. A promotional association must be incorporated in Colorado for the purposes of organizing and promoting entertainment activities within a common area of consumption and it must be organized or authorized by at least two people who own or lease property within the entertainment district.⁴ The association must also have a board of directors, with at least one director from each licensed premises attached to the consumption area, and agree to submit annual reports to the local licensing authority showing a detailed map of the boundaries of the area, listing the attached licensees, stating the hours of operation, listing

² C.R.S. § 12-47-301(11)

³ It is likely that in downtown Loveland there is at least the twenty thousand square feet of qualified licensed premises required for the creation of an entertainment district, but this has not yet been determined.

⁴ C.R.S. § 12-47-103 (24.5)

the association's directors and officers, describing security arrangements and reporting any violation of the Liquor Code by any attached licensee.⁵

A local licensing authority can refuse to certify, or it can decertify, a promotional association if any of the following requirements, as applicable, are not satisfied: (1) that the association timely file its annual report with the local licensing authority; (2) that the attached licensed premises and common consumption area are operated without violating the Liquor Code or creating a safety risk to the neighborhood; (3) that the association maintain liability insurance naming the municipality as an additional insured; (4) that there be at least two licensed premises attached to the common consumption area; (5) that the use of the common consumption area be compatible with the reasonable requirements of the neighborhood and desires of the adult inhabitants; and (6) that there has not been a violation by the association of any of the prohibited acts set out in C.R.S. § 12-47-909, which statute is hereafter discussed.⁶ The local licensing authority may also impose additional procedures and fees for certifying a promotional association and authorizing an attached licensee.

c. *Attached Licensee*: Any licensee of a tavern, hotel and restaurant, brew pub, or of a vintner's restaurant located within the entertainment district may apply to the local licensing authority for authorization to attach to the common consumption area.⁷ In order to be so authorized, the promotional association must request that the licensee be permitted to attach to the common consumption area and show that the licensed premises and common consumption area can be operated without violating the Liquor Code or creating a safety risk to the neighborhood. The local licensing authority has the power to deauthorize an attached licensee if any of these criteria are not being met or if the attached licensee has violated C.R.S. § 12-47-909.

d. *Prohibited Acts*: Under C.R.S. § 12-47-909(1), promotional associations and attached licensees are prohibited from:

- Employing servers and security agents who have not completed the Colorado Liquor Enforcement Division's required training program;
- Selling or providing an alcohol beverage to a customer for consumption in the common consumption area in a container that is larger than 16 ounces, that is not disposable or that does not contain the name of the vendor in at least 24-point font on the container;
- Permitting a customer to leave the attached licensed premises to enter the common consumption area with an alcohol beverage that is not in the required type of container;
- Operating the common consumption area during hours an attached licensed premises cannot legally sell alcohol;
- Operating the common consumption area in an area that exceeds the maximum authorized by statute or by the local licensing authority;
- Selling or giving alcohol to a person who is under 21 years of age, that is visibly intoxicated, or a known habitual drunkard; or

⁵ C.R.S. § 12-47-301(11)(c)

⁶ C.R.S. § 12-47-301(11)(c)

⁷ C.R.S. § 12-47-301(11)(e)

- Permitting a visibly intoxicated person to loiter within the common consumption area.

Patrons are prohibited from consuming alcohol within the common consumption area unless it was purchased from an attached licensed premises.⁸ Patrons are also prohibited from removing an alcohol beverage from the common consumption area.⁹ In addition, the promotional association must remove all alcohol beverages from the common consumption area at the end of the hours of operation.¹⁰

e. *Special Event Permits.* These new provisions for common consumption areas do not apply to a special event permittee unless the permittee desires to use an existing common consumption area and agrees in writing to abide by all the provisions regulating that common consumption area.¹¹

Summary:

In summary, in order for the City to allow the possession and consumption of alcohol beverages in the downtown area to occur on the weekends outside of a licensed premises, all of the following would have to occur:

1. The City Council would need to adopt an ordinance establishing an entertainment district that is no more than one hundred acres in area and within which there are at least twenty thousand square feet of premises with a tavern, hotel and restaurant, brew pub, or vintner's restaurant liquor license;
2. At least two people who own or lease property in the entertainment district would need to organize a promotional association;
3. Once established, the promotional association would need to apply to the City's Liquor Licensing Authority ("Authority") for certification to operate an open consumption area in the entertainment district; and
4. Then at least two establishments with a qualified liquor license located in the entertainment district must apply to the Authority for authorization to attach to the common consumption area.

Once the entertainment district is established by Council and the promotional association is certified by the Authority to operate an identified open consumption area and at least two liquor licensees have been authorized by the Authority to attach to the open consumption area, an open consumption area could become operational in Loveland's downtown on weekends.

⁸ C.R.S. § 12-47-909(3)

⁹ C.R.S. § 12-47-901(1)(h)(I),(VI)

¹⁰ C.R.S. § 12-47-909(2)

¹¹ C.R.S. § 12-47-909(4)

cc: Judge Bill Starks
Luke Hecker, Chief of Police
Teresa Andrews, City Clerk
Jeannie Weaver, Deputy City Clerk



CITY OF LOVELAND
ECONOMIC DEVELOPMENT OFFICE
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

MEMORANDUM

To: Loveland City Council
From: Mike Scholl, Economic Development Department, City of Loveland
Date: November 15, 2012
RE: Common Consumption Area

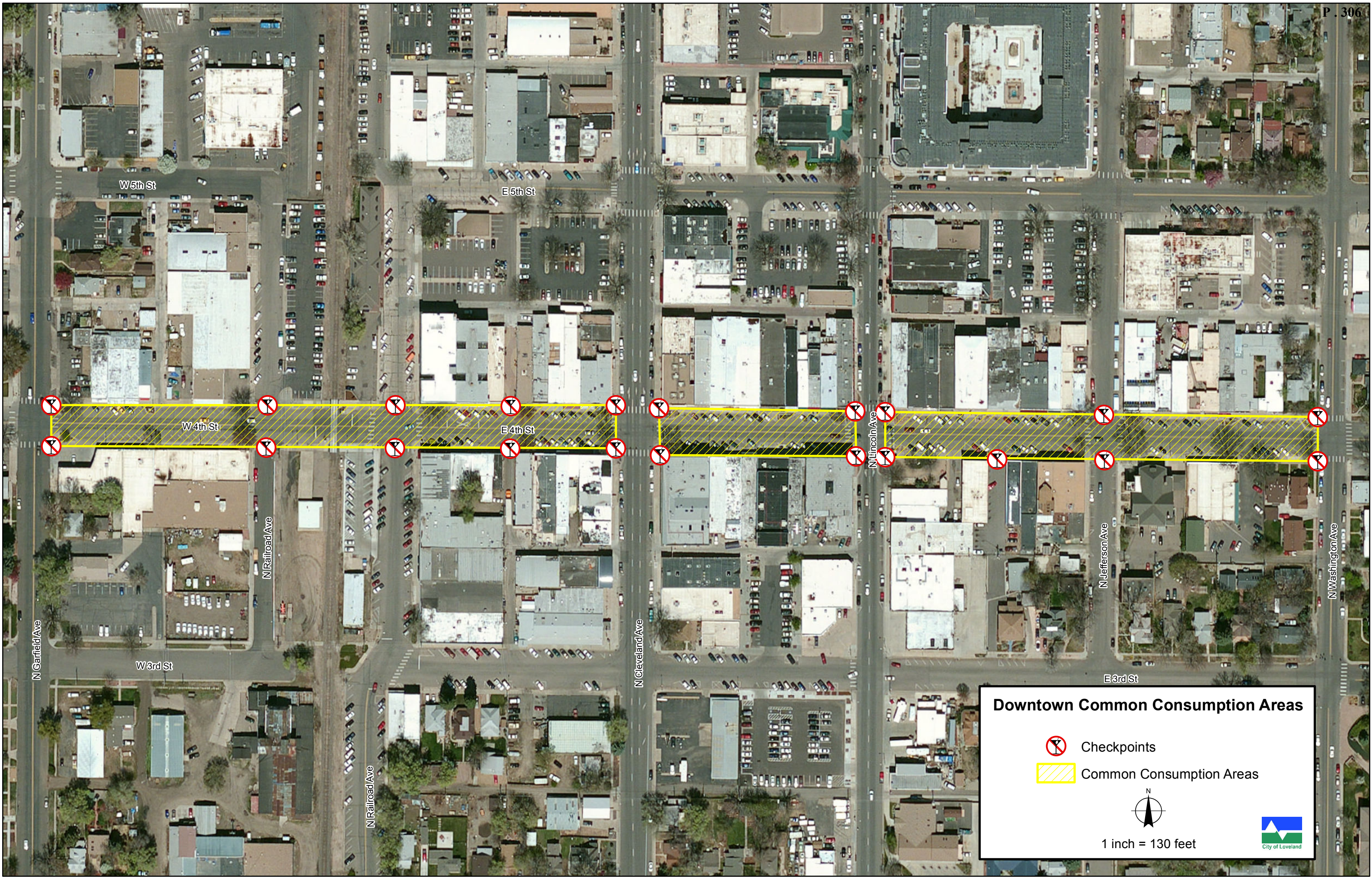
Background:

City Council asked staff to research and brief the Council on the possibility of creating a “*common consumption area*” for Downtown Loveland. The common consumption area is a sanctioned space where patrons can legally drink alcoholic beverages from participating establishments at designated times.



The issue was brought to the attention of the public when Downtown Greeley became the first community in Colorado to institute a common consumption area in their Downtown. Greeley’s “Go Cup” program began in June of 2012.

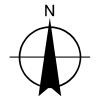
Issues:

1. While the City could enable a common consumption area through the creation of an “entertainment district”, a certified promotional entity would need to apply for the liquor license. The City would not be applicant. Further, the promotional entity would need to include two licensed premises within the consumption area. The legal issues are discussed in greater detail in the legal memorandum included in the packet.
2. In discussions with Downtown Greeley, the cost of providing insurance, monitoring and security costs around \$3,000 per evening. The association pays for off duty police officers and organizes volunteers to monitor access points.
3. Patrons legally cannot cross a road with an alcoholic beverage. The consumption area would require the closing of 4th Street. Further, because it is unlikely that Cleveland or Lincoln Avenue could be closed, it limits the consumption area. (see map) Each consumption area would require a separate liquor license application.
4. Every point of access would need to be actively monitored. If a business within the consumption area chooses not to participate, the entrance would need to be monitored and alcohol would be restricted within that premise. Monitoring access requires managing a large number of trained volunteers.



Downtown Common Consumption Areas

-  Checkpoints
-  Common Consumption Areas



1 inch = 130 feet

